



Suggested Answers - Semester

**Marks- 40
(Descriptive)**

Question-1(5 marks)

(i) According to **section 103** of the Companies Act, 2013, in case of a public company, **unless the articles** of the company **provide for a larger number**, if the number of members is **more than 1000 but upto 5000**, then the **quorum shall be 15 members** personally present.

If the quorum is not present **within half-an-hour** from the time appointed for holding a meeting of the company:

(a) the meeting shall stand **adjourned** to the **same day in the next week at the same time and place**, or to such other date and such other time and place as the **Board may determine**; or

(b) the meeting, if called by **requisitionists** under section 100, shall stand **cancelled**

Provided that in case of an adjourned meeting or of a **change** of day, time or place of meeting under clause (a), the **company** shall give **not less than three days'** notice to the members **either individually** or by publishing an advertisement in the **newspapers** (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the **adjourned** meeting also within half an hour, then the **members present shall form the quorum**.

In the given question, the quorum for the given company having 3500 members **shall be 15 members** personally present.

Where **quorum is not present** in the **adjourned** meeting (i.e. 13.05.2023) also within half an hour, then the **two members present shall form the quorum**.

(ii) The meeting held on 6.05.2023 had 16 members present. Hence, the **quorum was present**.

However, the meeting was adjourned due to unruly behaviour of some members and not for want of quorum. In the said meeting (13.05.2023), only 3 members in person were present. In such a case, these **3 members shall not constitute the quorum** and hence, shall **stand further adjourned**.

(iii) If the quorum is **not present** within half-an-hour from the time appointed for holding a meeting of the company, the meeting, if **called by requisitionists** under section 100, **shall stand cancelled**.

{2 marks for first time, 1 mark for 2nd and 3rd point and Section number : $\frac{1}{2}$ mark, Keywords : $\frac{1}{2}$ mark}

Question- 2 (5 marks)

(i) The amount that can be raised by the Company by issuing Debentures:

Section 71 of the Companies Act, 2013 (the Act), deals with the manner in which a company may issue debentures. Before the issue of debentures, the Board of Directors of the Company in compliance with Section 180(1)(c) of the Act, shall obtain approval of the shareholders through **special resolution** if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount.

Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings.

The Amount that can be raised by the Company by issuing Debentures:

In view of the above provisions, SRD Limited can raise money to the extent of the following



amounts without the approval of the shareholders through a special resolution:

Particulars	Amount
Paid up Equity Share Capital	40,00,000
Share Premium Reserve	50,00,000
General Reserve*	30,00,000
Balance in Profit and Loss Account*	20,00,000
Aggregate of its paid-up share capital, free reserves and securities premium amount (A)	1,40,00,000

*General Reserve and Balance in Profit and Loss Account is in the capacity of Free Reserve.

Since in the question, no pre-condition, is provided for issue of debenture with an option to convert such debentures into shares, so accordingly, the amount that can be raised by the company by issuing debentures will be:

Particulars	Amount
8% Non- Convertible Debentures	30,00,000
9.5% Term Loan for Purchase of Plant and Machinery	20,00,000
Amount already Borrowed (B)	50,00,000

Here, Short- term Cash Credit loan from XYZ Bank Ltd. is a 'Temporary Loan' obtained from the company's bankers.

Debentures that can be issued by the Board of Directors in the Board Meeting without obtaining approval of the shareholders through special resolution passed in the General Meeting = (A) - (B) = ₹ 90,00,000.

Further, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures exceed ₹ 90,00,000.

- (ii) Issue of Debentures with an Option to Convert into Shares: According to Section 71(1) of the Companies Act, 2013 a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. It is also provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

Thus, in case SRD Limited desires to issue debentures with an option to convert such debentures into shares, it has to pass the special resolution irrespective of the amount to be raised.

{ 3 marks : (i) and 2 marks :(ii) and amount specific marks to be allocated }

Question- 3 (5 marks)

(i) Rule 14(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, requires prior approval of the shareholders of the company, by a special resolution for each of the private placement offers or invitations.

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed



amount to be raised through such offer or invitation **exceeds the limit** as specified in clause (c) of subsection (1) of **section 180**, it **shall be sufficient** if the company passes a previous **special resolution** only **once in a year** for all the offers or invitations for such debentures during the year.

Thus, based on above, the resolution will be passed.

As per **section 42(2)** of the Companies Act, 2013, a private placement shall be made only to a **select** group of persons who have been **identified by the Board**, whose number **shall not exceed 50 or such higher number** as may be prescribed, in a financial year.

Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 has prescribed 'an offer or invitation to subscribe securities under private placement **shall not be made** to persons **more than two hundred (200) in the aggregate** in a financial year'.

Provided that any offer or invitation made to **Qualified Institutional Buyers and Employees** of the company being offered under a scheme of ESOP under section 62(1)(b) **shall not be considered** while calculating the limit of two hundred persons.

As per rule 14(7), **NBFCs** which are registered with the RBI and **Housing Finance Companies** which are registered with the National Housing Bank; if they are complying with any regulations made by the RBI or National Housing Bank in respect of offer or invitation to be issued on private placement basis, then **need not to comply** with the rule 14(2) above.

Thus, based on above, the maximum number of persons to whom an offer by private placement in a financial year will be determined.

(ii) As per section 42(6) of the Companies Act, 2013 provides that a company making an offer or invitation under private placement **shall allot** its securities **within sixty days** from the date of receipt of the **application money**.

If company fails to make allotment within 60 days, then **repayment** of the application money to the subscribers shall be made **within fifteen days** from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be **liable to repay** that money **with interest** at the rate of **twelve per cent per annum** from the expiry of the sixtieth day.

(iii) Company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with section 42(8). The return of allotment shall be filed with the Registrar within 15 days from the date of the allotment under section 42.

Hence, it can **utilize** the money thus received **once the return has been filled** with the Registrar.

{ 1st part : Special Resolution - 1 mark and explanation along with limits - 1 mark , 2nd Part : Days and Rate : 1.5 mark, 3rd part : Days and conclusion : 1.5 mark)

(Explanation for each accordingly to be provided)

Question- 4 (4 marks)

As per **Section 19** of the Companies Act, 2013, **no company** shall, either by itself or through its nominees, **hold any shares** in its holding company and **no holding company shall allot** or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be **void**.

However, this shall **not apply** where the subsidiary company is a shareholder **even before** it became a subsidiary company of the holding company.

In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018.

Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

(i) Holding of shares by S Ltd. in H Ltd. is **valid** in view of the proviso (c) to sub-section (1) of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the



holding company.

(iii) Allotment of bonus shares by H Ltd. to S Ltd. is also **valid** in view of the above proviso

{ Provision : 1.5 marks, Section: 0.5 mark, Conclusion and analysis : 1 mark each part }

Question- 5 (3 marks)

A Proxy form is an **instrument** in writing executed by a shareholder authorizing another person to **attend a meeting and to vote thereat** on his behalf and in his absence. As per the provisions of **Section 105** of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy.

It is **not necessary** that the proxy be a **member** of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than **48 hours** before a meeting shall have effect as if 48 hours had been specified therein. **The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.**

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of **member X, the proxy Y will be permitted** to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of **Member W, the proxy M (and not Proxy N) will be permitted** to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

{ Provision : 1.5 mark, Section number and keywords: 0.5 mark, Conclusion: 1 mark }

Question- 6 (4 marks)

((i) Abridged Form of Annual Return

In terms of Second Proviso to **Section 92(1)** of the Companies Act, 2013, the **Central Government** may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1), OPC and small company shall file the annual return in Form No. **MGT-7A**.

(ii) Signing of Annual Return

The annual return shall be signed by a **director** of the company and the **company secretary; and in case, there is no company secretary, by a company secretary in practice.**

In relation to One Person Company, small company and private company (if such private company is a startup), the annual return shall be signed by the **company secretary, or where there is no company secretary, by the director of the company.**

{ 2 marks each part and FORM NUMBER should be correct }

Question- 7 (4 marks)

Funds utilized for purchase of its own securities: **Section 68** of the Companies Act, 2013 states that a company may purchase its own securities out of:

i) its free reserves; or

ii) the securities premium account; or

iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities **cannot** be made out of the **proceeds of an earlier** issue of the same kind of shares or same kind of other specified securities.

Prohibition for buy-back in certain circumstances [Section 70]

(1) The provision says that **no company** shall directly or indirectly **purchase** its own shares or other specified securities-



- (a) through any **subsidiary** company including its own subsidiary companies; or
(b) through any **investment company** or group of investment companies; or
(c) if a **default** is made by the company in **repayment of deposits** or interest payment thereon, redemption of **debentures or preference shares** or payment of **dividend** to any shareholder or repayment of **term loan** or interest thereon, to any financial institutions or **banking** company; But where the default is remedied and a period of **three years has lapsed** after **such default ceased to subsist**, then such buy-back is not prohibited.
- (2) **No company** shall directly or indirectly purchase its own shares or other specified securities in case such company has **not complied** with provisions of Sections **92** (Annual Report), **123** (Declaration of dividend), **127** (Punishment for failure to distribute dividends), and section **129** (Financial Statements).

{ Funds : 1.5 marks , Prohibition : 1.5 marks, Part 2 : 1 mark }

Question- 8 (3 marks)

The provisions of Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay **commission** to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission:

- a) the payment of such commission shall be **authorized** in the company's **articles** of association;
b) the commission may be paid out of **proceeds** of the issue or the **profit** of the company or both;
Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of **shares**, **5%** of the price at which the shares are issued or a rate authorised by the **articles**, whichever is **less**, and in case of **debentures**, shall not exceed **two and a half per cent** of the price at which the debentures are issued, or as specified in the company's **articles**, whichever is **less**.

Disclosure of particulars: the prospectus of the company **shall disclose** the following particulars -

- a. the **name** of the underwriters;
b. the **rate and amount** of the **commission payable** to the underwriter; and
c. **number** of **securities** which is to be **underwritten** or subscribed by underwriter absolutely.
No commission to be paid: There shall not be paid commission to any underwriter on securities which are **not offered to the public** for subscription;

Copy of contract of payment of commission to be delivered to registrar: a copy of contract for the payment of commission is delivered to the **Registrar** at the time of delivery of the prospectus for registration.

{ Any Three points to be clearly explained with correct rates, conditions : 1 mark each point }

Question 9 (3 marks)

Irregular allotment: The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfilment of those requirements.

In broad terms an allotment of shares is **deemed to be irregular** when it has been made by a company **in violation of Sections 23, 26, 39 or 40**. Irregular allotment therefore arises in the following instances:

- (i) Where a company **does not issue a prospectus** in a public issue as required by section 23; or
(ii) Where the prospectus issued by the company does not include any of the **matters** required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or



- (iii) Where the prospectus has **not been filed with the Registrar** for registration under section 26 (4); or
- (iv) The **minimum subscription** as specified in prospectus has not been received in terms of section 39; or
- (v) The **minimum amount receivable** on application is **less than 5%** of the **nominal value** of the securities offered or **lower than the amount prescribed by SEBI** in this behalf; or
- (vi) In case of a public issue, **approval for listing** has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

{ Definition : 1 mark, Any 4 points : $\frac{1}{2}$ mark each }

Question 10 (4 marks)

Regarding the validity of Proposals w.r.t change of registered office by A Ltd. in the light of the **section 12** of the Companies Act, 2013:

(i) In the first case, where the Registered office is shifted from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai.

As per Section 12 (5) of the Act which deals with the change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a **special resolution** passed by the company. **No approval of regional director** is required as both the places are falling within the jurisdiction of the Registrar of Mumbai. Accordingly, said proposal is **valid**.

(ii) **Section 12** talks about shifting of Registered office only, In the second case the corporate office is being shifted from Pune to Mumbai under the **authority of Board resolution**. Shifting of corporate office under the board resolution is **valid**.

{ Provision with good explanation : 2 marks , Resolution : $\frac{1}{2}$ mark both parts each , Conclusion : $\frac{1}{2}$ mark each }

Notes :

1. If You are unable to remember Section number then , As per provision of Companies Act will also be considered for marking system
2. Keywords should be highlighted
3. Flow of Answer must be appropriate .
4. Avoid scribbling and cutting in the paper,
5. Answer's length should be justified
6. Clear Handwriting and nothing ambiguous to be written
7. At times of limits, Please write as per limits prescribed if not able to remember the same,
8. Language should not extreme basic, it should have words with essence of law.
9. Don't use too many shortcuts atleast when it is utmost unnecessary
E.G: RO for Registered Office