TopLad

CMA INTER GROUP-1

VOLUME-3

COMPANY LAW

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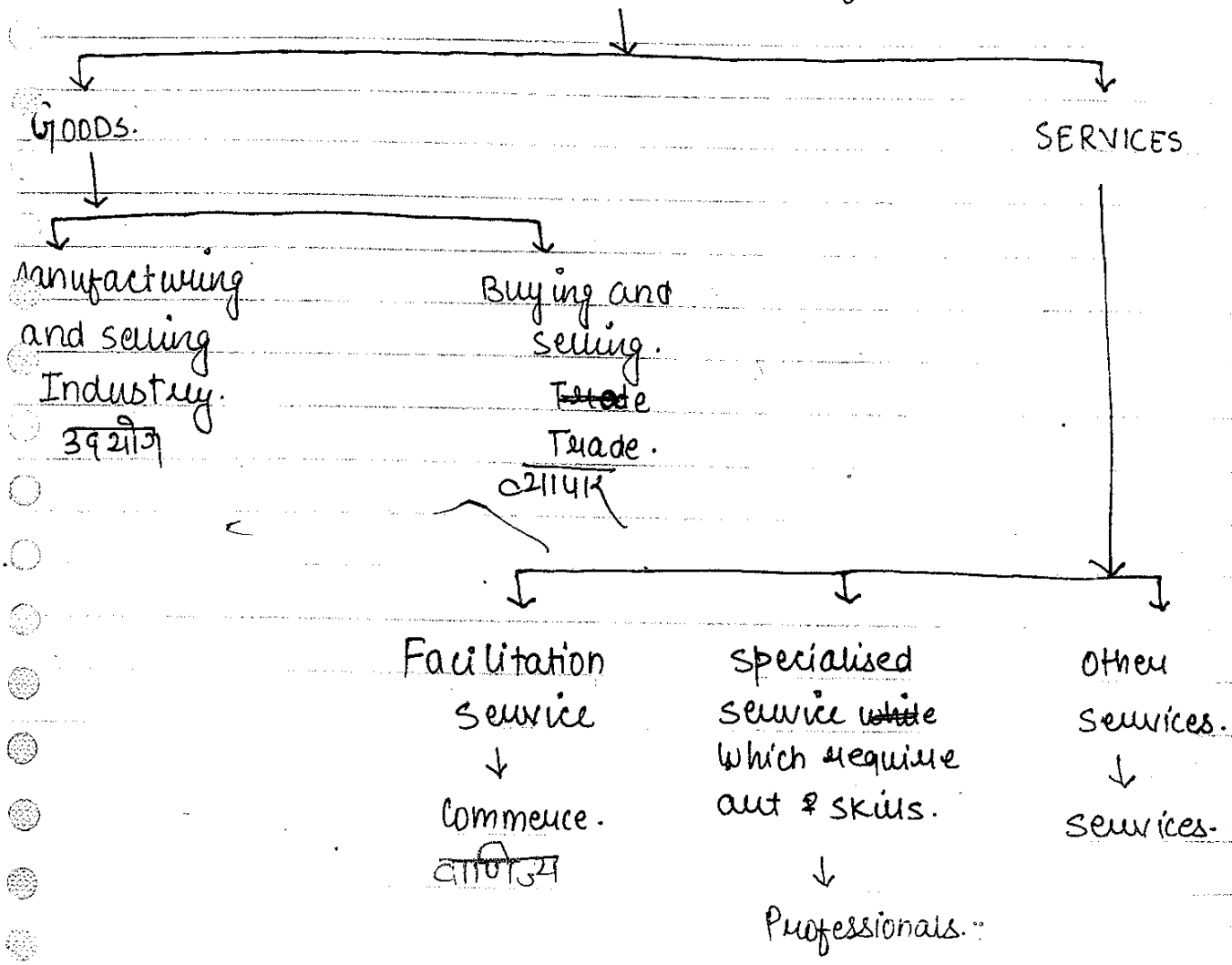
UNIT 1

BASIC OF COMPANY LAW

Basics of Company Law:

1) Nature of business can be as follows:



2) All such business can be registered either as proprietorship or partnership or company or co-operative society or LLP or HUF.

3) It doesnot matter what is the nature, size and scale of operation, every business is possible in every structure which means the small Kirana

Shop/store can be registered as company and a large factory can be registered as proprietorship.

④. It is the choice of businessman whether he can handel the company or he is happy with proprietore -ship.

⑤. Company in India is governed by Ministry of Corporate affairs. (ie by Govt) (MCA)

⑥. So ~~Computer~~ Comparatively there more compliances and this is the reason why people open partnership and proprietorship as compare to company.

⑦. Company can be Public or Private and company can be Govt or non-Govt. but every company will have to follow Companies act 2013 which is comparatively diffficult then operating a partnership and proprietorship

⑧. Companies whoes name ends with 'Limited' are called public companies but It doesnot mean that Public has purchased shares in this company. Public company is called Public company because if the company wants It can Issue shares to Public.

⑨. It means public company may or may not sell shares to public.

⑩. If public company sells its share to public, it will be called "Public listed company or listed company"

(11.) Public company who do not issue shares to ~~company~~ public are called "unlisted companies."

(12.) Private company can never issue shares to public so it will always remain unlisted company.

(13.) It means unlisted company also has shares but such shares are not available for us.

(14.) In case of listed company any one can simply purchase shares of the company.

(15.)

Meaning OF Company :

(1). As per **sec. 2(20)** of company act 2013. Company means a company registered under this act or any previous company law.

(2). It means company registered under companies act 2013 and any previous company law will follow the same company law.

(3). In simple words it is an association of person who are ~~is~~ registered as per there choice with registrars of company. (ROC)

(4). It means registration formalities are performed at the office of registrar of companies.

(5). Generally every state has his own ROC, but there are few states in which various states have a common ROC and a single state has a more than one ROC.

For ex: Uttarpradesh & Uttrakhand have same Roc at Kanpur and Maharastra has two Roc at mumbai & Pune.

(6) Authority above ROC is ~~Regional director~~ Regional Director. There are 7 Regional directors covering different state.

(7) Authority above Regional director. ~~Secretary~~ Secretary. MCA who directly report to minister of corporate affairs. (MCA)

Applicability of Company act, 2013. SECTION-1

(1) It applies to whole of India including J&K.

(2) It applies on following organisations.

(a) Companies registered under old company law.

(b) Company registered under new company law.

(c) Banking Companies only if Banking regulation act 1949 is silent.

(d) Insurance companies only if Insurance act 1938 is silent.

(e) Electricity companies only if electricity act 2003 is silent.

(2) Features of Company:

(1) **Separate legal entity:** Company and members of company are two different entities. Income-expenses, asset-liability, Profit-loss, belong to company and not the shareholders. As per sec. 123 dividend distribution is not complusory, so 100% dividend or zero percent dividend is at the will of direct-ors if no dividend is distributed, the entire profit belongs to company and shareholders cannot claim this.

(2) **Limited liability:** Liability of a company is always unlimited because it will have to sale its asset to pay off the liabilities. However liab. of shareholders is only limited to the amount of shares purchased by them. If they have paid complete amount, there liab. has ended.

(3) **Perpetual succession:** Shares of a company are personal property of shareholder, when a share holder dies or leaves the company, another shareholder automatically steps in. So existence of company is not affected by arrival and departure of any shareholder. This is why company has perpetual succession.

④ Separate property: As per sec. 187, all acquisition of assets and Investments must take place in the name of company only. If there is any practical difficulty in doing this, it should not be done then.

⑤ Common seal: Common seal means a stamp neccessary for the documents to make them valid. However after the companies amendment act, 2015 use of common seal is now optional. Any document can be made valid if it is signed by two directors any one company secretary.

⑥ Transferability of Shares: Shares can be easily transfered but only in case of public company. It means transfer of shares is restricted in a private company.

⑦ Capacity to sue and be sued: When legal proceedings takes place, they take place in the name of company and not in the personal capacity of directors or shareholder.

V.V.V. imp.

** Lifting of Corporate veil :

Generally directors are not personally liable for any loss or liability. It is because when he brings profit, it is forfeited by company. similarly if there are loss it should also belong to company. This is subject to condition that directors must be working honestly. This called non lifting of corporate veil which means no liab. of directors.

However, sometimes directors behave dishonestly and they work for personal profit only. If they are not acting as per law or they are dishonest by nature, they should be personally liable for any loss or liabilities. this is called lifting of corporate veil which means liab. belongs to directors.

In the following circumstance corporate veil is generally lifted :

(a) When their is Tax evasion.

(b) When we want to find out whether company is friend or enemy to the country.

(c) When fraud is Committed.

(d) Where a company exist only on papers

(e) When company is working against the public policy.

(f) When company is working against shareholder.

(g) When company is avoiding labour welfare.

(h) When criminal activities are performed.

Types of Company:

On the basis of liability

(1) **Company limited by shares**: sec. 2(22) It is the most famous company and it is found all over India. Liability of its members is limited to the amount of shares purchased by them.

(2) **Company limited by Guarantee**: sec. 2(21) Liability of member of this company shall also be limited but they donot purchase any shares. They give a written Guarantee on the basis of which they get voting power. Money is demanded whenever it is needed to avoid winding up. They are charitable in nature.

(3) **Unlimited company**: sec. 2(92) Liability of members of this company is absolutly unlimited and money can be demanded without any limit. It is just like a partnership.

On the basis of Members

(4) Private Company: It is a company in which following Section 2(68) -ing 3 restriction shall always apply:

(a) No. of Members cannot go beyond 200

(b) Transfer of Shares of this company is restrict -ed.

(c) It cannot Invite public for Sale of Shares or Securities.

It means that:

(1) Minimum no. of members in private company is just ₹ 2 and maximum number is 200.

(2) Out of this 200 employee and ex-employees are not counted.

(3) It means If an employee gets Share, he will not be counted as a member but he will enjoy all rights of a member.

(4) He will enjoy all rights but he will not get voting power.

(5) Even if this employee leaves employment even

then he will not be counted as member.

(6) If a person purchased shares when he was not employee but later on became employee, he will be counted as member.

(7) If a member has become employee he will always remain member and if an employee became member, he will also remain employee.

Eg.	Today	Next day	Next day	Next day	Next day	Count
Case 1	Emp	SH				No
2	SH	Emp				Yes
3	Emp.	SH	Left emp			No
4	SH	Emp	Left emp			Yes
5	Emp.	SH	Left emp.	Left SH	SH	Yes.

(8) Transfer of shares in public company is restricted means it is possible but subject to approval of BOD.

(9) If the share holder has submitted transfer application it is only a request which can be rejected by company.

(10) Private company cannot invite public for sale of shares or securities which means private company cannot bring general offer.

(11) It does not mean that private company cannot sells shares it only mean that shares will be sold to those peoples who have been invited.

(12) In other words private company can make specific offer to maximum 200 ~~members~~ person to buy shares.

(13) If company already has some shareholders, such no. shall be reduced from 200.

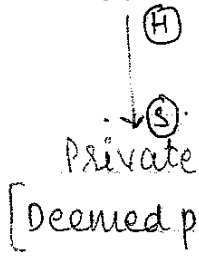
(5.) Public company: Sec. 2(71)

(1)
↳ It is a company which is not a private company.

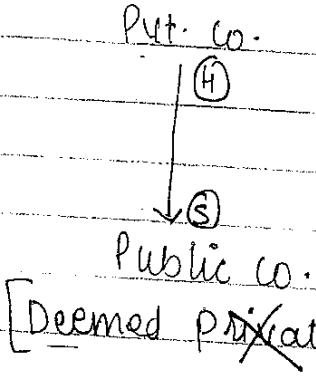
(2) It means a company which doesnot suffers from limi-tations of private company shall be public company.

(3) Minimum no. of members in public company is 7 and there is no limit on the maximum members.

(4) Subsidiary of public company will also be public company, even when it is actually a private company.



(5) Vice-Versa is not true.



On the basis of Control:

(6) Holding Company: Sec. 2(46) — Any company which has acquired majority shares or voting power of some other company becomes holding company.

(7) Subsidiary company: Sec. 2(87) — Any company whoes majority shares or voting power has been acquired by some other company shall be subsidiary company.

On the basis of Listing:

(8) Listed company: Sec. 2(52) — Any company which has been listed on any of the stock exchange

(9) Unlisted company: Any company Other than listed company shall be listed company.

On the basis of Govt participation:

(10) **Government company:** Sec. 2(45) Any company in which minimum 51% shares or voting power is held by central govt or State govt or both shall be a govt. company. Moreover subsidiary of Govt company shall also be Govt company.

Other types

(11) **Associate company:** Sec. 2(6) Any company whoes 20% to 50% shares are acquired by some other company shall be associate company. Moreover joint venture company shall also be associate company.

(12) **Banking company:** Sec. 2(9) Any co. registered as a bank under Banking regulation act 1949.

(13) **Foreign company:** Sec. 2(42) Any company which is registered outside India but having a place of business and business activity in India shall be a foreign company.

(14) **One person company:** Sec. 2(62) It is a company in which 100% shares are held by one Individual and it cannot be a public company.

(15) **Small Company:** Any company which is private in nature having paid up share capital not more than ₹ 50 lakh and having turnover not more than 2 crore shall be small company. However the following companies can never be small:-

(a) Holding company of any company.

(b) Subsidiary company of any company.

(c) Charitable company

(d) any company for which separate act of parliament was enacted.

(16) **Daumant Company:** It is a company register for a future project or to hold any asset and it doesnot have any significant accounting transaction.

(17) **Section 8 company:** It is a charitable company which doesnot distribute any dividend to its member. The entire profit is spent for the promotion of charitable objects.

(18) **Inactive company:** It is a company which has not filed financial statements and financial returns for 2 years and which does not carry on any business for two years.

(19.) **Producer Company**: It is a company still regulated under old company law and is Incorporated by primary producers. for their common welfare. Primary producers are agriculturist and any primary product manufacturers which Includes milk, Honey, Poultry farm, Animal husbandry. They donot follow entire company law and a single section 581 applies on ~~that~~ them.

Sec. 581 of Co. act 1956

(20.) **Investment Company**: It is a company whoes principal business is to acquire shares and debentures and to sell them to earn profits. They donot carry on any other manufacturing or trading activity.

(21) **Statutory Company**: It is a company established by a separate act of Parliament. and need not to follow companies act, 2013.

UNIT 2

ONE PERSON COMPANY

UNIT-2 ONE PERSON COMPANY.

1. As per **sec. 2(62)** one person company is a private company with just one single member.

2. Any Individual can open OPC and can keep all the shares with him.

3. One person company will also have a **nominee** who will become member upon the death or exit of original member.

4. Member and nominee both must be **Indian citizen** and **Indian resident.**

5. Both member and nominee must be **natural person.**

6. Resident means any Individual residing in India for **minimum 182 days.**

7. One person can open just **One** OPC.

8. One person can nominee in only One OPC.

* Imp. Point

It means the same Individual can be member of one OPC and nominee of another OPC at the same time.

Mr (X)

	Member	nominee
OPC 1	(X)	Z
OPC 2	(X) ← member — (X)	

10. Suppose Mr. X is member of OPC_1 and nominee of OPC 2, this is allowed but if member of OPC_2 expire Mr. X will automatically become member of OPC_2 as well However this is technically wrong. So, in such a situation, Mr. X has to decide any one OPC in which he wish to remain as member and he will resign from the membership of another OPC. So, he has following two option

Option. 1 If Mr. X resign from OPC_2 he will have to first nominate someone in OPC_2 so that he become member after his exit.

Option. 2 If Mr. X resign from OPC_1, nominee of OPC_1 i.e, Z in our example will become member.

(11) This selection has to be done within 180 days. Otherwise last in first out will apply which means he will have to leave OPC_2 and the same will be acquired by C.Govt.

(12) One person company cannot be charitable in nature.

(13.) One person company cannot carry on financial activities.

(14) OPC has to be a small company which means its paid up share capital cannot be more than ₹ 50,00,000 and its turnover cannot be more than ₹ 2 Crore.

(15.) If the paid up share capital goes beyond ₹ 50,00,000, OPC should be converted into any other category.

(16) If the turnover of OPC goes beyond ₹ 2 crore for consecutive three years. Conversion must be done into any other category.

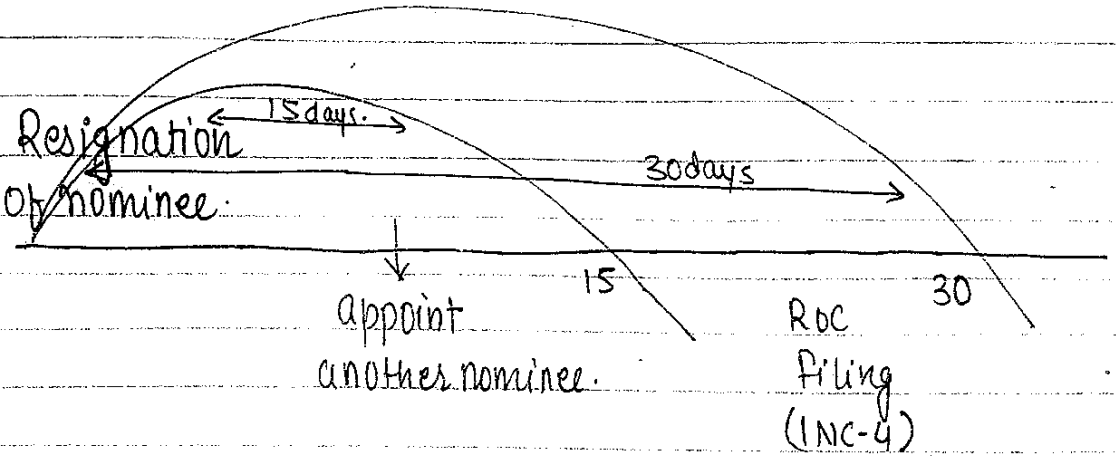
(17.) Such conversion whether because of capital or because of turnover can be done within six months after crossing the limit.

(18.) If OPC wants to convert into any other category voluntarily without crossing capital ~~or~~ or turnover it is not allowed in first two years of incorporation.

(19.) Appointment of nominee is done in FORM NO. INC-2

(20.) Such nominee ~~shall~~ must also give his written consent that he is ready to become nominee in FORM NO. INC-3

(21.) Nominee can resign any time after which member will appoint another nominee ~~or~~ in 15 days and will inform RoC within 30days in Form no. INC-4



(22) Member can also remove nominee but there is no formality required for removal because if member files INC-4 at any point of time it definately means he is appointing some one else so it is obvious that previous nomiee has been terminated.

(23) It means in case of Resignation, INC-4 comes later but in case of removal it comes first.

Resignation ⟶ INC-4

INC-4 ⟶ Removal.

(24) Generally share certificate is required only when there is various Shareholder. OPC can also issue share certificate.

(25) Share Certificate of OPC shall be signed by <u>one director</u> and one company ~~secretary~~. Secretary.

(26) OPC will file annual return in the same manner as any other company and it will be signed by company secretary (OR) Director.

(27) There is no requirement of any meeting of shareholder because sole member cannot meet himself. However, decisions taken by sole member shall be entered in the registered called 'Minutes Book.'

(28) All decisions will be communicated to ROC as well.

(29) Following sections donot apply to OPC.

Sec. 98 → Power of NCLT to call meeting.
100 → Extra ordinary General meeting.
101 → Notice of meeting
102 → Statement to be annexed to notice.
103 → QUORM.
104 → Chairman of meeting.
105 → Proxy.
106 → Restriction on voting Right
107 → Voting by Show of Hands.
108 → E-voting
109 → Demand for Poll.
110 → Postall Ballot.
111 → Circulation of member's Resolution.

UNIT 3

INCORPORATION COMPANY

UNIT-3 INCORPORATION OF COMPANY.

1. Company cannot be created, It can be Incorpo-rated.

2. It means we cannot open ourself.

3. We can get it created from Registrar of Company (ROC).

4. Company Incorporation can be applied by us, Its approval depend on MCA.

5. Incorporation is a simple process of application & approval where we submit certain documents, wait for the verification and receive the certificate of Incorporation.

6. All the documents are uploaded online and signed with digital signature.

7. Upon the successful verification, certificate of Incorporation is generated automatically in FORM NO INC-11.

8. Such company need not to apply for Income tax PAN separately. because since 2013 PAN is already printed on INC-11.

9. Upon Incorporation, Company becomes a separate legal entity.

SEC. 3 FORMATION OF COMPANY.

1. Company can be limited or unlimited.
2. If the Company is limited, it can be limited by shares or limited by guarantee.
3. OPC requires one member.
4. Private company requires two member.
5. Public company requires 7 member.

Selection of Name of Company.

1. It is complusory to find out availability of name for the company before incorporation.
2. MCA server will accept more than 1 (one) names in the application form but name given first will be verified first.
3. MCA server will verify whether the name is unique or not.

4. Name should also match the requirements of rule 8.

5. Name application is made in FORM NO. INC-1.

Once the name is approved, such name remain reserved for 60 days within which all the remaining ~~document~~ documents must be submitted, otherwise name will lapsed.

**** MOST IMP.

Documents Required for Incorporation.

1. Memorandam of association. (MOA)
2. Article of association. (AOA)
3. Declaration by Professionals, directors, or a secretary. (Professionals means CA, CMA, CS and ~~adva~~ advocate)
4. Address for correspondence.
5. (know your customer) ↑ KYC documents of promoter, First directors and subscribers.
6. Consent of directors to work as directors.
7. Declaration by every director and subscriber that:—

(a) They were never convicted in relation to Company Incorporation.

(b) They were never found guilty of any fraud in last 5 years under company law.

(C) All the documents and Information submitted by them is absolutely correct.

Memorandam Of association

1. It is also called Charter document.
2. CHARTER means order of the King or Queen.
3. It defines the powers of company what it can do and what it cannot do.
4. Memorandam has 5 specific paragraphs whoes format cannot be altered.
5. For OPC memorandam contains six clauses and for all other company it contain Five clauses
6. Content of these clauses can be changed but arrangement of clauses cannot be changed.

7. Following are the different format of memorandum given in schedule-1

TABLE: A → For company limited by shares.

TABLE B → For company limited by guarantee without share capital.

TABLE C → For company limited by guarantee with share capital.

TABLE D → For unlimited company without share capital.

TABLE E → For unlimited company with share capital.

Following are the clauses in memorandum:

1. Name clause: Name clause which contains complete name of company with limited or private limited company.

2. Situation clause: which contains the name of the state in ~~#~~ which Registered office shall be situated. it is not neccessary that complete address is given because company is allowed to acquire the registered office after Incorporation.

3. Object Clause: which contain purpose for which company is incorporated. It can contain more than 1 business activities which need not be carried on. It is sufficient if anyone of them is conducted.

4. Liability Clause: which contain the facts whether liability of members of company is limited or unlimited.

5. capital Clause: which contains maximum amount of share capital which can be issued by company, which is also called authorised capital. people who become first shareholder are called subscriber's to memorandam. Shares purchased by them are written against their name.

6. Nominee Clause (only for OPC): Which contains details of nominee of the sole member who will become member after the death of original member.

Article of association:

1. Article of association contain rules & regulation for company management.

2. They are Internal rules and can be drafted in any manner.

3. Company law has given various format for article as well but they are not compulsory.

4. Company can design articles as per the Individual requirement and there is no particular list of clauses to be included in them.

5. Following are format of article of ~~assossi~~ association given in schedule-1.

TABLE F: For company limited by shares.

TABLE G: For company limited by Guarantee with shares.

TABLE H: For company limited by Guarantee without share

TABLE I: For Unlimited company with shares

TABLE H: For unlimited company without shares.

6. Generally following are the content of articles:

(a) Interpretation
(b) Voting rights.
(c) Issue and forfeiture of shares.
(d) Calls on shares.
(e) Transfer of shares.
(f) Transmission of shares.
(g) Alteration of shares capital.
(h) Capitalisation of profit
(i) Buy Back of shares
(J) General meeting
(K) Proxy.
(L) Board of directors.
(M) Board meeting
(N) CEO
(O) CFO
(P) Managing director.
(Q) Dividend.
(R) Accounts & audit
(S) Winding up.
(T) Amalgamation

Signature on Memorandum and article:

(1) Each subscriber will put his signature in MOA & AOA.

(2) There shall be one witness for each subscribers and ~~witness~~ witness will also sign.

(3) If the subscribers is illiterate, he shall put his thumb impression or some mark which will work as signature.

(4) Witness can never be illiterate.

(5) Witness will read and explain contents of memorandum and articles to illiterate subscribers so, that free consent can be obtain.

(6) If the subscriber is body corporate (means Co. or LLP) it representative will sign.

Registration of company:

(1) If all documents are verified in found correct, RoC must issue certificate of incorporation.

INC:

(2) COI is in Form No. 11.

(3) Once the certificate is issued there is no need to apply separately for Income Tax par PAN.

It is because COI carries as well.

4. COI is conclusive evidence that company has been Incorporated and no one can challenged the existence of company.

5. Even if there are thousand errors in the process of Incorporation, Incorporation itself can never be illegal The maximum remedy is the defect should be corrected.

Overridding Power of the act:

① All the provision of Co, act. 2013 are Overridding in nature.

② It means whenever there is any clashing between company law and article of ~~any~~ Company, law will apply

③ However if language of articles is making the law more difficult, it is allowed.

Entrenchment of articles
(मसकिल बनाना)

1. Entrenchment means making the law more difficult
2. Articles cannot go beyond law but atleast can be more strict.
3. Ideally this Entrenchment should be done at the time of Incorporation itself so that there shall no resistance.
4. However it can be done at any point of time subject to permission of shareholders.
5. In case of Public company, 75% shareholder should agree and in case of private company 100% share-holder should agree.

Copy of Document to members:

1. Whenever any member demands copy of memorandum or article or any other document, company must provide it within 7 days
2. Company can take reasonable fee for providing such documents but it should not exceed ₹10 per page.

M.Imp
***

Rectification of name of Company:

(1) Name of company may be wrong if it doesnot comply with Rules or it is similar to other company and creating ~~deceptive~~ deceptive expression to public against this name

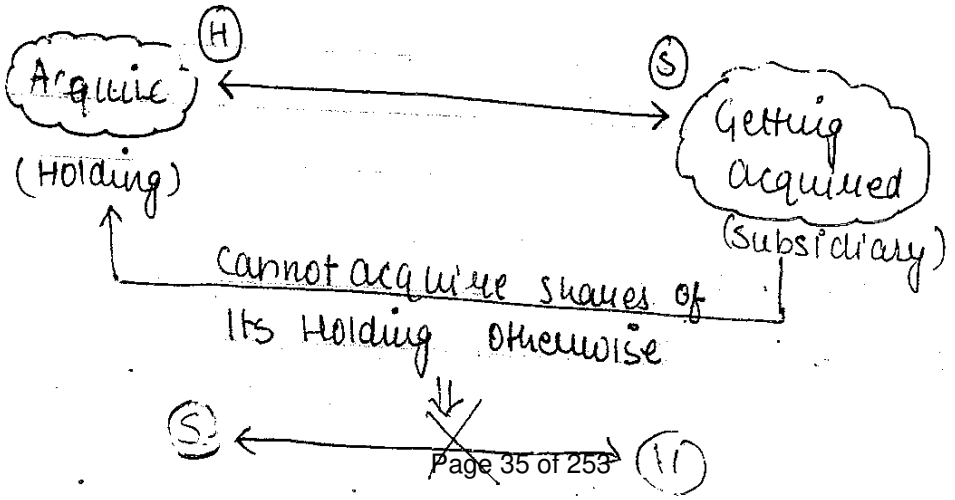
Anyone can file complain to MCA, but only within 3 years from the date of Incorporation.

~~Govt~~ However central govt. can raise objection without any limitation period.

Name Changed should be done (within)

- within 3 month of CG order. (Without complaint)
- within 6 month of CG order. (With complaint)

Subsidiary company not to Hold shares in Holding Co.



1. Subsidiary Company cannot acquire shares of Holding Company.

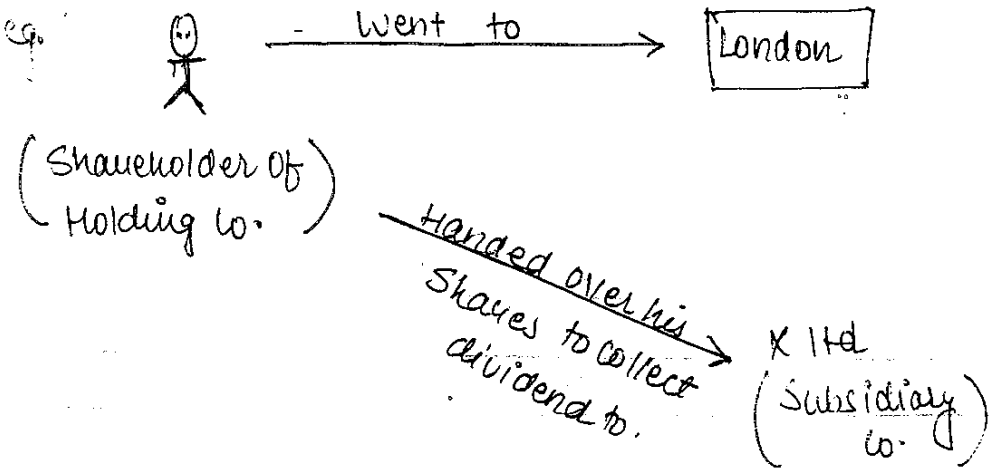
2. This is not allowed because if it takes place, it will result in Reverse merger

3. Reverse merger is not allowed u/s 232 of Co-act 2013 as well as in AS-21 of Consolidation

4. However in following three situation, Subsidiary Company can acquire Shares of Holding Company:

   (a) If subsidiary company acquired such shares even before becoming subsidiary.

   (b) If subsidiary company holds shares of holding company as a trust on behalf of someone else this is allowed.



[Mr. A is the shareholder of a company. This company was holding company of X ltd. Mr. A before going aboard wanted that his dividend should

be given to X Ltd. but company denied saying that only shareholder can take dividend. So, Mr. A temporarily transfered shares to X Ltd so that it can collect dividend but as and when Mr. A comes back he will get back the shares.]

(C) When Subsidiary company has become legal successor of shareholder of Holding company because of will.

Mr. X —made a→ WILL

Shareholder of Holding co. is died.

(legal successor will be A Ltd. which is Subsidiary co.)

(This is an automatic transmission and cannot be stopped)

4 S. Even in these three cases Subsidiary company cannot keep shares of Holding co. on permanent basis. Subsidiary co. will have to dispose off such Investment (shares) on or before next annual closing.

SERVICE OF DOCUMENT

1. Company can send any document to any one by physical / Hand delivery, Courier, Registered post, speed post, Email and even Ordinary post.

2. Anyone can send any document to company by all the -se mode but Ordinary post is not allowed. If Ordinary post is used, company is not liable for any non receipt.

Authentication of documents:

1. Authentication means making a document certified and verified and declearing it to be correct.

2. Document will be considered valid only if it is signed by key managerial person ~~and~~ or if company does not have KMP, any person authorised by BOD.

[KMP= MD, manager, whole time Director, CEO, CFO, CS]

Execution of Bills of exchange.

1. Bill of exchange means promissory notes, BOE and all other negotiable Instrument.

2. Bill of exchange can be signed on behalf of company by any one but there authorization from BOD.

3. If no such person is authorised, 2 directors and 1 Company Secretary will sign it.

4. If Company doesnot have CS, only 2 directors can sign.

Alteration of MOA

1. Name alteration :

↳ SR + CG approval + ROC filing in 30days.

2. Situation ~~etc~~ alteration:

Cases	Process.
① Within same city/ Town / Village.	Only Board Resolution,
② Different city / Town / Village, Same state same ROC	SR + ROC Filing.
③ Different city / Town / Village different State same ROC	SR + ROC Filing.
④ Different CTV same State different ROC	Regional director + SR + ROC filing.

⑤ Different CTV
Different State
Different ROC

RD approval + SR + ROC filing.

3. Object alteration:

↳ SR + CG approval + exit option to dissenting shareholder + ROC filing.

4. Liability alteration: Only if each individual shareholder agree, otherwise cannot be altered.

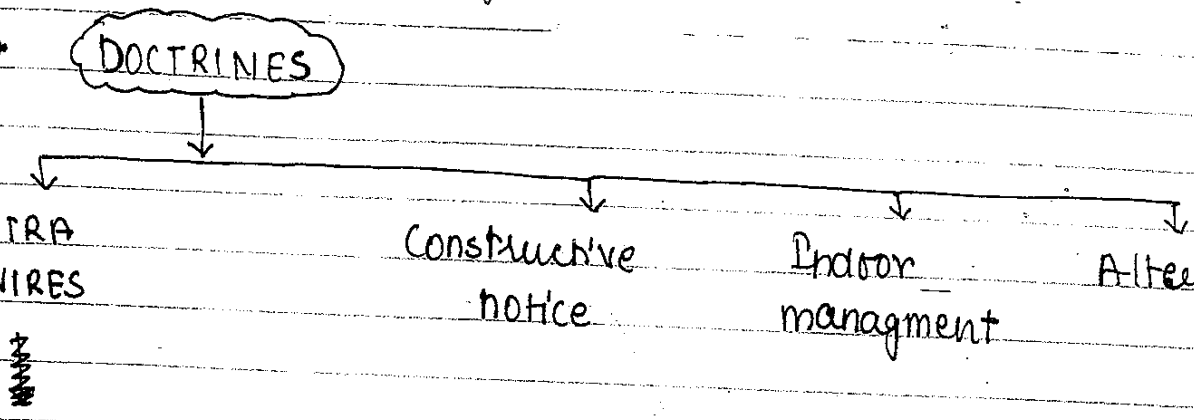
5. Capital alteration: Refer share capital

6. Nomiee alteration: No meeting and no approval required.

ALTERATION OF AOA

1. Any alteration in AOA shall be allowed subject to passing of special Resolution.
2. Any alteration done in the articles must be within the provision of law.
3. Altered article shall be as valid as original articles.

4. Any alteration done shall be notified to RoC and all other people with whom company is doing business and to whom original copy was given.



Meaning of Doctrine : Doctrine means principle which is applicable but was never prescribed.

It is a customary concept which passes on generation to generations and people start following the same. Moreover when judges use such principles in their judgements, they get legal recognition as well.

~~Ultra Vi~~ Doctrine of Ultra Vires.

1. Company can't do anything against memorandum and articles against means beyond memorandum or articles.

2. In other words Co. can perform only those activities which are prescribed by memorandum or articles.

3. It also means that Co. can't perform any activities/ objective which are not prescribed in the object clause.

4. If performed, BOD will be personally liable for any loss or liability.

5. If profit arises by such activities, it will be forfeited by company.

6. If BOD act beyond power but shareholder approve the same. It will become Intra vires. but in any case it should not be illegal.

DOCTRINE OF CONSTRUCTIVE NOTICE

1. Anything written in memorandam (or) article shall be deemed to be communicated to all insider or outsider.

2. Anyone doing contract with company must read them in advance otherwise he can't blame company for any Incidental Loss.

3. Whenever co. enters into any contract co. should provide copy of memorandam & article to such party for reference purpose.

Doctorine of Indoor management

1. Whenever Co. enters into any contract, it is the outsiders resposibility to read memorandam and articles but it is the duty of company to make sure that they are followed.

2. Outsiders can presume that everything written in memorandam & article is followed.

3. If memorandam and article are not followed, company shall be resposible and outsiders can claim damages.

4.

Doctorine of Alter Ego

1. Alter ego means altering the Identity.

2. It means if the directors are acting honestly, company will suffer all losses & liabilities.

3. However if they are acting dishonestly they will be personally liable.

4. It is also called lifting of corporate veil (Already done)

UNIT 4

SCTION 8

COMPANY OR CHARITABLE COMPANY

UNIT-4 SECTION 8 COMPANY OR CHARITABLE COMPANY

1. A normal company of commercial nature is incorporated under section 7 of companies act 2013.

2. However a charitable company is registered under section 8 of the same law.

3. Charitable company is incorporated for the promotion of charitable object such as commerce, art, science, education, research, social welfare, religion, charity, environment protection etc.

4. Such company earns profit as any other company but it cannot be distributed as dividend.

5. The entire profit generated by this company shall be applied on promotion of charitable object.

6. Such company cannot change its memorandam and articles without taking prior permission of central govt.

7. Charitable company will have to take ~~licence~~ licence from central govt to operate as charitable company.

8. Such company can be public or private but

It need not to right Ltd or Pvt Ltd words after its name.

9. At present such certificate or licence is issued by Registrar of Company (RoC) on behalf of central govt.

10. Such licenced can be cancelled by central govt. If a Charitable company doesnot fulfil the condition of section 8 but. After cancellation it will become a commercial company and acqumulated general reserve or donation shall be donated to some other similar nature charitable company.

11. Generally a partnership firm cannot become member of any company because partnership doesnot have any separate legal identity. A partner can purch-ase shares in his name but not in the name of the firm. However Partnership firm can become member in charitable company.

12. Charitable company can be amalgamated only with a Charitable company.

13. When the charitable company is found up, acmqumu-lated reserve shall be donated to a similar nature charitable company but if such donation is not possible the entire money is transferred in Insolvency fund maintained by cent. Govt.

UNIT 5

CONVERSION OF COMPANIES

UNIT-5

CONVERSION OF COMPANIES

Section 18 of Co. act 2013 allows any kind of company to be converted into any other kind of Co. However the present unit cover only following conversion:

1. Conversion of charitable co. into commercial company.
2. Conversion of one person company to Public & private co.
3. Conversion of private company into OPC

* Conversion of charitable co. into commercial co.

1. Special resolution is required to passed.
2. Application should be filed to regional director in MGT-18.
   Notice in
3. Newspaper should be given within 10 week of application.

↳ Copy ~~of special resolution~~ must be given to regional director in MGT-19.

5. Upload copy of newspaper notice on the company website.

6. Inform about such conversion to following authorities.

(a) Chief Commissioner of Income tax.

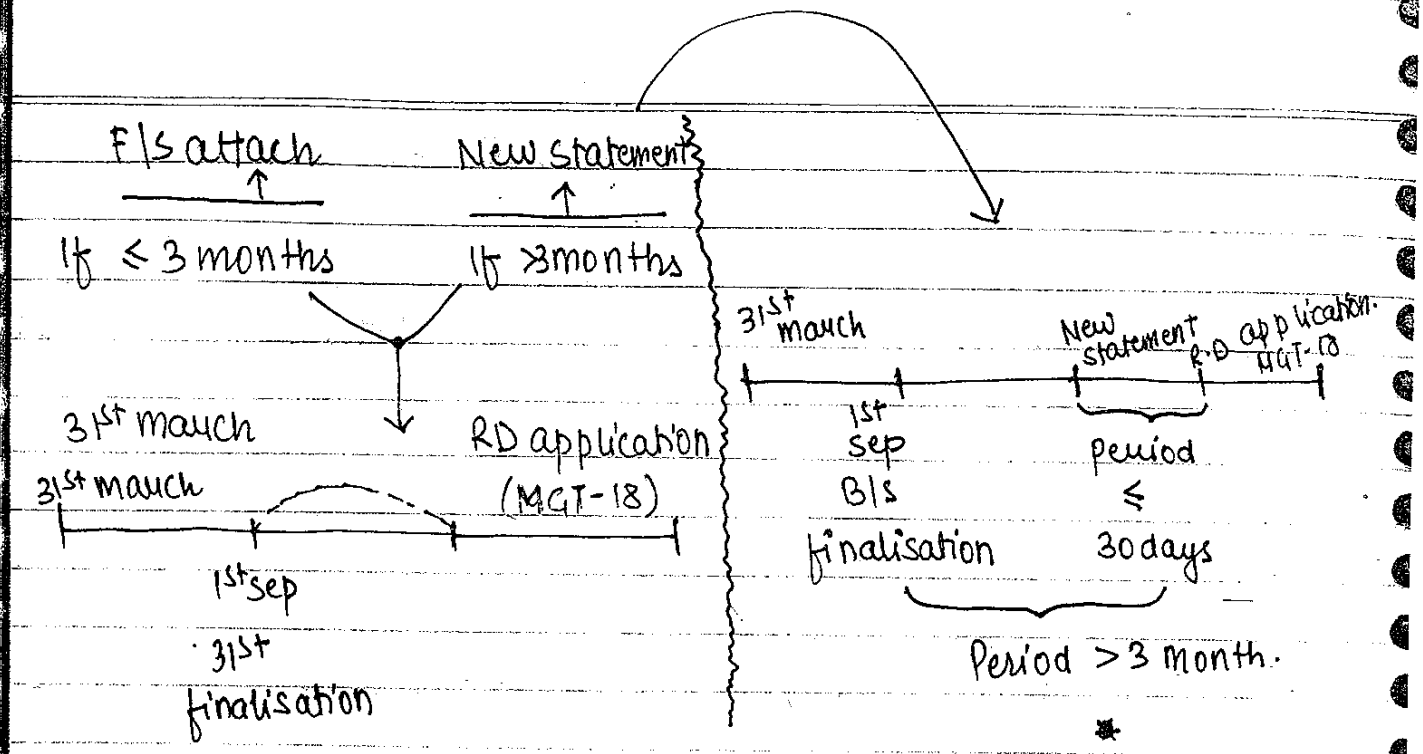
(b) Charity Commissioner.

(c) Chief Secretary of state.

7. These authority can raise objections within 60days of information.

8. Any, reserve, accumulated profit, surplus, asset, property shall not be transferred to any directors or shareholder and will be donated to any other charitable company.

9. If the co's financial statement are less than three month old, they will be attached with application but if they are more than three months old, a new statement shall be prepared showing the financial position but the gap between this statement and application to regional director should not be more than 30days.



10. CO. will also submit a declaration signed by CA or CMA or CS that all provision have been followed.

11. If everything is verified and found correct regional director may issue order of conversion.

12. Copy of this Order will be submitted to ROC in INC-20 within 30 days.

Conversion of OPC into Public & Pvt Co.

1. Such conversion can be a voluntary conversion or compulsory conversion

2. In both the cases procedure is same.

3. The process is as follows:

(a) Increase of no. of members to 7 for public company and 2 for private co.

(b) Submit form no. INC-5 to ROC as conversion application.

(c) If everything is alright conversion will be processed.

Conversion of Private company into OPC

1. It can never be a complusory conversion.

2. Before such conversion, company must ensure that it doesnot have capital beyond ₹50 lakh and turnover beyond ₹2 crore.

2. Before such conversion, company must ensure that it does not have capital beyond

3. following are the steps for such conversion:

(a) special resolution should be passed:

(b) No objection certificate should be taken from every member and creditor.

(c) Copy of SR should be filed with ROC in MGT-14 within 30days.

(d) Application for conversion will be given in form no. INC-6

(e) following are the attachments for application:

(i) Copy of ~~Bill~~ NO objection certificate from members & creditors.

(ii) Declaration by BOD regarding capital & turnover.

(iii) Latest audited B/s & P&L account.

UNIT 6

REGISTERED OFFICE OF COMAPNY

UNIT-06

REGISTERED OFFICE OF COMPANY

1. As per sec. 12, Co. should take registered office within 30days of Incorporation.
2. RoC filling should be done within 60days of incorporation in form no. INC-22
3. following are attachments to INC-22
   (a) Document of title or rent agreement or lease due.
   (b) If it is on rent or lease, authorisation from the owner.
   (c) evidence of utility service which should not be more than two month old.
4. Every Co. will publish its name in following place:
   (a) Outside every office
   (b) Outside every place of business.
   (c) All letters, invoice, official communication
   (d) Negotiable Instruments.
5. Name will be published on the board in

english as well as regional language.

6. OPC will write name of Co. along with the word OPC everywhere.

7. If the company has changed its name, it will publish both the old name and new name for two years at every place.

8. If the Co. changes its registered office, ROC filing should be done within 30 days in INC-22.

Shifting of registered office within the same state.

1. This topic covers only Maharastra & Tamil nadu.

2. It means it covers shifting of registered office from one ROC to another withing the same state but it can happen only in Maharastra & Tamil nadu.

3. Following are the steps of the process:

   (a) Application to regional directors in form no. INC-23.

   (b) Publish newspaper notice in english and local language.

(c) Send individual notices to members, creditors, debenture holders, depositors.

(d) They can raise their objection to regional directors within 21 days.

(e) Co. will pass special resolution & will inform to regional director.

(f) Regional director will give confirmation order within 30 days.

(g) ROC filing shall be done within 60 days.

(h) ROC will issue fresh certificate of Incorporation in another 30 days.

(i) If the Co. is under Investigation, such shifting is not allowed.

Shifting of registered office from one state to another state having different ROC.

1. If the state is changing, but ROC is not changing, this topic will not apply.

2. Following are the steps for such conversion.

   (a) application to Central Govt. (RD) in form NO RNC-23.

(b) Following documents will be attached within INC-23

* Copy of memorandum & article.
* Copy of special resolution.
* List of creditor:
* List of debenture holder
* List of claim filed against Company.
* affairs signed by CS and two director that everything is correct.

3. Newspaper notice will be given in form no. INC-26 in english as well as in local language.

4. Individual notice will be given to SEBI and other authorities so that they can raise their objection.

5. If everything is alright, central govt (RD) will issue order of shifting the registered office.

6. Copy of this Order will be filled with ROC of both the State in form no. INC-28 within 30 days.

UNIT 7

PUBLIC OFFER

UNIT-7

PUBLIC OFFER

1. As per Sec. 23 a public company can issue shares by following manner or modes:
   (a) Public offer
   (b) Private placement
   (c) Right Issue
   (d) Bonus Issue.

2. Pvt co. can issue shares by following three modes:
   (a) Private placement
   (b) Right issue
   (c) Bonus shares.

3. Public offer means issue of shares to any of the following:
   (a) More than 200 persons.
   (b) Any no. of persons who were alloted shares by open invitation.

4. Public offer is allowed only to public co.

5. Private placement means issue of shares to any of the following people.

(a) Shares were alloted to specific people but upto 200 only.

(b) Any no. of persons who have been specifically invited, as reduced by no. of members already present from 200.

Eg. Private co. ⟶ 5 members

Private co.

Invited

Case 1 → 195 members → Pvt placement

Case 2 → 200 members → Public offer.

6. Right issue means issue of shares to already present member so that there shareholding does not come down. It is called right shares because it is there right to get those shares.

7. Bonus shares means free shares issued by company to existence shareholders by converting profit into capital.

8. So it is clear that

	Public co.	Pvt co.
Public offer	✓	×
Private placement	✓	✓
Right issue	✓	✓
Bonus Issue.	✓	✓

PROSPECTUS:

1. Prospectus is required only in public offer.
2. Prospectus is an invitation to offer in which we invite general public to purchase shares & securities of the company.
3. As per s section 26, following are the content of Prospectus.

(a) History of company.
(b) Details about company.
(c) Details about officers.
(d) Details about bankers
(e) Details about trustees.
(f) Details about underwriter.
(g) Date of opening & closing the issue.
(h) Details about allotment.
(i) Details of separate bank account in which money will be transfered
(j) Consent of directors.
(k) Consent of auditors.
(l) Consent of bankers.

(m) Consent of expert
(o) Resolution details
(p) capital structure
(q) Post issue capital
(r) Objective of the company.
(s) Objective of the public company
(t) any case against company in last 5 years
(u) Default in repayment of any due
(v) Details of directors.
(w) Sources of promoters contribution.

Reports to be attached with prospectus.

1. Reports by auditors regarding profit & loss, asset & liab.

2. Reports relating to financial position in each of the last five financial years.

3. Reports on the overall business performance.

Variation in prospectus.

As per a section 27, alternative in prospectus can be done after the issue of shares but consent of all the shareholder must be taken. Those who do not agree can take their money back without any deduction.

Offer Of sales Of Shares (Green Shoe option)*

1. Sometimes existing shareholders want to sell their shares but they do not find any suitable buyer so they handover the shares to company for further shares.

2. Sometimes company faces difficulty of over application or over subscription but company does not want to refuse any such application so company can borrow some shares from the existence shareholders to issue them further.

3. Both these process are allowed under new company law.

Demoterialized Issue.

1. Materialization means physical shares and demoterialization means electronic shares.

2. every public offers has to be dematerialized so that people can easily buy & sell shares.

Advertisment for prospectus.

1. If the prospectus is advertised it should be true in all respect.

2. following content must be compulsory

in every ~~eeh~~ advertisement.

* Contents of memorandum.
* Amt of share capital.
* Liability of members.
* Subscribers to memorandum
* Shares subscribed by them.
* Capital structure.

Shelf prospectus.

1. As per section 31 it is a prospectus which is published once but used more than once.

2. Maximum validity period of such prospectus is one year.

3. Any changes taken place in the co. between two issue shall be put in a seperate document called Information memorandum (सूचना ज्ञापन)

4. Shelf prospectus & Info-memo together become a complete prospectus.

Red Herring Prospectus

1. Sometimes Co's issue shares with the price band, which means a minimum and maximum price range from which investor will have to select a particular price.

2. Investors fills their own price in the application form and all such price are put together to calculate moving average.

3. If an investor has quoted less price, Co. will demand the balance & if he has quoted a higher price, Co. will refund the balance.

4. So it is clear that prospectus did not contain any exact price and such prospectus which does not contain exact price is called red herring prospectus.

5. This process of issuing shares with a price band system is called book building process.

Application form.

1. As per sec 33, If a person is taking application form purchasing shares, it is compulsory that he takes prospectus as well.

2. However vice-versa is not true.

3. If the Co. is not issuing prospectus, it will have to publish necessary information on the application form itself so that investor can read such information.

4. If the application form itself contain necessary information with or without ~~per~~or Information, it is called Abridged Prospectus.

Misstatement in prospectus.

1. Misstatement can be of two types
   (a) ~~Fa~~ False statement.
   (b) Misleading statement.

2. False means false statement but misleading statement is actually true but is producing a false meaning.

3. Both such statements are punishable offence under Co. law.

4. In case of misstatement, civil & criminal liab. will arise.

5. Civil liab. means giving compensation to the aggrieved person who has purchased shares on the basis of prospectus but suffered losses.

6. Criminal liability means punishment to be imposed by law on the company for wrong prospectus.

7. following people shall be responsible in case of misstatement:
   (a) Promotor of the company.
   (b) Director of the company.
   (c) Proposed director of the company.
   (d) Any other officer who signed the propectus.
   (e) Any experts giving his comments.

8. In case of misstatement is prospectus, only primary shareholder can file case against company because he has acquired shares directly from the company.

9. secondary shareholder means a shareholder who has acquired shares from another shareholder, and can't file case against company.

Punishment for fraudlently Inducing person to Invest money.

1. If a person is giving Investment Consultancy to someone in good faith, it is absolutely allowed.

2. However if the same consultancy is taking shape of fraudulent Inducement this will be punishable Offence & Punishment under sec. 447 will apply.

Punishment for personation.

If a person files multiples application to purchase Shares in false name it is a punishable Offence. Such person will be liable under section 447

Underwriting Commission:

1. Underwriter is Contractor who takes responsi-bility of selling Shares or securities of the company.

2. If he could not sell shares, he will have to pay for them but he will not get any rights of member.

3. Maximum permissable underwriting commission in case of shares is 5% or as prescribed by article whichever is lower.

4. Maximum permissable underwriting commission in case of debenture is 2.5% or as prescribed by articles whichever is lower.

Allotment

1. There is no min. subscription prescribed by law, earlier it was 90%.

2. Min. subscription shall be prescribed separately by SEBI for every company.

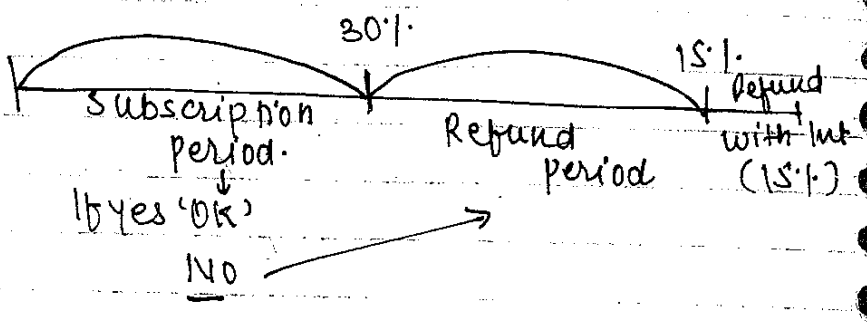
3. Min. 5% of the face value of the every shares should be received by co. without which allotment cannot take place.

4. However for listed co. it is 25%.

5. If the subscription is not receive within 30days time period the entire issue will get cancelled and all money received will be refunded back to the applicants within 15days after completion of 30days.

6. If the money is not refunded within 15 days, 15% pa interest will apply.

Every co. bringing public offer must get listed on at least one stock exchange so that further sale can take place easily.



When the allotment is over, a return shall be filed with RoC in form no PAS-3 within 30 days which will describe the details of allotment done to various person.

Money received on the application of shares shall be kept separate in a separate book of account till the time allotment is not done and co. cannot use this amount. This account is called 'ESCROW A/c'

Every co. ~~bring~~ bringing public offer ~~cannot~~ must get listed on atleast one stock exchange so that further sale can take easily.

UNIT 8

PRIVATE PLACEMENT

UNIT · 8

PRIVATE PLACEMENT

1. Private placement is allowed to public as well as private company.
2. Shares are alloted to selected group of persons and not by open invitation.
3. Company must pass special resolution before issuing private placement.
4. Maximum no. of allotees including present shareholders cannot be more than 200.
5. Allotment should be done within 60days otherwise the entire money shall be refunded within next 15 days.
6. If money is not refunded within 15days interest @ 12% p.a will apply.
7. Allotment return is same as public offer.
8. ESCROW account is same as public offer.
9. Minimum Issue size to each person is ₹ 20,000

UNIT 9

SHARE CAPITAL

Unit No. 9 Share Capital.

Introduction :- Capital of partnership as well as company is divided into small parts. When we devided capital in case of partnership, No. of parts and No. of partners are always equal. Whenever a new partner comes in the firm, existing will have to sacrifies a bit. It is because there is no extra part of capital which can be taken by a new partner. It means whenever a new partner joins, we have ~~do~~ to do restructuring of capital by making appropriate accounting entry. However it doesn't happen in case of company. Capital of company is divided into smallest peices which are called shares. Every member of company acquires some shares which means there may be some extra share always available which can be taken by new members without disturbing existing members. Yes, it is true that percentage of existing shareholders come down whenever new shares are issued.

Share can be issued either to known people or unknown public. When the company is newly created, it is obvious that people will not buy share of new company provided promotors are not will be known. It means generally company sells its shares to near and dear ones and later on after creating goodwill, company brings public issue. It does not mean that a company which has not brought public issue does not have shares, it has shares, it has shareholders, it has share capital but it has not given public advertisement. Every company, whether big or small, public or private, govt. or private, listed or unlisted, domestic or foreign, holding or subsidiary and commercial or charitable, all have shares but the question is now, how were they sold.

How to Sales Share:-

1) Private placement and public offer are the only median to sell shares to new people.
2) Right issue and Bonus issue are only two medium to sell shares to existing people.
3) When following condition are fullfied it is called private placement and if any of them is not fullfied it will became public offer:-
   (a) Maximum number of applicants should be 200
   (b) Applicant can not come himself, he can only come after invitation
   (c) Their should be no public advertisment for or announcement of any nature regarding issue of share
4) In simple words private placement is private allotment. In which allotment is done only to specific people by company itself. Up to a maximum of 200 people without any advertisement.
5) Private placement can be used by every company, whether public or Private but public offer can be used only by a public company.

How to Sell Share to existing Shareholder

1] Right issue means right of existing shareholder to claim a new share before any other person.
2] It means all the new share are first offers to existing shareholder so. that they can maintain percentage shareholding.
3] Bonus issue means issue of free share to existing shareholders in the nature of ~~a~~ bonus.
4] Right issue and bonus issue both can be used by both company i.e private as well as public.
5] Private company can easily used these method because it is not increasing any new shareholder and maximum limit of 200 ~~meber~~ member will not be distributed

* Meaning of Share:-

1) As per section 2 share means share in the capital of the company.

2) Capital of company is divided into equal parts and each individual part is called share.

3) As per Section 2, share means stock as well. ~~As~~

4) When we define shares in numbers, they remain shares but when they are expressed in percentage, they become stock.

5) As per Sec 44, shares are movable property which can be transferred by following a proper procedure.

6) If it is a private company, shares are not easily transferable but in case of public company shares are freely transferable.

* Publication of Authorised, Subscribed and Paid Up Capital :-

1) As per sec 60, all these 3 capital should be mentioned together at all places.

2) Companies cannot take a choice of adopting one capital and showing it and hiding the others.

3) Companies generally want to do this when they want to show that their capital is either very high or very low.

4) However such choice based disclosure is not allowed.

5) Font Size, Colour and the font design should be same in all manners whenever they are disclosed.

* Kind of Share Capital

1) There are 3 types of Share Capital.

→ Preference share Capital
→ Equity share Capital
→ Equity share Capital with differential voting rights.

2) When we read Sec 43, it prescribes equity share capital to be of two types, which are differential equity and just equity.

3) Preference Share Capital consists of those shares on which ~~ea~~ every shareholder receives two preferential rights, which are as follows :-
   a. They received fixed amount of dividend or dividend a fixed rate.
   b. They receive repayment of their capital before equity shareholders ~~before~~ at the time of dissolution of the company.

4) Generally preference shares donot carry any voting rights because they already enjoy profit-sharing on preferential basis but if preference dividend remains unpaid for a continous period of 2 financial years, they will get all the voting powers same as Equity ShareHolders.

5) Any share which doesnot carry these preferential rights are called Equity Shares.

6) Equity Shareholders receive dividend only if declared by Board of Directors but as a compensation to ~~these~~ this rule, they receive voting power, in proportion to their shareholding pattern.

Equity Share with Differential Rights

~~By~~ Generally equityshares are known for their equality but due to the contribution made by some shareholders, we must provide them recognisiontion, this recognition can be given in various ways but rule 4 prescribes the concept of special rights to be given to some shareholders. These special rights can be additional dividend, additional voting power, additional membership rights etc.

However such differential equity shares can be issued only if following conditions are fulfilled :-

1) Article of Association must allow this.
2) It should be permitted by ordinary resolution.
3) If the company is listed, ordinary resolution should be passed by 'postal Ballot'.
   डाक मतदान
4) Maximum quantity of such shares is 26% of total share capital.
5) Company should have consistent track record of distributable profits in last 3 years.
6) Company shouldnot have defaulted in filing annual accounts and annual returns in last 3 years.

7) Companies shouldnot have defaulted in dividend, deposits, debenture, redemption of preference shares and Interest.

8) Companies shouldnot have defaulted in repayment of loan, statutory dues and investor education protection fund and differential equity can be issued only after completing 5 years from the date of clearing dues.

9) Company shouldnot be convicted in last 3 years in the matters of RBI, SEBI, Securities Contract Regulations Act and FEMA. (Foreign Exchange Management Act).

Explanatory Statement for Issuing Differential Equity

As per Sec 102 and 110, it is compulsory to attach explanatory Statement with the notice of meeting, so that it can be explained why differential equity is being issued. When such statement is prepared, following contents should be there.

1) Total Quantity of such shares.
2) Details of Differential rights
3) Percentage of Differential right.
4) Justification of the issue
5) Price of such share.
6) Reservation for some shareholder
7) Earning per share before and after.
8) Shareholding pattern, before and after.

Share Certificate

1. Whenever shares we issued ~~into~~ past, seperate slip was issued for each share.

2. It used to facilitate transfer of shares by simply selling those slips.

3. As time moved on, one certificate started to be given per person in which total number of shares used to be mentioned.

4. Even today, Sec 45 says that every share has a serial number which is specified on the certificate itself.

5. When shares are converted into electronic form, also called Dematerdised form, there is no concept of share certificate or serial number of shares.

6. As per Sec 46, share certificate is signed by two directors or one director and one Company Secretary.

7. ~~(6)~~ Share Certificate should also carry common seal, if available.

8. Signatures on the certificate can be manual, printed or digital.

9. Format of share certificate is in SH-1.

10. Details of all the share certificate issued must be recorded in a seperate register.

Renewal of share certificate

1. As per rule 6, new certificate can be claimed whenever there are changes in particulars.

2. Company may charge renewal fee, it should be more than ₹ 50 per certificate.

3. New certificate should have number of old certificate as well.

Duplicate € Share certificate

1. As per Sec 46, shareholder can demand duplicate share certificate simply upon payment of prescribed fee but which cannot be more than ₹ 50 per certificate.

2. Duplicate share certificate must carry the word duplicate.

3. In case of unlisted company, duplicate certificate must be issued within 3 months of demand and in case of listed company within 15 days.

Issue of Sweat Equity Shares

1. Sweat Equity Shares are normal shares but their allotment is special.

2. Company issues ~~share~~ such shares at a discount to employees and directors because of value addition contributed by them to the company.

3. Sweat Equity shares are actually a choice which may or maynot be exercised by employee.

4. Sweat Equity shares can be issued only if conditions of Sec 54 are followed, which are as follows :-

(i) Employee may be whole time or part time.
(ii) Director may be Whole time or part time.
(iii) They may be working within India or outside India.
(iv) Special resolution must be passed by company.
(v) If it is a listed company, SEBI approval is also required.
(vi) Sweat equity must be alloted within 12 months of passing special resolution otherwise it will be passed again.
(vii) Maximum quantity of sweat equity cannot exceed 25% of total share capital.
(viii) However sweatequity at one point of time in one year cannot exceed 15% of share capital or ₹ 5crore, whichever is higher.
(ix) There will be lock-in-period of 3 years from the date of allotment which means person who got such shares cannot sell them, cannot transfer them and cannot dispose them.
(x) However, such shares can be pledged for loan.
(xi) Startup company can issue Sweat Equity shares upto 50% of total share capital upto 5 years from the date of incorporation.
(xii) Employee must be working with the company for minimum one year.
(xiii) Business of the company must also be one year old.
(xiv) All the sweat equity shares must be recorded in a separate register in form number SH-3, which shall be signed by CS or any other officer.

Issue of Bonus Share

1. Bonus shares are called Capitalisation of Profits.

2. We can use profit to issue new shares.

3. We can use free reserve, securities premium Account and Capital Redemption Reserve.

4. Sec 63 disallows use of Revaluation Reserve.

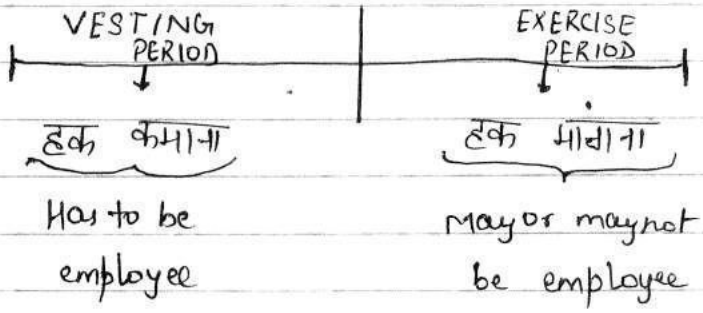
5. Bonus shares are not substitute of dividend, it can be a surplus to dividend.

6. If Board of Directors have declared bonus issue, it can never be cancelled.

7. Following are the conditions to issue Bonus shares :-

(a) It should be permitted by AOA.
(b) It should be approved by ordinary resolution.
(c) There should be no default in deposit or debentures.
(d) There should be no default in employee dues.
(e) All the shareholders to whom bonus shares are being given should have fully paidup shares.
(f) Rights of bonus shares will be same as original shares.

ESOP
Employee Stock Option Plan



1. It is an issue of shares done in a special manner but at the end of the day they are ordinary shares only.

2. It is basically an offer given to employees to acquire shares of a company at a reduced price.

3. Employee will have to provide his services for a particular period of time after which he can exercise this offer within a particular period of time.

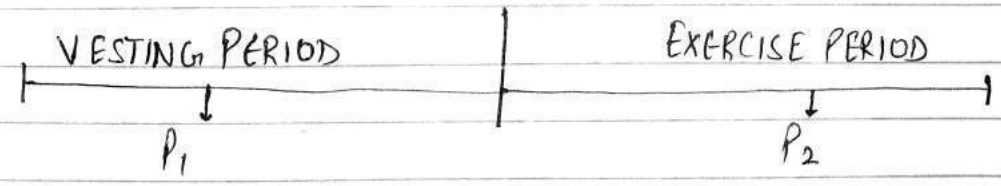
4. Company must pass special resolution to decide about vesting period and exercise period.

5. Company will allot such shares to only those employees who have completed vesting period.

6. However it is not necessary that employee has to be employee during exercise period.

7. Employee and directors can be whole time or part time, working within India or outside India.

8. Their must be minimum one year gap from the opening of offer and closing of offer.



$P_1 + P_2 \geq 1$ year.

9. Lock-in period shall be decided by company itself.

10. Such option is not transferable even to relatives of employee.

11. If the employee dies without completing vesting period, there will be no ESOP. but if he dies after vesting period, his legal heir can claim shares.

12. There will be a separate register for recording ~~ESH~~ ESOP in form ~~S~~ SH-6 which will be signed by Company Secretary or any other officer.

Voting Rights

1) Generally all the voting rights are available with Equity shares.

2) Sec-47 doesnot allow any voting power to preference shareholder, debenture holders and depositors.

3) Voting rights of equity shareholders are always in proportion to the shares held by them.

4) However preference shareholders will get voting power if there dividend is in arrears for continuous period of 2 financial year.

5) Whenever they get their dividend, they will loose voting power.

Variation of Share Holders Rights

1) As per Sec-48, company can have * variation in the rights of different category of shareholders such as retail individual Investor, Non-Institutional Investor or Qualified Institutional Buyer.

2) Company will have to pass special resolution and there should be permission of Articles of Association.

3) If some shareholders have ~~of~~ objection, they can goto tribunal but -
(a) They must be minimum 10% shareholders
(b) They must go within 21 days of SR (Special Resolution).
(c) Decision of tribunal shall be final.

(d) Copy of decision of NCLT should be given to ROC within 30 days.

Alteration of Share Capital

1. As per Sec 61, alteration means alteration in the structure not in the amount of capital.

2. Paidup share capital before alteration and after alteration should not change which means balance sheet should not be affected by alteration.

3. Alteration can be done simply by passing ordinary resolution but it should be permitted by Article of Association.

4. Following are the ways to alter the share capital :-

(a) Increase in authorised share capital. (Decrease in Authorised Share Capital is not alteration, it is called Diminution.)

(b) Conversion of shares into stock or stock into shares.

(c) Consolidation of small value shares into higher value shares.

For Example :-

Before	After
₹10 X 100 = ₹1,000	₹100 X 10 = ₹1000

(d) Conversion of high value shares into small value shares.

(e) Cancellation of those shares which are still unsold.

Reduction of Share Capital

1. As per Sec 66, reduction means reducing the paidup share capital.
2. It canbe done in two ways :-

(a) Repayment :→ Company will pay back some amount on every share and facevalue of each share will also comedown.
This will decrease the total amount of sharecapital but will not decrease the voting power of shareholders.

Before	After
Total Cap ₹ 1,00,000	Total cap ₹ 90,000
(Total shares 10,000 @ ₹ 10)	(Total shares 10,000 @ 9)
Share with = ₹ 10,000	shares with = ₹ 9,000
Mr. X	Mr. X
% = 10%	% = 10%

(b) By Reducing the liability on shares :→
If their is some amount which is still unpaid or even uncalled, we can simply write off the liability of shareholders of such shares and reduce the face value of share itself. This will not decrease the number of shares but value of shares for some shares.

Particulars	Before	After
Total 1,00,000 shares @ ₹10	1,00,000	99,000 = (90,000 = 9000×10, 9,000 = 1000×9)
All shareholders except Mr.X	90,000	90,000
Share value of Mr. X	10,000	9,000
Less: call in Arrear	1,000	NIL
Paidup Cap	99,000	99,000

3. Following are the conditions to do Reduction :-
(a) Their should be alteration in Memorandum of Association.
(b) Their must be approval of special resolution.
(c) Their should be no default in deposit and debentures.
(d) Their should be approval of NCLT.
(e) NCLT will ask all the creditors, Central Government, ROC, SEBI to raise objections within 3 months.
(f) If objection is received, they will be settled first otherwise, NCLT will publish the order.
(g) Copy of order of NCLT shall be given to ROC within 30 days.

Further Issue of Share Capital (Right Shares)

1. As per Sec 62, whenever a company issues further shares, they should be first offered to existing shareholders.

2. It will maintain their percentage equity.

3. If the existing shareholders donot want to take more shares, then such shares will be given to outsiders.

4. Shareholders must be given minimum 15 days and maximum 30 days to decide about the offer.

5. If the special resolution is passed, shares can be given directly to outsiders.

6. If the company has issued covertable debentures, they will be alloted shares without asking existing shareholders.

Securities Premium Account

1. Whenever Investors pays more than the ~~face~~ pays Face value, Excess amount is credited to premium Account.

2. As per Sec 52, Securities Premium Amount is a restricted item, which cannot be used freely.

3. Securities Premium can be used only at five places, which are as follows :-

(a) Conversion of Partly Paidup shares to fully Paid up for the purpose of Bonus Issue.

(b) Write off Preliminary Expenses.

(c) Writing off issue expenses or Discount.

(d) For the purpose of payment of premium upon redemption.

(e) for the purpose of BuyBack.

Issue of Shares at Discount

1. As per Sec 53 discount is prohibited.

2. If the shares are issued at discount, following consequences will arise :-

(a) Company will pay minimum ₹ 1,00,000 and maximum ₹ 5,00,000.
(b) Officer in default the same amount.

(c) Maximum imprisonment of 6 months.

(d) Shareholders will remain shareholder.

Personation [Sec 57]

1. Personation means creating artificial personality to obtain shares of a company.

2. In simple words, a person is filing multiple applications in artificial names.

3. It is a punishable offence and the punishment is as follows:-
(a) Minimum fine ₹ 1,00,000, maximum fine ₹ 5,00,000.
(b) Minimum jail 1 year and maximum jail 3 years.

Transfer and Transmission

1. Transfer means voluntry transfer of shares either with consideration or without consideration.

2. However when transfer takes place automatically after the death of shareholder, it is called Transmission.

3. As per Sec 56, both are permitted subject to a specified procedure.

4. Transfer can be done by using following forms:

(a) SH-4, to be filled by transferrer.

(b) SH-5, to be filled by ₹ transferee.

5. In case of transmission, SH-4 doesnot apply.

6. New share certificate must be issued within 1 month from the date of filing the papers.

7. If it is a case of voluntry transfer, company may make a delay or refuse or doesnot reply, then following steps will be taken:-
(a) Appeal within next 60 days after expiry of 30 days, to NCLT.
(b) NCLT will decide the matter accordingly.
(c) Company will have to follow NCLT instructions with in 10 days.

8. If the order of tribunal is not followed, following will be the punishment :-
(a) Company will pay minimum ₹ 1,00,000 & maximum ₹ 5,00,000.
(b) Offier in default will pay minimum ₹ 1,00,000 & maximum ₹ 5,00,000
(c) Maximum Imprisonment 3 years.

UNIT 10

PREFERENCE SHARE

UNIT · 10

PREFERENCE SHARE CAPITAL

1. Preference shares are those shares on which fixed dividend is paid and when the company is closed, money will be paid back to them in priority, before Equity · Shareholders.

2. Preference shares are always cumulative in India. ~~Nature~~.

3. Preference shares are always redemeable.

4. Preference shares are always participating in India. (apportionment of surplus b/w Pref & Equity)

5. Preference shares can be convertible or non-convertible.

6. Convertible means Pref · Shares ~~Eq~~ will be converted into Equity some day in future

7. Issue of Preference shares requires following two conditions:

   (a) Special resolution

   (b) There should be no default in repayment of Pref · shares or payment of dividend.

8. Maximum redemption period shall be 20 years but if the money is utilised for Infrastructure purpose it can be extended to 30 years.

9. If it is extended to 30 years, minimum 10% redemption should be done every year ~~beginning~~ begining from the 21st year.

10. When redemption is done, money shall arranged from the Profits or fresh Issue of shares. If Profit is used for redemption, equal amount of capital redemption reserve must be made.

11. CRR need not to be made if entire money is being arranged from fresh Issue.

12. When company doesnot enough funds for redemption, company can issued new pref. shares in exchange of old pref. shares which will be permitted only if 75% shareholders are ~~argee~~ agree.

13. If some pref. shareholders donot agree, they can take theire money back.

UNIT 11

BUY BACK

UNIT-11

BUY BACK OF SHARES

1. Buy back means Co. is purchasing its own shares back from the shareholders and such shares will be destroyed so that they cannot be re-issued.

2. After buy back, no. of shares and shareholder will come down so the total amount of liabilities will also come down.

3. Buy back is generally done in following circumstance:

   (a) to decrease fluctuations in the market price of shares, which will be possible because when shareholders will have less shares, they will do less transaction of purchase & sell.

   (b) to utilise extra cash available with the company, in payment to shareholders so that total liab. of company automatically comes down this liab. has to be paid anyhow, now or in future. So, better to pay it now.

   (c) Company wants to reduce shares which are not available with promoters so that share percentage available with promoters get increased.

4. Buy back must be permitted by AOA.

5. Maximum permisable buy back which can done by BOD without asking shares holder is 10% of ~~share~~ paid up shares capital & free reserve.

6. Buy back beyond 10% requires special resolution to be passed by share holders.

7. Maximum ~~buy~~ buy back is permisable is 25% of paid up share capital & Free reserve.

8. Shares to be bought must be fully paid up.

9. If the company is Listed co., SEBI approval is also manadotry.

10. Buy Back must be completed within 1 year period

11. There must be a minimum gap of 1 year between two different buy back.

12. Every shareholder given minimum 15 days and maximum 30days whether he want to give his shares or not.

13. When every shareholder gives his response, such responses will be verified by company within 15days and all the responses shall be demeed to be accepted if company doesnot reject them in 21days

14. Buy back can done from open market, from Individual Shareholders and from employees.

15. Money required for buy back can be arranged from free reserve, securities premium account or fresh issue of shares.

16. Shares which are bought back must be destroyed within 7 days.

17. Shares which are bought back may also be online, in that case they will be deleted from server.

18. Similar nature shares cannot be issued in next 6 months.

19. BOD will give a written declaration that company will not be insolvent in the next 1 year because of doing the buy back.

20. Co. will maintain a buy back register in form no. SH-10

21. Co. will furnish return of buy back in form no. SH-11

22. Co. will submit a declaration in form no SH-15 signed by two directors & CS that buy back is completed as per law.

23. Buy back is prohibited if the Co. has defaulted in repayment of debenture, there Interest, deposites, redemptions of pref. shares, there dividend, any term loan, there Interest and prohibition will apply for 3 more years even after repayment.

UNIT 12

DEBENTURES

UNIT · 12

DEBENTURES

1. Debenture means debt certificate.

2. It is just like Unitary loan taken from different Individuals.

3. This debt certificate is called debenture and they donot carry any voting right.

4. Debentures are in the category of creditors which can be secured or unsecured.

5. If they secured, some of the asset is transferred in the name of debenture holders as ~~Collateral~~ Collateral Securities.

6. Debentures can be Convertible & non Convertible

7. If they are Convertible, they will be converted into Equity share whenever debenture become due.

8. Maximum redemption period for debenture shall be 10 years but in case of Infrastructure project it can be 30 years.

9. Company will appoint one or more debenture trustees who will take care of the debenture holders.

10. Such appointment must be done within 60 days of allotment of debenture

11. Deb. trustee will work as representative of Deb. holders.

12. Deb. trustee must give these consent in writing that they are willing to work as debenture trustee.

13. Following people cannot become deb. ~~trustees~~ trustees:

(a) Shareholder of company
(b) Promotor, director, KMP, officer or employee of co.
(c) Debtor of company.
(d) any person with whom co. has a business of ₹50 lakhs or 2% of turnover, which ever is lower in last two years.

(e) Relative of these people.

14. Debenture trustee can resign any time subject to acceptance of his resignation.

15. Debenture trustee can be removed but only by debenture holder by passing special resolution in their meeting

16. Following are the duties of debenture trustees:
(a) To satisfy himself that all terms & conditions are beinged followed.

(b) To satisfy himself that co. is running we

(c) To satisfy himself that Interest payment is regul
If Interest has been defaulted twice consicutively
deb. trustee can appoint nominee director in the
company.

(d) To ensure that all the asset of company are
suffient enough to pay back to debenture holders.

(e) To call meeting of debenture holder whenever
required.

(f) To do everything to protect debentureholders.

17. Meeting of Debenture holders can be called in
following two situations:

(a) When debenture trustees find it suitable.

(b) When minimum 1/10th deb. holders demand
in writing.

18. Co. will create debenture redemption reserve
out of profits of the company.

19. DRR shall be 25% of the total debentures
due which will be Invested in the govt. securi
-ties, Scheduled bank or debenture securities.
(earlier it was 15%)

20. Format of Debenture trust deed is in SH-12

21. Any debenture holder or member can demand copy of trust deed, which shall be provided to him within 7 days.

22. Redemption of debenture should be done on or before due date on the following three manner:

(a) Repayment of cash.

(b) Conversion of Debenture into equity shares.

(c) Issue of new debentures to reedem old debent-ure.

23. Conversion of Deb. can be done only after passing SIR in the meeting of shareholders.

24. If Debentures are alloted to govt., govt. can use instructions to convert them into shares compulsorely even if they are actually non-convert-itable deb. Company can file appeal to NCLT within 60 days.

UNIT 13

DEOSITS

UNIT - 13

DEPOSITES

1. Generally we understand that Investor is either shareholder or debenture holder

2. Both shares and debentures carry their disadvan-tages.

3. Shares carries voting right which create trouble in the General meeting.

4. Debentures carries compulsory Interest which is a fixed payment, which is again a financial trouble.

5. There is third category of Investor who neithere purchases shares nor debentures.

6. Such Investor pays money to company on repay-ment basis and get it back along with Interest after a particular period of time.

7. It looks like a loan but it is called deposites.

8. So Obviously such person is called depositor.

9. Every Co. can take deposite, whether public or private, but only from existing members.

take

10. If a company wants to deposites from public, other than existing member, following condition are compulsory:

(a) It must be a public company.

+

(b) It should have networth of ₹100 crore or turnover of minimum ₹500 crore.

+

(c) SLR must be passed in the meeting of shareholders

11. Deposite rules donot apply on banking companies and non-banking financial companies.

12. Before Issuing deposites, company will issue a circular to its members or advertisment to its public, in which following content are compulsory:

13. (a) financial position of company.

(b) credit rating of company.

(c) Total no. of depositors.

(d) Total amount of previous deposites.

(e) any other content as may be prescribed.

13. Copy of this circular or advertisment must be given to RoC atleast 30days before issuing the offer.

14. In other words, ~~first for~~ first of all we will give circular to RoC and after a min. gap of 30days, it will be issued to memember.

15. Company must maintain deposite repayment reserve each year @15% of deposite due.

16. When money is received from depositors, Co. must provide some collateral securities to depositors within 30 days or it can purchase Insurance for them.

17. Any deposite accepted by any company under old company law must be paid within 3month from the commencement of new Co. law or within the time extented by central Govt.

18. Central govt has prescribed last day to repay such deposite as 31st march 2018.

19. If repayment is not done on or before the this last date following punishment will apply.

(a) Company will pay minimum ₹1crore.

(b) Maximum ₹10crore.

(c) Officier in default will pay min. ₹25lakh

(d) maximum ₹2crore

(e) maximum Imprisonment for officer in default for 7 years.

20. If the depositors has encountered any any fraud, he can demand damages from the company.

21. Minimum tenure of deposites shall be six month and maximum tenure shall be 36 month.

22. However if the total deposites donot exceeds 10% of paid up share capital or Free Reserve, minimum tenure shall be 3 month.

23. There is a list of deposites which are not considered as deposites as per Instructions of RBI, they are as follows:

(a) amount received from govt.
(b) amount received from local authority.
(c) amount received from foreign Govt.
(d) amount received from foreigner
(e) Amount received as loan from bank.
(f) amount received from public financial Institution.
(g) amount received from any other co.
(h) amount received for application of shares & debentures, but if the allotment is not done 60 days, it will become deposite.
(i) amount received from Director of Company.

(J) amount received from Deb-holder
(K) amount received from employee
(L) amount received from customers
(M) amount received as security deposite.
(N) amount received from promotors.
(O) any amount received by nidhi co.

UNIT 14

GDR

UNIT-14

GLOBAL DEPOSITORY RECEIPT

1. When one company takes deposite in the home country it is domestic deposite.

2. When one company takes deposites in another country it is globle deposites.

3. When company take-Global deposites it issues receipts. It is called GDR.

4. Special Resolution must be passed before accepting global Deposite.

5. Such company must fulfil eligibility cueteria under foreign exchange management act, 1999. (FEMA) also

6. It means RBI appuoval is neccessary for accepting Global deposite.

7. all money received must be first deposited in the ~~fro~~ foreign bank outside India and after words it should be brought to India through banking channel.

8. to must appoint ~~Rowcting~~ practising CA or CMA or CS or merchant banker to make sure that regulations are followed.

9. Such professional will prepare a compliance report in which he will certify that every thing has been done as per rules.

10. Such report will be placed before BOD in which atleast 1 Independent direct should be present.

11. Rules regarding Shares, debentures and ~~prop~~ prospectus donot apply on GDR.

UNIT 15

CHARGES

UNIT-15

CHARGES

1. When something is pledged or mortgage with someone, we remaine the owner but conditional right also reach to that person.

2. conditionals right means if we donot repay the loan, it becomes there right to ~~forefite~~ forfeit such collateral securities.

3. This conditional right is called Charge.

4. Whenever something is Given as pledge or mortgage, it is called creation of charge.

5. Whenever Charge is created, it must be informed to ROC, which is called registration of charge.

6. Registration of charge should be done in FORM NO. CHG-1 in case of loan and CHG-9 in case of Debenture.

7. Such registration must be done within 30days from the date of borrowing.

8. Roc can extend this time period to 300 more days, which will make it 330 days.

9. When registration is done, Roc will issue certificate of Registration in form no. CHG-2.

10. If the registration is not done, lender will have no right on such collatral security and the secured loan will automatically become unsecured loan.

11. If there are any changes in the terms and conditions of loan or debentures, Roc will be informed again in the same form.

12. ROC will issue modified certificate of Registration in Foum. no. 3.

13. If registration is not done by company, lender can himself go to Roc to do registration of charge.

14. Roc will do registration after getting confirmation from company.

15. Company must give confirmation within 14 days from the date of demand by Roc.

16. Roc will maintain a register of charges for all the companies and all the transaction.

17. Such register must be made available online on MCA website.

18. When company makes repayment of loan ~~and~~ or debenture the charge get cancelled, it is called Satisfaction of charge.

19. Whenever satisfaction takes place, company will inform to ROC within 30 days, in ~~f~~ form no. CHG-4.

20. ROC can extend this ~~d~~ period to 300 more days, which will make it total 330 days.

21. ROC, will confirm from the lender whether payment has been done or not.

22. Lender must reply within 14 days of demand by ROC.

23. ROC will issue satisfaction certificate within reasonable time in FORM no. CHG-5.

24. If the company couldnot repay the loan or debentures, lender will get forfeiture right on such asset.

25. This situation is called Crystsiliation of Charge.

26. When crystilisation take place, company or lender must inform ROC within 30days in form no. CHG-6.

27. Every Co. will maintain a register of charges at its registered office in FORM NO. CHG-7.

28. Any member or creditor can verify or inspect such register within office hours.

29. If total limit of 30days and 300days is over, company will have to first apply to Central govt for condonation of delay in Form no. CHG8

UNIT 16

REGISTERS

UNIT - 16

REGISTERS

1. Every company must maintain following register at the registered office with index :-

   (a) Register of Equity shareholders.

   (b) Register of preference shareholders.

   (c) Register of Debentureholders.

2. (a) Foreign register.

2. Format of ~~Registratio~~ Register of member is in FORM. NO. 1. MGT.

3. Register of debenture holder is in FORM. no. MGT-2

4. Foreign register shall be in MGT-3

5. Registers are ideally kept at register office but it can also be kept at other branches.

6. Foreign register shall be kept outside India and it will alsobemade available at registered office

7. Every entry made in foreign register must be communicated to registered office within 15day

8. Entries in all other registers must be update within 7 days of any transaction.

9. If 1/10th or more shareholder reside in an area other than registered office, copies of all registeres must be maintained in that area as well.

10. All the registers will be authenticated by company secratary of company.

11. If company doesnot have company secratary any person authorised by BOD can sign.

12. Some times shares are purchased in the name of minor and caretaker exercise rights of a member.

13. This situation is called beneficial ownership.

14. This beneficial ownership must be declared to company within 30days in FORM no. MGT-4.

15. Sometimes company closes the register of member and debentureholders for sometime so, that dividend can be distributed and general meeting can be held.

16. Company cannot close registers for more than 30 days at one time.

17. Company can close register more than once in a single year But total of all these days should not be more than 45 days.

18. Whenever company closes registers, Co. will inform to all member in advance atleast 7 days before the Closer.

19. Any member coming for Inspection of these registered may be charged a maximum fee of ₹ 50 per Inspection.

20. If a members wants to have photocopy of these registers he may be charged maximum ₹ 10 per page.

21. Such photocopy shall be provided within 7 days.

UNIT 17

ANNUAL RETURN

UNIT- 17

Annual Return

1. Co. is a creation of law so it is always monitored by RoC and regional directors.

2. In other words ~~or~~ controlers of company must inform each and every to RoC.

3. At the end of the accounting year, annual return is prepared to be filed with RoC.

4. Annual return is prepared in form no. MGT-7

5. Annual return is signed by one director and one cs

6. CS can be whole time cs ~~and~~ or practising cs.

7. Signature of cs is not required in case of OPC and small company.

8. If the company is listed (OR) it has paid up share capital of ₹10crore or more or it has turnover of ₹50 crore or more, a practising CS will sign a certificate in Form no. MGT-8 which will certified that ~~annual~~ annual return is verified and found correct.

9. A Summary of annual return shall be prepared in Form no. MGT-9 and it shall be attached with board report.

10. Annual return shall be submitted to RoC within 60 days from the date of ~~&~~ AGM.

11. If the AGM did not ~~due~~ take place, on due date, 60 days will be counted from due date.

12. If annual return is not file penalty is as follow:

(a) Company will pay minimum ₹ 50,000 and maximum ₹ 500,000.

(b) Company will pay only if it is unintentional default. Otherwise officer in default will pay minimin ₹ 50,000 and max. ₹ 5 lakh.

(c) Maximum Imprisonment shall be 6 months.

13. In case listed co., whenever percentage of shareholding of promoters changes it must be inform to RoC along with the details of top 10 shareholders within 15 days.

14. Annual return shall be kept preserved for 8 years.

15. Place of keeping annual return shall be the registered office and if 1/10th members reside

If an area other than registered office a copy of annual return shall also be kept at such other place.

16. Rule regarding inspection by members and photocopy is absolutely same as registers.

UNIT 18

GM

UNIT-18

GENERAL MEETING-

NOTICE OF GENERAL MEETING: SEC. 101

1. BOD will give information and invitation to every members about the general meeting.

2. Notice must be given atleast 21 clear days before the date of meeting.

3. Clear days means following days are not included in 21 days:

   (a) Date of meeting.
   (b) Date of dispatch.
   (c) Two days of Trasmission.

4. So in Total there are 25 days.

Eg:

Particular	Case 1	Case 2	Case 3
Date of AGM	30th sep	1st may	15th July.
21 clear days.	29th sep. to 9th sep.	30 April. to 10 April	14th July to 24th June.
2 days of trami-ssion	8th sep to 7th sep.	9th & 8th april	23th & 22th June.
Dispatch.	6th sep or even before	7th april or even before.	21st June or even before

* BUSINESSES AT THE MEETING. sec. 102

1. Matters to be discussed at a meeting are called businesses.

2. There are four ordinary business at the AGM and all other businesses are called called special.

3. Ordinary business means it is a regular activity and need not to be specified in the notice.

4. Following are those four ordinary business.

   (a) approval of annual accounts.

   (b) declaration of dividend.

   (c) appointment of directors in place of retiring directors.

   (d) appointment of auditors.

5. In extraordinary ordinary G.M, every business is special business.

6.

QUORUM OF AGM SEC. 103

1. Quorum means minimum no. of members required to start a valid meeting.

2. In case of private company Quorum is 2 members personally present.

3. In case of Public company Quorum is as follows:

No. of Member	Quorum
(a) If the total member is 1000	→ 5 members personally present.
(b) If total members are more than 1000 or >1000 but maximum 5000	→ 15 members personally present.
(c) If total members are more than 5000 or >5000.	→ 30 members personally present.

4. Quorum shall be waited for 30 minutes from the scheduled time after which meeting get adjourned to the next week same day same time, same place.

5. There shall be 3 days advance notice in the newspaper for the adjourned meeting.

6. If Quorum is still not present, whatever no. of members are present shall be Quorum, subject to minimum of Two.

* - Proxy. Sec. 105

1. When a member cannot attend General meeting, he can send his representative.

2. He must inform the company in advance so that Co. can make suitable arrange-ment.

3. In advance means atleast 48 hrs prior to the schedule time of the meeting.

4. It means no proxy can be appointed in last two days.

5. More than 1 proxy is can be appointed But the person appointed the last can attend the meeting.

means

6. It more than 1 proxy can be appointed but more than cannot attend.

7. In other words, if one form is submitted after another, the previous appointment lapses. and the new form will ~~prevail~~ prevail.

8. Proxy can come, attend, vote at the meeting but cannot participate in the decision making ~~and~~ or discussion.

9. In other words, proxy can not speak at the meeting.

10. If the members himself wants to attend the General meeting, even after appointing the proxy it is allowed.

11. If member and proxy both attend the general meeting, voting shall be done by member.

12. However if the voting is already done, member cannot vote again.

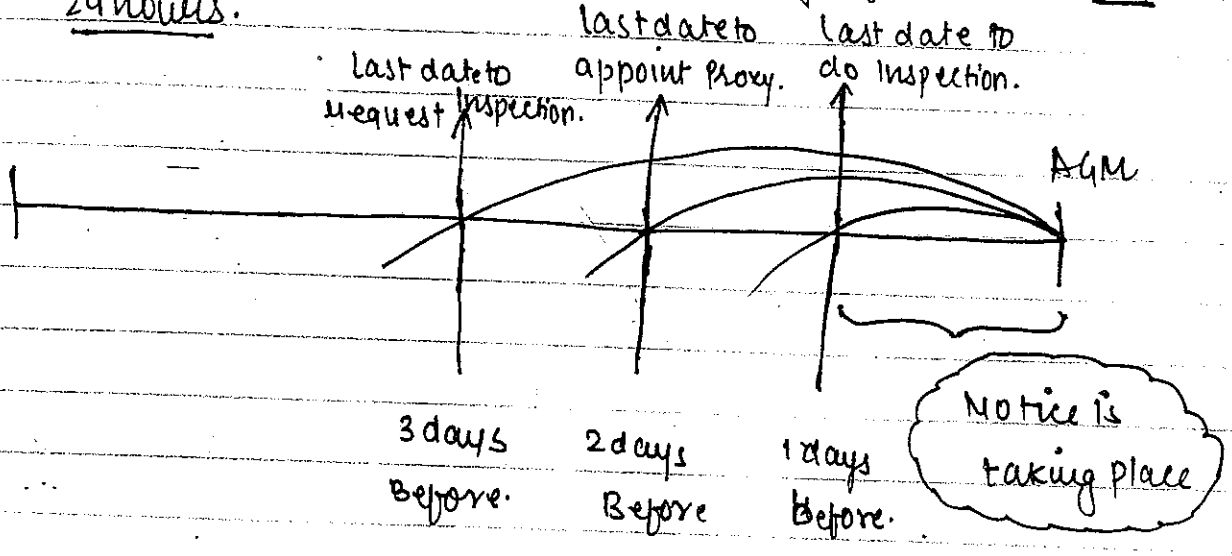
13. In following ~~three~~ three situation representative will have all the right of members and will not be considered as proxy.

(a) Representative appointed by president of India

(b) " appointed by Governor of the state

(c) Representation when shareholder is a Co.

14. If a member wants see all the proxy appointed, he can come to inspect the proxy form but he must give three days advance notice before the schedule time of meeting and can inspect the proxy form in last 24hours.



15. One single person can become proxy for more than 1 individual as well. but maximum no. of member for whom he will be proxy shall be 50 or 10% shareholder which ever is earlier.

ex. Mr. x (proxy)
↳ for :- A_1 A_2 A_3 A_4 ⇒ 12%.
Total shareholding
} Not allowed It is less than 50 but more than 10%.

Mr. x (proxy)
↳ for :- A_1 A_2 A_3 —— A_{52} = 9%.
Total shareholding
} Not allowed It is less than 10% But more than 50.

Chairman of Meeting

1. Generally chairman of company becomes chairman of the meeting as well because it saves time in selecting a new chairman (2) However this is not a rule. It is just an option available to the company.

(3) If chairman is not present and 1/. members demand so, any of the director or member can be appointed as chairman.

Voting at general meeting

Voting means members will cast their vote either in favour or against the resolution. Any Ordinary Resolution or Special resolution is passed only after the voting. There are four methods to do the voting :-

1) Show of Hands: It is the most basic method of doing voting where hands are counted. Final decision shall be announced by chairman. However if 10/. members object, some other method will be used.

2) Electronic voting :→ In this method shareholder will receive E-MAIL with option to click yes or no. there will be no need to appoint proxy in this method because every one can vote without coming.

3) Poll :→ It is the most famous election method in which members come to general meeting and they do the voting either physically or electronically.

4) Postal Ballot → It is also called Voting by Post. Company sends pre-stamped envelop to shareholders who will post there reply in the same envelop. This is again a facility available where share-holder need not to come to the general meeting

UNIT 19

AGM

UNIT-19

ANNUAL GENERAL MEETING.

1. Concept of AGM doesnot apply on OPC.

2. For all Other Companies AGM is Compulsory.

3. First AGM of Company should take place within 9 months from the end of 1st financial year.

eg. COI: 31.12.18

First F.Y = 31.12.18 to 31.3.2019

First AGM's last date = 9 month from 31.12.19

= 31.12.19.

COI = 31.1.2019.

First F/ = 1.1.2019 to 31.3.20.

last date of First AGM = 31.12.20.

4. If first AGM could not take place in 9 months Registrar cannot extend this time peeiod.

5. After the first AGM, all other AGM shall be called Subsequent AGM.

6. Maximum Gap between two AGM can be 15 months.

7. Last date to hold AGM is six months from the end of Financial year.

8. Minimum one AGM should takes place in every calender year.

For. ex.

AGM S.NO.	Rule 1	Rule 2	Rule 3	Last date	Actual AGM.
1.	-	-	-	-	30.9.18
2.	30.12.19	30.9.19	31.12.19	30.9.2019	1.5.2019
3.	1.8.2020	30.9.20	31.12.20	1.8.2020	31.7.2020
4.	31.10.21	30.9.2021	31.12.21	30.9.2021	1.9.2021.

9. ROC has power to allow extention of time by 3moths. but only in case of subsequent AGM.

10. If AGM could not take place within the given time or extended time, following punishment ~~shall~~ will apply:

(a). For the first time default maximum fine shall be ₹ 100,000.

(b) In case of repeated offc. offence fine shall be maximum ₹ 5000 per day.

11. AGM cannot start before 9.am.

12. AGM cannot be called after 6p.m. but can be continued after 6p.m.

13. AGM can take place on public holiday but cannot take place on national holiday.

14. AGM should take place at the registered office but If it is not possible, it should take place in the same city / town / village in which registered office is situated.

15. If the company doesnot follow regulations regarding AGM, NCLT can order compulsory AGM.

16. If the Tribunal orders AGM, Meeting can start with one person.

17. BOD must prepare an AGM report in which following contents are complusory :

(a) Day, Date, time, Place of meeting.

(b) Details of Chairman.

(c) No. of present members.

(d) Quantity of Quorum.

(e) Certificate by Company Secretary that everything took place as per rules.

(f) Resolution discussed and Passed.

18. Copy of this report will be given to ROC in Form no. MGT-15 within 30days from the date of AGM.

UNIT 20

EGM

UNIT - 20

EXTRA ORDINARY GENERAL MEETING
(EGM · Section · 100)

1. EGM can be called by BOD either on their own or upon request from the member or upon the instruction of tribunal.

2. Any General meeting other than AGM is called EGM.

3. There is no time limit minimum or maximum to call EGM because emergency can arise any time.

4. If members are demanding, demand must come from minimum 10% members.

5. BOD must call ~~the board meet~~ EGM within 45 days of demand. but atleast start the peprati -on within 21 days of demand.

6. If EGM could not be called in 45 days members can call EGM ~~themselves~~. themselfs, whose expenses shall reimbursed by Co. to them.

7. EGM can take place on Public holiday as well as national holiday.

UNIT 21

DIRECTOR

10. Investment Company :- Any company whose principal ~~place~~ of business is the investment into shares and securities shall be Investment companies. They are called Intemediaries of Securities Market.

11. Statutory Corporation :- Any organisation for which separate act of parliament has been passed shall be statutory corporation. For Example :- Reserve Bank of India, LIC of India, and ICAI, Kolkata.

Unit - 21 Directors

Introduction

1. Company doesnot belong to anyone.

2. It means company is a collection of people who put their money together, control the affairs and distribute the profits.

3. People who put their money may or maynot be willing to contribute their time.

4. People who contribute their money decide who will run their organisation on their behalf.

5. It means person managing the organisation may be someone from them or some outside peresan.

6. Person who put his money is called Shareholder and person who manage this money is called director.

7. It means shareholder and director may be same person or may be different person.

8. When we open a company, we want to keep the control with us so we keep majority shareholder with us.

9. Appointment of directors is directed by majority shareholder so if we have majority shares, we can appoint directors.

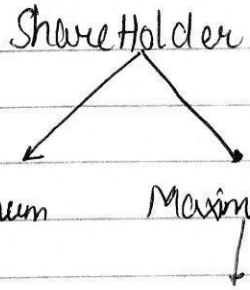
10. It is upto the majority shareholder whether they make themselves directors or appoint someone else.

Minimum and Maximum Number of Directors

(1) Minimum directors in a private company shall be '2'.

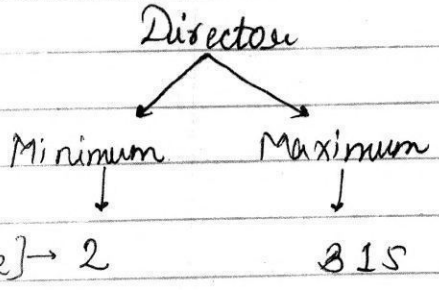
(2) Minimum directors in a public company shall be '3'.

(3) Maximum directors in any company except charitable company shall be '15'.



[Private] 2 — 200

[Public] 7 — Unlimited



[Private] → 2 — 15

[Public] → 3 — 15

Increase and Decrease in Number of Directors

(1) Directors can be increased simply by doing appointment.

(2) Appointment is done by pasing ordinary resolution which means decision by majority shares.

(3) Any increase beyond is not permitted but it will be allow after pasing special resolution which means 75% votes in favour of the decision.

(4) Generally, maximum no number of directors is 15 but if a company wants to have lesser limit, it can write it in its rules which are called Article of Association.

(5) If the limit is written in the article, it can be increased or decreased by pasing special resolution.

(6) Decrease can be done simply by removing the director or resignation of director or anyother reason of vacancy.

Types of Directors

1) Executive Director (Full Time)
2) Non - Executive Director (Part Time)
3) Women Director
4) Independent Director
5) Nominee Director
6) Managing Director

7) Small Shareholder Director
8) First Director Etc.

Women Director

1. All companies donot need women director.
2. Women director is appointed in following companies :-
(a) Listed company
(b) Public company with paidup share with capital 100 crore.
(c) Public company turnover of ₹ 300 crore.

3. At least one women director is compulsory in these companies at all the times.

4. If casual vacancy arises in the office of women director, it shall be lifted by appointing another women director in next three months or next board meeting whichever is later.

First Director of Company

(1) Company takes birth later and director is appointed earlier.

(2) People who open company who are called Promoters. and promoter must also appoint 1st shareholders and 1st directors.

(3) It doesnot matter whether promoter writes their own name as first shareholder or first director or as both but writing such name is compulsory.

(4) If the promoter wants to make someone else as director their names can be written.

(5) In simple words, name of first directors are specified in articles of association.

(6) If director's name is absent in the articles of association, all the first shareholders will become the directors.

Mr.	Made a Plan	Promoter	First Shareholder	First Director.
A	✓	✓	✓	X
B	✓	✓	✓	✓
C	X	X	✓	✓
D	X	X	✓	✓
E	X	X	✓	X
F	X	X	✓	X
G	X	X	✓	X

↓ Also called Subscribers

Explanation

(1) We cannot open company without finalising who will run it.

(2) We can easily find a shareholder because he will just give us money.

(3) However it is not easy to finalise name of director because we require an efficient person to run the company for common benefit.

(4) If promoters couldnot find any can find out a suitable person to make him director, it is allright and his name can be written in the article of association.

(5) If promoters couldnot find any such name, they will leave the column of first directors blank, afterwhich all the first shareholder will become first directors.

(6) So it is clear that :-

a. Promoter need not to have shares.
b. Directors neednot to have shares.
c. Promoter, first shareholder, first director may or maynot be same.

(7) Liability ~~to~~ of directors is more than liability of shareholder so his appointment should be done carefully.

Additional Director

(1) Generally director is called Director and he is appointed by the General Meeting.

(2) If workload is too high and directors appointed by shareholder are enable to handle the same, Board of Directors can appoint more director temporary.

(3) Such temporary director who are appointed in addition~~al~~ to the original director are called additional Director.

(4) Such additional director will retire in the next annual General Meeting or due date of General meeting whichever is earlier.

(5) It means even if the next AGM will not held on time at the due date additional director will still retire.

(6) Any person who has lost election of becoming a director in General Meeting can never become additional director only in that company for the life time.

(7) Powers and duties of additional director are same as anyother director.

Alternate Director

(1) When a director goes away from India for minimum three months period, an alternate can be appointed in his place.

(2) This alternate director will remain in office only upto the arrival of original director back to India.

(3) Coming back to India means coming back to office.

(4) Alternate director will office in following situations :-

(a) Retirement of original director
(b) removal of original director.
(c) Death of original director.
(d) Resignation of original director.
(e) Vacancy due to any other reason
(f) Arrival of original ~~alternate~~ director back to office.

(5) Power & duties of alternate directors are same as original director.

~~Ato~~

Nominee Director

1. Sometimes company entered into transaction with outsider who wish to appoint their representation or director in the company.

2. If the company doesnot want to loose his transaction, it might agree to this.

3. It might be possible only if the company is under influence to enter into the transaction.

4. It might be possible in case of loan, joint venture with some foreign company, technology sharing, big contract of heavy purchase and sale, etc.

5. Sometimes national Company law tribunal also appoints a representative in the company as director

6. All these directors appointed by external parties are called Nominee Director.

Appointment & Retirement of Director

1. First directors of company are appointed by promoters by writing their names in the articles of association.

2. First director or any other director, doesnot remain permanent in the company.

3. Retirement comes to every director for sure, one day or other.

4. Each year, some directors retire at the annual general meeting.

5. Situations getting vacant may be decided to keep vacant only or it may be decided to fill them.

6. Number of directors to be retired each year is decided in the following process:

Step 1:- Take total directors, excluding independent directors.
Step 2:- Total Directors $\times$ $2/3$ = Rotational Directors
Step 3:- Rotational Directors $\times$ $1/3$ = Retiring Directors
Step 4:- Retiring Directors will be decided on the basis of seniority of service.

For Eg:- Step 1: Take Total Director = 12
Step 2: Total $\times$ $2/3$ = $12 \times 2/3 = 8$
[It means 8 directors are little unsafe and maximum 4 director already have Immunity. These 4 directors cannot be retired by this process. Procss of Retirement will work on 8 directors only. These 8 are called Rotational Directors.]

Step 3 :- Rotational Directors $\times \frac{1}{3} \times \frac{1}{3}$

$= 8 \times \frac{1}{3}$

$= 2.\overline{6}$

= 3 Directors.

[It means out of 8 Rational Directors all 8 will not go. Only $\frac{1}{3}$rd i.e. 3 will finally retire. Remaining 5 will be saved and will serve the company for one more year].

Step 4 :- 3 director will go for sure however who will be decided by Seriority Of Service.

7. If retirement cannot be decided by seriority it will be decided by mutual concent.

8. If mutual concent is also not possible, draw of lots will take place and retirement will be decided.

9. So it is clear that directors donot enjoy perpetual succesion, they will have to retire one day.

10. This retirement canbe annual retirement which is called Retirement by Rotation or it can be a retirement after particular period of time, such as 3 or 5 years.

11. In other words, there are some directors who are liable to be retired by rotation and there are some directors who enjoy their service without rotation for a particular period of time.

13. If we look at the process of rotational retirement, step 3 doesnot apply on total directors, it applies only on rotational directors. It means 1/3 will be calculated only on rotational directors.

14. However, if the company wants, all directors may be treated as rotational and 1/3 may be applied directly on them, which means, their will be one step less than the original process.

15. Following will be the revised steps :-

Step 1 :- Take total Directors, Excluding Independent Directors.

Step 2 :- Total X 1/3 = Retiring Directors

Step 3 :- Retiring directors will be decided on the basis of seniority in service.

What happens after Retirement

1. When the retirement takes place, ~~possession~~ position becomes vacant.

2. If shareholders decide by passing ordinary resolution, any of the following decision can be taken :-

(a) To keep the position vacant only.
(b) To ~~not~~ reappoint the same person again.
(c) To appoint someone else.

3. Shareholders will have to decide this in the same AGM, because voting of shareholders cannot take place after AGM.

4. If AGM couldnot take any decision, AGM will be adjourned to the next week, say day, same time, same place.

5. If no decision couldbe taken even at the adjourned AGM, automatic reappointment will take place.

6. Automatic reappointment cannot happen in following circumstances :-

(a) He is not willing.
(b) He is become disqualified.
(c) Shareholders have rejected his ~~not~~ reappointment.

Qualification and Disqualification of Director

Qualification of Director

1. There is no qualification criteria to become a director.
2. Anyone appointed by shareholders can become Director.
3. He may or may not have shares with him.
4. Anyone can file nomination form to become director.
5. Election will take place in the General Meeting, he will become director.
6. It means any person appointed as director becomes director.

Disqualification of Director

1. A person who is disqualified U/S 11 of Contract Act, 1872.
2. A person who has applied for Insolvency but his application is pending.
3. A person who has been convicted by court for minimum 6 months, cannot become director for 5 years, from the expiry of jail.

Ex:-

Jail period	Disqualification Period
6month	5y + 6m
1y	6y
5y	10y
7y	?

4. If a person has been convicted for 7 years or more, he can never become director in his lifetime.

5. A person who has not paid calls on his shares cannot become director during the period of default

6. Any person disqualified by court or National Company law Tribunal (NCLT).

7. If a person doesnot have Direction Identification Number (DIN).

Appointment of Director by Small Shareholders

1. Small Shareholder means any shareholder who has purchased maximum shares of ₹ 20,000 as per face value.

2. Director appointed by small shareholders is called Small Shareholder's Director (SSD).

3. SSD is required only if following conditions are fulfilled:-

(a) Company should be a listed company.

(b) Appointment of SSD is demanded by SS.

4. Demand must come from following number of shareholders.

→ 1,000 SS
or
→ 1/10th of Total SS

} whichever is less.

Eg. Total Shareholders = 1,00,000
Total SS = 70,000
Calculate, How many SS should demand SSD?

Option 1 1,000 SS

Option 2 1/10 th of total SS i.e. 70,000
= 7,000

whichever is less = 1,000 SS should demand.

5. If the company wants to appoint SSD without any demand, it is more good.

6. SSD remains ~~his~~ in office for a maximum period of 3 years.

7. SSD doesnot retire by rotation.

8. SSD can never be reappointed as SSD but he can be appointed in any other post only after 3 years from the date of retirement.

9. One single person can work as SSD simultaneously in two companies but these 2 companies should not be in competition or conflict with eachother.

10. Status of SSD is of Independent director.

11. SSD neednot to be SS himself.

Vacation of Office

1. Vacation means leaving the office due to certain reason.

2. It looks like Disqualification but disqualification arises before appointment and if something happens after appointment, this is called Vacation.

		Before	After	Thereafter
	Insane	Insane	Disqualification	X
	Insane	Director	Insane	Vacation

3. Vacation happens due to following reasons :-

(a) Disqualification U/s 164.

(b) Removal by Shareholders.

(c) Person disqualified due to related party transaction.

(d) Disqualified due to disclosure of Interest.

(e) If a director doesnot attend all board meetings for a continuous period of one year, he will have to leave that company.

(f) If a director has exceeded maximum number of directorship.

Maximum Number of Directorship

1. One single person can become director in maximum 20 companies at one time.

2. Out of this 20 companies, maximum limit of public companies is 10.

3. It means all 20 can be private but all 20 cannot be public.

4. Public Company means following companies :-

→ Public Company
→ Private Company which is subsidiary of Public Company.
→ Private Company which is holding company Public Company.

Eg. Mr. X is director of 5 public companies and he is not director in any private company, find out whether he can accept appointment in following companies or not?

a) A Ltd
b) B Private Ltd
c) C Pvt. Ltd.
d) D Pvt. Ltd. / a subsidiary of E Ltd.
e) E Ltd
f) F Ltd.
g) G Ltd. which is subsidiary of H Pvt. Ltd.
h) H Pvt. Ltd.
i) I Ltd.
j) J Pvt. Ltd, which is holding of I Ltd.

Offer S.No.	Offer from	Status Public/Pvt	Balance Limit- Public	Balance Limit- Private	Accept / Reject
0.	—	—	5	10	—
1.	A ltd.	Public	5	10	Accept
2.	B(P) ltd.	Pvt.	4	10	Accept
3.	C(P) ltd.	Pvt.	4	9	Accept
4.	D(P) ltd.	Public	4	8	Accept
5.	E ltd.	Public	3	8	Accept
6.	F ltd.	Public	2	8	Accept
7.	G ltd.	Public	1	8	Accept
8.	H(P) ltd.	Public	0	8	Accept
9.	I ltd	Public	0	8	Accept
10.	J(P) ltd.	Pvt.	0	8	Accept
			0	7	

Resignation of Director

1. Resignation Any Director can resign anytime.
2. Resignation must be in writing.
3. Resignation must be given in form number (DIR-11).
4. Copy of Resignation with reason will be given to ROC as well with in 30 days by director.
5. Company will send its own clarification to ROC in form DIR-12. within 30 days.

6. Director will continue to be liable for activities done during his tenure.

7. Directors so resigned can join back the company anytime.

Step 01 :- Minimum 1% shareholders must write a complain to the Board of Directors and simultaneously request to call extra-ordinary General Meeting.

Step 02 :- BoD will called EGM and will also inform the concerned director.

Step 03 :- Such director will submit his representation in writing to the company in advance so that it can be circulated to all

shareholders.

Step 04:- Company will circulate notice of meeting and representation to all shareholders so that they can come well prepared.

Step 05:- If director doesnot give representation or gives it too late to get it circulated, he will be allowed to speak out at the meeting.

Step 06:- Shareholders will vote about the removal and matter will be decided by passing ordinary resolution.

5. If the representation submitted by director carries some defamatory aspects or statements, company can take permission of NCLT to stop him from submitting representation.

6. The director so removed can be reappointed by shareholders anytime but he cannot be appointed by BoD.

7. Director removed by one company doesnot become disqualified for other companies..

Duties of Director

Prior to 2013, there were no provisions regarding duties of directors. Such profile was desired because every mistake and offence used to be associated with directors.

In maximum companies, there are no guidelines about duties of directors. So, directors were burdened with everything.

However, See 166 of Companies Act 2013 has prescribed following duties of directors :-

1. They should work as per articles.
2. They should work in good faith.
3. They should show Due Diligence.
4. They shouldnot have conflict of Interest.
5. They shouldnot have undue advantage of their position.
6. They cannot assign their office or possession to anyone else.

Contributions by Company -

(Section 181 to 183).

Charitable Contribution U/S 181

1. This is voluntary charity done by directors.
2. They can contribute maximum 5% of last 3 years average Net Profit.
3. Any contribution beyond this limit requires approval of Shareholders by passing ordinary resolution.

Political Contribution U/S 182

1. Political Contribution means financial assistance to political party.
2. It may be direct, cash contribution or Indirect contribution in kind.
3. This contribution can be given by BOD without any limit, which means shareholder's approval is not required.
4. Political contribution is not allowed for following companies :-
   (a) Government Companies.
   (b) Any other company which is less than 3 years old.
5. Company must declare details of political contribution along with name of political party in the Profit & loss Account.
6. If compliance of this section is not done, company will pay fine upto 5 times of the amount contributed and their may be imprisonment upto 6 months.

Contribution to National Defence fund etc U/S 183

1. This is a voluntary contribution to National Defence fund or any other fund maintained by Central Government for this purpose.

2. BOD can contribute upto a maximum of 100% of last 3 years average net profit.

3. This contribution should also be disclosed in P&L A/C with the details of specific fund.

Power of Board of Directors.

These 13 powers are called absolute powers.

Section 180 prescribed just 4 powers, these powers can be exercise only if shareholders pass special resolution. These 4 powers are called restricted powers.

13 Absolute U/s 179

1). To make calls on shares.
2). To approve buy back upto 10% of paid up share capital and free reserve.
3). To issue debentures whether in india or outside India
4). To borrow money otherwise than on debenture.
5). To invest funds of company.
6). To grant loan, give guarantee or security.
7) To approve financial statement and director's report.
8). To diversify business of company.
9). To approve amulgmation, merger or reconstruction.
10). To take over another company.
11). To make political contribution.
12). To appoint or remove key managerial person.
13). To appoint internal audition and secreterial auditor.

Generally all the decisions taken by BOD are taken in the board meeting. Board meeting requires various formalities under section 173 & 174. This create delay in decision making. Power No. 4, 5 & 6 cannot be ~~defaid~~ delayed because of urgency in nature. So section 179 allows us to deligate these 3 powers to a person or group of person so that they can be performed without board meeting. Such 3 powers can be deligated to following peoples :

(a.) Committee of directors.
(b.) Managing directors
(c.) Manager
(d.) Principle officer of company.
(e.) Branch officer of company.

Restricted power U/s 180.

Special resolution is compulsory to execute following 4 powers.

(a). To sell, dispose of our lease undertaking of company or substantial part of undertaking of company.
(b). To invest money received on amalgmation of some company in which we have invested money, excluding investment in trust.
(c) To borrow money otherwise than on debentures beyond 100% of paid up share capital and pre reserve, excluding temporary loans of max. 6 months.
(d). To give him or provide waiver to director for his dues.

So, it is clear that these powers are restricted in nature and requires special resolution. It can be once and for all transaction or it can be for a single transaction.

Managerial Remuneration (Sec-197)

1). This section covers payments to directors only.

2). It doesn't talk about CEO, CFO and other senior management positions.

3). Direct can be whole time or part time.

4). If the company has just one whole time director, he will get 5% of net profit.

5). If there are more than one whole time director all of them will collectively get 10% of net profit.

6). Remuneration of part time director is dependent on whole time directors.

7). If company have not any whole time director, part time director will get collectively 3% of net profit.

8). If company has one or more whole time director, part time directors will get collectively ~~one~~ 1% of net profit.

9) There can be following cases in practical life :-

	Ex director	Non-ex director	Total MR
a).	0 = 0%	Any No. = 3%	3%
b).	1 = 5%	0 = 0%	5%
c)	More than 1 = 10%	0 = 0%	10%
d).	1 = 5%	Any No. = 1%	6%
e).	More than 1 = 10%	Any No. = 1%	11%

10). Limits of managerial remuneration cannot be increased by company but they can be increased by passing special resolution.

11). Prior to companies ammendment Act 2018, central government (CG) approval was also requires but now it is not needed.

12). Overall mangerial remuneration is max. 11% of net profit.

13). In case of losses or low profit mangerial remuneration can be paid to only whole time directors. But not on the basis of profit, it will be calculated on the basis of schedule 5.

14). Payment can be done either on monthly basis or annual basis or as decided by company.

15). If it is found that managerial remuneration is paid in ~~excess~~, it can be recovered back either through adjustment or in cash.

Special Rules of managerial Remuneration

1). If a director performs some professional service which are not in capacity of directors, he will be eligible to take seperate professional charges.

2). Generally companies purchase fidility insurance for their directors and key managerial persons.

3). Premium paid up on such policies cannot be recovered from managerial remuneration.

4). If the fraud actually takes place, entire premium paid so for can be recovered.

5). When directory attained board meeting or committee meeting they are paid a predetermined amount which is called sitting fees.

6). Maximum permisable sitting fees is Rs. 1,00,000 per director per meeting.

7). Company can change AOA to reduce sitting fees.

8). Perquisities can also be given in addition to managerial remuneration of 11%. In accordance with section V.

Appointment of Managing Director and whole time director

MD and whole time directors are executive in nature. They work like employees of companies. So they have to fulifill additional conditions before becoming MD or WTD.

Conditions are prescribed in section 196 as well as schedule 5, they are as follows :-

1). Minimum age is 21 years and there is no remedy to it.

2). Maximum age is 70 years and if a person has already attained 70 years, special resolution can be passed to make him MD or WTD.

3). He should not have done any compromise with his creditors.

4). He should not be fine of more than ₹ 1,000 in any of the 16 Acts.

5). He should not be jailed ~~or~~ even for a single day in any of the 16 Acts.

6). He should not be detained even for a minute under FEMA or smuggling.

7). He should be resident of India.

8). If he is a managerial person in more than one companies he cannot take double remuneration.

16 Acts,

1). Indian Stamp Act, 1899.
2). Central Excise Act, 1944.
3). Industries Development and Regulation Act, 1951.
4). Prevention of Food Adultration Act, 1954.
5). Essential Commodities Act, 1955.
6). Companies Act, 2013.
7). Securities Contract Regulation Act, 1956.
8). Wealth Tax Act, 1957.

9). Income Tax Act, 1961.
10). Custom Act, 1962
11). Competition Act, 2002.
12). Foreign Exchange Management Act, 1999 (FEMA).
13). Sick Industrial Companies Act, 1985
14). Securities Exchange Board of India Act, 1992.
15). Foreign Trade Development and Regulation Act, 1922.
16). Prevention of Money Laundering Act, 2002.

Directors Indentification Number (DIN).

1). It is a 10 digit number which is compulsary to be purchased before becomming directors in any company.
2). This number is given by Ministry of Corporate Affairs.
3). DIN can be applied in the form of DIR 3.
4). Following are the details to be furnish for DIN:-
   a). Colour photograph.
   b). Identity proof.
   c). Residence proof.
   d). Board Resolution to appoint director.
   e). Sample signature.
5). DIR-3 shall be submitted electronically by using digital signature.
6). This form must be verified by company secretory of managing director or director or CEO or CFO of the company in which he is becomming director.

7). Central Government will process the application in 15 days.

8). Any changes required can be done in DIR-6.

9). Central government will demand further information to process the application.

10). One individual can have just one DIN.

11). Wherever and whenever director puts his signature DIN must be mentioned.

Independent Director (Sec-149.)

1). Concept of Independent Director is new to India.

2). He is a non-executive director who must fulfil 6 conditions.

3). So it is clear that every independent director is part time director. but every part time director is not independent director.

4). Independent director does not take any remuneration whether fixed or variable.

5). He is given sitting fees Reimbursement of out of pocket expense and profit related commission.

6). Independent directors is not required in all companies.

7). He is required only in following companies :-

(a). Listed companies required 1/3 independent director.

(b). Following company requires 2 independent directors :-

(i). Public company with paid up share capital of ₹ 10 crore or more.

(ii). Public company with ~~paid up~~ turnover of ₹ 100 crore or more.

(iii). Public company which has O/s loans, debentures and deposites of ₹ 50 crore or more.

8). Independent director should not have any financial or non-financial connection ~~of~~ with the company & and his directors.

COMPANY LAW

QUESTION

PRACTICE MANUAL

Fill in the blanks

1. The Board shall have a minimum number of _____ directors in the case of private company.

2. The maximum number of directors shall be _____.

3. Small shareholder means a share holder holding shares of nominal value not more than `_____.

4. The company shall, within _____ days of the appointment of a director, file consent of director with the Registrar.

5. DIN stands for _____.

6. A return containing the appointment of directors and KMP and changes therein shall be filed with the Registrar within _____ days of such appointment or change by the company.

7. The maximum age limit of Managing Director is _____ years.

8. The total managerial remuneration payable by a public company to its directors, including Managing Director and Whole Time Director in respect of a financial year shall not exceed _____ of the net profits of the company.

9. Sitting fees shall not exceed _____ per meeting of the Board or Committee.

10. The office of a Director shall become vacant in case he absent himself from all the meeting of the Board of Directors held during a period of _____ with or without seeking leave of absence of Board.

Choose the correct answer

1. The minimum number of directors for a public company is

(a) 1
(b) 2
(c) 3
(d) 7

2. What is the paid up share capital fixed for the appointment of a woman director?

(a) `100 crores;
(b) `300 crores;
(c) `500 crores;
(d) None of the above.

3. The appointment of an independent director shall be approved by the

(a) Board meeting;
(b) General meeting;
(c) Registrar of Companies;
(d) Central Government.

4. The tenure of director appointed by small share holders shall be

(a) Up to the date of next AGM;
(b) 1 year;
(c) 3 years;
(d) 5 years.

5. No independent director shall hold office for more than ____ consecutive terms.

(a) 2
(b) 3
(c) 4
(d) 5

6. Which public company is required to appoint independent director"

(a) The public company having turnover of `100 crores or more;
(b) The public company having paid up share capital of `10 crores or more;
(c) The public companies which have, in aggregate, outstanding loans, debentures and deposits exceeding `50 crores;
(d) Any of the above.

7. Which one of the following is not the criterion for the appointment of independent director?

(a) He shall not be a promoter of the company.
(b) He shall relate to the promoters of the company;
(c) He shall not have any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial year.
(d) His relatives have not held any pecuniary relationship with the company amounting to 2% or more of its gross turnover.

8. A director may be elected by small share holders upon a notice by

(a) Not less than 1000 small shareholders;
(b) One tenth of the total number of shareholders;
(c) Not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower;
(d) None of the above.

9. At every AGM, not less than _____ of the total number of directors shall retire by rotation.

(a) One third;
(b) Two third;
(c) Three fourths;
(d) Half.

10. The minimum age prescribed for the appointment of Managing Director is

(a) 18 years;
(b) 21 years
(c) 30 years
(d) 70 years.

State whether TRUE or FALSE

1. A company may appoint more than 15 directors after passing a resolution.

2. All companies are required to appoint one woman director.

3. An independent director shall not be entitled to any stock option.

4. Whole time director is not the employee of the company.

5. Additional director shall hold office up to the date of next AGM.

6. The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the new Act.

7. Non obtaining of DIN does not amount to disqualification of a director.

8. The Board may accept the resignation of a Director on his submission of his application for resignation.

9. The removed directors shall not be reappointed as director by the Board of Directors.

10. In any financial year, if a company has no profits or its profits are inadequate, the company shall not pay remuneration to its directors.

Model Questions

1. Define 'independent director'.

2. Write on various types of directors.

3. Discuss the procedure for rotation of directors and re-appointment of directors.

4. Director Identification Number – discuss the provisions relating to this.

5. What are the disqualifications for the appointment of director?

6. When the office of a Director shall become vacant?

7. Can a director be removed? If so give the procedure in detail.

8. Write notes on

(a) Overall remuneration payable by a public company;
(b) Remuneration payable to Managing Director or Whole Time Director.
(c) Remuneration payable to Directors.

9. Which will not form part of the remuneration of a Director?

10. What are the duties of a director in a company?

Answers:

Fill in the blanks

1. 2;
2. 15;
3. 20000;
4. 30;
5. Director Identification Number;
6. 30;
7. 70;
8. 11%;
9. ` 1 lakh;
10. 12 months.

Choose the correct answer

1. C;
2. A;
3. B;
4. C;
5. A;
6. D;
7. B;
8. C;
9. B;
10. B.

State whether TRUE or FALSE

1. TRUE;
2. FALSE;
3. TRUE;
4. FALSE;
5. TRUE;
6. TRUE;
7. FALSE;
8. FALSE;
9. TRUE;
10. TRUE.

MTP Question:

Question: 1 June 2019 What are the documents to be submitted to Registrar of Companies for incorporation of a company

Answer: Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company. The promotor of the company shall submit the following documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration. (a)Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed; (b)A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and rules made there under in respect of registration;

(c)A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that — (Form No. INC-9)
(1)he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2)he has not been found guilty of any fraud or misfeasance or of any breach of duty to company under this Act or any previous company law during the last five years and

(3) that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d)The address for correspondence till registered office is established;

(e)All particulars of every subscriber to the memorandum along with the proof of identity;

(f)The particulars of the persons mentioned in the articles as the first directors of the company;

(g)The consent to act as directors of company in such form as may be prescribed.

Question: 2 Explain the provisions relating to pay commission in connection with the subscription to the securities, by a company

Answer: Section 40(6) provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules.

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

• the payment of such commission shall be authorized in the company's articles of association;

• the commission may be paid out of proceeds of the issue or the profit of the company or both;

• the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;

• the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;

• commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;

• a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

Question: 3 Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Answer: (a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undercharged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d)he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence; If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(e)an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(f)he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(g)he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(h)he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications. The disqualifications referred under (d), (e) and (g) above shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification

Question: 4 What are the duties of a director in a company?

Answer: Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

• A director of a company shall act in accordance with the articles of the company;

• A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;

• A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;

• A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;

• A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;

• A director of a company shall not assign his office and any assignment so made shall be void;If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 5 Write short notes

(a) Alternation of Share Capital

(b) Revocation of licence

Answer: (a) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

• increase its authorized share capital by such amount as it thinks expedient;

• consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

• convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;

• sub division of shares,or any of them,into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount,if any,unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

• cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation shall not be deemed to reduction of share capital.

(b) Revocation of licence

Section 8(6) provides that the Central Government may, by order, revoke the licence granted to the company registered under this section-

• if the company contravenes any of the requirements of this section; or

• any of the conditions subject to which a licence is issued; or

• the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.
The Central Government shall direct the company to convert its status and change its name to add the words 'Limited' or 'Private Limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

Question: 6 What are the prohibitions of buy back spelt out in Section 70 of the Act?

Answer: Prohibition of buy back in certain circumstances Section 70 provides that no company shall directly or indirectly purchase its own shares or other specified securities-

• through any subsidiary company including its own subsidiary companies;

• through any investment company or group of investment companies; or

• if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company. The buy back is not prohibited if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

Question: 7 June,2019 Enumerate the provisions relating to provisions relating to Restrictions on powers of Board

Answer: Section 180: Restrictions on powers of Board The Board can exercise the following powers only with the consent of the company by special resolution, namely –

(a)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;

(b)to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

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

(d)to remit, or give time for the repayment of, any debt due from a director. The special resolution relating to borrowing money exceeding paid up capital, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except in accordance with the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded

Question: 8 June,2019 Describe the term 'Independent Director' as per companies Act,2013

Answer: 'independent director' is defined under Section 149(6) of the Act as a director other than a Managing Director or a whole time director or a nominee director-

■ who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

■he shall not be a promoter of the company or its holding, subsidiary or associate company;

■he shall not be related to the promoters or directors in the company, its holding, subsidiary or associate company; he shall not have any pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

■ neither he or any of his relatives-

• holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company, in any of the three financial years immediately preceding the financial year;

• is or has been an employee or proprietor or partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-

■ a firm of auditors or company secretaries in practice or cost auditors of the company; or

■any legal or a consulting firm that has or had any transaction with the company, amounting to 10% or more of the gross turnover of such firm.

• holds together with his relatives 2% or more of the total voting power of the company; or

• is a Chief Executive or Director of any nonprofit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

■ who possess such other qualifications as may be prescribed.

Question: 8 June 2019 Director Identification Number

Answer: Director Identification Number
Every individual, who is to be appointed as director of a company shall make an application electronically in Form No.DIR-3 to the Central Government for allotment of DIN along with the prescribed fees. The applicant can download the said from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompletion to the applicant by placing it on its web site and by email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN. The director, on allotment of DIN, is to intimate the company in Form No.DIR-3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, fumish the same with the Registrar. If a company fails to famish DIN the company shall be punishable with fine which shall not be less than Rs 25,000/- but which may extend to ' 1/- lakh. Every officer of the company who is default shall be punishable with tine which shall not be less than ' 25,000/- but which may extend to Rs1/- lakh.

Question: 9 Dec 2018 Discuss the procedure for conversion of a One Person Company into a Public Company or a Private Company.

Answer: (i) Conversion of OPC to convert into a Public Company or a private company

Rule 6 provides that where the paid up share capital of an OPC exceeds `50 lakhs and its average annual turnover during the relevant period exceeds `2 crores, it shall cease to be entitled to continue as OPC. Such company is mandatorily to be required to convert within six months into either a public limited company with at least 7 members or a private company with minimum two members.

The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid for OPC.

Question: 10 Can a director be removed? If so, give the procedure in details.

Section 169 of Companies Act, 2013 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;
- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
  - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company‘s default, the director may required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order at company‘s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

Question: 11 Discuss briefly about the benefits of a one person company

Answer: (i) The benefits of a one person company may be enumerated as below:

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.

- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.

- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs**.**

Question: 11 What do you understand by the term 'Red-Herring Prospectus'

Answer: Red herring prospectus

The Explanation to Section 32 defines the term _red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of securities. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlight as variations in the prospectus.

At the time of closing of the offer the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

Question: 12 Issue of Securities by a public company

Answer: Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;

- through private placement by complying with the provisions of Part II of Chapter III of this Act;

- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
(b) through private placement by complying with the provisions of Part II of this Chapter.

As per explanation to section 23, for the purposes of Chapter III, ―public offer‖ includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

Question: 12 State the features of Section 8 Companies.

Answer: (i) Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

- has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;
- the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
- a firm may be a member of the company registered under this section;
- a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
- a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

Question: 13 Write a note on 'Small Company'

Answer: "Small company" means a company, other than a public company,―

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to―
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act;

Question: 14 Discuss the procedure for alteration of Memorandum of Association.

Answer: Procedure of alteration of memorandum: Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that –

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word ―Private‖, on the conversion of any one class of companies to another class. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate

4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that –

- The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
- the sufficient provision has been made by the company either for the due discharge of all its
- debts and obligations, or
- adequate security has been provided for such discharge.

6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar -

- the special resolution passed by the company under sub-section (1);

- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration. 9. Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—

- The details, in respect to of such resolution shall also be published in the newspapers (one in

- English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;

- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Question: 15 State the reports that are to be set out in the prospectus

Answer: Reports to be set out in the prospectus

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus; The reports made by the auditors in respect of the business of the company.

Question: 16 Conditions of formation of OPC

Answer: Conditions of formation of OPC

One Person Company (_OPC‘ for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

Conditions

The following are the conditions in formation of a OPC:

- No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;
- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond `50 lakh or its average annual turnover during the relevant period exceeds `2 crore rupees.

Question: 17 Mr. Jadav floated an OPC, but he does not want to provide any nominee. Is nomination compulsory under OPC. If so what would be the procedure and regulations

Answer: Nomination of One Person Company

The proviso to Section 3(1) provides that the memorandum of OPC shall indicate the name of the other person as nominee in Form No. INC.2. The prior written consent of the other person shall be obtained in the Form No. INC.3. The other person in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of OPC along with Memorandum and Articles of the Company.

The other person may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company. The sole member shall nominate another person as nominee within 15 days of the notice of the withdrawal. He shall send an intimation of such nomination in writing to the company, along with the written consent of such other person so nominated in Form No. INC.3. The company shall within 30 days of receipt of the notice of the withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name another person

nominated by the sole member in Form No. INC.4 along with the fee prescribed along with the written consent of such another person so nominated in Form No.INC-3.

The subscriber or member of OPC may change the name of such other person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee. He may nominate another person after obtaining the prior consent of such another person inform No.INC-3. The company shall, on receipt of such intimation, file with the Registrar, a notice of such change in Form No.INC-4 along with the fee and with the written consent of new nominee in Form No.INC-3 within 30 days of such receipt of intimation of change.

Where the shareholder of OPC ceases to be the member in the event of death of incapacity to contract, his nominee becomes the member of such OPC. Such new member shall nominate within 15 days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company. The company shall file with the Registrar an intimation of such cessation and nomination in Form No.INC-4 along with the fee within 30 days of the change in membership with the prior written consent of the person so nominated in INC-3.

Question: 18 What are the requirements for public placement?

Answer: Requirements for private placement

Rule 14(2) (a) of Companies (Prospectus of Securities) Rules, 2014, provides that a company shall make a private placement after-

- getting the approval by the shareholders of the company, by a special resolution for the proposed offer of securities or invitation to subscribe securities;

- the explanatory statement annexed to the notice for the general meeting shall disclose the basis for justification for the price, including premium, if any, at which the offer or invitation is being made;

- in case of offer or invitation for non convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures;

- in case of an offer or invitation for non convertible debentures made within a period of six months from 01.04.2014, the special resolution may be passed within the said period of six months from 01.04.2014.

Question: 19 Jun 2018 Write a note on issue of Preference shares.

Answer: Liability for mis-statement

Rule 9 of Companies (Share Capital and Debentures) Rules, 2014, provides that a company having a share capital may, if so authorized by articles, issue preference shares subject to the following conditions:

- the issue should be authorized by passing a special resolution in the general meeting of the company;

- the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier either before or after the commencement of Companies Act or in payment of dividend due on any preference shares.

In the resolution the company shall set out the following:

- the priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares;

- the participation in surplus fund;

- the participation in surplus assets and profits, on winding up which may remain after the entire capital has been repaid;

- the payment of dividend on cumulative or non cumulative basis;

- the conversion of preference shares into equity shares;
- the voting rights;
- the redemption of preference shares.

The explanatory statement to be annexed to the notice of the general meeting shall provide the complete material facts concerned with and relevant to the issue of such shares, including-

- the size of the issue and number of preference shares to be issued and nominal value of each share;
- the nature of such shares i.e., cumulative or non cumulative, participating or nonparticipating, convertible or non convertible;
- the objectives of the issue;
- the manner of issue of shares;
- the price at which such shares are proposed to be issued;
- the basis on which the price has been arrived at;
- the terms of issue, including terms and rate of dividend on each share, etc.,
- the terms o redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
- the manner and modes of redemption;
- the current shareholding pattern of the company;
- the expected dilution in equity share capital upon conversion of preference shares.

The particulars of the issue of the preference shares shall be noted in the Register of Members. If a company wants to list its preference shares on a recognized stock exchange it shall issue the preference shares in accordance with the regulations made by SEBI.

Question: 20 State the disqualifications for a person to be appointed as a director.

Answer: Disqualifications for appointment of director

Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;

(e) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(f) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(g) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(h) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(i) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (d), (e), (f) and (h) shall not take effect-

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal or petition is disposed of.

Question: 21 Alteration of share capital

Answer: Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

- increase its authorized share capital by such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;
- sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation shall not be deemed to reduction of share capital.

Question: 22 List the documents that have to be submitted for incorporation of a company.

Answer: Incorporation of company

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for of a company. The promoter of the company shall submit the following documents to the registrar of companies, whose jurisdiction the registered office of the company is proposed to be situated for registration.

(a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company;

(a) An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that

(1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

(2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years.

(3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(b) The address for correspondence till registered office is established;

(e) All particulars of every subscriber to the memorandum along with the proof of identity;

(f) The particulars of the persons mentioned in the articles as the first directors of the company;

(g) The consent to act as directors of company in such form as may be prescribed.

The memorandum of association and articles of association are the basic essential documents of the company.

Question: 23 Discuss about the contents of the Annual Return

Answer: Section 92 of the act requires a company to file Annual Return. This section provides that every company shall prepare a Annual Return in Form No. MGT-7. The Annual Return shall contain the following particulars as they stood at the end of the financial year:

- the register office of the company, its principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration paid to Directors and Key Managerial Personnel;
- penalty and punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of companies, disclosures as may be prescribed;
- details in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- such other matters as may be prescribed.

The return shall be signed by a director and the Company Secretary. Where there is no company secretary, then it shall be signed by a Company Secretary in practice.

The proviso to Section 92(1) provides that the annual return of a OPC and small company, shall be signed by the Company Secretary or where there is no Company Secretary by the director of the Company.

Question: 24 Discuss the procedure of sending notice of meeting by electronic mode as per Companies Act.

Answer: Procedure of sending notice of meeting by electronic mode

Rule 18 provides the procedure for issue of notice through electronic mode. The term 'electronic mode' shall mean any communication sent by a company through its authorized and secured computer program which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

The procedure of sending notice through electronic mode is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

Question: 25 How is Quorum calculated for conduct of meetings of different classes of companies?

Answer: It is usual to calculate a quorum for a meeting for the validity of the transactions taken place in the meeting. The Articles of the company shall provide the quorum for a meeting. If no quorum is mentioned in the Article, Section 103(1) provides that –

- In case of a public company –
  - ❖ 5 members personally present if the number of members as on the date of meeting is not more than 1000;

- ❖ 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- ❖ 30 members personally present if the number of members as on the date of the meeting exceeds 5000;

- In case of a private company 2 members personally present shall be the quorum for a meeting of the company.

  - ❖ The articles of the company shall indicate the quorum more than this number or otherwise the above will be applicable.

Section 103(2) provides that if the quorum is not there within half an hour from the time appointed for holding a meeting of the company-

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

- the meeting, if called by requisitionists shall stand cancelled.

In the case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or publishing an advertisement in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not also present within half an hour from the time appointed for holding meeting, the members present shall be the quorum.

Question: 25 Write a note on:
Secured debentures

Answer: Secured Debentures

Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

- The date of redemption of secured debentures shall not exceed ten years;

- The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30years:

  - ❖ Companies engaged in infrastructure projects;
  - ❖ 'Infrastructure Finance Companies'
  - ❖ Infrastructure Debt Fund Non Banking Financial Companies;

- The issue shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

- The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of debentures;

- A debenture deed shall be executed to protect the interest of debenture holders; and

- The security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee on-

  - ❖ any specific movable property of the company; and

  - ❖ any specific immovable property wherever situate, or any interest therein

In case of a non banking financial company, the charge or mortgage may be created on any movable property.

In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply

Question: 25 Jun 2017 Write a note on Central Record Keeping Agency as per Section 21 of PFRDA Act, 2013.

Answer: Central Recordkeeping Agency [Section 21]

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency: Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 26 Write about the rules regarding repayment of deposits accepted before the commencement of Companies Act, 2013

Answer: Repayment of deposits accepted before the commencement of Companies Act, 2013

Section 74 (1) provides that if any deposit is accepted before the commencement of the Companies Act, 2013 the amount of such deposit or part thereof or any interest due thereon remains unpaid the company shall within a period of 3 months from such commencement or from the date on which such payments due at any time thereafter the company shall-

• file a statement of all deposits accepted by the company and the sums remaining unpaid on such amount with interest thereon along with the arrangements made for such repayment with the Registrar within a period of three months from such commencement or from the date on which such payments are due; and

• repay within one year from such commencement or from the date on such payments are due, whichever is earlier.

Section 74(2) provides that the Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit o part thereof and the interest payable thereon and such other matters allow further time as considered reasonable to the company to repay the deposit.

Question: 27 Condition for conversion of a Sec 8 company into a company of any other kind

Answer: Rule 21 provides conditions for conversion of a company registered under Section 8 into a company of any other kind.

Rule 21(1) provides that a company registered under Section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

Rule 21(2) provides that the explanatory statement annexed to the notice, convening the general meeting shall set out in detail the reasons for opting for such conversion including the following;

• the date of incorporation of the company;

• the principal objects of the company as set out in the memorandum of association;

• the reasons as to why the activities for achieving the objects of the company cannot be carried on the current structure i.e., as a Section 8 company;

• if the principal or main objects are proposed to be altered, then what would be the altered objects and the reasons for the alteration;

• what are the privileges or concessions currently enjoyed by the company, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donation or bequests received by the company with conditions attached to their utilization etc.,

• details of impact of the proposed conversion on the members of the company including the details of any benefits that may accrue to the members as a result of the conversion.

Rule 21 (3) provides that a certified true copy of the special resolution along with a copy of the notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No. MGT-14 along with the fee.

Rule 21(4) requires that the company shall also file an application in Form No. MGT-18 with the Regional Director along with the fee. A certified copy of special resolution and a copy of the notice convening the meeting including the explanatory statement shall be attached, the proof of serving the notice served to all the authorities under Rule 22(2).

Rule 21(5) requires that a copy of the application with annexures as filed with Regional Director shall also be filed with the Registrar.

Question: 27 Dec 2017 State the contents of Memorandum of Association.

Answer: Contents of Memorandum of Association

The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built**.**

As per Section 4(1), the memorandum of a limited company must state the following:

(a) the name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company; (Name Clause)

This shall not apply in case of companies registered under section 8.

Similarly, in case of government companies the name of the company shall end with the words "Limited". This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2013.

(b) the State in which the registered office of the company is to be situated; (Situation Clause)

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;(objects clause) Provided that nothing in this clause shall apply to a company registered under section 8;

(d) the liability of members of the company, whether limited or unlimited, and also state,- (Liability Clause)

(i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(e) in the case of a company having a share capital,— (Capital Clause)

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share per subscriber; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Question: 28 What are the requirements for public placement?

Answer: Rule 14(2) (a) of Companies (Prospectus of Securities) Rules, 2014, provides that a company shall make a private placement after –
• getting the approval by the shareholders of the company, by a special resolution for the proposed offer of securities or invitation to subscribe securities;

• the explanatory statement annexed to the notice for the general meeting shall disclose the basis for justification for the price, including premium, if any, at which the offer or invitation is being made;

• in case of offer or invitation for non convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures;

• in case of an offer or invitation for non convertible debentures made within a period of six months from 01.04.2014, the special resolution may be passed within the said period of six months from 01.04.2014.

Question: 29 Mr. X has fraudulently made mis-statements in the prospectus. What liability does arise on behalf of Mr. X in this context?

Answer: Liability for mis-statement

If there is any mis-statement in the prospectus then it would attract the liability on the issuer. The liability may be civil or criminal. Section 34 provides for criminal liability and section 35 provides for civil liability.

Section 34 provides that where a prospectus includes any untrue statement or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorize the issue of such prospectus shall be liable under Section 447. The criminal liability will not arise if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of the issue of prospectus believe, that the statement was true or the inclusion or omission was necessary.

Section 35 provides that where a person has subscribed for securities of a company based on the mis-statement in the prospectus and he has sustained any loss or damage as a consequence thereof, the company and every person who-

• is a director of the company at the time of the issue of the prospectus;

• has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become to become such director, either immediately or after an interval of time;

• is a promoter of the company;

• ha authorized the issue of the prospectus; and

• is an expert,

shall be liable to pay compensation to every person who has sustained such loss or damage. This liability is without prejudice to any punishment to which any person may be liable under Section 36.

No person shall be liable if he proves-

• that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

• that the prospectus was issued without his knowledge or consent and that on becoming aware of this issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Section 35(3) provide that it if it is proved that a prospectus has been issued with intent to defraud the applicant for the securities of a company or any other person or any fraudulent purpose, every person shall be personally responsible without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Question: 30 State the disqualifications for a person to be appointed as a director.

Answer: Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;

(e) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(f) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;

(g) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(h) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(i) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (d), (e), (f) and (h) shall not take effect-

• for 30 days from the date of conviction or order of disqualification;

• where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or

• where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal or petition is disposed of.

Question: 31 Write a note on:
(i) Pension Funds [Section 23 of PFRDA Act, 2013]

(ii) Alteration of share capital

Answer: Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

EXPLANATION. — For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

(ii) Alteration of share capital

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

• increase its authorized share capital by such amount as it thinks expedient;

• consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

• convert all or any of is fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;

• sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

• cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation shall not be deemed to reduction of share capital.

Question: 32 Jun 2017
(i) State the features of Section 8 Companies.
(ii) Write a note on 'Small Company'.

Answer: (i) Section 8 Companies, as per Companies Act, 2013 are companies formed with Charitable objects. Their features are as follows:

- has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- intends to apply its profits, if any, or other income in promoting its objects; and
- intends to prohibit the payment of any dividend to its members;
- the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;
- a firm may be a member of the company registered under this section;
- a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
- a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

(ii) Section 2(85) defines Small Company as a company, other than a public company-

(i) paid up share capital of which does not exceed `50 lakh rupees or such higher amount as may be prescribed which shall not be more than `5 crore; and

(ii) turnover which is as per its last profit and loss account does not exceed `2 crores or such higher amount as may be prescribed which shall not be more than `20 crores.

This definition shall not apply to-

- a holding company or a subsidiary company;
- a company registered under Section 8; or
- a company or body corporate governed by any special act.

Question: 33
(i) Discuss briefly about the benefits of a one person company

(ii) What do you understand by the term 'Red-Herring Prospectus'

Answer: (i) The benefits of a one person company may be enumerated as below:

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, and access to market, limited liability, and legal protection available to companies.
- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery. Earlier they were working as artisans and weavers on their own, so they did not have a legal entity of a company. But now the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure**.**

- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

(ii) Red herring prospectus

The Explanation to Section 32 defines the term _red herring prospectus' as a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Section 32 provides that a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of securities. The same shall be filed with the Registrar at least three day prior to the opening of the subscription list and the offer. It shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlight as variations in the prospectus.

At the time of closing of the offer the prospectus stating the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other detail as are not included in the red herring prospectus shall be filed with the Registrar and the SEBI.

Question: 34 Issue of Securities by a public company

Answer: Issue of Securities by a public company

Section 23(1) provides that a public company may issue securities-

- to public through prospectus by complying with the provisions of Part I of Chapter III of this Act;
- through private placement by complying with the provisions of Part II of Chapter III of this Act;
- through a rights issue or a bonus issue in case of listed company or a company intends to get its securities listed with SEBI and the rules and regulations made there under.

Section 23(2) lays down that a private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter

As per explanation to section 23, for the purposes of Chapter III, —public offer‖ includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus

Question: 35
(i) Discuss the procedure for conversion of a One Person Company into a Public Company or a Private Company.

(ii) Can a director be removed? If so, give the procedure in details.

Answer: Conversion of OPC to convert into a Public Company or a private company

Rule 6 provides that where the paid up share capital of an OPC exceeds `50 lakhs and its average annual turnover during the relevant period exceeds `2 crores, it shall cease to be entitled to continue as OPC. Such company is mandatorily to be required to convert within six months into either a public limited company with at least 7 members or a private company with minimum two members.

The OPC has to alter its memorandum and articles by passing a resolution according to Section 122(3) to give effect to the conversion and to make necessary changes incidental thereto.

The OPC shall within a period of 60 days from the date of the applicability give a notice to the Registrar in Form No. INC-5 informing that it has ceased to be a OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover having exceeded the threshold limit laid for OPC.

(ii) Section 169 of Companies Act, 2013 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;
- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
  - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company's default, the director may required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order at company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

Question: 36
(i) Discuss the procedure for alteration of Memorandum of Association.

(ii) State the reports that are to be set out in the prospectus

Answer: Procedure of alteration of memorandum:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that –

1. Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

2. Name Change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word ―Private‖, on the conversion of any one class of companies to another class. The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

3. Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate

4. Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed

5. Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of there gistered office within a period of sixty days Before passing of order, Central Government may satisfy itself that –

- The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
- the sufficient provision has been made by the company either for the due discharge of all its
- debts and obligations, or
- adequate security has been provided for such discharge.

6. Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar -

- the special resolution passed by the company under sub-section (1);
- the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company. 7

7. Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

8. Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue afresh certificate of incorporation indicating the alteration.

9. Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and—

- The details, in respect to of such resolution shall also be published in the newspapers (one in
- English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;
- The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

10. Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

11. Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

12. Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

(ii) Reports to be set out in the prospectus

Rule 4 provides that the following reports shall be set out with the prospectus as detailed below:

- The reports by the auditors with respect to profits and losses and assets and liabilities;
- The reports relating to profit and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the issue of the prospectus;
- The reports made by the auditors in respect of the business of the company.

Question: 37 Conditions of formation of OPC

Answer: Conditions of formation of OPC

One Person Company (OPC'for short) is defined under Section 2(62) of the Act which has only one person as a member. Section 3 of the Act indicates that OPC is a private limited company.

Conditions

The following are the conditions in formation of a OPC:

- No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;
- No minor shall become member or nominee of OPC or can hold share with beneficial interest;
- Such company cannot be incorporated or converted into Section 8 company;
- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of anybody corporate;
- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond `50 lakh or its average annual turnover during the relevant period exceeds `2 crore rupees.

Revisionary Question:

Question: 38 Dec 2018 In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013.

Answer: Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;

(ii) is irrelevant or immaterial to the proceeding; or

(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non - inclusion of any matter in the Minutes on the grounds specified in sub - section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Question: 39 Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal?

Answer: The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub - section (4), may, after hearing the parties, either dismiss the appeal, or by order –

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Question: 40 N Ltd. has a paid up share - capital of 80 crores. M Ltd. holds a total of 50 crores of N Ltd. Now, N Ltd. is making huge profits and wants to expand its business and is aiming at investing in M Ltd. N Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of M Ltd.

Answer: In terms of section 2 (87) of the Companies Act 2013 "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 –

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one - half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, M ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of N Ltd., it (M Ltd.) is holding of N Ltd. Further, as per the provisions of section 19 of the Companies Act, 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

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

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, N ltd. cannot acquire the shares of M Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

Question: 41 Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer: According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months. Thus, the first AGM of InfoTech should have been held on or before 31st December, 2017.

Further, the Registrar does not have the power to grant extension to time limit

Question: 42 Discuss the role of Audit Committee of a Company.

Answer: The functions of Audit Committee of companies are:

- recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- reviewing and monitoring the auditor_s independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors_ report thereon;
- approval or any subsequent modification of transactions of the company with related parties;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

The powers of Audit Committee are as follows:

- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board.
- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board.
- To obtain professional advice from external sources.
- To have full access to information contained in the records of the company.

Question: 43 Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

(i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

(ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

Answer:

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one - tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid - up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- The chairman cannot reject the demand for poll subject to provision in the articles of company.
- The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question: 44 Explain the process of e-voting.

Answer: PROCESS OF E-VOTING:

(i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –

(a) by registered post or speed post; or
(b) through electronic means, namely, registered e-mail ID of the recipient; or
(c) by courier service;

(ii) The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) The notice of the meeting shall clearly state –

(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;

(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;

(c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

(iv) The notice shall -

(a) indicate the process and manner for voting by electronic means;

(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;

(c) provide the details about the login ID;

(d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of subrule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-

(a) statement that the business may be transacted through voting by electronic means;

(b) the date and time of commencement of remote e-voting;

(c) the date and time of end of remote e-voting;

(d) cut-off date;

(e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;

(f) the statement that –

1. remote e-voting shall not be allowed beyond the said date and time;

2. the manner in which the company shall provide for voting by members present at the meeting; and

3. a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and

4. a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

(g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

(h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

(vii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cutoff date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii) At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

44 B Restrictions in alteration of Memorandum. Comment.

Answer:

Section 13(8) provides that a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. The special resolution shall be published in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated and shall also be placed on the web site of the company, if any, indicating the justification for such change. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change.

Question: 45 (a) The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016 - 17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

(i) Mr. A, holding equity shares of face value of `10 lakhs has not paid an amount of ` 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

(ii) Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

Answer: (i) The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ` 10 Lakhs and has not paid an amount of ` 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ` 1.20 lakh towards dividend, out of which an amount of ` 1 lakh can be adjusted towards call money due on his shares. ` 20,000 can be paid to him in cash or by cheque or in any electronic mode. According to the above mentioned provision, company can adjust sum of ` 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

(ii) According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

Question: 46 Discuss the rules regarding Equity shares with differential rights.

Answer: Equity shares with differential rights:

Rule 4 of Companies (Share Capital and Debentures) Rules, 2014, provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

• the articles of association of the company authorizes the issue of shares with differential rights;

• the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders;

• where the equity shares o a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through the postal ballot;

• the shares with differential rights shall not exceed 26% of the total post issue paid up share capital including equity shares with differential rights issued at any point of time;

• the company having consistent track record of distributable profits of the last three years;

• the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

• the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

• the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or schedule bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

• the company has not been penalized by Court or Tribunal during the last three years o any offence under the RBI Act, 1934, SEBI Act, 1992, the Securities Contract Regulation Act, 1956, the FEMA, 1999 or any other special act under such companies being regulated by sectoral regulators.

Question: 47 (a) Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the Companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board"s Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board‟s Report?

Answer:

In accordance with the provisions of the Companies Act, 2013, as contained under sec 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

(1) The Chairperson of the company where he is authorized by the Board; or

(2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company

(3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon. The Board‘s report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

(i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.

(ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Question: 48 Prem, a director in a public company, gave in writing to the company that notice for any General Meeting and the Board of Directors‟ Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, and under certificate of posting. Prem did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013,

(i) whether the contention of Prem is valid?

(ii) Would you answer be still the same in case Prem remained outside India for two months (when such notices were given and meetings held).

Answer:

The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 101. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under:

(i) The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.

(ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Prem at the address outside India. Therefore, answer in the second case shall differ from the first one.

Question: 49 X Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ` 2,50,000 at the prevailing market rate. The director of X Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of X Ltd. Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to X Ltd. that he was interested in M and Co. Ltd,

Mr. B claims that he had given notice to X Ltd. as required under the Companies Act, 2013 and that his holding being only 1% is within the limit under the Companies Act, 2013.

Answer: As per section 184(2), every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. However, section 184(2) shall not apply to a contract or arrangement entered into between two companies, where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital of the other company.

If the aggregate shareholding of two or more directors in the other company exceeds 2% of the paid up share capital of the other company, all such directors shall make a disclosure as required under section 184(2), irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up share capital of the other company.

Section 184(1) requires every director to disclose the nature of his concern or interest (along with the shareholding, if applicable) in any company, body corporate, association of individuals or firm. Such disclosure is to be made by the director in the first Board meeting in which he participates as a director, the first Board in every financial year and the first Board meeting held after any change in the interest or concern takes place.

In the present case, the aggregate shareholding of Mr. B and Mr. C is more than 2% of the paid up share capital of M and Co., and so section 184(2) has become applicable. Accordingly, Mr. B and Mr. C, both, are required to disclose the nature of their interest (viz. their shareholding in M and Co. Ltd.) in the Board meeting of X Ltd. in which the contract or arrangement between X Ltd. and M and Co. Ltd. is first discussed.

The requirements specified under section 184(2) is independent of the requirement of section 184(1). In other words, even where a director has disclosed his concern or interest as per section 184(1), he is still required to disclose his concern or interest in each and every contract or arrangement covered under section 184(2), although such contract or arrangement is with a company or body corporate in respect of which disclosure of interest was already given by him in terms of section 184(1).

The general notice given by Mr. B in terms of section 184(1) is not a sufficient compliance of the requirements of section 184(2), and so Mr. B has contravened the provisions of section 184(2). Also, Mr. C has not disclosed his concern or interest in the Board meeting in which the contract or arrangement is first discussed, and so, Mr. C has also contravened the provisions of section 184(2).

Consequences of contravention of section 184(2) shall be as follows:

- Mr. B and Mr. C shall vacate the office of director held by them.

- As per Section 184(4), Mr. B and Mr. C shall be punishable with –

(a) imprisonment up to 1 year; or

(b) fine which may extend to ` 1 lakh; or

(c) both.

- The contract or arrangement entered into by X Limited shall be voidable at the option of X Limited [Section 184(3)].

Question: 50 Provisions for entering into contracts that by One person Company. Comment.

Answer: The provisions of section 193 of the Companies Act, 2013 are explained as follows:

1. Applicability of section 193

Section 193 applies where –

(a) the company is a One Person Company;
(b) it enters into a contract with its sole member; and
(c) the sole member is also the director of the company.

2. Legal requirements

(a) The contract entered into between the company and the sole member shall be in writing.

(b) If the contract is not in writing, the company shall ensure that the terms of the contract are contained in a memorandum or are recorded in the minutes of the first Board meeting held next after entering into such contract.

3. Non-applicability of section 193

Section 193 shall not apply where a contract is entered into by the company in the ordinary course of its business**.**

4. Duty of the company to inform the Registrar

(a) Where a contract is entered into by One Person Company and recorded in the minutes of the Board meeting in accordance with the provisions of this section, the company shall inform the Registrar about such contract.

(b) Such information shall be given to the registrar within 15 days of the date of approval by the Board of Directors.

Section 193 shall apply to One Person Company, irrespective of the fact as to whether it is limited by shares or by guarantee

Question: 51 What are the different duties of a director in a company as per the Companies Act, 2013??

Answer: As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

- A director of a company shall act in accordance with the articles of the company.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,
- A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,
- A director of a company shall not assign his office and any assignment so made shall be void,

It a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 52 State the prescribed qualifications for an Independent Director.

Answer: Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. He should have no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten percent of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Question: 53 "Office of a Director shall become vacant in case". Comment

Answer: Section 167 provides that the office of a Director shall become vacant in case –

(i) he incurs any of the disqualifications specified in Section 164; Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that subsection.

(ii) he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;

(iii) he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.

(iv) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;

(v) he becomes disqualified by an order of a Court or Tribunal;

(vi) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months. The office shall be vacated by the director even if he has filed an appeal against the order of such court; For point no (v) and (vi) it should be noted that the office shall not be vacated by the director in case of orders—

(a) for thirty days from the date of conviction or order of disqualification;

(b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(vii) he is removed in pursuance of the provisions of the Act;

(viii) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to the above.

Where all the directors of a company vacate their offices under any of the disqualifications the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than `1 lakh but which may extend to `5 lakhs or with both.

Question: 54 Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom?

Answer: As per section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

Question: 55 State the duties of a Director as per Section 166 of Companies Act, 2013.

Answer: Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

- A director of a company shall act in accordance with the articles of the company;
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- A director of a company shall not assign his office and any assignment so made shall be void;

If a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 56 A and B were appointed as First Directors on 4th April in Sun limited. Thereafter, C, D and E were appointed as Directors on 6th July and F, G and H were also appointed as Directors on 7th August in the Company. In the AGM of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as Directors. At the AGM, resolution for A"s retirement and re-appointment was

passed. However, before the resolution for „B‟ could be taken up for consideration, the Meeting was adjourned. In the Adjourned Meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B‟s retirement. Comment on the following based on the above situation:

(i) Whether the proposal for retirement by rotation and re-appointment of A and B only were sufficient
(ii) Status of B as a director in the company.

Answer: As per Section 152(6) of Companies Act, 2013

(a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall-

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.—For the purposes of this sub-section, ―total number of directors‖ shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

Directors liable to retire by rotation shall be determined in the following manner:

(a) Those who have served the longest as Director would retire first

(b) If two or more Directors were appointed on the same date, Directors liable to retire may be determined:

(i) As per any agreement between them, or
(ii) By draw of lots, in absence of any agreement

Special Consideration should be taken into account would be:

(a) While fractions in the calculation of minimum number of Rotational Directors were rounded off to one, fractions in determining the number of Retiring Directors shall be rounded off to nearest 1/3rd.

(b) A Director appointed to fill a casual vacancy holds office till the end of the term of the Original Director, he does not retire at the end of the period. Therefore, such a person is not considered as a Retiring Director.

Section 152(7) of Companies Act, 2013 states that:

(a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall 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 holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless –

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) Section 162 is applicable to the case.

As per the given problem:

(i) Retiring Director will be deemed re-appointed, if exceptions like unwillingness, disqualification, reason u/s 152(7) are not attracted.

(ii) B will continue as Director, by way of deemed re-appointment.

Question: 57 Payment of commission to any person in connection with the subscription to its securities

Answer: Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company‘s articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company‘s articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question: 57 Qualification of independent directors

Answer:
Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company‘s business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on

passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Question: 58 June 2018 What is Shelf Prospectus? Explain it with relevant provisions.

Answer: Shelf Prospectus [Section 31]

(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub - section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation: — For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Question: 59 Can company registered under the Companies Act, 2013 commence business of banking in India? Comment.

Answer: No, "company registered" under the Companies Act, 2013 or any act prior to it cannot commence business of banking in India. As per the RBI Act, it is mandatory for a bank to get itself registered with the RBI This registration authorizes it to conduct its business as a bank .For the registration with the RBI, a company incorporated under the Companies Act, 2013 or any act prior to it and desirous of commencing business of banking, should have an initial minimum paid -up capital of ` 200 crore which is to be raised to ` 300 crore within three years of commencement of business. The promoters' contribution shall be a minimum of 40% of the paid up capital of the bank at any point of time. This promoters' contribution of 40% of the initial capital shall be locked in for a period of five years from the date of licensing of the bank.

Question: 60 Ayush Company limited at a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its equity share capital. The articles of the company empower the company for buy-back of shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. With reference to the provisions of Companies Act, 2013 comment on the following:

(i) Whether the company's proposal is in order?
(ii) Would there be any difference if the company decides to buy-back 20% of equity share capital, in place of 30%?

Answer: As per section 68, where the buy-back is authorized by passing a Special Resolution, the following limits would be applicable:

1. The buy-back shall not exceed 25% of aggregate of paid-up capital and free reserves

2. The buy-back of equity shares in any FY shall not exceed 25% of its total paid-up equity capital in that FY.

Again, where the buy-back is authorized by passing a resolution in a Board Meeting only, the buy back shall not exceed 10% of the aggregate of paid-up equity capital and free reserves.

In the given case,

(i) The proposal of the company to buy-back its shares is not valid, since the company has passed an Ordinary Resolution in place of a Special Resolution. It also proposed to buyback 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital. Again the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares, which is prohibited.

(ii) The decision to buy back 20% of equity share capital shall also not be valid, since buy-back passing an Ordinary Resolution is violative of Sec 68 and the company proposes to buyback out of the proceeds of an earlier issue of same kind of shares, which is prohibited.

Question: 61 What is the 'doctrine of constructive notice'? Explain with case law.

Answer: A company being an artificial person acts through the instrumentality of its agents/authorized representatives. The sphere or gamut of permissible activities of a company is specified by its Memorandum of Association. The memorandum and articles of association of a company, when registered, become public documents and can be inspected by anyone on payment of nominal fee to the Registrar of Companies. Therefore, every person who intends to entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers could be delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning [Griffith v. Paget, (1877) Ch. D.517]. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it so signed; otherwise he cannot claim under it. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum or outside the limits set on the authority of the directors, he cannot as a general rule acquire any right under the contract against the company [Mohony v. East Holyfrod Mining Co. (1875) L.R7HL. 869]. The concept of constructive notice was established in Kotla Venkataswami v. Ram Murti AIR (1932) All 141.

Question: 62 Ruby Company Limited is in the process of issuance of prospectus. Kindly enlist the items that are to be disclosed in their prospectus.

Answer: The items that are to be stated in prospectus are as follows:

1. Details of the company, officers, bankers, trustees, underwriters and such other persons as may be prescribed;

2. Date of opening and closing of the issue;

3. Declaration about the issue of allotment letters and returns within the prescribed time;

4. Details of bank account and details of all money is utilized and unutilized monies out of the previous issue;

5. Details about underwriting of the issue;

6. Consent of the directors, auditors, bankers to the issue, expert‘s opinion etc.,

7. Authority for the issue and the details of the resolution passed;

8. Procedure and time schedule for allotment and issue of securities;

9. Capital structure of the company;

10. Main objects of the public offer, terms of the present issue and such other particulars as may be prescribed;

11. Main objects and present business of the company, the location of company, schedule of implementation of the project;

12. Details of litigation or legal action pending or taken by Ministry or Department of the Government or a statutory authority against ht promoter during last five years immediately preceding the year of the issue of prospectus;

13. Details of default and non-payment of statutory dues etc.,

14. Details of directors including their appointment and remuneration; their details such name, designation, DIN, the nature of interest;

15. Source of promoters‘ contribution shall be disclosed;

Question: 63 What may be the sources of funds for buy-back of shares?

Answer: Sources of funds for buy-back of shares:

Under section 68 (1) of the Companies Act, 2013 a company can purchase its own shares or other specified securities. The purchase should be out of:

(i) its free reserves: or
(ii) the securities premium account: or
(iii) the proceeds of the issue of any shares or other specified securities.

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

'Specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time. [Explanation (1) under Section, 68].

Question: 64 Can a non-profit organisation be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?

Answer: Registration of a non-profit organisation as a company:

According to section 8 (1) of the Companies Act, 2013, the Central Government may allow a person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure: An association of persons intending to carry any or all or some of the activities mentioned in section 8(1) as mentioned above, has to apply to the Central Government seeking its permission for being set up as a company under the Act. The Central Government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8(1) without the addition of word ―Limited‖ or words "Private Limited" as the case may be, to its name.

After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1). Under section 8(2) a company registered under section 8(1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity lo it to be represented and heard in the matter.

Question: 65 Restrictions in alteration of Memorandum. Comment.

Answer: Section 13(8) provides that a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. The special resolution shall be published in the newspapers, one in English and one in vernacular language, which is in circulation at the place where the registered office of the company is situated and shall also be placed on the web site of the company, if any, indicating the justification for such change. The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

Rule 29 provides that the change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposit or debentures.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon the change.

Question: 66 What are the procedures that have to be followed for signing of Memorandum and Articles?

Answer: Rule 13 provides for signing of memorandum and articles. The Memorandum and articles shall be signed in the following manner:

- The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. One witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.

- The witness shall state that ––I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity details for their identification and satisfied myself of his/her/their identification particulars filled in.

- Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him;

- Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association;

- Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate.

- Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association;

- Where the subscriber is a foreign national residing outside India-

  - in a country in any part of the Commonwealth , his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary Public in that part of the Commonwealth;

- in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary Public of the Country and be duly apostillised in accordance with the Hague Convention;

- in a country outside the commonwealth and not a party to the Hague Apostille Convention, 1961, his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf .

- visited in India and intended to incorporate a company, in such cases the incorporation shall be allowed if, he/she is having a valid Business Visa.

Question: 67 Define the term 'Small Company' as contained in the Companies Act, 2013.

Answer: SMALL COMPANY:

Under Section 2(85) of the Companies Act, 2013, "small company means a company, other than a public company:-

(i) having PAID-UP SHARE CAPITAL not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) having TURNOVER as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

EXCEPTIONS: This section shall not apply to:

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

Question: 68 Discuss the code of professional conduct that needs to be followed by Independent Directors with respect to the following:

(i) Guidelines of Professional Conduct
(ii) Role and Functions
(iii) Duties

Answer: Adherence to Code by Independent Directors and fulfilment of their responsibilities in a professional and faith" manner will promote confidence of the investment community, particularly Minority Shareholders, Regulators and Company in the institution of Independent Directors.

The Company and Independent Directors shall abide by the provisions specified in Schedule IV, which are as under:

(i) Guidelines of Professional Conduct: An Independent Director shall –

1. uphold **ethical standards** of integrity and probity,

2. act **objectively** and constructively while exercising his duties,

3. exercise his responsibilities in a **bonafide** manner in the interest of the Company,

4. devote sufficient **time and attention** to his professional obligations for informed and balanced decision-making,

5. **not allow any extraneous considerations** that will vitiate his exercise of objective independent judgment in thfj paramount interest of the Company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision-making,

6. **not abuse his position** to the detriment of the Company or its Shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person,

7. **refrain** from any action that would lead to loss of his independence,

8. where circumstances arise which make an Independent Director **lose his independence,** the Independent Director must immediately **inform** the Board accordingly,

9. assist the Company in implementing the best **Corporate Governance** Practices.

(ii) Role and Functions: The Independent Directors shall -

1. help in bringing an **independent judgment** to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct,

2. bring an **objective view** in the evaluation of the performance of Board and Management,

3. **scrutinise** the performance of Management in meeting agreed goals and objectives and monitor the reporting of performance,

4. satisfy themselves on the integrity of **financial information** and that financial controls and the systems of risk management are robust and defensible,

5. safeguard the **interests** of all Stakeholders, particularly the Minority Shareholders,

6. **balance** the conflicting interest of the Stakeholders,

7. determine appropriate levels of **remuneration** of Executive Directors, KMP and Senior Management and have a prime role in appointing and where necessary recommend removal of Executive Directors, KMP and Senior Management,

8. moderate and **arbitrate** in the interest of the Company as a whole, in situations of **conflict** between Management and Shareholder's interest.

(iii) Duties: The Independent Directors shall -

1. undertake appropriate induction and regularly **update** and refresh their skills, knowledge and familiarity with the Company,

2. seek appropriate **clarification** or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the Company,

3. strive to attend **all Meetings** of the Board of Directors and of the Board Committees of which he is a Member,

4. participate **constructively and actively** in the Committees of the Board in which they are Chairpersons or Members,

5. strive to attend the **General Meetings** of the Company,

6. where they have **concerns** about the running of the Company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the Minutes of the Board Meeting,

7. keep themselves well **informed** about the Company and the external environment in which it operates,

8. **not to unfairly obstruct** the functioning of an otherwise proper Board or Committee of the Board,

9. pay sufficient attention and ensure that adequate deliberations are held before approving **Related Party Transactions** and assure themselves that the same are in the interest of the Company,

10. ascertain and ensure that the Company has an adequate and functional **Vigil Mechanism** and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use,

11. report concerns about **unethical behaviour,** actual or suspected fraud or violation of the Company's code of conduct or ethics policy,

12. acting within his authority, assist in **protecting** the legitimate interests of the Company, Shareholders and its employees,

13. **not disclose confidential information**, including Commercial Secrets, Technologies, Advertising and Sales Promotion Plans, Unpublished Price Sensitive Information, unless such disclosure is expressly approved by the Board or required by law.

Question: 69 Directors are agents of the company. Comment.

Answer: The Company can act only through Directors, and so the relationship between the Company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a Company, will be binding on the Company. However, Directors are not Agents of Members of the Company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement / contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company.

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.
- When Directors act properly on behalf of the Company, they do not incur personal liability, they do not exceed their powers

Question: 70 X Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ` 2,50,000 at the prevailing market rate. The director of X Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of X Ltd. Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to X Ltd. that he was interested in M and Co. Ltd,

Mr. B claims that he had given notice to X Ltd. as required under the Companies Act, 2013 and that his holding being only 1% is within the limit under the Companies Act, 2013.

Answer: As per section 184(2), every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest. However, section 184(2) shall not apply to a contract or arrangement entered into between two companies, where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid up share capital of the other company.

If the aggregate shareholding of two or more directors in the other company exceeds 2% of the paid up share capital of the other company, all such directors shall make a disclosure as required under section 184(2), irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up share capital of the other company.

Section 184(1) requires every director to disclose the nature of his concern or interest (along with the shareholding, if applicable) in any company, body corporate, association of individuals or firm. Such disclosure is to be made by the director in the first Board meeting in which he participates as a director, the first Board in every financial year and the first Board meeting held after any change in the interest or concern takes place.

In the present case, the aggregate shareholding of Mr. B and Mr. C is more than 2% of the paid up share capital of M and Co., and so section 184(2) has become applicable. Accordingly, Mr. B and Mr. C, both, are required to disclose the nature of their interest (viz. their shareholding in M and Co. Ltd.) in the Board meeting of X Ltd. in which the contract or arrangement between X Ltd. and M and Co. Ltd. is first discussed.

The requirements specified under section 184(2) is independent of the requirement of section 184(1). In other words, even where a director has disclosed his concern or interest as per section 184(1), he is still required to disclose his concern or interest in each and every contract or arrangement covered under section 184(2), although such contract or arrangement is with a company or body corporate in respect of which disclosure of interest was already given by him in terms of section 184(1).

The general notice given by Mr. B in terms of section 184(1) is not a sufficient compliance of the requirements of section 184(2), and so Mr. B has contravened the provisions of section 184(2). Also, Mr. C has not disclosed his concern or interest in the Board meeting in which the contract or arrangement is first discussed, and so, Mr. C has also contravened the provisions of section 184(2).

Consequences of contravention of section 184(2) shall be as follows:

- Mr. B and Mr. C shall vacate the office of director held by them (Section 167).

- As per Section 184(4), Mr. B and Mr. C shall be punishable with –

(a) imprisonment upto 1 year; or
(b) fine which shall not be less than `50,000 but which may extend to ` 1 lakh; or
(c) both. .

- The contract or arrangement entered into by X Limited shall be voidable at the option of X Limited [Section 184(3)].

Question: 71 Provisions for entering into contracts that by One person Company. Comment.

Answer: The provisions of section 193 of the Companies Act, 2013 are explained as follows:

1. Applicability of section 193
Section 193 applies where-

(a) the company is a One Person Company;

(b) it enters into a contract with its sole member; and

(c) the sole member is also the director of the company.

2. Legal requirements

(a) The contract entered into between the company and the sole member shall be in writing.

(b) If the contract is not in writing, the company shall ensure that the terms of the contract are contained in a memorandum or are recorded in the minutes of the first Board meeting held next after entering into such contract.

3. Non-applicability of section 193

Section 193 shall not apply where a contract is entered into by the company in the ordinary course of its business.

4. Duty of the company to inform the Registrar

(a) Where a contract is entered into by One Person Company and recorded in the minutes of the Board meeting in accordance with the provisions of this section, the company shall inform the Registrar about such contract.

(b) Such information shall be given to the registrar within 15 days of the date of approval by the Board of Directors.

Section 193 shall apply to One Person Company, irrespective of the fact as to whether it is limited by shares or by guarantee.

Question: 72 A company sold one of its flats to one of the directors and received 50% of the price in cash and agreed to receive the balance in installments. Would u consider this as a loan granted to director?

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

In the given case, the debt arose not out of an advance but out of a transaction of sale of a flat by the company to its director.

The company gave time to the director to pay a part of the purchase price.

The essential requirement of a 'loan' is the advance of money upon the understanding that it shall be returned back and it may or may not carry interest. Where a company sells a flat to one of its directors and receives half the price in cash and agrees to receive the balance in installments, the transaction amounts to a credit sale; it does not amount to even an 'indirect loan'.

The word 'indirectly' used in section 185 of the Companies Act, 2013 only means that company shall not give a loan to a director through the agency of one or more intermediaries. The word 'indirectly' cannot be read as converting 'what is not a loan' into 'a loan'.

Therefore, in the given case, there is no contravention of Section 185 of the Companies Act, 2013.

Question: 73 Decide in the light of the provisions of the Companies Act, 2013, the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters: Donation of ` 5 lakhs to a political party registered with the appropriate authority.

Answer: As per section 182 of the Companies Act, 2013, a company shall not make a political contribution unless all the following conditions are satisfied:

(a) The company is not a Government company.

(b) The company has been in existence for 3 or more financial years.

(c) The aggregate amount of political contribution in a financial year shall not exceed 7.5% of average net profits during immediately preceding 3 financial years.

(d) The Board shall make a political contribution only by passing a resolution at a Board meeting.

(e) The company shall disclose in its profit and loss account the amount of political contribution and the name of the political party or the person to whom such amount has been contributed.

In the given case, the Board shall be entitled to make the political contribution of Rs. 5 lakh only if –

(a) the company has been in existence for 3 financial years;

(b) the average net profits of the company during immediately preceding 3 financial years is equal to or more than ` 66,66,667 (i.e. 5,00,000 × 100/7.5); and

(c) the resolution approving the political contribution is passed at a Board meeting;

The Board shall ensure that adequate disclosures are made in the profit and loss account.

Question: 74 Z was appointed as director of the company in an annual general meeting. He took over the office and carried on his functions as director. Subsequently, it was found that there were some irregularities in voting and hence the appointment was declared invalid. Would the act done by Z, while in office as director, be binding upon the company?

Answer: The provisions relating to validity of acts of directors are contained in section 176. The provisions of section 176 are discussed below in detail:

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. Thus, 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, notwithstanding 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.

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 [Varkey Souriar v Keraleeya Banking Co. Ltd. AIR 1957 Ker97].

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) where his appointment has been shown to the company as invalid or terminated, i.e. 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.

4. Acts of a chairman - Not validated
The provision of validity of acts is not applicable to chairman. Therefore, the resolutions passed by casting vote of chairman are not valid, if his appointment is invalid.

5. Action by third parties - When permissible?
Persons who deal with the directors after having notice of the defect or disqualification of the directors are not protected by section 176. A person cannot take advantage of the protection given by the section if he is aware of some defect or disqualification.

Where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, no prior act done by him shall be deemed to be invalid [Section 196(5)].

Question: 75 Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom?

Answer: As per section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two

meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

Question: 76 A Board meeting of PQR Limited was called to be held on 19.01.2015 at 3 pm at Shah Auditorium, Delhi. However, due to lack of quorum, the meeting could not be held. Discuss the consequences.

Answer: As per section 174(4), if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned –

(a) to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is not a national holiday;

(b) at the same time;

(c) at the same place.

In the instant case, the Board meeting could not be held for want of quorum, and so the provisions of section 174(4) shall become applicable. In the next week, same day happens to be a national holiday (viz. 26.01.2015), and so, the adjourned Board meeting cannot be held on 26.01.2015. The next succeeding day which is not a public holiday is 27.01.2015. Therefore, the adjourned Board meeting shall be held on 27.01.2015 at 3 pm at Shah Auditorium.

For absence of information in the question, it has been assumed that the articles of the company do not contain any provision with respect to the consequences where a Board meeting is not held for want of quorum.

Question: 77 Referring to the provisions of the Companies Act, 2013, examine the validity of the following: 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. Further, there is no agreement between the company and the bank for any such nomination.

Answer: As per 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. The provisions of section 161(3) are subject to any provision contained in the articles of the Company.

In the given case, no agreement has been entered into between PQR Limited and the bank providing the financial assistance with respect to appointment of nominee director. Also, no provision contained in any law for the time being in force authorises the appointment of nominee director. Further, the articles of the company do not confer any power on the Board to appoint the nominee directors. Thus, the appointment of Mr. Peter as nominee director is not valid.

Question: 78 Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2014 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, 2015, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2015. Advise the company on the complaints made by the shareholders.

Answer: The given problem relates to sections 161(1) and 161(4) of the Companies Act, 2013.

The Legal Position
Additional Directors [Section 161(1) of the Companies Act, 2013]:

- The Board may appoint the additional directors in pursuance of the provisions of section 161(1).

- The Board may, in its discretion, appoint the additional directors whenever it deems fit.

- The appointment of additional directors may be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.

- An additional director holds office upto the date of next annual general meeting. However, if AGM is not held upto the last date for holding ASM as per the provisions of section 96, the additional director shall vacate his office on the last day on which the AGM should have been held.

Director filling a casual vacancy [Section 161(4) of the Companies Act, 2013]

- The Board is authorised to fill a casual vacancy arising in the office of a director appointed in general meeting.

- The director filling a casual vacancy shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

- A casual vacancy cannot be filled by passing a resolution by circulation under section 175.

The given case

- The Board has appointed Mr. Sachin as an additional director in a casual vacancy.

- The appointment of Mr. Sachin has been made by passing a circular resolution.

- The last date for holding the annual general meeting was 31st March, 2015. The annual general meeting has not been held till 31st March, 2015.

- So it is to be decided, whether appointment of Mr. Sachin is valid or not?; and if he can continue after 31st March, 2015?

Analysis of the case

1. Neither section 161(1) nor section 161(4) authorises the Board to appoint an additional director to fill the casual vacancy.

- If appointment of fAr. Sachin is made as an additional director, then, the provisions of section 161(1) apply, and so such appointment cannot amount to filling a casual vacancy.

- If Mr. Sachin is appointed to fill a casual vacancy, then, the provisions of section 161(4) apply to him, and so Mr. Sachin shall not be an additional director.

- Thus, a combined reading of sections 161(1) and 161(4) makes it clear that the appointment of Mr. Sachin as an additional director to fill the casual vacancy is not possible at all.

2. Mr. Sachin has been appointed to fill the casual vacancy by passing a circular resolution. Since, the appointment of a director filling a casual vacancy requires passing of a resolution in a board meeting only, therefore, the appointment of Mr. Sachin is in contravention of section 161(4), and is therefore, invalid.

Conclusion

- The complaint made by the shareholders is valid.

- The appointment of Mr. Sachin is not valid since it is in contravention of sections 161(1) and 161(4). Mr. Sachin cannot continue as a director after the date of annual general meeting, since his very appointment is void ab initio.

Question: 79 Payment of commission to any person in connection with the subscription to its securities

Answer: Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;
- the commission may be paid out of proceeds of the issue or the profit of the company or both;
- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;
- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;
- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question: 80 Qualification of independent directors

Answer: Rule 5 prescribes the qualification of independent directors. An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines to the company's business.

Section 149, further provides that an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee and the reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. An independent director shall not hold office for a term of office up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing a special resolution by the company. The Board's report shall disclose the same. No independent director shall hold office for more than two consecutive terms. He shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. The provisions for retirement of directors shall not be applicable to independent directors.

Independent directors may be selected from a data bank containing the details of persons who are eligible and willing to act as independent directors by any agency as notified by the Central Government. The appointment of independent director shall be approved by the company in general meeting.

Suggested Question:

Question: 81 Dec 2018 What are the features of companies registered under section 8 of the Companies Act, 2013?

Answer: Section 8 of companies Act 2013 These companies intend to promote art, commerce, sports, safety, science, research, healthcare, social welfare, religion, protection of the environment etc.

The following are the features of companies registered under Section 8 of the Companies Act, 2013;

1. has its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

2. intends to apply its profit, if any, or other income in promoting its objects; and

3. intends to prohibit the payment of any dividend to its members;

4. the company registered under this Section shall enjoy all the privileges and be subject to all the obligations of the limited company;

5. a firm may be a member of the company registered under this section ;

6. a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.

7. a company registered under this section may convert itself into a company of any other kind only after complying with such conditions as may be prescribed.

Question: 82 Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares.

Answer: Section 63 of the Companies Act, 2013 provides for the issue of bonus shares. Section 63(1) provides that a company issue fully paid up bonus shares to its members out of its

- free reserves ;
- the securities premium account ; or
- the capital redemption reserve account

No bonus shares shall be made by capitalizing reserves created by revaluation of assets. Section 63(2) provides that no company shall capitalize its profits or reserves for the purpose of issuing fully paid up shares unless –

- it is authorized by its articles ;
- it has, on the recommendation of the Board, been authorized in the general meeting of the company ;
- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus ;
- the partly paid up shares, if any outstanding on the date of allotment are made fully paid up ;
- it complies with such conditions as may be prescribed ;

Section 63(3) provides that the bonus shares shall not be issued in lieu of dividend. Rule 14 provides that the company which once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

Question: 83 Discuss the powers of the Board of Directors of a company as per the Companies Act, 2013.

Answer: Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting. The following section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely : -

(1) to make calls on shareholders in respect of money unpaid on their shares ;

(2) to authorise buy-back of securities under section 68 ;

(3) to issue securities, including debentures, whether in or outside India ;

(4) to borrow monies ;

(5) to invest the funds of the company ;

(6) to grant loans or give guarantee or provide security in respect of loans ;

(7) to approve financial statement and the Board's report ;

(8) to diversify the business of the company ;

(9) to approve amalgamation, merger or reconstruction ;

(10) to take over a company or acquire a controlling or substantial stake in another company;
(11) to make political contributions ;

(12) to appoint or remove key managerial personnel (KMP) ;

(13) to appoint internal auditors and secretarial auditor ;

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board. However, unless specifically restricted under the act or Article of Association, Board has all the powers to manage the affairs of the company

Question: 83 Enumerate the provisions of the Companies Act, 2013 relating to women director in a company.

Answer: Second proviso to Section 149(1) of the Companies Act, 2013 read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following classes of companies shall appoint at least one woman director

- every listed company ;
- every other public company having
  - paid up share capital ` 100 crores or more; or
  - turnover of ` 300 crores or more.

For this purpose the paid capital or turnover as on the last date of latest audited financial statements shall be taken into account. A company incorporated under the Companies Act shall comply with such appointment of woman director within a period of six months from the date of its incorporation. Any intermittent vacancy of a woman director shall be filed up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Question: 84 Write short notes
Small Companies

Answer: Small Companies:

Section 2(85) of the Companies Act, 2013 defines 'small company' as a company, other than a public company –

(i) paid up share capital of which does not exceed ` 50 lakh or such higher amount as may be prescribed which shall not be more than ` 10 crore; and

(ii) turnover which is as per its last profit and loss account does not exceed ` 2 crores or such higher amount as may be prescribed which shall not be more than ` 100 crores.

This definition shall not apply to the following companies –

- A holding company or subsidiary company;
- A company registered under Section 8; or
- A company or a body corporate governed by any special act.

Question: 85 June 2018 Discuss the procedure for conversion of private company into One Person Company.

Answer: Conversion of private company into a OPC
Rule 7 provides the procedure for conversion of private company into OPC. Rule 7(1) provides that a private company other than Section 8 company, having paid up share capital of ` 50 lakh or less and average annual turnover during the relevant period is ` 2 crores or less may convert itself into OPC by passing a special resolution in the general meeting. Before passing such resolution the company shall obtain 'No Objection Certificate' in writing from the members and creditors. The OPC shall file copy of the resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT-14.

The company shall file an application in Form No. INC-6 for its conversion into OPC along with fees. The following documents are to be attached:

- the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is ` 50 lakhs or less or average annual turnover is less than ` 2 crores, as the case may be;
- the list of members and creditors;
- the latest Audited Balance sheet arid the Profit and Loss Account;
- the copy of No objection letter of secured creditors.

On being satisfied and complied with the requirements the Registrar shall issue the certificate.

Question: 86 June 2018 What are the procedures of sending notice through electronic mode under the Companies Act, 2013?

Answer: The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice;
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company should ensure that it uses a system which produces confirmation of the total number of recipients emailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained or on behalf of the company as 'proof of sending';
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.

Question: 87 Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

Answer: Section 164 of the Companies Act, 2013 details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if –

(i) he is of unsound mind and stands so declared by a competent court;

(ii) he is an undischarged insolvent;

(iii) he has applied to be adjudicated as an insolvent and his application is pending;

(iv) he has been convicted by a Court of any offence, whether involving moral
Academics Department, The Institute of Cost Accountants of India (Statutory Body under an Act of Parliament) Page 10 turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the Sentence;

(v) if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;

(vi) an order disqualifying him for appointment as a director has been passed by the Court Or Tribunal and the Order is in force;

(vii) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;

(viii) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(ix) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications in (iv), (v), (vi) and (viii) shall not take effect –

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of;
- where any further appeal or petition is preferred against order or sentence within 7 days until such further appeal of petition is disposed of.

Question: 88 "Directors are agents of the company." — Discuss

Answer: The company can act only through Directors, and so the relationship between the company and the Director is that of Principal and Agent. Contract entered into by a person as a Director of a company, will be binding on the Company. However, Directors are not Agents of Members of the company.

Directors have personal liability. They would be personally liable under the following circumstances:

- Director acts in his own name,
- Director enters into an agreement/ contract which does not state clearly as to whether the Director signing in his personal capacity or in his representative capacity as an Agent of the Company

Rights of the Company:

- Contract executed by the Director in excess of his authority, is binding on the Company. However, the Company may claim damages from the Director for breach of implied warranty of authority.

- When Directors act properly on behalf of the Company, they do not incur personal liability; they do not exceed their powers

Question: 89 Write short notes
Undue Influence

Answer: Under Section 16 of the Indian Contract Act defines undue influence as under:

(i) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(ii) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another—
(a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Question: 90 Dec 2017 Discuss the procedure for conducting a poll in a meeting of a company.

Answer: As per the provisions of the Companies Act, 2013 where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll to report thereon to him. The Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

Rule 21 provides that the Chairman of a meeting shall, in the poll process, ensure that-

• The Scrutinizes are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies;

• The Scrutinizers are provided with all the documents received by the Company

• The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting;.

• In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;

• The Polling shall be in Form No. MGT-12;

• The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies:

• The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over;

• In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman;

• The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded;

• The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman;

• The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same;

• The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing. The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in form No. MGT-13. The report shall be signed by the scrutinizer(s) and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

Question: 91 Elucidate the circumstances in which a company cannot buy-back its own shares as per the provisions of the Companies Act, 2013.

Answer: Circumstances in which a company cannot buy back its own shares As per Section 70 of the company act 2013, a company cannot buy back shares or other specified securities directly or indirectly

(a) Through any subsidiary company including its own subsidiaries; or

(b) Through investment or group of investment companies; or

(c) When the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank. The problem does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.

(d) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distributed dividend (section 127) and financial statement (section 129)

Question: 92 What are the different duties of a director in a company as per the Companies Act, 2013?

Answer: As per Section 166 of the Companies Act, 2013 a director of a company is bound to perform the following duties as mentioned below:

• A director of a company shall act in accordance with the articles of the company.

• A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

• A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment,

• A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company,

• A director of a company shall not achieve or attempt to achieve any undue gain or advantages either to himself or to his relatives, partners or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company,

• A director of a company shall not assign his office and any assignment so made shall be void,

It a director of a company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Question: 93 Enumerate the provisions relating to Restrictions on powers of Board.

Answer: Section 180 of the Companies Act 2013: Restrictions on powers of Board The board can exercise the following powers only with the consent of the company by special resolution, namely –

(a) 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.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

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

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

The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board. The title of buyer or the person 'who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company. The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act. The debt incurred by the company exceeding the paid capital and free reserves is not. Valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

Question: 94 Write short notes on
Director Identification Number (DIN)

Answer: Director Identification Number

Every individual, who is to be appointed as director of a company shall make an application electronically in Form No. DIR-3 to the Central Government for allotment of DIN along with the prescribed fees.The applicant can download the said from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompletion to the applicant by placing it on its web site and by email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN. The director, on allotment of DIN, is to intimate the company in Form No.DIR-3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, furnish the same with the Registrar. If a company fails to furnish DIN the company shall be punishable with fine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh. Every officer of the company who is default shall be punishable with tine which shall not be less than ` 25,000/- but which may extend to ` 1/- lakh.

Question: 95 Jun 2017 What are the conditions stipulated in the Companies Act, 2013 in formation of One Person Company?

Answer: The following are the conditions in formation of a OPC: No person shall be eligible to incorporate more than a OPC or become nominee in more than such company;

- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 182 days;

- No minor shall become member or nominee of OPC or can hold share with beneficial interest;

- Such company cannot be incorporated or converted into Section 8 company;

- Such company cannot carry out Non Banking Financial investment activities including investment activities in securities of any body corporate;

- No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit of paid up share capital is increased beyond ` 50 lakh or its average annual turnover during the relevant period exceeds ` 2 crore rupees.

Question: 96 Discuss the procedure of alteration of memorandum of association as per the companies Act, 2013.

Answer: As per the provision of section 13 of the Companies Act, 2013 the alteration of the memorandum may be taken place in the following manner**:**

(i) Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution

(ii) Name change of the company: Any change in the name of a company shall be effected only with the approval of Central Government in writing. However no such approval is necessary where the change in the name of the company is only the deletion there from, or addition thereto of the word 'private', on the conversion of any one class of companies to another class.

(iii) Entry in register of companies: On any change in the name of the company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(iv) Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(v) Disposal of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days before passing of order. The central government may satisfy itself that-

(a) The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
(b) The sufficient provision has been made by the company either for the due discharge of all its debt and obligations, or
(c) Adequate security has been provided for such discharge.

(vi) Filing with Registrar: A company shall in relation to any alteration of its memorandum file with the Registrar –

(a) The special resolution passed by the company under sub-section (1),
(b) The approval of the central government under sub-section (2), if the alteration involves any change in the name of the company.

(vii) Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one state to another, a certified copy of the order of the central government approving the alteration shall be filed by the company with the Registrar of each of the State within such time and in such manner as may be prescribed, who shall register the same.

(viii) Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to shall issue afresh certificate of incorporation including the alteration.

(ix) Change in the object of the company: A company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and -

(a) The details in respect of such resolution shall also be published in the newspaper

(b) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI

(x) Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

(xi) Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(xii) Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum in the case of a company limited by guarantee and not having a share capital intending to give any person right to participate in the divisible profits of the company otherwise than as a member shall be void.

Question: 97 Describe the Procedure for the resignation of Director.

Answer: Section 168 provides the procedure for the resignation of a director as detailed below:

- A director may resign from his office by giving a notice in writing to the company;
- He shall within 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with the reasons for the resignation, in Form No. DIR - 11 along with the fee;
- A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR - 11 and file the same on his behalf intimating the reasons for the resignation;
- The Board shall on receipt of such notice take notice of the same;
- The company shall intimate the Registrar in Form No. DIR-12 within one month from the date of receipt of such notice;
- The said information is to be posted on the website of the company;
- The fact of the resignation shall be laid in the report of directors immediately following the general meeting by the company;
- 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;
- The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure;

Where all directors of a company resign from their offices the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

Question: 98 Describe the term 'independent director' as per the Companies Act, 2013.

Answer: 'Independent director' is defined under Section 149(6) of the Companies Act as a other than a managing director or a whole time director or a nominee director –

(a) Who in the opinion of the board is a person of integrity and possesses relevant expertise and experience,

(b) He shall not be a promoter of the company or its holding, subsidiary or associate company,

(c) He shall not relate to the promoters or directors in the company, its holding, subsidiary or associate company,

(d) He shall not any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial years or during the current financial year,

(e) His relative shall not have any pecuniary relationship with the company or their promoters or directors amounting to 2 % or more or more of its gross turnover or total income or ` 50 lakhs or such higher amounts as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year,

(f) he or his relatives-

- holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company, in any of the three financial years immediately preceding the financial year;

- is or has been an employee or proprietor or partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-

  - a firm of auditors or company secretaries in practice or cost auditors of the company; or

  - any legal or a consulting firm that has or had any transaction with the company, amounting to 10% or more of the gross turnover of such firm.

- holds together with his relatives 2% or more of the total voting power of the company; or

- is a Chief Executive or Director of any nonprofit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

- who possess such other qualifications as may be prescribed.

Question: 99 Write short notes on
Revocation of licence

Answer: Revocation of licence: Section 8(6) of Companies Act, 2013 provides that the Central Government, by order, revoke the licence granted to the company registered under this section-

- if the company contravenes any of the requirements of this section; or

- any of the conditions subject to which a licence is issued; or

- the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company.

The Central Government shall direct the company to convert its status and change its name to add the words 'limited' or 'private limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form register the company accordingly.

Workbook Question:

Question: 100 1. Sambhav Media Limited, an Unlisted Public Company, has the following figures at the end of the Financial Year 2016-17: Paid-up Share Capital = ` 130 Crore Turnover = ` 320 Crore Average Profit of last 3 years = ` 7.5 Crore Borrowings = ` 75 Crore

(i) Is the Company required to appoint Independent Director and further are they required to appoint Women Director? Explain the composition of Board.

(ii) Explain the Code of independent directors as per schedule IV of the Companies Act 2013.

Answer: (i) Yes the company is required to appoint an Independent Director as per the provisions of Section 149(4) & Rule 4 of Companies (Appointment and Qualification of Directors) Rule, 2014 every Listed Company shall have at least one-third of the total number of directors as Independent Director and every Unlisted public Company are required to appoint atleast 2 Independent Directors having any one of the following features:

- Public Company having Paid Up Share Capital of ` 10Crore or more; or
- Public Company having Turnover of ` 100 Crore or more; or
- Public Company having aggregate outstanding loans, debentures and deposit, exceeding `50 Crore.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, has Paid-Up Share Capital of `130 Crore, Turnover of ` 320 Crore, and Borrowings of ` 75 Crore which is more than the criteria mentioned in sec 149(4), so therefore the Company is required to appoint atleast 2 Independent Directors.

Yes, the Company is required to appoint a Women Director as per second Proviso to Section 149(1) read with Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014. The following classes of companies are required to appoint at least one Woman Director-

(i) Every Listed Company;
(ii) Every Unlisted Public Company having –
- Paid–up share capital of `100 Crore or more; or
- Turnover of `300 Crore or more.

So as we see in the case study Shambhav Media Limited, an Unlisted Public Company, it has PaidUp Share Capital of ` 130 Crore, Turnover of ` 320 Crore, which is more than the criteria mentioned in Section 149(1), so therefore the Company is required to haveatleast1Women Director in the composition of Board of Director of the Company.

Therefore the Company should have at least 1 women director in composition of the Board of the Company and at least 2 Directors should be Independent Directors.

(ii) <u>Schedule IV (Code of conduct of Independent Directors)</u>

Guidelines of professional conduct:

An independent director shall:

(1) uphold ethical standards of integrity and probity;

(2) act objectively and constructively while exercising his duties;

(3) exercise his responsibilities in a bona fide manner in the interest of the company;

(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;

(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;

(7) refrain from any action that would lead to loss of his independence;

(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

(9) assist the company in implementing the best corporate governance practices.

Role and functions:
The independent directors shall:

(1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

Duties:

The independent directors shall—

1. undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

2. seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

3. strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

4. participate constructively and actively in the committees of the Board in which they are chairpersons or members;

5. strive to attend the general meetings of the company;

6. where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

7. keep themselves well informed about the company and the external environment in which it operates;

8. not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

9. pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

10. ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

11. report concerns about unethical behaviour, actual or suspected fraud or violation of the company‘s code of conduct or ethics policy;

12. 1["act within their authority"], assist in protecting the legitimate interests of the company, shareholders and its employees;

13. not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Question: 101 Mr. Rajiv Singh is a director in 22 Companies as given below:

- **12 Public Companies**
- **1 Section 8 Company**
- **9 Private Companies**

Now out of the 22 Companies, he is Alternate Director in 4 Companies.

(i) Which Section of Companies Act, 2013 specifies the maximum number of Directorship an individual can hold?

(ii) Is Mr. Rajiv in contravention with the provisions of Companies Act, 2013? Explain with reason.

(iii) What would have been your answer if Mr. Rajiv would have been director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies?

(iv) What is the penalty for contravention of this provision?

Answer: (i) Section 165 of the Companies Act, 2013 specifies that a person can hold office as a director, including any alternate directorship, in maximum twenty companies at the same time.

(ii) Yes, Mr. Rajiv Singh is in contravention of Section 165 of the Companies Act, 2013. As per the Act, a person cannot be appointed in more than 20 companies at the same time, provided that a person shall not hold office in more than 10 Public Companies out of the limit of 20 Companies. Since Mr. Rajiv Singh is Director in more than 10 Public Companies i.e. 12. Therefore, it is advised to Mr. Rajiv Singh to resign from any of the 2 Public Companies out of the 12 Public Companies in which he is currently appointed to avoid contravention of Section 165 of the Companies Act, 2013.

(iii) As per the provisions of the Section 165 of the Companies Act, 2013 the limit is 20 companies out of which a person cannot be appointed as a director in more than 10 Public Companies and further the limit of 20 companies shall not include Section 8 Companies.

Therefore, as per the case study Mr. Rajiv is Director in 10 Public Companies, 6 Section 8 Companies and 10 Private Companies where those 6 Section 8 companies shall not be counted in the limit of 20 Companies. So in this situation Mr. Rajiv is complying with the provisions of section 165 of the Companies Act, 2013.

(iv) If a person accepts an appointment as a director in contravention of sub-section (1) of Section 165, he shall be punishable with fine which shall not be less than ` 5,000 (five thousand) but which may extend to `25,000 (twenty-five thousand) for every day after the first year during which the contravention continues.

Question: 102 Specify the power of board as per section 179 of the Companies Act, 2013.

Answer: Section 179 of the Act deals with the powers of the board. The Board of Directors 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 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 memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

The following (section 179(3) read with Rule 8 of Companies (Meetings of Board and its Power) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely:

(1) to make calls on shareholders in respect of money unpaid on their shares;

(2) to authorize buy-back of securities under section 68;

(3) to issue securities, including debentures, whether in or outside India;

(4) to borrow monies;

(5) to invest the funds of the company;

(6) to grant loans or give guarantee or provide security in respect of loans;

(7) to approve financial statement and the Board's report;

(8) to diversify the business of the company;

(9) to approve amalgamation, merger or reconstruction;

(10) to take over a company or acquire a controlling or substantial stake in another company;

(11) to make political contributions;

(12) to appoint or remove key managerial personnel (KMP);

(13) to appoint internal auditors and secretarial auditor;

Question: 103 What are the restrictions on powers of Board?

Answer: The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The Board can exercise the following powers only with the consent of the company by special resolution, namely –

(a) 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;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

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

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

The special resolution relating to borrowing money exceeding paid up capital, free reserves and securities premium share specify the total amount up to which the money may be borrowed by Board.

The title of buyer or other person who buys or takes on lease any property, investment or undertaking in good faith cannot be affected and also in case if in the ordinary business of the company comprises such selling or leasing.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except in accordance with the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital, free reserves and securities premium is not valid and effectual, unless the lender proves that the loan was advanced in good faith and also having no knowledge that limit imposed had been exceeded.

Question: 104 (a) Which classes of Companies are specified to conduct meeting through electronic means and under which section of the Act?
(b) Explain the process of e-voting.
(c) What is the role of Scrutinizer in voting through electronic means and through poll?

Answer: (a) Section 108 of the Companies Act, 2013 prescribes that Every Company which is Listed on a Recognized Stock Exchange and every other Company having 1000 or more members shall provide to its members the facility to exercise their right to vote on resolution proposed to be considered at a general meeting by electric means (i.e. E-voting)

(b) PROCESS OF E-VOTING:

(i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –
(a) by registered post or speed post; or
(b) through electronic means, namely, registered e-mail ID of the recipient; or
(c) by courier service;

(ii) THE notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) THE notice of the meeting shall clearly state –(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;(c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

(iv) THE notice shall—(a) indicate the process and manner for voting by electronic means;(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;(c) provide the details about the login ID;(d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least in one English newspaper having country-wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-
(a) statement that the business may be transacted through voting by electronic means;

(b) the date and time of commencement of remote e-voting;

(c) the date and time of end of remote e-voting;

(d) cut-off date;

(e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;

(f) the statement that—
(A) remote e-voting shall not be allowed beyond the said date and time;

(B) the manner in which the company shall provide for voting by members present at the meeting; and

(C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and

(D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

(g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

(h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

(vii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cutoff date, may opt for remote e-voting:

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii)At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

(c) ROLE OF SCRUTINIZER

(i) The Board of Directors shall appoint one or more scrutinizers, who may be Chartered Accountant in practice. Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner: Provided that the scrutinizers so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

(ii) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(iii) The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizers, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

(iv) The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer‘s report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same: Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

(v) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutinizer shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutinizers may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

(vi) The scrutinizers shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

Question: 104 Write short notes on
(i) Section 42
(ii) Independent Director u/s 149(6)
(iii) Disqualification of Director u/s 164 (iv) Entrenchment Clause

Answer: (i) **Section 42:** Section 42 deals with the provision of PRIVATE PLACEMENT under Companies Act, 2013. A private placement offer cannot be made to more than 200 people in aggregate in a financial year excluding Qualified Institutional Buyers‖ and employees of the company being offered securities under a Scheme of Employee‘s Stock Option as per provisions of clause (b) of sub-section (1) of Section 62.

The value of such offer or invitation shall be with an investment size of not less than ` 20,000/- per person.

The number of such offers or invitations shall not exceed 4 in a financial year and not more than once in a calendar quarter with a minimum gap of 60 days between any 2 such offers or invitations.

Procedure

1. Check Provision in the Articles of Association regarding Private Placement

2. Call Board Meeting:
- To Prepare Offer Letter
- Make Proposal for Private Placement
- Prepare list of persons to whom option will be given
- Call Extra Ordinary General Meeting

3. Pass Special Resolution in Extra Ordinary General Meeting which will be valid for 12 months
- If Private Placement is not completed in 12 Months then pass another Special Resolution
- Approve Draft Offer Letter by Special Resolution

4. File MGT-14 with ROC with following Attachments:
– Notice of EGM – Certified True Copy of Special Resolution
– Minutes of Extra Ordinary General Meeting

5. Issue offer letter in PAS-4 within 30 days of record of name of persons:

6. Prepare complete record of Private Placement in PAS-5

7. File PAS-4 + PAS-5 with ROC within 30 days of issue of offer letter in e-form GNL-2

8. Make Allotment of shares within 60 days of receipt of money from the persons to whom the right was given.

9. Called Board Meeting for allotment of shares

10. File PAS-3 (Return of Allotment) with ROC within 30 days of Allotment with following Attachments:

– List of Allottees
– Board Resolution for allotment of shares

(ii) Independent Director u/s 149(6):

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,—
(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent or more of the gross turnover of such firm;

(iii) holds together with his relatives two percent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five percent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two percent or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(iii) Disqualification of Director u/s 164:

(1) A person shall not be eligible for appointment as a director of a company, if —
(a) he is of unsound mind and stands so declared by a competent court;
(b) he is an undischarged insolvent;
(c) he has applied to be adjudicated as an insolvent and his application is pending;
(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
(h) he has not complied with sub-section (3) of section 152.

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall 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.

(iv) Entrenchment Clause:

The Article may contain entrenchment provision. This is new concept under Indian Companies Act, as there was no such concept under the old Act.

The word Entrench is not defined under Companies Act, 2013. As per Oxford Dictionary the word entrench means to establish (an attitude habit or belief) so firmly that change is very difficult or unlikely. It may require form of super majority or referendum submitted to the people, or the consent of another party.

If such entrenchment provisions are intended to be incorporated in its Articles after Incorporation then consent of members is mandatory in the prescribed manner. In case of a _Private Company', consent of all the members of the company is required and in case of Public Company' consent of its members by way of special resolution is required.

According to Rule 10 of Companies (Incorporation) Rules, 2014 where the Article contain provisions for entrenchment, the Company shall give notice to the Registrar within 30 days from the date of formation or amendment of Articles of such provision in Form INC-2 or Form INC-7 as the case may be at the time of incorporation of the Company.

Where the Articles of an existing company has been altered to include entrenchment, the notice of entrenchment shall be filed in Form MGT -14 within 30days from the date of entrenchment of the Articles as the case may be along with the fees as provided in the Company's Rules, 2014.

Question: 105 A Limited, a Company situated in Kolkata (West Bengal) wants to shift its registered office from West Bengal to Maharashtra.

Advice the Company with complete procedure along with names of e-forms required with their respective attachments.

Answer: A Limited, a Company of West Bengal, which wants to shift its registered office to Maharashtra, has to comply with the following formalities as mentioned below:

1. The Company has to call an Extra Ordinary General Meeting.
2. Pass Special Resolution seeking members' approval for shifting of registered office and file e-Form MGT-14 to Registrar of Companies (ROC) within 30 days of passing Special Resolution.
3. At least one month before filing application with Regional Director(RD) –

- Publish a notice, at least in one daily newspaper published in English and in one principal language of that district in which the registered office of the company is situated and serve individual notice on each debenture holder, depositor and creditor of the Company. The newspaper advertisement/notice to creditors should state that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the Company within 21 days of the date of publication of that notice.

4. Draw up the application and file e-form INC 23, with following attachments:-

- Copy of minutes of meeting in which special resolution has been passed
- Copy of Memorandum of Association
- Notice convening the general meeting along with explanatory statement
- Extract of special resolution passed by members approving the change of registered office
- Copies of advertisement published
- Copies of notice sent to creditors, debenture holder, depositor along with dispatch proof
- Particulars of objections received;

- Any attachment to support the details of prosecution filed against the company and its officers in default, if any

5. File a copy of the application to ROC and Chief Secretary through Speed/ Registered Post.

6. Once the order is passed by the RD, approving shifting of the registered office, File e-form INC-28 along with the Order passed by RD within 30 days from the date of passing order by RD and then file e-form INC 22 with both the ROCs, supported by the following documents:

- The registered document of the title of the premises of the registered office in the name of the company; or
- The notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

Question: 105 Advice:

(1) C Limited sent the notice of EGM on 30thSeptember, 2017 for a meeting to be held on 24th October, 2017 through courier. Explain whether the notice was sent as per Section 101 of the Act.

(2) B Limited has 4000 members. The Company conducted an EGM and at the EGM 20 members were present. Explain whether the quorum was sufficient as per Section 103 of the Act.

(3) Some members of AB Limited want Mr. C's name to be proposed for the candidate of director in the Company. Explain the procedure with applicable provision. What would have been your answer if the company would have been a Private Limited Company?

Answer: (a) As per section 101 of the Companies Act, 2013 a company has to give atleast 21 Clear Days notice to the members to call a General meeting. Over here Clear days means it will not include the date of giving of notice and the day of meeting and further if the notice is sent by post then it will be deemed to be delivered after 2 days from the dispatch of notice. Further those 21 Clear Days does not include a National Holiday i.e. Gandhi Jayanti (2nd October), Independence Day (15th August) and Republic Day (26th January).

So as we can see in the given case study C Limited sends notice on 30th September, 2017 for a meeting to be held on 24th October so the Day of sending notice and the day of meeting is excluded and further there is a National Holiday on 2nd October so that will also be excluded and the speed post is sent by post so it will be deemed to be received after 2 days of sending the notice. Therefore, total number of days excluded are (1+1+2+1=5) so days remaining (25-5=20) Days. Hence Section 101 is not complied over here by the company.

(b) As per section 103 of the Companies Act, 2013, unless the Articles of the company provide for a larger number,—

(a) In case of a Public Company,—

(i) 5 (five) members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) 15 (fifteen) members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) 30 (thirty) members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, 2 (two) members personally present, shall be the quorum for a meeting of the company.

As per the given case study B Limited, a Public Company, has 4000 members so therefore the Company needs to have a quorum of 30 (Thirty) people in a general meeting but B Limited has only 20 members present in the EGM so the Quorum is not sufficient as per Section 103 of the Act and therefore the meeting shall be adjourned till next week same day same place at same time.

(c) As per 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, or some member intending to propose him as a director, has, not less than 14 (fourteen) 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 or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of ` 1,00,000/- [one lakh rupees] shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25 % (twenty-five percent) of total valid votes cast either on show of hands or on poll on such resolution.

So as per the given case study the members of AB Limited who want Mr. C as the candidate for the Directorship of the company has to give a notice in written to the company about the candidate standing for the position of Directorship at its registered office atleast 14 days before the meeting and deposit ` 1,00,000/- with the company as a security deposit which shall be refunded once Mr. C becomes the director of gets atleast 25% votes otherwise the deposit shall be forfeited by the company.

If the Company would have been a private co then this section would have not been applicable on the Company as per the Notification dated 5th June 2015 of the Companies Act, 2013 which granted exemption to private companies from Section 160.