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| CHAPTER | <h1 style="margin: 0;">Preliminary and Incorporation of Company</h1> |
| 1 | |

This chapter covers: Study's Chapter: 1 and 2

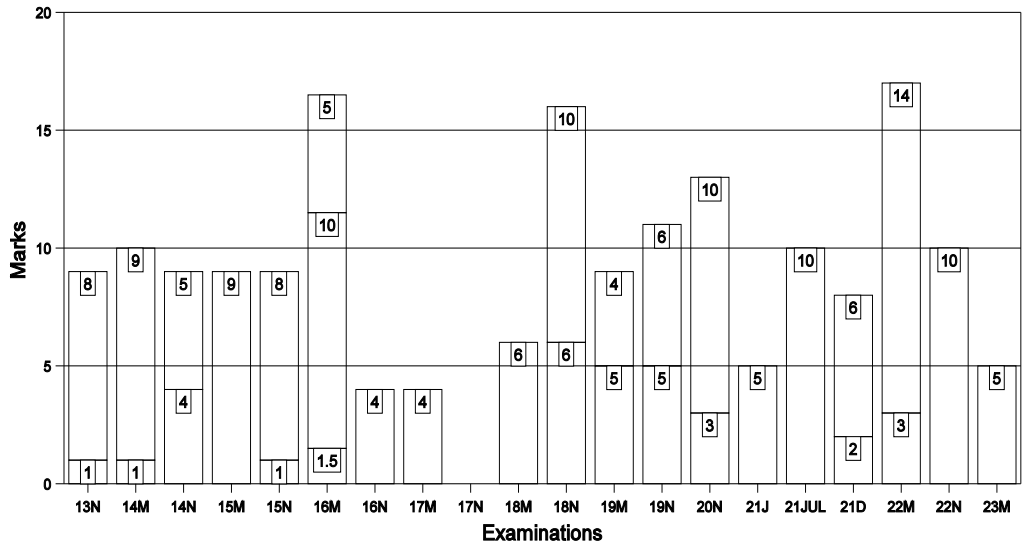
Chapter Comprises: Definitions Formation of Company MOA AOA Incorporation of company Alteration of Memorandum Alteration of Articles Service of Documents Authentication of documents, proceedings and contracts.

| | |
|------------------|-----------------------------|
| THE GRAPH | Trend Analysis |
|------------------|-----------------------------|

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

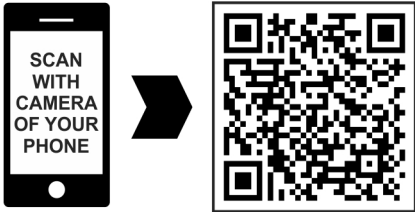
Legend

Objective
 Short Notes
 Distinguish
 Descriptive
 Practical



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2.16 ■ **Scanner CA Inter Group - I Paper - 2A**



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| TIME MANAGER | | <i>Plan and Manage your Time</i> | | | | | | |
|---------------------|--------------------------------|--|-------------------------|-------------------------------------|--------------------------|--------------------------|-----------------------|--|
| Time | <i>First In-depth learning</i> | <i>Instant Revision (in hours)</i> | | <i>Periodic Revision (in hours)</i> | | | | |
| | i.e..... | Next day i.e.... | After 7 days i.e. on | After 30 days i.e. on | After 60 days i.e. on | After 90 days i.e. on | Fix as per your need. | |
| | Day 1 | Day 2 | Day 8 | Day 30 | Day 60 | Day 90 | | |
| 1. Budgeted | | | | | | | | |
| 2. Actual | | | | | | | | |
| 3. Variance (1-2) | | | | | | | | |

| QUICK LOOK | | <i>Weightage Analysis</i> | |
|-----------------------------------|----------------------------------|---------------------------------|--|
| Repeatedly Asked Questions | Common Answered Questions | Must Try Question | |
| 7.1 | 8.1 | 5.1, 5.7, 7.1, 8.1, 9.1, 10.1 | |

| Q.1.1 | 2018 - May [1] {C} (a) | Practical |
|---|------------------------|-----------|
| <p>MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of ₹ 45 lakh and turnover of ₹ 3 crores. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:</p> <p>(i) Whether the MNP Private Ltd. can avail the status of small company?</p> <p style="text-align: right;">[Modified] (6 marks)</p> | | |

Answer:

Meaning of a Small Company

As per Sec. 2(85) of the Companies (Amendment) Act, 2017, small company means a company, other than a public company whose:

- (i) paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees and
- (ii) turnover of which as per profit and loss account for immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Provided that nothing in this clause shall apply to –

- (A) a holding company or a subsidiary company;
- (B) a company registered under Section 8; or
- (C) a company or body corporate governed by any special Act;

Section 2 (85) of Companies Act, 2013 defines limits for the identification of Small Company. Limits are as follows:

Paid-up Capital: 50 lac to 10 Crore

Turnover: 2 Cr to 100 Crore.

AND Gives power to Government to prescribe such higher amount within the specified limits.

By using aforesaid power (powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013), Central Government has prescribed limit by inserting new clause (t) under Rule 2(1) in the

2.18■ **Scanner CA Inter Group - I Paper - 2A**

Companies (Specification of definition details) Rules, 2014.
 Now the new limit for Small Company effective from 01/04/2021 is Paid-up Capital NOT EXCEED ₹ 4 Cr. AND Turnover NOT EXCEED ₹ 40 Cr. (as per profit and loss account for the immediately preceding financial year) (vide GSR 700LE) dated 15th September, 2022)

Present Case:

- (i) MNP Private Ltd. can avail the status of small company as its turnover does not exceeds forty crore rupees.

— Space to write important points for revision —

| Q.1.2 | 2019 - Nov [1] {C} (a) | Practical |
|--|------------------------|-----------|
| <p>(i) Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013. (2 marks)</p> <p>(ii) SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. (2 marks)</p> | | |

Answer:

- (i) According to Section 2 (42) of the Companies Act, 2013 “Foreign Company” means any company or body corporate incorporate outside India which –
- Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - Conducts any business activity in India in any other manner
- According to Rule 2 of the Companies (Registration of Foreign Companies) Rules, 2014** “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –
- Business to business and business to consumer transactions, data interchange and other digital supply transactions:

- (b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in Securities in India or from Citizens of India;
- (c) Financial statements, web based marketing, advisory and transactional services, data base services and products, supply chain management;
- (d) Online services such as tele-marketing, tele-commuting, tele-medicine, education and information research; and
- (e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Explanation: For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as electronic mode for the purpose of clause (42) of Section 2 of the Act.

[Companies (Specification of definitions details) Third Amendment Rules, 2021]

Present Case:

Looking to the above description, it can be said that being involved in business activity through tele-marketing, Herry Limited will be treated as foreign company.

- (ii) Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

2.20

Scanner CA Inter Group - I Paper - 2A

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

⇒ SKP Ltd., as per above shall require to apply to Central Government to follow different financial year for consolidation of its accounts outside India.

— Space to write important points for revision —

| Q.1.3 | 2021 - Dec [3] (a) (ii) | Descriptive |
|-------|-------------------------|-------------|
| | Define "Small Company". | (2 marks) |

Answer:

As per Sec. 2(85) of the Companies (Amendment) Act, 2017, small company means a company, other than a public company whose:

- (i) paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees and
- (ii) turnover of which as per profit and loss account for immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Provided that nothing in this clause shall apply to —

- (A) a holding company or a subsidiary company;
- (B) a company registered under Section 8; or
- (C) a company or body corporate governed by any special Act.

Section 2 (85) of Companies Act, 2013 defines limits for the identification of Small Company. Limits are as follows:

Paid-up Capital: 50 lac to 10 Crore

Turnover: 2 Cr to 100 Crore.

AND Gives power to Government to prescribe such higher amount within the specified limits.

By using aforesaid power (powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013), Central Government has prescribed limit by inserting new clause (t) under Rule 2(1) in the

Companies (Specification of definition details) Rules, 2014.
 Now the new limit for Small Company effective from 01/04/2021 is Paid-up Capital NOT EXCEED ₹ 4 Cr. AND Turnover NOT EXCEED ₹ 40 Cr. (as per profit and loss account for the immediately preceding financial year) (vide GSR 700LE) dated 15th September, 2022)

— Space to write important points for revision —

| Q.1.4 | 2021 - Dec [4] (a) (i) | Practical |
|--|------------------------|-----------|
| <p>Diya Limited, incorporated under the provisions of the Companies Act, 2013, has two subsidiaries-Jai Limited and Vijay Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2021. Examining the provisions of the Companies Act, 2013, explain in what manner the subsidiaries-Jai Limited and Vijay Limited shall prepare their Balance Sheet and Statement of Profit & Loss? (3 marks)</p> | | |

Answer:

According to Sec. 129(3) of the Companies Act, 2013, where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under subsection (2).

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014.

2.22■ **Scanner CA Inter Group - I Paper - 2A****Present Case:**

Since, consolidation of accounts is to be done by the holding company (i.e. Diya Limited), Jai Limited and Vijay Limited shall prepare their financial statement normally following the relevant provisions of the Companies Act, 2013 compliant with the applicable Accounting Standards.

— Space to write important points for revision —

| Q.1.5 | 2022 - Nov [3] (a) | Practical |
|---|---------------------------|------------------|
| <p>Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company :</p> <ul style="list-style-type: none">(i) ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.(ii) CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.(iii) PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013. <p style="text-align: right;">(5 marks)</p> | | |

Answer:

As per the Sec. 2(52) of the Companies Act, 2013, the listed company means a company that has any of its securities listed on any recognized stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the securities and exchange board, shall not be considered as listed companies.

According to Rule 2A of the Companies (Specification of definition details) Rules, 2014 the following classes of companies shall not be considered as listed companies namely:

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their:
 - (i) Non-convertible debt securities issued on a private placement basis in terms of SEBI (Issue and listing of Debt Securities) Regulations, 2008; or
 - (ii) Non-convertible redeemable preference shares issued on a private placement basis in terms of SEBI (Issue and listing of Non-convertible Redeemable preference shares Regulations, 2013 or
 - (iii) Both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on a private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities Regulations, 2008.
- (c) Public Companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in Section 23(3) of the Act.

Facts & Conclusion:

- (i) ABC Ltd., a Public co., has listed its non-convertible Debt securities issued on a private placement basis in terms of SEBI (Issue and Listing of Debts Securities) Regulations, 2008. It has complied with the requirements as per Rule 2A (a)(I) of the companies (Specification of definitions details) Rules, 2014. **So, it is not a listed company.**
- (ii) CHG Ltd., a public co., has listed its non-convertible redeemable preference shares issued on a private placement basis in terms of SEBI (Issue and Listing of Non-convertible Redeemable preference shares) Regulations, 2013. It has complied with the requirements as per Rule 2A (a) (ii) of the companies (Specification of definition details) Rule, 2014. **So, it is not a listed company.**
- (iii) PRS Ltd., is a public company which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in **sub-section (3) of Section 23 of the Companies Act, 2013**. It has complied with the requirements as per Rule 2A (c) of the companies (Specification of definition details) Rules, 2014. **So, it is not a listed company.**

2.24■ **Scanner CA Inter Group - I Paper - 2A**

| Q.1.6 | 2023 - May [4] (a) | Practical |
|--|--------------------|-----------|
| <p>H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was ₹ 1.80 crores; and paid up share capital was ₹ 80 lakhs. The Board of Directors wants to avail the status of a small company. The company secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of practicing company secretary is correct, explaining the relevant provisions of the Act. (5 marks)</p> | | |

2**Introduction**

| Q.2.1 | 2014 - Nov [7] (b) | Descriptive |
|--|--------------------|-------------|
| <p>Attempt the following: Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain. (4 marks)</p> | | |

Answer:**Definition of Promoter:**As per **Sec. 2(69) of the Companies Act, 2013 Promoter** means a person:

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Sec. 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in Sub-clause (c) shall apply to a person who is acting merely in a professional capacity.**Thus as per the provisions of Companies Act, 2013,** "Promoter is a person who originates a scheme for the formation of the company, gets the memorandum and articles prepared, executed and registered and finds the

first directors, settles the terms of preliminary contracts and prospectus and makes arrangements for advertising and circulating the prospectus and placing the capital”.

The term ‘promoter’ is not just a term of law. It is term of business i.e. this term is to be understood in the practical business sense.

— Space to write important points for revision —

| Q.2.2 | 2015 - May [7] (b) | Descriptive |
|--|--------------------|-------------|
| Answer the following question: Define the term ‘Small Company’ as contained in the Companies Act, 2013. (4 marks) | | |

Answer :

Small Company:

As per **Sec. 2(85) of the Companies Amendment Act, 2017**

Small company means a company other than a public company

- (a) Paid up share capital of which does not exceed four crore rupees or a higher prescribed amount which shall not be more than ten crore rupees, and
- (b) Turnover of which as per its of Profit and Loss Account for the immediately preceding financial year does not exceed forty crore rupees or a higher prescribed amount which shall not be more than one hundred crore rupees.

Provided that nothing in this clause shall not apply to:

- (A) a holding company or a subsidiary company
- (B) a company registered u/s 8, or
- (C) a company or body corporate governed by any special Act.

| |
|---|
| Section 2 (85) of Companies Act, 2013 defines limits for the identification of Small Company. Limits are as follows: Paid-up Capital: 50 lac to 10 Crore Turnover: 2 Cr to 100 Crore. AND Gives power to Government to prescribe such higher amount within the specified limits. |
|---|

2.26■ **Scanner CA Inter Group - I Paper - 2A**

By using aforesaid power (powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013), Central Government has prescribed limit by inserting new clause (t) under Rule 2(1) in the Companies (Specification of definition details) Rules, 2014.

Now the new limit for Small Company effective from 01/04/2021 is Paid-up Capital NOT EXCEED ₹ 4 Cr. AND Turnover NOT EXCEED ₹ 40 Cr. (as per profit and loss account for the immediately preceding financial year) (vide GSR 700(E) dated 15th September, 2022)

— Space to write important points for revision —

| Q.2.3 | 2016 - May [4] (c) | Descriptive |
|---|--------------------|-------------|
| Explain the concept of “Dormant Company” as envisaged in the Companies Act, 2013. | | (4 marks) |

Answer :

Dormant Company:

As per Sec. 455 of Companies Act, 2013, where a company is formed and registered under this Act, for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as is prescribed under Rule 3 of Companies (Miscellaneous) Rules, 2014 for obtaining the status of a dormant company.

“Inactive Company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial year, or has not filed financial statements and annual returns during the two financial years.

“**Significant Accounting transaction**” means any transaction other than:

1. Payment of fees by a company to the Registrar;
2. Payment made by it to fulfill the requirements of this Act, or any other law.
3. Allotment of shares to fulfill the requirement of this Act, and;
4. Payment for maintenance of its office and records.

— Space to write important points for revision —

| Q.2.4 | 2018 - Nov [5] (a) | Practical |
|--|--------------------|-----------|
| Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company. | | (6 marks) |

Answer:

As per Sec. 2(42) of the Companies Act, 2013, Foreign company means any company or body corporate incorporated outside India which:

- (a) has a place of business in India whether by itself or through an agent physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

As per Rule given in the Companies (Specification of Definitions Details) Rules, 2014, term “Electronic mode”, means carrying out electronically based, whether main server is installed in India or not including, but not limited to:

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) Financial statements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

Explanation: For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as electronic mode for the purpose of clause (42) of Section 2 of the Act.

2.28**Scanner CA Inter Group - I Paper - 2A****[Companies (Specification of definitions details) Third Amendment Rules, 2021]****Present Case:**

In this case, Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but doing online business through data interchange in India. As the company has no place of business in India but carrying business through electronic mode as covered in above rule. So, Teresa Ltd. will be treated as Foreign Company.

— Space to write important points for revision —

| Q.2.5 | 2022 - May [4] (a) (i) | Practical |
|---|-------------------------------|------------------|
| ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013? | | (3 marks) |

Answer:

As per Section 2(76), clause (viii)(B) of the Companies, Act, 2013, related party with reference to the company includes, any body corporate which is a subsidiary company to which it is also a subsidiary. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) of Section 2(76) shall not apply with respect to the Section 188 to a private company. In this case, However if such two subsidiary private companies have common directors then they will be deemed to be related party because of section 2(76)(iv).

In the present case, ABC Private Ltd. has two wholly owned subsidiary companies, D private Ltd. and E Private Ltd. so that D Pvt. Ltd. and E Private Ltd. are considered as related parties, except with Respect to Section 188. However if D Pvt. Ltd. and E Pvt. Ltd. have common directors, then they will be deemed to be related parties because of Section 2(76)(iv).

— Space to write important points for revision —

| | | |
|---|---------------------------|------------------|
| Q.3.1 | 2014 - May [7] (c) | Practical |
| <p>Attempt the following: (Decide, under the Companies Act, 2013 whether Mr. Prabhu can incorporate a new company using the phrase “Electoral Trust” with the name of the company. (4 marks)</p> | | |

Answer:**Provision:**

According to the Companies Act, 2013, if any person wants to incorporate a new company then the name of the proposed company should be such one that is allowed under the Companies Act and Emblems of Names Act. The word “Electoral Trust ” is specifically given for the Sec. 8 companies. It means as per Companies Act, 2013, if any person wants to form a Sec. 8 Company then he can use the phrase “Electoral Trust” with the name of the company otherwise he cannot use it. [As per Ministry of Corporate Affairs vide General Circular No. 12/2013 dated 28.06.2013]

Present Case:

Mr. Prabhu wants to incorporate a new company using the phrase “Electoral Trust” with the name of company. He can do so by complying with the provision of above mentioned circular i.e. only if he wants to form Sec. 8 Company.

— Space to write important points for revision —

| | | |
|---|-------------------------------|------------------|
| Q.3.2 | 2014 - Nov [1] {C} (b) | Practical |
| <p>The XYZ Traders Association was constituted by four joint Hindu families consisting of 25 major and 2 minors members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 2013 or any other law.</p> | | |

2.30

■ Scanner CA Inter Group - I Paper - 2A

State whether the XYZ Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the XYZ Traders Association subsequently were reduced to 18?
(5 marks)

Answer:

As per Sec.464 of Act, 2013,

1. No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:
Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.
2. Nothing in sub-section (1) shall apply to:
 - (a) A Hindu undivided family carrying on any business; or
 - (b) An association or partnership, if it is formed by professionals who are governed by special Acts.
3. Every member of an association or partnership carrying on business in Contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall be also personally liable for all liabilities incurred in such business.

Further, Rule 10 of the Companies (Miscellaneous) Rules, 2014, provides that no association or partnership shall be formed, consisting of more than fifty persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Present Case: Thus, as per Sec. 464 of Companies Act, 2013, HUF being exempt, XYZ Traders Association is having a legal status. Also as per Companies (Miscellaneous) Rules, 2014, Since the member of members is below fifty, XYZ Traders Association is having a legal status.

And this legal status will continue even if number of members falls to 18.

— Space to write important points for revision —

| Q.3.3 | 2016 - May [5] (b) | Descriptive |
|--|--------------------|-------------|
| State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies. | | (6 marks) |

Answer :

Documents and Information for registration of a One Person Company (OPC):

For the registration of the One Person Company (OPC), following documents and information are required to be filed with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated –

1. Memorandum and Articles:

The Memorandum and Articles of the company duly signed by the subscriber to the Memorandum in such manner as prescribed in Rule 13 of Companies (Incorporation) Rules, 2014. (The Memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.)

2. Declaration of Compliance:

A declaration in Form No. INC.8 by person who is engaged in the formation of the company (an advocate, a Chartered Accountant, a Cost Accountant or a Company Secretary in practice) and by a person named in the Articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

3. Declaration from Subscribers to Memorandum:

A declaration from the subscriber to the Memorandum and from person named as the first director, if any, in the Articles stating that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under

this Act or any previous company law during the last five years, and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

4. Address for Correspondence:

The address for correspondence till its registered office is established.

5. Particulars of the subscriber:

The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the Memorandum alongwith the proof of identity, and in the case of a subscriber being a body corporate, such particulars as may is prescribed under Rule 16 of Companies Incorporation Rules, 2014.

6. Particulars of persons mentioned in the Articles:

The particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of persons mentioned in the Articles as the first directors of the company and such other particulars including proof of identity as is prescribed, under Rule 17 of Companies Incorporation Rules 2014.

7. Particulars of interest of persons:

The particulars of the interests of the persons mentioned in the Articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as is prescribed under Rule 17 of Companies Incorporation Rules, 2014.

Note: Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company (The Companies (Incorporation) Rules, 2014).

_____ Space to write important points for revision _____

| Q.3.4 | 2018 - Nov [1] {C} (a) | Practical |
|--|------------------------|-----------|
| XYZ a One-Person Company (OPC) was incorporated during the year 2014 -15 with an authorized capital of ₹ 45.00 lakhs (4.5 lakh shares of ₹ 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2014-15 and 2015-16 was ₹ 2.00 crores and ₹ 2.5 crores | | |

respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2016-17. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

- (i) If promoter increases the paid up capital of the company by ₹ 10.00 lakhs during 2016-17
- (ii) If turnover of the company during 2016-17 was ₹ 3.00 crores.

(4 marks)

Answer:

Companies (Incorporation) Second Amendment Rules, 2021. has done away with requirement of paid up capital of Rupees Fifty Lakhs or less and turnover of Rupees Two Crore or less for Conversion of OPC. Now any Resident or Non-Resident who has stayed in India for more than 120 who has incorporated OPC can convert the OPC into Private Company or Public Company other than Section 8 Company with no paid up capital and turnover restrictions..

Process for Conversion of OPC into Private or Public company

As per Rule 6 of **Companies (Incorporation) Amendment Rules, 2023.**

1. The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2. A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.
3. The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the **Companies (Registration offices and fees) Rules, 2014** with altered e-MOA and e-AOA.

2.34

Scanner CA Inter Group - I Paper - 2A

4. On being satisfied that the requirements stated herein have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

Hence pursuant to the aforesaid amendment the requirement of filing INC-5 has been done away with and the format of INC-6 has been changed.

| Q.3.5 | 2019 - May [5] (a) | Descriptive |
|---|--------------------|-------------|
| <p>A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act. Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013. (5 marks)</p> | | |

Answer:

Provision:

According to Sec. 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

The Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

Present Case:

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under Section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good,

since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in Section 8(1) of the Companies Act, 2013. Therefore, the proposal is not feasible.

| Q.3.6 | 2019 - Nov [1] {C} (a) (iii) | Practical |
|---|------------------------------|-----------|
| <p>Naveen incorporated a “One Person Company” making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.</p> <p>(A) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?</p> <p>(B) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? (6 marks)</p> | | |

Answer:

Provision:

As per Rule 3 of Companies (Incorporation) Second Amendment Rules, 2021, with respect to formation of one person company only a natural person who is an Indian Citizen whether resident in India (person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding one calendar year) or otherwise –

- Shall be eligible to incorporate a OPC;
- Shall be a nominee for the sole member of a OPC.

Present Case:

- (A) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.
- (B) Yes, Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage.

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2.36

Scanner CA Inter Group - I Paper - 2A

| Q.3.7 | 2020 - Nov [1] (a) | Practical |
|--|--------------------|-----------|
| <p>Mr. Raja along with his family members is running successfully a trading business. He is capable of developing his ideas and participating in the market place. To achieve this, Mr. Raja formed a single person economic entity in the form of One Person Company with his brother Mr. King as its nominee. On 4th May 2020, Mr. King withdrew his consent as Nominee of the One Person Company. Can he do so under the provisions of the Companies Act, 2013?</p> <p>Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 5th May 2020 under the above said Act.</p> <ul style="list-style-type: none">(i) Mr. Shyam son of Mr. Raja who is 15 years old as on 5th May 2020.(ii) Ms. Devaki an Indian Citizen, sister of Mr. Raja stays in Dubai and India. She stayed in India during the period from 2nd January 2019 to 16th August 2019. Thereafter she left for Dubai and stayed there.(iii) Mr. Ashok, an Indian Citizen residing in India who is presently a member of a 'One Person Company'. <p style="text-align: right;">(6 marks)</p> | | |

Answer:**Provision:**

As per Sec. 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

The other person (nominee) whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation along with its Memorandum of Association and Articles of Association.

Such other person (nominee) may withdraw his consent in such manner as may be prescribed.

Present Case:

In terms of the above provision, Mr. King, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

As regards the eligibility for being nominated as nominee:

- (i) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Mr. Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.
- (ii) As per the Rule 3 of the Companies (Incorporation) Second Amendment Rules, 2021 wrt formation of OPC, only a natural person who is an Indian citizen whether resident in India or otherwise shall be a nominee or the sole member of a One Person Company. The term “Resident in India” means a person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year. Here Ms. Devaki an Indian Citizen but not resident in India as she stayed for a period of less than 120 days during the immediately preceding financial year in India. However, she is eligible for being nominated as nominee of the OPC as per the latest amendment.
- (iii) As per the Rule 3 of the Companies (Incorporation) Rules, 2014, a person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC. Mr. Ashok, an Indian Citizen residing in India who is a member of an OPC (Not a nominee in any OPC), can be nominated as nominee.

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| Q.3.8 | 2021 - July [3] (a) | Practical |
|--|---------------------|-----------|
| <p>State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Cool, a member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the Company.</p> | | |

2.38

■ Scanner CA Inter Group - I Paper - 2A

- (i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions.
- (ii) Whether the Company may be wound up?
- (iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?
(5 marks)

Answer:

- **Sec. 8 of the Companies Act, 2013**, deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects.
- **Section 8** companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, state cricket club, a LLP was a **section 8** company and it conducted its affairs fraudulently.
- As per the Companies Act, 2013, the answers to the questions and the powers of the Central Government is given as follows:
 - (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudlently, or violate of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter. So that Central Government can revoke the licence of the cricket club as per the provision mentioned above.
 - (ii) Where a licence is revoked, the Central Government may by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act, or amalgamated with another company registered under this Act.

However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects then, not with standing anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

In this case, the State Sports Club cannot be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking as the objects of both the companies are different and not similar.

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| Q.3.9 | 2021 - Dec [1] {C} (a) (i) | Practical |
|---|----------------------------|-----------|
| <p>Chhavish, an Indian citizen and resident of India formed “Ekta Readymade Garments Ltd.” as One Person Company on 1st April 2018 with his wife Mrs. Jyoti as nominee. The authorized and paid-up share capital of the company is ₹ 35 lakhs. He got in touch with a readymade garments buyer and was expecting to receive a substantial order by August 2020 where final delivery will be completed by December 2020. To expand the production capacity, the company decided to invest an additional capital of ₹ 10 lakhs in plant and machinery. As a result, the company’s authorized and paid-up share capital is now ₹ 45 lakhs. Promoter of the company seeks your advice. Considering the case and referring the provisions of the Companies Act, 2013, advice:</p> <p>(A) Who is eligible to act as a member of OPC?</p> <p>(B) Whether “Ekta Readymade Garments Ltd.” can convert into any other kind of company as on 1st December 2020?</p> <p>(C) If the company increases its paid up share capital by ₹ 30 lakhs in</p> | | |

2.40

Scanner CA Inter Group - I Paper - 2A

August, 2019, can it be converted in any other kind of company immediately? (3 marks)

Answer:

- (A) The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company. Only a natural person who is an Indian citizen whether resident in India or otherwise-
- (a) shall be eligible to incorporate One Person Company (OPC);
 - (b) shall be a nominee for the sole member of One Person Company (OPC).
- (B) **Present Case:**
The Ministry of Corporate Affairs w.e.f 1st April, 2021 has removed the condition whereby OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
Ekta Readymade Garments Ltd. was incorporated on 1st April, 2018. Ekta Readymade Garments Ltd. cannot voluntarily convert the OPC into any other kind of company before expiry of two years from 1st April, 2018 i.e. upto 31st March, 2020. Thus, it can convert into any other kind of company as on 1st December, 2020.
- (C) **Companies (Incorporation) Second Amendment Rules, 2021.** has done away with requirement of paid up capital of Rupees Fifty Lakhs or less and turnover of Rupees Two Crore or less for Conversion of OPC. Now any Resident or Non-Resident who has stayed in India for more than 120 who has incorporated OPC can convert the OPC into Private Company or Public Company other than Section 8 Company with no paid up capital and turnover restrictions.

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4

Memorandum of Association

| Q.4.1 | 2013 - Nov [6] (c) | Objective |
|---|--------------------|-----------|
| State whether the following statement is correct or incorrect : (iii) Memorandum of Association is the Charter of the company. (1 mark) | | |

Answer:

Correct.

5

Article of Association

| Q.5.1 | 2015 - May [1] {C} (b), RTP | Descriptive |
|---|-----------------------------|-------------|
| Answer the following question: “The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company.” Explain the above statement. Also, state the exceptions to the above rule. (5 marks) | | |

Answer :

As per the Companies Act, 2013, there is a provision which protects the outsiders to the company who are dealing with the company which is known as “The doctrine of Indoor Management”. As per this provision, persons dealing with the company though are supposed to have satisfied themselves regarding the competence of the company, can safely presume that internal proceedings have been observed properly or complied with. They need not inquire into the regularity of internal proceeding. This provides the protection to those persons dealing with the company. As the outsider is unknown about the internal proceedings of the company so that he can protect himself for being ruled by the certain circumstances based on the reasonable and justifiable grounds. They are bound to examine the registered documents of the company and ensure the consistency of the proposed dealing, but are not bound to do more. But there are certain exceptions to this rule of indoor

management so that in such ground outsider cannot protect himself on the basis of doctrine of Indoor Management.

Exceptions of Doctrine of Indoor Management:

The doctrine of indoor management is subject to the following exceptions:

1. **Knowledge of irregularity** : Under the rule of indoor management the benefit cannot be claimed if a person dealing with a company has the knowledge of the irregularity in its internal management [Howard V. Patent Ivory Manufacturing Co. (1888) 38 Ch. D. 156.]
2. **Acts void ab initio and forgery** : The doctrine of indoor management will not be used, where the acts done in the name of the company are void ab initio. The doctrine is applicable only to those irregularities that otherwise might affect a genuine transaction. It does not apply to forgery. A company cannot be made liable for forgeries done by its officers [Ruben v. Great Fingall Consolidated Co.]
3. **No knowledge** : A person having no knowledge of Articles cannot ask for protection under indoor management.
4. **Negligence** : If the irregularities are discovered by the persons dealing with a company, on making proper inquires, he cannot claim the advantages of the rule of indoor management. No protection of the rule is possible, where the circumstances surrounding the contracts are so suspicious as to invite inquiry and the outsider dealing with the Co. does not make proper inquiry [Under Wood v. Bank of Liver Pool]
5. **Act outside the scope of apparent authority**: If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound.

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| Q.5.2 | 2016 - Nov [7] (b) | Practical |
|--|--------------------|-----------|
| <p>The Articles of Association of XYZ Ltd. provides the Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting.</p> | | |

Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013. (4 marks)

Answer:

Provision:

According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Case Study:

As per the case of the *Royal British Bank Vs. Turquand* [1956] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Present case:

Since the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

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| Q.5.3 | 2018 - Nov [6] (a) | Descriptive |
|---|--------------------|-------------|
| The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. (6 marks) | | |

Answer:

Doctrine of Indoor Management

According to the “Doctrine of Indoor management” the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also

entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of “constructive notice” and popularly known as the rule laid down in the celebrated case of *Royal British Bank V. Turquand*. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Doctrine of Constructive Notice

In consequences of the registration of the memorandum and articles of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents (*T.R. Pratt (Bombay) Ltd. V.E.D. Sassoon & Co. Ltd.*) This is because these documents are constructed as ‘Public documents’ Accordingly, if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction which is *ultra vires* these documents, he must do so at his peril.

The doctrine of constructive notice is not a positive one but a negative one like that of estoppels of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself; consequently he is prevented from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority *ultra vires*.

There is one limitation to the doctrine of constructive notice of the Memorandum and the Articles of a company.

The outsiders dealing with the company are on their part entitled to assume that as far as the internal proceedings of the company are concerned, everything has been done properly in accordance with the Memorandum and Articles and the Act. They are only bound to read the registered documents and satisfy themselves that the proposed dealing is not inconsistent therewith, but are not bound to do more; they need not inquire into the

regularity of the internal proceedings as required by the Memorandum and the Articles.

This limitation of the Doctrine of Constructive Notice is known as the 'Doctrine of Indoor Management' or the rule laid down in the celebrated case of *Royal British Bank V. Turquand*. Thus, whereas the Doctrine of Constructive Notice protects the company against outsiders, the Doctrine of Indoor Management seeks to protect outsiders against the company.

— Space to write important points for revision —

| Q.5.4 | 2020 - Nov [5] (Or) (a) (iii) | Descriptive |
|--|-------------------------------|------------------|
| <p>The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.</p> | | <p>(3 marks)</p> |

Answer:

Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective.

Section 5 of the Companies Act, 2013 describes the provisions relating to entrenchment.

Articles may contain provisions for entrenchment [Section 5(3)]: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Manner of inclusion of the entrenchment provision [Section 5(4)]: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

2.46

Scanner CA Inter Group - I Paper - 2A

Notice to the registrar of the entrenchment provision [Section 5(5)]:
Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

— Space to write important points for revision —

| Q.5.5 | 2021 - Jan [5] (Or) (a) | Descriptive |
|---|-------------------------|-------------|
| The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013. | | (5 marks) |

Answer:

Doctrine of Indoor Management:

The doctrine of indoor management is an exception to rules of constructive notice. As per the doctrine of indoor management, the persons dealing with the company have right to assume that as far as the internal proceeding of the company are concerned everything has been done properly. It is necessary to read the registered documents and to see that the proposed dealing is not inconsistent therewith. They are not required to do anything more as per the regularity of the internal proceeding. This disadvantage of doctrine of constructive notice is called the Doctrine of Indoor Management. [According to the rule in *Royal British Bank V Turquand*]

The doctrine of indoor management is based on the maxim *omnia praesumuntur rit esse acts* (all things are presumed to have been done rightly). The doctrine seeks to protect outsiders against the company.

Exceptions : The doctrine of indoor management is subject to the following exceptions:

- 1. Knowledge of irregularity :** Under the rule of indoor management the benefit cannot be claimed if a person dealing with a company has the knowledge of the irregularity in its internal management [Howard V. Patent Ivory Manufacturing Co. (1888) 38 Ch. D. 156.]
- 2. Acts void ab initio and forgery :** The doctrine of indoor management will not be used, where the acts done in the name of the company are void ab initio. The doctrine is applicable only to those irregularities that

otherwise might affect a genuine transaction. It does not apply to forgery. A company cannot be made liable for forgeries done by its officers [Rulen V. Great Fingall Consolidated Co.]

3. **No knowledge** : A person having no knowledge of Articles cannot ask for protection under indoor management.
4. **Negligence** : If the irregularities are discovered by the persons dealing with a company, on making proper inquires, he cannot claim the advantages of the rule of indoor management. No protection of the rule is possible, where the circumstances surrounding the contracts are so suspicious as to invite inquiry and the outsider dealing with the Co. does not make proper inquiry [Under Wood V Bank of Liver Pool].
5. **Act outsides the scope of apparent authority**: If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound. The doctrine of Indoor Management as discussed in the Royal British Bank vs. Turquand (1956) 6E&B 327. In this case, the directors of RBB also gave a bond to T. The Article empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company has notice of irregularity or where the person dealing with the company is put upon on inquiry or when an instrument purporting to be enacted on behalf of the company is a forgery.

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2.48■ *Scanner* **CA Inter Group - I Paper - 2A**

| Q.5.6 | 2022 - Nov [5] (Or) (a) | Practical |
|---|--------------------------------|------------------|
| <p>The Article Of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through Speed Post. Suresh dispatches some documents to the company by courier, under certificate of posting. The company did not accept it on the ground that it is in violation of the AOA. As a result, Suresh suffered from loss.</p> <p>Explain with reference to the provisions of the Companies Act, 2013:</p> <p>(i) Whether, refusal of document by the company is valid?</p> <p>(ii) Whether, Suresh can claim damages for it? (5 marks)</p> | | |

Answer:

As per Sec. 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by:

- Registered Post, or
- Speed Post, or
- Courier Services, or
- Leaving it at its registered office, or
- Means of such electronic or other mode as may be prescribed. Also, as per **Section 6 of the Companies Act, 2013**, the provisions of this Act shall have an overriding effect on the memorandum and articles of a company.

Facts of the case:

The Articles of Association (AOA) of AB Ltd. provides that documents may be served upon the company only through speed post. Suresh dispatches some documents to the company by courier under the certificate on posting. The company did not accept it on the ground that it was in violation of the AOA. As a result, Suresh suffered from loss.

Conclusion:

In the present case, Suresh had served documents to the company through a courier service under the certificate of posting. So, as per Sec.20, the mode through which Suresh had served the documents will be valid. The

Company cannot contend that the mode of serving documents is not valid even if its articles mention some other mode, i.e. Speed Post.

Thus, Suresh can claim damages for the loss suffered.

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| Q.5.7 | RTP | Descriptive |
|--|-----|-------------|
| <p>The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.</p> <p>Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.</p> | | |

Answer:

Alteration in Articles of Association:

Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

1. **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
2. **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, under Rule 33 of the Companies (Incorporation) Rules, 2014 who shall register the same.
3. **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

2.50■ **Scanner CA Inter Group - I Paper - 2A**

4. **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

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6***Incorporation of Company***

| Q.6.1 | 2014 - May [6] (c) (i) | Objective |
|--|-------------------------------|------------------|
| State whether the following statement is correct or incorrect: The concept of legal personality of a company is of absolute nature. <div style="text-align: right;">(1 mark)</div> | | |

Answer:

This statement is **correct**.

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| Q.6.2 | 2015 - Nov [6] (c) (i) | Objective |
|--|-------------------------------|------------------|
| State whether the following statement is correct or incorrect: A limited company can become a partner in a partnership firm. (1 mark) | | |

Answer:

Correct: As per Sec. 4 of the Indian Partnership Act, 1932, partnership is a relation between persons. A company being an artificial person falls within the definition of a person capable of contracting. Therefore, a company can become a partner in a partnership firm.

— Space to write important points for revision —

| Q.6.3 | 2019 - Nov [3] (a) | Descriptive |
|--|--------------------|-------------|
| Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard. | | (5 marks) |

Answer:

- ⇒ **As per Section 7 (7) of the Companies Act, 2013**, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants –
- (a) Pass such orders, as it may think fit, for regulation of the management of the company including charges, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - (b) directs that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the register of the companies; or
 - (d) Pass an order for the winding up of the company; or
 - (e) Pass such other orders as it may deem fit.
- ⇒ **Provided that** before making any order.
- the company shall be given a reasonable opportunity of being heard in the matter; and
 - The tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any contracted or payment of any liability
- ⇒ **Thus, In this case**, Tribunal has the above mentioned powers against Mahima Ltd. which was incorporated by furnishing false informations.
- Space to write important points for revision —

2.52■ **Scanner CA Inter Group - I Paper - 2A**

| Q.6.4 | 2022 - May [4] (ii) | Descriptive |
|---|---------------------|-------------|
| <p>Sapphire Private Limited has registered its articles along with memorandum as on 1st July, 2021. The directors of the company seeks your advice regarding effect of registration of the company on the company itself and on its members. (3 marks)</p> | | |

Answer:

According to Sec. 9 of the Companies Act, 2013 from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.

From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators' and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of association.

In the present case of sapphire Private Ltd., the effect of the registration of the company will be 1st July 2021 on itself and on its members.

— Space to write important points for revision —

7***Registered Office of the Company***

| Q.7.1 | 2013 - Nov [6] (a), 2015 - Nov [6] (a) | Descriptive |
|---|--|-------------|
| <p>What is the importance of registered office of a company? State the procedure for shifting of registered office of the company from one State to another State under the provisions of the Companies Act, 2013. (8 marks each)</p> | | |

Answer :

Registered Office Clause

State in which registered office will be situated has to be specified in Memorandum of Association under Registered office clause. Registered Office is really the permanent address of the company. It is residence of the company. It decides the domicile of the company.

Registered Office of Company as per Sec. 12.

1. A company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. [Sec. 12(1)].
2. The company shall furnish to the Registrar in Form No. INC. 22 verification of its registered office within a period of thirty days of its incorporation in such manner as is prescribed under Rule 25 of Companies Incorporation Rules, 2014.
3. Every company shall –
 - (a) Paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages; [Sec. 12(3)(a)].
 - (b) Have its name engraved in legible characters on its seal, if any; [Sec. 12(3)(b)].
 - (c) Get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
 - (d) Have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed.

Importance of Registered Office Clause

Companies Act, 2013 and other Acts provide great importance to registered office. It actually decides domicile of a company.

1. **Serving of notice on company:** Any document can be served on a company by sending it by post under certificate of posting or by registered post or by speed post or courier or by hand delivery, or by means of such electronic or other mode as is prescribed under Rule 35 of Companies (Incorporation) Rules, 2014 at the registered office. [Section 20(1)]
2. **Holding of AGM:** Annual General Meetings of company must be held either in registered office, or in city/town/village in which registered office is situated. [Sec. 96(2)].
Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance: [Inserted by Companies (Amendment) Act, 2017]
3. **Publications of advertisements:** Following advertisements have to be published in newspapers in the district/State where registered office is situated:
 - (a) Advertisement inviting public deposits should be published in one English and one vernacular newspaper in the State in which registered office is situated.
 - (b) Notice of closure of register of members and debentureholders is to be published in newspaper circulating in the district in which the registered office of the company is situated.
4. **Depositing proxy, notice of EOGM, circular resolution:** Proxy for meeting have to be deposited at registered office of the company. [Article 57 of Model Articles of Association Table-F of the 2013 Act]
Sec. 100(2) of the Companies Act, 2013 provides for requisition of meeting by members. Though section does not specifically say so, as per Sec. 20, of the Companies Act, 2013 the requisition has to be submitted at registered office of the company.

If members want to circulate a resolution under Sec. 111 of the 2013 Act, they have to deposit requisition in writing at registered office.

Change of Registered Office from one State to another

In order to the change its registered office from one State to another the Companies Act, 2013 lays down the following steps and procedure:

- 1. Resolution of the Board of Directors:** The first step in changing registered office is that the Board of Directors must adopt a resolution to that effect and convene a general meeting of members in which the change is approved.
- 2. Special resolution:** A special resolution must be passed by the company in the general body meeting of shareholders/members. [Sec. 13(1)]
- 3. Approval of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016):** The alteration of the Memorandum relating to the change of the registered office from one state to another shall not have any effect, unless it is approved by the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) on an application in Form INC. 23 and in such manner as is prescribed in Rule 30 of Companies (Incorporation) Rules, 2014. Hence, the company will have to make the required application after the name is approved by the members by special resolution. [Sec. 13(4)]
- 4. Disposal of application:** The Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) shall dispose of the application within sixty days and before passing its order, it may satisfy itself that the alteration has the consent of creditors, debentureholders and other persons concerned with the company, or that adequate provisions have been made by the company either for the due discharge of their liabilities or adequate security has been provided for such discharge. [Sec. 13(5)]
- 5. Registration with Registrar:** The company shall file a certified copy of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) order

2.56■ **Scanner CA Inter Group - I Paper - 2A**

approving the alteration with the Registrar of each of the States in Form No. INC.28 along with the fees within 30 days from the date of receipt of certified copy of order, who shall register the same. The Registrar of the State where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration. [Sec. 13(7)]

— Space to write important points for revision —

| Q.7.2 | 2021 - July [5] (a) | Practical |
|--|----------------------------|------------------|
| <p>Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:</p> <ul style="list-style-type: none">(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.(ii) The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution. (5 marks) | | |

Answer:

- (i) As per **Section 12 of the Companies Act, 2013**, where a company changes the place of its registered office from jurisdiction of one Registrar to the jurisdiction of another Registrar within the same state, then such change is to be confirmed by the Regional Director on an application made by the company.

- Here, the registered office is shifted from Thane (local limit of Thane District) to Dadar (Local limit of Mumbai District) as both places falling within the jurisdiction of the registrar of Mumbai, confirmation of Regional Director is not required. So, there is no violation of the provisions of the Act.
- (ii) **The Companies Act, 2013, under section 13** provides for the process of altering the Memorandum of a Company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Pune to Mumbai does not result in alteration of the Memorandum and hence, the provisions of **Section 13** does not apply.
- However, **under section 12(5)** of the Act, which deals with the registered office of company, the change in registered office from one town or city to another in the same state must be approved by a special resolution of the company. Further, registered office is shifted from one ROC to another, therefore, company will have to seek approval of Regional director.
 - **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.
However, if it is assumed that Corporate Office and Registered Office are same. Then in this case, Registered Office situated in Mumbai is changed from Mumbai to Pune falling the jurisdiction of different of ROC's in the same State, then such change is to be confirmed by the Regional Director on an application made by the company. Accordingly, the said proposal may be treated as invalid, due to lack of confirmation by Regional director of such change.
- (iii) As per the provisions of the Companies Act, 2013, the registered office of the company shall be changed only by passing of special resolution by a company, outside the local limits of any city, town or village where such office is situated, or where it may be situated later by virtue of a special resolution passed by the company.

2.58

Scanner CA Inter Group - I Paper - 2A

- The registered office in this case is shifted to the another place within the local limits of the same city under the Board Resolution. So in line with above provisions the company's action to shift office to another place within local limit without passing special resolution is tenable in law.

— Space to write important points for revision —

| Q.7.3 | RTP | Descriptive |
|---|-----|-------------|
| A Company XY Ltd. wants to shift its Registered Office in Mumbai to Pune. State the procedure in this regard. | | |

Answer:

Transfer of RO of XY Ltd. from Mumbai (Maharashtra) to Pune (Maharashtra)

Maharashtra has ROC offices at Mumbai as well as at Pune. Thus, shifting of RO of XY Ltd. from Mumbai to Pune would mean change of RO within same state but from jurisdiction of one ROC to the jurisdiction of another ROC.

Accordingly the formalities to be complied under Sec. 12(5) of the Companies Act, 2013 and Rule 28 of the Companies (Incorporation) Rules, 2014 are as follows:

As per Sec. 12(5), except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed, –

- (a) in the case of an existing company outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and
- (b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the

Regional Director on an application made in this behalf by the company in the prescribed manner.

The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

As per Rule 28 of the Companies (Incorporation) Second Amendment Rules, 2017:

1. An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No. INC.23 along with the fee and following documents, –
 - (a) Board Resolution for shifting of registered office;
 - (b) Special Resolution of the members of the company approving the shifting of registered office;
 - (c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
 - (d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;

2.60

Scanner CA Inter Group - I Paper - 2A

(e) acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.

As per Companies (Incorporation) Eighth Amendment, Rules, 2019.

2. The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.
3. The certified copy of order of the Regional Director approving the alternation of memorandum for transfer of registered office of the company within the same State shall be filed in Form No. INC.28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.

_____ Space to write important points for revision _____

| Q.7.4 | RTP | Practical |
|---|-----|-----------|
| VD Company Ltd. is registered in Mumbai within the jurisdiction of the Registrar of Companies, Pune. The company proposes to shift its registered office to a place within the jurisdiction of Registrar of Companies, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office. (5 marks) | | |

Answer :

Transfer of RO of VD Company Ltd. registered in Mumbai within jurisdiction of ROC, Pune to a place within jurisdiction of ROC, Coimbatore.

This shifting would mean change of RO from one state to another.

Accordingly the formalities to be complied under Rule 30 of the Companies (Incorporation) Second Amendment Rules, 2017 are as follows:

1. An application under Section 13(1), for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC 23

along with the fee and shall be accompanied by the following documents, namely:–

- (a) a copy of Memorandum of Association, with proposed alterations;
 - (b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
 - (c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
2. There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely–
- (a) the names and address of every creditor and debenture holder of the company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:
- Provided** that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that–
- (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and
 - (ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

3. A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
4. There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
5. The company shall, not more than thirty days before the date of filing the application in Form No. INC. 23 –
 - (a) advertise in the Form No. INC. 26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with wide circulation in the state in which the registered office of the company is situated.
Provided that a copy of advertisement shall be served on the Central Government immediately on its publication;
 - (b) serve, by registered post with acknowledgment due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgment due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
6. There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter-response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

7. Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.
8. Where an objection has been received,
 - (i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application;
 - (ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.
9. The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper.

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
10. On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.

Certified copy of Central Government's order:

The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No. INC.28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

— Space to write important points for revision —

2.64

Scanner CA Inter Group - I Paper - 2A

8

Alteration of Memorandum

| Q.8.1 | 2016 - May [1] {C} (b) | Practical |
|---|-------------------------|-----------|
| <p>Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause. (5 marks)</p> | | |
| OR | 2017 - May [4] (a) (ii) | Practical |
| <p>The object clause of the Memorandum of Vardhman Industries Ltd., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. State whether the company can make such change as per the provisions of the Companies Act, 2013? (4 marks)</p> | | |

Answer:**Alteration of Object Clause:**

According to Sec. 13(1) of the Companies Act, 2013, a company may be special resolution and after complying with the procedure specified in this section alter the provisions of its MOA.

The Object Clause can be altered in the following way:

- 1. Resolution of Board of Directors:** The first step in altering object is that the BOD must adopt a resolution to that effect and convene a general meeting of members in which the alteration is approved.
- 2. Special Resolution:** Change in object clause can be effected simply by passing a special resolution in general meeting of members. [Sec. 13(1) of the 2013 Act].

3. **Filing with ROC:** The special resolution should be filed with ROC in Form No. MGT 14 within thirty days from the date of resolution [Sec. 13(6)(a) of the 2013 Act].
4. **Entry in Register of Companies by ROC:** The Registrar will register the document and then only the alteration becomes effective. [Sec. 13(10) of the 2013 Act]
5. **Special provision in case of listed Company which has raised money from public and has unutilised amount out of money so raised.**
 - (i) **Passing Special Resolution by Postal Ballot**
 - (ii) **Notice to Shareholders**

Notice in respect of the Resolution for altering the objects shall contain the following particulars:

 - (a) the total money received,
 - (b) the total money utilized for the objects stated in the prospectus,
 - (c) the unutilized amount out of the money so raised through prospectus,
 - (d) the particulars of the proposed alteration or change in the objects,
 - (e) the justification for the alteration or change in the objects,
 - (f) the amount proposed to be utilised for the new objects,
 - (g) the estimated financial impact of the proposed alteration on the Earnings & Cash Flow of the Company,
 - (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution,
 - (i) the place from where any interested person may obtain a copy of the Notice of the Resolution to be passed.
 - (iii) **Publication in Newspaper**
 - (a) Details of the resolution shall be published 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.

2.66■ **Scanner CA Inter Group - I Paper - 2A**

(b) The Advertisement giving details of each resolution to be passed for change in objects shall be published simultaneously with the despatch of Postal Ballot Notices to Shareholders.

(iv) **Placing on Website of Company**

The Notice shall also be placed on the Website of the Company, if any.

(v) **Opportunity to Dissenting Shareholders**

Dissenting Shareholders shall be given an opportunity to exit by the Promoters and Shareholders having control, in accordance with SEBI Regulations.

— Space to write important points for revision —

| Q.8.2 | 2022 - May [3] (a) | Practical |
|--|---------------------------|------------------|
| <p>As per the financial statement as at 31.03.2021 the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹100 Lakh divided into 10 Lakh equity shares of ₹10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹ 10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to, certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.</p> <p>In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing company secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association.</p> <p style="text-align: right;">(5 marks)</p> | | |

Answer:**Provision**

Under Sec. 61(1), a limited company having a share capital may, if authorized by its articles, alter its MoA in its general meeting to cancel the shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under Sec. 64 where a company alters its share capital in any above way, the company shall file a notice in the prescribed form with the Registrar within a period of 30 days of such alteration, along with an altered memorandum. The capital clause of memorandum, if authorised by the articles, shall be altered by passing an ordinary resolution as per section 61(1) of the Companies Act, 2013.

Present Case:

In this case, the company has amended its MoA by passing the requisite resolution at the duly convened meeting for reduction in its share capital by cancelling 2 lakh shares issued without obtaining the confirmation from Tribunal. So the company has contravened the provisions of the above section by not taking confirmation from the Tribunal.

- (i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.
- (ii) According to section 13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

— Space to write important points for revision —

2.68

Scanner CA Inter Group - I Paper - 2A

9

Rectification of Name of Company

| Q.9.1 | 2009 - May [10], RTP | Practical |
|--|----------------------|-----------|
| <p>India Cosmetics Limited was a registered company Under Indian Companies Act, 2013. Later on, another company, India Cosmetics and Accessories Limited was formed and registered. Being similarity in the names of both Companies, India Cosmetics Limited lodged the complaint against India Cosmetics and Assessories Limited to the Registrar of Companies stating that there is sufficient similarity between these two names which may mislead or defraud to the public. India Cosmetics and Accessories Limited is intending to alter its name.</p> <p>Advice the India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 2013.</p> <p style="text-align: right;">(5 marks)</p> | | |

Answer :

Provision:

Sec. 13(1) of Indian Companies Act, 2013, provides that the name of a company may be changed at any time by passing a special resolution at a general meeting of the company.

As per Sec. 13(2), any change in the name of a company shall be subject to the provisions of sub-section (2) and (3) of Sec. 4 and shall not have effect except with the approval of Central Government in writing (Power delegated to ROC vide Notification No. SO 1353(E), dated 21.05.2014 w.e.f. 21.05.2014)

Rectification of name of company in case of similarity of Names

Sec. 16, provided that if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which –

In the opinion of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016), is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act

or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose [Sec. 16(1)(a)].

Present Case:

The problem asked in the question is based upon the provision of Sec. 16(1)(a) of the Companies Act, 2013. The new company registered under the name India Cosmetics Accessories Ltd. is identical in name with the existing India Cosmetics Limited. According to the aforesaid provisions of Sec. 16(1)(a) the newly setup company should change its name. In such a case, the company can, on its own, change the name by obtaining previous approval of Central Government (Power now delegated to Regional Director) and then by passing an ordinary resolution. Such a change should be made within three months of the date of the direction of the Regional Director being received or such longer period as the Regional Director may deem fit to allow. The application for changing the name is required to be made to the Registrar of Companies in e-form INC 1 with a fee of one thousand rupees. [w.e.f 24. 7. 2011]

— Space to write important points for revision —

10

Alteration of Article

| Q.10.1 | 2014 - May [6] (a) | Descriptive |
|---|--------------------|-------------|
| What restrictions are applicable under the Companies Act, 2013 when Articles of Association of a company are altered? | | (8 marks) |

Answer:

Limitations to alteration: The alterations made in the articles will be valid, until they fall within any one of the following categories given below:

1. The alteration must not authorise anything expressly or impliedly forbidden by the Companies Act.

2.70**Scanner CA Inter Group - I Paper - 2A**

2. The alteration must not exceed the power or modify the memorandum.
3. The alteration must not contain anything illegal.
4. The alteration must not be inconsistent with any alteration made by Central Government when its has passed order under oppression and Mis-management.
5. The alteration must be *bona fide* for the benefit of the Company as a whole.
6. The alteration must not make the articles unalterable as it is regarded bad in law.
7. Retrospective operation of articles.
8. The alteration must not constitute a fraud on the minority by a majority.
9. An alteration of articles to effect a conversion of a public company into a private company cannot be made without the approval of the Central Government.
10. There cannot be alteration of the articles so as to compel an existing member to take or subscribe for more shares or in any way extend liability to contribute to share capital, unless he gives his consent in writing.
11. A company cannot justify breach of contract with third parties or avoid a contractual liability by altering articles.
12. An alteration should not increase the liability of a member unless he has agreed thereto in writing.

— Space to write important points for revision —————

11***Conversion of Companies Already Registered***

| | | |
|--|-------------------------------|------------------|
| Q.11.1 | 2022 - May [1] {C} (a) | Practical |
| MNP Limited is a registered public company having the following members: | | |
| (i) | Directors and their Relatives | 18 |

| | | |
|-------|---|-----|
| (ii) | Employees | 26 |
| (iii) | Ex-Employees (Shares were allotted during employment) | 15 |
| (iv) | Members holding shares jointly (7 × 2) | 14 |
| (v) | Other Members | 137 |

The Board of Directors of MNP Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise:

- (i) Whether the company can be converted into a private company?
- (ii) Whether existing number of members need to be reduced for the proposed private company? (6 marks)

Answer:

According to Sec. 2(68) of the Companies Act, 2013, "Private Company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of one person company, limits the number of its members to two hundred.

However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that:

- (a) Persons who are in the employment of the company; and
- (b) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.
 - (i) In the instant case, MNP Ltd. may be converted into a private company only if the total members of the company are limited to 200. Total number of members are:

2.72**Scanner CA Inter Group - I Paper - 2A**

| | | |
|-------|--|-----|
| i | Directors and their Relatives | 18 |
| iv | Members holding shares jointly (7 × 2) | 7 |
| v | Other Members | 137 |
| Total | | 162 |

So, MNP Ltd. can be converted into a private company.

- (ii) There is no need for reduction in the number of members since existing number of members are 169 which does not exceed maximum limit of 200.

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12

***Subsidiary Company not to hold share
in its Holding Company***

| | | |
|--|-------------------------------|------------------|
| Q.12.1 | 2014 - May [1] {C} (b) | Practical |
| Anson Limited held equity shares in Booban Limited. Later on Anson Limited became a subsidiary company of Booban Limited. Decide under the Companies Act, 2013 whether it is necessary for Anson Limited to surrender the equity shares of Booban Limited? | | (5 marks) |

Answer:

Subsidiary company not to hold shares in its holding company:

According to **Sec. 19 of the Companies Act, 2013**, no company shall either by itself or through its nominees.

- (i) hold any shares in its holding company; and
- (ii) no holding company shall allot or transfer its shares to any of its subsidiary companies; and
- (iii) any such allotment or transfer of shares of a company made to its subsidiary company shall be void.

Following are the exceptions:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Present Case:

Anson Limited held equity shares in Booban Limited. Later on Anson Limited became a subsidiary company of Booban Limited.

Following the provisions of **Sec. 19 of the Companies Act, 2013**, it is not necessary for Anson Ltd. to surrender the equity shares of Booban Ltd. as Anson Ltd. held equity shares before it became a subsidiary company.

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| Q.12.2 | 2016 - May [5] (a) (iii) | Objective |
|---|--------------------------|-----------|
| State, giving reasons, whether the following statement is correct or incorrect: (iii) A Subsidiary Company cannot hold shares of its Holding Company. (1.5 marks) | | |

Answer :

The given statement is incorrect.

Sec. 19 of the Companies Act, 2013 states exceptions under which subsidiary company can hold shares in its holding company. These are –

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee, or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

— Space to write important points for revision —

| Q.12.3 | 2019 - May [1] {C} (a) | Practical |
|--|------------------------|-----------|
| As at 31 st March, 2018, the paid-up share capital of S Ltd. is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. | | |

Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

- (i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- (ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- (iii) Can H Ltd. allot or transfer some of its shares to S Ltd.? (4 marks)

Answer:

Provision:

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.

Provided that nothing in this sub-section shall apply to a case:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

However, the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or (b) of the said proviso.

Present Case:

In this case, H Ltd. holds 6,00,000 equity shares out of 10,00,000 shares of S Ltd. and S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013. In the instant case,

- (i) As per the provisions of Section 19 (1) of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.
- (ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
- (iii) **Section 19 also provides that** 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. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

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| Q.12.4 | 2020 - Nov [2] (c) | Practical |
|--|--------------------|-----------|
| <p>S Ltd. acquired 10% paid up share capital of H Ltd. on 15th March 2017. H Ltd. acquired 55% paid up share capital of S Ltd. on 10th March 2018. H Ltd on 25th September 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide</p> <ul style="list-style-type: none"> (i) the validity of holding of shares by S Ltd. in H Ltd. (ii) allotment of Bonus shares by H Ltd. to S Ltd. (4 marks) | | |

Answer:

Provision:

As per Sec.19, Holding company can not allot any shares to its subsidiary company. But there are certain exception of it. It means in that case it is allowed for that company to allot shares to its subsidiary company which is as follows:

- Where the subsidiary company holds such shares as the legal Representative of a deceased member of the holding company; or
- Where the subsidiary company hold such shares as a trustee; or
- Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Present Case:

In the given case, H. Ltd., acquired 55% paid up share capital of S. Ltd. So S. Ltd. is a subsidiary company of H. Ltd. So, based on the above mentioned exceptions, now S. Ltd., can't hold more than 10% in H. Ltd as that 10% acquired before it become subsidiary of H. Ltd.

But in second case, as per the SEBI Regulation Holding company can't allot Bonus shares to its subsidiary company. So, H. Ltd. can not allot Bonus share to S. Ltd.

Therefore:

- 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.
- Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

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| Q.13.1 | 2012 - Nov [7] (c) | Descriptive |
|---|--------------------|-------------|
| Answer the following: Discuss the provisions of law contained in the Companies Act, 2013 as regards to the service of documents. (4 marks) | | |

Answer:

Serving of Documents

| | |
|---|--|
| Persons Served on | Mode of serving [Sec 20 and Rule 35 of Companies (Incorporation) Rules, 2014.] |
| Service to Officer [Sec 20(1)] | <p>A document may be served on a Company or an Officer thereof by:</p> <p>(a) by sending it to the Company or the Officer at the Registered Office of the Company:</p> <p style="padding-left: 40px;">(i) by Registered Post, or</p> <p style="padding-left: 40px;">(ii) by Speed Post, or</p> <p style="padding-left: 40px;">(iii) by Courier Service,</p> <p>(b) by leaving it at its Registered Office, or</p> <p>(c) by means of electronic transmission, or</p> <p>(d) by other modes as is prescribed under Rule 35 of Companies (Incorporation) Rules 2014.</p> <p>Note: Where Securities are held with a Depository, the records of the beneficial Ownership may be served by such Depository on the Company by means of electronic or other mode.</p> |
| Service to ROC/Member [Sec. 20(2)] | <p>A document may be served on the Registrar or any Member:</p> <p>(a) by sending it to him by Post or by Registered Post or by Speed Post or by Courier, or</p> <p>(b) by delivering at his Office or Address, or</p> <p>(c) by means of electronic or other prescribed mode, or</p> <p>(d) by other mode as is prescribed under Rule 35 of Companies (Incorporation) Rules, 2014.</p> <p>Note:</p> <ul style="list-style-type: none"> • Provisions of the Act or Rules for filing of documents with the ROC in electronic mode, also apply, |

2.78

■ Scanner CA Inter Group - I Paper - 2A

- | | |
|--|---|
| | <ul style="list-style-type: none">• A member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the Company in its AGM. |
|--|---|

Rule 35 of Companies (Incorporation) Rules, 2014:

A document may be served on a company or an officer, the ROC or any member through electronic transmission.

Electronic transmission means a Communication

(a) delivered by:

- (i) facsimile telecommunication or e-mail when directed to the Facsimile Number or E-Mail Address, respectively, which the Company/Officer /ROC/ Member has provided from time to time for sending communications to the company / Officer/ ROC/Member respectively,
 - (ii) posting of an Electronic Message Board or Network that the Company/Officer/ROC/Member has designated for such communications, and which transmission shall be validly delivered upon the posting, or
 - (iii) other means of electronic communication, in respect of which the Company/Officer/ROC/Member has put in place reasonable systems to verify that the Sender is the person purporting to send the transmission, **and**,
- (b) that **creates a record** that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

Again as per Rule 35(5), Courier (as mentioned in Sec 20) means:

a document sent through
a courier which provides proof of delivery.

In case of delivery by post

Such service shall be deemed to have been effected.

- (i) in the case of a notice of a meeting at the expiration

- (ii) In the case of a notice of a meeting, at the completion of forty-eight hours after the letter containing the same is posted and,
- (iii) In any other case, at the time at which the letter would be delivered in the ordinary course of post.

— Space to write important points for revision —

MULTIPLE CHOICE QUESTION**1*****Introduction***

1. A company is not a separate legal entity with perceptual succession for lawful purpose.
 - (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above
2. Person who initiate promotion of a company are known as _____ ?
 - (a) Demoters
 - (b) Promoters
 - (c) Contractors
 - (d) Members
3. The Companies Act, 2013 defines the term “Promoter” under Section 2(69) which means a person.
 - (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92.
 - (b) Who hasn’t been named such in a prospectus or is identified by the company.
 - (c) Who has been named as such in a prospectus or is identified by the company in the annual return suffered to in Section 91.
 - (d) Who is not identified by the company.
4. Persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoter.

- (a) True
- (b) False
- (c) Partly True
- (d) Partly False

5. Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company.
 - (a) True
 - (b) False
 - (c) Partly True
 - (d) None of above
6. What does OPC stands for?
 - (a) One Person Corporation
 - (b) One Person Community
 - (c) One Person Company
 - (d) One Person Correndum
7. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
 - (a) True
 - (b) False
 - (c) Partly True
 - (d) None of above
8. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the commercial objects.
 - (a) True
 - (b) False
 - (c) Partly True
 - (d) None of above

3***Memorandum of Association - MoA (Section 4)***

9. As per Section _____ memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.
- (a) 2(56)
 - (b) 2(54)
 - (c) 2(65)
 - (d) 2(64)
10. A company if wants, can depart from the provisions contained in the memorandum however imperative may be the necessity for the departure.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above
11. In case of a company whatever is stated in the memorandum as the objects or power is prohibited by the doctrine of ultra Vires.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above
12. Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, shall not give any person a right to participate in the divisible profits of the company otherwise than as a member.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above

13. Articles of Association is stated under which Section ?
- (a) Section 5
 - (b) Section 15
 - (c) Section 50
 - (d) Section 25
14. As per Section _____ articles means the articles of association of a company as originally framed or as altered from time to time or applied in purpose of any previous company law of this Act.
- (a) 2(15)
 - (b) 3(15)
 - (c) 2(5)
 - (d) 3(5)
15. Which doctrine means, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and article of association.
- (a) Doctrine of Indoor Management
 - (b) Doctrine of Management Indoor
 - (c) Doctrine of Management Outdoor
 - (d) Doctrine of Outdoor Management
16. A company can never be held bound for forgeries committed by its officers.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above

17. According to Basis of Doctrine of Indoor Management, what happens internal to a company is a matter of public knowledge.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above

18. Any provision contained in the memorandum, articles, agreement or resolutions shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above
19. The memorandum and articles of the company need not to be duly signed by all the subscribers to the memorandum.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of above
20. According to Section _____, without prejudice to the provisions of Section _____ where, at any time after the incorporation of a company, it is proved that the company has been got incorporated.
- (a) 7(6) & 7(5)
 - (b) 6(7) & 5(7)
 - (c) 7(7) & 7(8)
 - (d) 7(3) & 7(5)

21. Under the provisions of the Act, a company may purchase shares of another company and thus become a controlling company.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
22. According to _____, from the date of incorporation, the subscribers to the memorandum and all other persons, who many from time to time become members of the company, shall be a body corporate by the name contained in the memorandum.
- (a) Section 9
 - (b) Section 19
 - (c) Section 90
 - (d) Section 8
23. The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
24. The company need not maintain and preserve at its registered office copies of all documents and information as information as originally filed, till its dissolution under this Act.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above

7

Registered Office of the Company [Section 12]

25. Section 12 defines.
- (a) Effect of Memorandum
 - (b) Registered Office of Company
 - (c) Incorporation of Company
 - (d) Alteration of Memorandum.
26. The verification of registered office is done by?
- (a) Registrar
 - (b) Company
 - (c) Government
 - (d) Members
27. From the _____ day of its incorporation and at all times there after a company shall have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- (a) 15th
 - (b) 16th
 - (c) 19th
 - (d) 13th
28. The company shall file the confirmation with the registrar within a period of 30 days of the date of confirmation.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above

8

Alteration of Memorandum [Sections 13 & 15]

29. Section 13 of the Companies Act, 2013 provides the provision that deals with the Alteration of Memorandum.
- (a) True
 - (b) False

- (c) Partly true
 - (d) None of the above
30. The Central Government shall dispose off the application of change of place of the registered office within a period of:
- (a) 30 days
 - (b) 60 days
 - (c) 50 days
 - (d) 3 days
31. Any change in the name of company shall be effected with whose approval?
- (a) Company
 - (b) Registrar
 - (c) Central Government
 - (d) Members
32. Company may alter the provisions of its memorandum with the approval of the:
- (a) Central Government
 - (b) State Government
 - (c) Registrar
 - (d) Members by special resolution
33. No Alteration made under Section 2(3) shall have any effect until it has been registered in accordance with the provisions of this section.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
34. Every alteration made in the memorandum or articles of a company shall be noted where?
- (a) In Every copy of the memorandum or articles
 - (b) In the register of registrar
 - (c) In the books of accounts
 - (d) In the copy of Certificate of Incorporation.

9

Rectification of Name of Company [Section 16]

35. The Central Government is empowered to give direction to the company to Rectify it's name where _____.
- (a) The name is identical with a company which is already registered.
 - (b) The company is registered since 10 years.
 - (c) The company is registered since 3 years.
 - (d) The company is under capitalised.

10

Alteration of Articles [Sections 14 & 15]

36. The Section 14 of Companies Act, 2013 vests companies with power to alter or add to its articles. A company can divest itself of these powers [Andrewsus Gas meter Co. (1867) 1 Ch. 161]
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
37. Every alteration of the article and a copy of the order of the tribunal approving the alteration, shall be filed with the company personnel.
- (a) True
 - (b) False
38. Any alteration made shall be valid only if it was originally:
- (a) Contained in Act
 - (b) Contained in Prospectus
 - (c) Contained in rule book
 - (d) Contained in Articles
39. Every alteration made in articles of a company shall be noted _____.
- (a) In one copy of articles
 - (b) In the file retained with the registrar
 - (c) In every copy of the articles
 - (d) None of the above

40. If a company makes default in complying with any direction company is liable towards a fine of:
- (a) 5,000 Rupees
 - (b) 1,000 Rupees
 - (c) 3,000 Rupees
 - (d) 7,000 Rupees
41. Central Government may revoke deligation of power or may itself Exercise the power and functions under Section 18
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
42. The Trademarks Act was introduced in which year?
- (a) 1998
 - (b) 1999
 - (c) 1997
 - (d) 2000

43. According to _____ every company on being so requested by all member, shall send copies of memorandum within seven days.
- (a) Section 18
 - (b) Section 17
 - (c) Section 23
 - (d) Section 19
44. In case of default, the company is the only one liable for each default and not every officer who is in default.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above

12

***Conversion of Companies Already Registered
[Section 18]***

45. Section 18 of Companies Act deals with?
- (a) Conversion of companies already registered
 - (b) Copies of Memorandum, Articles etc.
 - (c) Service of Documents
 - (d) Execution of bills of Exchange
46. The registration of the company has no effect on the _____.
- (a) On the debts, liabilities, etc. incurred before conversion.
 - (b) On the debts, liabilities, etc. incurred after conversion
 - (c) Goods and (taxes)
 - (d) None of the above
47. After registering the required documents, issue certificate of incorporation in the same manner as it first registration.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
48. During the conversion of a company, the company shall file an application to the registrar.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above

13

***Subsidiary Company not to Hold Shares in its
Holding Company [Section 19]***

49. Subsidiary company not to hold shares in its holding company is described under Section 19.
- (a) True
 - (b) False

- (c) Partly true
 - (d) None of the above
50. The subsidiary company referred to in the provision shall have a right to _____ at a meeting of the holding company.
- (a) Vote at a meeting
 - (b) Make decisions
 - (c) Elect directors
 - (d) Get dividend

51. Section _____ of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the registrars.
- (a) 20
 - (b) 19
 - (c) 30
 - (d) 21
52. A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by:
- (a) Registered post
 - (b) Speed post
 - (c) Both (a) & (b)
 - (d) None of these
53. For the purposes of Section 20, the term "courier" means a person or agency which delivers the document and provides proof of its delivery.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
54. The term which means a communication that creates a record that is capable of retention, retrieval and review.
- (a) offline transmission
 - (b) online transmission
 - (c) electronic transmission
 - (d) either (b) or (c)

55. The sub section related to subsidiary company not to hold shares in its holding company shall apply only where
- (a) the subsidiary company holds shares as a trustee; or
 - (b) where the subsidiary company is a shareholder even before it become a subsidiary company of the holding company
 - (c) both (a) & (b)
 - (d) None of these
56. If x Ltd. has invested 51% in the shares of y Ltd. on Jan 1st 2017, and y Ltd. have been holding 2% of equity of x Ltd. since 2011 can y Ltd. Increase its equity? If yes, what can be the case?
- (a) Cannot increase it beyond 2% on or after 1 Jan 2017.
 - (b) Continue with 2% or reduce to initial.
 - (c) Can increase to 5%.
 - (d) Option (a) and (b).
 - (e) None of these.

57. In case of specified IFSC public company, “An officer” can be read as “An officer or any other person.”
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
58. Section 21 deals with?
- (a) Service of Documents
 - (b) Authentication of documents, proceedings and contracts
 - (c) Conversion of Companies already registered
 - (d) Alteration of articles

59. Execution of bills of exchange etc. is described under which section?
- (a) Section 21
 - (b) Section 22
 - (c) Section 23
 - (d) Section 20
60. A deed signed by attorney on behalf of the company and under his seal shall bind the company.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
61. It can be a possibility that a company may or may not have a ?
- (a) Common seal
 - (b) Director
 - (c) President
 - (d) Employees
62. In case a company does not have a common seal, the authorisation shall be made by whom?
- (a) By 2 directors
 - (b) By director and the company secretary
 - (c) Both (a) & (b)
 - (d) None of these

Answer

| | | | | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 1. | (b) | 2. | (b) | 3. | (a) | 4. | (a) | 5. | (a) |
| 6. | (c) | 7. | (a) | 8. | (b) | 9. | (a) | 10. | (b) |
| 11. | (b) | 12. | (a) | 13. | (a) | 14. | (c) | 15. | (a) |
| 16. | (a) | 17. | (b) | 18. | (a) | 19. | (b) | 20. | (a) |
| 21. | (a) | 22. | (a) | 23. | (a) | 24. | (b) | 25. | (b) |
| 26. | (a) | 27. | (a) | 28. | (b) | 29. | (a) | 30. | (b) |
| 31. | (c) | 32. | (d) | 33. | (a) | 34. | (a) | 35. | (a) |
| 36. | (b) | 37. | (b) | 38. | (d) | 39. | (c) | 40. | (b) |
| 41. | (b) | 42. | (b) | 43. | (b) | 44. | (b) | 45. | (a) |
| 46. | (a) | 47. | (a) | 48. | (a) | 49. | (a) | 50. | (a) |
| 51. | (a) | 52. | (c) | 53. | (a) | 54. | (c) | 55. | (c) |
| 56. | (d) | 57. | (a) | 58. | (b) | 59. | (b) | 60. | (a) |
| 61. | (a) | 62. | (c) | | | | | | |