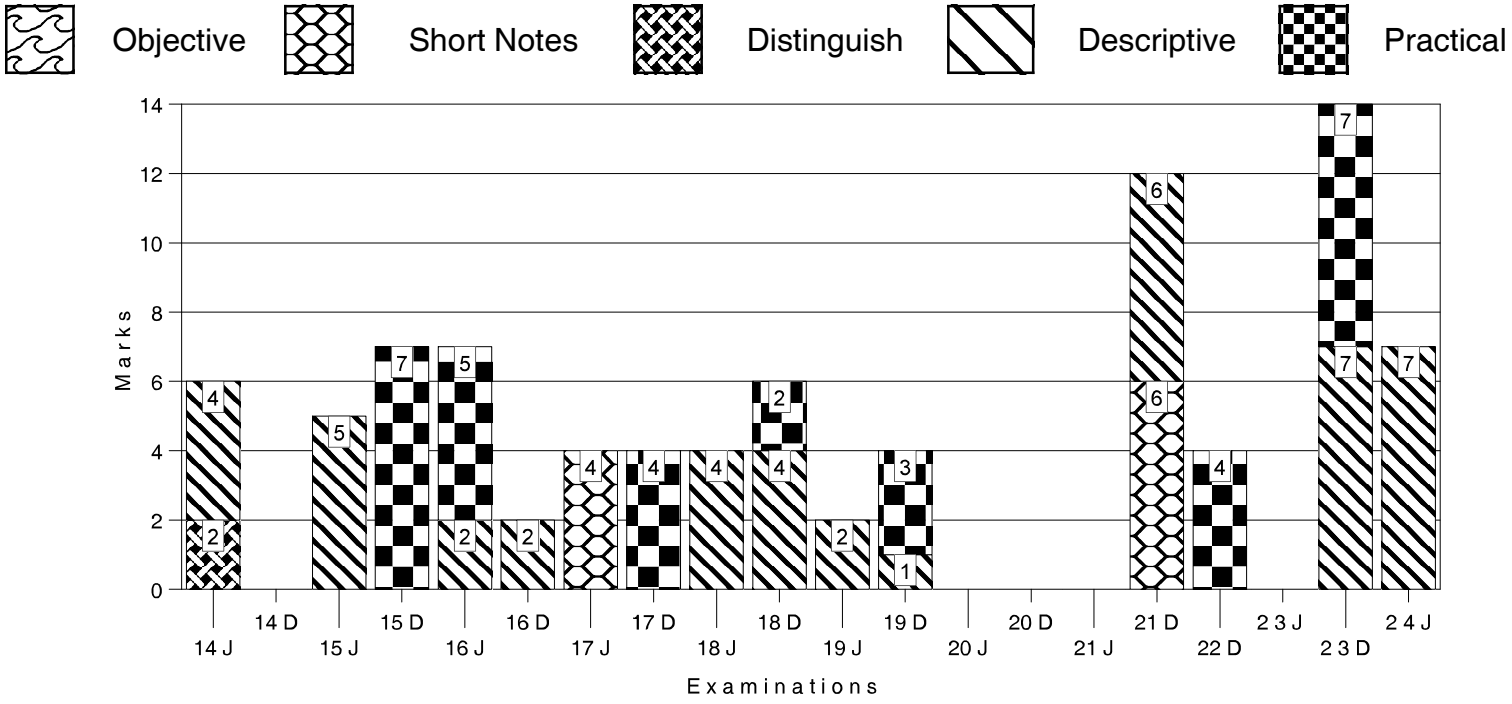
Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



1A COMPANY FORMATION AND CONVERSION

THIS CHAPTER INCLUDES

1. Incorporation of companies conversions/reconversion/re-registration.
2. Nidhi Companies
3. Mutual Benefit Funds and Producer Companies
4. Formation of "Not-for-Profit" making companies
5. Conversion of LLPs into Private Limited Companies and *vice versa*

CHAPTER AT A GLANCE

Company

A company is an association of both natural and artificial persons incorporated under the existing law of a country. A company has a separate legal entity from the persons constituting it.

Characteristics of a Company

The main characteristics of a company are corporate personality, limited liability, perpetual succession, separate property, transferability of shares, common seal, capacity to sue and be sued, contractual rights, limitation of action, separate management, termination of existence etc.

Doctrine of lifting of or piercing the corporate veil

1. Separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only.
2. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality.

3. The Court will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil”.
LLP
• It is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. • LLP can continue its existence irrespective of changes in partners. • It is capable of entering into contracts and holding property in its own name. • LLP is a separate legal entity, and is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
Corporation
An organization formed under state law for the purpose of carrying on a business enterprise is such a manner as to make the enterprise distinct from its owners.
Illegal Association
• As per Section 464 of Companies Act, 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. • The number of persons which may be prescribed under this section shall not exceed 100. Rule 10 of Companies (Miscellaneous) Rules, 2014 prescribes 50 persons in this regard.

Types of Company

From the point of view of incorporation, companies can be classified as chartered companies, statutory companies and registered companies.

- ✓ Companies can be categorized as unlimited companies, companies limited by guarantee and companies limited by shares.
- ✓ Companies can also be classified as public companies, private companies, one person companies, small companies, associations not for profit having license under Section 8 of the Act, Government Companies, Foreign Companies, Holding Companies, Subsidiary Companies, Associate Companies, Investment Companies and Producer Companies.

Private Company

A private company has been defined under Section 2(68) of the Companies Act, 2013 as a company which has a minimum paid-up capital of ₹ 1,00,000 or such higher paid-up capital as prescribed and by its articles restricts the right to transfer its shares, limits the number of its members to two hundred and prohibits any invitation to the public to subscribe for any securities of the company.

☞ **Amendment Made by Companies (Amendment) Act, 2015**
Provides that in clause (68), the words "of ₹ 1 lakh or higher paid up share capital" shall be omitted.

One Person Company

One Person Company" means a company which has only one person as a member.

"Small Company''

'Small company'' means a company, other than a public company, (i) paid-up share capital of which does not exceed ₹ 4 crore or such higher amount as may be prescribed which shall not be more than ₹ 10 crores; or (ii) turnover of which as per its last profit and loss account does not exceed ₹ 40 crores or such higher amount as may be prescribed which shall not be more than ₹ 100 crores.

Public Company
A public company is a company which (a) is not a private company (b) has a minimum paid-up share capital of ₹ 5 lakh or such higher paid-up capital, as may be prescribed. ☞ **Amendment Made by Companies (Amendment) Act, 2015:** *Provides that in clause (68), the words "of ₹ 5 lakhs or higher paid up share capital" shall be omitted.*
Limited Company
A limited company is a company limited by shares or by guarantee. An unlimited company is a company not having any limit on the liability of its members.
Foreign Company
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.
Investment Company
Investment Company means a company whose principal business is the acquisition of shares, debentures or other securities.
Association not for profit
Section 8(1) permits the registration, under a licence granted by the Central Government, of associations not for profit with limited liability without being required to use the word "Limited' or the words 'Private Limited" after their names. The Central Government may grant such a license if:

(a) it is intended to form a company for promoting commerce, art, science, sports, education, research, social welfare, religion, charity protection of environment or any such other object; and
(b) the company prohibits payment of any dividend to its members but intends to apply its profits or other income in promotion of its objects.

Government Companies

A company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary company of such a Government Company.

Holding Company

As per Section 2 (46), holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.
Amendment made by Companies (Amendment) Act, 2017 for the purpose of this clause, the expression company includes any body corporate.

Subsidiary Company

Section 2 (87) provides that subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

1. controls the composition of the Board of Directors; or
2. exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

Dormant Companies

As per Section 455 (1) 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 may be prescribed for obtaining the status of a dormant company.

Associate Company

As per Section 2(6), "Associate Company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Amendment made by Companies (Amendment) Act, 2017:

Section 2(6):

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement."

Position of OPC in India under the Companies Act, 2013

As per Section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member.

Section 3(1)(c) lays down that a company may be formed for any lawful purpose by one person, where the company to be formed is to be One Person Company that is to say, a private company. In other words, one person company is a kind of private company.

A One person company shall have a minimum of one director. Therefore, a One Person Company will be registered as a private company with one member and one director.

Procedure for incorporation of a company
(a) Application for Availability of Name of Company; (b) Preparation of Memorandum and Articles of Association; (c) Filing of Documents With Registrar of Companies; (d) Declaration from the professional; (e) Declaration from the subscribers to the Memorandum; (f) Furnishing verification of Registered Office (g) Filing of particulars of Subscribers (h) Filing particulars of first directors along with their consent to act as directors (i) **Power of Attorney :** Execution of power of attorney on a non-judicial stamp paper of a value prescribed in state stamp laws. (j) Issue of Certificate of Incorporation by Registrar.
Conclusive evidence
The certificate of incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein.
Private company to public company
Pass special resolution in general meeting File Form INC 27 with Registrar File MGT 14 for special resolution.
Public to private company
Pass Special Resolution in general meeting File Form INC 27 with Registrar Get NCLT's approval File MGT. 14 for special resolution .
Conversion of Section 8 company to any other kind
• Pass special Resolution in general meeting along with MGT 14 • Application to Regional Director in Form INC 18 (copy to be filed with Registrar) Publication of notice (INC 19) in news paper

• Declaration to the effect that no dividend/ bonus is paid • NOC from the relevant regulatory authority • No failure in filing financial statement certificate from PCS/CA/CMA for conversion compliance.
Conversion of one person company to a public company or private company
• If the paid up capital of an OPC exceeds ₹ 50,00,000. Or • Its average annual turnover during the relevant period exceeds ₹ 2 crore. Then it shall cease to be entitled to continues OPC. • Minimum number of members and directors has to be increased accordingly. Pass special Resolution in General Meeting to alter MOA & AOA Notice to Registrar within 60 days in INC 5.
Conversion of Pvt. company into one person company
Private company other than Section 8 company having paid up share capital of ₹ 50,00,000 or less or Average annual turnover during the relevant period is ₹ 2 crore or less • Before passing resolution the company shall obtain NOC from members & creditors then pass S/R in General Meeting • The company shall file an application in INC 6 for its Conversion • Declaration by Directors by way of affidavit.
'Producer' [Section 378A(1)]
• A 'Producer' shall mean any person engaged in any activity connected with or relatable to any primary produce.
Objectives of Producer Companies [Section 378B]
Objectives for which Producer Companies may be formed include *inter alia*, • production, marketing, • export of primary produce of members, • processing, packaging of produce of its members, manufacture,

- sale of machinery etc. mainly to its members, generation and distribution of power,
- insurance of producers/primary produce,
- rendering technical/ consultancy services,
- promoting mutual assistance,
- welfare measures and any other activity for the benefit of members.

No. of Producer [Section 378C(1)]

The Act provides that, any ten or more individuals, each of them being a producer or two or more producer institutions or a combination of ten or more individuals and producer institutions, desirous of forming a producer company may form an incorporated company, as such having its objects specified under this Act after complying with the requirements and the provisions of the Act in respect of registration.

Voting in Producer Companies [Section 378D]

Unless the membership of the Producer Company consists of a Producer Institution only, every member shall have a single vote irrespective of the number of shares held. Further, every such member shall be entitled to receive a limited return and may be allotted bonus shares.

Memorandum of Association

- The Memorandum of Association is a document which sets out the constitution of the company and is the foundation on which the structure of the company stands.
- It defines as well as confines the powers of the company.
- If the company enters into contract or engages in any trade or business which is beyond the powers conferred on it by the memorandum, such a contract or the act will be *ultra vires* the company and hence void.

Clauses
Memorandum of Association consists of: (a) Name Clause (b) Situation Clause (c) Object Clause (d) Liability Clause (e) Capital Clause (f) Subscription Clause
Articles of Association
• Articles mean the articles 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. • The articles include the regulations contained in Tables F to J in Schedule I of the Act, in so far as they apply to the company.
Alter its Articles of Association
• A company has a statutory right to alter its articles of association. • But the power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum. • Any alteration so made shall be as valid as if originally contained in the articles.
Registration of MOA/AOA
The memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member to observe and be bound by all the provisions of the memorandum and of the articles.
Alteration of Memorandum of Association
(1) Name Change: - Pass Special Resolution - Approval of Central Government

- To delete the word "private" approval from the name, Central Government is not required in case of conversion of private company to public company.

(2) Change in Registered Office:

(a) Change within local limits:
- Pass Board Resolution and Special Resolution Notice of change to Registrar in INC 22 within 15 days of such change

(b) Change of State:
- Approval of Central Govt. In INC 23 the Approval should be registered with Registrar for Incorporation Certificate

(c) Change in jurisdiction of Registrar:
- Get confirmation by Regional Director Communication of confirmation by Regional Director to the company within 60 days.

(3) Change in Liability:
- Needs Special Resolution to be passed.
- File the same with Registrar in Form MGT 14.

(4) Change in Capital:
- alteration of capital clause to be authorised by the Articles of Association [Section 61]; Ordinary Resolution

Doctrine of constructive notice

- As per **doctrine of constructive notice**, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution.
- Nevertheless they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum and Articles of Association.

Doctrine of indoor management

- While the doctrine of constructive notice seeks to protect the company against the outsiders, the doctrine of indoor management operates to protect the outsiders against the company.
- While persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company.
- However, there are certain exceptions to doctrine of indoor management.

Doctrine of *ultra vires*

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires* (The word 'ultra' means beyond and the word 'vires' means powers).

Nidhi Companies

(a) As per Section 406 of the Companies Act, 2013, 'Nidhi' means a company which has been incorporated as a Nidhi with the object of:
   1. cultivating the habit of thrift and savings amongst its members
   2. receiving deposits from, and lending to, its members only, for their mutual benefit, and
   3. which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(b) The Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

Requirements for Minimum Number of Members, Net Owned Fund etc.
(a) Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has: 1. Not less than two hundred members. 2. Net Owned Funds of ten lakh rupees or more. 3. Un-encumbered term deposits of not less than ten per cent of the outstanding deposits as specified in Rule 14 and 4. Ratio of Net Owned Funds to deposits of not more than 1:20.

SHORT NOTES

2017 - June [8] Write short note on the following:

(a) Producer Companies **(4 marks)**

Answer:

Producer Companies:

378B. (1) The objects of the Producer Company shall relate to all or any of the following matters, namely:—

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit:
Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) processing including preserving, drying, distilling, brewing, venting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

(d) providing education on the mutual assistance principles to its Members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;
(g) insurance of producers or their primary produce;
(h) promoting techniques of mutuality and mutual assistance;
(i) welfare measures or facilities for the benefit of Members as may be decided by the Board.

2021 - Dec [1] Write short note on Allotment of corporate identity number (CIN) **(3 marks) [Sec. C Six LAQ]**

Answer:

Allotment of Corporate Identity Number on and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a Corporate Identity Number (CIN) which shall be distinct Identity for the company and which shall also be included in the certificate.

2021 - Dec [2] Write short note on Boards report in case of OPC. [section 134(4)] **(3 marks) [Sec. C Six LAQ]**

Answer:

Board's report in case of OPC [Section 134(4)]:

In case of a one person company (OPC) the report of the Board of Directors (BoD) to be attached to the financial statement under this section shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

DISTINGUISH BETWEEN

2014 - June [6] (d) State the distinction between a Mandatory provision and a Directory provision. **(2 marks)**

Answer:

Distinction between a mandatory and directory provision:

- The distinction between a provision which is mandatory and one which is 'directory' is that when it 'mandatory', it must be strictly complied with, when it is 'directory', it would be sufficient that it is substantially complied with.
- Non-observance of mandatory provisions involves the consequences invalidating. But non-observance of directory provision does not entail the consequence of invalidating, whatever other consequences may occur.
- Mandatory provision has a compulsory requirements for compliance while directory provisions provide direction and are suggestive in nature, substance and compliance.

DESCRIPTIVE QUESTIONS

2013 - Dec [1] {C} (a) A group of promoters approach you for advice regarding the formation of a guarantee company. Advise them briefly about the types of organizations for which it is suitable to form a guarantee company and the advantages that can be derived by registering a guarantee company. **(4 marks)**

Answer :

- A guarantee company is a suitable form of organisations which are created to serve some social purposes.
- Such a company is generally recommended for non profit organisations which are engaged in some social and philanthropic purposes.
- Formation of Guarantee Company is a convenient and suitable form for association such as clubs, chamber of commerce, trade associations, societies setup for carrying on charitable work etc.

The advantages of a guarantee company are:

1. It has most of the advantages enjoyed by a limited company. It has a separate legal entity and can own property, enter into contracts, sue or be sued in regard to its contracts and transactions.

2. In respect of the transaction of the company, no personal liability is incurred by the members or director. Their liability arises only on winding up.
   - A guarantee company is like any other limited company. It has separate legal entity.
   - In a guarantee company the liability of the members is limited.
   - In the case of a company having share capital, it is limited by the nominal amount of shares held by each member.
   - In the case of a company not having share capital, by amounts of guarantee undertaken by the members i.e., the amounts they shall contribute for the repayment of debts of the company in the event of the company being wound up.

2013 - Dec [4] (b) In a limited liability partnership (LLP), what are the requirements relating to minimum and maximum number of partners, designated partners and identification numbers for the designated partners? **(4 marks)**

(d) Is it legally necessary for the every producer company to appoint a whole-time secretary under the provision of The Companies Act, 2013. **(2 marks)**

Answer:

(b) Partners and designated partners in LLP

- In the case of a LLP there must be a minimum of two partners.
- There is no maximum number prescribed.
- Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- The term 'resident' means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one year.
- However, in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

- There is also the requirement that each designated partner must have a Designated Partner Identification Number DPIN.
- This would mean before making the application for registration the person proposing to act as a designated partner must have obtained the DPIN, in this regard.

(d) Section 378X of the Companies Act, 2013 Provides that

(1) Every Producer Company having an average annual turnover exceeding five crore rupees or such other amount as may be prescribed in each of three consecutive financial years shall have a whole-time secretary.

(2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

(3) If a Producer Company fails to comply with the provisions of sub-section (1), the Company and every officer of the Company who is in default, shall be liable to a penalty of one hundred rupees for every day during which the default continues subject to a maximum of rupees one lakh:

Provided that in any proceedings against a person in respect of a default under this sub-section, no penalty shall be imposed if it is shown that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the Company was such that it was beyond its capacity to engage a whole-time secretary.

2014 - June [1] {C} (a) What is the effect of the registration of the Memorandum of Association of a company on

1. the subscribers of the Memorandum;
2. such other persons as may from time to time become members of the company;
3. the company and
4. outsiders dealing with the company? **(4 marks)**

Answer:

When the Memorandum of Association of a company has been registered, it has the following effect:-

1. The signatories become members of the company, the entry of their names in the register of members not being legally necessary and they are bound to observe all the provisions of the memorandum.
2. Such other persons as may from time to time become members of the company are bound by the memorandum, as if it had been signed by them, to observe all the provisions thereof.
3. The company is bound to observe all the provisions of its memorandum of association, as if it had been signed by the company.
4. The memorandum of association of a company is a public document, and every person dealing with the company is deemed to have notice of its contents. If a person deals with a company in a way contrary to its memorandum, he must take its consequences.

2015 - June [1] Answer the question:

(a) Define the term 'Promoter' as contained in the Companies Act, 2013. **(3 marks)**

Answer:

The Companies Act, 2013 has introduced a new definition of Promoter in Sec. 2(69) of the Act 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**; 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.

2015 - June [2] (c) (iv) Explain the provisions under the Companies Act for amendment of articles of association of a producer company. **(2 marks)**

Answer:

Under Section 378-I of the Companies Act, 2013, Provides that

(1) Any amendment of the articles shall be proposed by not less than two-thirds of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.

(2) A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within fifteen days from the date of its adoption.

2016 - June [4] (a) (ii) Is it legally necessary for the every producer company to appoint a whole-time secretary under the provision of the Companies Act, 2013. **(2 marks)**

Answer:

Please refer 2013 - Dec [4] (d) on page no. 27

2016 - Dec [2] (c) (ii) Is it obligatory for every producer company to appoint a whole-time Secretary under the provisions of the Companies Act, 2013? **(2 marks)**

Answer:

Please refer 2013 - Dec [4] (d) on page no. 27

2018 - June [2] (b) The Secretary of a company issued a share certificate to 'Prem' under the company's seal with his own signature and the signature of a Director forged by him. 'Prem' borrowed money from 'Amar' on the strength of this certificate. 'Amar' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'Amar' will succeed in getting the share registered in his name. Explain with the help of the doctrine of 'Indoor management' in brief. **(4 marks)**

Answer:

- The doctrine of indoor management is also known as Turquand's rule. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice.
- The doctrine of constructive notice protects company against outsiders whereas the doctrine of indoor management protects outsiders against the actions of company.
- This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.
- The person entering into a transaction with the company only needed to satisfy that his proposed transaction is not inconsistent with the articles and memorandum of the company.

- He is not bound to see the internal irregularities of the company and if there are any internal irregularities than company will be liable as the person has acted in the good faith and he did not know about the internal arrangement of the company.
- The rule is based upon obvious reason of convenience in business relations. Firstly, the articles of association and memorandum are public documents and they are open to public for inspection.
- Hence, an outsider is presumed to know the constitution of a company, but what may or may not have taken place within the doors that are closed to him.
- However, this doctrine has several exceptions one of them being forgery, rule does not apply to the transaction involving forgery or illegal transactions which are *void ab initio*.
- In the case of the forged transaction there is lack of consent.
- Here, the question of consent cannot arise as the person whose signature is forged he is not even aware of the transaction.
- However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.
- **In the instant problem,** the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to Prem and thereby to Amar.

  Hence, Amar will not succeed in getting the share registered in his name.

2018 - Dec [2] (a) 1. The common seal is a seal used by Corporation as the symbol of its incorporation and also a statutory requirement for a company. Comment. **(2 marks)**

3. Is it obligatory for a Producer Company to have internal audit of its accounts for financial year 2016-17? **(2 marks)**

Answer:

1. The common seal acts as the official signature of the company. Before companies (Amendment) Act, 2015, the common seal is a seal used by corporation as the symbol of its incorporation and also a statutory

requirement for a company. As a departure from this concept, the companies (Amendment) Act, 2015 has deleted the essential of having common seal compulsorily.

After this Amendment, in case a company does not have a common seal, the Authorisation shall be made by two directors or by a director and a company secretary, wherever the company has appointed a company secretary.

3. Yes as per Section 378ZF of the Companies Act, 2013, every producer company is required to have internal audit of its accounts carried out by a Chartered Accountant at such intervals and in such manner as may be specified in the articles.

2019 - June [2] (a) (i) Although Company is an artificial person, it can still own property and enter into contracts — Comment. **(2 marks)**

Answer:

It is true that Company is an artificial person as it is created by law. However, like a natural person a Company may also own property and enter into contracts. Being an artificial person, Company, enters into contracts through its Board of Directors (BOD). BOD enters into an agreement with others and indicates Company's approval through a common seal.

2019 - Dec [2] (c) Answer the following in a few words:

1. Which type of Public Enterprise is established under a Special Act of the Parliament? **(1 mark)**

Answer:

Statutory Corporation.

2021 - Dec [2] The Companies Act, 2013 is administered by which authority? **(1 mark) [Sec. B - SAQ]**

Answer:

The Companies Act 2013 is administered by the Central Government through the Ministry Of Corporate Affairs, (MCA) and offices of Registrar of Companies.

2021 - Dec [4] A company got registered with an illegal object. Can the registration be questioned? **(1 mark) [Sec. B - SAQ]**

Answer:
No, The registration can not be questioned if the Registrar has already issued the certificate of registration.

2021 - Dec [13] Name the organisation formed by passing a special act. **(1 mark) [Sec. B - SAQ]**

Answer:
Statutory Company

2021 - Dec [14] State whether the LLP Act, 2008 provides any facility for conversion of a LLP into private limited company. **(1 mark) [Sec. B - SAQ]**

Answer:
The LLP Act, 2008 does not provide any facility for conversion of LLP into a private limited company.

2021 - Dec [3] Identify the form of public sector enterprise in the following cases.
(1) It is under the control of the Concerned Minister of the department.
(2) Private individuals can also become shareholders.
(2 marks) [Sec. C One LAQ]

Answer:
(1) Departmental Undertaking
(2) Government company

2023 - Dec [7] (a) An issuer cannot make a public issue or rights issue of equity shares and convertible securities under certain conditions. Explain that condition for a public issue or rights issue of equity shares and convertible securities. **(7 marks)**

Answer:
An issuer cannot make a public issue or rights issue of equity shares and convertible securities under the following conditions:
(a) If the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by SEBI, or of any other company which is debarred from accessing the capital market under the order or directions made by SEBI.

(b) Unless an application is made to one or more stock exchanges for "in principle" approval of listing of equity shares and convertible securities on such stock exchanges and has chosen one of them as a designated stock exchange.
(c) Unless it has entered into an agreement with a depository for dematerialisation of equity shares and convertible securities already issued or proposed to be issued.
(d) Unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited.
(e) Unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.
(f) Promoter's holding is in dematerialised form prior to filing of offer document.
(g) The amount for general corporate purposes as mentioned in the objects of the issue in the draft offer document shall not exceed 25% of the amount raised by the issuer.
(h) Issue shall be open for at least 3 days and not more than 10 days.
(i) Minimum subscription shall be 90% of the issuer size failing which the application money has to be refunded within 15 days of closure of the issue.

2024 - June [5] (b) Mr. Paras deals with a company in a manner incompatible with the some of the articles mentioned in the Articles of Association of the company. What will be the consequences of the same? Is there any exception in this regard? **(7 marks)**

PRACTICAL QUESTIONS

2015 - Dec [1] (A) An association of 120 persons has been formed with the object of acquisition of gain. Now, due to an internal mismanagement, the said association has applied for being wound up under the provisions of the Companies Act, 2013. Advise. **(3 marks)**

Answer:

- According to Section 464 of the Companies Act, 2013, no association or partnership consisting of more than prescribed number of persons 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 the Companies Act, or is formed under any other law for the time being in force. Further, the prescribed number of persons shall not exceed 100.
- The association as mentioned in the question exceed the prescribed number of members i.e., it consists of 120 members and it is not registered as a company under the Companies Act, 2013.
- Where an association is formed, which has membership in excess of the number aforementioned, will be an illegal association except it is registered as company under Companies Act, 2013.
- Such a body will have no legal existence and it cannot be wound up under the Companies Act, 2013, or even as an unregistered company. Neither any member of it would be able to sue it nor would it be able to sue the member.
- Further, every member of an association or partnership carrying on business in contravention of above law, shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

2015 - Dec [2] (c) (ii) Under provisions of Companies Act, 2013, relation to producer company, examine whether the office of director of such company shall fall vacant in the following circumstances:

(a) X, a Director of P.K.R. Ltd., a producer company has made a default in payment of loan taken from a company and default continues for 60 days.

(b) Z, a Director of the above company could not call the Annual General Meeting for the company due to some natural calamity which occurred three days before the schedule date. **(4 marks)**

Answer:

Producer company – Vacation of Office of a Director (Section 378Q):

(1) The office of the director of a Producer Company shall become vacant if,—
   (a) he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;
   (b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;
   (c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;
   (d) the Producer Company, in which he is a director—
      1. has not filed the annual accounts and annual return for any continuous three financial years; or
      2. has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;
   (e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles;
   (f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.

(2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer Institution which is a member of a Producer Company.

2016 - June [3] (b) The promoters of Welcome Company incorporated on 8th June, 2015 has entered into a contract with A on 10th May, 2015 for supply of goods. After incorporation, the company does not want to proceed with the contract. As a company advisor, advise the management of the company, referring to the provisions of the Companies Act, 2013. **(5 marks)**

Answer:

1. It is not only the company which is allowed, under the Specific Relief Act, to adopt and enforce its pre-incorporation claims against third parties, Section 19 of the Specific Relief Act also allows, the other party to enforce the contract against the company if (i) the company had adopted the same after incorporation, and (ii) the contract is warranted by the terms of incorporation. Contracts like preparation and printing of the memorandum, and articles, remunerating the professionals, if any, for securing the registration of the company, renting premises, hiring secretarial staff are envisaged under the Act.
2. Pre-incorporation contracts in general are *void ab initio*, and hence not binding on the company. However, under Section 19(e) of the Specific Relief Act, 1963, the party to the contract can enforce the contract against the company, if:
   (a) The company had adopted the same after incorporation, and
   (b) The contract is warranted by the terms of incorporation.

   Thus, unless the company adopts the contract, the other party cannot enforce the same against the Company. There shall be no personal liability for the Promoter, if the agreement provides that:
   1. His liability shall cease once the Company adopts the agreement, and
   2. Either party may rescind the agreement, if the Company does not adopt it within a specified time.

2017 - Dec [7] (c) 1. Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

2. PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company. **(4 marks)**

Answer:

1. No, MN Limited cannot be considered as a government company because central and state governments only hold 40% of the shares in MN Limited.
2. Yes, PQ Limited is a government company as it is a subsidiary of government company.

2018 - Dec [2] (a) (ii) M/s Kaberi Mutual Benefits Nidhi Ltd. is incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors of the company have decided to appoint Mr. Raja (a minor) as a member of the company. Referring to the applicable provisions of the Companies Act, 2013 read with rules thereunder, advise them. **(2 marks)**

Answer:

Rules 8(3) of Nidhi Rules, 2014, a minor shall not be admitted as a member of Nidhi. Although, deposit may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

Therefore, the Board of Directors of the company cannot appoint Mr. Raja (a minor) as a member of the company.

2019 - Dec [2] (b) (ii) Soma Nidhi Limited proposes to reappoint Mr X, a director who has completed a term of 10 consecutive years as a Director of the Nidhi.

State your views the validity of the above proposals with reference to Nidhi Rules, 2014 formulated under Companies Act, **(3 marks)**

Answer:

As per Rule - 17 of the Nidhi Rules, 2014, the Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi and he shall be eligible for re-appointment only after the expiration of 2 years of ceasing to be a Director.

Therefore, in the instant case Soma Nidhi Limited cannot reappoint Mr. X as a director for a period of two years after completion of ten consecutive years.

2022 - Dec [2] (b) Blue Berry Ltd, is a Company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital are held by Companies incorporated in India. It issued prospectus inviting

subscriptions in India for its shares but did not state the Country in which it is incorporated. Examine in the light of the provisions of the Companies Act, 2013 whether the issue of prospectus by the Company is valid. **(2 marks)**

Answer:

Under section 387(1) (a) (iv) of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India.

Unless the prospectus is dated and signed, and contains particulars with respect to the date on which and the country in which the company would be or was incorporated.

Therefore, in the given case, issue of prospectus by Blue Berry Limited is not valid as it did not state the Country in which it is incorporated.

2022 - Dec [2] (c) XYZ Producer Company Limited, a producer company, was incorporated on 1st April, 2003. At present it has got 200 members and its board consists of 10 Directors. The Board of Directors of the Company propose to advance a Loan of ₹ 10,000 to Mr. X, a Director of the Company repayable within a period of six months. Explaining the provisions of the Companies Act, 1956, examine the validity of the above proposal.

(2 marks)

Answer:

According to proviso to Section 581ZK of the Companies Act, 1956, any loan or advance by a Producer Company to any director or his relative shall be granted only after the approval by the Members in general meeting.

In the given case, the proposal to advance a loan of ₹ 10,000 to Mr. X, a director of the XYZ Producer Company Limited by the Board of Directors will be valid only after the approval by the Members in general meeting.

2023 - Dec [4] (b) KFR Limited was registered as a public company. There are 230 members in the company as noted below:

(i) Directors and their relatives = 50
(ii) Employees = 15
(iii) Ex-employees (Shares were allotted when they were employees) = 10
(iv) 5 couples holding shares jointly in the name of husband and wife (5 × 2) =10
(v) Others = 145

The Board of Directors of the company proposes to convert it into a private company. Advise whether reduction in the number of members is necessary.

(7 marks)

Answer:

Meaning of Private Company:

According to Section 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. Although, 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.

Conclusion: In the above case, KFR Limited may be converted into a private company only if the total members of the company are limited to 200

Total Number of members:

(I) Directors and their relatives 50

(II) 5 Couples (5 × 1) 5

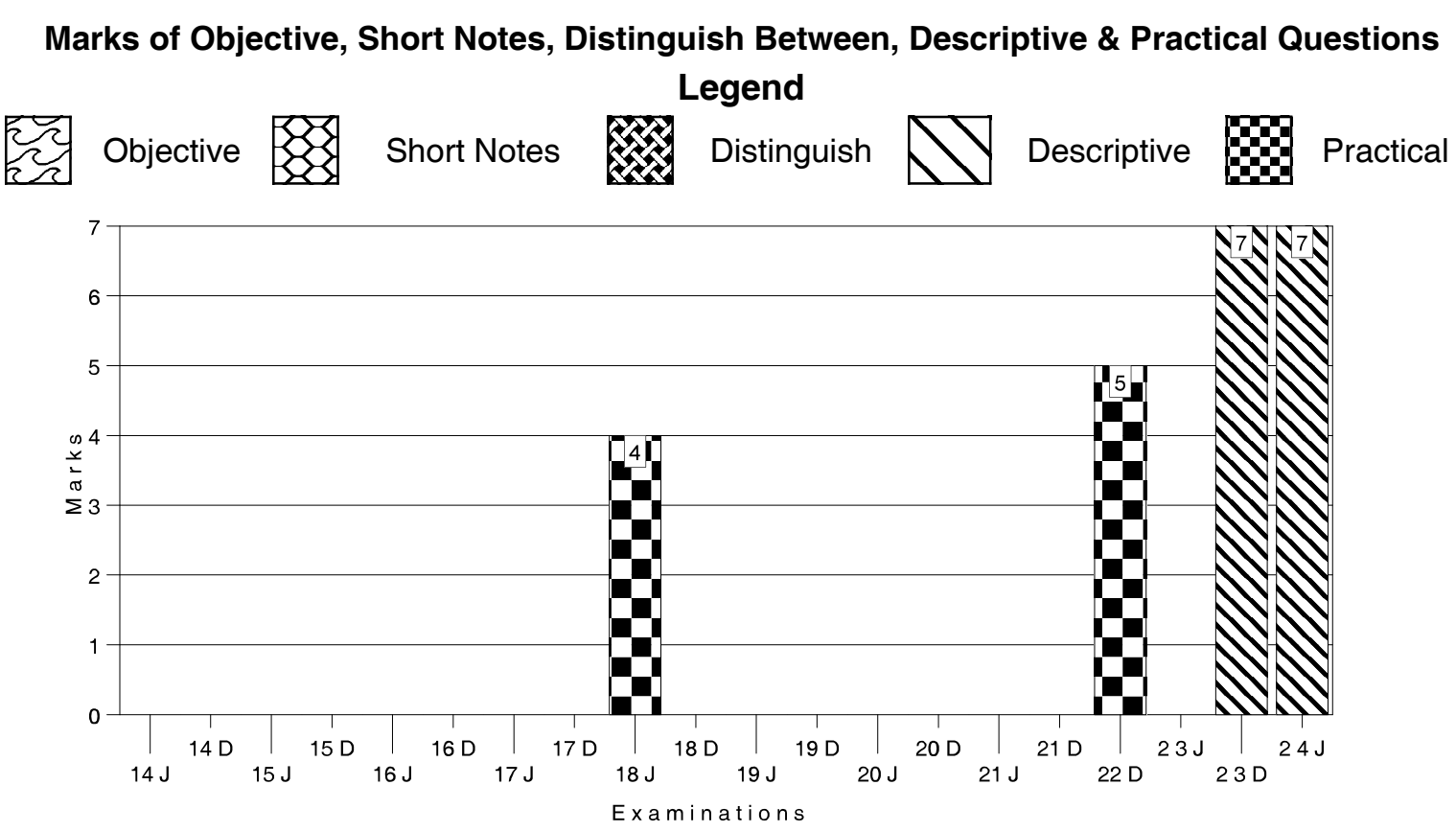
(III) Others 145

Total 200

Hence, there is no need for reduction in the number of members since the existing number of members is 200 which does not exceed the maximum limit of 200.

Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Is it legally necessary for the every producer company to appoint a whole-time secretary under the provision of the Companies Act, 1956. 16 - June [4] (a) (ii), 16 - Dec [2] (c) (ii)	2 Times

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



1B *INVESTMENT AND LOANS*

THIS CHAPTER INCLUDES

1. Procedure for inter-corporate loans, investments guarantee security.	2. Acceptance of deposits, renewal, repayment, default and remedies.

CHAPTER AT A GLANCE

1. Investments'

Investments' has been used in a limited sense in the lesson to mean the investing of money in shares, stock, debentures or other securities.

2. Restrictions on investments

The power to invest the funds of the company is the prerogative of the Board of Directors. However, the Board must not misuse its powers. The Companies Act, 2013 contains provisions for restrictions on investments that a company can make and loans it can provide. Restrictions are also placed on the guarantees which the company can give or security it can provide for a loan.

3. Approval of the shareholders

Approvals for making investments and loans would have to be taken in accordance with the specific provisions of the Companies Act. A blanket approval of the shareholders for the purpose would not suffice.

4. Investments made or held by a company in any

As per the Act, all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name. This requirement is confined to only those investments which are

made by it on its own behalf and not on behalf of someone else. However, in certain circumstances, the Act exempts the companies from complying with the above provisions.

5. Meaning of Deposit

Company may accept deposit from its members by passing a resolution in general meeting and subject to conditions as may be prescribed in the Rules including Credit rating, Deposit insurance etc.
'Deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India **[Section 2 (31) of the Companies Act, 2013].**

6. Eligible Company

Eligible company public company may accept deposits, if it has a net worth of not less than ₹100 crores or a turnover of not less than ₹ 500 crores and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.

7. Deposit Trustees

No company under sub-section (2) of **Section 73** or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits.

8. Deposit Insurance

Contract providing for deposit insurance at least thirty days before the issue of circular or advertisement.
Amendment made by Companies (Amendment) Act, 2017:
In Section 73 of the principal Act, in sub- section (2),—
clause (d) shall be omitted;

9. Quantum of deposits		
Type of company	**Members**	**Public**
Eligible Company	Upto 10% of aggregate of the paid up share capital and free reserves	upto 25% of aggregate of the paid up share capital and free reserves
Company other than Eligible Company	Upto 25% of aggregate of the paid up share and free reserves	Prohibited
Government Company	-	Upto 35% of aggregate of the paid up share capital and free reserves

10.	**Procedure of acceptance of deposit**

(a) Points of difference			
Category of Company	Private Company	Public Company (other than eligible company)	Public company (eligible company under Section 76 of the Act)
Source of deposits	From directors and members	From directors and members	From directors, members and general public
Condition for deposits to be taken from shareholders	It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves	It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves	It is allowed to be taken subject to the limit of 10% of the paid up share capital and free reserves

Conditions for deposits to be taken from Public	Prohibited	Prohibited	It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves
Resolution	The company should pass a resolution in a general meeting	The company should pass a resolution in a general meeting	The company should pass a special resolution in a general meeting and file the same with the Registrar. However, ordinary resolution would be sufficient if the amount is within the limit specified under Section 180 of the Act.
Advertisement	Not necessary	Not necessary	Necessary
Circular	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1	Circular shall be issued to its members by registered post with acknowledgement due or by speed post or by electronic mode in Form DPT-1

Display of circular on website	Optional	Optional	Mandatory, if any
Credit Rating	Required to be taken before the submission of the circular to the Registrar	Required to be taken before the submission of the circular to the Registrar	Required to be taken
(b) Points of Similarity			
Category of Company	Private Company	Public Company (other than eligible)	Public company (eligible company under Section 76 of the Act)
Tenure of deposits	The deposit shall not be repayable on demand or upon receiving a notice within a period less than 6 months and more than 36 months.		
Registration of circular	The circular signed by majority of directors or their agents duly authorised along with the statement shall be submitted to Registrar 30 days before the date of such issue.		
Validity of circular	6 (six) months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier.		
Return of deposits	A return shall be filed on or before 30th June of every year with the Registrar in Form DPT-3 along with fee giving the status as on 31st March of that year duly audited by the auditor of the company.		
Penal rate interest	A penal Rate of 18% p.a. shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.		
Premature payment	In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.		

List of Important Forms

Form No.	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DPT-1	Circular or Circular in the form of Advertisement inviting Deposits	73 (2)(a), (76)	4(1), 4(2)
DPT-2	Deposit Trust Deed	—	7(2)
DPT-3	Return of deposits		16
DPT-4	Statement regarding deposits existing on the commencement of the Act		20
MBP-1	Notice of interest by director	184(1)	9(1)
MBP-2	Register of loans, guarantee, security and acquisition made by the company	186(9)	12(1)
MBP-3	Register of investments not held in its own name by the company	187(3)	14(1)
MBP-4	Register of contracts with related party and contracts and Bodies etc. in which directors are interested.	189(1)	

Amendment made by Companies (Amendment) Act, 2017
Punishment for Contraction of Section 73 or 76

*"**Section 76A.** Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under Section 73 or Section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under Section 73 or Section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under Section 73:*

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than ₹ 1 crore but which may extend to ₹ 10 crores; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than ₹25 lakhs but which may extend to ₹2 crores, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under Section 447."

DESCRIPTIVE QUESTIONS

2023 - Dec [2] (a) Is their any provision for Prohibition on Acceptance of Deposits from Public exist in Companies Act, 2013? If so, analyze the provision. **(7 marks)**

Answer:

Prohibition on Acceptance of Deposits from Public [Section 73 of Companies Act, 2013]:

(1) No company can invite, accept or renew deposits under Companies Act, 2013 from the public except in a manner provided under Chapter V provided that nothing in this Sub section shall apply to a banking company and non-banking financial company (NBFC) and to such other companies as the Central Government may, after consultation with the Reserve Bank of India (RBI) specify in this behalf.

(2) A company may, with the approval of a resolution in general meeting and subject to such rules as may be prescribed accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, such as:

   (a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.

(b) Filing a copy of the circular along with such statement with the Registrar of Company (RoC) within thirty days before the date of issue of the circular.
(c) Depositing on or before 30th April each year such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
(d) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where the default has occurred, the company made good the default and five years have elapsed since then.

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.
(4) Where a company fails to repay the deposit or part thereof or any interest thereon under Sub- Section (3) the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
(5) The deposit repayment reserve account referred to in clause (c) of Sub-Section (2) shall not be used by the company for any purpose other than repayment of deposits.

2024 - June [8] (a) Should investments of a limited company be held in its name only? State the requirements of the Companies Act, 2013 in this regard. **(7 marks)**

PRACTICAL QUESTIONS

2013 - June [8] (c) VKS TEXTILES PVT. LTD., which is a private company which is not a subsidiary of any public company, does not furnish the details of its investments in Indian companies as required by note (1) *Schedule III*

to the Companies Act, 2013. The company is of the view that Section 186 of the Companies Act, 2013 is not applicable in its entirety to all the companies, i.e. public and private.

Is the said view of VKS TEXTILES PVT. LTD. in accordance with law?

(3 marks)

Answer:

Central Government to prescribe accounting standards (Section 133 of the Companies Act, 2013) The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under **Section 3 of the Chartered Accountants Act, 1949,** in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

2018 - June [2] (a) ABC Ltd. having a networth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. **(4 marks)**

Answer:

Eligible company : As per Section 76 of the act a public company which is having a net worth of more than ₹ 100 crores , OR having a net turnover of ₹ 500 crores , is an Eligible company.

Only an eligible public company can accept deposits from public subjected to certain conditions.

Prior consent of company , in general meeting , by SR File the SR to the registrar before making any initiation.

If proposed deposit is less than net worth of the company then consent of the company can be obtained by OR.

Terms and conditions for eligible companies to accept deposits from public: A company cannot accept the following deposit.

Demand deposit: Deposits payable within 6 months or after 36 months from the date of acceptance. Deposits may be accepted in joint name but not more than 3 joint depositors.

Since, ABC Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

2022 - Dec [5] (a) XYZ Ltd. is an investment company whose principal business is an acquisition of shares and debentures of other companies. The following figures were derived from the books of XYZ Ltd.:

Assets:	
Investment in shares and debenture	₹ 95 Lakh
Other Assets	₹ 105 Lakh
Total	₹ 200 Lakh
Income:	
Income from investment business	₹ 12 Lakh
Other Income	₹18 Lakh
Total	₹30 Lakh

(i) Whether the company is an investment company as per section 186 and eligible to claim exemption given thereunder?

(ii) The Board of Directors of XYZ Ltd. is considering the proposal for making the investment in ABC Ltd. The company has 5 directors on Board and in the Board Meeting 4 directors were present, three of them gave the consent to the proposal and one director abstained from voting. Comment on the same. **(5 marks)**

Answer:

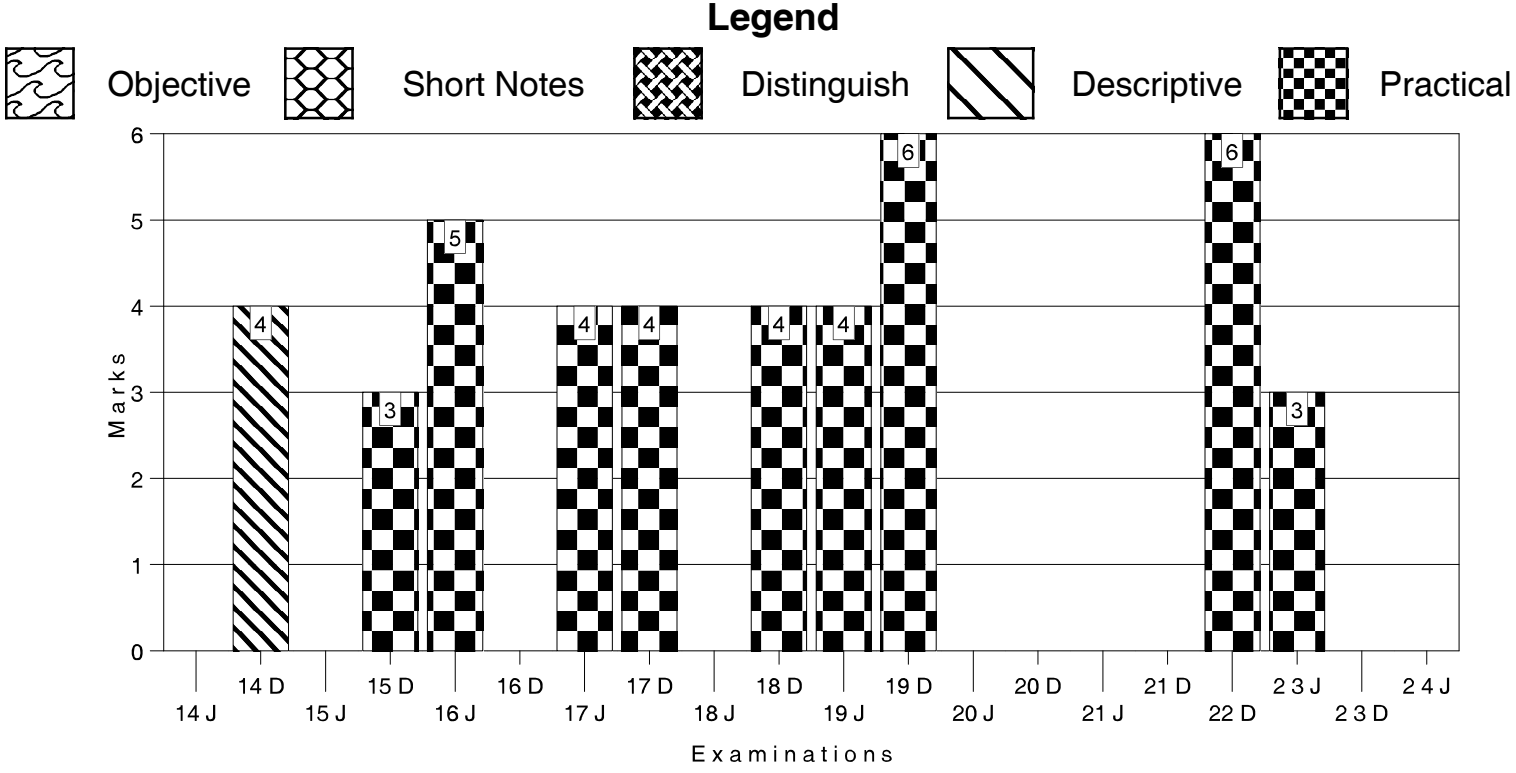
(i) Any & Investment Company meant a Company whose principal business is the acquisition of Shares, debentures or other Securities, Jane Therefore, XYZ Limited is an Investment Company as per **Section 186 of Compare Act 2013** and also eligible to claim exemption given there under

(ii) As per **Section 186 (5) of the Companies Act, 2013,** no investment shall be made or loan or guarantee or security given by the company,

unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting. is obtained.

Therefore, in the given case the Board of Directors of XYZ Ltd. while considering the proposal for making the investment in ABC Ltd. has not complied with the provision of **Section 186(5) of the Companies Act, 2013**, where the consent of all the directors present at the meeting is required. The resolution of the board of directors therefore, is not valid and has no legal effect.

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



1C DIVIDENDS

THIS CHAPTER INCLUDES

1. Profits and ascertainment of divisible profits
2. Declaration and payment of dividend
3. Unpaid and unclaimed dividend transfer to Investor Education and Protection Fund

CHAPTER AT A GLANCE

1. Section 2(35)

Under Section 2(35) of the Companies Act, 2013, 'dividend' includes any interim dividend.

2. Dividend

Dividend is the share of the company's profit distributed among the members.

3. Declare interim dividend

The Board may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account at any time between two AGM of the company. Final Dividend means a Dividend which is declared at the Annual General Meeting of the company.

4. Inadequacy of profits

In case of inadequacy of profits the company can declare the dividend in accordance with the Rule 3 of Companies (Declaration and Payment of Dividend) Rules 2014.

5. Amount of dividend

The amount of dividend shall be deposited in a schedule bank in a separate account within 5 days from the date of declaration.

6. Unpaid Dividend Account
Where the dividend is not paid or claimed within 30 days, the company shall, within 7 days transfer the amount to Unpaid Dividend Account which shall be opened in a scheduled bank.
7. Investor Education and Protection Fund
The amount remaining unpaid along with interest accrued thereon for 7 years shall be transferred to Investor Education and Protection Fund.

List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DIV 5	Physical Form	Statement of amounts credited to Investor Education and Protection Fund	—	—

DESCRIPTIVE QUESTIONS

2014 - Dec [1] {C} (c) TREEZA LTD. declared dividend for the Financial Year 2013-2014 on 1st July, 2014 but did not pay the same to the shareholders within the prescribed time. Explain with reference to the provisions of Companies Act, 2013.

1. What are the penal provisions against such violation?
2. Under what circumstances no offence shall be deemed to have been committed? **(2 + 2 = 4 marks)**

Answer:

1. Punishment for failure to distribute dividends:

- Section 127 of Companies Act, 2013 provides that when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend.

- Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than ₹ 1,000 for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

2. No offence under Section 127 of Companies Act, 2013 shall be deemed to have been committed:
   (a) where the dividend could not be paid by reason of the operation of any law;
   (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
   (c) where there is a dispute regarding the right to receive the dividend;
   (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholders; or
   (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under Section 127(1) was not due to default on the part of the company.

PRACTICAL QUESTIONS

2013 - Dec [3] (b) A company declared dividend at an Annual General Meeting for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties on the ground that these assets were acquired as investment for the purpose of the earning supplementary income, though shown in the balance sheet under the head "Fixed Assets", and not for the purpose of any business carried on by the company. If the company had provided depreciation on the said immovable properties, the company would have suffered loss for the financial year ended 31st March, 2013.

Answer the following in the context of the above and with reference of The Companies Act, 2013:

1. Is it in order for the company to declare dividend for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties?
2. Is it possible for the Board of Directors of the company to revoke the dividend which has been declared at the Annual General Meeting?

(4 marks)

Answer :

1. According to **Section 127 of the Companies Act, 2013,** a company can declare and pay dividend only after making adequate provisions for depreciation as provided in the Act.
   It is immaterial whether the assets are used for the purpose of business of the company or as investment for earning supplementary income so long as these assets are not intended for resale i.e. stock-in-trade.
   As the provisions of **Section 127** are mandatory in nature, it is not in order for the company to declare dividend for the financial year ended 31st March, 2013 without providing for depreciation on certain immovable properties. Further the financial statement for the financial year ended 31st March, 2013 cannot be said to show a true and fair view of the state of affairs.
2. Ordinarily a dividend once declared becomes a debt and cannot be revoked except with the consent of the shareholders, because the declaration of dividend creates a debt to the shareholders in whose favour it is declared.
   But where a dividend has been declared illegally as in this case, the Board of Directors will be justified in revoking the declaration of dividend.

2015 - Dec [1] (B) PWL Limited is facing loss in business during the current Financial Year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so? **(3 marks)**

Answer:

Declaration of interim Dividend: According to **Section 123 (3) of the Companies Act, 2013,** the Board of Directors of a company may declare Interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial year [i.e. 8 + 10 + 12 = 30/3 =10%].

Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

2016 - June [6] (d) Star Gold Ltd., declared and paid dividend in time to all its equity holders for the financial year 2014 – 15, except in the following two cases:

1. Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.
2. Dividend amount of ₹ 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. **(5 marks)**

Answer:

1. **Section 127 of the Companies Act, 2013** provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.
   In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend.
   Hence, the penal provisions under Section 127 will be applicable.
2. Section 127, *inter-alia*, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.
   In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession.
   Hence, there will not be any liability on the company and its Directors etc.

2017 - June [6] (b) (i) The Board of Directors of Nimbahera Chemicals Limited proposes to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company mentioning the relevant provisions of the Companies Act, 2013.

(4 marks)

Answer:

The first proviso to 123 (1) of the **Companies Act, 2013** provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, under the **Companies Act, 2013** the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. Therefore the company is free to transfer any part of its profits to reserves as if deems fit.

2017 - Dec [2] (b) Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
The Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. **(4 marks)**

Answer:
As per **Section 123(6) of Companies Act, 2013,** no company shall be able to declare dividend in case of default in repayment of public deposits as per Sections 73 and 74 of the Act.
Hence, the action of directors of ABC Limited is not valid.

2018 - Dec [2] (b) BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. **(4 marks)**

Answer:
Interim Dividend: under Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.
Although, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
In the given case, interim dividend by BET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. (11+16+18)/3=45/3=15%].
Hence, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

2019 - June [2] (b) Simplex Ltd. has a credit balance of ₹ 10,00,000 in Securities Premium Reserve. It did not earn profit during the year and thus was unable to declare dividend. Bapi, the accountant of the Company, suggested that Securities Premium Reserve of ₹ 10,00,000 may be used for payment of dividend. Comment. **(4 marks)**

Answer:

According to Section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate 'amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company:

(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
(e) for the purchase of its own shares or other securities, under section 68.

As such dividend cannot be declared.

2019 - Dec [2] (a) The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining, the provisions of the Companies Act, 2013, state:

1. Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?

2. What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder? **(6 marks)**

Answer:

As per Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

In pursuant to Section 127 of the Companies Act, 2013 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default is liable for the punishment under this section.

Penalty: under section 124(7) of the Companies Act, 2013 Provides that In section 124 of the Principal Act, for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.".

In the given case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting (AGM). In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after forty five days.

1. (1) As, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
   (2) The Board of Directors (BoD) of XYZ Company Limited is in contravention of Section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.
   Note: The following are the consequences for the violation of above provisions:
      (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.
      (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
2. As per Section 127 of the Companies Act, 2013 if the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the' shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence.

2022 - Dec [2] (a) XYZ Ltd. having inadequate profits, proposes to declare 10% equity dividend out of its current profits and its free reserves.
Following are the data drawn from the latest audited financial statements as at 31st March, 2019:

17,500 Preference Shares of ₹ 100 each fully paid; (Dividend @ 9%)
7,00,000 Equity Shares of ₹10 each
General Reserves: ₹ 21,00,000
Capital Reserves: ₹ 3,50,000

Securities Premium: ₹ 3,50,000 Surplus (P&L): ₹ 63,000 (Excluding current year's profit given below) Net Profit for the year: ₹ 3,57,000 Average Rate of Return for the last three years: 15% Average Rate of Dividend during the three years: 15% The company has declared dividends in each of the 3 preceding financial years.

In the light of the information given above, analysing and applying the provisions of the Companies Act, 2013 and the applicable Rules made thereunder, calculate the minimum amount that is required to be withdrawn from free reserve by XYZ Ltd. for declaring 10% dividend to the equity shareholders. **(6 marks)**

Answer:

Given:

XYZ Ltd has inadequate profits. They have decided to declare 10% equity dividend out of current profit and it's free reserves.

Question:

What is the minimum amount to be withdrawn from reserves for declaring 10% dividend to equity?

Solution:

As per **Section 123 of Companies Act, 2013**, referred to rule 3 (declaration and payment of dividend) rule 2014.

In case of inadequacy of profits:

Here, we have to make payment of preference dividend first and then equity.

Therefore, 17,500 preference shares of rupees 100 each.

17,500*100 = ₹ 17,50,000

Rate of dividend is 9% on preference shares

Therefore, ₹ 17,50,000*9% = ₹ 1,57,500 ……..1

Net profit for the year: ₹ 3,57,000 ……..2

Therefore ₹ 3,57,000 - 1,57,500 = ₹ 1,99,500 …….3

Amount remaining for equity shareholders in the given case = ₹ 1,99,500

Dividend rate for equity shareholders is 10%

Therefore 7,00,000 equity shares of ₹10 each

= ₹ 70,00,000*10 ……4

Amount of dividend
= ₹ 70,00,000*10%
= ₹ 7,00,000…….5
Therefore, ₹(1,99,500 + 63,000) = ₹ 2,62,500……..6
Remaining amount will be utilized from the reserve
Amount and reserves is ₹ 21,00,000
Therefore,
Total Dividend (-) Amount Available
7,00,000 (-) 2,62,500
= ₹ 4,37,500
₹ 4,37,500 to be withdrawn from the General Reserves.

2023 - June [3] (c) VS Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2021-22, except in the following two cases:

(i) Mrs. AB, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. AB about this discrepancy.

(ii) Dividend amount of ₹ 50,000 was not paid to the successor of Late Mr. PR, in view of the Court order restraining the payment due to family dispute about succession.

You are required to critically analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. **(3 marks)**

Answer:

(i) **Punishment for failure to distribute dividend:**
Section 127 of the Companies Act, 2013 provides that shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non compliance was not communicated to him.

In the above case, the company has failed to communicate to the shareholder Mrs. AB about non-compliance for her direction regarding payment of dividend.

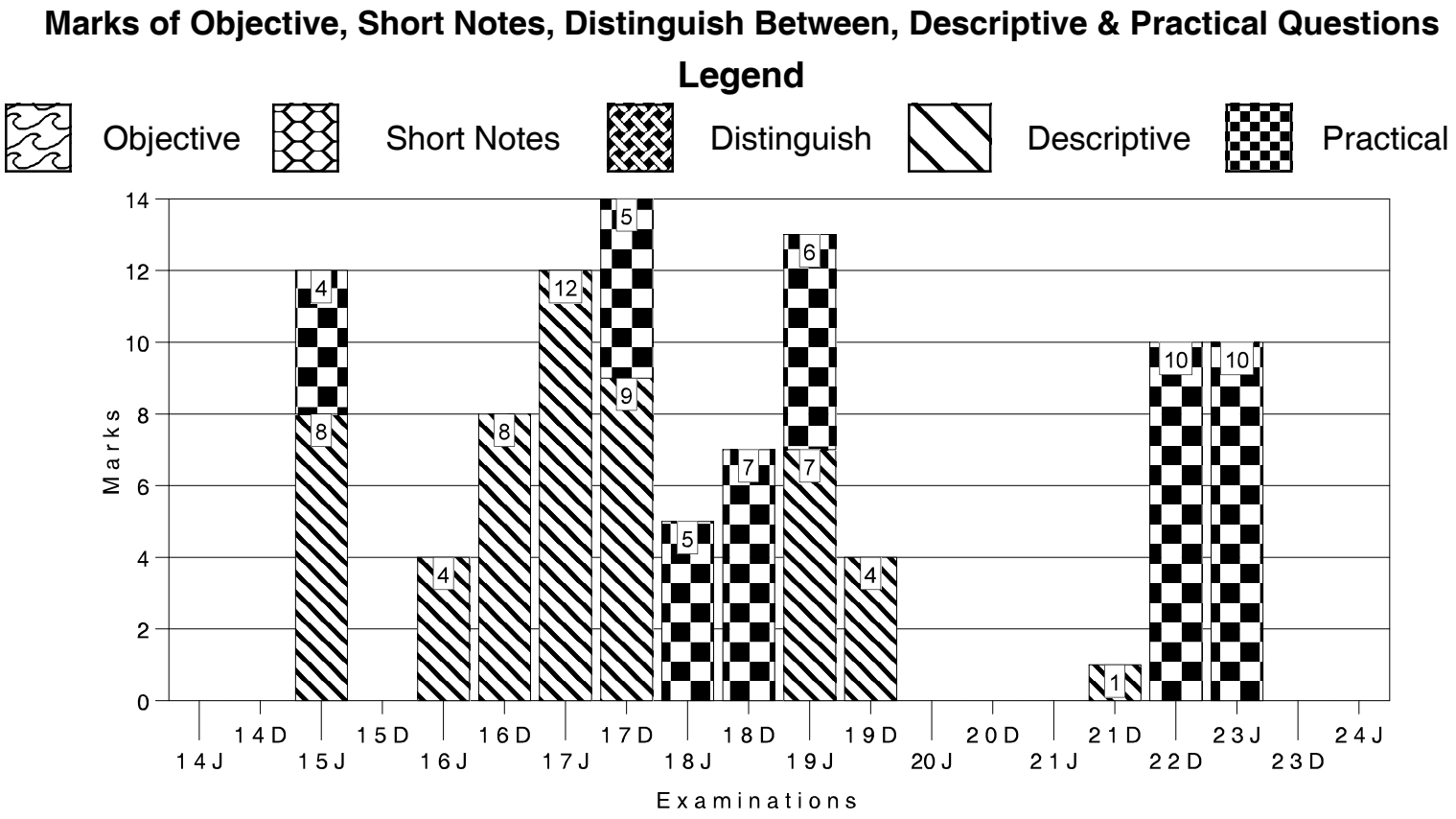
Therefore, the penal provisions under section 127 will be applicable.

(ii) As per Section 127, *inter-alia,* provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the above case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession.

Therefore, there will not be any liability on the company and its directors, etc.

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



13.67

1D ACCOUNTS AND AUDIT

THIS CHAPTER INCLUDES

1. Maintenance of Books of Accounts
2. Statutory Auditor
3. Special Auditor
4. Cost Auditor
   - Appointment
   - Resignation
   - Removal
   - Qualification
   - Disqualification
   - Rights
   - Duties and Liabilities
5. Companies Auditor Report Order (CARO) Rules, 2020.

CHAPTER AT A GLANCE

1. Appointment of auditors

The Act provides that every company shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of next annual general meeting. The Act also provides for methods of appointment of auditors along with their qualifications and disqualifications.

2. Auditor's report

The Act provides that the auditor's report shall be signed only by the person appointed as an auditor of the company.

3. Appointment of first auditor [Section139(6)]

Appointment of first auditor in case of every company except government company or company owned/ controlled by Central Government/State Government/Central Government and State Government [Section 139(6)] :

- The first auditor of a company, other than a Government company, shall be appointed by the Board within thirty days from the date of registration of the company and if the Board fails to appoint such auditor, it shall inform the members of the company and the members

shall make the appointment of first auditor within ninety days of information at an extra ordinary general meeting and such auditor shall hold office till the conclusion of the first annual general meeting.

- Appointment of first auditor shall be made by Comptroller and Auditor-General of India (CAG) within sixty days of registration of the company.
- If CAG fails to appoint the first auditor within given time then Board of such company shall appoint first auditor within next 30 days.
- If Board fails to appoint the first auditor within given time then it shall inform to members and members shall make the appointment of first auditor within 60 days of information at an extra ordinary general meeting.
- The First Auditor shall hold office till the conclusion of first AGM.

4. Appointment of Auditors at AGM (first AGM and sub-sequent AGM)

Appointment of auditor shall be made by members at First AGM and every subsequent AGM. At the first AGM, every company shall appoint an individual or a firm as an auditor. The auditor so appointed can hold office from the conclusion of first AGM till the conclusion of 6th AGM.

5. Rotation of Auditor

In case of an individual as auditor:

(a) No individual shall be appointed or re-appointed as auditor for more than 1 term of 5 consecutive years.

(b) An individual auditor, who has completed his term of 5 consecutive years, shall not be eligible for re- appointment as auditor in the same company for 5 years from the date of completion.

In case of a firm as an auditor:

(a) No audit firm shall be appointed or re-appointed as auditor for more than 2 terms of 5 consecutive years.

(b) An audit firm which has completed its 2 terms of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such terms

(c) If any firm/LLP which has one or more partners who are also partners in the outgoing audit firm/LLP cannot be appointed as auditors during the 5 year period.

6. Appointment of an auditor in casual vacancy
Casual vacancy arising by a reason other than resignation: Whereas casual vacancy is arising by a reason other than resignation then vacancy shall be filled by the Board within 30 days. **Casual vacancy arising due to resignation:** If casual vacancy is arising due to the resignation of auditor, it shall be filled within 30 days by the Board of Directors, and the appointment made by the Board shall be approved in a general meeting convened within 3 months from the date of recommendation of the Board.
7. Appointment of auditor in Casual Vacancy in case of Govt. Company
Casual vacancy shall be filled by the CAG within 30 days. If CAG fails to fill the vacancy within given time then BOD shall fill the vacancy within next 30 days.
8. Auditors not to render certain cases
(a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services.
9. Cost auditor
1. Every company referred to in sub-rule (1) shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board Meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in form CRA-2. 2. After the expiry of thirty days, the company shall issue formal letter of appointment to the cost auditor.

3. Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his, her or its reservations or qualifications or observations or suggestions, if any, in form CRA-3. 4. Every cost auditor shall forward his report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year. 5. Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in form CRA-4 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.
The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.

List of Important Forms

S. No.	Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
1.	AOC-1	Physical Form	Statement containing salient features of the financial statement of subsidiaries/ associate companies/joint ventures	129(3)	5
2.	AOC-2	Physical Form	Form for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub- section (1) of Section 188 of the Companies Act, 2013 including certain arms length transactions under third provision there to	134(3)(h)	8(2)
3.	AOC-3	Physical Form	Statement containing salient features of Balance Sheet and Profit and Loss Account	136(1)	10

4.	AOC-4	Physical Form	Form for filing financial statement and other documents with the Registrar	137	12(1)
5.	ADT-1	Physical Form	Notice of appointment of auditor by the company	—	4(2)
6.	ADT-2	Physical Form	Application for removal of auditor (s) from his/their office before expiry of term	—	7(1)
7.	ADT-3	Physical Form	Notice of Resignation by the Auditor	—	8
8.	ADT-4	Physical Form	Report to the Central Government	—	13(4)
9.	CRA-2	Company shall inform the Cost Auditor of his appointment.			
10.	CRA-3	Cost Audit Report Sent for the Board of Directors.			
11.	CRA-4	Cost Audit Report Sent to the Central Government.			

DESCRIPTIVE QUESTIONS

2013 - Dec [1] {C} (d) Draft a Directors responsibility statement to be attached in Director's report under The Companies Act, 2013. **(5 marks)**

Answer:

Director's Responsibility Statement

Your Directors wish to inform that the Audited Accounts containing Financial Statements for the financial year ended 31st March, 2013 are in full conformity with requirements of the Act, 2013. Your Directors believe that the Financial Statements reflect fairly the form and substance of transactions carried out during the year and reasonably present the company's financial condition and result of operations.

As stipulated in **Section -134 (5) of the Companies Act, 2013**, your Directors subscribe to the Director's Responsibility statement and confirm that:

1. in the presentation of the Annual Accounts, applicable accounting standards have been followed;

2. the accounting policies have been consistently applied and reasonable, prudent judgment and estimates are made so as to give a true and fair view of the state of your company as at 31st March, 2013 and of the profit for the financial year ended 31st March, 2013;
3. proper and sufficient care has been taken for the maintenance of adequate accounting records in accordance with the provision of the Companies Act, 2013 for safeguarding the assets of your company and for preventing and detecting frauds and other irregularities;
4. the annual accounts of your Company have been prepared on a going concern basis;
5. the Company's Internal Auditors have conducted periodic audits to provide reasonable assurance that the company's established policies and procedures have been followed.

2013 - Dec [6] (d) The liability of audit fees has been outstanding since last two years. This year after completion of audit, the auditor informs to the secretary of the company over phone to bring the cheque of all the three years and take delivery of the audit report. Discuss briefly the above statement in the context of the right of the auditor to receive remuneration.

(4 marks)

Answer:

Section 142 of the Companies Act, 2013 deals with fixation of remuneration of an auditor. However, the Act is silent on the mode of recovery of remuneration by an auditor. Normally speaking, an auditor has right to receive his remuneration after completing his work, that is, submission of the audit report.

As per Research Committee of the Institute of Chartered Accountants of India, the auditor may also recover his fees on progressive basis.

In the instant case, perhaps, the auditor has linked the delivery of audit report only on audit fees being received since the payment has been outstanding for last two years.

But as a matter of professional ethics, it would not be proper on the part of the auditor and moreover he would not be performing his duties under the **Companies Act, 2013,** if he insists that he would deliver the audit report only after receiving his due fees from the company.

As such, it would be better on the part of the auditor to enforce his right to receive remuneration through Court of Law only after submitting his audit report.

2015 - June [2] (b) 4. Explain the provisions regarding directors' responsibility statement as covered under the Companies Act, 2013. **(5 marks)**

(v) Q Limited has defaulted repayments of dues to a financial institution during the financial year 2013-14 and the same remained outstanding as at March 31, 2014. However, the company settled the total outstanding dues including interest in April, 2014 subsequent to the year end and before completion of the audit. Discuss how you would deal with this matter as per Schedule III to the Companies Act, 2013. **(3 marks)**

Answer:

Please refer 2013 - Dec [1] {C} (d) on page no. 72

2. **Reporting requirement as per Schedule III to the Companies Act, 2013:** As per the general instructions for preparation of Balance Sheet, provided under Schedule III to the Companies Act, 2013, terms of repayment of term loans and other loans is required to be disclosed in the notes to accounts. It also requires specifying the period and amount of continuing default as on the balance sheet date in repayment of loans and interest, separately in each case.

   In the given case, Q Ltd. has defaulted in repayments of dues to a financial institution during the financial year 2013-14 which remain outstanding as at March 31, 2014. However, the company has settled the total outstanding dues including interest in April, 2014 but, the dues were outstanding as at March 31, 2014. Therefore, it needs to be reported in the notes to accounts.

2016 - June [4] (a) (i) Define the expression "Accounting Standards" within the meaning of Companies Act, 2013. **(4 marks)**

Answer:

- As per sub-section (2) of Section 2 of the Companies Act, 2013, the expression "accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in Section 133.

- As per Section 133, the standards of accounting recommended by the Institute of Chartered Accounts of India constituted under the Chartered Accountants Act, 1949 as may be prescribed by the Central Government in consultation with and after examination of the recommendations made by the National Financial Reporting Authority established under Section 132 of the said Act.
- Rule 7 of the Companies (Accounts) Rules, 2014, further states that the standards of accounting specified under the Companies Act, 2013.
- Shall be deemed to be the accounting standards until the according standards are prescribed by the Central Government under Section 133.

2016 - Dec [7] (a) The Companies Act, 2013 has introduced several provisions which would change the way Indian Corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities which has assumed considerable importance.
Discuss the provisions governing CSR as provided in the Companies Act, 2013 and the Rules made thereunder. **(8 marks)**

Answer:

1. CSR applies to the following classes of companies during any financial year:
    1. Companies having Net Worth of rupees five hundred crore or more;
    2. Companies having turnover of rupees one thousand crore or more,
    3. Companies having Net Profit of rupees five crore or more.
2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
3. The CSR Committee shall consist, of three or more Directors, out of which at least one Director shall be an Independent Director.
4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.
5. The contents of the Policy shall be disclosed in the Board's report.
6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.
7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant.

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates.
2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board's Report.
3. The eligible companies are required to spend in every financial year at least two percent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR policy. (Sec. 135)

2017 - June [3] (b) (i) The auditors of a company refuses to make their report on the annual accounts of a company before it is signed on behalf of the Board of Directors. Advise the company. **(4 marks)**

Answer:

- The auditor is right. Theoretically, accounts are presented to auditors only after they are approved by the Board and signed by authorized persons. The auditor is only expected to submit his report on the accounts presented to him for audit after conducting an examination of the necessary documents, analyzing relevant information and test checking accounting records in order to be able to form an opinion of the financial statements presented to him. In practice, the checking of accounts is already completed before accounts are approved by the Board.
- Auditor informally approves the draft account with notes etc., before the accounts are approved by the Board. However, auditor signs the accounts only after these are approved by Board and signed by persons authorized by Board of the company.

2017 - June [5] (a) What is the minimum contribution the companies are required to make towards CSR as per Companies Act, 2013. **(8 marks)**

Answer:

Required minimum contribution of the Companies towards CSR:

(a) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

(b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.
(c) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.
(d) Companies may build CSR capacities of their own personnel as well as those of their implementing agencies through Institutions with established track records of at least three financial years. However, such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year.

2017 - Dec [2] (c) The Board of Directors of a company have filed a complaint with the Institute of Chartered Accountants of India against their Statutory Auditors for their failing to attend the Annual General Meeting of the Shareholders in which audited accounts were considered. Comment. **(5 marks)**

Answer:

As per **Section 146 of the Companies Act, 2013** it is the duty of statutory auditor to attend the AGM of the company either himself or through his representative.

In case the statutory auditor did not attend the AGM nor seek leave of absence from the board members, he shall have to provide a valid justification for the same, and the company has the option to not reappoint him in the next AGM.

2017 - Dec [5] (a) (ii) What is the role of the Audit Committee *vis-a-vis* the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144? **(4 marks)**

Answer:

The company shall appoint a statutory auditor to perform certain engagements not restricted under Section 144 with the approval of the Audit committee.

The audit committee shall recommend the appointment of statutory auditor to perform those engagements to the Board and prepare a report on the same engagements.

2019 - June [2] (c) Explain the particulars required to be contained in Directors Responsibility Statement as per provision of the Companies Act, 2013. **(4 marks)**

Answer:

Contents of Directors Responsibility Statement:

[Section 134(5) of the Companies Act, 2013]:

The Directors' Responsibility Statement referred to in 134(3) (c) shall state that —

1. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
2. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
4. the directors had prepared the annual accounts on a going concern basis;
5. the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

   Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and
6. the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

2019 - June [3] (c) (ii) The e-forms rolled out by the Ministry of Corporate Affairs (MCA) under the provisions of the Companies Act, 2013 and rules framed thereunder are mandatorily numbered alpha-numeric. Explain this concept. **(3 marks)**

Answer:

In order to facilitate easy understanding of the e-forms being rolled out under the provisions of Companies Act, 2013 and Rules made thereunder, forms under the Companies Act are mandatorily numbered alpha-numeric. Initial of forms is to be started with alphabet of two or three letters based on the subject of the Chapter, followed by serial number of the form. This will define the nature of the forms and would be easy to recognize.

2019 - Dec [4] (c) Briefly state the compliance requirements under Companies Act, 2013 regarding risk management policy. **(4 marks)**

Answer:

Companies Act, 2013 has introduced various provisions relating to ease of doing business while ensuring the governance and transparency are maintained in the way the business is conducted. One of the key compliance requirement introduced towards the governance and transparency is the introduction of Risk Management as a policy and process in the Companies Act, by which the board and audit committee have been vested with specific responsibilities in assessing the robustness of risk management policy, process and systems.

1. **Section 134 (3)** There shall be attached to (Financial) statements laid before a company in general meeting, a report by its Board of Directors,(BoD) which shall include.
2. A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.
3. **Section 177 (4)** Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter* alia, include.
4. Evaluation of internal financial controls and risk management systems.

Therefore, as per Companies Act, 2013 it is compulsory for the Companies to development and implementation of a risk management policy and Audit Committee shall evaluate the risk management systems.

2021 - Dec [7] Can the company keep any of the books of account at any other place in India other than the registered office of the company?

(1 mark) [Sec. B - SAQ]

Answer:

Yes, Subject to intimation to the Registrar, within seven days of the Board decisions.

PRACTICAL QUESTIONS

2015 - June [2] (d) (i) Telco Ltd. had the following items under the head 'Reserves and Surplus' in the Balance Sheet as on 31st March, 2015.

	Amount ₹ in Lakhs
Capital Reserve	70
Security Premium Reserve	80
General Reserve	70

The company had an accumulated loss of ₹ 240 Lakhs on the same date, which it has disclosed under the head 'Statement of Profit and Loss' as an asset in its Balance Sheet. Comment on accuracy of this treatment in line with schedule III to the Companies Act, 2013. **(4 marks)**

Answer:

Debit balance of statement of profit & loss (after all allocations and appropriations) shall be shown as a negative figure under the head 'surplus'. Similarly, the balance of 'reserve & surplus', after adjusting balance of surplus, shall be shown under the head 'Reserve & Surplus' even if the resulting figure is in negative. [As per Note 6(B) part 1 of Schedule III of the Companies Act, 2013.]

In this case, the debit balance of profit & loss i.e ₹ 240 lakhs exceeds the total of all reserve i.e ₹ 220 lakhs.

Therefore, balance of 'Reserve & Surplus' after adjusting debit balance of profit & loss is negative by ₹ 20 lakhs, which should be disclosed on the face of the Balance Sheet as the sub heading 'Reserve & Surplus' under the heading 'Shareholders fund'.

Thus, treatment done by the company is incorrect.

2017 - Dec [6] (b) Interior Pvt. Ltd. is a manufacturing company having turnover of ₹ 210 crore but having maximum outstanding loan from public financial institution of ₹ 90 crore only during the preceding financial year. You are required to state whether the company is liable for internal audit as per the provisions of the Companies Act, 2013. **(5 marks)**

Answer:

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate [As amended *vide* notification no. G.S.R. 742(E) dated 27th July, 2016], namely:

(a) every listed company.

(b) every unlisted public company having:
   (1) paid up share capital of ₹ 50 crore or more during the preceding financial year, or
   (2) turnover of ₹ 200 crore or more during the preceding financial year, or
   (3) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year, or
   (4) outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year, and

(c) every private company having:
   (1) turnover of ₹ 200 crore or more during the preceding financial year, or
   (2) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year.

   Hence, since the turnover of the company exceeds ₹ 200 crore, it is liable for internal audit.

2018 - June [2] (c) (i) X Ltd. appointed CA Innocent as a statutory auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. Comment. **(5 marks)**

Answer:

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed:

Further Section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in Section 144.

In the given case, CA Innocent was appointed as an auditor of X Ltd. He was offered additional services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. The auditor is advised not to accept the services as these services are specifically notified in the services not to be rendered by him as an auditor as per Section 144 of the Act.

2018 - Dec [3] (b) Mr. Faithful is an auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. for 2016-17, he finds manipulation of funds around ₹ 2 crore committed by the officers of the company against the Daga Ltd. Examine in the light of the Companies Act, 2013 the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. in relation to reporting of such frauds. **(7 marks)**

Answer:

Reporting of frauds by auditor and other matters : As per Section 139 read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014, if an auditor of a company, in the course of the performance of his duties as

auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officer or employees, the auditor shall report the matter to the Central Government. **The auditor shall report the matter to the Central Government as given below:**

1. **The auditor shall report the matter to the Board or the Audit Committee**, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
2. On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
3. In case the auditor fails to get any reply or observations from the board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations ;
4. The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgment Due or by Speed Post followed by an email in confirmation of the same;
5. The report shall be on the letter-head of the auditor containing postal address, email address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
6. The report shall be in the form of a statement as specified in Form ADT-4.

Particular of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report by the company:

(a) Nature of Fraud with description;
(b) Approximate Amount involved ;
(c) Parties involved, if remedial action not taken; and
(d) Remedial actions taken.

2019 - June [4] (a) M/s RST and Co., a firm of Chartered Accountants, comprising of three partners R, S and T are Statutory Auditors of 50 companies as per details given below:

1. Small Companies — 10
2. Private Companies having paid-up share capital of less than ₹ 100 Crores — 20
3. Private Companies having paid-up share capital of more than ₹ 100 Crores – 15
4. Public Companies — 5

Mr. R signs the Balance Sheet of 10 Small Companies and 10 Private Companies having paid-up share capital of less than ₹ 100 Crores. Mr. S signs the Balance Sheet of 10 Private Companies having paid-up share capital of less than ₹ 100 Crores and 5 Private Companies having paid-up share capital of more than ₹ 100 Crores. Mr. T signs the Balance Sheet of 10 Private Companies having paid-up share capital of more than ₹ 100 Crores and 5 Public Companies.

What is the maximum number of audits that the firm as a whole can accept and what is the maximum number of audits each individual partner can accept? **(6 marks)**

Answer:

Ceiling on Number of Audit: As per Section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty Companies other than one person companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

As per Section 141(3)(g), this limit of 20 Company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be $3 \times 20 = 60$ Company audits. Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 Company audits on his account. Therefore, maximum number of audits that the firm M/S. RST and CO. as a whole can accept is 60 and maximum number of audits each individual

partner can accept is 20 i.e. other than one person Companies, dormant Companies, small Companies and private Companies having paid-up share capital less than ₹ 100 crores.

In the given case, CAR is holding appointment in 20 Companies, i.e. 10 small companies and 10 private companies having paid up share capital of less than ₹ 100 crores, whereas CA S is having appointment in 15 companies i.e. 10 private companies having paid up share capital of less than ₹ 100 crore and 5 private companies having paid up share capital of more than ₹ 100 crore and CA T is having appointment in 5 public Companies and 10 private companies having paid up share capital of more than ₹ 100 crores. In aggregate all three partners are having 50 audits.

As per Section 141(3)(g) applying the above provisions, an auditor can accept more appointment as auditor = ceiling limit as per Section 141(3)(g) – already holding appointments as an auditor.

Hence (1) CA R can accept 20 more audits. (2) CA S can accept 20 – 5 = 15 more audits and (3) CA T can accept 20 – 1 5 = 5 more audits.

As per the facts of the case, M/S. RST and CO. is already having 20 company audits and they can also accept 40 more company audits. In addition, they can also conduct the audit of one person companies, small companies, dormant companies and private companies having paid up share capital less than ₹ 100 crores.

As per Section 141(3)(g) of the Companies Act, 2013, M/S. RST and CO. can accept appointment as an auditor of 40 more companies as under:

Total number of Audits available to the Firm	= 20 × 3 =	60
Number of Audits already taken by all the partners in their individual capacity	= 0 + 5 + 15 =	20
Remaining number of Audits available to the firm	=	40

2022 - Dec [4] (b) The Central Government initiated a case against Mr. Sujay Bishoi, Managing Director of BSK Ltd. for causing damage to the interest of the financial industry by mismanaging the funds and referred the case to the Tribunal where the Tribunal passed an order on 20th June, 2018, holding that Mr. Sujay was not fit and proper person to hold such office.

Mr. Sujay vacated his office as on 21st June, 2018 and he demanded compensation, as per the contract with the company, for early termination. On 23rd January, 2022. Mr. Sujay was appointed as a non-executive director in one other company.

In the light of the given facts, advise in the given legal situations:

(i) Whether Mr. Sujay was entitled for such compensation?

(ii) Whether Mr. Sujay was entitled to be appointed as a non- executive director in such other company? **(6 marks)**

Answer:

(i) The Tribunal had passed an order as per **section 242(4A) of the Companies Act,2013**, as the case had been referred to it by the central Government to decide whether Mr. Sujay was fit and proper person or not.

As per **sections 243(1A)** and **(1B) of the Companies Act, 2013**, the person who is not a fit and proper person pursuant to **sub-section (4A)of section 242**, shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of 5 years from the date of the said decision: **Provided that** the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. Notwithstanding anything contained in any other provisions of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation. Therefore, Mr. Sujay was not entitled for such compensation for early termination of his office, despite of the terms of the contract, as his termination was pursuant to order of National Company Law Tribunal passed under subsection (4A) of section 242 of the companies Act, 2013.

(ii) As discussed aforesaid, as per **sub-section (1A) to the Companies Act, 2013**, Mr. Sujay was not entitled to hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision.

The decision was given by the Tribunal on 20th June, 2021 and so till 20th June, 2026, Mr. Sujay was not entitled to hold such office except with the permission of the Central Government accorded by the leave of Tribunal. Therefore, if Mr. Sujay had been appointed as a non-executive director in other company without the permission of the Central Government, then he and every other director of such other company who is Knowingly a party to such contravention, shall be liable to punishment as per **Section 243(3)**, as Follows:- Any person (i.e. Mr. Sujay) who Knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of **sub-section (1) or sub-section (1A)**, and every other director of the company who is Knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

2022 - Dec [6] (b) Electro Ltd. is engaged in generation of electricity for captive consumption through Captive Generating Plant. The Company also maintain cost records in their books of account as required under Cost Records and Audit Rules. Mr. X, friend of Managing Director of the company, suggested name of his brother, who is a Cost Accountant in Practice, for the purpose of cost audit. However, the statutory auditor of the company, is of the view that the company is not legally required to conduct cost audit. Now, the Managing Director is in dilemma about the requirement of cost audit. Being an expert in cost records and audit rules, you are required to guide in this regard. **(4 marks)**

Answer:

Electro Ltd. is engaged in generation of electricity for captive consumption through captive generating plant and company also maintains cost record in their books, managing director is in dilemma about the requirement of cost audit. However, statutory auditor does not think it is legal to conduct a cost Audit.

Applicability of Provisions related to Cost Records and Audit: The provisions relating to cost records and audit are governed by **Section 148 of the Companies Act, 2013** read with the Companies, (Cost Records and Audit) Rules, 2014.The audit conducted under this section shall be in addition to the audit conducted **under section 143.** Rule 3 of the Companies

(Cost Records and Audit) Rules, 2014 provides the classes of companies, engaged in the production of goods or providing services, required to include cost records in their books of account.

However, the requirement for cost audit under these rules shall not be applicable to a company which is covered under Rule 3, and,

(i) whose revenue from exports, in foreign exchange, exceeds 75 per cent of its total revenue; or

(ii) which is operating from a special economic zone.

(iii) which is engaged in generation of electricity for captive consumption through Captive Generating Plant.

2023 - June [8] (a) Mr. Ravinder Nath is Managing Director of ABC Ltd. The Audit is going and there are many issues which the Auditor has pointed out and the same are being clarified by the Company Management but the Auditor is not satisfied with the explanations. MD wants to consult you as the CFO of the Company on how the current Auditor can be removed. Auditor is also not feeling comfortable and has threatened to resign. Please advise MD on the legal provisions under the Companies Act, 2013 in respect of the following:

(i) Can the Auditor be removed? Please state the procedure.

(ii) As the Auditor is not satisfied and what if he resigns?

(iii) If the Auditor decides to continue with the assignment and he issues a qualified report on the observations found by him during the course of the Audit. **(4 + 3 + 3 marks)**

Answer:

(i) The auditor under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company and after obtaining prior approval of the Central Government by making an application in E-form- ADT-2 and shall be accompanied with the prescribed fees.

The above stated application shall be made to the Central Govt within 30 days of the resolution passed by the Board of Directors. The company shall hold the general meeting within 60 days of receipt of approval of the Central Govt. for passing the special resolution.

The Auditor concerned shall be given an opportunity of being heard. If the Auditor is removed, then a new Auditor has to be appointed by the board due to the casual vacancy caused thereafter in the next general meeting called.

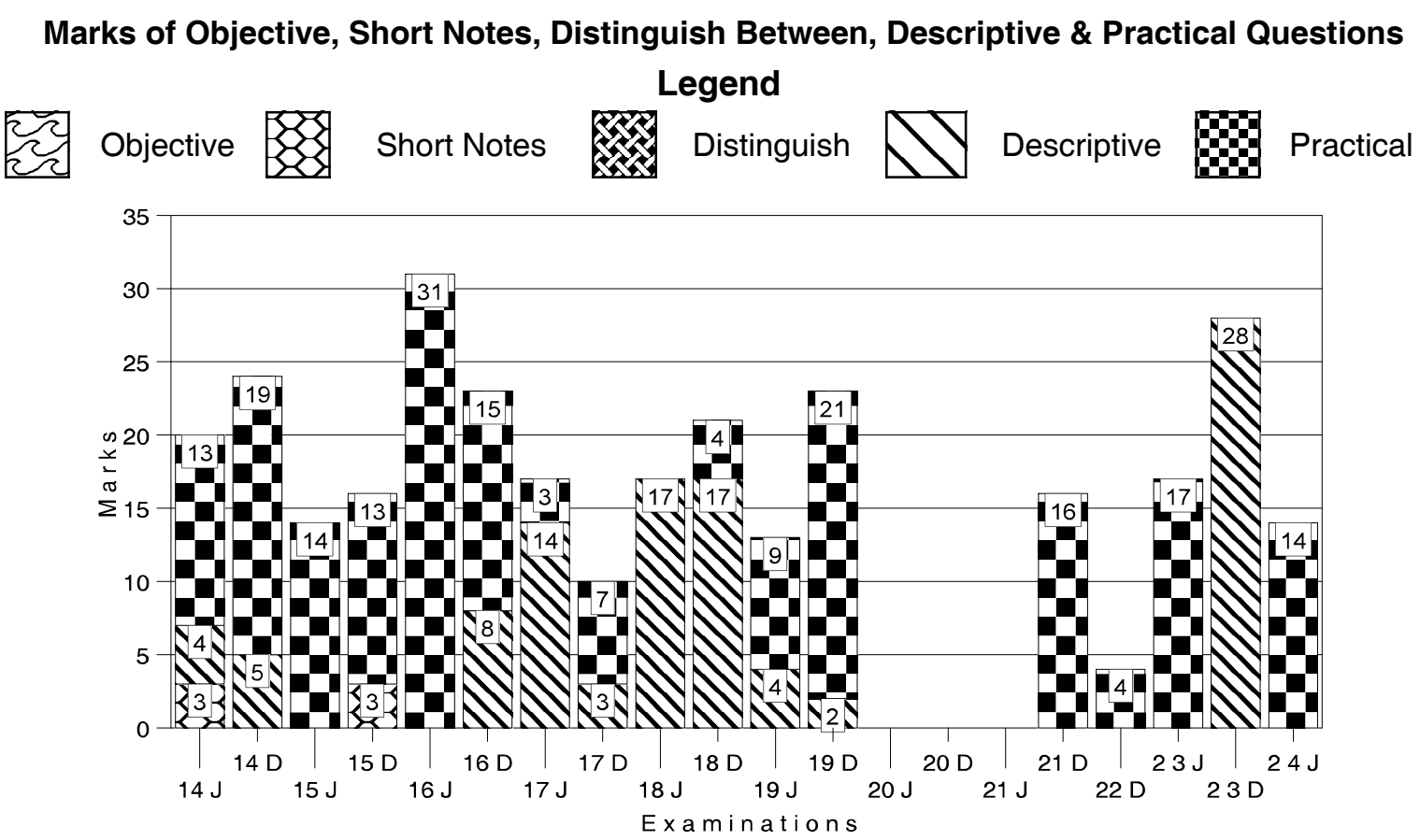
(ii) If the Auditor has resigned form the company, He shall file within a period of 30 days from the date of resignation, a statement in the form ADT 3 with the company and the concerned registrar. The Auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation in his statement.

(iii) If the Auditor gives a qualified report, the same has to be replied by the Board of Directors as annexure to Board's Reports and shall be circulated and placed in AGM.

Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Explain the particulars required to be contained in Directors Responsibility Statement as per provision of the Companies Act, 2013. 15 - June [2] (b) (iv), 19 - June [2] (c)	2 Times

FOR NOTES

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



13.91

1E BOARD OF DIRECTORS AND KEY MANAGERIAL PERSONNEL, MEETINGS AND PROCEDURES

THIS CHAPTER INCLUDES

1. Directors and Managerial Personnel
2. Appointment, Reappointment, Resignation, Removal
3. Payment of remuneration
4. Powers of Board of Directors
5. Restrictions on the Powers of Directors
6. Obtaining DIN
7. Compensation for loss of office
8. Waiver of recovery of remuneration
9. Making loans to Directors
10. Disclosure of interest of a Director
11. Holding of Office or Place of Profit by a Director/Relative
12. Interested Directors
13. Board Meetings, Minutes, Registers
14. Powers of the Boards
15. Corporate Governance and Audit Committee
16. Nomination and Remuneration Committee Stakeholders Relationship Committee
17. Corporate Social Responsibility Committee
18. Duties and Liabilities of Directors
19. Power related to political contributions

CHAPTER AT A GLANCE

1. No. of directors

Every public company shall have at least 3 directors and every private company shall have at least 2 directors and every one person company shall have at least 1 director under Section 149.

2. Legal position of director
Directors are trustees for the company i.e. the directors are persons selected to manage the affairs of the company for the benefit of the shareholders.
3. Maximum Number of Director
Maximum Number of Director is 15, which can be increased by passing a special Resolution.
4. Woman director
Certain prescribed class or classes of companies is required to have at least one woman director. This is a mandatory provision.
5. Resident director
Every company including one person company shall have at least one director who stays in India for a period of not less than 182 days in the financial year.
6. Number of directorship
Maximum limit on total number of directorship has been fixed at 20 companies including sub limit of 10 for public companies.
Penalty for violating provisions relating to restriction on number of directorships A person cannot be director in more than 20 companies, including alternate directorship. Out of the 20 companies, only maximum 10 can be public companies - **Section 165(1) of companies Act, 2013.** As per Companies Amendment Act, 2020 Provides that Penalty for violation of Section 165(6) can be If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.".
7. Removal of director
A director may be removed from the office by giving a special notice.

8. Managerial remuneration
The overall limit on managerial remuneration shall not exceed 11% of the net profits.
9. More than one such director
If there is more than one such director, remuneration shall not exceed 10% of the net profits of the company.
10. Independent director
An independent director in relation to a company means a director other than a managing director or a whole-time director or a nominee director.
11. An independent director can be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent director.
12. Number of Independent Directors
Every listed company shall have one-third independent directors.
13. Section 149(8)
Section 149(8) provides that the company and independent directors shall abide by the provisions specified in Schedule IV.
14. Term of independent director
An independent director shall hold office for a term up to 5 consecutive years on the Board of a company.
Resignation or removal of an independent director
The resignation or removal of an independent director will be in the manner as is provided in Sections 168 and 169 of the Act.
16. Composition of Board of Director
50% of the Board is to be independent if the Chairman is a promoter, otherwise 1/3rd of the board is to be independent prescribed under Clause 49* of Listing Agreement.

Note:
**Regulation 17 of the SEBI (LODR) Regulations, 2015. SEBI has notified new regulation named SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 on 2nd September, 2015. A time period of 90 days has been given for implementing the Regulations. However, two provisions of the regulations, which are facilitating in nature, are applicable with immediate effect. Other provisions of this new regulation have come into effect from 1st December, 2015.*
The new regulation aim to consolidate and streamline the provisions of existing Listing Agreements for different segments of the capital market. However, for the sake of students help, we have provided the questions and answer under this chapter as per old listing Agreement as well as new regulation about listing agreement.

17. Nomination Committee

The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.

18. Participation *Via* Video Conferencing

Director can participate in the Board Meeting through video conferencing or other audio visual mode as may be prescribed.

19. Notice of Board Meeting

Notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means.

20. The participation of director at Board Meeting through video conferencing or by other electronic means shall be counted for the purpose of Quorum.

21. Audit Committee (Section 177)

Every Listed Public Company and such other company as may be prescribed shall form Audit Committee comprised of minimum 3 directors

with majority of the Independent Directors and majority of members of committee shall be persons with ability to read and understand financial statement.
22. Nomination and Remuneration Committee
Every listed company and prescribed class or classes of companies, shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one half shall be independent directors.
23. Inter corporate investments
Inter corporate investments not to be made through more than 2 layers of investment companies.
24. Meeting of Board (Section 173)
• In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board Meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board Meetings. • In case of One Person Company (OPC), small company and dormant company, at least one Board Meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.
25. Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means
1. the approval of the annual financial statements; 2. the approval of the Board's report; 3. the approval of the prospectus; 4. the Audit Committee Meetings for consideration of accounts; and 5. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
26. Quorum for Board Meeting (Section 174)
One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

27. Audit Committee (Section 177)

The requirement of constitution of Audit Committee has been limited to:

(a) Every listed public Companies; or

(b) The following class of companies –

1. all public companies with a paid up capital of ₹ 10 crores or more;
2. all public companies having turnover of ₹100 crores or more;
3. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 crores." (Limit is greater than and not greater then and equal to)

28. Corporate Social Res-possibility Committee (Section 135)

The Section applies to any of the following classes of companies during the immediately preceding financial year:

1. Companies having Net Worth of ₹ 500 crores or more; or
2. Companies having turnover of ₹ 1,000 crores or more; or
3. Companies having Net Profit of ₹ 5 crores or more.

29. Prohibitions and Restrictions Regarding Political Contributions (Section 182)

The non-government company or the company which has been in existence less than three financial years may contribute any amount directly or indirectly to any political party.

Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.

30. Key Managerial Personnel (Section 203)

- Under Section 2(51) a Key Managerial Personnel is defined as the Chief Executive Officer or Managing Director or the manager or, a Company Secretary or the whole time director and the Chief Financial Officer in relation to a company.

  Amendment made by Companies (Amendment) Act, 2017:

  Revised Section 2(51):

  "Key managerial personnel" in relation to a company, means—

  1. the Chief Executive Officer or the managing director or the manager;
  2. the company secretary;
  3. the whole-time director;
  4. such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
  5. such other officer as may be prescribed;"
- Every listed Company and every unlisted Public Company having a paid up share capital of 10 crores or more is compulsorily required to have a key managerial personnel.
- The whole time key managerial personnel is to be appointed by the Board and shall not hold office in more than one company however he is permitted to hold such other office with the permission of Board of the company.

31. Penalty for not appointing Key Managerial Personnel when mandatory

Section 203 of Companies Act, 2013 make provisions for mandatory appointment of certain Key Managerial personnel like MD or CEO, Company Secretary and CFO.

If any company makes any default in complying with the provisions of Section 203, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand

rupees for each day after the first during which such default continues but not exceeding five lakh rupees - **Section 203(5) of Companies Act, 2013** amended *vide* the Companies (Amendment) Act, 2019.

32. Section 203

The Company Secretary has been covered under the same section of KMP i.e. **Section 203**.
Rule 8A Appointment of Company Secretaries in companies not covered under Rule 8 A company other than a company covered under Rule 8 which has a paid up share capital of ₹ 5 crore or more shall have a whole the company secretaries.

Managerial Personnel

1. ***Overall managerial remuneration***
   Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with Section 198 except that the remuneration of the directors shall not be deducted from the gross profits.
2. ***Remuneration to Managing Director/whole time Director/Manager***
   The remuneration payable to any one managing director or whole-time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors.
3. ***Remuneration to other directors***
   Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
   - 1% of the net profits of the company, if there is a managing or whole-time director or manager;
   - 3% of the net profits in any other case.

4. ***Remuneration by a company having no profit or inadequate profit***

If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

Managerial Remuneration under Schedule V (Part II)

Section I : Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons or persons or other director or directors in accordance with **Section 197.**

Section II: Where in any financial year during the currency of tenure of a managerial person, or other director a company has no profits or its profits are inadequate it may without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:

	(1)	(2)	(3)
Sl. No.	**Where the Effective Capital (in rupees) is**	**Limit of yearly Remuneration payable shall not exceed (in Rupees) in case of a managerial person**	**Limit of yearly Remuneration payable shall not exceed (in Rupees) in case of other director**
1.	Negative or less than 5 crores.	60 lakhs	12 lakhs
2.	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
3.	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs

4.	250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores.	24 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores.

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Amendment made by Companies (Amendment) Act, 2017:

Revised First Proviso to Section 197(1)-

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:"

Revised Second Proviso to Section 197(1)-

"Provided further that, except with the approval of the company in general meeting by a special resolution,—

1. the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
2. the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
   (A) one per cent. of the net profits of the company, if there is a managing or whole- time director or manager;
   (B) three per cent. of the net profits in any other case.

Third Proviso to Section 197(1)-

"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

34. Secretarial audit
The Central Government through rules has prescribed such other class of companies as under- (a) every public company having a paid-up share capital of fifty crore rupees or more; or (b) every public company having a turnover of two hundred fifty crore rupees or more **Note:** **As per Companies (Amendment) Act, 2019, Penalty for contravention of Section 197 in respect of managerial remuneration** **Section 197** makes provisions in respect of managerial remuneration. If any person makes any default in complying with the provisions of **Section 197**, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees - **Section 197(15) of Companies Act, 2013** amended *vide* the Companies (Amendment) Act, 2019.

Steps for the Appointment of Whole-time Director

S. No.	Appointment of Whole-time Director as per Schedule V	Appointment of Whole-time Director with the prior approval of Central Government
1.	Convene a Board Meeting- (a) to appoint Whole-time Director of the Company till the ensuing. General Meeting of the Company (additional director). (b) To fix date, time and place of the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the Company.	Convene a Board Meeting- (a) to appoint Whole-time Director of the Company till the ensuing General Meeting of the Company (additional director). (b) To fix date, time and place of the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the Company.

2.	File E-form MGT-14 and DIR-12 (with necessary attachments) with ROC within 30 days from the date of appointment as an additional director of the Company.	File E-form MGT-14 and DIR-12 (with necessary attachments) with ROC within 30 days from the date of appointment as an additional director of the Company.
3.	Convene Extraordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the Company.	Convene Extraordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the Company.
4.	Not Applicable	File E-form MR-2 to obtain the approval of Central Government with regard to the appointment of whole-time Director of the Company.
5.	File E-Form DIR-12 within 30 days from the date of general meeting for regularization of whole-time Director of the Company.	File E-Form DIR-12 within 30 days from the date of general meeting for regularization of whole-time Director of the Company.
6.	File E-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time director.	File E-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time director.

List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DIR-1	Physical Form	Application for inclusion of name in the databank of independent Directors	150	6(4)

DIR-2	Physical Form	Consent to act as it director of a company	152(5)	8
DIR-3	Physical Form	Application for allotment of Director Identification Number	153	Rule 10 of Limited Liability Partnership Rules, 2009
DIR-4	Physical Form	Verification of applicant for application for DIN	153	9(3)(a)(iv)
DIR-5	Physical Form	Application for surrender of Director Identification Number	153	11(f)
DIR-6	Physical Form	Intimation of change in particulars of Director to be given to the Central Government	—	12(1)
DIR-7	Physical Form	Verification of applicant for change in DIN particulars	—	12(1)(i)
DIR-8	Physical Form	Intimation by Director	164(2)	14(1)
DIR-9	Physical Form	Report by the company to Registrar	164(2)	14(2)
DIR-10	Physical Form	Form of Applicant for Removal of Disqualification of Directors	164(2)	14(5)
DIR-11	e-Form	Notice of resignation of a Director to the Registrar	168(1)	16
DIR-12	e-Form	Particulars of appointment of directors and the key managerial personnel and the changes among them	7(1)(c), 168, 170 (2)	17
MR. 1	e-Form	Return of appointment of key managerial personnel	196,197 and sch. V	3
MR. 2	e-Form	Form of application to the Central Government for approval of appointment or reappointment and remunera- tion or increase in remuneration or waiver for excess or over payment to managing	196,197, 200,201(1), 203 (1) and Sch. V	7

		director or whole time director or manager and commission or remuneration to directors		
MR. 3	Physical Form	Secretarial Audit Report	204 (1)	9

SHORT NOTES

2014 - June [6] (b) Write a brief note on personal expenses of Directors. **(3 marks)**

Answer:

Reimbursement of personal expenses of Director:

- All payments to Directors as remuneration or perquisites whether in the case of a public or private company are required to be authorized both in accordance with the Companies Act and Articles of Association of the company.
- Articles may provide that such remuneration require sanction of the shareholders either by ordinary or special resolution while in some cases it may require only approval of Directors.
- If the terms of appointment of a Director include payment of expenses of a personal nature, then such expenses can be incurred by the company, otherwise, no such expense can be incurred or reimbursed by the company.

2015 - Dec [2] (A) (ii) Write short note on the Constitution of Audit Committee under Sec. 177 of the Companies Act, 2013. **(3 marks)**

Answer:

Audit Committee [Section 177]

Constitution of Audit Committee: As per the Section 177 of the Companies Act, 2013, every listed public company and the following classes of companies shall constitute an Audit Committee:

(a) all public companies with a paid up capital of ten crore rupees or more;
(b) all public companies having turnover of one hundred crore rupees or more

(c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debenture or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

As per Section 139 of Companies Act, 2013, where a company is required to constitute an Audit Committee under Section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Amended made by Companies (Amendment) Act, 2017

1. in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;
2. in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:

   Provided further that in case of transaction, other than transactions referred to in Section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

   Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

   Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in Section 188, between a holding company and its wholly owned subsidiary company.

DESCRIPTIVE QUESTIONS

2013 - Dec [1] {C} (c) Section 149 of The Companies Act, 2013 provides that no body Corporate, Association or Firm can be appointed Director of a company. Only an individual can be appointed as director. Explain briefly the reasons as to why it is necessary that only an individual should be a Director of a company. **(3 marks)**

Answer :

- The Supreme Court has given reasons to explain that why it is necessary to have an individual as director and no body corporate or association of persons or body of individuals can be appointed as director.
- The relevant case in which such reasons are given is Oriental Metal Processing Works Pvt. Limited *v.* V.B. Thakoor.
- The Supreme Court has stated that the office of the director is an office of trust and there should be somebody readily and really available who can be held responsible if the trust seems to be broken.
- Thus a director should be a real person and not an artificial person because it would be difficult to fix responsibility of breach of trust on an artificial person.

2013 - Dec [2] (d) A Director claims that he may leave the company any time merely by submitting his resignation without waiting for its acceptance. Discuss whether it is acceptable and valid? **(3 marks)**

Answer :

- The claim of director is right, valid and acceptable. A resignation of director once communicated to the company need not be accepted by the Board of Directors.
- There is misconception that any resignation has to be accepted.
- The resignation is effective of the date if any date is specified in his letter of resignation.
- If no date is specified, it becomes effective only from the time when the letter of resignation is received by the company.
- But a whole-time director being an employee, Resignation cannot be effective unless the resignation is accepted.

2013 - Dec [5] (d) Decide under the provision of The Companies Act, 2013, whether notice of a board meeting is required to be sent to an interested director. **(2 marks)**

Answer :

Section 173 of The Companies Act, 2013 requires that notice must be given to every director.

Therefore, notice must be given to a director even if he is precluded from voting on a proposed business. *[John Shaw & Sons (Salford) Ltd v. Peter Shaw & John Shaw]*

2014 - June [6] (c) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons :

1. Alternate Director ;
2. An interested Director;
3. A Director who has expressed his inability to attend a particular Board Meeting;
4. A Director who has gone abroad. **(4 marks)**

Answer:

Notice of Board Meeting:

1. **Alternate Director:** Where a director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 161 of The Companies Act, 2013 the notice should be served to the alternate director as well as on the original director who is outside India for the time being although there is no legal precedence in this regard, it would be a prudent practice on strictly construing Section 173.
2. **An Interested Director:** Notice must be given to a director even though he is precluded from voting of the meeting on the business to be transacted.
3. **A Director who has expressed his inability to attend a particular Board Meeting:** If a director states that he will not be able to attend the next Board Meeting, notice must be given to that director.

4. **A Director who has gone abroad:** A director is entitled to a notice even though he is outside India provided he has made sufficient arrangement with the company for sending such notice to him. The right to receive notice cannot be waived.

2014 - Dec [4] (b) Under what circumstances a Managing Director or whole time Director is not entitled to compensation for loss of office under the Companies Act, 2013? **(5 marks)**

Answer:

Compensation for Loss of Office of Managing or Whole- time Director or Manager (Section 202)

Section 202 (Compensation for loss of office of managing or whole time director) of the Companies Act, 2013 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:

(a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;
(b) where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;
(c) where the office of the director is vacated due to disqualification;
(d) where the company is being wound up due to the negligence or default of the director;
(e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
(f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.

2016 - Dec [1] {C} Answer the following:

(a) List out the Matters not to be dealt with in a meeting through Video Conferencing or Other Audio Visual Means as prescribed under the Companies Act, 2013 and the Rules made thereunder. **(5 marks)**

Answer:
The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:

1. The approval of the Annual Financial Statements.
2. The approval of the Board's report.
3. The approval of the prospectus.
4. The Audit Committee Meeting for consideration of Financial Statements including consolidated Financial Statements, if any to be approved by the Board under sub-section (1) of Section 134 of the act and
5. The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

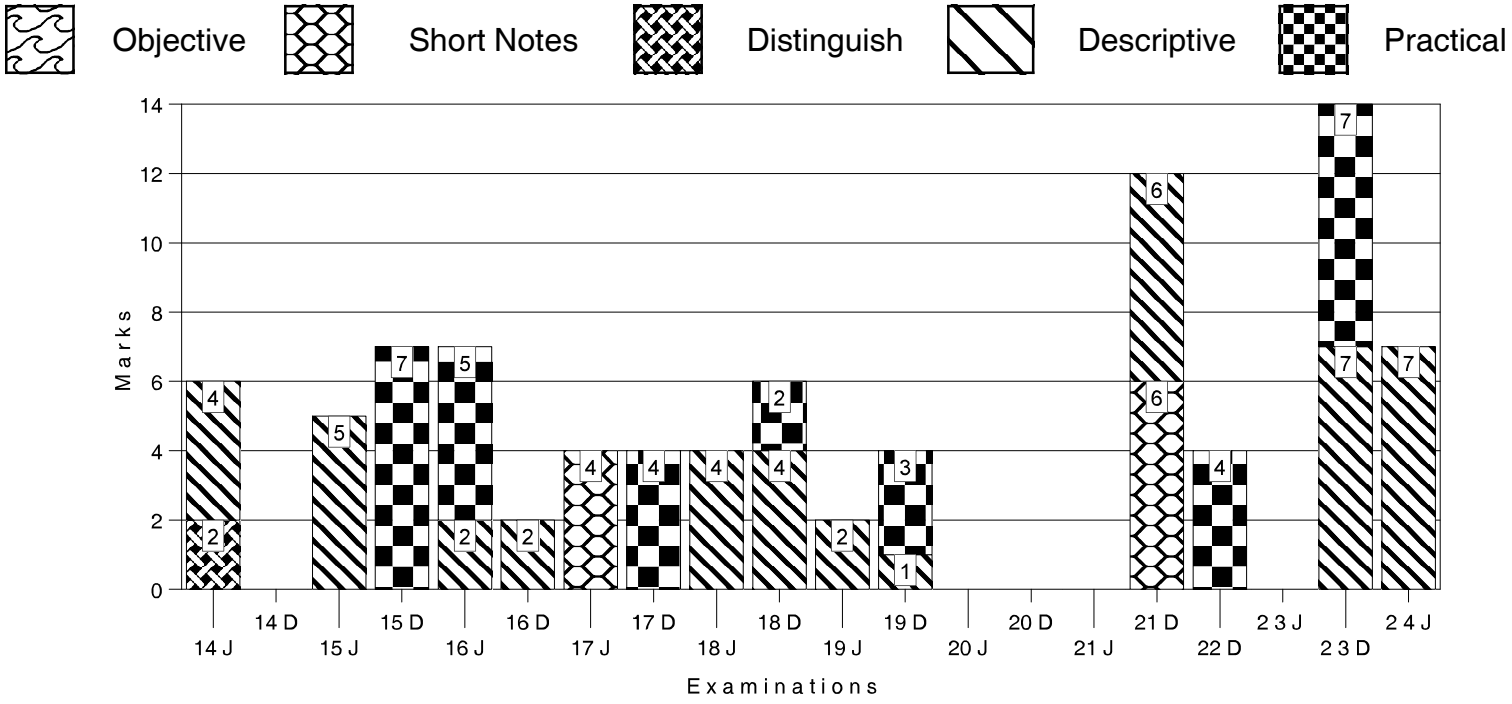
2016 - Dec [6] (a) (ii) "Decision taken by the Board of Directors cannot be altered or changed by the shareholders even if they want to approve it with unanimous majority". Comment with reference to the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

- The statement is true.
- If some powers are vested in directors, they and they alone can exercise these powers.
- Shareholders will not dictate them how to use these powers. The directors while exercising their powers do not act as agents for the majority or even all the members and hence the members cannot supersede the powers of directors.
- The shareholders can however change the directors if they so wish, as the directors are elected or removed in general meeting but they just cannot dictate the director. If the power being exercised by the directors is given to them by the AOA. The shareholders can make' alterations to Articles.

2017 - June [4] (a) Can a Company pay compensation to its Directors for loss of office? Explain briefly the relevant provisions of the Companies Act, 2013 in this regard. **(8 marks)**

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



(5) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof, and

(6) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

2017 - June [6] (a) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

1. An interested Director;
2. A Director who has expressed his inability to attend a particular Board Meeting;
3. A Director who has gone abroad (for less than 3 months). **(6 marks)**

Answer:

Notice of Board Meeting:

1. **Interested director: Section 173(3) of the Companies Act, 2013** makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an Interested Director, notice must be given to him even though he is precluded from voting at the meeting on the business to be transacted.
2. **A Director who has expressed his inability to attend a particular Board Meeting:** In terms of **Section 173(3)** even if a director states that he will not be able to attend the next Board Meeting; notice must be given to that director.
3. **A director who has gone abroad:** A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The **Companies Act, 2013,** allows delivery of notice of meeting by electronic means also. This is important because the **Companies Act, 2013** permits a director to participate in a meeting by video conferencing or any other audio visual means.

2017 - Dec [5] (b) (i) X was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2014. Examine in this connection.

(A) Can 'X' be appointed for life as Managing Director?

(B) Is it possible for the company in general meeting to remove 'X' from his office of directorship during his life time? **(4 marks)**

Answer:

(A) No the appointment can only be made for a term of five years at a time and no reappointment be made earlier than one year before the expiry of the term.

Hence, 'X' cannot be appointed as Managing Director for life in a private company.

(B) Section 169(1) of the Companies Act, 2013 empowers the company to remove a director, by ordinary resolution before the expiry of his period of office after giving him an opportunity of being heard. This section applies to both public and private companies. It applies to all directors except a director appointed by the Tribunal under Section 242 of the Act. The above provision applies to the Managing Director also as he is a director of the company and the member of its Board of Directors. Hence, it is possible for the company in general meeting to remove 'X' before the expiry of his term of office by an ordinary resolution.

2018 - June [3] (a) There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Evaluate whether he will be treated as Managing Director of the company. Also recommend the procedure of appointment of Managing Director in a company in the light of the Companies Act, 2013. **(6 marks)**

Answer:

Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with

substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to Section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management.

In the given situation Madhav has been authorised to draw an indoors negotiable instruments on behalf of the company as well as sign cheques on behalf of the company. And share certificates on behalf of the company. In the light of the above mentioned provision the duties entrusted to Madhav are merely administrative in nature hence he cannot be called as the managing director of the company.

Procedure of appointment of a Managing Director [Section 196(4)]

1. Subject to the provisions of **Section 197** and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.
2. The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.
3. In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.
4. The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
5. A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.

2018 - June [3] (b) Examine the following aspect related to convening of board meeting with reference to the provisions of the Companies Act, 2013:

1. The Chairman of Greenhouse Limited convened a board meeting and two weeks' notice was served on all Directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.
2. Purple Florence Limited proposes to hold its board meeting at a shorter notice through video conferencing. **(7 marks)**

Answer:

1.
   - According to Section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.
   - According to the question, two of the independent directors on the Board has objected on the grounds that no proper agenda for the meeting was circulated.
   - The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting.
   - However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting.
   - Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.
   - Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e. more than 7 days).
   - Hence, the meeting shall be valid.
2. **According to Section 173 of the Companies Act, 2013:**
   (a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Further, Central Government may provide for matters which cannot be dealt in a meeting through video conferencing or other audio visual means.

(b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

- Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.
- Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.
- Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.
- Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final, only on ratification thereof by at least one independent director, if any.

2018 - June [7] (a) Vijay, a director, resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time . What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to RoC? **(4 marks)**

Answer:

Resignation of Director (Section 168 of the Companies Act, 2013):

A Director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR -12 and post the information on its website, if any.

Such director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM DIR-11 along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Vijay to RoC, even then the resignation of Vijay shall take effect from the date on which the notice is received by the company or the date, if any, specified by Vijay in the notice, whichever is later.

In section 168 of the Companies Act, 2013, in sub-section (1), in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

2018 - Dec [2] (c) The Board of Directors of Best Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May , 2017. They seek your advice in respect of the following matters:

1. Can the board meeting be held in Chennai, when all the directors of the company reside at Kolkata?
2. Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?

   Advice with reference to the relevant provisions of the Companies Act, 2013. **(2 + 2 = 4 marks)**

Answer:

1.
   - There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place.
   - The Companies Act lays down the provisions for holding meetings by video conferencing, sending notices, procedures at the meeting etc.
   - Hence, there is no difficulty in holding the board meeting at Chennai even if all the directors of the company reside at Kolkata and the registered office is situated at Kolkata provided that the

requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.

2. • Section 173(3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company.
   - There is no provision in the Act laying down the contents of the notice.
   - Therefore, it may be construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting.
   - Although, considering the importance of Board Meetings and the responsibilities placed on the Directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings.
   - As a matter of good secretarial practice, the notice should include full details and particulars of the business to be transacted at the Board Meetings.
   - The articles of association of the company may make it compulsory to do so in almost all cases.

2018 - Dec [3] (a) 1. Mr. Balu is a CEO in a public company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and schedule V apply to Mr. Balu.

2. Mr. X is a Whole Time Director (WTD) in a Super Ltd. He is also Whole Time Director (WTD) in its subsidiary company. Discuss the validity of Mr. X as WTD in its subsidiary company. **(2 + 2 = 4 marks)**

Answer:

1. Section 197 applies with regard to remuneration of directors including MD/WTD and Manager.

   Schedule V provides conditions with regard to appointment and remuneration of MD/WTD and Manager.

   Hence, the provisions related to the managerial remuneration are not applicable on all KMP's i.e. to CEO, CFO or CS but they are applicable only to MD/WTD and Manager.

   Therefore, Section 197 and Schedule V, shall not apply to Mr. Financer.

2. According to Section 203(2) of the Companies Act, 2013, every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
   A whole-time key managerial personnel shall not hold office in more than one company at the same time except in its subsidiary company [Section 203(3)].
   Therefore, accordingly. Mr. X can validly hold the position of Whole time Director in the subsidiary of Super Ltd.

2018 - Dec [3] (c) Comment with reference to the provisions of the Companies Act, 2013 in respect of the following:–

1. Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.
2. On the request of bank providing financial assistance, the Board of Director of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination.

(2 + 3 = 5 marks)

Answer:

1. According to first proviso to Section 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director but he is qualified to be appointed as an independent director under the provisions of this Act.
   In the given case, Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director. Hence, the said appointment is not valid.
2. According to Section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of association of a company.

In the given case, on the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power and further there is no agreement between the company and the bank. Hence, the appointment of Mr. Peter as nominee director is not valid as Articles do not confer upon the Board of Directors any such power.

2018 - Dec [4] (c) An Audit Committee of a Public Limited Company constituted under section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether:

1. The Board is empowered not to accept the recommendations of the Audit Committee.
2. If so, what alternative course of action, would be Board resort to?

(3 + 1 = 4 marks)

Answer:

1. As per Section 177(2) and (3) of the Companies Act, 2013 an audit committee must be formed within a year of the commencement of the Act or within a year of the incorporation of a company as the case may be, and will consist of at least 3 directors out of which the independent directors shall constitute the majority.

   Under Section 177(8) the Board's Report which is laid before a general meeting of the company under Section 134(3) where the financial statements of the company are placed before the members, must disclose the composition of the audit committee and also where the Board has not accepted any recommendations of the audit Committee the same shall be disclosed alongwith the reasons therefor. Therefore, the Board is empowered not to accept the recommendations of the Audit Committee but only under genuine circumstances and with legitimate reasons.
2. If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its report under Section 134(3) placed before a general meeting of the company.

2019 - June [4] (b) State briefly with reference to the applicable provisions of the Companies Act, 2013 read with rules thereunder whether an unlisted Public Company which is a wholly owned Subsidiary Company will be required to appoint Independent Directors. **(2 marks)**

Answer:

As per Section 149(6) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the public Companies of prescribed class shall require to appoint minimum 2 independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017. It provided that an unlisted public Company which is a joint venture, a wholly owned subsidiary or a dormant Company will not be required to appoint independent Directors.

2019 - June [6] (a) (ii) Explain the concept of KMP (Key Managerial Personnel) as introduced by the Companies Act, 2013. **(2 marks)**

Answer:

As per the provisions of Section 203(1) of the Companies Act 2013, every company belonging to such class or classes of companies as may be prescribed, shall have the following whole time key managerial personnel.

(a) Managing Director or Chief Executive Officer or Manager and in their absence ,a whole-time Director;
(b) Company Secretary; and
(c) Chief Financial Officer

2019 - Dec [5] (c) (ii) You, an individual shareholder found that the Directors representing the majority of shareholders perform an illegal or *ultra vires* act for the company. What is the action you may take to restrain such an act? **(2 marks)**

Answer:

The majority of shareholders have no right to confirm an illegal or ultravires transactions of the company. In this case an individual shareholder has right to restrain the company by an order or injunction of the court from carrying out an ultravires acts.

2023 - Dec [2] (b) All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to certain conditions. Elucidate that conditions to omnibus approval for related party transactions. **(7 marks)**

Answer:

Omnibus approval for related party transactions on annual basis (Rule 6A):

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:

(1) Approval of the Board of Director: The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:
   (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
   (b) the maximum value per transaction which can be allowed;
   (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
   (d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
   (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.

(2) Constitute the Audit Committee: The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:
   (a) repetitiveness of the transactions (in past or in future).
   (b) justification for the need of omnibus approval.

(3) Interest of the Company: The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(4) Omnibus Approval: The omnibus approval shall contain or indicate the following:
   (a) name of the related parties.
   (b) nature and duration of the transaction.
   (c) maximum amount of transaction that can be entered into.
   (d) the indicative base price or current contracted price and the formula for variation in the price, if any, and

(5) Validity Period: Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

(6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

(7) Any other conditions as the Audit Committee may deem fit.

Note: Section 188 states that a company, whose paid-up capital is more than Rupees Ten crore or is proposed to enter into transactions exceeding such sums as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules 2014, cannot enter into the transactions, except with the prior approval of shareholders by way of resolution.

2023 - Dec [3] (a) Section 180 of the Companies Act, 2013 provides certain restrictions on powers of Board of Directors. List out those restrictions.

(7 marks)

Answer:

Restrictions on Powers of Board (Section 180 of Companies Act, 2013)

According to Section 180 of the Act provides for restrictions on powers of Board Although, this section shall not apply to private companies vide Notification No. GSR 46(E) dated 05 June, 2015.

(a) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution in general meeting.
   (1) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole of any of such undertakings substantially the whole of the undertaking shall mean 20% or more of the value of the undertaking as per balance sheet of the preceding financial year.

(2) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation,

(3) To borrow money, where the money to be borrowed, together with the money already borrowed will exceed aggregate of its paid-up share capital and free reserves and security premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Note: For above mater, E-Form MGT - 14 is required to be filed under Section 117(3) (e)

(4) To remit, or give time for the repayment of, any debt due from a director.

Note: Every Special Resolution is required to be filed in Form No. MGT-14 as per Section 117(3) (a)

(b) Every special resolution in relation to borrowing shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(c) No debt incurred by the company in excess of the limit imposed by above point (3) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

2023 - Dec [4] (a) The Board of Directors of PQR Limited met thrice in the year 2022 and 4th meeting though called but could not be held for want of quorum. Examine with reference to the relevant provisions of the Companies Act, 2013, whether any provision of the Act has been contravened.

(7 marks)

Answer:

Meeting of the Board of Directors:

Under section 173(1) of the Companies Act, 2013, a company must hold a minimum number of four meetings of its Board of directors every year in such a manner that not more than 120 days shall elapse between two consecutive meetings of the Board.

The proviso to this subsection provides that the Central Government may by notification, direct that these provisions will not apply in relation to any class or description of companies or may apply subject to such exceptions, modifications or conditions as may be specified in the notification.

As per Section 174(4) of the Companies Act, if a meeting of the Board could not be held for want of quorum then, unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a National Holiday till the next succeeding day which is not a national holiday, at the same time and place.

Conclusions:

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled. An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

Thus, in case of an adjourned Meeting, the gap of one hundred and twenty days for the purpose of fixing up the date of the next Meeting or for any other purpose should be counted from the date of the original Meeting.

In the above case, the Board meeting of PQR limited was held 3 times and for the 4th time the meeting was called but could not be held for want of quorum.

Therefore, as per the provisions of the Companies Act, 2013 the Company (PQR) has violated the provisions with respect to convening the Board Meetings.

But if the 4th Board meeting was adjourned due to want of quorum and the adjourned meeting was duly held within the stipulated time, then the company has not contravened the provisions of the Act.

2023 - Dec [5] (a) How far the acts of the director will be invalid if his appointment is not valid? **(7 marks)**

Answer:

Defects in Appointment of Directors not to Invalidate Action Taken:

Section 176 seeks to give protection to the company and third parties where certain acts are done by a director in good faith and without notice that these are done wrongly or illegally consequently, Section 176 validates the bona fide acts of de facto directors. These provisions may be explained as follows:

1. Acts of a director - Validated

   No act done by a person as a director shall be deemed to be invalid, in spite of that it was subsequently noticed that:

(a) his appointment was invalid by reason of any defect or disqualification; or
(b) his appointment was terminated by virtue of any provision contained in the Act or in the Articles of the company.

2. Acts of managing director - Not validated
Acts done by a director in his capacity as managing director are not validated under section 176.
Accordingly, where a managing director ceased to hold his office, all his subsequent acts were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all.
3. Acts of a director - Not validated in certain cases.
In the following cases, the acts of a director shall not be valid:
(a) where his appointment is illegal or there is no appointment at all;
(b) If an appointment has been shown to the company as invalid or terminated, where such defect comes into the knowledge of the company, all subsequent acts done by such a director shall be invalid.
(c) Where the acts of a director are *ultra vires* the Companies Act, 2013.

PRACTICAL QUESTIONS

2012 - June [8] (c) The Board of Directors of GREEN ENVIRON LTD. at a meeting held on 15.1.2012 resolved to borrow a sum of ₹ 50 crores from a Nationalised Bank. Subsequently the said amount was received by the Company. One of the Directors who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:

1.	Share Capital (Paid-up)	₹ 15 crores
2.	Reserves and Surplus	₹ 20 crores
3.	Secured Loans	₹ 50 crores
4.	Unsecured Loans	₹ 15 crores

Advise the Management of the Company (Green Environ Ltd.). **(5 marks)**

Answer:

According to the provisions of **Section180(1)(c) of the Companies Act, 2013** there are restrictions on the borrowing powers to be exercised by the Board of Directors. According to that section, the borrowings should not exceed the aggregate of the paid up capital and free reserves. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of the business will be excluded. However, from the figures available **in the present case** the proposed borrowing of ₹ 50 crores will exceed the limit mentioned. Thus the borrowing will be beyond the powers of the Board of Directors.

However the shareholders have the power to ratify the act of the Board of Directors, if it is not beyond the powers of the company as laid down in the memorandum of association. In that case the shareholders can rectify as it is intra vires the Company even though it may be beyond the powers of the Board of Directors.

Thus the management of GREENENVIRON LTD., should take steps to convene the annual general meeting and pass a resolution by the members in the meeting as stated in **Section 180 (1)(c) of the Companies Act, 2013**. Then the borrowing will be valid and binding on the company and its members.

2012 - Dec [6] (c) MR. ADAM a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2012 in the last Annual General Meeting of the company.

Mr. Adam seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013:

1. Specify the steps to be taken by Mr. Adam and the company in his behalf;
2. Draft a suitable resolution to be passed for removal of MD;
3. Is it necessary to state reasons to support the resolution for his removal?

(3 + 2 + 1 = 6 marks)

Answer:

1.
- Under **Section 169 of the Companies Act, 2013**, a company may, by ordinary resolution, remove a director before the expiry of his tenure.
- For the purpose, special notice from a shareholder **(Mr. Adam in the present case)** shall be required to be given to the company for moving a resolution to remove a director.
- On receipt of notice, the company shall forthwith send a copy thereof to the director concerned **(MD in the present case)** and he shall be entitled to be heard on the proposed resolution at the meeting.
- Copy of the representation, if any, made by the director be also sent to all members of the company to whom notice of the general meeting is normally sent.
- In case, the representation is received too late, the same shall be read at the meeting. The representation need not be sent if the Company Law Board (now Tribunal) is satisfied that it will cause needless publicity for defamatory matter.
- Under **Section 115 (Resolution requiring special notice)**, special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

In the present case, if the AGM is due to be held, Mr. Adam may send the special notice 14 days before the AGM. He already holds more than 10% shares in the company. Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.

2. Mr. Adam may give special notice of his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr…….. Managing Director of the Company be and is hereby removed as a director of the company under **Section 169 of the Companies Act, 2013** with immediate effect."
3. A statement of reasons is not necessary to support the resolution for removal of a director. *LIC vs. Escorts Ltd .(2013) 59 Comp. Cases 548 (SC)*

2012 - Dec [8] (b) M/S. MEDICA HEALTH SERVICES LTD. owns a Multi-speciality Hospital in Chennai. DR. MILTON a practicing Heart Surgeon, has been appointed by the company as its non-executive ordinary director and it wants to pay him fee, on case to case basis, for surgery performed on the patients at the hospital. A question has arisen whether payment of such fee to him would amount to payment of managerial remuneration to a director subject to any restriction under the Companies Act, 2013.

Advise the company, which seeks to ensure that the same does not contravene any provision of the Companies Act, 2013. **(3 marks)**

(c) MR. WELDON was appointed as a director in SAM LTD. on 1.10.2011. Certain acts were done by the Board of Directors, of which MR. WELDON also formed part. Later, on 1.9.2012, certain defect was found in the appointment of MR. WELDON as director.

Discuss whether the acts done by the Board Meeting can be considered as invalid owing to such defect being found at a later date? **(6 marks)**

Answer:

(b) **Section 197** states the manner in which profit of the company relevant for computing managerial remuneration **u/s 197** can be computed. **Section 197** also states that remuneration to a director will not form part of managerial remuneration if the following conditions are satisfied:

1. the given service is of professional nature; and
2. in the opinion of Central Government, the director possesses the requisite qualifications for giving such services.

In the present case, the company is advised to seek the permission of Central Government providing it with necessary documents proving that Dr. Milton has the necessary qualification for giving such services.

(c) **According to Section 176 of The Companies Act, 2013, (Defects in appointment of directors not to invalidate actions taken)** No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

2013 - June [6] (a) JUPITER TEXTILES LTD. was incorporated on 1st June, 2009. On 1st March, 2012 a political party approaches the company for a contribution of ₹ 12 lakhs for political purpose.

Your advice is sought in respect of the under mentioned issues:

1. Is the company legally authorized under the Companies Act, 2013 to give this political contribution?
2. Will it make any difference, if the company was in existence on 1st April, 2009?
3. Can the company be penalised for violation of the applicable provisions relating to political contribution?
4. What are the disclosure requirements in this regards?

(2+1+2+2= 7 marks)

Answer:

Political Donations: Section 182 of the Companies Act, 2013

1. Only a company which had been in existence for 3 years can make contribution to political parties. Since **in the given case,** the company has not completed three years of existence on 1st March, 2012, it is not eligible to give political contribution.
2. Yes, because in the case, Jupiter Textiles Ltd. shall complete three financial years of its existence, therefore, will be eligible to give political contribution subject to the condition that such a political contribution should not exceed seven and half percent of the Average Net profits (calculated as per Section 198) of three immediately preceding financial years and a resolution authorizing such contribution is passed at a meeting of the Board of Directors.
3. A company will be eligible to give political contribution subject to the condition that a contravention of the provisions of this section will make a company liable to fine which may extend to five times the amount so contributed.

   Further every officer of the company in default would be liable to imprisonment for a term which may extend to six months & also with fine which may extend to 5 times the amount so contributed.
4. Section 182 of the Companies Act, 2013 provides to impose an obligation to disclose in its profit and loss account contributions made by it to any political party or for any political purpose.

If a company makes any political contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to six months and also with fine which may extend to 5 times the amount so contributed.

Note:
Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.

2013 - Dec [6] (b) Examine whether the following transactions can be considered as a loan to a director requiring approval of the Central Government under Section 185 of Companies Act, 2013.

1. A public company secures residential accommodation for the use of its managing director by entering into an arrangement under which the company has to deposit a certain amount with the landlord to secure compliance with the terms of the agreement.
2. A public company purchases a flat which is subsequently sold to a director at the prevailing market price out of which the director pays 50% immediately and contracts to pay the balance in 10 equal annual installments. **(4 marks)**

(c) A was appointed director of the company in its annual general meeting. He took over the office and started acting on behalf of the company as its director. Subsequently it was found that the appointment of the director was not valid because in the meeting where he was appointed certain members who had voted were not qualified to vote and certain members had voted twice by mistake. There were also certain mistakes in the counting of the votes. As such, the appointment of the director was held to be invalid. Would the acts of A, done by him as director be valid and binding upon the company? **(3 marks)**

Answer:

(b) 1. The deposit of the cost of purchase of the property cannot be regarded as a loan or advance to the M.D. or book debt attracting the provisions of **Section 185 of The Companies Act, 2013**. It is no concern of the M.D. on what terms the company secures premises for residential accommodation for him.

2. In a petition in Dr. Fredie Ardeshir Mehta *v.* Union of India the Bombay High Court came to the conclusion that a company selling one of its flats to one of its directors on receiving half price in cash and agreeing to accept the balance in installments does not give a loan to the director. It is a credit sale. It cannot be described even as an indirect loan. In view of this decision, the transaction in question does not amount to a loan to a director requiring approval of the Central Government.

(c) • Yes, According to **Section 176 (Defects in appointment of directors not to invalidate actions taken) of the Companies Act, 2013** all the acts of a director are valid notwithstanding the fact that his appointment is afterward discovered to be invalid, by reason of any default and defect in his appointment.

- This is to protect outsiders as well as members dealing with the company.
- In this case the defects in the appointment of the director were found out subsequent to his appointment.
- The director had no knowledge of the defects until he had started acting as a director.
- The validity of the acts of the director cannot be questioned just on the basis of irregularities subsequently discovered in the appointment of the director.
- All the acts done by director are valid and binding on the company.

2014 - June [1] {C} (c) An Audit Committee of a Public Limited Company constituted under Section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board however did not accept the recommendations. In the light of the situation, State whether:

1. The Board is empowered not to accept the recommendations of the Audit Committee.

2. If so, what alternative course of action, would be Board resort to?
3. As a chairman of the Audit Committee, how would you respond to the situation? **(3 marks)**

Answer:

1. As per Section 177(Audit Committee), the Board's report under Section 134 shall disclose the composition of the Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefore.
2. If the Board does not accept the recommendation of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.
3. The chairman of the Audit Committee shall attend the Annual General Meeting(s) of the company to provide any clarifications on matters relating to Audit.

Amended made by Companies (Amendment) Act, 2017

1. in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;
2. in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:

   Provided further that in case of transaction, other than transactions referred to in Section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

   Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

   Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

2014 - June [5] (a) State your views on the following with reference to the provision of the Companies Act, 2013:

1. Complex Ltd, a well reputed manufacturing Public Limited Company has made a contribution of ₹ 2.5 Lacs during the financial year ended, 31-03-13 to a political party for running a school, situated in the village, where most of the workers of the company reside. It is admitted that the benefit of the school is mostly for the children of the workers of the company. The company has not made any profits in the last four years.

(3 marks)

(b) Mr. Prasad is Managing Director of Bapi Ltd. He gave his resignation letter to the Chairman of the Board of Directors on 31st December, 2013, and requested that he should be relieved immediately. When does the resignation of Mr. Prasad take effect? **(3 marks)**

(c) Advise the Board of Directors of a Limited Company regarding validity and extent of their powers, under the provisions of the Companies Act, 2013 in relation to the following matters :

1. Buy-Back of the shares of the company, for the first time up to 10% of the paid up equity share capital without passing a special resolution.
2. Delegation of power to the Managing Director of the company to invest surplus funds of the company in the shares of some companies. **(2 + 2 = 4 marks)**

Answer:

(a) 1.

- Section 182 of the Companies Act, 2013 deals with prohibitions and restrictions regarding political contributions.
- A non Government company which has been in existence for not less than three years may contribute any amount or amounts directly or indirectly to any political party or for any political purpose to any person provided that the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 7.5% of its average net profits determined in accordance with the provisions of Section 198 during the three immediately preceding financial years.

- The company in question has not made any profit in last four years and contributed ₹ 2.5 lacs during the year to a political party for running a school.
- This is violation of the provisions of Section 182 of the Companies Act although the children of its workers are benefitted. The auditor would have to qualify his report stating the contravention of the provision of the Companies Act.

Note:
Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.

(b)
- According to Section 168(Resignation of director), A director can resign from his office by serving a notice of his resignation upon the Company or the Board.
- There is no need for its acceptance by the Board or the Company.
- However, if a Managing Director resigns, he cannot give up his office at his pleasure simply by serving the notice.
- This is because he occupies two positions i.e., of a director and an employee.
- In case of Managing Director, the notice or letter of resignation is required to be approved or accepted by the company and he has to be relieved of his duties and responsibilities attaching to his office from which he has resigned.
- Similar views were accepted in the case of Achutha Pal *vs*. Registrar of Companies, (1956) 36 Comp. Cases 598.

Accordingly, ***in the given case,*** *the resignation of Mr. Prasad, the Managing Director shall be effective when approved or accepted by the company and he is relieved of his duties and responsibilities attaching to his office within a reasonable time.*

(c) 1.
- Section 68 (Power of a company to purchase its own shares) of the Companies Act, 2013 facilitates buy-back of shares upto 10% of the total paid up equity capital and free reserves.

- Hence, special resolution in general meeting of the company is not required. The proposed buy-back of shares is in order provided other conditions laid down in Section 68 of the Companies Act, 2013 are fulfilled.

2.
- Section 179 (Power of Board)of the Companies Act, 2013 empowers the Board of Directors to delegate to the Managing Director the power to invest in general terms.
- But Section 186 (Loan and investment by the company)of the said Act provides that no investment shall be made unless it is sanctioned by a resolution passed at a meeting of the board with the consent of all Directors present. Section 186 does not provide for delegation.
- Hence the proposed delegation of power to the Managing Director to invest is not in order.

2014 - Dec [1] {C} (a) M/S ANAND STEEL LTD. showed a net balance in the Profit and Loss Account for the last five years as follows:

Financial Year 2009-10	Loss	₹ 125 Lakh (Dr.)
Financial Year 2010-11	Profit	₹ 180 Lakh (Cr.)
Financial Year 2011-12	Loss	₹ 110 Lakh (Dr.)
Financial Year 2012-13	Profit	₹ 180 Lakh (Cr.)
Financial Year 2013-14	Profit	₹ 190 Lakh (Cr.)

The Board of Directors of the Company proposes to donate a sum of ₹ 25 Lakh to a Social Organization (approved/bonafide) engaged in Education and Health Care of Backward Community in the locality.

Examine with reference to the provisions of the Companies Act, 2013, whether the proposed donation is within the powers of the Board of Directors of the Company. **(2 marks)**

Answer:

Section 181 (Company to contribute to bona fide and charitable funds etc.) of the Companies Act, 2013 states that the Board of Directors of a company may contribute to *bonafide* charitable and other funds, provided that prior permission of the company in general meeting shall be required for such

contribution in case any amount the aggregate of which, in any financial year, exceeds five percent, of its average net profits (calculated as per section 198) for the three immediately preceding financial years.

In the given case *the Board of Directors is not empowered to contribute to ₹ 25 lakhs as it exceeds 5% of average profits of the preceding three years i.e. ₹ (-110+180+190) x 5% = ₹ 13 lakhs. Hence, prior permission of the shareholders is to be obtained by the Board of Directors of Anand Steel Ltd.*

2014 - Dec [2] (a) Mr. Abir, a Cost Accountant and an Independent Director of Gurgaon Auto Ancillaries Ltd. will be abroad for three months from 10-11-2014. The Company wants to appoint Mr. Rahul as an alternate Director in place of Mr. Abir.

Draft a Board Resolution authorising the appointment. **(4 marks)**

(b) HILTON LTD. was incorporated on 1st January, 2012. On 1st July, 2014 a political party approaches the company for a contribution of ₹ 12 lakh for political purpose.

Advise in respect of the following under Companies Act, 2013,

1. Is the company legally authorised to give this political contribution?
2. Will it make any difference, if the company was incorporated on 1st December, 2010?
3. Can the company be penalized for defiance of rules in this regard?

(2 + 2+ 2 = 6 marks)

Answer:

(a)

GURGAON AUTO ANCILLARIES LTD.

Meeting of the Board of Directors.

Resolution on Agenda Item 102.3 **Date: 06.11.2014**

RESOLVED THAT in pursuance of Sec.161 (2) of the Companies Act, 2013 read with Article No..…… of the Articles of Association of the Company, MR. RAHUL who is not a Director/Alternate Director of the company, be and is hereby appointed as an Alternate Director of the Company in place of MR. ABIR, an Independent Director for a period of, three months commencing from 10.11.2014 or such further period till the return of Mr. Abir from abroad but not longer than that permissible to Mr. Abir for his tenure as a Director in the company.

FURTHER RESOLVED THAT the Board endorses the recommendation of the Appointment and Remuneration Committee of the Board approving on verification the eligibility of Mr. Rahul to be appointed as an Independent Director and who is otherwise not disqualified for appointment.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorized to file returns and issue notice for appointment of Mr. Rahul in various committees of the Board.

(b) According to Section 182 of the Companies Act, 2013:

1. Notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party. Here 'political party' means of political party registered under Section 29A of the Representation of the People Act, 1951;
2. The following companies are not allowed to contribute to any political party:-
   (a) a Government company;
   (b) a company which has been in existence for less than three financial years.

   In the given case:

   (1) HILTON LTD. cannot make any political contribution because the company is not in existence for a period of 3 financial years.
   (2) If Hilton Ltd. were incorporated on 01.12.2010 it may make a political contribution as on 01.07.2014 because in such a case it would have been in existence for 3 financial years. However, it shall comply with the following conditions:
      (a) The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and half percent of its average net profits during the three immediately preceding financial years.

Note:
Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.

(b) No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.

(c) The company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. [Section 182 (3)].

(3) If a company makes any contribution in contravention of the provisions in this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

2014 - Dec [3] (c) The board meeting of MANO LTD. was held on 10th June, 2014 at Lucknow at 10.30 a.m. At the time of starting the board meeting, the number of directors present were 8. The total number of directors in the company were 10. The board transacted eight items in the board meeting on that day. At 12 noon after the completion of four items in the agenda, 5 directors left the meeting.

Examine the validity of all these transactions explaining the relevant provisions of the Companies Act, 2013. **(4 marks)**

Answer:

- Section 174 of the Companies Act, 2013, provides for the quorum for meeting.
- The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher.
- Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time.
- In this case, the quorum is 4 (i.e. 1/3rd of 10 = 3 1/3 rounded off as 4).

- Hence, the quorum was present at the time of commencement of meeting. As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business.
- It is not enough that a quorum was present at the commencement of the business.
- The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. *(Balakrishna V. Balu Subudhi AIR 1949 Pat 184).*

In the given situation four items were transacted with the quorum and thus they are valid. Other four items were transacted after 5 directors left the meeting resulting in the reduction of quorum as only 3 directors were present as against the required quorum of 4 directors. Hence, such four transactions are void.

2014 - Dec [5] (b) AKSHAY LTD. has advanced a loan of ₹ 1,00,000 to one of its Directors in contravention of the provisions of Sec. 185 of the Companies Act, 2013.

State the consequences of such contravention. **(3 marks)**

Answer:

If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1) of Section 185 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 25 lakhs, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend, to six months or with fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 25 lakhs, or with both.

Summary of the punishment u/section 185 (Loan to directors etc.):

Company : Fine up to rupees five lakhs to twenty five lakhs.

Director taking loan : Fine upto rupees five lakhs to twenty five lakhs; or

: Imprisonment up to six months; or

: Both

2015 - June [1] Answer the question:

(b) Mr. K is appointed as an Additional Director by the Board of Directors of PNR Company Limited at its meeting held on 1st October, 2014 for a period as permitted by Law.

Draft a resolution and state the body which appoints K. **(3 marks)**

Answer:

Appointment of Additional Director: Resolution (Section 161 of the Companies Act, 2013)

According to Section 161(1) of the Companies Act, 2013, the articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

Board Resolution:

"Resolved that pursuant to the Articles of Association of the company and Section 161(1) of the Companies Act, 2013, Mr. K is appointed as an Additional Director of the PNR Company Limited with effect from 1st October, 2014 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Resolved further that Mr. K will enjoy the same powers and rights as other directors.

Resolved further that Mr. ——— Secretary of PNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act."

2015 - June [2] Answer the question:

(a)1. Mr. Birat is a Director of MEGLOW LTD. He intends to construct a residential building for his own use. The cost of construction is estimated at ₹ 1.00 Crore which Mr. Birat proposes to finance partly from his own sources to the tune of ₹ 50 Lakh and balance ₹ 50 Lakh from housing loan, to be obtained from a Housing Finance Company. For the purpose of obtaining the loan, he has approached the housing finance company which has in principle agreed to grant loan, but has put a condition.

The condition put by the housing finance company is that MEGLOW LTD. of which Mr. Birat is a Director should provide the guarantee for repayment of the loan and interest as per terms of the proposed agreement for granting the loan to Mr. Birat.

You are required to advise Mr. Birat on the matter keeping in view the relevant provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Loans to Directors [Sec. 185 of Companies Act, 2013]

According to Section 185 (1), no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Contravention :

If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-Sec. (1), the company shall be punishable with a fine which shall not be less than ₹ 5 lakhs but which may extend to ₹ 25 lakhs and the directors or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Present Case:

In view of the provision of Section 185, MEGLOW Ltd. shall not provide guarantee for repayment of loan and interest thereon.

2015 - June [2] (e) (i) The Board of Directors of Kanu Limited by passing a resolution decides to borrow from the company's bankers an additional sum of ₹ 200 Crores, as long term loan in order to finance the new projects to be taken up shortly.

The company gives you the following financial information:

	₹
Equity Share Capital	100 Crores
Preference Share Capital	50 Crores

General Reserve	25 Crores
Debenture Redemption Reserve	20 Crores
Provision for Taxation	10 Crores

Existing Long Term Loan is ₹ 25 Crores.

Examining the provisions of the Companies Act, 2013, the company seeks your advice about the extent to which the company can borrow from its bankers and also state whether the board of directors' proposal to borrow ₹ 200 Crores is valid. **(5 marks)**

(ii) There are 9 (nine) directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the board meeting under the provisions of the Companies Act, 2013? **(2 marks)**

Answer:

(i) Section 180 of the Companies Act, 2013 provides that the Board of Directors of a company can exercise certain powers only with the consent of the company accorded by a special resolution passed at the company's general meeting.

Board of Directors of the company can borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of the company's paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business, only with the consent of the company accorded by a special resolution passed at a general meeting. Every such special resolution shall specify the total amount up to which moneys may be borrowed by the Board of Directors.

In the given case, *the aggregate of paid-up share capital + free reserves is ₹ 100 crores + ₹ 50 crores + ₹ 25 crores, i.e. ₹ 175 crores i.e. the maximum amount can be borrowed by the directors. As per resolution, the Board wants to borrow additional sum of ₹ 200 crores. Company has already borrowed ₹ 25 crores as existing long term loan. Since, the amount of additional borrowing i.e. ₹ 200 crores is in excess of the above limit of ₹ 175 crores, the Board can borrow only by passing a special resolution passed in the general meeting of the company.*

The Board of Directors of the company are, therefore, advised to get a special resolution passed in the company's general meeting and the resolution should also specify the amount that can be borrowed by the Board.

(ii)
- According to Section 174(1) of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of a company shall be one third of the total strength of Board (any fraction contained in the said one third being rounded of as one) or two directors whichever is higher.
- The total strength is to be derived after deducting the number of directors whose offices are vacant.
- Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant, we find: 1/3 of (9-2) = 1/3 of 7 = 2 1/3 directors which will be rounded off as 3.
- Therefore, being higher than 2, 3 directors would constitute the quorum for the Board Meetings.

2015 - Dec [2] (A) 1. A meeting of the Board of 'No Holiday Ltd.' was held on a national holiday. However due to lack of quorum, the proceedings of the meeting could not be held and therefore the Chairman of the meeting decided with the consent of the majority that the Board meeting be adjourned to next Monday. However, the date fixed for the adjourned meeting happened to be a 'national holiday'. Advise and draw your analogy with reference to the provisions of the Companies Act, 2013, whether the adjourned meeting of the Board can be held on a day which is a public holiday. **(4 marks)**

4. Mr. B. Pandey, a newly appointed director of Ankrit Ltd. applied for DIN (Director Identification Number). Advice him about the list of scanned documents required to be attached with DIR.3. **(3 marks)**

Answer:

1. The Companies Act, 2013 *vide* Section 173 (3) merely states that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by

electronic means. It further provides for the board meeting to be held on shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

Therefore, with reference to Section 96 and Section 173(3) of Companies Act, 2013 as far as the holding of a board meeting is concerned, it may be held at any place on any day including a national holiday if agreed by the directors.

However, when a board meeting is adjourned due to lack of quorum, then under Section 174(4) the meeting shall stand automatically adjourned to the same day at the same time and place in the next week or if that day is a national holiday till the next succeeding day, which is not a national holiday, at the same time and place, unless the Articles provide otherwise.

Therefore, the adjourned meeting cannot be held on a national holiday unless the Articles of the company provide that it can. The meeting will have to be held on the next working day to the national holiday.

4. 1. Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Amendment made by Companies (Amendment) Act, 2017:

Proviso to Section 153-

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

2. The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

3. (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically:

1. photograph;
2. proof of identity;
3. proof of residence;

4. verification by the applicant for applying for allotment of DIN in Form DIR-4; and
5. specimen signature duly verified.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by:

1. a Chartered Accountant in practice or a company secretary in practice or a cost accountant in practice; or
2. a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

2015 - Dec [2] (c) (i) The Board of Directors of Sunrise Ltd. want to circulate unaudited accounts before the Annual General Meeting of the Shareholders of the company. Examine the validity of the act of the Board of Directors under the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

Section 129 (2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay financial statements for the financial year. Further Section 134 (7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:

(a) Any notes annexed to or forming part of such financial statement
(b) The Auditor's report; and
(c) The Board's report

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So the act of the Board of Directors of Sunrise Limited is not valid.

2015 - Dec [2] (d) (ii) SHRIJA LTD. secures residential accommodation for the use of its Managing Director by entering into a license arrangement under which the company has to deposit a certain amount with the Landlord to secure compliance with the terms of the license agreement.
Can it be considered as a loan to a Director? Discuss with reference to the Companies Act, 2013. **(3 marks)**

Answer:
As per Section 185 of the Companies Act, 2013, no company shall directly or indirectly make any loan to a director.

In the present case, the company has provided the managing director with a housing accommodation. It does not amount to a loan because of the following reasons:

- The company has not given any deposit or advance to the managing director. The amount deposited with the landlord cannot be said to be an indirect loan to the managing director.
- It is a usual practice to give a security deposit to the landlord with whom a rent or lease agreement is entered into. Thus, the company has made the security deposit on account of *bonafide* business considerations.
- It is of no concern of the managing director as to the terms on which the company secures residential accommodation for him.

It is the company and not the director who has entered into the lease agreement. Therefore, the company can at anytime use the accommodation for any other purpose and the managing director will have to vacate it, as and when desired by the company.

2016 - June [1] {C} Answer the following :

(a) Mr. Kachi was appointed as an additional Director of ROYAL Ltd. w.e.f. 1st October 2015, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2016, but the same was not held due to delay in the finalization of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Kachi and his continuation as additional Director beyond 31st March, 2016.
Advise the company on the complaint made by the shareholders.
(5 marks)

Answer:

Under Section 161(1) of the Companies Act, 2013 the article of a company may confer on its Board of Directors the power to appoint, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Further, Section 161(4) states that, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

In the given case, Mr. Kachi has been appointed as an additional director in order to fill in a casual vacancy. A casual vacancy on the Board can be filled only by means of a Board resolution passed at a meeting of the Board and not by circulation. Therefore, the appointment of Mr. Kachi is invalid.

However, it is rather strange that **in the given case** Mr. Kachi has been appointed as an additional director to fill a casual vacancy in Board. Actually, additional directors are appointed by the Directors (if authorized by the Articles) to increase the Number of Directors within the legally prescribed limits and not to fill a casual vacancy.

In case Mr. Kachi had been appointed as an additional director not to fill a casual vacancy, his appointment could have been made by a resolution by circulation under Section 161(1) and he would have held office till the date of the next AGM or the last date when the next AGM should have been held, whichever is earlier.

In the given case, *as the AGM was due on 31st March, 2016 which is presumably the last date for holding it, therefore his appointment would terminate on 31st March, 2016.*

2016 - June [2] (b) Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. **(4 marks)**

(c) The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of Directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so. **(4 marks)**

(d) Audit Committee is to be formed by each and every company and the auditor has right to vote in the meeting of such Audit Committee. Comment. **(4 marks)**

Answer:

(b) Intimation of changes in particulars of Director - Rule 12

(1) Every individual having DIN in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 (Intimation of change in particulars of Director to be given to the Central Government).

DIR - 6 will be filed along with copy of the proof of the changed particulars and verification in the Form DIR-7 (Verification of applicant for change in DIN particulars) all of which shall be scanned, signed digitally by applicant and submitted electronically. Form requires pre-certification by the professional CA/CS/CMA in practice.

Amendment made by Companies (Amendment) Act, 2017:

Proviso to Section 153-

"Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."

(2) The Central Government shall incorporate the said changes in the electronic database after due verification from the enclosed proofs and confirm the applicant by post/email/any other mode.

(3) The DIN cell of the MCA shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

(c) Under Section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public Company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors.

The proviso to Section 149(1) states that a company may appoint more than fifteen directors after passing a special resolution.

From the, provisions of Section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors.

In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

1. Alter its Articles of Association under Section 14 of the Act;
2. Authorise the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

(d) The requirement of constitution of Audit Committee has been limited to:

(a) Every listed Public Companies; or

(b) The following class of companies –

1. all public companies with a paid up capital of ten crore rupees or more;
2. all public companies having turnover of one hundred crore rupees or more;

3. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

In addition to the auditor, the KMP shall also have a right to be heard in the meeting of the Audit Committee when it considers the auditor's report, though they shall not have voting rights.

In the given case, the auditor does not have power to vote at the meeting.

2016 - June [4] (b) Mr. Biron was appointed as the Managing Director of NIVA LTD. for a period of 5 years w.e.f. 1st January, 2014. Since his work was found unsatisfactory, his services were terminated from 20th October, 2015 by paying compensation for the loss of office as provided in the agreement entered into by the company. Later, the company discovered that during his tenure of office Mr. Biron was guilty of many corrupt practices and that he should have been removed without payment of compensation.

Advise the company whether the services of Managing Director can be terminated without payment of compensation as provided in the agreement and whether the company can recover the amount already paid to Mr. Biron.

(5 marks)

Answer:

According to Section 202 of the Companies Act, 2013 a Managing Director is entitled to be paid compensation for loss of office. However, Section 202(2)(e) of the Companies Act, 2013 provides that no compensation is payable if the director concerned has been guilty of fraud or breach of trust or of gross negligence in or gross mismanagement in the conduct of the affairs of the Company.

However, **in the present case,** compensation amount was paid and subsequently the misconduct on the part of Mr. Biron was noticed by the company. In the case of Bell -*Vs*-Lever Bros (1932), Lever Bros removed their Managing Director of a subsidiary by paying them compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been removed without compensation. As action was then commenced to recover back the compensation money. It was held that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him.

Thus, in normal circumstances, the company (NIVA Ltd.) is entitled to terminate the services of Mr. Biron as Managing Director without payment of compensation as he was guilty of many corrupt practices. **In the present case,** however, the company will not be able to recover the compensation money already paid to Mr. Biron, Managing Director.

2016 - June [5] (a) Board of Directors of PBX Limited held a board meeting on 2nd May, 2014 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting. **(6 marks)**

Answer:

While drafting the minutes of a board meeting following salient points should be kept in mind:

(a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.

(b) the place, date and time of the meeting should be stated.

(c) The chairman of the meeting must be mentioned. The general phrase used in the Minutes is "Mr._____, chairman of the meeting took the chair and called the meeting to order".

(d) the minutes should clearly mention the attendance and the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.

(e) Contents of the meeting giving serial number of the minutes, brief subject heading, full terms of the resolution adopted including the statistical details, if any.

(f) The adoption of the Minutes of the previous Board Meeting must be the first item on the Agenda by the directors giving their approval and the Chairman signing the Minutes as proof of approval of the Minutes.

(g) Conduct of the business at the meeting should be recorded in the chronological sequence as per the Agenda.

(h) In respect of each item of business the names of the directors dissenting or not concurring with any resolution passed at the board meeting should be mentioned.
(i) Reference about interested directors abstaining from voting is also required to be stated in the minutes.
(j) Chairman's signature and date of verification of minutes as correct.

2016 - June [6] (c) Company Y with a paid-up capital of ₹ 50 lakhs entered into a contract with company Z in which a director of Y is holding equity shares of the nominal value of ₹ 50,000. The director did not disclose his interest at the Board Meeting under Section 184 of the Companies Act, 2013. Is the director liable for his act? **(3 marks)**

Answer:

As per Section 184(2) of the Companies Act, 2013 the disclosure of the interest by directors do not apply to any contract or arrangement within two companies where any of the directors of one company or two or more of them together holds or hold not more than 2% of the paid up share capital in the other company.

In the present case, *the holding of the director of Y in company Z is less than 2% [(50,000/50,00,000) × 100% = 1%] the director is not liable.*

2016 - Dec [2] (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

1. Mr. Person together with one of his relatives holds 3% of the total voting power of XYZ Ltd. The Board of Directors of the company appointed him as an independent director.
2. ABC Ltd., a listed company having 5,000 small shareholders, upon receiving notice from 400 of such small shareholders has refused to appoint a small shareholders' director under Section 151 of the Companies Act, 2013.
3. Mr. D, who fails to get appointed as a director in the general meeting of AJD Limited, subsequently was appointed as an additional director by the Board of Directors of the company. **(1 + 2 + 1 = 4 marks)**

Answer:

1. An independent director means a director who, neither himself nor any of his relatives holds together with his relatives 2% or more of the total voting power of the company [Section 149(6) of the Companies Act, 2013].

   In the given problem, Mr. Person holds together with his relatives 3% of the total voting power of XYZ Ltd. Hence, his appointment as an independent director is not valid.

2. According to Section 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as given in Rule 7 of the Companies **(Appointment and Qualification of Directors) Rules, 2014.**

   As per the rule, a listed company, may upon notice of not less than:

   (a) one thousand small shareholders; or

   (b) one- tenth of the total number of such shareholders,

   Whichever is lower, have a small shareholders' director elected by the small shareholders.

   Hence, in the above case, since the number of small shareholders of ABC Ltd. who applied is less than 1000 and 500 ($1/10^{th}$ of the total 5000) small shareholders, ABC Ltd. can validly refuse to appoint such a director.

3. According to Section 161(1) of the Companies Act, 2013, a person who fails to get appointed as a director in a General-Meeting, cannot be appointed as an additional director.

   Hence, the appointment of Mr. D as an additional director in AJD Ltd. is not valid.

2016 - Dec [2] (b) Mr. Raman is a Managing Director of X company. He resigns from his office as a result of amalgamation of the X company with the other body corporate. Further he is appointed as the Managing Director of the body corporate resulting from the amalgamation. State in the light of the Companies Act, 2013 whether in this situation, is company liable towards Managing Director to compensate for the loss of office after his resignation.

(5 marks)

Answer:

According to Section 202 of the Companies Act, 2013, a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, in certain situations, no compensation shall be made by the company. As per the situation given in Section 202(2)(a) , where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation; no company shall make payment by way of compensation for loss of office to a managing or whole-time director or manager.

Hence, in the above case Mr. Raman, a Managing Director of X company resigns from his office as a result of amalgamation of the said company with the other body corporate. He is appointed as Managing Director of the Body Corporate resulting from the amalgamation. So accordingly, **as per the above stated provision,** company shall not make compensation to Mr. Raman for the loss of office due to his resignation on account of amalgamation of the company with other body corporate.

2016 - Dec [6] (b) MR. AMAN a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 01.04.2015 in the last Annual General Meeting of the company.

Mr. Aman seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013.

1. Specify the steps to be taken by Mr. Aman and the company in his behalf;
2. Draft a suitable resolution to be passed for removal of MD;
3. Is it necessary to state reasons to support the resolution for his removal?

(3 + 2 + 1 = 6 marks)

Answer:

1.
   - Under Section 169 of the Companies Act, 2013, a company may, by ordinary resolution, remove a director before the expiry of his tenure. For the purpose, special notice from a shareholder **(MR. AMAN in the present case)** shall be required to be given to the company for moving a resolution to remove a director.
   - On receipt of notice, the company shall forthwith send a copy thereof to the director concerned **(MD in the present case)** and he shall be entitled to be heard on the proposed resolution at the meeting.
   - Copy of the representation, if any, made by the director be also sent to all members of the company to whom notice of the general meeting is normally, sent.
   - In case, the representation is received too late, the same, shall be read at the meeting. The representation need not be sent if the Company Law Board (now Tribunal) is satisfied that it will cause needless publicity for defamatory matter.
   - Under Section 115 (Resolution requiring special notice), special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

     In the above case, if the AGM is due to be held, Mr. Aman may send the special notice 14 days before the AGM. He already holds more than 10% shares in the company. Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.
2. Mr. Aman may give special notice or his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr…….. Managing Director of the Company be and is hereby removed as a director of the company under Section 169 of the Companies Act, 2013 with immediate effect."
3. A statement of reasons is not necessary to support the resolution for removal of a director. *LIC vs. Escorts Ltd.(2013) 59 Comp. Cases 548 (SC).*

2017 - June [5] (b) (ii) Mr. X is a director of ABC Ltd. He has approached Housing Finance Co. Ltd. for the purpose of obtaining a loan of ₹ 50 lacs to be used for construction of building of his residential house. The loan was sanctioned subject to the condition that ABC Ltd. should provide the guarantee for repayment of loan instalments by Mr. X. Advise Mr. X.

(3 marks)

Answer:

According to **Section 185 of the Companies Act, 2013,** no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Thus, Mr. X is not allowed for loan of ₹ 50 Lacs against guarantee by the company ABC Ltd.

2017 - Dec [3] (c) The Board of Directors of Stepping Stones Publications Ltd. at a meeting held on 15.01.2014 resolved to borrow a sum of ₹ 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:

1. Share Capital ₹ 5 crores
2. Reserves and Surplus ₹ 5 crores
3. Secured Loans ₹ 15 crores
4. Unsecured Loans ₹ 5 crores

Advise the management of the company. **(4 marks)**

Answer:

As per **Section 180(c) of the Companies Act, 2013** the company needs to pass a special resolution in case of borrowing money where money to be borrowed together with money already borrowed exceeds aggregate of paid up share capital and free reserves.

In the given case, the total money that can be borrowed is (5+5 crores) but company has already borrowed 15 crores, hence for further taking any loan, a special resolution is required.

2017 - Dec [4] (b) (ii) B.B. Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:
What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director. **(3 marks)**

Answer:

According to Section 151 of the Companies Act, 2013:
A listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed.
Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than 20,000 or such other sum as may be prescribed.
The appointment of small shareholders' director shall be subject to the provisions of Section 152 except that :

(a) such director shall not be liable to retire by rotation;
(b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.
(d) He shall directly or indirectly not be appointed or associated in any other capacity with the company either directly or indirectly for a period of 3 years from the date of cessation as a small shareholder director.

2018 - Dec [4] (b) Excel Limited is a listed company with a turnover of ₹ 60 crores in Financial Year 2016-17. The Company appoints Ms. R as the Women Director on 1st March, 2017. Ms. R is already a director in twelve companies including ten Public Companies. State briefly whether the appointment of Ms. R in Excel Ltd. is valid as per provision of the Companies Act, 2013. **(4 marks)**

Answer:

Number of directorships: As per Section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

As per Companies Amendment Act, 2020 Section 165(6) can be If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.".

In the present case, Ms. R was appointed as a women director on 1st March, 2017 in Excel Limited. She was already holding directorship in twelve companies including ten public companies.

As Ms. R was already a director in ten public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.

In given case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies to maintain the limit of holding of directorship.

2019 - June [3] (a) The Promoters of M/s Soma Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time Directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:

1. How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?
2. For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received. **(5 marks)**

(b) M/s Daga Limited (an unlisted company) without any public deposits as per the audited financial statements of the company as at March 31st, 2018 gives you the following informations:

Paid-up Share Capital	₹ 20 crores
Gross Turnover	₹ 500 crores
Bank Borrowings	₹ 50 crores (from a National Bank)
Other Borrowings	₹30 crores (from a Public Financial Institution)

Mr. Lodha, a Chartered Accountant employed in the finance and audit department of the company wants to form a Vigil Mechanism for directors and employees of the company. Advise whether it is mandatory for M/s Daga Limited to formulate a Vigil Mechanism for directors and employees of the company. **(4 marks)**

Answer:

(a) 1. According to Section 152(6)(c) of the Companies Act, 2013, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or their number is neither three nor a multiple of three, then, the number nearest to the 1/3rd shall retire from office. Therefor the Directors liable to retire by rotation are 11 × 2/3 i.e. 7.3 or 8.
(No. of directors to retire at AGM: 8 × 1/3 i.e. 2.67. Hence nearest to 1/3rd is 3).

2. According to Section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of Section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the Company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14th day. Hence, the contention of the directors are valid.

(b) Formation of vigil mechanism: According to Section 177(9) of the Companies Act, 2013, a Vigil mechanism shall be formed in:

(a) Every listed Company, and

(b) Such other prescribed classes of companies. Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following class or classes of companies that shall constitute Vigil mechanism:

1. The Companies which accept deposits from the public;
2. The Companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees.

In the instant case, Daga Ltd. does not have any public deposits. They have borrowings from banks and public financial institutions of ₹ 80 crores which is in excess of ₹ 50 crores. Since, the Company had borrowed from banks and Public Financial Institutions in excess of ₹ 50 crores as prescribed in Rule 7(2), the Company is mandatorily required to form a Vigil Mechanism for directors and employees of the Company.

2019 - Dec [3] (a) On the ground of conviction for an offence dealing with related party transaction. Mr. Bat was disqualified to hold the directorship in XYZ Limited. The Board filled up the vacancy by appointing Mr. Samarth as a director on 3rd April, 2018 which was subsequently approved by the members in the immediate next general meeting. Unfortunately, Mr. Samarth expired on 15th May, 2018 after working about 40 days as a director. The Board now wishes to fill up the said vacancy by appointing Mr. Ball in the forthcoming meeting of the Board. Advise the. Board on the validity of the following appointments as per the provisions under the Companies Act, 2013:

1. Appointment of Mr. Samarth in place of Mr. Bat.
2. Appointment of Mr. Ball in place of Mr. Samarth. **(6 marks)**

Answer:

Under Section 161(4) of the Companies Act, 2013 provides that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of association of the company, be filled by the Board of Directors (BoD) at a meeting of the Board which shall be afterward accept by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would haw held office if it had not been vacated.

1. In the given problem, the appointment of Mr. Samarth in place of the disqualified director Mr. Bat was in order. Mr. Samarth could have held his office as director up to the date to which Mr. Bat would have held the same.
2. As per case, Mr. Samarth expired on 15th May, 2018 and again a vacancy has arisen in the office of director owing to death of Mr. Samarth who was appointed by the board and accept by members to fill up the casual vacancy resulting from disqualification of Mr. Bat Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as Section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting.

   Therefore, the Board cannot fill in the vacancy arising from the death of Mr. Samarth. Hence, cannot appoint Mr. Ball in the office of Mr. Samarth.

   The Board may however appoint Mr. Ball as an additional director under Section 161 (1) of the Companies Act, 2013 provided the Articles of Association (AoA) authorises the board to do so, in which case Mr. Ball will hold the office up to the date of the next Annual General Meeting (AGM) or the last date on which the Annual General Meeting should have been held, whichever is initial.

2019 - Dec [4] (a) The Articles of Association of a listed company provides for fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹30,000. In view of the increased responsibilities of Independent Directors of listed Companies, the Company proposes to increase the sitting fee to ₹45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal. **(4 marks)**

Answer:

Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed.

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹ 30,000 to ₹ 45,000 per meeting by passing a resolution in the Board Meeting and alternating the Articles of Association (AoA) by passing Special Resolution.

2019 - Dec [5] (a) One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company, power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors powers to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable.

Whether it is possible for the members to usurp the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting. **(6 marks)**

Answer:

Powers of Board of Director: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors (BoD) of a Company shall be entitled to exercise all such powers and to do all such acts and things, as the Company is authorized to exercise and do:

Provided that in exercising such power of doing such act or thing, the Board of Directors shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations made by the Company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the Company or otherwise to be exercised or done by the Company in general meeting.

In pursuant to Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a Company which can be exercised only with the consent of the Company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the Company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Hence, the sale of the undertaking of a Company can be made by the Board of Directors only with the consent of members of the Company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the Company, the sale of undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Hence, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given problem, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it though the directors.

The contention of the shareholders is incorrect in the first place as it is not within their authority to accept a proposal independently of the Board of Directors (BoD). It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution.

Accordingly, the claim of the members that they were, the principals and directors being their agents were bound to give effect to the decisions of the members is not correct.

2019 - Dec [5] (b) Runway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Runway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Runway Infrastructure Limited before entering into contract with Royal forgings.
What would be your answer in case Royal forgings is a private limited company in which wife of Mr. Patrick is holding shares? **(5 marks)**

Answer:

The contract for supply of components entered into between Runway Infrastructure:

Limited and Royal forgings, a partnership firm attracts Section 184,188 and 189 of the Companies Act, 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting.

As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting.

If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

Under Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorised by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon analysis of the above provisions: If the value of the contract or transaction is more than limit specified, prior consent of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it As the directors wife (i.e. Patrick's wife) is member of Royal forgings private limited.

As per Section 184 is not applicable as Mr. Patrick, director of runway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Therefore, the provisions of Section 184 are not attracted.

2021 - Dec [2] Earth Developers Private Limited, a Bengaluru based company is regular in filing its annual return as well as financial statements and has four directors but so far no managing director has been appointed. Due to the manifold increase in the construction work undertaken by the company in the last two years, it is urgently felt that a managing director needs to be appointed. Accordingly, Mr Pranav was appointed as MD by the Board of Directors at its meeting, specifying the terms and conditions including monthly remuneration, payable to him. Enumerate on the requirement and validity of an appointment of Mr. Pranav in the given scenario, in the context of relevant law. **(4 marks) [Sec. C Two LAQ]**

Answer:

As per Section 196(4) provides that the terms and conditions of appointments of a Managing Director (MD) and the remuneration payable to him shall be approved by the Board of Directors (BoD) at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Part I of the Schedule V.

Hence, in the given case, there is no requirement regarding the approval of appointment of Mr. Pranav as MD in the Earth Developers Private Limited, at the immediate next general meeting of the shareholders.

Hence his appointment as MD in the Earth Developers Private Limited is valid.

2021 - Dec [1] Mr. Vikram, a Director of M/S Tubelight Limited has made default in filing of annual accounts and annual returns with the Registrar of Companies for a continuous period of 3 financial years ending on 31st March 2016. Examine the validity of the following under the Companies Act, 2013.

1. Whether Mr. Vikram can continue to be a Director of M/S Tubelight Limited (defaulting company) and also M/S Green light Limited where he is also a Director.
2. State Whether he can be reappointed as Director in these two companies.
3. What would be your answer be in case Mr. Vikram is a nominee Director of a Public Financial Institution?
4. What would be your answer in case the defaulting company (i.e. M/S Tubelight Limited) is a private limited company?

(3 + 3 + 3 + 3 = 12 marks) [Sec. D CSQ]

Answer:

Disqualifications for Appointment of Director:

As per Section 164 (2) of the Companies Act 2013 a person who is or has been a director of a company which

(A) has not filed the financial statements or annual returns for any continuous three financial years or

(B) has failed to repay the deposits accepted by it or pay interest thereon due date or redeem its debentures on due date or pay interest due thereon or pay any dividend declared and such failure continues for one year or more. Shall not be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. Further, pursuant to Section 167(1) (a) of the Companies Act 2013, the office of a director shall become vacant in case he incurs any of the disqualification specified in Section 164. The company joint reading of both the Sections i.e. 164(2) and 167 (1)(a),we may decide the case as under

   1. In the first case Mr. Vikram cannot continue to be director of the defaulting company namely M/s Tubelight Ltd. whereas in Green light Ltd., he can continue as a director because that company is not defaulting company.

2. In the second case, Mr. Vikram is a Director of Tubelight Ltd. and Green Light Ltd. Tube Light Ltd. did not file financial statements for a continuous period of three financial years ending 31 March 2016.

   This failure constitute a disqualification under Section 164(2) and consequently Mr. Vikram will not be eligible for reappointment in Tubelight Ltd. and Green light Ltd. for a period of five years from the date on which the said company incurs the default.
3. In the third case, Mr. Vikram is a nominee director of a Public Financial Institution then in such case section 164 is not applicable.
4. In the fourth case Tubelight Ltd. is a Private Ltd. Company. As per Section 164(3) a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub section (1) and (2) of Section 164

Hence, in the given case, Mr. Vikram has to vacate his office of directorship from Tubelight Ltd. and Green light Ltd. and cannot be reappointed in both the companies for a period of 5 years from the date on which the said company incurs the default.

2022 - Dec [3] (a) Mr. K and Mr. L who are the directors of RR Limited informed the company about their inability to attend the Board meetings because the notice thereof was not served on them. Discuss whether there is any default on the part of RR Limited and the consequences thereof.

(4 marks)

Answer:

As per **Section 173 (3) of the Company Act, 2013** a meeting of the Board shall be called by giving not less than seven days" notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

- **Section 173 (4) further provides** that every office of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ₹ 25,000. In the given case, as no notice was served on Mr. K and Mr. L who are the directors of R R Limited, every officer responsible for such default in serving notice shall be punishable with fine of ₹ 25,000.

- Neither the Companies Act, 2013 nor the Companies (Meetings of the Board and its Powers) Rules, 2014 lay down any specific provision regarding the validity of a resolution passed by the Board of Directors in case notice was not served to all the directors.
- The Companies Act, 2013 clearly provide for the notice to be sent to every directors.
- The Supreme Court, in the case of *Parmeshwari Prasad vs. Union of India (1974)* has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing.
- Therefore, even though the directors concerned knew about the Board meeting, the meeting shall not be valid and resolutions passed thereat also shall not be valid.

2023 - June [2] (b) AB Ltd., a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. M.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals. **(8 marks)**

Answer:

AB Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. M. Part(i) of the Second Proviso to Section 197(1) of the Companies Act 2013, provides that except with the approval of the company in general meeting by a special resolution.

The remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company.

If there is more than one such director then remuneration shall nor exceed 10% of the net profits to all such directors and manager taken together.

In the above case, since the AB Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. M, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees ₹ 50,000/- and also commission at the rate of 1% of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2% of the net profit of the company: Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval the company in general meeting by a special resolution.

The remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed:

(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager.

(B) 3% of the net profits in any other case.

In the above case, the maximum remuneration allowed to directors other than managing or whole-time directors is 1% of the net profits of the company because the company is managed by a managing director.

Therefore, if the company wants to fix directors' remuneration at not more than 2% of the net profit of the company, the approval of the company in the general meeting is required by passing a special resolution.

2023 - June [3] (b) PQR Limited is an unlisted public company having a paid-up share capital of twenty crore rupees as on 31st March, 2022 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2022. The total number of directors is thirteen. Referring to the provisions of the Companies Act, 2013 answer the following:

(i) State the minimum number of independent directors that the company should appoint.

(ii) How many independent directors are to be appointed in case PQR Limited is a listed company? **(5 marks)**

Answer:

(i) **Minimum number of director:** According to Rule 4(1) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or

(2) the Public Companies having turnover of 100 crore rupees or more; or

(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the above case, PQR Limited is an unlisted public company having a paid-up capital of ₹ 20 crore as on 31st March, 2022 and a turnover of ₹ 150 crore during the year ended 31st March, 2022. Accordingly, as per stated rules is must have at least 2 directors as independent directors.

(ii) As per to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors.

The Explanation to Section 149(4) specifies that any fraction contained in such one-third numbers shall be rounded off as one.

In the above case, PQR Limited is a listed company and the total number of directors is 13. Hence, in this case, PQR Limited must have atleast 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

In the above case, it is mentioned that paid up capital of PQR Limited is ₹ 20 crore as on 31st March, 2022 and turnover is ₹ 150 crore during the year ended 31st March, 2022. It is therefore assumed that 31st March 2022 is the last date of the latest audited financial statement.

2023 - June [4] (a) (ii) The last Board meeting of ABC Structurals Ltd., a public limited company was held on 25th January, 2022. The MD wants that in the next Board meeting the annual financial statements to be placed and approved. The Accounts manager feels that the financial statements shall be ready latest by 15th June only. Mr. Ahuja is the chairman of audit committee, who will not be in India during the whole of June. MD feels that we get the financial statements approved through video board meeting. Presently, there is no chairman in the company, MD chairs the Board meetings. State your views. **(4 marks)**

Answer:

MD of the company need to know and understand and comply with the following.

(i) As per section 173(1) Next board meeting shall have to be held within 120 days of the previous meeting therefore next board meeting cannot be held in June. There shall be another meeting to be held when financial statements are ready.

(ii) Rule 4 of Companies (meeting of board and its powers) rules prohibits approval of annual financial statements through video meetings.

2024 - June [3] (a) What is the quorum of Company's Board Meeting in the following cases (explain as per the provisions of the Companies Act, 2013)?

(i) A public company has 10 directors (including 4 non-executive directors). But 8 directors (including 4 non-executive directors) attended the BOD meeting.

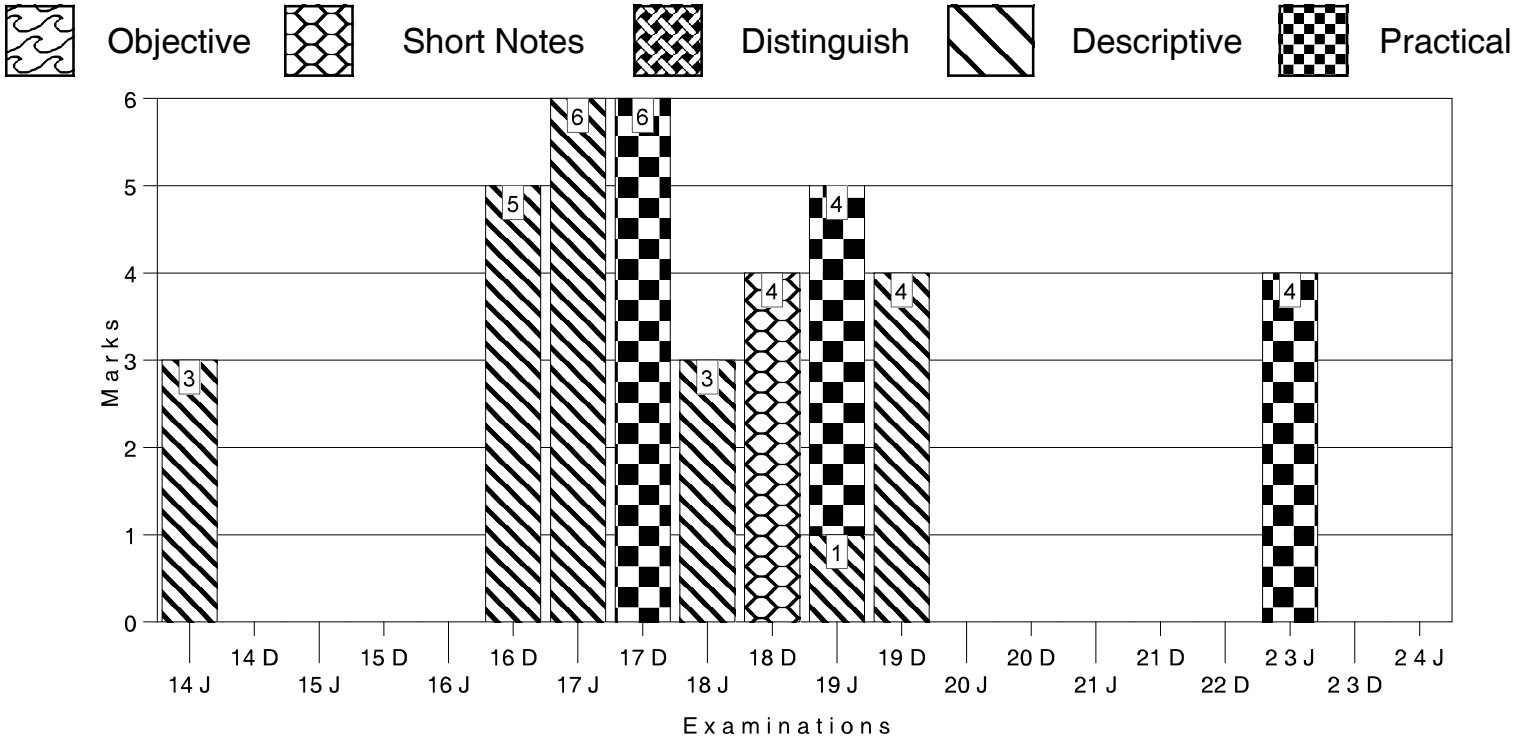
(ii) Startup Odisha Ltd. is a section 8 company which has 8 non-executive directors. 3 directors attended the meeting.

(iii) BOD of X Ltd. consists of 9 executive directors and 3 non-executive directors. Total 6 executive directors and 3 non-executive directors attended the BOD meeting. A business was transacted in which one director was interested. Articles of Association has fixed the quorum as 5. **(7 marks)**

2024 - June [4] (b) The Board of Directors of Mckinsy Ltd., a listed company, appointed Dinesh, as an Executive Director at the Board Meeting held on June 1, 2023. The Company took up this appointment of Dinesh, for approval of the shareholders at its Annual General Meeting (AGM) held on September 29, 2023, but the same was not approved by the shareholders. However, he was appointed as an Additional Director on whole time employment by the Board at its meeting held on September 30, 2023 by passing a resolution to hold the office of directorship till the conclusion of the next AGM, to be held for the year 2024. Is appointment of Dinesh as an Additional Director, by the **Board Justified**? **Examine** the correctness of the aforesaid appointment. **(7 marks)**

FOR NOTES

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



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1F INSPECTION, INQUIRY AND INVESTIGATION

THIS CHAPTER INCLUDES

1. Power to call for information, inspect books and conduct inquiries
2. Conduct of inspection and inquiry
3. Report on inspection made
4. Search and seizure
5. Investigation into affairs of Company
6. Establishment of Serious Fraud Investigation Office (SFIO)
7. Firm, body corporate or association not to be appointed as Inspector
8. Investigation of ownership of company
9. Procedure, powers, etc., of Inspectors
10. Protection of employees during investigation
11. Seizure of documents by Inspector
12. Freezing of assets of Company on inquiry and investigation
13. Inspector's report
14. Expenses of investigation
15. Voluntary winding up of company, etc., not to stop investigation proceedings
16. Legal advisers and bankers not to disclose certain information
17. Investigation etc. of foreign companies
18. Penalty for furnishing false statement, mutilation, destruction of document

CHAPTER AT A GLANCE

1. Inspection

The Act provides exhaustive powers to the Registrar or Inspectors or Serious Fraud Investigation Officer authorized by the Central Government or as the case may be, to conduct inspection in order to ascertain that all

transactions have been validly entered into and recorded in appropriate books and that applicable laws, rules and procedures have been complied with by the company.
2. Inspection by whom
• Also, the books of account and other books and papers shall be open to inspection by any director during business hours. • The Companies Act does not give any statutory right of inspection of books of account to a shareholder. • However articles of a company may give such a right to the shareholders.
3. Copies of Books of account
The Act empowers the person making the inspection to make or cause to be made copies of books of account and other books and papers or place or cause to be placed any marks of identification thereon in token of inspection having been made.
4. Reporting to Central Government
The person making an inspection is required to make a report to the Central Government after inspection of books of account and other books and papers of the company.
5. Penalty
If a default is made in complying with the provisions of inspection, every officer of the company, who is in default, shall be punishable with fine and imprisonment.
6. Investigation
The Companies Act provides for carrying out investigation of the affairs of the company whose business is being conducted in fraudulent or unlawful manner or in a manner oppressive of any member or of the affairs of related companies or of ownership of the company for the purpose of determining the true persons who are or have been able to control or

materially influence the policy of the company or who are or have been financially interested in the success or failure, whether real or apparent of the company.
7. Appointment of Inspectors
In the public interest it may become necessary for the Central Government to know the persons who are financially interested in a company and who control the policy or materially influence it. For this reason, the Central Government has been empowered under the Act to appoint one or more Inspectors to investigate and report on the membership of any company and other matters relating to the company.
8. Protection of employees making disclosure
Under the Act, the employees of the company under investigation, who make disclosure during the course of investigation, are protected against dismissal, discharge, removal, etc.

SHORT NOTES

2018 - Dec [8] Write short note on the following:

(v) Inquiry by the Registrar [(Section 206(4)] **(4 marks)**

Answer:

Inquiry by the Registrar [Section 206(4)]

(1) The Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the Registrar is satisfied :

(a) On the basis of information available with or furnished to him, or

(b) On a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act, or

(c) The grievances of investors are not being addressed.

(2) Prior calling the company to furnish in writing any information or explanations and carrying out inquiry, the Registrar has to inform the company of the allegations made against it by a written order.
(3) The Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an Inspector appointed by it for the purpose to carry out the inquiry under this sub-section.
(4) It is further provided that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as prescribes in Section 447.

DESCRIPTIVE QUESTIONS

2012 - Dec [4] (b) Can the Registrar of Companies seize the books and documents of a company? Explain. **(4 marks)** ***[CSEM - II]***

Answer:

The statement is correct:

According to **Section 209 (Search and seizure) of the Companies Act, 2013**, if the Registrar has reasonable ground to believe that books and papers of or relating to, any company or other body corporate or Managing Director or Manager of such company may be:

1. Altered;
2. Destroyed;
3. Mutilated;
4. Falsified; and
5. Secreted,

Note: *The Registrar may make an application to the magistrate having jurisdiction for an order for the seizure of such books and papers.*
The magistrate after considering the application and hearing the Registrar, if necessary, may, by order, authorise to Registrar to enter which such assistance as may be required, the place or places where such books and papers are kept, search the place and seize such books and papers as he considers necessary.

2014 - June [6] (a) What are the provisions available in the Companies Act, 2013 for protection of employees during investigation? **(3 marks)**

Answer:

(a) Notwithstanding anything contained in any other law for the time being in force, if:
   1. during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under Section 210, Section 212, Section 213 or Section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under Section 216, or
   2. during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI,

   such company, other body corporate or person proposes:
      (a) to discharge or suspend any employee; or
      (b) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
      (c) to change the terms of employment to his disadvantage,

   the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

(b) If the company, other body corporate or person concerned does not receive within thirty days of making of application under point (a), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.

(c) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.

(d) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

(e) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

2016 - Dec [2] (c) (i) What are the duties of the inspector as enumerated in Sec. 223 of the Companies Act, 2013 in relation to his report? **(5 marks)**

Answer:

Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

1. Submission of interim report and final report [Sub section (1)]	An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
2. Report to be in writing or printed [Sub section (2)]	Every report made under sub - section (1) above, shall be in writing or printed as the Central Government may direct.
3. Obtaining copy or report [Sub section (3)]	A copy of the above report may be obtained by making an application in this regard to the Central Government.
4. Authentication of report [Sub section (4)]	The report of any inspector appointed under this Chapter shall be authenticated either: (a) by the seal of the company whose affairs have been investigated; or

	(b) by a certificate of a public officer having the custody of the report, as provided under Section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
5. Exceptions	Nothing in this section shall apply to the report referred to in Section 212 of the Companies Act, 2013.

2017 - June [2] (b) (i) What are the duties of the inspector as enumerated in Sec. 223 of the Companies Act, 2013 in relation to his report. **(6 marks)**

Answer:

Section 223 of the Act lays down the following provisions in respect of the Inspector's report on investigation conducted under the **Chapter XIV**:

(a) Submission of interim report and final report [Sub-section (1)]: An Inspector appointed under the Chapter (**Chapter XIV**- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.

(b) Report to be writing or printed [Sub-section (2)]: Every report made under **sub-section (1)** above shall be in writing or printed as the Central Government may direct.

(c) Obtaining copy of report [Sub-section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government.

(d) Authentication of report [Sub-section (4)]: The report of any Inspector appointed under this Chapter shall be authenticated either:

(1) by the seal, if any, of the company whose affairs have been investigated; or

(2) by a certificate of a public officer having the custody of the report, as provided **under Section 76 of the Indian Evidence Act, 1872**, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

(e) Exceptions [Sub section (5)]: Nothing in this section shall apply to the report referred to in **Section 212 of the Companies Act, 2013.**

2018 - June [3] (c) State briefly the composition of SERIOUS FRAUD INVESTIGATION OFFICE (SFIO) under the Companies Act, 2013.

(3 marks)

Answer:

Composition of SFIO [Section 211(2)]

The SFIO shall be:

(1) Headed by a Director, and

(2) Consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in:
   (a) Banking
   (b) Corporate affairs
   (c) Taxation
   (d) Forensic audit
   (e) Capital market
   (f) Information technology
   (g) Law; or
   (h) Such other fields as may be prescribed.

2019 - June [7] (a) (iii) (I) Who shall be the competent authority for all decisions pertaining to arrest as per the provision of the Companies (Arrests in connection with investigation by serious Fraud Investigation office) Rules, 2017? **(1 mark)**

Answer:

The Director of SFIO shall be the competent authority for all decisions pertaining to arrest.

2019 - Dec [6] (d) During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do so under the provisions of the Companies Act, 2013? **(4 marks)**

Answer:

Investigation into affairs of related companies: Section 219 of the Companies Act, 2013, provides for power of Inspector to conduct investigation into the affairs of related companies etc., if an inspector appointed under Section 210 or Section 212 or Section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of –

(a) Any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(b) Any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(c) Any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(d) Any person who is or has at any relevant time been the company's managing director or manager or employee, he shall, subject to the prior consent of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Hence, the inspector shall subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of to Managing Director or Manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the Company for which he is appointed. In view of above problem, the Inspector is permitted to investigate the holding company.

PRACTICAL QUESTIONS

2017 - Dec [4] (b) (i) Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted. Elaborate.

(6 marks)

Answer:

According to the Companies Act, 2013, the Central Government under Section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

(a) on the receipt of a report of the Registrar or Inspector under Section 208;
(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;
(c) in public interest. According to Section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

The shareholders' application will not be accepted as under Section 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

2019 - June [4] (c) (ii) Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:

1. A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.
2. An employee of the company publicized among his social networking of sound financial position of his organization in order to incite the public to purchase the shares of its company. In actuality, the company was running in loss. **(4 marks)**

Answer:

Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affaire of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false,- he shall be punishable for fraud in the manner as provided in Section 447.

As per the above provision:

1. With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.

2. Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather-fully relying on the publicity made on social networking.

2023 - June [2] (a) A group of shareholders of MSK Limited made a complaint to the concerned Registrar of Companies (RoC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide:

(i) Whether the RoC has the power to order for an inquiry into the affairs of the Company?

(ii) If yes, state the procedure to be followed by the RoC.

(iii) Whether the inquiry should be pursued by the RoC in case the complaint is withdrawn by the same group of shareholders subsequent to the Order for enquiry?

(iv) Whether the Central Government has the power to direct the RoC to carry out the inquiry? **(4 marks)**

Answer:

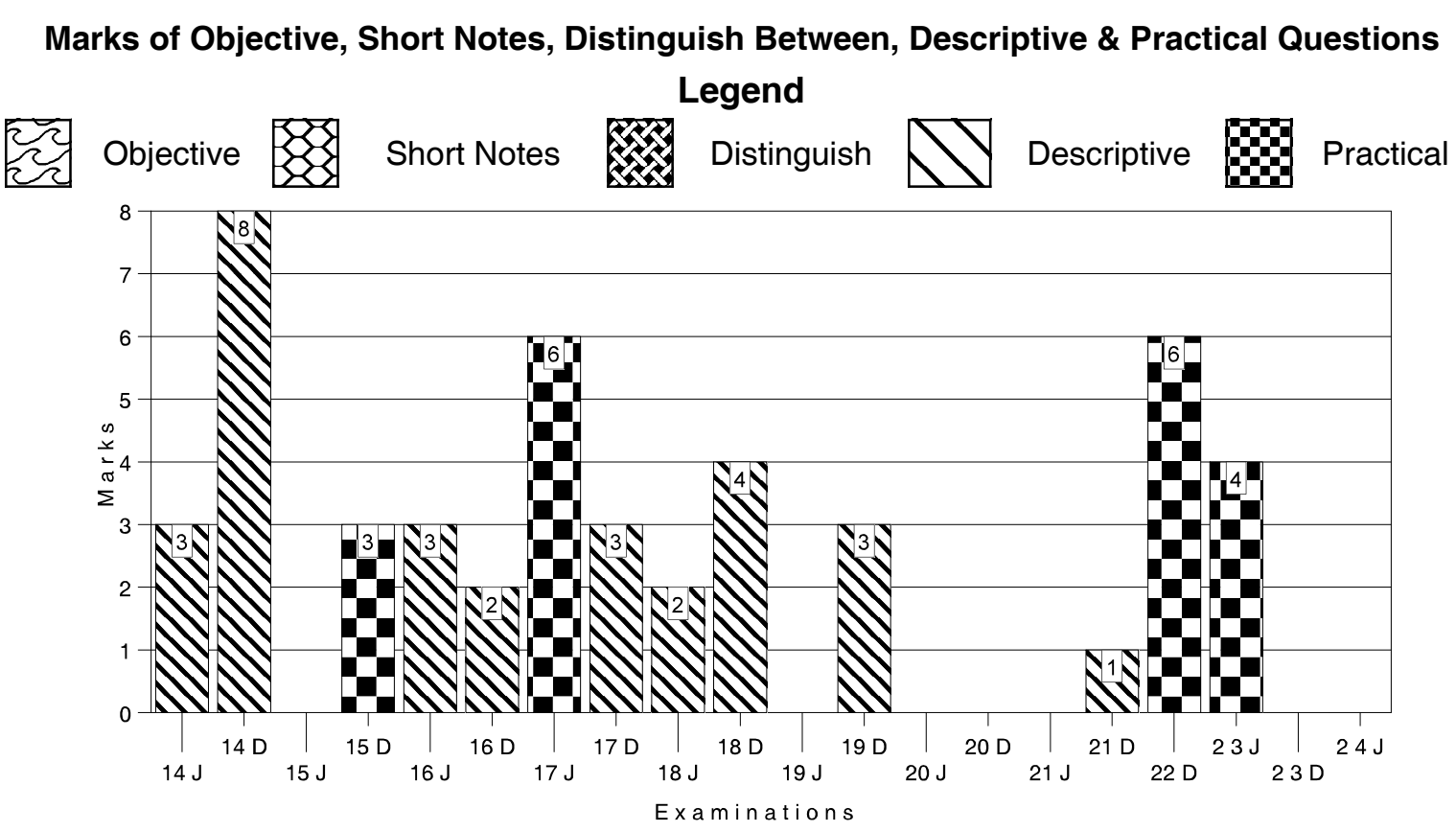
(i) Yes, the Registrar of Company (RoC) has the power to order for an inquiry as he deems fit after providing the company a reasonable opportunity of being heard, into the affairs of the company if he is satisfied on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with provisions of Companies Act, 2013.

(ii) **Procedure followed by ROC:** The Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.

(iii) The inquiry can be pursued by the Registrar of Company in case the complaint is withdrawn by same group of shareholders subsequent to the order for inquiry under this Companies Act, 2013.

(iv) Yes, the Central Government may, if it is satisfied that the circumstances so warrant, direct the registrar for the purpose to carry out inquiry under this Companies Act, 2013.

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



1G COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

THIS CHAPTER INCLUDES

1. Power to compromise or make arrangements with creditors and members
2. Power of Tribunal to enforce compromise or arrangement
3. Merger and amalgamation of companies
4. Merger and amalgamation of certain companies
5. Merger or amalgamation of company with foreign company
6. Purchase of minority shareholding
7. Power of Central Government to provide for amalgamation of companies in public interest
8. Preservation of books and papers of amalgamated companies
9. Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

CHAPTER AT A GLANCE

1. Compromise

'Compromise' is a term which implies the existence of a dispute such as relating to rights. It means settlement or adjustment of claims in dispute by mutual concessions. If the members have to give up their rights entirely. It will not be compromise.

2. Arrangement

The term 'arrangement' is of very wide importance. It includes a reorganization of the share capital of a company by the consolidation of

shares of different classes, or by the division of share into shares of different classes or by both these methods. All modes of reorganising the share capital, including interference with preferential and other special rights attached to shares, can properly form part of an arrangement with members.

3. Amalgamation

'Amalgamation' is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another and as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or the amalgamated company.

4. Power to Compromise or make Arrangements with Creditors and Members

Where a compromise or arrangement is proposed:

1. between a company and its creditors or any class of them, or
2. between a company and its members or any class of them, the Tribunal may, on the application of the,
   (a) company or
   (b) of any creditor or
   (c) member of the company, or
   (d) in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members.

5. Merger or Amalgamation of a Company with a Foreign Company

Section 234 (2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

6. Power of the Central Government to Provide for Amalgamation of Companies in Public Interest
Section 237 (1) states that when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
7. Preservation of Books and Papers of Amalgamated Companies
As per **Section 239,** the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission.

DESCRIPTIVE QUESTIONS

2013 - Dec [4] (a) Write a brief note on Conglomerate merger. **(5 marks)**

Answer:

Conglomerate merger

- A conglomerate merger is a merger where two or more companies carrying different businesses are acquired and merged. The companies may not be related to each other horizontally.
- In a "pure conglomerate" there are no important common factors between the companies in production, marketing, research and development or technology.
- Conglomerate merger is quite often the result of desire and its favourable points are:
    1. It can give better stability of earnings because the activities are in different industries with different businesses. It is a very good form of diversification.

2. It can employ spare resources, whether of capital or management;
3. where there are some common factors, it can obtain benefit of economies of scale, particularly to "staff functions (such as personnel, advertising, accounting and financial)";
4. It leads to defensive diversifications, designed to make the company too large to be likely to be the object of a take-over, or perhaps to make it a less attractive object;
5. to provide an outlet for the ambitions of management, where anti-monopoly laws make further acquisitions (or perhaps even growth) in the company's own field impracticable.

2014 - June [6] (e) State the powers of the Tribunal about the matters that would be considered while sanctioning the scheme of amalgamation under the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

While sanctioning the scheme of amalgamation, the Tribunal under Section 232(3) (Merger and amalgamation of companies) of the Companies Act, 2013 may make provision for all or any of the following matters:

1. The transfer to the transferee company of the whole or any part of the undertaking property or liabilities of the transferor company.
2. The allotment by the transferee company of any shares, debenture etc. in that company which under the scheme are to be allotted by that company to any person.
3. The continuation of any legal proceedings by or against any transferor and transferee company.
4. The dissolution, without winding- up of any transferor company.
5. The provisions to be made for any persons who within such time and in such manner as the court directs, dissent from the scheme of amalgamation.
6. Such incidental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

2014 - Dec [4] (d) Explain the "Majority" required for approving the scheme of amalgamation in a meeting of member of a company called as per directions of the Court.

Examine further whether the scheme should be approved by the preference shareholders under Companies Act, 2013. **(2+1=3 marks)**

Answer:

Majority in number representing three-fourth in value of members or class of members, as the case may be, present and voting either in person or by proxy, where proxies are allowed under the rules made under **Section 105 (Proxies) of Companies Act, 2013** must approve the scheme or arrangement providing for amalgamation of companies [Section 232 (Merger and amalgamation of companies) of Companies Act, 2013] Any member who though present at the meeting, does not vote for or against, but remains neutral, is not to be taken under consideration.

As the expression used is member, not only holders of equity shares but also preference shares and equity shares are ordered by the Tribunal to be held separately, the three- fourth majority of each class will have to be ascertained separately.

2014 - Dec [5] (c) Explain the different tools of corporate restructuring. **(5 marks)**

Answer:

Tools of Corporate Restructuring:

1.	Merger	Merger is the combination of two or more companies which can be merged together either by way of amalgamation or absorption.	
		Horizontal Merger	It is a merger of two or more companies that compete in the same industry.
		Vertical Merger	It is a merger which takes place upon the combination of two companies which are operating in the same industry but at different stages of production or distribution system.

		Co-generic Merger	In these mergers the acquirer and target companies are related through basic technologies, production processes or markets.
		Conglome-rate Merger	These mergers involve firms engaged in unrelated type of activities i.e. the business of two companies are not related to each other horizontally or vertically.
2.	Demerger	It is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. It is the converse of a merger or acquisition. A demerger may be possible through a Spin off, Split off, Split up and Sell off.	
3.	Reverse Merger	Reverse Merger is the opportunity for the private companies to become public company, without opting for Initial Public Offer (IPO). In this process the private company acquires the majority shares of public company, with its own name.	
4.	Disinvestment	Disinvestment means the action of an organization or government selling or liquidating an asset or subsidiary. It is also known as "divestiture".	
5.	Take over/ Acquisition	Takeover means an acquirer takes over the control of the target company. It is also known as acquisition.	

		Friendly takeover	In this type, one company takes over the management of the target company with the permission of the board of target company.
		Hostile takeover	In this type, one company takes over the management of the target company without its knowledge and against the wish of its management.
6.	Joint Venture (JV)	A joint venture is an entity formed by two or more companies to undertake financial activity together.	
7.	Strategic Alliance	Any agreement between two or more parties to collaborate with each other, in order to achieve certain objectives and allows to remain independent organization is called strategic alliance.	
8.	Slump sale	Slump sale means the transfer of one or more undertaking as a result of the sale of lump sum consideration without values being assigned to the individual assets and liabilities in such sales.	
9.	Buy Back	Buy back means the repurchase of outstanding shares by a company in order to reduce the number of shares in the market.	

2016 - June [6] (b) Answer the following with reference to a scheme of amalgamation of companies explaining the relevant provisions of the Companies Act, 2013:

(i) Whether companies being amalgamated must be companies registered in India. **(3 marks)**

Answer:
A scheme of compromise or arrangement may provide for amalgamation of companies under **Section 232 of the Companies Act, 2013.** While the 'transferee company' does not include any company other than a company within the meaning of the **Companies Act, 2013**, the transferor company includes any body corporate whether a company within the meaning of the Companies Act or not. Hence, the scheme of the amalgamation may provide for transfer of the foreign companies to Indian companies.

2016 - Dec [6] (c) Does the scheme of compromise or arrangement under the Companies Act, 2013 require approval of preference shareholders? **(2 marks)**

Answer:
Preference shareholders: The term 'member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence, their approval is also required.
If the Tribunal directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Tribunal.

2017 - Dec [4] (a) (ii) Does the scheme of compromise or arrangement require approval of preference shareholder? **(3 marks)**
Answer:
As per **Section 230(3) of the Companies Act, 2013** where a meeting is proposed to be called in pursuance of an order of the [Tribunal] under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and Stock Exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.
Hence, the approval of the preference shareholder has to be seeked.

2018 - June [4] (c) (ii) State the provisions of the Companies Act, 2013 relating to preservation of books and papers of amalgamated Companies. **(2 marks)**

Answer:

Preservation of Books and Papers of Amalgamated Companies (Section 239):

As per Section 239, the books and papers of a company which has been amalgamated with, or whose share have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs of the transferor company or its amalgamation or the acquisition of its shares.

2018 - Dec [4] (a) ABC Ltd. and DEF Ltd. are wholly owned by Government of West Bengal. As a policy matter, the Government issued administrative orders for merging DEF Ltd. with ABC Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Authority to whom the application for merger is to be made According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette provide for the amalgamation of those companies into a single company.

Hence, in the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will deliver for the amalgamation of the two said companies into a single company.

2019 - Dec [5] (c) (i) Is it mandatory to obtain Regulatory approvals for scheme of compromise/arrangements as per section 230(5) of the Companies Act, 2013? Explain. **(3 marks)**

Answer:

Notice to be sent to the regulators seeking their representations Section 230(5) states that a notice under Sub-Section (3) along with all the documents in such form as may be specify shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under Sub-Section (1) of Section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

2021 - Dec [10] State which of the following terms are not defined in the Companies Act, 2013:

1. The word amalgamation
2. The words oppression and mismanagement **(1 mark) [Sec. B - SAQ]**

Answer:

Both

PRACTICAL QUESTIONS

2015 - Dec [2] (E) (i) A scheme of amalgamation of Anu Co. Ltd. with Priya Co. Ltd. was presented to the Tribunal for sanction after the scheme was approved by an overwhelming majority of shareholders, secured and

unsecured creditors of both companies at meeting held under Section 231 of the Companies Act, 2013. While the scheme was pending in the High Court, some of the members requisitioned EGM for the purpose of requesting company 'Anu Limited' to negotiate with company 'Priya Ltd.' as according to the requisitionists the exchange ratio was not fair and reasonable. Can the directors refuse to call EGM? Comment. **(3 marks)**

Answer:

In such a case, the tribunal cannot prevent a company from holding a requisitioned meeting for considering a proposed modification of a scheme which is already pending before the tribunal for its sanction.

The Tribunal has wide powers u/s 231 to give directions or make such modification in the compromise or arrangement as it may consider necessary for proper working of the compromise or arrangement arrived at.

Any modification in the scheme could be considered by the Tribunal at the instance of a shareholder.

Further, a mere discussion by the shareholders at a properly requisitioned meeting about the proposal modification to the scheme pending before the Tribunal for sanction would not by itself affect either the Scheme or the Tribunal power to consider the modification and sanction of scheme with or without modification.

Hence, directors can't refuse to call an EGM requisitioned by the member.

2017 - June [3] (a) A meeting of members of Joka Agricultural Equipments Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 200 members holding 500000 shares. 70 members holding 400000 shares in the aggregate voted for the scheme. 120 members holding 90000 shares in aggregate voted against the scheme. 10 members holding 10000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority? **(6 marks)**

Answer:

Compromise or Arrangement:

According to **Section 230(6) of the Companies Act, 2013,** the scheme of compromise and arrangement must be approved by a resolution passed with

a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 200 members attended the meeting, but only 190 members voted at the meeting. As 70 members voted in favour of the scheme the requirement relating to majority in number (i.e. 95) is not satisfied.

190 members who participated in the meeting held 4,90,000 shares, three-fourth of which works out to 3,67,500 while 70 members who voted for the scheme held 4,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, **in the instant case,** the scheme of compromise and arrangement of Joka Agricultural Equipments Limited is not approved as though the value of shares voting in favour is significantly more, the number of members voting in favour do not exceed the number of members voting against.

2022 - Dec [7] (c) Surya Ltd., wants to reorganise the company's share capital by the consolidation of shares of different classes and passed a resolution to this effect in the Board meeting and thereafter made an application to the Tribunal. The Tribunal ordered that a meeting of the members be called. The company sent notices to all the members.

In the meeting, some of the members made objections to such arrangements. However, the majority of the members were interested in the resolution proposed by the company. Tribunal after scrutinising the minutes of the meeting, sanctioned the proposed arrangement.

Examine in the light of the given facts, that in order to give effect to the arrangement which prescribes the reorganisation of company's share capital by the consolidation of shares of different classes, mention the requirements on the execution of the said arrangement under the Companies Act, 2013.

(6 marks)

Answer:

Section 230(1) of the Companies Act, 2013 provides that where a compromise or arrangement is proposed - (a) between a company and its

creditors or any class of them; or (b) between a company and its members or any class of them, The Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up. of the liquidator, appointed under this Companies Act or under the Insolvency and Bankruptcy Code, 2016.

Order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Here the term, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods. Any compromise or arrangement needs the order of sanction by the Tribunal and the Tribunal may on an application made by the company, order the company to call the meeting of the shareholders, pass such resolution in the meetings and then forward the minutes to the Tribunal for its order.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

2023 - June [4] (a) (i) ABC Ltd. is a public limited unlisted company with ₹ 50 crores equity capital of ₹ 10 each. It has taken over 70% equity of a company called BCG Ltd. which is a listed company with equity capital of ₹ 20 crores divided into share of ₹ 10 each. ABC Ltd. and BCG Ltd. have decided to merge.

The CEO of BCG Ltd. has following queries which you have to answer.

(i) Is the decision to merge is in order and necessary?
(ii) Is the merger to be approved by shareholders of each of the companies?
(iii) What happens if few shareholders do not consent?
(iv) Does require order of NCLT? **(1 × 4 = 4 marks)**

Answer:

(i) Yes. The decision to merge is in order. Companies are free to merge with consent of shareholders and by following the procedures prescribed under law. Although, it will not fall under special category mergers under section 233 of the Companies Act. Yes, a scheme is necessary.

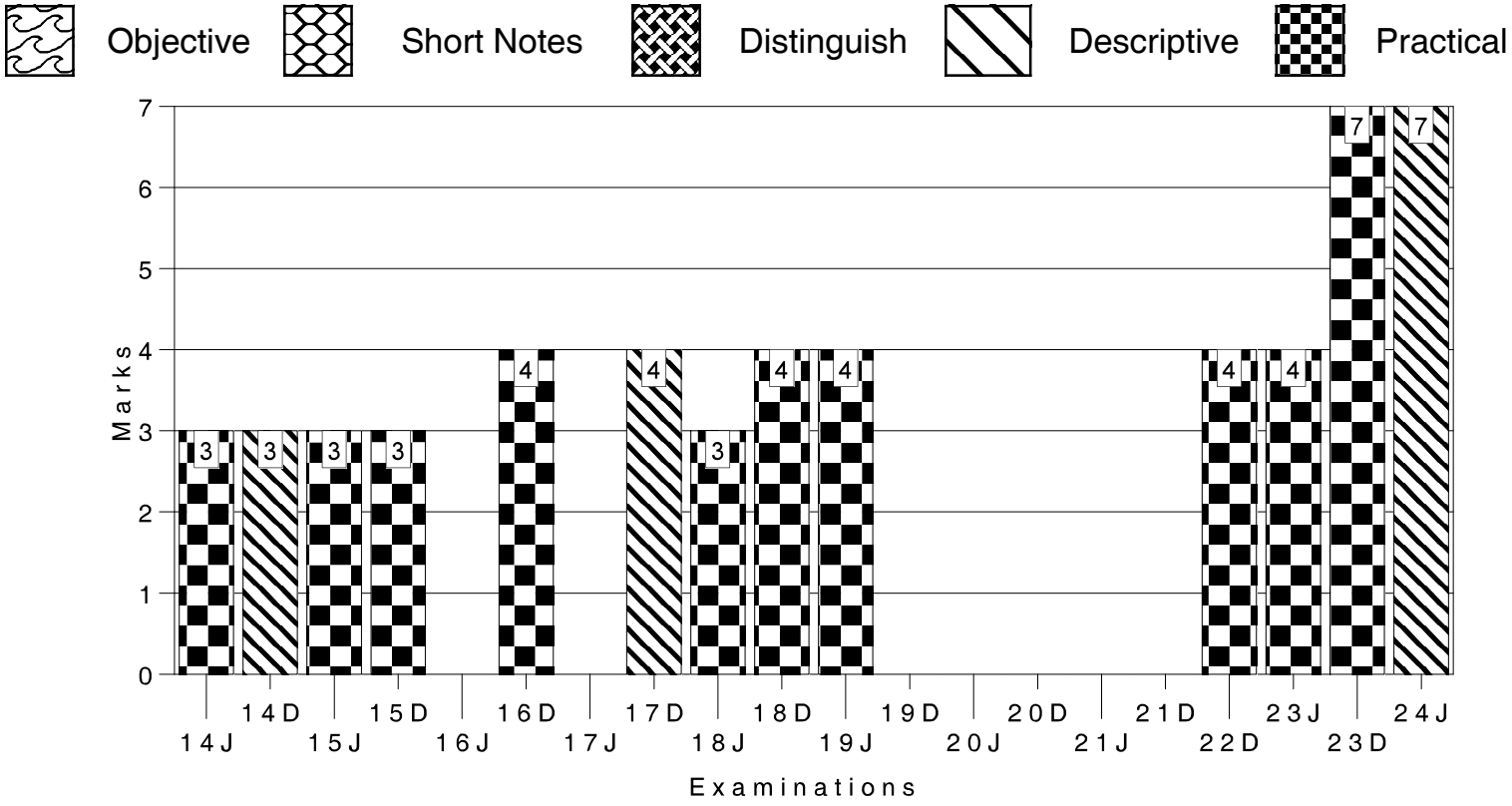
(ii) Yes, the scheme has to be approved by $3/4^{th}$ majority of shareholders in value.

(iii) The dissenting shareholders have to accept the decision of the majority.

(iv) Yes, It requires approval of NCLT. Because the transferee company is listed, SEBI regulations have to be complied with, wherever applicable.

FOR NOTES

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



13.205

1H PREVENTION OF OPPRESSION AND MISMANAGEMENT

THIS CHAPTER INCLUDES

1. Majority Rule but Minority Protection	2. Prevention of Oppression and Mismanagement

CHAPTER AT A GLANCE

1. Powers

Under the Companies Act the powers have been divided between two segments; one is the Board of Directors and the other is of shareholders. The directors exercise their powers through meetings of Board of Directors and shareholders exercise their power through Annual General Meetings/Extra- ordinary General Meetings.

2. Principle of company law

The general principle of company law is that every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company. In case of difference(s) amongst the members, the issue is decided by a vote of the majority.

3. Protection for the minority shareholders

Since the majority of the members are in an advantageous position to run the company according to their command, the minority shareholders are often oppressed. The company law provide for adequate protection for the minority shareholders when their rights are trampled by the majority.

4. Prejudicial to public interest
Any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the NCLT by way of petition for relief.
5. Relief
Relief under the Act will also be available if the affairs of the company are being conducted in a manner prejudicial to public interest. 'Public interest' is a very broad term involving the welfare not only of the individual shareholders but also of the country according to the economic and social policies of the State.
6. Violation of the regulations
If there is persistent violation of the regulations and statutes and an appeal to general body is not likely to put an end to the matters complained of by reason of the fact that those responsible for the violations control the affairs of the company, then it will be just and equitable to wind up the company.
7. Right to apply
The following members of a company shall have the right to apply under Section 241, namely: **(a) In the case of a company having a share capital:** 100 members of the company or 10% of the total number of members, whichever is less. (The applicants must have paid all calls and other sums due on their shares. Thus, holders of partly paid-up shares cannot apply) **(b) In the case of a company not having a share capital:** 20% of the total number of members. However, the Tribunal may, on an application, waive all or any of the above requirements so as to enable the members to apply under Section 241.

8. Exceptions to the Rule in Foss *v.* Harbottle or Protection of Minority Rights and Shareholders Remedies

- Ultra Vires Act
- Fraud on Minority
- Wrongdoers in Control
- Resolution requiring Special Majority but is passed by a simple majority
- Personal Actions
- Breach of Duty
- Prevention of Oppression and Mismanagement

Under the Provision of Companies Act, 2013:

The first remedy in the hands of an oppressed minority is to move the NCLT. Section 241 provides that any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the NCLT by way of petition for relief. Following requirements must be satisfied for seeking a relief under Section 241:

1. That the affairs of the company are being conducted: (a) in a manner prejudicial to public interest; or (b) oppressive to any members.
2. That the fact justified the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.
3. That to wind up the company would unfairly prejudice the petitioners *[Ramji Lal Baiswala v. Britain Cable Ltd., (1964) 14 Raj. 135].*

On being satisfied about the above requirements, the NCLT may make the necessary orders for ending the matters complained of. The first requirement relates to public interest or oppression. First we analyse and discover the precise connotation of the word “oppression” with the help of judicial decisions.

DESCRIPTIVE QUESTIONS

2013 - Dec [3] (a) Explain with reference to decided cases, what constitutes and what do not constitute oppression of members. **(5 marks)**

Answer :

In *Shanti Prasad Jain V. Kalinga Tubes Ltd.* The Supreme Court defined "oppression" as conduct which is burdensome, harsh and wrongful, it involves an element of lack of probity (means correctness, morality, justice) or fair dealing with regard to a member with respect to his rights as a member.

Illustrations of "oppression":

(a) not holding AGMs.
(b) deliberately not giving notices of general body meetings to some members.
(c) not giving financial statement to members.
(d) carrying on the company's business after base of the company has disappeared.
(e) using powers which one does not possess and using them against members who have beneficial interests.
(f) not paying declared dividends.
(g) refusing illegally, transfer or transmission of shares.
(h) directors taking more than permissible remuneration.

Illustrations of "no oppression":

(a) change of management is not necessarily oppression - Shanti prasad Jain's case.
(b) trying to get majority or trying to retain majority provided unfair means are not used
(c) not allowing members to inspect books of account.
(d) all directors being members of the same family.
(e) not declaring dividends according to profits.
(f) explanatory statement not annexed to notice calling meetings.

2014 - Dec [1] {C} (b) In case of application for oppression and mismanagement, how far the following situations hold good under the provisions of Companies Act, 2013.

1. Application by minority shareholders holding majority beneficial interest.
2. Application by a group of shareholders against non-declaration of dividend. **(2 + 1 = 3 marks)**

Answer:

1. Persons who hold majority of beneficial interest but minority of voting power can complain of oppression which term includes not merely obtaining unfair pecuniary advantage but also an overwhelming desire for power. The remedy is analogous (similar) to winding up but before seeking winding up, a member must exhaust his remedy.

2. Non declaration of dividend when it does not lead to devaluation of shares is not an act of mismanagement.

2017 - Dec [4] (a) (i) ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Under this Section members shall have right to apply under Section 241 of the Act. Accordingly:

(a) The following members of a company shall have the right to apply under Section 241, namely:
   (1) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
   (2) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241.

Explanation: For the purposes of this Sub-Section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(b) Where any members of a company are entitled to make an application under Sub-Section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

Hence, the petitioner can seek relief by giving an application to Tribunal on this behalf and it may waive any such requirement and case be redressed.

2024 - June [2] (a) Explain the term "Class Action" under section 245 of the Companies Act, 2013. What are the remedies which can be sought for in a petition for Class Action? **(7 marks)**

PRACTICAL QUESTIONS

2014 - June [4] (d) Examine with reference to the provisions of the Companies Act, 2013 whether the following act, of the company is valid:
The Board of Directors of a company has made a bonafide decision not to declare any dividend for the year ended 31st March, 2013. A group of shareholders complain to the Tribunal against the above decision of the Board of directors on the ground of mismanagement and wants the company to declare dividend. **(3 marks)**

Answer:

The term 'mismanagement' has not been defined under the Act. normally, mismanagement means gross mismanagement of affairs of company. It may include:

(a) drawing of funds for personal expenses,
(b) gross negligence in managing the affairs,
(c) inaction can also be mismanagement.

Hence, Directors' *bona fide* decision not to declare dividend and to accumulate available profits into reserves is not mismanagement.

*Thus **in the present case** the group of shareholders who complain to Tribunal against the decision of the Board not to declare any dividend and to accumulate available profits into Reserves, would not succeed, as the act of directors does not amount to mismanagement.*

Furthermore, the shareholder cannot compel the Board to recommend the dividend. The Board's recommendations are placed in the general meeting. The general meeting can reduce the dividend but cannot increase the dividend as recommended by the Board. Therefore, the shareholder cannot compel the company to declare dividend and cannot charge the directors for the mismanagement Sections 241 and 242 of the Companies Act, 2013.

2015 - June [2] (b) (i) XYZ Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement under the Companies Act. **(3 marks)**

Answer:

Section 244 of the Companies Act, 2013), in the case of a company having share capital, the following members have the right to apply to the Tribunal under Section 241 or 242.

1. Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
2. any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per (I) above, 10% of 8 i.e. 1 satisfies the condition.

Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

2015 - Dec [2] (c) (iv) Speciality Chemicals Private Limited is controlled by two groups of members. The group holding majority of shares made an application to Tribunal alleging oppression by the minority group. Give your answer according to the provisions of the Companies Act, 2013.

(3 marks)

Answer:

Right to apply (Section 244):

(1) The following members of a company shall have the right to apply under Section 241, namely:
   (a) In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
   (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members. Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241.

(2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

2016 - Dec [4] (a) (ii) A group of shareholders of DEPLOMAT TECHNO LTD., filed an application before the Tribunal alleging various acts of frauds and mismanagement by MR. SUNNY the Managing Director and his associates. During the course of hearing before the Tribunal the authorized representatives of the said company contended that the alleged transactions had taken place several years ago and the company has already removed the Managing Director, who was responsible for such transactions and hence there is no case before the Tribunal to interfere in the working of the company. Against the submissions on behalf of the company, the applicants submitted that although the fraudulent transactions were done in the past and the Managing Director has been removed, but the company is still controlled by the person, who are in league with the erstwhile Managing Director and are working as his Henchman. State, the merits of the applicants' arguments and power of the Tribunal according to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Section 241 of the Companies Act, 2013 deals with the relief from oppression and mismanagement if the affairs of the company are being conducted in a manner oppressive to any member of the company or in a manner harmful or prejudicial to the company. The word is 'being conducted' and that should mean that the oppression and mismanagement should be continuous at the time when the relief is sought. The application is made to Tribunal which can take measure to give relief from oppression and mismanagement to the application. From the language it is clear that the Tribunal has no power if the oppression and mismanagement has been done in the past. According to the Act, the Tribunal can take following steps **in the present case:**

1. It can cancel any transfer of property within 3 months from the date of application.
2. It can use powers u/s 246 (Application of certain provisions to proceedings under Section 241 or Section 245) of Companies Act, 2013 to direct the refund of any funds that has been earned or retained by the directors, officers or managers of the company.
3. Ask the applicant to be more specific and cite examples in support of his or her application.

2018 - June [5] (c) (i) A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds, one-tenth of the total paid -up share capital accounting for one - fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividend even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (I) getting the petition admitted and (II) obtaining relief from the Tribunal. **(3 marks)**

Answer:

Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

1. In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
2. In the case of company not having share capital, not less than one-fifth of the total number of its members.

   Since the group of shareholders do not number 100 or hold $1/10^{th}$ of the issued share capital or constitute $1/10^{th}$ of the total number of members, they have no right to approach the Tribunal for relief.

   However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under Section 241.

   As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. *vs*. M.K. Chandrakanth).

   Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. *vs.* Kuttanad Robber Co. Ltd.)

   Thus, the shareholders may not succeed in getting any relief from Tribunal.

2018 - Dec [5] (a) A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability.

Examine their contention having regard to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

1. The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintainability is not correct.
2. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry Electric Corporation vs. V. Nageswar Rao, A.I.R. (1956) S.C. 213* that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition.
3. Hence, the validity of the petition must be judged on the facts as they were at the time of presentation.
4. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

2019 - June [4] (c) (i) PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. Bala, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Bala is valid and maintainable. **(4 marks)**

Answer:

According to Section 244 of the Companies Act, 2013, in the case of a Company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

(a) Not less than 100 members of the Company or not less than one-tenth of the total number of members, whichever is less; or

(b) Any member or members holding not less than one-tenth of the issued share capital of the Company provided the applicant(s) have paid all the calls and other sums due on the shares.

Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are six shareholders. As per the condition (a) above, 10% of 6 i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the Company's share capital.

Thus, the petition made by Mr. Bala is valid and maintainable.

2022 - Dec [3] (c) A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of KV Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is the due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Tribunal. **(4 marks)**

Answer:

Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mismanagement. This right is available only when the petitioners hold:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicants have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number to 100 or hold $1/10^{th}$ of the issued share capital or constitute $1/10^{th}$ of the total number of members, they have no right to approach the Tribunal for relief.

However, pursuant to Section 244 of the Act, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd). Thus, the shareholders may not succeed in getting any relief from Tribunal.

2023 - June [3] (a) A group of members of ABC Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

The argument of the majority shareholders that the petition may be dismissed on the ground of non maintainability is not correct.

The proceedings shall continue irrespective of withdrawl of consent by some petitioners. It has been held by the Supreme Court in Rajmundhry Electric Corporation vs. V. Nageswar Rao, that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition.

So, the validity of the petition must be judged on the facts as they were at the time of presentation.

Neither the right of the applicants to proceed with the petition nor the jurisdiction of tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

2023 - Dec [5] (b) In a scheme of reconstruction by a multinational company listed in India, the company wanted the minority shareholders to get out of the company by selling their shares back to the promoters at a price determined by the promoters. The minority shareholders were not given a choice whether they wanted to tender their shares or not. In the meeting, there were six non-promoter shareholders who voted against the scheme, but Chairman declared that the motion was carried with an overwhelming majority of more than 90% shareholding. However, minority shareholders contended that they had a right to reject the offer. Will they succeed?

(7 marks)

Answer:

In the scheme of reconstruction by a Multinational Company (MNC) listed in India, the company wanted to acquire the minority shareholders by selling their shares to the promoters at a price determined by the promoters.

1. As per Section 236(1) of the Companies Act, 2013 in the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent.

   Majority or holding ninety per cent of the Issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

2. As per to Section 236(2) of the Act, the acquirer, person or group of persons, shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a determined price on the basis of valuation by a Registered Valuer.

   The minority shareholders of the Company may offer to the majority shareholders to purchase the minority equity shareholding of the Company at the determined price as above.

   In the above case, the minority shareholders were not given a choice whether they wanted to tender their shares or not. Also, 6 minority shareholders were dissenting from the scheme. Chairman declared that

such a scheme was passed by a majority of more than 90% shareholding. Further the price of the shares was determined by the Promoters and not by a Registered Valuer.

Therefore, in the given case, the said procedure of acquisition of shares of minority shareholders is not in compliance with the procedure given in Section 236 of the Act.

Further, as per the Section 236(9) of the Act, when a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders.

Hence, as per the above provisions of the Act, minority shareholders will succeed in rejecting the said offer of purchasing minority shareholding in the Company.