CA INTER

COMPANY LAW (MODULE – 2)

INDEX

7. MANAGEMENT AND ADMINISTRATION

OVERVIEW:

A company is an artificial legal entity distinct from its members. The affairs of the company are managed by the members and directors through resolutions passed at the validly held meetings. The day-to-day affairs of the company are managed by the directors who collectively act through Board of Directors. The Board performs its role within the powers granted to it. Certain powers can be exercised by the board on its own and some with the consent of the company at the general meetings.

In the capacity as owners of the company, the shareholders ratify the actions of the board at the general meetings.

The meetings of the shareholders serve as the focal point for the shareholders to converge and give their decisions on the actions taken by the directors.

GENERAL MEETING is the meeting of a company's shareholders as per the provisions of the Act. The general meeting can be an annual general meeting (AGM) or an Extraordinary General meeting (EGM).

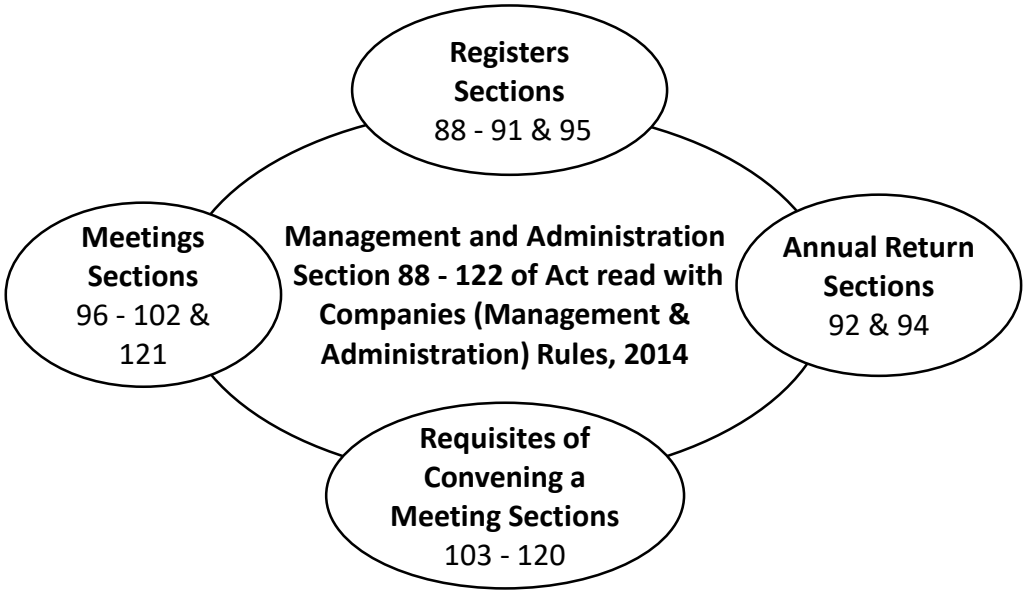
1. An annual general meeting (AGM) is a mandatory yearly gathering of a company's interested shareholders. The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company.
2. An Extraordinary General Meeting (an EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.

BOARD MEETING is the meeting of the board of directors of the company

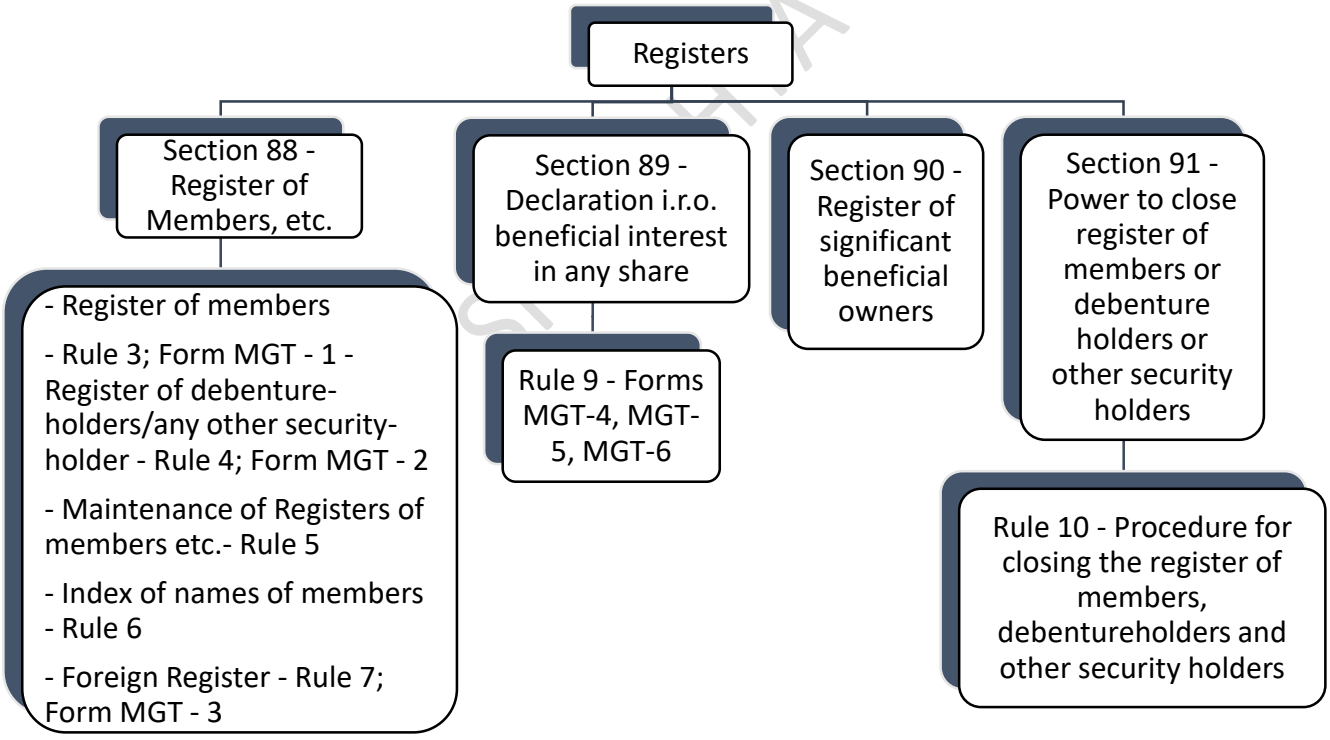
CLASS MEETING is the meeting of special class of persons, like, creditors, preference shareholders, etc.

Every company is duty-bound to maintain register of members, register of debenture-holders and register of other security holders.

Chapter VII of Companies Act, 2013 deals with the provisions relating to management and administration of companies. It covers Sections 88 to 122 and is divided under the following headings–



Various provisions relating to keeping and maintenance of registers are as follows:



Q.NO.1. EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO MAINTENANCE OF REGISTER OF MEMBERS

ANSWER:

REGISTER OF MEMBERS (SEC 88)

A. Every company shall keep and maintain the register of members, register of debenture-holders (DH) and register of any other security holders (OSH).

B. **MAINTENANCE OF REGISTER OF MEMBERS:** Section 88(1)(a) requires a register of members to be maintained and that the holding of each class of equity and preference shares by each member residing in or outside India will have to be shown separately in the register of members.

Note:

- The form and manner in which these registers are to be maintained, is contained in Rule 3 of the Companies (Management & Administration) Rules, 2014;
- whereas Rule 5 provides for the maintenance of the register of members.

C. **TIME PERIOD FOR ENTRIES IN REGISTER** (Rule 5): Entries must be recorded in the Register within 7 days of the date of approval by the Board or Committee thereof by approving the allotment or transfer of shares, debentures or any other securities, as the case may be.

According to Rule 5 (3), consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within 7 days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

D. **PLACE WHERE REGISTER SHALL BE MAINTAINED** (Rule 5): the registers shall be maintained at the registered office of the company unless a **special resolution** is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside.

E. **OTHER INFORMATION'S ALSO TO BE REFERRED IN REGISTER:** Any order passed by the competent authority attaching the shares or relating to dividends is also required to be referred in the register of members. The particulars of any charge, lien, pledge or hypothecation of any securities of the company is also required to be entered in the register of members as per Rule 5(7) and 5(8).

F. **PARTICULARS IN REGISTER:** Rule 3 provides that every company limited by shares, shall, from the date of its registration, maintain a register of its members in Form MGT-1. In case of a company not having share capital, the register shall contain the following particulars, in respect of each member-

- Name of the member, address (registered office address in case the member is a body corporate); email address; Permanent Account Number or Corporate Identity Number ('CIN'); Nationality; in case member is a minor - name of his guardian and the date of birth of the member, name and address of the nominee;
- Date of becoming the member;
- Date of cessation;
- Amount of guarantee, if any;
- Any other interest, if any; and
- Instructions, if any, given by the member with regard to sending of notices, etc.

G. MAINTENANCE OF REGISTER OF DEBENTURE HOLDERS (DH): Every company which issues or allots debentures, or any other security shall maintain a separate register for debenture holders or security holders, as the case may be, for each type of debentures or other securities in Form MGT-2. [Rule 4]

H. UPDATING OF CHANGE IN STATUS OF MEMBERS: If any change occurs in the status of a member or debenture-holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund (IEPF) or due to any other reason, entries thereof explaining the change shall be made in the respective registers.

I. INDEX OF NAMES [Sec 88(2)]:

1. Every register maintained under section 88(1) shall include an index of names included therein.
2. However, according to Rule 6 of the *Companies (Management & Administration) Rules, 2014* the maintenance of index is not necessary where the number of members is less than 50.
3. Rule 6 also provides that the company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

J. REGISTER INDEX OF BENEFICIAL OWNER TO BE MAINTAINED OF A DEPOSITORY:

The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

K. FOREIGN REGISTER - SECTION 88(4) READ WITH RULE 7:

1. **Maintenance of foreign register:** Company which has share capital or which has issued debentures, or any other security may, if so authorised by its articles, keep in any country outside India, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country. The register may be referred as "Foreign Register".
2. **Compliances:** The Foreign Register is optional. Once company decides to keep, it shall comply to the following-
   - **a. ROC Filing:**
     - **i.** The company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar of Companies ('RoC') notice of the situation of the office in the prescribed Form No. MGT - 3 along with the fee where such register is kept; and
     - **ii.** in the event of any change in the situation of such office or of its discontinuance, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No. MGT.3 with the RoC of such change or discontinuance.
   - **b.** A foreign register shall be deemed to be part of the company's register ('principal register') of members or of debenture-holders or of any other security holders or beneficial owners, as the case may be.
   - **c.** The foreign register shall be maintained in the same format as the principal register.
   - **d.** A foreign register shall be open to inspection and may be closed, and extracts may be taken therefrom, and copies thereof may be required, in the same manner, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
   - **e.** If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.
   - **f.** Entries in the foreign register maintained under section 88(4) shall be made after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.
   - **g.** The company shall -
     - **i.** Transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made; and

ii. Keep at such office a duplicate register of every foreign register duly updated from time to time and it shall be deemed to part of the principal register.

iii. No transaction with respect to any shares, debentures, or any other security, registered in a foreign register shall, during the continuance of such foreign register, be registered in any other register.

iv. The company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

L. PENALTY FOR FAILURE TO MAINTAIN REGISTER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 88(1) AND 88(2) OF THE ACT:

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of Rs. 50,000.

M. NATURE OF OFFENCE: The offence under this section is a compoundable offence under section 441 of the Act.

N. DETAILS OF NOMINATIONS IN THE REGISTER: It is important to note here that Form MGT - 1 and MGT - 2 require details of nomination as referred to in section 72 of the Act, read with Rule 19 of the Companies (Share Capital and Debentures) Rules, 2014 to be entered in the Register of members and register of debenture-holders or other security holders as the case may be.

O. AUTHENTICATION OF ENTRIES (Rule 8):

1. The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.
2. The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.

EXAMPLE 1: Mr. Zoey purchased the shares of Luxy Hairstyles Private Limited, at market price, in the name of his daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the updation of said change in the register of members, since Mila, being a minor is incompetent to contract in her capacity.

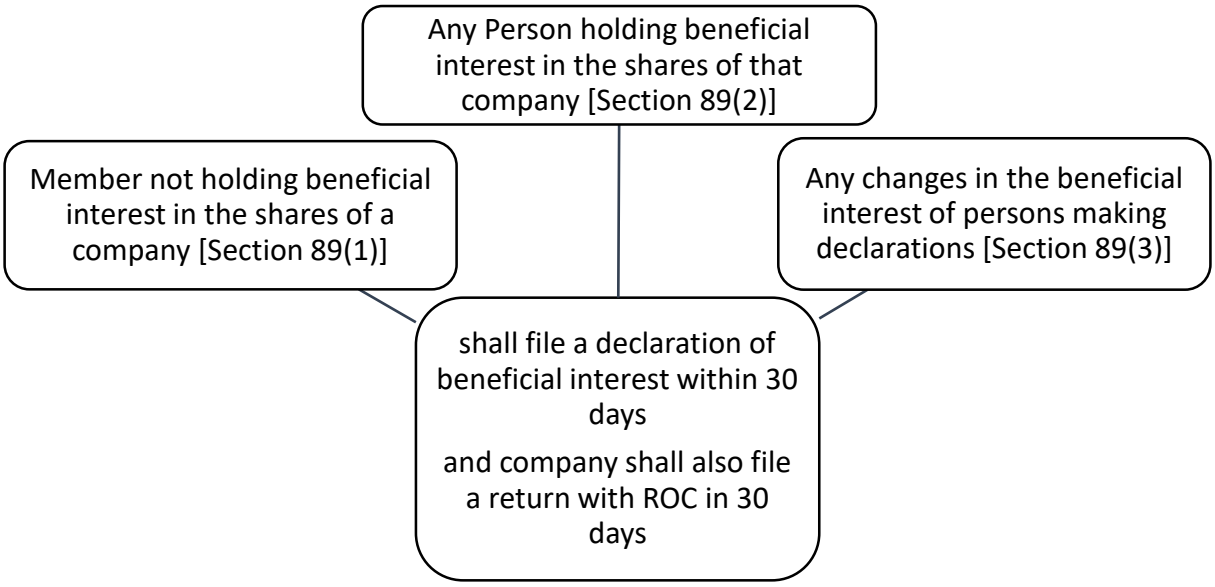
ANSWER: *Since, the minors are not competent to enter into any contract, thus their names cannot be entered in the register of members. Therefore, Mr. Joe is advised that while filing MGT – 1 and MGT – 2, the names of the minor can only be entered only if the details of the guardian are present. Thus, Zoey's name shall appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.*

EXAMPLE 2: Mrs. And Mr. Taneja, recently got married and jointly purchased the shares of New Hopes India Private Limited on 14th August 2018. Mr. Taneja intimated the company that only the name of his wife should appear in the records of the company, for the shares purchased by them. The secretary of the company is not sure whether this is possible, given that the shares are held in the names of both the persons.

ANSWER: *Joint holders of shares may request the company to enter their names on the register in a certain order, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition of Mr. Taneja that only the name of his wife should appear in the register as a member cannot be catered to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.*

Q.NO.2. EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE.

ANSWER:



A. **DECLARATION BY REGISTERED HOLDER OF SHARES:** A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company,

   a. a declaration to that effect in Form No. MGT. 4, specifying the name and other particulars of the person who holds the beneficial interest in such shares,

   b. within a period of 30 days from the date on which his name is entered in the register of members of such company.

B. **DECLARATION BY PERSON HOLDING BENEFICIAL INTEREST IN SHARES:** Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company in form MGT-5, within 30 days after acquiring such beneficial interest, specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

C. **DECLARATION IN CASE OF CHANGE IN BENEFICIAL INTEREST:** Where any change occurs in the beneficial interest in any shares in respect of which a declaration has been filed u/s 89 (1) and (2), then, within 30 days of such change, a declaration is to be made to the company.

D. **FILLING OF RETURN BY THE COMPANY WITH THE REGISTRAR:** Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in Form No. MGT.6 with the Registrar in respect of such declaration with fee.

E. **CONSEQUENCE OF NON-FILLING OF DECLARATION:** where a declaration required u/s 89 is not filed by the beneficial owner, then, any right with respect to such shares shall not be enforceable by the beneficial owner or by any person claiming through him.

F. **EXEMPTION:** Trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. These entities need not file the declarations as envisaged under this section.

G. **DUTY OF THE COMPANY TO PAY DIVIDEND NOT AFFECTED:** Nothing contained in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged

Note:

Meaning of beneficial interest: For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

i. exercise or cause to be exercised any or all of the rights attached to such share; or

ii. receive or participate in any dividend or other distribution in respect of such share. [Section 89(10)]

H. EXEMPTION FROM FOLLOWING THE PROVISIONS OF SECTION 89 [SECTION 89(11)]

The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

I. PENALTY FOR DEFAULT UNDER SECTION 89(5) & 89(7) – Two kinds of penal provisions are included under section 89 –

Related to persons required to make a declaration [Section 89(5)]- If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with a further penalty of Rs. 200 for each day after the first during which such failure continues, subject to a maximum of Rs. 5,00,000.

Related to company [Section 89(7)]- If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 1000 for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

J. EXEMPTION TO GOVERNMENT COMPANY- In case of Government Company - Section 89 shall not apply - Notification dated 5th June 2015.

The above-mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- Notification dated 13th June 2017.

Q.NO.3. EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT TO DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE.

ANSWER:

A. REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY [SECTION 90]

Every Significant Beneficial Owner "SBO" is required to disclose the nature of his interest and other particulars within the prescribed period of time to the Company, which in turn will inform the same to the Registrar of Companies.

In the said connection, MCA has issued Companies (Significant Beneficial Owners) Rules, 2018 ("SBO"), which deals with identification and reporting in connection with SBO.

B. DEFINITION OF SIGNIFICANT BENEFICIAL OWNER: Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty- five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner").

C. COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) AMENDMENT RULES, 2019: However, Companies (Significant Beneficial Owners) Amendment Rules, 2019 ("Amendment Rules") has amended the definition of the term SBO. In terms of Rule 2(1) (h) of the SBO Rules, the term 'Significant Beneficial Owner' (SBO) is defined as an individual who—

i. acting alone or together, or

ii. through one or more persons or trust,

Possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed):

i. holds indirectly, or together with any direct holdings, not less than 10% of the shares;

ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

iii. has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

iv. Has the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In simple terms, SBO is an individual who either alone or together with other individuals or trust, exercises rights or entitlements in the Reporting Company by way of holding 10% shares or 10% voting rights or right to receive 10% or more dividend, both indirect and direct holdings or right taken together or such individual exercise significant influence or control, indirectly or along with direct holding in the Reporting Company. The amended Rules further explain that if an individual does not hold any indirect right or entitlement as mentioned in i., ii. Or iii. above, he will not be considered to be a 'significant beneficial owner'.

D. EXPLANATION:

1. **Significant influence:** The term "significant influence" was previously not defined specifically for the rules, and hence, to provide clarity, the following definition has been inserted through SBO rules: "Significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.
2. **Majority stake:** The Amendment Rules inserted a new term, "Majority Stake," which means
   - **i.** holding more than one-half of the equity share capital in the body corporate; or
   - **ii.** holding more than one-half of the voting rights in the body corporate; or
   - **iii.** Having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.
3. **Direct and Indirect shareholding:** The Amendment Rules provide that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO. An individual will be considered to hold a right or entitlement directly in the Relevant Company, if he satisfies any of the following criteria:
   - **i.** the shares in the Relevant Company representing such right or entitlement are held in the name of such individual;
   - **ii.** the individual holds or acquires a beneficial interest in the shares of the Relevant Company under section 89(2) of the CA 2013, and has made a declaration in this regard to the Relevant Company.

   Indirect shareholding is, when a shareholder is a (a) Body corporate; (b) Hindu Undivided Family; (c) Partnership; (d) Trust; (e) Pooled investment vehicle.

E. ONUS ON THE REPORTING COMPANY:

The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form.

As per the Amendment Rules, every reporting company shall give notice in the Form BEN- 4 to any person whom the company knows or has reasonable cause to believe-

a. to be a significant beneficial owner of the company;

b. to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

c. to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

F. Every company shall maintain a register of significant beneficial owners in Form No. BEN-3 which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

G. APPLICATION TO TRIBUNAL [SECTION 90 (7)]:

1. The company shall,—

a. Where that person fails to give the company the information required by the notice in form no. BEN4 within 30 days of date of notice; or

b. Where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of the right to receive dividend or any other distribution in relation to the shares in question; suspension of voting rights in relation to the shares in question; any other restriction on all or any of the rights attached with the shares in question.

2. On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

3. The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed within a period of one year from the date of such order.

4. If no such application has been filed within a period of one year from the date of the order such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

H. Declaration by SBO:

1. Every individual who is a SBO in the Reporting Company, as on the date of commencement of the Amendment Rules, is required to file a declaration with the Reporting Company in Form BEN-1 within 90 days from such commencement. In turn, the Reporting Company will be required to file the said disclosure with the Registrar within 30 days of receiving it from the SBO.
2. Any individual, who subsequently becomes a significant beneficial owner in the Reporting Company or whose significant beneficial ownership undergoes any change, is required to file a declaration with the Reporting Company in Form BEN-1 within 30 days of such acquisition or change.
3. If an individual becomes a significant beneficial owner in the Reporting Company or her significant beneficial ownership undergoes any change within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

I. NON-APPLICABILITY: The amended Rules will not be applicable where the shares of the Relevant Company are held by:

- **a.** The Investor Education and Protection Fund Authority;
- **b.** Its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;
- **c.** The Central Government, any State Government or any local authority;
- **d.** An entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);
- **e.** Investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and
- **f.** Investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

J. CONTRAVENTION

- **a. By SBO:** If any person fails to make a declaration as required under sub- section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees. [Section 90(10)]

b. By Reporting Company:

If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein,

i. the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and

ii. every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees. [Section 90(11)]

K. Contravention by Company and Officer in Default of provisions of Section 90 and SBO Rules is compoundable.

Note: Where the SBO or the Officer in Default intentionally furnishes any false or incorrect information or suppresses any material information, then they will be liable for fraud under section 447.

L. EXEMPTION TO GOVERNMENT COMPANY- In case of Government Company - Section 90 shall not apply - Notification dated 5th June, 2015.

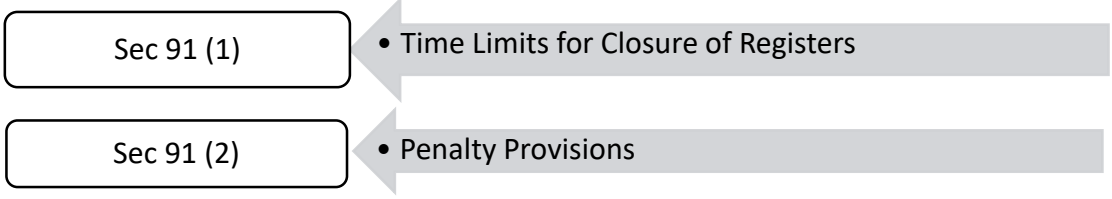
The above-mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- Notification dated 13th June, 2017.

Q.NO.4. EXPLAIN THE PROVISIONS OF COMPANIES ACT WITH RESPECT POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE-HOLDERS OR OTHER SECURITY HOLDERS.

ANSWER:

POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE-HOLDERS OR OTHER SECURITY HOLDERS [SECTION 91]

a. The said section is divided into two parts – sub-section (1) deals with the time limits for which the register of members is allowed to be closed and sub- section (2) mentions the penalty for contravention of the provisions of sub- section (1).



b. According to Section 91(1) a company may close the register of members, debenture-holders and other security holders by giving minimum 7 days' notice or such lesser period as specified by Securities Exchange Board of India ('SEBI').

c. Section 91(1) further states that the registers may be closed for any period not exceeding 30 days at any one time and for an aggregate period of 45 days in one year.

d. Section 91(2) sets out that if the registers is closed without giving the notice as prescribed in sub-section (1), or after giving a shorter notice than that so provided, or for a continuous period or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 5,000 per day subject to a maximum of Rs. 1,00,000 during which the register is kept closed. However, the offence is a compoundable offence under section 441 of the Companies Act, 2013.

e. Notice:

i. According to Rule 10 of the Companies (Management & Administration) Rules, 2014, a company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice,

ii. if such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company. [Sub rule (1)]

f. Exemption: The private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers. [Rule 10 (2), Companies (Management & Administration) Rules, 2014]

Q.NO.5. EXPLAIN THE PROVISIONS OF COMPANIES ACT REGARDING ANNUAL RETURN.

ANSWER:

Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A.

A. According to section 92(1), Every company shall prepare a return (hereinafter referred to as the annual return in this section) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

a. its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

b. its shares, debentures and other securities and shareholding pattern;

c. its members and debenture-holders along with changes therein since the close of the previous financial year;

d. its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

e. meetings of members or a class thereof, Board and its various committees along with attendance details;

f. remuneration of directors and key managerial personnel;

g. penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

h. matters relating to certification of compliances, disclosures as may be prescribed;

i. details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and

j. such other matters as may be prescribed,

B. SIGNING:

a. The afore-mentioned annual return has to be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

b. However, in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Note: Provided further that the Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed". Accordingly, as per Rule 11 (1) One Person Company and small company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

C. CERTIFICATION: Sub section 2 of section 92 read with Rule 11(2) of the Companies (Management & Administration) Rules, 2014, provides that the annual return, filed by

a. a listed company or

b. a company having paid-up share capital of Rs. 10 crore or more; or

c. a turnover of Rs. 50 crore or more,

shall be certified by a Company Secretary in practice and the certificate shall be in Form MGT – 8. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act.

D. Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

E. ROC FILINGS: A copy of annual return shall be filed with the ROC within

- **a.** 60 days from the date on which the Annual General Meeting ('AGM') is held or
- **b.** where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

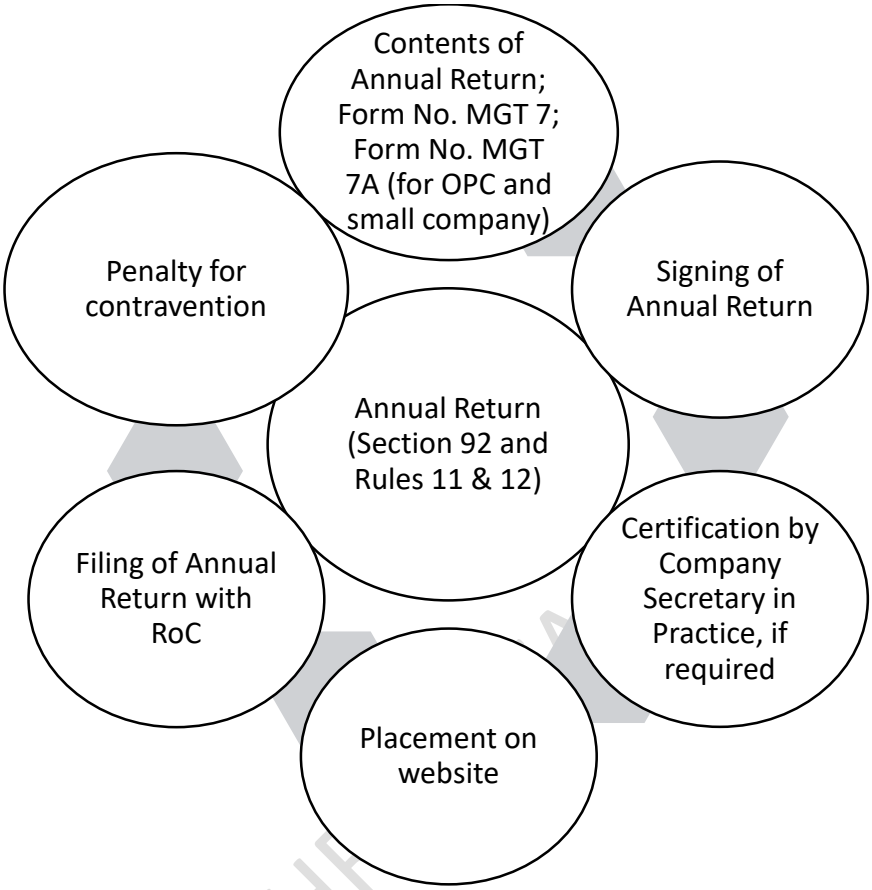
F. PENALTY FOR CONTRAVENTION–

- **a.** Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein,
  - **i.** such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and
  - **ii.** in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2,00,000 in case of a company and fifty thousand rupees in case of an officer who is in default.
- **b.** If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be liable to a penalty of ₹ 2,00,000.

Example: Big Fox Private Limited called it's Annual General Meeting on 30th September 2019 for laying down the financial statement for approval of its shareholders for the financial year ended 31st March 2019. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements or the annual return for the year ending March 2019, with the ROC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.

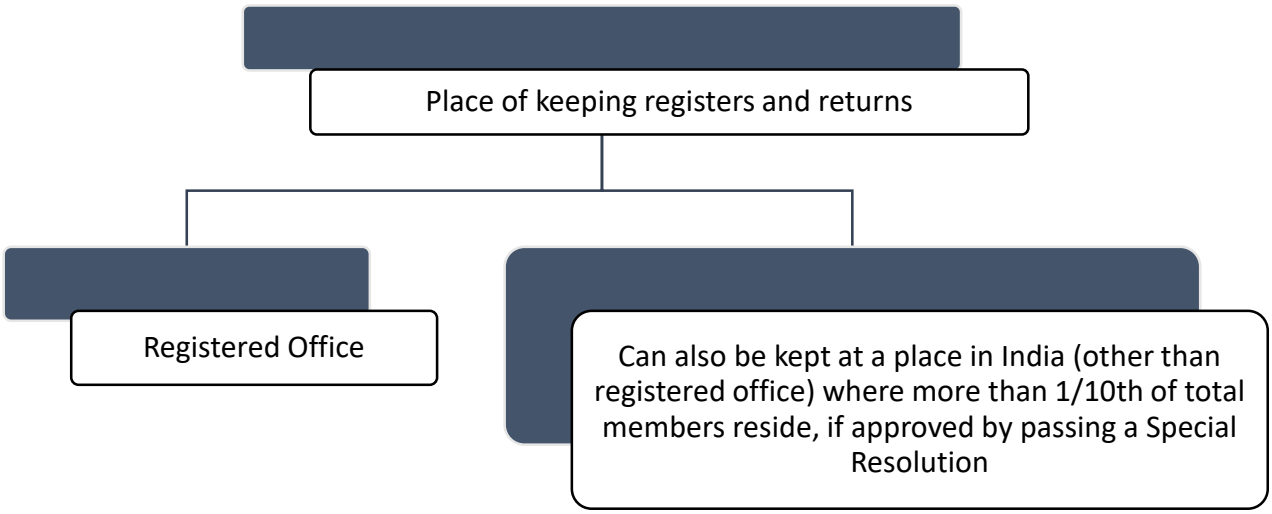
ANSWER: *The director is incorrect in holding that there no contravention of the provisions of the Companies Act, 2013. Section 92 states that every company has to file an annual return with the ROC within 60 days of date on which annual general meeting was held or the date when it must have been held. In the above case, the annual general meeting of Big Fox Private Limited should have been*

held by 30th September 2019, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92(5) of the Act.



Q.NO.6. EXPLAIN THE PROVISIONS OF COMPANIES ACT REGARDING PLACE OF KEEPING AND INSPECTION OF REGISTERS, RETURNS, ETC.

ANSWER:



A. PLACE OF MAINTENANCE OF REGISTERS:

a. The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.

b. Such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed."

B. INSPECTION: As per Rule 14(1), the registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide,

a. by any member, debenture holder, other security holder or beneficial owner without payment of fee and

b. by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.

C. According to Section 94(3) read with Rule 14(2), any member, debenture- holder or security holder or beneficial owner can take the extracts during any business without payment of any fee or can also get copies thereof with payment of fee not exceeding Rs. 10 for each page. Such copies or entries or return shall be supplied within 7 days of deposit of fee.

Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section.

As per Rule 14, Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: —

i. address or registered address (in case of a body corporate);

ii. e-mail ID

iii. Unique Identification Number

iv. PAN Number

D. PRESERVATION OF REGISTER OF MEMBERS ETC. AND ANNUAL RETURN–

1. **Preservation of register of members:** Rule 15 of the Companies (Management & Administration) Rules, 2014 states that the register of members along with the index shall be preserved permanently and shall be kept in the custody of company preservation of register of members secretary of the company or any other person authorised by the Board for such purpose; and
2. **Preservation of register of debenture holders/ other security holders:** The register of debenture-holder or any other security holder along with the index shall be preserved for a period of 8 years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.
3. **Copies of documents filled with ROC to be preserved:** Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the ROC.
4. **Preservation of foreign register:** shall be preserved permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture-holder or any other security holder shall be preserved for a period of 8 years from the date of redemption of debenture or securities.

E. PENALTY FOR REFUSING THE INSPECTION OR MAKING ANY EXTRACT OR COPY REQUIRED –

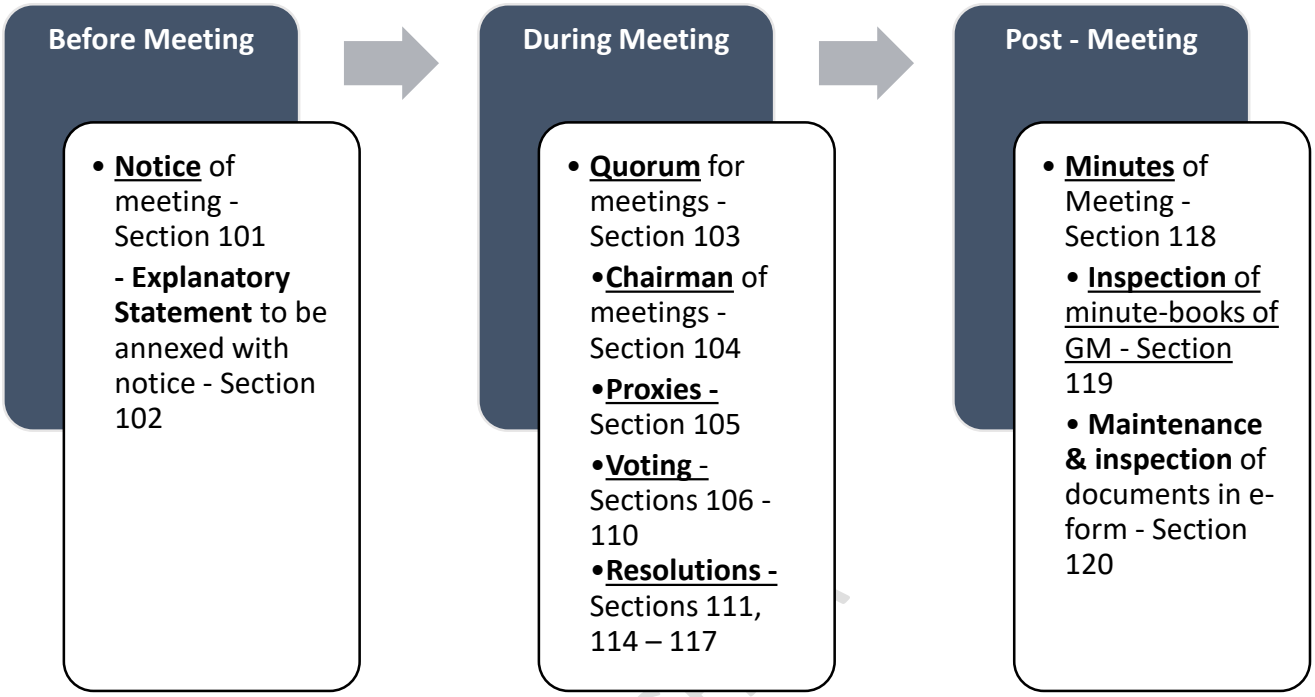
1. If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable for each such default, to a penalty of Rs. 1, 000 for every day subject to a maximum of Rs. 1, 00,000 during which the refusal or default continues. [Section 94(4)]
2. The Central Government may also, by order, direct an immediate inspection of the document, or directs that the extract required shall forthwith be allowed to be taken by the person requiring it. [Section 94(5)]

F. REGISTERS, ETC. TO BE EVIDENCE [SECTION 95]

It provides that the registers, indices and copies of annual return shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

PRE-REQUISITES OF A MEETING

Before we move on to our next concept of types of meetings and the procedure to convene them as per the Companies Act, 2013, let us understand the terms which are important to know for convening a meeting.



Q.NO.7. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING NOTICE OF A MEETING?

ANSWER:

A. NOTICE OF A MEETING [SEC 101]: To properly call a general meeting, notice of at least 21 clear days, before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.

B. SPECIAL CASES:

1. **Specified IFSC Public Company** - Section 101 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.
2. **Sec 8 Company:**
   - **a.** In case of Sec 8 company, a general meeting can be called by giving notice at least 14 clear days before the meeting
   - **b.** The exception shall be applicable to a Sec 8 company which has **not committed a default** in filing of its financial statements under Sec 137 or annual return under Sec 92 with the Registrar.

C. **MEANING OF 21 CLEAR DAYS:** 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice. A company cannot curtail the requirement of 21 clear days through its Articles.

D. Any accidental omission to give notice to or the non- receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting. The onus is on the company to prove that the omission was not deliberate [Sec 101(4)]

EXAMPLE: MR. ABEER FILED A COMPLAINT AGAINST THE COMPANY, ELIXIR PRIVATE LIMITED SINCE IT DID NOT SERVE THE NOTICE TO HIM FOR ATTENDING THE ANNUAL GENERAL MEETING. THE COMPANY, IN TURN, PROVIDED THE PROOF THAT THEY HAD SENT THE NOTICE, BY WAY OF AN EMAIL TO MR. ABEER, INVITING HIM TO ATTEND THE ANNUAL GENERAL MEETING OF THE COMPANY. ABEER ALLEGES THAT HE NEVER RECEIVED THE EMAIL. STATE WHETHER THE COMPANY IS LIABLE AS GUILTY FOR CONTRAVENING THE PROVISIONS OF SECTION 101 OF THE COMPANIES ACT, 2013 READ WITH RULES.

ANSWER: *As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.*

E. **MEETINGS HELD AT SHORTER NOTICE:** Generally, general meetings need to be called by giving at least a notice of 21 clear days.

1. However, a general meeting may be called after giving **shorter notice** than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto
   a. **AGM:** in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
   b. **OTHER THAN AGM**: in the case of any other general meeting, by
      i. **Company having Share Capital:** if the company has share capital then members of the company holding majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
      ii. **Company having no Share Capital:** if the company has no share capital then members of the company having, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

2. Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

F. CONTENTS OF THE NOTICE [SEC 101(2)]: A valid notice must state the day, date, hour, place of the meeting and shall contain a statement of business to be transacted in that meeting.

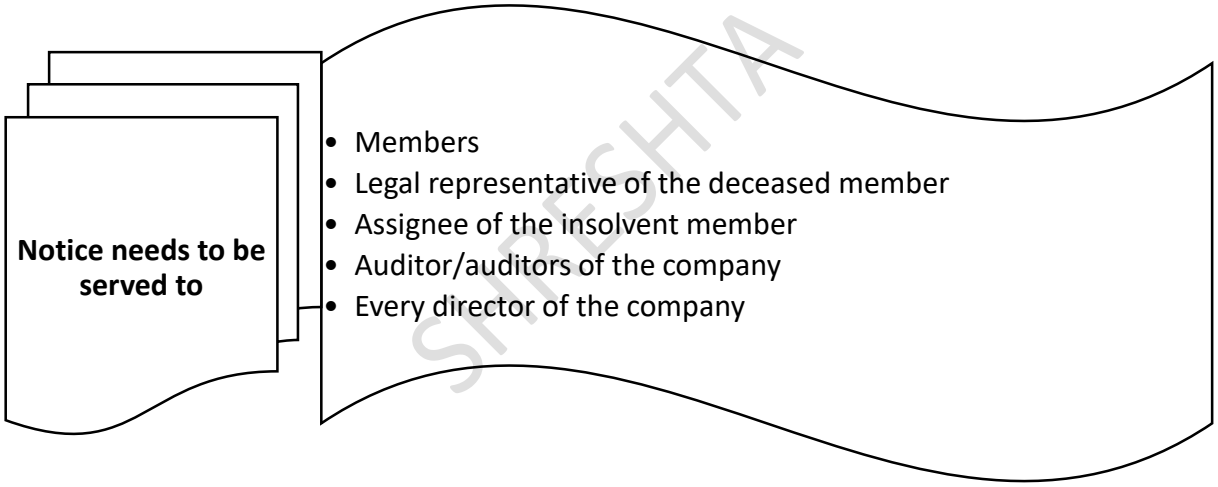
G. PERSONS ENTITLED TO RECEIVE THE NOTICE OF THE GENERAL MEETING [SECTION 101(3)]

The notice of every meeting of the company shall be given to:

a. every member of the company, legal representative of any deceased member or the assignee of insolvent member;

b. the auditor or auditors of the company;

c. every director of the company.



H. AUTHORITY TO CALL A GM:

1. A general meeting (AGM, EGM) has to be called by the Board.
2. An individual director does not have an authority to call a GM. Any notice of GM given without the sanction of the Board is invalid; however, the same can be ratified by the Board.

I. MODE OF SENDING THE NOTICE [RULE 17]: As per Rule 18 of the Companies (Management & Administration) Rules, 2014, sending of notices through electronic mode has been statutorily recognized.

Note: Electronic mode shall mean any communication sent by a company through its authorized and secured computer programme 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.

1. The said rule mentions that a notice may be sent through e-mail as a Text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
2. The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email ids are already registered.
3. The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.
4. The notice shall be placed simultaneously on the website of the Company, if any, and on the website as may be notified by Central Government.
5. Where a notice of GM is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted (Rule 35(6) of the Companies Incorporation Rule, 2014)

Q.NO.8. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING EXPLANATORY STATEMENT OF A MEETING?

ANSWER:

EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE [SEC 102]

A. Where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify,

1. the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
   - **a.** every director and the manager, if any;
   - **b.** every other key managerial personnel; and
   - **c.** relatives of the persons mentioned in sub-clauses (i) and (ii);
2. Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

B. ORDINARY BUSINESS AND SPECIAL BUSINESS: Companies Act, 2013 sets out the two types of businesses transacted in general meetings, which are Ordinary business, Special business.

1. **ORDINARY BUSINESS** are the following business which are transacted at the annual general meeting of the company–

a. Consideration of Financial statement and the reports of the Board of Directors and Auditors

b. Declaration of any dividend

c. Appointment of Directors in the place those retiring

d. Appointment of, and fixing the remuneration of the auditors

2. **SPECIAL BUSINESS:** In the case of AGM, all business to be transacted thereat **except** the ones stated above are special business. At the EGM, every business transacted is a special business. Explanatory statement is not required for transacting Ordinary Business.
3. If special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other KMP shall be disclosed, if the extent of shareholding is **2% or more** of the paid up share capital of that other company [Proviso to section 102(2)].
4. In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.
5. **EFFECT OF NON-DISCLOSURE [Sec 102(4)]:** If as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a promoter, director, manager, other key managerial personnel or their relatives, such person shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

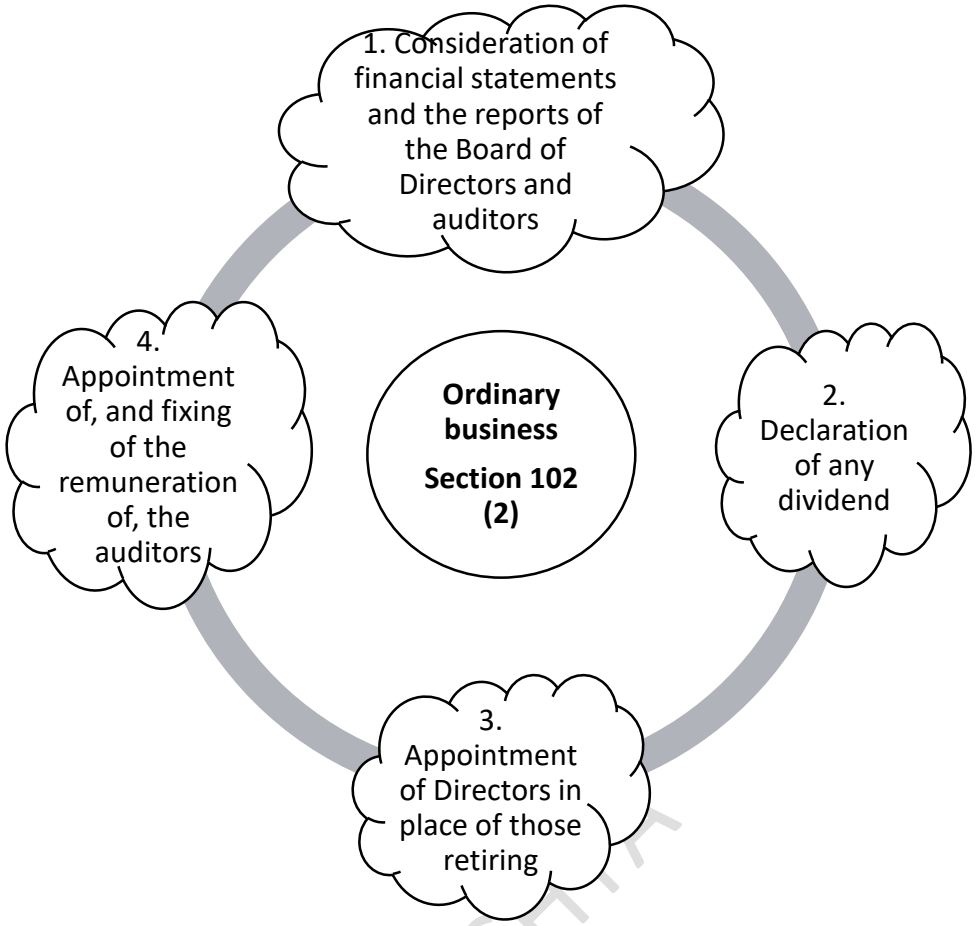
C. PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THIS SECTION: Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of

a. ₹ 50,000 or

b. 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives,

whichever is **higher**. [Section 102(5)]

Note: In case of Specified IFSC Public Company - Section 102 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.



Q.NO.9. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING QUORUM OF A MEETING?

ANSWER:

A. QUORUM FOR MEETINGS [SECTION 103]

Quorum means the minimum number of members who must be present in order to constitute a valid meeting. Section 103 of the Act states that unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows

1. In case of Private Company: 2 members personally Present
2. In case of Public Company:
   - **a.** If number of members is not more than 1000, quorum shall be 5 members personally present
   - **b.** If the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present
   - **c.** If the number of members exceed 5000, then quorum shall be 30 members personally present.

NOTE: The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Public Company -

1. If number of members is not more than 1000, quorum shall be 5 members personally present.
2. if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present
3. If the number of members exceed 5000, then quorum shall be 30 members personally present.

Private Company -

Private Company - Two members personally present shall be the Quorum.

B. ADJOURNED MEETING DUE TO WANT OF QUORUM:

1. If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company
   a. the meeting shall stand **adjourned** to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
   b. the meeting, if called by requisitionists under section 100, shall stand **cancelled**
2. In case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
3. Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

C. REPRESENTATION OF THE PRESIDENT & GOVERNORS IN MEETING OF COMPANIES TO WHICH THEY ARE MEMBER [SEC 112]

The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and such other person shall be entitled to exercise the same rights and powers including the right to vote to proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

D. REPRESENTATIONS OF CORPORATIONS MEETING OF COMPANIES AND CREDITORS [SECTION 113]

Where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents

E. SPECIAL POINTS:

1. In case of **Specified IFSC Public Company** Section 103 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.
2. The following points have been prescribed by Secretarial Standard – 2:
   - **a.** Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.
   - **b.** Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be **counted** for the purpose of Quorum.
   - **c.** A Member who is not entitled to vote on any particular item of business being a **related party**, if present, shall be counted for the purpose of Quorum.
   - **d.** The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through **postal ballot**.

NOTE:

Related party, with reference to a company, means—

i. A **director** or his relative;

ii. A **key managerial personnel** or his relative;

iii. A **firm**, in which a director, manager or his relative is a partner;

iv. A **private company** in which a director or manager or his relative is a member or director;

v. A **public company** in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

vi. Any **body corporate** whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

vii. **Any person** on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

viii. Any **body corporate** which is-

A. A holding, subsidiary or an associate company of such company;

B. A subsidiary of a holding company to which it is also a subsidiary; or

C. An investing company or the venturer of the company;

Explanation- For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

This Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company

ix. Such other person as may be prescribed;

EXAMPLE: There are 54 members of Dicey Private Limited. The company held its annual general meeting on 1st July 2019 at 2:00 p.m. and 28 members were present till 2:30 p.m. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

ANSWER:

As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a meeting of the company Thus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.

EXAMPLE: ABBEY LIMITED HAS 2300 MEMBERS AND THE ANNUAL GENERAL MEETING OF THE COMPANY IS TO BE HELD ON 23RD FEBRUARY 2019 AT 10.30 A.M. ON THE DAY OF THE MEETING, 18 MEMBERS WERE PERSONALLY PRESENT BY 11.00 A.M. AND THE CHAIRMAN PROCEEDED TO INITIATE THE CHRONICLES OF THE MEETING. THERE WERE 5 SPECIAL BUSINESSES TO BE DISCUSSED AT THE SAID MEETING AND BY 2.30 P.M. AGENDA 1 TO 3 HAD BEEN DISCUSSED AND APPROPRIATE RESOLUTIONS WERE PASSED. HOWEVER, DUE TO SOME EMERGENCY, 4 OF THE MEMBERS HAD TO LEAVE AROUND 3 P.M. THE CHAIRMAN GRANTED THEM THE PERMISSION AND PROCEEDED TO DISCUSS AGENDA 4 & 5 AND ACCORDINGLY PASSED RESOLUTION AS PER THE CONSENT OF THE REMAINING MEMBERS. COMMENT WHETHER THE MEETING IS A PROPERLY CONVENED MEETING AS PER THE PROVISIONS OF SECTION 103 OF THE COMPANIES ACT, 2013.

ANSWER: In the above case, while the appropriate quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, the quorum was not present at the time of deciding Agenda 4 & 5. It has been held that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Q.NO.10. WHO CAN ACT AS CHAIRMAN IN THE MEETINGS OF THE COMPANY UNDER COMPANIES ACT, 2013?

ANSWER:

CHAIRMAN OF MEETING [SECTION 104]

A. ELECTION OF CHAIRMAN BY MEMBERS:

1. Section 104 of the Companies Act, 2013 seeks to provide that unless the articles of association of the Company otherwise provide, the members, personally present, shall elect among themselves to be the Chairman by show of hands.
2. **DEMAND OF POLL:** The section further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.

B. POWERS OF CHAIRMAN: Chairman of the meeting is the person who manages the meetings and ensures that the required decorum of the meeting is maintained at all times, till the meeting is concluded and post that, executes the minutes of the meeting. The Chairman has prima facie authority to decide all questions which arise at a meeting and which require decision at the time. In order to fulfil his duty properly, he must observe strict impartiality.

C. RIGHT TO CAST CASTING VOTE:

1. The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the Company.
2. A casting vote means that in event of the equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote.
3. If there is no provision in the articles for a casting vote, an ordinary resolution on which there is equality of votes is deemed to be dropped.

D. SPECIAL CASES:

1. **PRIVATE COMPANY:**
   - **a.** In case of private company Sec 104 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise
   - **b.** This exception shall be applicable to a private company which has not committed a default in filing its financial statements under Sec 137 or annual return under Sec 92 of the Act, with the Registrar.
2. **IFSC PUBLIC COMPANY:** Sec 104 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.

Q.NO.11. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING APPOINTMENT OF PROXY TO THE MEETINGS OF THE COMPANY:

ANSWER:

PROXIES [SEC 105]

1. Appointment of a proxy is an important right of a member of the company. Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
   NOTE: Section 105 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.

2. However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

3. Unless the articles of a company otherwise provide, appointment of Proxy shall not apply to a company not having a share capital. CG may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

4. A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company. [Rule 19 of the Companies (Management & Administration) Rules, 2014]

5. A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights.
   Note: However, a member who is holding more than 10 per cent of the total share capital of the Company carrying voting rights may appoint a single person as a proxy and such person shall not act as a proxy for any other person or shareholder.

6. **PROXY INSTRUMENT:**
   a. The instrument appointing a proxy must be in Form No. MGT. 11. [Rule 19(3) of the Companies (Management & Administration) Rules, 2014].
   b. It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be under its seal or be signed by an officer or an attorney duly authorised by the body corporate.
   c. For execution of proxy, the Articles of Association of a company cannot specify any special requirement to be complied with. [Sec 105 (6)].

7. **DISCLOSURES IN NOTICE ABOUT PROXY:** As a compliance requirement, every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. [Sub- section (2)]

8. A proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period. [Sec 105(4)]

9. **INSPECTION OF PROXY INSTRUMENTS:**
   Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company. [Sec 105(8)]

10. **PENALTY FOR DEFAULT**
    a. If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to penalty of ₹ 5,000.
    b. If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of ₹ 50,000. [Section 105(5)]
    EXCEPION: An officer shall not be liable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Q.NO.12. TATE THE CIRCUMSTANCES UNDER COMPANIES ACT 2013 REGARDING RESTRICTIONS ON VOTING RIGHTS OF THE MEMBERS IN MEETINGS?

ANSWER:

RESTRICTION ON VOTING RIGHTS [SEC 106]

A. The section overrules the whole of the Companies Act, 2013 and provides that the articles of association of a company may provide that no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums payable to the company, or in regard to which the company has exercised the right of lien. [Sub section (1)]

B. A company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned in (1). [Sub section (2)]

C. On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses. [Sub section (3)]

D. Also, such member can't sign a requisition for an extraordinary general meeting.

NOTE:

1. If the articles of the company do not contain any provision restricting the exercise of voting right of member, a member cannot be prevented from voting, even though, calls or other sum payable by him have not been paid or the company has exercised any right of lien over his shares.

2. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re- allotted, the new allottee being liable for the balance remained unpaid on the shares will not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

EXAMPLE: WHAT HAPPENS IN CASE OF VOTING BY JOINT SHAREHOLDERS?

SUPPOSE THAT MR. & MRS. IYER ARE JOINT SHAREHOLDERS OF GOAL PRIVATE LIMITED AND THEY HOLD 500 SHARES OF THE COMPANY. REGARDING A PARTICULAR SPECIAL BUSINESS BEING TRANSACTED AT THE EXTRA-ORDINARY GENERAL MEETING OF THE COMPANY, MR. IYER IS IN THE FAVOUR OF THE DECISION, WHEREAS MRS. IYER IS AGAINST THE RESOLUTION. DECIDE HOW SHOULD THE VOTE BE CASTED IN CASE OF THIS SITUATION?

Join shareholders must concur in voting unless the articles provide to the contrary.

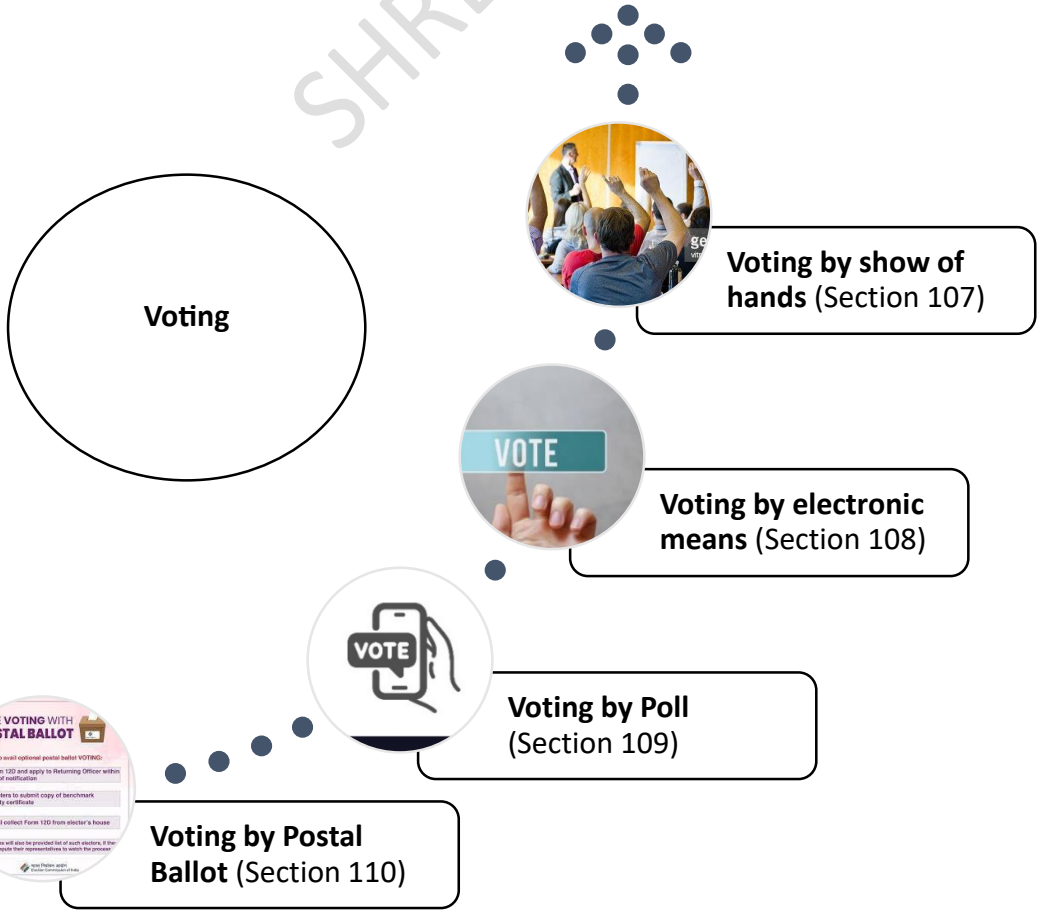
The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

EXAMPLE: Consider a situation where directors are also the shareholders of the company.
Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director should vote as a common shareholder would vote in a general meeting and need not be influenced by the fact of his being a director.

An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013 preference shareholder is entitled to vote only for a resolution pertaining to his rights.

The various modes through which a shareholder can cast his vote are as follows:

- *Voting by show of hands – (section 107);*
- *Voting by electronic means – (section 108);*
- *Voting by demand of poll – (section 109);*
- *Voting by Postal Ballot – (section 110)*



Q.NO.13. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING CONDUCT OF VOTING UNDER SHOW OF HANDS?

ANSWER:

VOTING BY SHOW OF HANDS [SEC 107]

A. According to section 107 of the Companies Act, 2013, **unless the voting is demanded by way of poll or by electronic means**, the voting should be done by way of show of hands in the first instance.

B. The declaration by the Chairman of the meeting in the minutes books shall be the conclusive evidence that the resolution is passed. [Sec 107(2)]

EXAMPLE: CAN AN INSOLVENT SHAREHOLDER VOTE AT THE MEETING BY SHOW OF HANDS?

ANSWER: Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

Q.NO.14. STATE THE APPLICABILITY OF E-VOTING TO THE COMPANIES UNDER COMPANIES ACT, 2013.

ANSWER:

VOTING THROUGH ELECTRONIC MEANS [SEC 108]

A. E- Voting has been introduced under Section 108 read with the Companies (Management and Administration) Rules, 2014 and provides that a member in the prescribed class of companies may exercise his right to vote by electronic means.

B. Rule 20 of the Companies (Management & Administration) Rules, 2014 provides a detailed procedure for electronic voting, which states as follows

1. Voting through electronic means shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.
2. Companies providing its members to exercise right to vote by electronic means:
   - **a.** Every company which has listed its equity shares on a recognised stock exchange
   - **b.** Every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

3. **EXCEPTIONS:** E-voting is not applicable to following companies
   a. A Nidhi, or
   b. an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

   is not required to provide the facility to vote by electronic means.

C. NOTE:

1. "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.
2. cut-off date' means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting.
3. Electronic voting system means a secured system-based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security.
4. Remote e-voting means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting.
5. Voting by electronic mean includes remote e-voting and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.

Q.NO.15. WRITE ABOUT THE PROCEDURE FOR CONDUCTING E-VOTING.

ANSWER:

A. EXERCISE OF RIGHT BY A MEMBER: A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule.

B. PROCEDURE: A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-

1. **NOTICE OF MEETING:** 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;

2. **NOTICE TO BE HOSTED ON WEBSITE:** 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;

3. **NOTICE CONTAINING THE PARTICULAR:** 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 been entitled to cast their vote again;

4. **CONTENTS OF NOTICE:** 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.

5. **PUBLICATION OF NOTICE:** 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 21 days before the date of general meeting, at least once in a 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 once in English language in an 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 dispatch of notice may obtain the login ID and password;

f. the statement that-

i. remote e-voting shall not be allowed beyond the said date and time;

ii. the manner in which the company shall provide for voting by members present at the meeting; and

iii. 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

iv. 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:

NOTE: The public notice shall be placed on the website of the company, if any, and of the agency;

6. **TIME FOR OPENING OF E-VOTING:** 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;

7. **OPTION FOR REMOTE E-VOTING:** During the period when facility for remote e- voting is provided, the members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting.

NOTE:

i. 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

ii. 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;

8. At the end of the remote e-voting period, the facility shall forthwith be blocked:

   NOTE: 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.

9. **APPOINTMENT OF SCRUTINIZER**: The Board of Directors shall appoint one or more scrutinizer, 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.
   NOTE: The scrutinizer 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;

10. **FUNCTION OF SCRUTINIZER:** The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

11. **ROLE OF CHAIRMAN:** 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 scrutinizer, 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.

12. **COUNTING OF VOTES:** 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:
    NOTE: The Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;
    It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

13. **ACCESS TO DETAILS:** 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 scrutiniser 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 scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

14. **MAINTENANCE OF REGISTER:** The scrutiniser 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;

15. **SAFE CUSTODY OF REGISTER:** The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

16. **RESULT ON WEBSITES:** The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman

    NOTE: in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

17. **PASSING OF DATE OF RESOLUTION:** Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

    NOTE: the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

18. **RESOLUTION NOT TO BE WITHDRAWN:** A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

Q.NO.16. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING VOTING UNDER POLL.

ANSWER

DEMAND FOR POLL [SEC 109]: On or before declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own, or on demand made by the 'specified' members in that behalf conduct poll.

A. MEMBERS WHO CAN DEMAND FOR POLL –

1. In case of a company having a share capital, by the members present in person or proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than Rs. 5,00,000 or such higher amount has been prescribed has been paid – up.
2. 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 1/10th of the total voting power.

B. WITHDRAWAL OF DEMAND FOR POLL: the demand for poll may be withdrawn by the persons who made the demand, at any time.

C. TIME LIMIT FOR CONDUCTING POLL:

1. A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
2. A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.

D. APPOINTMENT OF SCRUTINISER: Where a poll is to be taken, the Chairman of the meeting shall appoint a scrutinizer for observing the poll process and votes given on poll and to report thereon.

E. DUTIES OF SCRUTINISER: The duties of a scrutinizer shall be as follows–

1. To ensure proper conduct of the polling process;
2. To maintain proper records of the poll;
3. To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
4. To ensure that the compliance of the provisions of section 109 and Rule 21.

Q.NO.17. WRITE ABOUT THE PROCEDURE FOR CONDUCTING VOTING UNDER POLL.

ANSWER:

A. POWERS OF CHAIRPERSON: The Chairman shall regulate the manner in which the poll shall be taken at the meeting and appoint such number of scrutinizers as may be necessary.

B. PROCEDURE FOR CONDUCTING POLL: Rule 21 lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized

1. The Chairman of the meeting shall ensure that –

- **a.** The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- **b.** The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.
- **c.** 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 and the Polling paper shall be in Form No. MGT.12.
- **d.** The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.
- **e.** The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
- **f.** The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
- **g.** In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
- **h.** The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- **i.** The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- **j.** Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

k. The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

l. The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.

m. 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.

2. The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT.13 and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

3. The results of the poll shall be deemed to be the decision of the meeting on the resolution.

C. EXEMPTION: Applicability of section 101 to 107 and 109 to Private companies- Section 101 to 107 and 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar.

Q.NO.18. WRITE ABOUT THE APPLICABILITY OF VOTING UNDER POSTAL BALLOT UNDER COMPANIES ACT, 2013.

ANSWER

A. "Postal ballot" means voting by post or through any electronic mode. [Sec 2(65)]

B. The provisions relating to passing of resolution by postal ballot are contained in Section 110 read with Rule 22 of the Companies (Management and administration) Rules, 2014.

1. Notwithstanding anything contained in this Act, a company

a. shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

b. may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot.

in such manner as may be prescribed, instead of transacting such business at a general meeting.

NOTE: Any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

2. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf."

a. The section seeks to provide that the Central Government may declare items of business that can be transacted only by postal ballot and also in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting.

b. Only those assents/ dissents are to be considered which have been sent by the members within 30 days as prescribed in Rule 22. Section 110(2) makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

C. The following items of business shall be transacted only by means of voting through a postal ballot [110(1)(a)]

1. Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act (Existing Companies), Alteration of the main objects of the memorandum;

2. Alteration of articles of association in relation to insertion or removal of provisions which, under section 2(68), are required to be included in the articles of a company in order to constitute it a private company;

3. Change in place of registered office outside the local limits of any city, town or village as specified in Section 12(5);

4. Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under Section 13(8);

5. Issue of shares with differential rights as to voting or dividend or otherwise under Section 43(a)(ii);

6. Variation in the rights attached to a class of shares or debentures or other securities as specified under Section 48;

7. Buy-Back of shares by a company under Section 68(1);

8. Election of a director under Section 151 of the Act;

9. Sale of the whole or substantially the whole of an undertaking of a company as specified under Section 180(1)(a);
10. Giving loans or extending guarantee or providing security in excess of the limit specified under Section 186(3)

NOTE:

1. Any aforesaid items of business, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.
2. One Person Companies and Other companies having member's up to 200 are not required to transact any business through postal ballot.

Q.NO.19. WRITE ABOUT THE PROCEDURE FOR CONDUCTING VOTING UNDER POSTAL BALLOT.

ANSWER

Manner in which postal ballot shall be conducted [Rule 22 of the Companies (Management & Administration) Rules, 2014].

A. Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of 30 days from the date of dispatch of the notice.

B. The notice shall be sent either

1. by Registered Post or speed post, or
2. through electronic means like registered e-mail id or
3. through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

C. An advertisement shall be published at least once in a 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 once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters, namely:-

1. A statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;

2. The date of completion of dispatch of notices;
3. The date of commencement of voting;
4. The date of end of voting;
5. The statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
6. A statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
7. Contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

D. The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

E. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

F. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

G. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

H. The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than 7 days thereof;

I. The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

J. The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

K. The assent or dissent received after 30 days from the date of issue of notice shall be treated as if reply from the member has not been received.

L. The results shall be declared by placing it on the website of the company along with the scrutinizer's report.

M. The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.

EXAMPLE: HOW DOES THE COUNTING HAPPEN AT THE TIME OF POSTAL BALLOT?

ANSWER: *It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes in the same way.*

Therefore, 4 types of ballots may be received from the shareholders–

a. *Ballots which contain assents;*

b. *Ballots which contain dissents;*

c. *Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and*

d. *Invalid ballots (due to absence/ mismatch of signature, overwriting, etc.)*

Q.NO.20. WRITE A SHORT NOTE ON CIRCULATION OF MEMBERS' RESOLUTION AND STATEMENTS?

ANSWER:

CIRCULATION OF MEMBERS' RESOLUTION AND STATEMENTS:

While the board enjoys the primacy in setting the agenda of the meetings, the members are given a right under section 111 to propose resolutions for consideration at the general meetings. The number of members required to make a requisition under sub-section (1) of this section are as required to requisition a general meeting in sub-section (2) of section 100.

1. **Prerequisites of a valid Requisition:** The prerequisites for a valid requisition prescribed in section 111(2) are as under:

a. Requisition must be made in **writing and signed**

i. in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

ii. in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote.

b. Two or more copies of the said requisition may contain signature of all the requisitionists.

c. Time limit for deposit of Requisition:

i. It must be deposited at the registered office of the company not less than six weeks before the meeting in the case of a requisition requiring notice of a resolution.

ii. In case of other resolutions, the same is to be deposited not less than two weeks before the meeting.

d. A sum reasonably sufficient to meet the company's expenses in giving effect to proposing the resolution is deposited or tendered. When the money is tendered, no payment is made but an unconditional offer is made to pay money.

Note: The time period provided above need not be complied with in case an annual general meeting is called on a date within six weeks after the copy has been deposited. The copy of requisition, in such a case, shall be deemed to have been properly deposited for the purposes thereof although not deposited within the time required by this sub-section. The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with.

2. Notice to members:

a. A company shall give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting on requisition in writing of such number of members, as required in section 100 (Calling of EGM); and

b. Circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

3. Exception from circulation of any statement: The Company shall not be bound to circulate any statement,

a. if on the application either on behalf of the company or of any other person who claims to be aggrieved,

b. the Central Government (delegated to Regional Director), by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.

4. **Order to bear the cost:** An order made may also direct that the cost incurred by the company shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

5. **Default in contravention of the provision:** If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of Rs. 25,000.

Q.NO.21. DEFINE RESOLUTION? STATE THE DIFFERENCES BETWEEN SPECIAL RESOLUTION AND ORDINARY RESOLUTION?

ANSWER

A. RESOLUTION:

1. In lay man's language, a resolution is the formal decision of an organization while transacting a business at a meeting.
2. A motion which has obtained the necessary majority vote in its favour becomes a resolution. When a resolution is passed, a company is bound by it.

B. DIFFERENCE BETWEEN MOTION & RESOLUTION

1. Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done.
2. A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as where a motion is made for the adjournment of the meeting.
3. A motion whether it is passed for the closure of discussion or adjournment, etc. can be passed by an ordinary resolution **unless there is a specific provision in the articles**.

C. AS PER THE COMPANIES ACT, 2013, RESOLUTIONS ARE OF TWO TYPES

- Ordinary Resolutions – which are passed by simple majority; and
- Special Resolutions – which are passed by 75% majority.

1. **ORDINARY RESOLUTION:** As per Section 114(1) states that a resolution shall be ordinary resolution,
   a. if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.
   b. Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.
2. **SPECIAL RESOLUTION:** As per Section 114(2) of the Act, a resolution shall be a special resolution, when–
   a. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
   b. The notice required under this Act has been duly given; and
   c. The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

      In simple words, a resolution shall be a special resolution, when it is duly specified in the notice, calling the general meeting and votes cast in favour is 3 times the votes cast against the resolution.

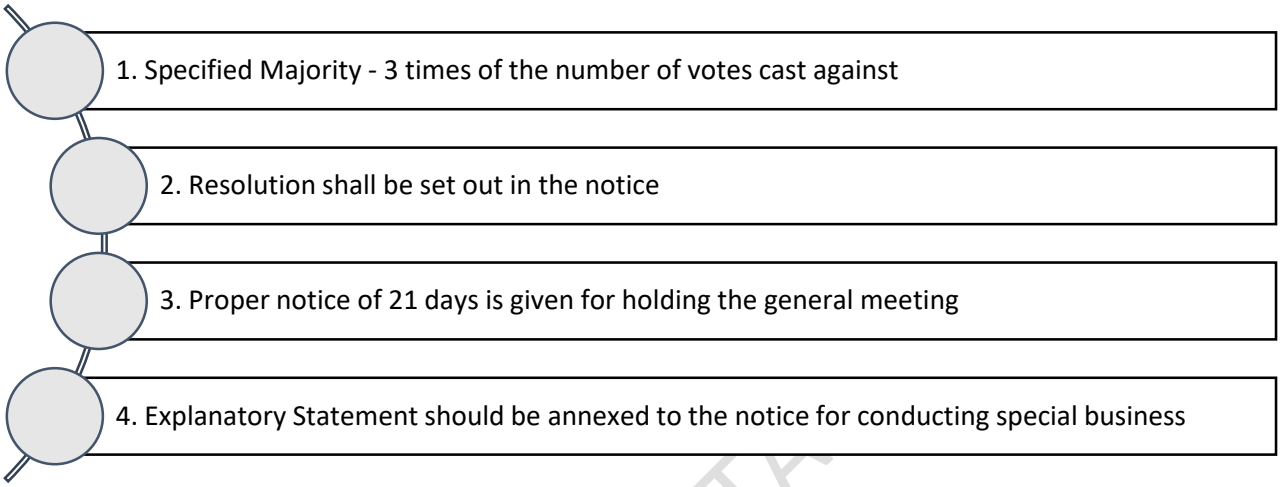
EXAMPLE: IN THE ANNUAL GENERAL MEETING OF BLACK MANGO LIMITED, THE NOTICE CONTAINED THE AGENDA FOR 8 SPECIAL BUSINESSES TO BE TRANSACTED. THE CHAIRMAN DECIDED TO MOVE ALL THE RESOLUTIONS AT ONE TIME IN ORDER TO SAVE TIME OF THE MEMBERS PRESENT AT THE MEETING. DISCUSS WHETHER TWO OR MORE RESOLUTIONS CAN BE MOVED TOGETHER AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER: For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.

Where notice has been given of several resolutions, each resolution must, be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be material.

CHARACTERISTICS OF SPECIAL RESOLUTION



Q.NO.22. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING RESOLUTIONS REQUIRING SPECIAL NOTICE?

ANSWER:

A. APPLICABILITY:

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees (as may be prescribed) has been paid-up.

B. As per the Act, special notice is required in the following cases –

1. Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].
2. Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].
3. Resolution to remove a director before the expiry of his period of office [Section 169(2)]
4. Resolution to appoint another director in place of the removed director [(Section 169(5)]
5. Further, the articles may provide for additional matters which may require special notice.

C. Rule 23–Special Notice—

A. A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

B. The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

C. The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

D. Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.

E. The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Q.NO.23. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING THE RESOLUTIONS PASSED AT ADJOURNED MEETING?

ANSWER:

RESOLUTIONS PASSED AT ADJOURNED MEETING [SEC 116]

1. Where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors,
2. the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

EXAMPLE: The extra-ordinary general meeting of the company, Purple Banana Private Limited was due to be held on 23rd September 2019. However, due to want of quorum, the meeting was adjourned to a later date on 1st October 2019 and two resolutions were passed on that date. Now, as per section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the original date of meeting, i.e. 1st October 2019 and not on the earlier date.

Q.NO.24. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDING THE RESOLUTIONS PASSED AT ADJOURNED MEETING?

ANSWER:

RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]

A. **FILING WITH ROC:** A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within 30 days of the passing or making thereof in such manner and with such fees as may be prescribed.

B. **FORM:** A copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. MGT.14 along with the fee. [Rule 24]

NOTE: The copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

C. **RESOLUTIONS AND AGREEMENTS TO BE FILED WITH THE REGISTRAR ARE AS UNDER:**

1. Special Resolutions
2. Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
3. Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
4. Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose **unless they had been passed by a specified majority** or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members.
5. Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
6. Resolutions passed in pursuance of section 179(3).

NOTE:

1. No person shall be entitled under section 399 to inspect or obtain copies of such resolutions;
2. Nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans undersection 179(3)(f) in the ordinary course of its business by,
   - **a.** a banking company;
   - **b.** any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
   - **c.** any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and
3. Any other resolution or agreement as may be prescribed and placed in the public domain.
4. In case of Specified IFSC Companies time limit for filing with ROC is 60 days

Q.NO.25. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 AND RULES MADE THEREUNDER REGARDING MINUTES OF THE MEETINGS?

ANSWER:

A. MINUTES [SEC 118]

1. **TIME LIMIT:** Every company shall prepare, sign and keep minutes of
   - **a.** every general meeting of any class of shareholders or
   - **b.** creditors, including the meeting called by the requisitionists, and
   - **c.** every resolution passed by postal ballot and
   - **d.** every meeting of its Board of Directors or of every committee of the Board,

   within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub section (1)]

   NOTE: In case of a Specified IFSC public company & IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.

2. **CONTENTS:** The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting

a. All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

b. In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain

i. The names of the directors present at the meeting; and

ii. In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

c. Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting

i. Is or could reasonably be regarded as defamatory of any person; or

ii. Is irrelevant or immaterial to the proceedings; or

iii. Is detrimental to the interests of the company.

d. The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.

3. The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.

4. Where the minutes have been kept in accordance with this section, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

5. No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters requires by this section to be contained in the minutes of the proceedings of such meeting.

6. Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government. [Sub section (10)]

Note: The aforesaid point is not applicable to Specified IFSC Public Company, IFSC Private Company.

7. If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of 25,000 and every officer of the company who is in default shall be liable to a penalty of 5,000.

8. If a person is found **guilty of tampering** with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

B. RULE 25 OF THE COMPANIES (MANAGEMENT & ADMINISTRATION) RULES, 2014 PRESCRIBES THE PROCEDURE FOR MAINTENANCE OF MINUTES OF PROCEEDINGS OF GENERAL MEETING, MEETING OF BOARD OF DIRECTORS AND OTHER MEETINGS AND RESOLUTIONS PASSED BY POSTAL BALLOT AS FOLLOWS–

1. A distinct minute book shall be maintained for each type of meeting namely:
   - **a.** general meetings of the members;
   - **b.** meetings of the creditors
   - **c.** meetings of the Board; and
   - **d.** meetings of each of the committees of the Board.

2. The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

3. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

4. Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed
   - **a.** in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
   - **b.** in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;

c. In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

5. The minute books of general meetings shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board.

6. The minute books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

C. EXEMPTION

In case of Sec 8 Company - Sec 118 shall not apply as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation

The exceptions, modifications and adaptations, shall be applicable to a section 8 company which has not committed a default in filing its financial statements under 137 or Annual Return under section 92 with the Registrar.

Q.NO.26. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 RELATING TO INSPECTION OF MINUTES OF THE MEETINGS?

INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING [SECTION 119]

A. HOW SHALL THE INSPECTION TAKE PLACE?

1. As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall–

a. be kept at the registered office of the company; and

b. be open for inspection, during business hours, by any member,

without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting.

However, at least 2 hours in each business day shall be allowed for inspection [Sub – Section (1)].

2. Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred [Sub Section (2)].

B. WHAT IS THE PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT? [SUB SECTION (3)]: If any inspection under sub section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub section (2), then

1. The company shall be liable to a penalty of Rs. 25,000 and
2. Every officer of the company who is in default shall be liable to a penalty of Rs. 5,000 for each such refusal or default as the case may be.

C. POWER OF TRIBUNAL [SUB – SECTION (4)]

In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

D. RULE 26–COPY OF MINUTE BOOK OF GENERAL MEETING

1. Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page
2. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding 3 financial years shall be entitled to be furnished, with the same free of cost.

Q.NO.27. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 RELATING TO MAINTENANCE OF MINUTES IN ELECTRONIC FORM

ANSWER:

MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM [SECTION 120]

Any document, record, register or minute, etc., required to be kept by a company or allowed to be inspected or copies given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be specified in Rule 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014.

1. Every listed company or a company having at least 1000 shareholders, debenture-holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made thereunder, in electronic form. [Rule 27]

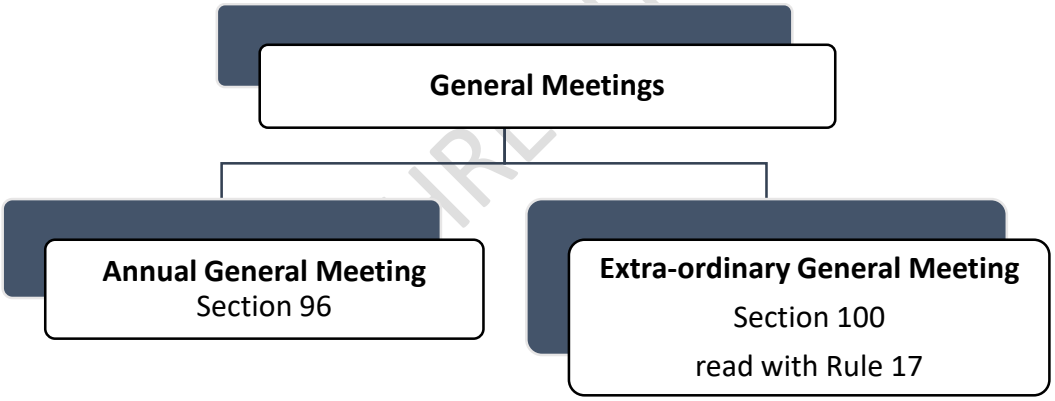
2. The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records. [Rule 28]
3. The records maintained in electronic form shall be made available for inspection by the company in electronic form. Copies of the records maintained in e-form, containing a clear reproduction of the whole or part thereof, should be provided on payment of not exceeding Rs. 10/page. [Rule 29]

Q.NO.28. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING FIRST ANNUAL GENERAL METING AND SUBSEQUENT ANNUAL GENERAL MEETING?

ANSWER:

REQUIREMENTS AND TIME LIMIT TO HOLD ANNUAL GENERAL MEETING [SEC 96(1)]: Every company, whether public or private, except One Person Company, shall **hold an annual general meeting** every year.

The Act describes two types of general meetings to be held by a company. They are–



A. FIRST AGM:

1. First annual general meeting of the company should be held within 9 months from the closing of the first financial year.
2. It shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

B. SUBSEQUENT AGM:

1. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
2. The gap between two annual general meetings should not exceed 15 months.

C. EXTENSION OF VALIDITY PERIOD OF AGM:

1. In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time.
2. Such extension can be for a period not exceeding 3 months.
3. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

EXAMPLE: Abbeys Private Limited closed its financial year on 31st March 2019. According to section 96(1) of the Act, the Company should hold its annual general meeting for the year 2018-19 by 30th September 2019 unless an extension is granted by RoC on special reasons. Abbyrush Limited was incorporated on 11th December 2018. When should the company hold its AGM?

ANSWER: According to section 96(1), the company's financial year will close on 31st March 2019. The company may hold its first AGM by 31st December 2019, i.e., within 9 months of the close of its financial year.

A. TIME AND PLACE FOR HOLDING AN ANNUAL GENERAL MEETING [SEC 96(2)]:

1. Every annual general meeting shall be called during business hours, i.e., between 9 a.m. and 6 p.m. on any day that is not a National Holiday ("National Holiday" means and includes a day declared as National Holiday by the Central Government).
2. Every annual general meeting shall be **held** either
    a. at the registered office of the company or
    b. at some other place within the city, town or village in which the registered office of the company is situated.

B. EXEMPTIONS:

1. **UNLISTED COMPANY:** Annual general meeting of an unlisted company may be held at any place in India if **consent** is given in writing or by electronic mode by all the members in advance.

2. **SECTION 8 COMPANY:**
    a. The time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.
    b. The exception shall be applicable to a Sec 8 company which has **not committed a default** in filing of its financial statements under Sec 137 or annual return under Sec 92 with the Registrar

3. **GOVERNMENT COMPANY:**
   a. Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at such other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf.
   b. The exception/ modification/ adaptation shall be applicable to Government company which has **not committed a default** in filing of its financial statements under Sec 137 or annual return under Sec 92 with the Registrar.

4. The **Central Government** may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Q.NO.29. WRITE THE POWERS OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING?

ANSWER:

A. **POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING [SEC 97(1)]:** If any default is made in holding the annual general meeting of a company under Sec 96,
   a. Notwithstanding anything contained in this Act or the articles of the company,
   b. The Tribunal may on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient.
   c. such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

B. **AGM CALLED BY TRIBUNAL TO BE DEEMED AS AGM [SEC 97(2)]:** A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

Q.NO.30. WRITE THE POWERS OF TRIBUNAL TO CALL MEETINGS OF MEMBERS OTHER THAN ANNUAL GENERAL MEETING?

ANSWER:

A. **POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC. [SEC 98(1)]:**
   1. If for any reason it is **impracticable** to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold

or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company,

2. the Tribunal may, either suomotu or on the application of any director or member of the company who would be **entitled to vote** at the meeting
   a. order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
   b. give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company
   c. such directions may include a direction that one member of the company present in person or by proxy shall be deemed to **constitute** a meeting.

B. METINGS OF MEMBERS CALLED BY TRIBUNAL TO BE DEEMED AS VALID GENERAL MEETING [SEC 97(2)]: Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Q.NO.31. WHAT IS THE PUNISHMENT FOR DEFAULT IN COMPLYING WITH THE PROVISIONS OF SECTION 96 TO 98 [SECTION 99]

ANSWER:

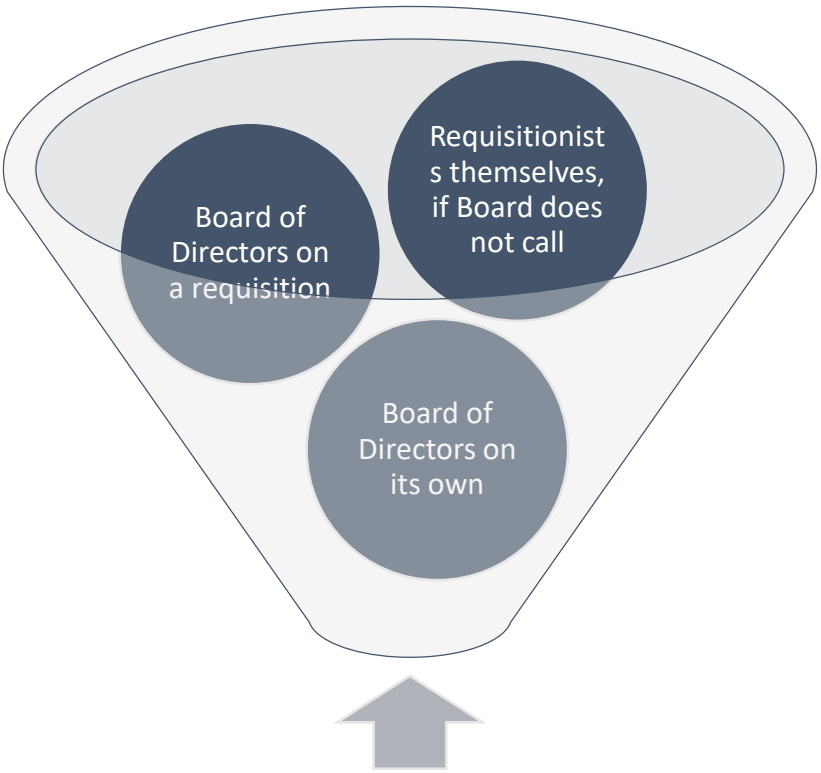
PUNISHMENT FOR DEFAULT IN COMPLYING WITH THE PROVISIONS OF SECTION 96 TO 98 [SEC 99]

1. If company **defaults** in holding a meeting of the company as AGM or complying with any directions issued by the Tribunal.
2. It states that the company and every officer of the company who is in default, shall be punishable with fine which may extend to ₹ 1,00,000 and in the case of a continuing default, with a further fine which may extend to ₹ 5,000 for every day during which the default continues.

Q.NO.32. EXPLAIN THE PROVISIONS OF COMPANIES ACT, 2013 REGARDEING EXTRA-ORDINARY GENERAL METING [SECTION 100]

ANSWER:

All general meetings other than annual general meetings are called extraordinary general meetings. Section 100 of the Companies Act, 2013 contains provisions regarding the calling of EGMs. **Calling of EGM**



Who can call EGM

Who can call an EGM?

A. BOARD OF DIRECTORS:

1. The Board may, whenever it deems fit, call an extraordinary general meeting of the company.
2. An EGM of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be **held** at any place within India.
3. **Specified IFSC Private Company and Public Company:** The Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.

B. ON THE REQUISITION OF MEMBERS BOD:

1. Who can make valid requisition:
   a. In the case of company having a share capital: Such number of **members** who hold, on the date of receipt of requisition, at least 1/10th of such paid- up capital of the company as on that date carries the right of voting;
   b. In the case of company not having a share capital: such number of **members** who hold, on the date of receipt of requisition, at least 1/10th of total voting power of all the members having on the said date a right to vote.

2. Matters of valid requisition:

a. The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

b. The Board must, within 21 days from the date of receipt of a valid requisition, **proceed** to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

C. REQUISITIONISTS:

1. If the Board **does not**, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of 3 months from the date of the requisition. [Sub section (4)]

2. A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

3. Any reasonable expenses incurred by the requisitonists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under Sec 197 payable to such of the directors who were in default in calling the meeting.

Q.NO.33. EXPLAIN THE PROVISIONS OF COMPANIES RULES, 2014 REGARDEING EXTRA-ORDINARY GENERAL METING BY REQUISITIONISTS [RULE 17]

ANSWER:

Rule 17 of the Companies (Management and Administration) Rules, 2014 provides as under with regard to calling of EGM by requisitionists:

1. The members may requisition convening of an extraordinary general meeting in accordance with Sec 100(4), by providing such requisition in writing or through electronic mode at least clear 21 days prior to the proposed date of such extraordinary general meeting.

2. The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.

3. Requisitonists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday.

4. If the resolution is to be proposed as a special resolution, the notice shall be given as required by Sec 114(2). (Disclosure of Special Resolution)
5. The notice shall be signed by all the requisitonists or by a requistionists duly authorised in writing by all other requisitonists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
6. No explanatory statement as required under Sec 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
7. The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
8. Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on 21st day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the 45 days from the date of receipt of a valid requisition.
9. The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall **not invalidate** the proceedings of the meeting.

EXAMPLE: THE BOARD OF DIRECTORS OF ILLUSIONS PRIVATE LIMITED, A COMPANY REGISTERED IN NEW DELHI, HAS DECIDED TO CALL AN EGM IN MADRID, SPAIN ON 2ND OCTOBER 2018. DISCUSS WHETHER THE GENERAL MEETING CAN BE CONVENED ON THE SAID DATE.

ANSWER: *No, the meeting cannot be convened in the manner as stated in the facts of the question. As per Rule 17(2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting in the registered office of the company or in the same city or town in which the registered office is situated and it should be a working day.*

EXAMPLE: THE MEMBERS OF THE BLUMOVE PEACOCKS PRIVATE LIMITED, HOLDING 1/10TH VOTING POWER OF THE COMPANY, REQUISITIONED A MEETING ON 14TH AUGUST, 2018 TO THE BOARD OF DIRECTORS. HOWEVER, THE DIRECTORS DID NOT PAY ANY HEED TO SUCH A REQUISITION AND DID NOT CALL AN EXTRA-ORDINARY MEETING. DISCUSS THE CONSEQUENCES OF THE CONTRAVENTION OF THE SAME IN ACCORDANCE WITH THE COMPANIES ACT, 2013.

ANSWER: *Where the Board, after the receipt of the requisition, does not within 21 days call for a meeting within 45 days of the date of requisition, then the requisitionists may themselves call and convene the meeting.*

Q.NO.34. Explain the provisions of Companies act regarding Report of Annual General Meeting

ANSWER:

1. According to Section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder.
2. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee.
3. According to Rule 31 of the Companies (Management and Administration) Rules, 2014, the report shall be prepared in the following manner:
   - **a.** the report under this section shall be prepared in addition to the minutes of the general meeting.
   - **b.** the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;
   - **c.** the report shall contain the details in respect of the following, namely:-
     - **i.** the day, date, hour and venue of the AGM;
     - **ii.** confirmation with respect to appointment of Chairman of the meeting;
     - **iii.** number of members attending the meeting;
     - **iv.** confirmation of quorum;
     - **v.** confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
     - **vi.** business transacted at the meeting and result thereof;
     - **vii.** particulars with respect to any adjournment, postponement of meeting, change in venue; and
     - **viii.** any other points relevant for inclusion in the report
4. **PENALTY FOR DEFAULT:** If the company fails to file the report within 30 days of conclusion of AGM,
   - **a.** such company shall be liable to a penalty of ₹ 1,00,000 and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 5,00,000 and

b. every officer of the company who is in default shall be liable to a penalty which shall not be less than ₹25,000 and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 1,00,000.

Q.NO.35. STATE THE EXEMPTIONS AVAILABLE TO ONE PERSON COMPANY UNDER CHAPTER MANAGEMENT AND ADMINISTRATION

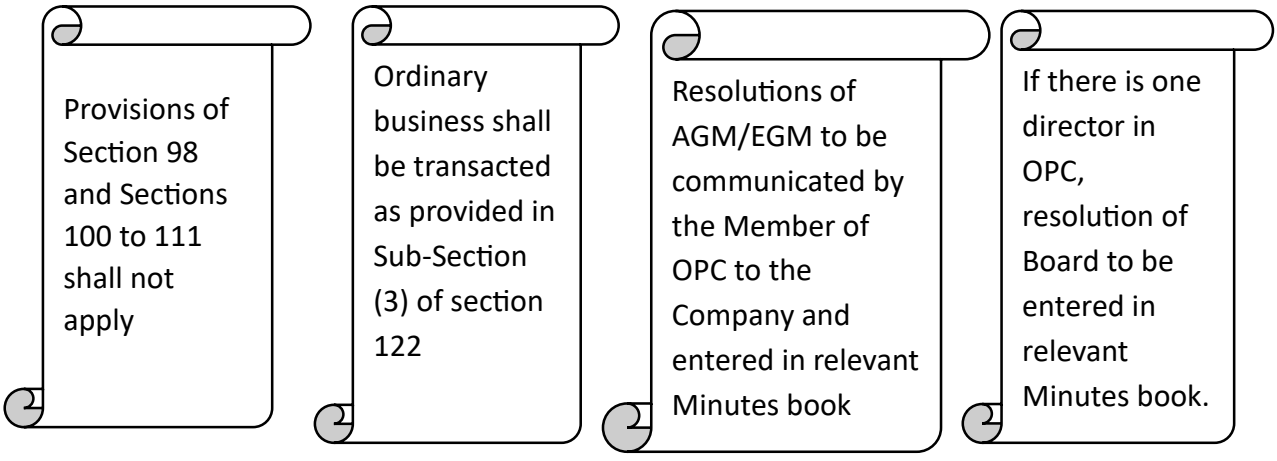
ANSWER:

APPLICABILITY OF THIS CHAPTER TO ONE PERSON COMPANY [SECTION 122]

1. The section states that the provisions of section 98 and section 100 to 111 shall not apply to OPC.
2. The ordinary businesses as mentioned under section 102(2)(a), which a company is required to transact at an AGM, shall be transacted in the case of One Person Company, as provided in Sub-section (3).
3. In case of One Person Company:
   - **a.** Any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution,
   - **b.** It shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes-book and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.

Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes book and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

Applicability of Chapter VII to One Person Company (OPC) [Section 122]



4. PENALTY

If any default is made in compliance with any of the provisions of this rule, the company and every officer or such other person who is in default shall be punishable with fine which may extend to ₹ 5,000 and where the contravention is a continuing one, with a further fine which may extend to ₹ 500 for every day after the first during which such contravention continues. [Rule 30]

Q.NO.36. EXPLAIN THE PROVISIONS OF THE COMPANIES ACT, 2013 RELATING TO THE 'SERVICE OF DOCUMENTS' ON A COMPANY AND THE MEMBERS OF THE COMPANY.

ANSWER

A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode. [Sec 20]

Save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. [Sec 20(2)]

ILLUSTRATIONS

Illustration 1.

Luxy Hairstyles Private Limited allotted 500 shares in the name of Mr. Zoey's daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the entries to be made in the register of members, since Mila is incompetent to contract in her capacity as minor.

ANSWER: Since minors are not competent to enter into any contract, their names cannot be entered in the register of members without the details of guardians. Therefore, Mr. Joe is advised that while filling MGT – 1, the name of a minor shall be entered only if the details of the guardian are available. Thus, Zoey's name shall also appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Illustration 2.

Tanya and Tarun who recently got married were jointly allotted 1000 shares by New Hospitality Services Private Limited. Tarun intimated the company that only the name of his wife should appear in the records of the company in respect of joint holding of shares allotted to them. The directors of the company are not sure whether this is possible, given that the shares are held in the names of both Tanya and Tarun.

ANSWER: Joint holders of shares may request the company to enter their names in the register in a certain order, or execute transfers to have their holdings split, with the result that part of the holding is entered showing the name of one holder and part showing the name of other holder. However, the condition of Tarun that only the name of his wife, Tanya, should appear in the register as a member cannot be acceded to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Illustration 3.

Big Fox Entertainment Limited called its Annual General Meeting on 30th September, 2021, for laying down the financial statements relating to the Financial Year ended 31st March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the

annual return for the year ending 31st March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.

ANSWER: The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92 (4) states that every company has to file an annual return with the ROC within 60 days from the date on which Annual General Meeting is held or where no Annual General Meeting is held in any year, it shall be filed within 60 days from the date on which the Annual General Meeting should have been held, along with the reasons for not holding the AGM.

In the above case, the Annual General Meeting should have been held by 30th September, 2021 but it did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of Section 92 of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in Section 92 (5) of the Act.

Illustration 4.

Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice for attending the Annual General Meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.

ANSWER: As per Rule 18 (3) (v) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the email and the company shall not be held responsible for a failure in transmission beyond its control. Also, Rule 18 (3) (vi) if a member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.

Illustration 5.

The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.

ANSWER: In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth Rs. forty lakh which works out to 80% (40,00,000/50,00,000 *100) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (i.e., shareholders holding shares worth ₹ 47,50,000) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.

Illustration 6.

There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1st July 2022 at 2:00 p.m. at its registered office. There were 28 members present till 2:30 p.m. at the venue of the AGM. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions after observing due process. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

ANSWER: As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a general meeting of the company. Thus, the quorum for the Annual General Meeting of Nice Games Private Limited was complied with and the company has not contravened any of the provisions of the Companies Act, 2013.

Illustration 7.

Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23rd August, 2022 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General Meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss

Agenda 4 and 5 and accordingly passed resolutions as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

ANSWER: According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

Illustration 8.

Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra-ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?

ANSWER: The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members. Accordingly, in case of Mr. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

Illustration 9.

Consider a situation where directors are also the shareholders of the company.

ANSWER:

Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director shall vote in the same manner as a common shareholder would have voted in a general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

Illustration 10.

Can an insolvent shareholder vote at the general meeting by show of hands?

ANSWER:

Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as a member.

Illustration 11.

The Annual General Meeting of Super Star Bakers Limited was attended by 60 members. In respect of a particular business, the resolution was to be passed as a special resolution. Ten members voted against the resolution whereas five abstained themselves from the voting. The Chairman of the meeting Mr. Ravinder declared that the resolution was passed as a special resolution. Whether the declaration is valid.

ANSWER: In case of a special resolution, the requirement is that the votes cast in favour of the resolution must be three times the number of the votes cast against it. In the above case, ten members voted against the resolution which implies that minimum thirty members (three times of ten) must vote in favour of the resolution. Ignoring five members who abstained themselves from voting, forty five members (sixty minus ten minus five) voted in favour of the resolution which far exceeds the required majority of thirty members. Therefore, declaration by Mr. Ravinder, Chairman of the meeting, that the resolution was passed as a special resolution is valid.

Illustration 12.

In the annual general meeting of Steel Products Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.

ANSWER: For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting decides that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.
Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would be immaterial.

Illustration 13.

Abbeys Grocers Private Limited closed its financial year on 31st March, 2022. When should it hold is Annual General Meeting (AGM) for the financial year 2021-22?

ANSWER: According to section 96 (1) of the Companies Act, 2013, Abbeys Grocers Private Limited should hold its annual general meeting for the financial year 2021-22 latest by 30th September 2022 unless an extension is granted by jurisdictional Registrar of Companies for any special reason.

Illustration 14.

Abbyrush Mechanics Limited was incorporated on 12th July, 2022. When should the company hold its first Annual General Meeting (AGM)?

ANSWER: In the above case, the financial year of Abbyrush Mechanics Limited will close on 31st March, 2023. According to section 96 (1), the company must hold its first AGM latest by 31st December 2023 i.e., within 9 months of the close of its financial year on 31st March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Illustration 15.

The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10th voting power of the company, requisitioned the Board of Directors to call a general meeting on 14th July, 2022. However, the directors did not pay any heed to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.

ANSWER: In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitionists and therefore, the Board Directors is required to initiate the process of calling the meeting. According to section 100 (4), if the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of

such requisition, then the requisitionists may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to section 100 (5), a meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board of Directors.

Accordingly, the requisitionists being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

Illustration 16.

The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on 2nd October, 2022. Discuss whether the general meeting can be convened on the said date and place.

ANSWER: Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitionists. As per Rule 17 (2) of the Companies (Management and Administration) Rules, 2014, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2nd October, 2022 is a National Holiday.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.**
   a. **Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.**
   b. **No, the signing is not in order as only the Chairman is authorised to sign the report**
   c. **Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.**
   d. **No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.**

2. **The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?**
   a. **75% of members entitled**
   b. **90% of members entitled**
   c. **91% of members entitled**
   d. **95% of members entitled**

3. **Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?**
   a. **B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.**
   b. **A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange**
   c. **C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange**

d. D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

Answer to MCQ based Questions

1.	**d.**	No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.
2.	**d.**	95% of members entitled
3.	**c.**	C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange

PRACTICE QUESTIONS

Q.NO.1. IN A GENERAL MEETING OF ALPHA SOFTWARE LIMITED, THE CHAIRMAN DIRECTED TO EXCLUDE CERTAIN MATTERS DETRIMENTAL TO THE INTEREST OF THE COMPANY FROM THE MINUTES, MUKESH, A SHAREHOLDER CONTENDED THAT THE MINUTES OF THE MEETING MUST CONTAIN FAIR AND CORRECT SUMMARY OF THE PROCEEDINGS THEREAT. DECIDE, WHETHER THE CONTENTION OF MUKESH IS MAINTAINABLE UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013?

ANSWER:

PROVISION: 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.

ANALYSIS AND CONCLUSION: Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

Q.NO.2. A GENERAL MEETING WAS SCHEDULED TO BE HELD ON FRIDAY, 15TH APRIL, 2022 AT 3.00 P.M. AS PER THE NOTICE THE MEMBERS WHO ARE UNABLE TO ATTEND A MEETING IN PERSON CAN APPOINT A PROXY AND THE PROXY FORMS DULY FILLED SHOULD BE SENT TO THE COMPANY SO AS TO REACH AT LEAST 48 HOURS BEFORE THE MEETING. MR. X, A MEMBER OF THE COMPANY APPOINTS MR. Y AS HIS PROXY AND THE PROXY FORM DATED 09-04-2022 WAS DEPOSITED BY MR. Y WITH THE COMPANY AT ITS REGISTERED OFFICE ON 11-04-2022. SIMILARLY, ANOTHER MEMBER MR. W ALSO GIVES TWO SEPARATE PROXIES TO TWO INDIVIDUALS NAMED MR. M AND MR. N. IN THE CASE OF MR. M, THE PROXY DATED 12-04-2022 WAS DEPOSITED WITH THE COMPANY ON THE SAME DAY AND THE PROXY FORM IN FAVOUR OF MR. N WAS DEPOSITED ON 14-04-2022. ALL THE PROXIES VIZ., Y, M AND N WERE PRESENT BEFORE THE MEETING.

ACCORDING TO THE PROVISIONS OF THE COMPANIES ACT, 2013, WHO WOULD BE THE PERSONS ALLOWED TO REPRESENT AS PROXIES FOR MEMBERS X AND W RESPECTIVELY?

ANSWER:

PROVISION: A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

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

ANALYSIS AND CONCLUSION:

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

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

ANALYSIS AND CONCLUSION:

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

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

Q.NO.3. M. H. COMPANY LIMITED SERVED A NOTICE OF GENERAL MEETING UPON ITS SHAREHOLDERS. THE NOTICE STATED THAT THE ISSUE OF SWEAT EQUITY SHARES WOULD BE CONSIDERED AT SUCH MEETING. MR. 'A', A SHAREHOLDER OF THE M. H. COMPANY LIMITED COMPLAINS THAT THE ISSUE OF SWEAT EQUITY SHARES WAS NOT SPECIFIED FULLY IN THE NOTICE. IS THE NOTICE ISSUED BY M. H. COMPANY LIMITED REGARDING ISSUE OF SWEAT EQUITY SHARES VALID ACCORDING TO THE PROVISIONS OF THE COMPANIES ACT, 2013? EXPLAIN IN DETAIL.

ANSWER:

PROVISION: Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

a. the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and

b. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

ANALYSIS AND CONCLUSION:

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q.NO.4. TULIP LTD. MAINTAINS ITS REGISTER OF MEMBERS AT ITS REGISTERED OFFICE IN MUMBAI. A GROUP OF MEMBERS RESIDING IN KOLKATA WANT TO KEEP THE REGISTER OF MEMBERS AT KOLKATA.

a. EXPLAIN WITH PROVISIONS OF COMPANIES ACT, 2013, WHETHER THE COMPANY CAN KEEP THE REGISTERS AND RETURNS AT KOLKATA.

b. DOES MR. RICH, HOLDING 400 SHARES OF TOTAL WORTH ₹ 4000 ONLY, HAS THE RIGHT TO INSPECT THE REGISTER OF MEMBERS?

ANSWER:

a. PROVISION:

Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company: Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

ANALYSIS AND CONCLUSION:

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

b. PROVISION:

As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture- holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

ANALYSIS AND CONCLUSION:

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

Q.NO.5. EXAMINE THE VALIDITY OF THE FOLLOWING WITH REFERENCE TO THE RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013:

THE BOARD OF DIRECTORS OF SHREY LTD. CALLED AN EXTRAORDINARY GENERAL MEETING UPON THE REQUISITION OF MEMBERS. HOWEVER, THE MEETING WAS ADJOURNED ON THE GROUND THAT THE QUORUM WAS NOT PRESENT AT THE MEETING. ADVISE THE COMPANY.

ANSWER:

PROVISION: According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled.

ANALYSIS AND CONCLUSION:

Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Q.NO.6. ZORAB LIMITED SERVED A NOTICE OF GENERAL MEETING UPON ITS MEMBERS. THE NOTICE STATED THAT A RESOLUTION TO INCREASE THE SHARE CAPITAL OF THE COMPANY WOULD BE CONSIDERED AT SUCH MEETING. A SHAREHOLDER COMPLAINED THAT THE AMOUNT OF THE PROPOSED INCREASE WAS NOT SPECIFIED IN THE NOTICE. IS THE NOTICE VALID?

ANSWER:

PROVISION: Under section 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

a. the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:

i. every director and the manager, if any;

ii. every other key managerial personnel; and

iii. relatives of the persons mentioned in sub-clauses (i) and (ii);

b. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

ANALYSIS AND CONCLUSION:

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q.NO.7. 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:

PROVISION: 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.

ANALYSIS AND CONCLUSION:

Hence, on the basis on the above provisions of the Companies Act, 2013:

i. The chairman cannot reject the demand for poll subject to provision in the articles of company.

ii. The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Q.NO.8. SURYA, A SHAREHOLDER, GIVES A NOTICE FOR INSPECTING PROXIES, FIVE DAYS BEFORE THE MEETING IS SCHEDULED AND APPROACHES THE COMPANY TWO DAYS BEFORE THE SCHEDULED MEETING FOR INSPECTING THE SAME. WHAT IS THE LEGAL POSITION IN RESPECT OF DEMAND FOR INSPECTION OF PROXIES BY SURYA AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

PROVISION: Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

ANALYSIS AND CONCLUSION:

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

Q.NO.9. THERE ARE CERTAIN ENTITIES TO WHICH THE COMPANIES (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2018 ARE NOT APPLICABLE. LIST THEM.

ANSWER:

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

a. The Investor Education and Protection Fund Authority;

b. Its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;

c. The Central Government, any State Government or any local authority;

d. An entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);

e. Investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and

f. Investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Q.NO.10. INFOTECH LTD. WAS INCORPORATED ON 1.4.2018. NO GENERAL MEETING OF THE COMPANY HAS BEEN HELD TILL 30.4.2020. 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:

PROVISION: 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 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019. 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.

ANALYSIS AND CONCLUSION:

Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit

Q.NO.11. THE ARTICLES OF ASSOCIATION OF DJA LTD. REQUIRE THE PERSONAL PRESENCE OF 7 MEMBERS TO CONSTITUTE QUORUM OF GENERAL MEETINGS. THE COMPANY HAS 965 MEMBERS AS ON THE DATE OF MEETING. THE FOLLOWING PERSONS WERE PRESENT IN THE EXTRA-ORDINARY MEETING TO CONSIDER THE APPOINTMENT OF MANAGING DIRECTOR:

i. **A, THE REPRESENTATIVE OF GOVERNOR OF UTTAR PRADESH.**
ii. **B AND C, SHAREHOLDERS OF PREFERENCE SHARES,**
iii. **D, REPRESENTING Y LTD. AND Z LTD.**
iv. **E, F, G AND H AS PROXIES OF SHAREHOLDERS.**

CAN IT BE SAID THAT THE QUORUM WAS PRESENT IN THE MEETING?

ANSWER:

PROVISION: According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

ANALYSIS AND CONCLUSION:

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Q.NO.12. WHAT DO YOU MEAN BY PROXY? EXPLAIN THE PROVISIONS RELATING TO APPOINTMENT OF PROXY UNDER THE COMPANIES ACT, 2013.

ANSWER:

PROVISION: A proxy is an instrument in writing executed by a share holder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

Q.NO.13. SUPER MART LIMITED CALLED ITS AGM IN ORDER TO LAY DOWN THE FINANCIAL STATEMENTS FOR THE APPROVAL OF THE SHAREHOLDERS. DUE TO WANT OF QUORUM, THE MEETING WAS CANCELLED. THE DIRECTORS DID NOT FILE THE ANNUAL RETURNS WITH THE REGISTRAR. THE DIRECTORS WERE OF THE OPINION THAT THE TIME FOR FILING OF RETURNS WITHIN 60 DAYS FROM THE DATE OF AGM WOULD NOT APPLY, AS AGM WAS CANCELLED. HAS THE COMPANY CONTRAVENED THE PROVISIONS OF COMPANIES ACT, 2013? IF THE COMPANY HAS CONTRAVENED THE PROVISIONS OF THE ACT, HOW WILL IT BE PENALIZED?

ANSWER:

PROVISION: According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2,00,000 in case of a company and fifty thousand rupees in case of an officer who is in default.

ANALYSIS AND CONCLUSION: In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 (5) of the Act.

Q.NO.14. MADURAI BAKESTRY LTD. ISSUED A NOTICE FOR HOLDING OF ITS ANNUAL GENERAL MEETING ON 7TH SEPTEMBER, 2022. THE NOTICE WAS POSTED TO THE MEMBERS ON 16TH AUGUST, 2022. SOME MEMBERS OF THE COMPANY ALLEGED THAT THE COMPANY HAD NOT COMPLIED WITH THE PROVISIONS OF THE COMPANIES ACT, 2013 WITH REGARD TO THE PERIOD OF NOTICE AND AS SUCH THE MEETING WAS NOT VALID. REFERRING TO THE PROVISIONS OF THE ACT, DECIDE:

i. **WHETHER THE MEETING HAS BEEN VALIDLY CALLED?**

ii. **IF THERE IS A SHORTFALL, STATE AND EXPLAIN BY HOW MANY DAYS DOES THE NOTICE FALL SHORT OF THE STATUTORY REQUIREMENT?**

iii. **CAN THE DELAY IN GIVING NOTICE BE CONDONED?**

ANSWER:

PROVISION: According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

ANALYSIS AND CONCLUSION:

Hence, in the given question:

i. A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

ii. As explained in (i) above, notice falls short by 2 days.

iii. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Q.NO.15. KMN CABLES LTD. SCHEDULED ITS ANNUAL GENERAL MEETING TO BE HELD ON 15TH SEPTEMBER, 2022 AT 11:00 A.M. THE COMPANY HAS 900 MEMBERS. ON THE SCHEDULED DATE OF AGM FOLLOWING PERSONS WERE PRESENT BY 11:30 A.M.

1. **P1, P2 & P3 SHAREHOLDERS**
2. **P4 REPRESENTING ABC LTD.**
3. **P5 REPRESENTING DEF LTD.**
4. **P6 & P7 AS PROXIES OF THE SHAREHOLDERS**
   i. **EXAMINE WITH REFERENCE TO RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013, WHETHER QUORUM WAS PRESENT IN THE MEETING.**
   ii. **WHAT WILL BE YOUR ANSWER IF P4 REPRESENTING ABC LTD., REACHED IN THE MEETING AFTER 11:30 A.M.?**

iii. IN CASE LACK OF QUORUM, DISCUSS THE PROVISIONS AS APPLICABLE FOR AN ADJOURNED MEETING IN TERMS OF DATE, TIME & PLACE.

WHAT HAPPENS IF THERE IS NO QUORUM AT THE ADJOURNED MEETING?

ANSWER:

PROVISION: According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

I. ANALYSIS AND CONCLUSION:

1. P1, P2 and P3 will be counted as three members.
2. If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
3. Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

II. ANALYSIS AND CONCLUSION:

The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

III. ANALYSIS AND CONCLUSION:

In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

IV. ANALYSIS AND CONCLUSION:

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

Q.NO.16. AS A MATTER OF FACT, THE USUAL TIME ALLOWED FOR MAKING ENTRIES IN THE REGISTER OF MEMBERS OR REGISTER OF DEBENTURE-HOLDERS OR REGISTER OF OTHER SECURITY HOLDERS IS SEVEN DAYS AFTER THE BOARD OF DIRECTORS OR ITS COMMITTEE GRANTS ITS APPROVAL. THERE ARE CERTAIN EVENTS, ON THE HAPPENING OF WHICH THE ENTRIES CAN BE MADE EVEN AFTER SEVEN DAYS. WHICH ARE THOSE EVENTS?

ANSWER:

PROVISION: Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within 15 days from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within 15 days from such an event.

ANALYSIS AND CONCLUSION:

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

Q.NO.17. WITH A VIEW TO TRANSACT SOME URGENT BUSINESS, RATNA, RIMPI AND RATNESH, THE THREE DIRECTORS OF SHILPKAAR CONSTRUCTIONS LIMITED ARE DESIROUS OF CALLING A GENERAL MEETING OF SHAREHOLDERS BY GIVING SHORTER NOTICE THAN 21 DAYS' CLEAR NOTICE. THE FOURTH DIRECTOR, NILESH IS OF THE OPINION THAT SUCH AN ACTION WILL ATTRACT PENALTY PROVISIONS SINCE THERE IS CONTRAVENTION. THE PAID-UP SHARE CAPITAL OF THE COMPANY IS RS. 30 CRORES DIVIDED INTO 3 CRORES SHARES OF RS. 10 EACH. KEEPING IN VIEW THE APPLICABLE PROVISIONS OF THE COMPANIES ACT, 2013, DISCUSS REGARDING THE POSSIBILITY OF CALLING A GENERAL MEETING BY GIVING SHORTER NOTICE.

ANSWER:

PROVISION: Generally, general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving **shorter notice** than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto

a. **AGM:** in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and

b. **OTHER THAN AGM**: in the case of any other general meeting, by

   i. **Company having Share Capital:** if the company has share capital then members of the company holding majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

   ii. **Company having no Share Capital:** if the company has no share capital then members of the company having, not less than ninety-five per cent. of the total voting power exercisable at that meeting.

Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

ANALYSIS AND CONCLUSION:

In view of the above provisions, Shilpkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

Q.NO.18. MIRAJ SUGAR MILLS LIMITED HELD ITS ANNUAL GENERAL MEETING ON SEPTEMBER 15, 2022. THE MEETING WAS PRESIDED OVER BY MR. VENKAT, THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE COMPANY. ON SEPTEMBER 17, 2022, MR. VENKAT, THE CHAIRMAN, WITHOUT SIGNING THE MINUTES OF THE MEETING, LEFT INDIA TO LOOK AFTER HIS FATHER WHO FELL SICK IN LONDON. REFERRING TO THE PROVISIONS OF THE COMPANIES ACT, 2013, EXAMINE THE MANNER IN WHICH THE MINUTES OF THE ABOVE MEETING ARE TO BE SIGNED IN THE ABSENCE OF MR. VENKAT AND BY WHOM.

ANSWER:

PROVISION: Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of

the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

ANALYSIS AND CONCLUSION:

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

Q.NO.19. SHIKHAR CEMENT LIMITED PASSED TWO RESOLUTIONS BY MEANS OF POSTAL BALLOT. KEEPING IN VIEW THE RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013, YOU ARE REQUIRED TO ADVISE THE DIRECTORS OF THE COMPANY REGARDING THE PROVISIONS APPLICABLE FOR MAKING ENTRIES IN THE MINUTES BOOK INCLUDING THE TIME LIMIT WITHIN WHICH THE ENTRIES MUST BE MADE.

ANSWER:

PROVISION:

Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

ANALYSIS AND CONCLUSION:

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

a. there should be entered a brief report on the postal ballot conducted including the resolution proposed.

b. there should be entered the result of the voting made by the shareholders in respect of resolution.

c. there should be entered the summary of the scrutinizer's report.

d. there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

Q.NO.20. THE PAID-UP SHARE CAPITAL OF DISHA HOME APPLIANCES LIMITED IS RS. 8 CRORES DIVIDED INTO 80 LACS SHARES OF RS. 10 EACH. THE DIRECTORS OF THE COMPANY WOULD LIKE TO KNOW THE CIRCUMSTANCES UNDER WHICH THE ANNUAL RETURN OF THE COMPANY SHALL BE REQUIRED TO BE CERTIFIED BY A COMPANY SECRETARY IN PRACTICE.

ANSWER:

PROVISION:

In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 provides that the annual return, filed by

a. a listed company or

b. a company having paid-up share capital of ₹ 10 crore or more; or

c. a turnover of ₹ 50 crore or more,

ANALYSIS AND CONCLUSION:

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to Rs. 10 crores or more or its turnover becomes Rs. 50 crores or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Q.NO.21. PRINCE AUTO-PARTS LIMITED, A LISTED COMPANY, HAS RECENTLY CONCLUDED ITS ANNUAL GENERAL MEETING. AS A STATUTORY REQUIREMENT, IT IS OBLIGATORY ON ITS PART TO FILE WITH THE JURISDICTIONAL REGISTRAR OF COMPANIES A COPY OF THE REPORT ON ITS AGM.

i. STATE WITHIN HOW MUCH TIME IT IS REQUIRED TO FILE THE SAID REPORT.

ii. IN CASE PRINCE AUTO-PARTS LIMITED FAILS TO FILE THE REPORT ON ITS AGM WITHIN THE SPECIFIED TIME, STATE THE PENALTY TO WHICH THE COMPANY AND ALSO ITS EVERY OFFICER WHO IS IN DEFAULT SHALL BE LIABLE FOR SUCH FAILURE.

ANSWER:

PROVISION:

In terms of Section 121 (2) of the Companies Act, 2013, Prince Autoparts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.

In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file the report within 30 days of conclusion of AGM,

a. Such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and

b. Every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

ANALYSIS AND CONCLUSION:

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of 30 days, it shall be liable to the above stated penalty which may go maximum up to Rs. five lakhs in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be Rs. one lakh in case of continuing failure.

Q.NO.22. ASHOK, A DIRECTOR OF GAMA ELECTRICALS LTD. GAVE IN WRITING TO THE COMPANY THAT THE NOTICE FOR ANY GENERAL MEETING AND OF THE BOARD OF DIRECTORS' MEETING BE SENT TO HIM ONLY BY REGISTERED POST AT HIS RESIDENTIAL ADDRESS AT KANPUR FOR WHICH HE DEPOSITED SUFFICIENT MONEY. THE COMPANY SENT NOTICE TO HIM BY ORDINARY MAIL UNDER CERTIFICATE OF POSTING. ASHOK DID NOT RECEIVE THIS NOTICE AND COULD NOT ATTEND THE MEETING AND CONTENDED THAT THE NOTICE WAS IMPROPER.

DECIDE:

i. WHETHER THE CONTENTION OF ASHOK IS VALID.

ii. WILL YOUR ANSWER BE THE SAME IF ASHOK REMAINS IN U.S.A. FOR ONE MONTH DURING THE NOTICE OF THE MEETING AND THE MEETING HELD?

ANSWER

PROVISION:

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

CONCLUSION:

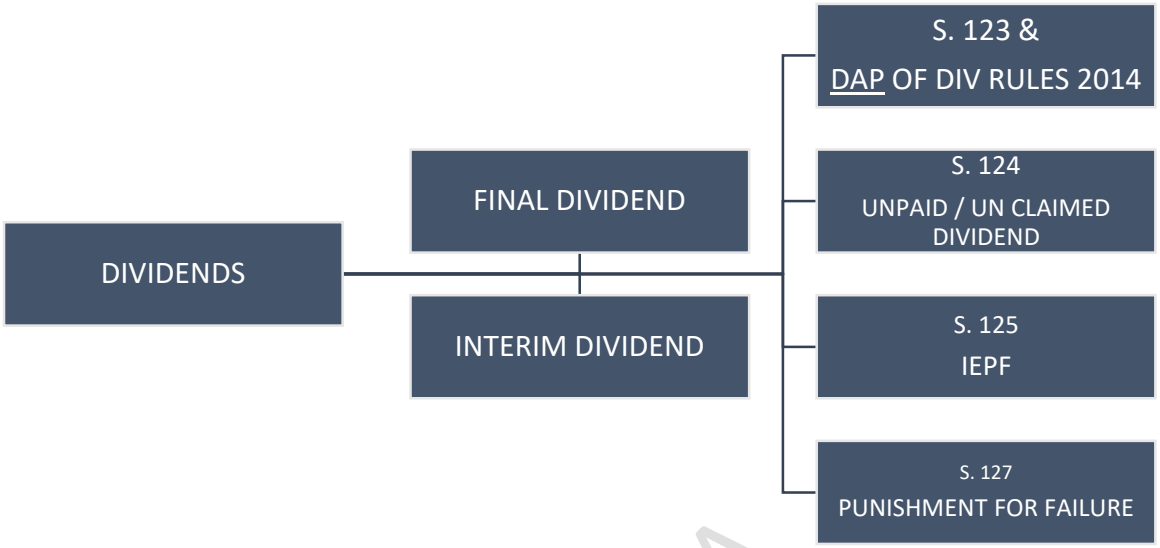
Accordingly, the questions as asked may be answered as under:

i. The contention of Ashok shall be tenable, for the reason that the notice was not properly served.

ii. In the given circumstances, the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India.

8. DECLARATION AND PAYMENT OF DIVIDEND

[SEC. 123 TO 127]



Q.NO.1. WRITE ABOUT THE DEFINITION, MEANING AND CONCEPT OF DIVIDENDS UNDER COMPANIES ACT 2013?

ANSWER:

A. **DEFINITION [SEC. 2(35)]:** The term dividend simply states that "dividend" includes any interim dividend.

B. **MEANING AND CONCEPT:**

1. Dividend is the shareholders return on their investment / capital in the company. Dividend is part of the distributable profits which has been paid out to them.
2. In simple words, it is a distribution of profits i.e., a portion of profits earned and allocated as payable to the shareholders whenever declared.
3. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
4. Dividend is recommended by Board of Directors in the Board's Report and approved by Shareholders at the Annual General Meeting.
5. Dividend is not a liability unless it is declared by the shareholders at a validly constituted general meeting by passing an ordinary resolution at the rates recommended by the Board or such lower rates as they may decide.

6. Declaration of dividend by the company at a rate higher than the rate recommended by the Board is not permitted.
7. Dividend is Declared as a proportion of Nominal or Face Value of a share.

Example: AB Ltd. has issued equity shares having face value of Rs. 10 per share. The shares are currently quoting on the NSE at Rs. 250/- per share. The Company at its AGM held on 27.7.20 has declared a dividend of 20%. Mr. Shekar owns 1000 shares which he purchased at Rs. 300/- per share. What is the amount of dividend he will receive?

ANSWER:

The dividend is to be calculated on Face Value i.e., Rs. 10/-. So, dividend per share is 20% of Rs. 10/- = Rs. 2/- per share. So Mr. Shekar will receive Rs. 2 * 1000 shares = Rs. 2000/-.

Example: The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution.

ANSWER:

Articles of Association companies usually contain provisions with regard to declaration of dividend. The power to declare a dividend vests with the general meeting but not even all the shareholders have the power to declare a dividend exceeding the amount recommended by the Board of Directors.

Q.NO.2. WRITE ABOUT THE CONCEPT OF INTERIM AND FINAL DIVIDEND AND A COMPARISION THERE OF?

ANSWER:

INTERIM DIVIDEND:

1. Interim dividend may be declared by the Board of Directors at any time during the period from closure of financial year till holding of the annual general meeting.
2. **SOURCES FOR INTERIM DIVIDEND:** The declaration of interim dividend is done out of profits before the final adoption of the accounts by the shareholders and ***therefore, interim dividend is said to be declared and paid between two AGMs.*** The sources for declaring interim dividend include:
   a. Surplus in the profit and loss account or
   b. Profits of the financial year in which such dividend is sought to be declared or
   c. Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

3. **RATIFICATION AT AGM:** Declaration of interim dividend shall be ratified at the ensuing AGM by the members.
4. **IN CASE OF LOSSES:** If the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the **average** (rate of) dividend declared by the company during the immediately preceding 3 financial years.
   Example: If a company declared dividend at the rate of 16% during the immediately preceding three financial years, then in case the company incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 16%.

5. **SEPARATE BANK ACCOUNT:** The amount of the dividend, including interim dividend, shall be deposited in a separate account maintained with a scheduled bank within 5 days from the date of declaration.
6. **SAME PROVISIONS OF FINAL DIVIDEND:** All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

FINAL DIVIDEND:

1. When the dividend is declared at the Annual General Meeting of the company, it is known as 'final dividend'.
2. The rate of dividend recommended by the Board cannot be increased by the members.

COMPARISION BETWEEN INTERIM AND FINAL DIVIDEND

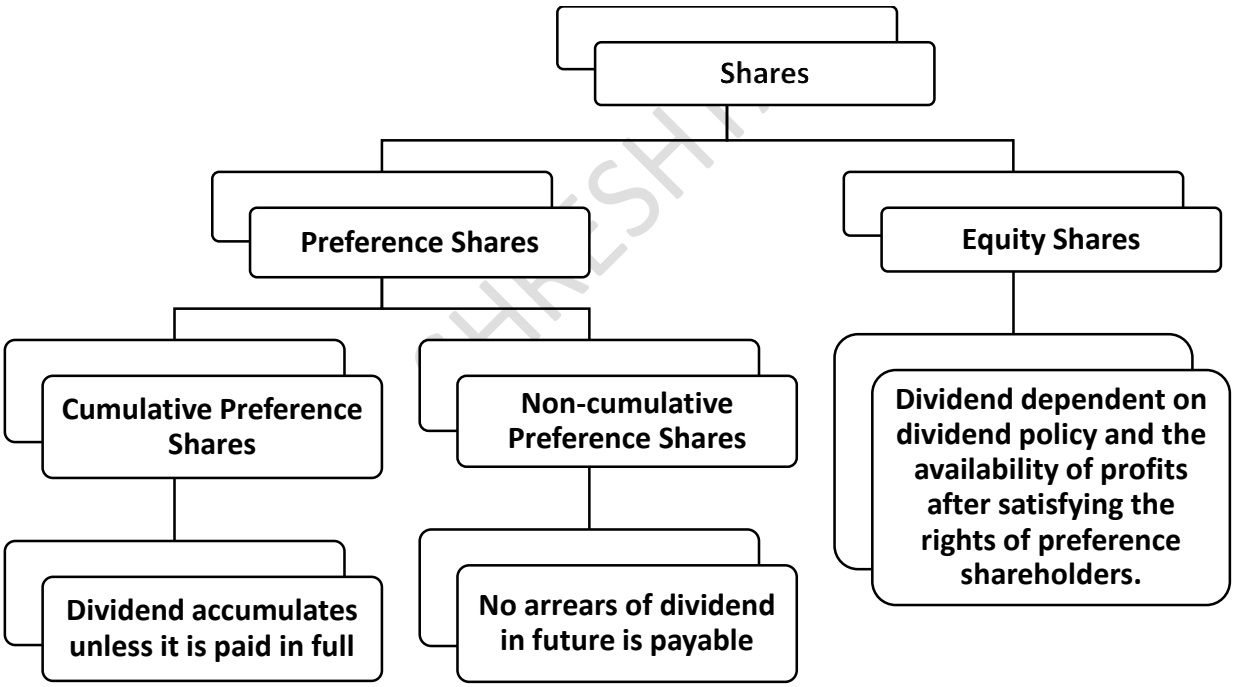
BASIS	INTERIM DIVIDEND	FINAL DIVIDEND
Definition	Interim dividend is declared and paid during an accounting year, i.e., before the finalization of accounts for the year.	Final dividend is the dividend recommended by the board of directors and approved by shareholders at the company's Annual General Meeting, after the close of financial year.
Announcement	Announced by Board of Directors.	Recommended by Board of Directors and approved by shareholders.

Time of Declaration	Before preparation of financial statements.	After preparation of financial statements.
Revocation	It can be revoked with the consent of all shareholders.	It cannot be revoked.
Provision in Articles of Association	It is declared only when the articles specifically permit the declaration.	It does not require any specific provision in the articles.

Q.NO.3. WRITE ABOUT CLASSIFICATION OF SHARES BASED ON MANNER OF PAYMENT OF DIVIDEND?

ANSWER:

Shares can be classified into 2 categories i.e., Preference shares and Equity shares. The manner of payment of dividend is dependent upon the nature of shares.



PREFERENCE SHARES:

1. **PREFENTIAL PAYMENT:** According to Section 43 of the Companies Act, 2013, shareholders holding preference shares are assured of a preferential dividend at a fixed rate during the life of the company.
2. **BY DEFAULT – NONCUMULATIVE:** Preference dividend unless otherwise agreed is Non-cumulative in nature and need not be paid in any year where there is deficiency of profits.
3. **CLASSIFICATION:** Classification of preference shares on the basis of payment of dividend is as follows:

a. **Cumulative Preference Shares:** A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years. Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

b. **Non-cumulative Preference Shares:** A non-cumulative preference share is one where the dividend is payable only in a year of profit. There is no accumulation of profit as in the case of cumulative preference shares. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year expires and the holder of such a share is not entitled to be paid arrears of dividend out of future years.

EQUITY SHARES:

1. Equity shares are those shares, which are not preference shares. It means that they do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital.
2. The rate of dividend on equity shares is recommended by the Board of Directors and may vary from year to year. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

Q.NO.4. WHAT ARE THE PROVISIONS REGARDING DECLARATION AND PAYMENT OF DIVIDENDS?

ANSWER:

A. SOURCES FOR DECLARATION OF DIVIDEND:

According to Section 123 (1), the dividend for any financial year shall be declared or paid from the following sources:

a. **PROFITS OF THE CURRENT FINANCIAL YEAR:** Profits arrived at after providing for depreciation in accordance with Schedule II.

b. **PROFITS OF ANY PREVIOUS FINANCIAL YEAR OR YEARS:** Profits of any previous financial year(s) arrived at after providing for depreciation in accordance with Schedule II and remaining undistributed i.e., credit balance in profit and loss account and free reserves. It is to be noted that only free reserves and no other reserves are to be used for declaration or payment of dividend.

c. Both (a) and (b).

d. **PROVISION OF MONEY BY THE GOVERNMENT:** Money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Note: Before declaration of any dividend, carried over previous losses and depreciation not provided in previous year or years are required to be set off against profit of the company for the current year. [4th Proviso to Sec. 123(1)]

Note: Capital profits are not same as distributable profits because they are not earned in the normal course of business; and therefore, normally not available for distribution as dividend.

B. MEANING OF FREE RESERVES [SEC. 2(43)]:

1. **MEANING:** '**Free Reserves' to mean** such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.
2. **EXCLUDES:** However, following items shall not be treated as free reserves:
    a. **REVALUATION RESERVE:** Any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise or
    b. **FAIR VALUE ADJUSTMENTS:** Any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value. [AS PER IND AS]

Q.NO.5. WHAT IS THE NEED FOR PROVIDING DEPRECIATION OUT OF PROFITS BEFORE DECLARING DIVIDEND?

ANSWER:

1. Dividend is an apportionment from revenue profits. Therefore, dividend should never be declared out of capital.
2. "Depreciation" is a notional estimate of the reduction in the value of an asset due to:
    a. Wear and tear,
    b. Efflux of time,
    c. Improvements in technology etc.
3. If depreciation is not provided for there will be 2 consequences:
    a. The value of the asset will be overstated in Balance Sheet
    b. The profits of the current year will be overstated.
4. Hence the law mandates provision for depreciation out of profits before declaration of dividend.

Example: Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value, which is moderately ten times the original price, thus resulting in a revaluation profit of Rs. 20,00,000. The Board of Directors is keen to utilize this Rs. 20,00,000 along with free reserves of Rs. 24,00,000 for declaration of

dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September 2019. But according to Proviso to Section 123 (1) (a), the amount of Rs. 20,00,000 cannot be considered as it does not form part of Free Reserves as the same cannot be utilized towards declaration of dividend.

Q.NO.6. BEFORE DECARING DIVIND, THE COMPANY MUST TRANSER A CERTAIN % OF PROFITS TO RESERVES. IS IT TRUE? ELOBORATE?

ANSWER:

NO. Transfer of profits to reserves for any financial year has been left to the discretion of the company. Therefore, a company is free to transfer any portion of its profit to reserves as it may deem fit. It may also decide not to transfer any amount to reserves.

Example: For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

Answer: The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit.

Example: Brix Shipyards Limited has earned a profit of Rs. 1,000 crores for the financial year 2018-19. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

Answer: The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit, or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any amount of profits to the reserves.

Q.NO.7. WRITE ABOUT CONDITIONS FOR DECLARATION OF DIVIDENDS IN CASE OF INADEQUACY OR ABSENCE OF PROFITS?

ANSWER:

Where in any year there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014. Under Rule 3 such declaration shall be subject to the following 3 conditions:

CONDITION I

1. **AVERAGE RATE:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

Rate of Dividend ≤ (RD1 +RD2 + RD3)/3

Where, RD1, RD2, RD3 are rates at which dividend was declared by the company in the immediately preceding three years.

2. However, this condition shall not apply if the company has not declared any dividend in each of the 3 preceding financial year.

CONDITION II

The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

In other words: Total amount that can be drawn from accumulated profits ≤ 10% of (paid up share capital + free reserves)

CONDITION III

The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

CONDITION IV

The balance of reserves after such withdrawal shall **not fall below 15% of its paid-up share capital** as appearing in the latest audited financial statement.

EXEMPTION FROM RULE 3 CONDITIONS: 100% GOVERNMENT COMPANY – NOT APPLICABLE:

The conditions prescribed by Rule 3 are not applicable to a Government company in which the **ENTIRE** [100%] paid-up share capital is held by:

1. The Central Government, or
2. By any Stale Government or Governments or
3. By the Central Government and one or more State Governments.

EXAMPLE: Capricorn Industries Limited has a paid-up capital of Rs. 200 lakhs and accumulated Reserves of Rs. 240 lakhs. Loss for the year ending 31st March 2020 is Rs. 30 Lakhs. Dividend was declared at the following rates during the three years immediately preceding.

Year 1	9%
Year 2	10%
Year 3	12%

What is the maximum rate at which the company can declare dividend for the current year?

ANSWER:

RELEVANT PROVISION AND ANALYSIS:

In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March 2020, but it still wants to declare dividend. Let us apply the conditions:

Condition I

1. Average rate= 10.33% $\left[\frac{9+10+12}{3}\right]$
2. Therefore, the rate of dividend shall not exceed 10.3%. i.e., 10.3% of Paid-up Capital i.e., Rs. 200 lakhs = Rs. 20.6 lakhs

Condition II

1.	Paid-up capital + Free reserves*	Rs. 440 Lakhs
2.	**10% of above [10% on 1]**	**Rs. 44 Lakhs**
3.	**Less:** loss for the year	(Rs. 30 Lakhs)
4.	**Amount available [2 – 3]**	**Rs. 14 Lakhs**

Hence the quantum of dividend is further restricted to Rs. 14 lakhs.

*Assuming all reserves are free reserves.

Condition III

1.	Accumulated Reserves	Rs. 240 Lakhs
2.	Proposed withdrawal declaration of dividend	(Rs. 14 Lakhs)
3.	**Balance of Reserves [2 - 3]**	**Rs. 226 Lakhs**

The Balance of Reserves are more than 15% of paid-up capital (i.e., 15% of Rs. 200 Lakhs) i.e., Rs. 30 lakhs.

CONCLUSION:

Thus, the **company can declare a dividend of Rs. 14 lakhs** i.e., at a rate of 7% on its paid-up capital of Rs. 200 lakhs.

EXAMPLE: Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March 2020, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%.

Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2019-20, as per the provisions of the Companies Act, 2013.

ANSWER:

RELEVANT PROVISION:

The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

1. The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
2. The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
3. After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

CONCLUSION:

The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

Q.NO.8. WRITE ABOUT DEPOSIT AND PAYMENT OF DIVIDEND?

ANSWER:

A. DEPOSIT OF DIVIDEND IN A SEPARATE BANK ACCOUNT [SEC. 123(4)]:

1. The amount of the dividend (including interim dividend) shall be deposited in a separate account maintained with a scheduled bank. This is to be done within 5 days from the date of declaration of dividend.
2. **100% GOVERNMENT COMPANY – NOT APPLICABLE:** This requirement shall not apply to a Government Company in which the **entire** paid-up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.

EXAMPLE: The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is Rs. 50.00 lacs divided into 5,00,000 equity shares of Rs. 10 each. At its Annual General Meeting (AGM) held on 24th September 2019, the company declared a dividend of Rs. 2 per share by passing an ordinary resolution. The amount of dividend must be deposited in a scheduled bank in a separate account latest by 29th September 2019.

B. PAYMENT OF DIVIDEND TO SHAREHOLDERS [SEC. 123(5)]:

1. ONLY TO REGISTERED MEMBER:

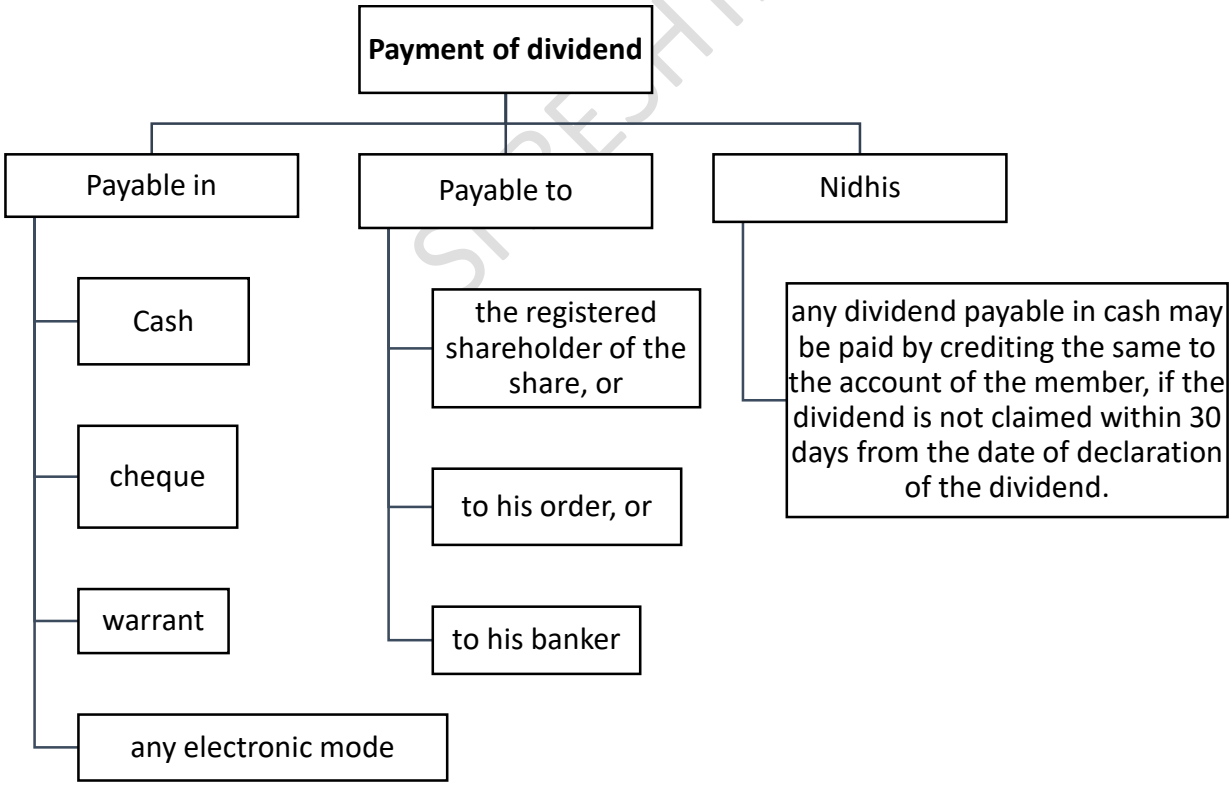
a. Dividend shall be payable only to the registered shareholder or to his order or to his banker.

b. SH BUT NOT A MEMBER:

i. A purchaser of shares whose name is not entered in the Register of Members cannot claim payment of dividend to him though he might have made full payment to the seller of shares.

ii. In this regard we will dividend may be kept in abeyance pending registration of transfer of shares unless the registered holder has authorized the company to pay the dividend to the purchaser.

NOTE: In case a shareholder informs the company to pay dividend to a particular banker and if the payment is so made by the company, then it shall be deemed to be made to the shareholder himself.



EXAMPLE:

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The company announced 28th September 2018 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 30th September 2018.

Mr. Binoy was the holder of 2000 equity of shares on 31st March 2018, but he transferred the shares to Mr. Mohan, whose name has been entered in the register of members on 18th June 2018. Who will be entitled to the above dividend?

ANSWER:

According to section 123, dividend shall be paid by a company only to the registered shareholder of such share.

Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e., Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan who is the registered shareholder on the record date.

EXAMPLE:

The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2019-20. The same was approved at the Annual General Meeting of the company held on 25th June 2020.

Mr. Nitin Jha was holding 1,000 equity shares as on 31st March 2020, but the same were transferred by him to Mr. Raj, whose name was registered on 20th April 2020 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

ANSWER:

According to section 123(5), dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker.

Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April 2020. Since Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June 2020, he will be entitled to the dividend.

1. **DIVIDEND ON PARTLY PAID SHARES:**

   In terms of Section 51, a company may, if so, authorised by its articles, pay dividend in proportion to the amount paid-up on each share.

EXAMPLE: the shareholders have paid only Rs. 5 (face value Rs. 10) on each share held by them. In case of declaration of dividend at the rate of Rs. 5 per share, the company, if authorised by its articles, shall be justified in paying dividend of Rs. 2.50 per share in respect of such partly paid shares.

2. **DIVIDENDS ARE PAYABLE IN CASH AND NOT IN KIND:**
   - **a.** Dividends that are payable to the shareholders in cash may also be paid by cheque or dividend warrant or through any electronic mode.
   - **b.** Section 127 requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of 30 days from the date of declaration of dividend.
   - **c.** In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within 30 days by the shareholders or not.
   - **d. EXCEPTION:** The capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

3. **APPLICABILITY OF SECTION 123 (5) TO NIDHIS:**
   This sub-section shall apply to the NIDHIS, subject to the modification that any dividend payable in cash may be paid by **crediting** the same to the account of the member if the dividend is not claimed within 30 days from the date of declaration of the dividend.

Q.NO.9. WRITE ABOUT CIRMCUMSTANCES FOR PROHIBITION ON DECLARATION OF DIVIDENDS?

ANSWER:

In the following cases declaration and payment of dividend is prohibited:

1. **FAILURE TO COMPLY WITH DEPOSITS PROVISIONS:** A company which fails to comply with the provisions of section 73 (Prohibition on acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act of 2013) shall not, so long as such failure continues, declare any dividend on its equity shares.

2. **FOR SECTION 8 COMPANIES:** According to section 8 (1), a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

Q.NO.10. EXPLAIN ABOUT UNPAID DIVIDEND ACCOUNT?

ANSWER:

Section 124 of the Act contains the provisions relating to Unpaid Dividend Account (UDA). These are as follows:

A. TRASNFER TO UNPAID DIVIDEND ACCOUNT:

1. **WITHIN 7 DAYS:** Where a dividend has been declared by a company BUT has not been paid or claimed within 30 days from the date of declaration, the company shall, within seven 7 days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

2. **12% INTEREST:** If any default is made in transferring the total unpaid dividend amount or any part thereof to the Unpaid Dividend Account, the company shall pay, from the date of such default, interest at the rate of 12% per annum on the amount **NOT SO TRANSFERRED** to the said account. The interest accruing on such amount shall ensure i.e., be available to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

3. Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account may apply to the company concerned for payment of the money so claimed.

B. PREPARING OF STATEMENT OF THE UNPAID DIVIDEND: Within 90 days of transferring any amount to the Unpaid Dividend Account, the company shall prepare a statement containing the names, last known addresses and the amount of unpaid dividend to be paid to each person and place such statement on its website, if any, and also on any other website approved by the Central Government for this purpose.

Q.NO.11. WRITE ABOUT TRANSFER OF UNPAID DIVIDEND TO INVESTOR EDUCATION AND PROTECTION FUND?

ANSWER:

A. TRANSFER OF UNCLAIMED AMOUNT TO INVESTOR EDUCATION AND PROTECTION FUND (IEPF):

1. **7 YEARS:** Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for 7 years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund [IEPF].

2. **TRANSFER OF SHARES TO IEPF:** All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

   NOTE: By way of Explanation, it is clarified that in case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

3. **FILE A STATEMENT WITH IEPF:** Further, the company shall send a prescribed statement containing the details of such transfer to the IEPF Authority and in turn, the Authority shall issue a receipt to the company as evidence of such transfer.

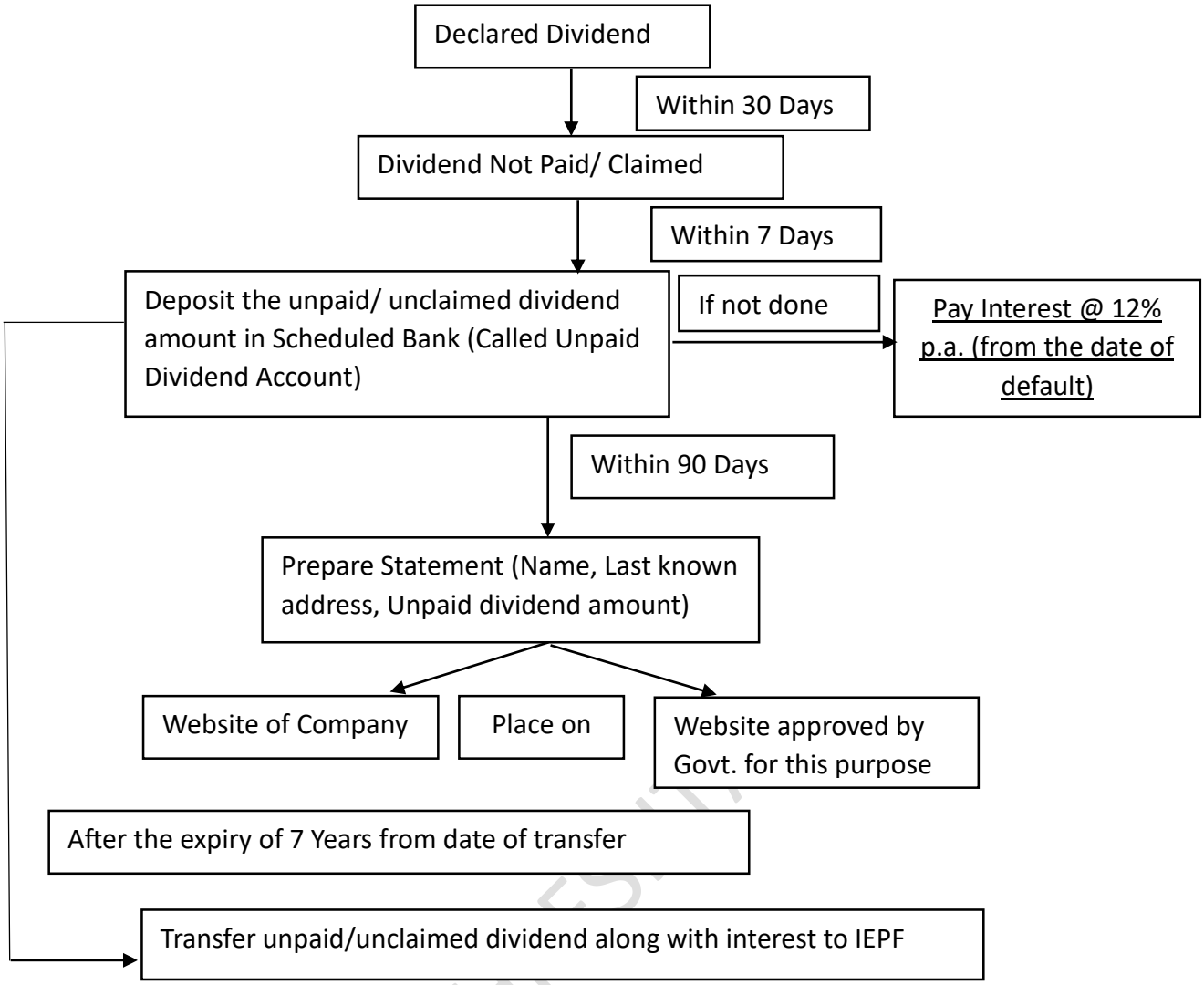
B. RIGHT OF OWNER OF 'TRANSFERRED SHARES' TO RECLAIM:

Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

C. PUNISHMENT FOR CONTRAVENTION:

1. **IN HANDS OF COMPANY:** If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of Rs. 1,00,000 /- and in case of continuing failure, with a further penalty of Rs. 500/- for each day after the first during which such failure continues, subject to **a maximum of Rs. 10 Lakh rupees.**

2. **IN HANDS OF OFFICER IN DEFAULT:** Every officer of the company who is in default shall be liable to a penalty of Rs. 25,000/- and in case of continuing failure, with a further penalty of Rs. 100/- for each day after the first during which such failure continues, subject **to a maximum of 2 Lakh rupees**.



Q.NO.12. WRITE ABOUT INVESTOR EDUCATION AND PROTECTION FUND, SOURCES TO THE FUND AND UTILISATION OF THE FUND?

ANSWER:

Section 125 of the Act along with Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 deal with the Investor Education and Protection Fund (IEPF).

This fund, being established by the Central Government, shall be credited with specified amounts, and utilized for *refund of unclaimed and unpaid amounts*, *promotion of investors'* awareness and *protection of the interests* of investors, etc. The relevant provisions are discussed below:

A. CREDIT OF SPECIFIED AMOUNTS TO THE FUND: Following specified amounts shall be credited to the Fund:

a. AMOUNT GIVEN BY THE CENTRAL GOVERNMENT: The amount given by the Central Government by way of grants after due appropriation made by Parliament.

b. DONATIONS BY THE CENTRAL GOVERNMENT: Donations given by the Central Government, State Governments, companies or any other institution for the purposes of the Fund.

c. **AMOUNT LYING IN THE UNPAID DIVIDEND ACCOUNT:** The amount lying in the Unpaid Dividend Account (UDA) of companies which is transferred by them to the Fund under section 124(5).

d. **AMOUNT IN THE GENERAL REVENUE ACCOUNT OF THE CENTRAL GOVERNMENT:** The amount in the General Revenue Account of the Central Government which had been transferred to that account under section 205A (5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of the Act of 2013.

e. **AMOUNT IN IEPF:** The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956.

f. **INCOME FROM INVESTMENTS:** The interest or other income received out of investments made from the Fund

g. **AMOUNT RECEIVED THROUGH DISGORGEMENT OR DISPOSAL OF SECURITIES:** The amount received under section 38(4) i.e., amount received through disgorgement or disposal of securities seized from a person who has been convicted for personation for acquisition of securities as provided in section 38(3).

Disgorgement *is the legally enforced repayment of ill-gotten gains imposed on wrongdoers by the courts. Funds that were received through illegal or unethical business transactions are disgorged, or paid back, often with interest and/or penalties to those affected by the action.*

h. **APPLICATION MONEY:** The application money received by companies for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment).

i. **MATURED DEPOSITS:** Matured deposits with companies other than banking companies (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment).

j. **MATURED DEBENTURES:** Matured debentures with companies (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment).

k. **INTEREST:** Interest accrued on the amounts referred to in clauses (h) to (j).

l. **AMOUNT RECEIVED FROM SALE PROCEEDS:** Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger, and amalgamation for 7 or more years.

m. **REDEMPTION AMOUNT:** Redemption amount of preference shares remaining unpaid or unclaimed for 7 or more years and

n. **OTHER AMOUNTS:** Such other amounts as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. They are as under:

   i. All amounts payable as mentioned in clause (a) to (n) of section 125 (2) of the Act [as stated above]

   ii. All shares in accordance with section 124 (6) i.e., all those shares in whose case dividends have not been claimed or paid for 7 consecutive years or more.

   iii. All the resultant benefits arising out of shares held by the Authority under clause (b) above.

   iv. All grants, fees and charges received by the Authority under these rules.

   v. All sums received by the Authority from such other sources as may be decided upon by the Central Government.

   vi. All income earned by the Authority in any year.

   vii. All amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 sub-section (3) of section 38A of the State Bank of India Act, 1955 and section 40A of the State Bank of India (Subsidiary Bank) Act, 1959 and

   viii. All other sums of money collected by the Authority as envisaged in the Act.

Further, according to Rule 3 (3), in case of term deposits and debentures of companies, due unpaid or unclaimed interest shall be transferred to the Fund along with the transfer of the matured amount of such term deposits and debentures.

B. UTILIZATION OF THE FUND:

According to section 125 (3) the Fund shall be utilized for:

a. **Refund of**:

   1. Unclaimed dividends.
   2. Matured deposits.
   3. Matured debentures.
   4. The application money due for refund and interest thereon.

b. Promotion of investors' education, awareness, and protection.

c. Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders, or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the court which had ordered disgorgement.

d. Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the tribunal and

e. Any other purpose incidental thereto in accordance with the rules framed under the investor education and protection fund authority (accounting, audit, transfer, and refund) rules, 2016.

C. APPLICATION TO THE AUTHORITY FOR PAYMENT: According to section 125 (4), any person claiming to be entitled to the amount referred in section 125 (2) may apply to the Authority constituted under section 125 (5) for the payment of the money claimed.

D. OTHER PROVISIONS GOVERNING THE IEPF:

a. CONSTITUTION OF THE AUTHORITY FOR ADMINISTRATION OF FUND: In terms of Notification dated 13.01.201614, the Ministry of Corporate Affairs has notified sub-section (5), sub-section (6) (except with respect to the manner of administration of the Fund) and sub-section (7) of section 125 of the Act w.e.f. 13.01.2016. With this Notification, an Authority is being constituted for the administration and maintenance of accounts as well as other relevant records of the Fund.

Further, with the notification of IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016 on 13.01.2016, the **Secretary, Ministry of Corporate Affairs** shall be the ex-officio Chairperson of the Authority. In addition, there shall be 6 members (maximum limit seven) and a Chief Executive Officer who shall be the convenor of the Authority.

b. PROVISION OF REQUIRED RESOURCES BY THE CENTRAL GOVERNMENT FOR ADMINISTRATION OF THE FUND: The Central Government may provide to the Authority such offices, officers, employees, and other resources in accordance with the IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016.

c. AUTHORITY TO WORK IN CONSULTATION WITH CAG OF INDIA: The Authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor- General of India.

d. SPENDING OF MONEY: The Authority shall be competent to spend money out of the Fund for carrying out the objects specified in section 125 (3) i.e., purposes for which the fund shall be utilized.

e. **AUDIT OF THE FUND:** The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him. Such audited accounts together with the audit report thereon shall be forwarded annually by the Authority to the Central Government.

f. **PREPARATION OF ANNUAL REPORT BY THE AUTHORITY:** For each financial year, the Authority shall prepare in the prescribed form and at prescribed time its annual report giving full account of its activities during the financial year and forward a copy thereof to the Central Government. In turn, the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor - General of India to be laid before each House of Parliament.

Q.NO.13. WRITE ABOUT RIGHT OF DIVIDEND, RIGHTS SHARES AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES?

ANSWER:

According to Section 126, in case any instrument of transfer of shares has been delivered by a shareholder for registration and the transfer of such shares has not been registered by the company, such company shall take the following steps:

a. Transfer the dividend in relation to such shares to the Unpaid Dividend Account unless it is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in the instrument of transfer and

b. Keep in abeyance in relation to such shares any offer of rights shares under section 62 (1) (a) and any issue of fully paid-up bonus shares in pursuance of first proviso to section 123 (5).

Q.NO.14. WRITE ABOUT PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN THE TIME LIMIT?

ANSWER:

Section 127 of the Act contains time limit for distribution of dividends and punishment for failure to distribute dividend on time.

TIME LIMIT FOR DISTRIBUTION OF DIVIDENDS:

Where a company declares dividend, it must be paid, or the dividend warrant thereof must be posted within 30 days from the date of declaration of dividend to the shareholders entitled to the same. Posting of dividend

warrants within 30 days absolves the company from any punishment irrespective of whether it is received by the shareholder concerned within this time or not. The offence is committed only when

the company fails to post dividend warrants to the registered address of the members within 30 days of declaration. Non-receipt of dividend warrants by the shareholders within the prescribed time does not attract any punishment.

PUNISHMENT FOR FAILURE:

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

1. Every director of the company shall be punishable with imprisonment of up to 2 years, if he is knowingly a party to the default **AND**, he shall also be liable to pay minimum fine of Rs. 1,000 for every day during which such default continues.
2. The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

EXEMPTION FROM PUNISHMENT:

Under the following cases, where the company has failed to pay declared dividend within 30 days of declaration, no offence shall be deemed to have been committed and therefore, no punishment is attracted:

1. **OPERATION OF LAW:** Where the dividend could not be paid by reason of the **operation of any law**.
2. **SPECIFIC DIRECTIONS – COULDN'T BE COMPLIED:** Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.
3. **DISPUTED OWNERSHIP:** Where there is a dispute regarding the right to receive the dividend.
4. **ADJUSTED AGAINST DUES:** Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.
5. **DEFAULT IN PROCESS BY OTHERS:** Where, for any other reason, the failure to pay the dividend or to post the warrant within the prescribed period of 30 days was not due to any default on the part of the company. [E.g., Banking System failure, Postal Department Strike or Lockdown]

   EXAMPLE: Mr. Alok, holding equity shares of face value of Rs. 10 lakhs have not paid Rs. 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

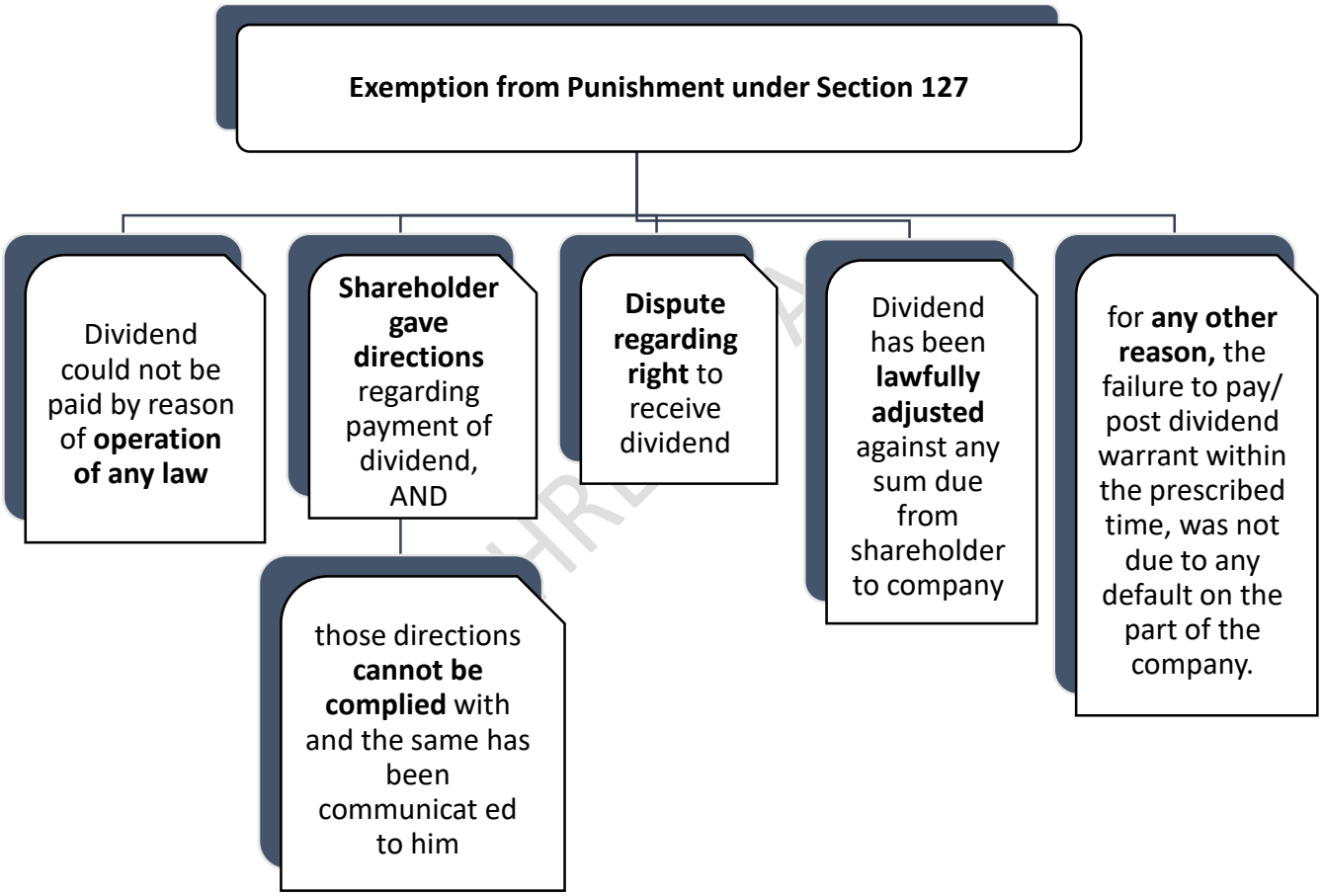
   ANSWER: Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to Rs. 80,000 is justified and therefore, no punishment is attracted.

APPLICABILITY OF SECTION 127 TO NIDHIS:

Section 127 dealing with punishment shall apply to the NIDHIS, subject to the following modification:

In case the dividend payable to a member is **Rs. 100 or less**, it shall be sufficient compliance of the provisions of the section 127, **IF** the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the NIDHIS for at least 3 months. [USELESS PROVISION]



TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. is declared **When the dividend** at the Annual General Meeting of the company, it is known as …

a. Final Dividend

b. Interim Dividend

c. Dividend on preference shares

d. Scrip Divided

2. Amount to be transferred to reserves out of profits before any declaration of dividend is _____

a. 5%

b. 7.5%

c. 10%

d. at the discretion of the company

3. The Board of Directors of Vidyut Limited are contemplating to declare interim dividend in the last week of July, 2022 but the company has incurred loss during the current financial year up to the end of June, 2022. However, it is noted that during the previous five financial years i.e., 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.

a. Maximum at the rate of 10%.

b. Maximum at the rate of 11%.

c. Maximum at the rate of 10.5%.

d. Maximum at the rate of 11.5%.

4. The amount accumulated in the Investor Education and Protection Fund shall not be used for:

a. refunds in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon.

b. reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245.

c. grants or donation to the Central Government for the purpose of investor's education and training.

d. distribution of any disgorged amount among eligible and identifiable applicants who have suffered losses.

5. In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, company shall be liable to pay simple interest at the rate of ……during the period for which such default continues.

a. 6% p.a.

b. 12% p.a.

c. 15% p.a.

d. 18% p.a

Answer to MCQ based Questions

1.	a. Final Dividend
2.	d. at the discretion of the company.
3.	b. Maximum at the rate of 11%
4.	c. grants or donation to the Central Government for the purpose of investor's education and training
5.	d. 18% p.a.

PRACTICAL QUESTIONS

Q.NO.1. THE ANNUAL GENERAL MEETING OF ABC BAKERS LIMITED HELD ON 30TH MAY, 2022, DECLARED A DIVIDEND AT THE RATE OF 30% PAYABLE ON ITS PAID-UP EQUITY SHARE CAPITAL AS RECOMMENDED BY BOARD OF DIRECTORS. HOWEVER, THE COMPANY WAS UNABLE TO POST THE DIVIDEND WARRANT TO MR. RANJAN, AN EQUITY SHAREHOLDER, UP TO 25TH JULY, 2022. MR. RANJAN FILED A SUIT AGAINST THE COMPANY FOR THE PAYMENT OF DIVIDEND ALONG WITH INTEREST AT THE RATE OF 20 PERCENT PER ANNUM FOR THE PERIOD OF DEFAULT. DECIDE IN THE LIGHT OF PROVISIONS OF THE COMPANIES ACT, 2013, WHETHER MR. RANJAN WOULD SUCCEED? ALSO, STATE THE DIRECTORS' LIABILITY IN THIS REGARD UNDER THE ACT.

ANSWER:

RELEVANT PROVISION:

As per Sec. 127 of the companies act 2013, In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

1. Every director of the company shall be punishable with imprisonment of up to 2 years, if he is knowingly a party to the default **AND**, he shall also be liable to pay minimum fine of Rs. 1,000 for every day during which such default continues.
2. The company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

CONCLUSION:

Therefore, in the given case Mr. Ranjan will not succeed if he claims interest at 20% interest as the limit under section 127 is 18% per annum.

Q.NO.2. The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

ANSWER:

RELEVANT PROVISION:

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

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

ANALYSIS AND CONCLUSION:

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.
3. **Consequences:** The following are the consequences for violation of the above provisions:
   a. Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of 2 years and shall also be liable for a minimum fine rupees Rs.1,000/- for every day during which such default continues.
   b. The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Q.NO.3. REFERRING TO THE PROVISIONS OF THE COMPANIES ACT, 2013, EXAMINE THE VALIDITY OF THE FOLLOWING:

THE BOARD OF DIRECTORS OF ABC TRACTORS LIMITED PROPOSES TO DECLARE DIVIDEND AT THE RATE OF 20% TO THE EQUITY SHAREHOLDERS, DESPITE THE FACT THAT THE COMPANY HAS DEFAULTED IN REPAYMENT OF PUBLIC DEPOSITS ACCEPTED BEFORE THE COMMENCEMENT OF THIS ACT.

ANSWER:

RELEVANT PROVISION:

Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

ANALYSIS AND CONCLUSION:

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is **NOT VALID**.

Q.NO.4. STAR COMPUTERS LIMITED DECLARED AND PAID DIVIDEND IN TIME TO ALL ITS EQUITY HOLDERS FOR THE FINANCIAL YEAR 2021-22, EXCEPT IN THE FOLLOWING TWO CASES:

i. **MRS. SHEELA BHATT, HOLDING 250 SHARES HAD MANDATED THE COMPANY TO DIRECTLY DEPOSIT THE DIVIDEND AMOUNT IN HER BANK ACCOUNT. THE COMPANY, ACCORDINGLY REMITTED THE DIVIDEND BUT THE BANK RETURNED THE PAYMENT ON THE GROUND THAT THERE WAS DIFFERENCE IN SURNAME OF THE PAYEE IN THE BANK RECORDS. THE COMPANY, HOWEVER, DID NOT INFORM MRS. SHEELA BHATT ABOUT THIS DISCREPANCY.**
ii. **DIVIDEND AMOUNT OF ₹ 50,000 WAS NOT PAID TO THE SUCCESSOR OF LATE MR. MOHAN, IN VIEW OF THE COURT ORDER RESTRAINING THE PAYMENT DUE TO FAMILY DISPUTE ABOUT SUCCESSION.**

YOU ARE REQUIRED TO ANALYSE THESE CASES WITH REFERENCE TO PROVISIONS OF THE COMPANIES ACT, 2013 REGARDING FAILURE TO DISTRIBUTE DIVIDENDS.

ANSWER:

RELEVANT PROVISION:

i. Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions could not be complied with but the non-compliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

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

ANALYSIS AND CONCLUSION:

In the present case, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its directors, etc.

Q.NO.5. ALPHA HERBALS, A SECTION 8 COMPANY IS PLANNING TO DECLARE DIVIDEND IN THE ANNUAL GENERAL MEETING FOR THE FINANCIAL YEAR ENDED 31-03-2023. MR. CHOPRA IS HOLDING 800 EQUITY SHARES AS ON DATE. STATE WHETHER THE ACT OF THE COMPANY IS ACCORDING TO THE PROVISIONS OF THE COMPANIES ACT, 2013.

ANSWER:

RELEVANT PROVISION:

According to Section 8(1) of the Companies Act, 2013, the companies licenced under Section 8 of the Act (Formation of companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

ANALYSIS AND CONCLUSION:

Hence, in the instant case, the proposed act of Alpha Herbals, a company licenced under Section 8 of the Companies Act, 2013, which is planning to declare dividend, is NOT according to the provisions of the Companies Act, 2013.

Q.NO.6. YZ MEDICAL INSTRUMENTS LIMITED IS A MANUFACTURING COMPANY & HAS PROPOSED A DIVIDEND @ 10% FOR THE YEAR 2022-2023 OUT OF THE PROFITS OF CURRENT YEAR. THE COMPANY HAS EARNED A PROFIT OF ₹ 910 CRORES DURING 2022-2023. THE COMPANY DOES NOT INTEND TO TRANSFER ANY AMOUNT TO THE GENERAL RESERVES OUT OF THE PROFITS. IS YZ MEDICAL INSTRUMENTS LIMITED ALLOWED TO DO SO? COMMENT.

ANSWER:

RELEVANT PROVISION:

According to section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2022-23. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors.

ANALYSIS AND CONCLUSION:

Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Q.NO.7. PQ LTD. DECLARED AND PAID 10% DIVIDEND TO ALL ITS SHAREHOLDERS EXCEPT MR. KUMAR, HOLDING 500 EQUITY SHARES, WHO INSTRUCTED THE COMPANY TO DEPOSIT THE DIVIDEND AMOUNT DIRECTLY IN HIS BANK ACCOUNT. THE COMPANY ACCORDINGLY REMITTED THE DIVIDEND, BUT THE BANK RETURNED THE PAYMENT ON THE GROUND THAT THE ACCOUNT NUMBER AS GIVEN BY MR. KUMAR DOESN'T TALLY WITH THE RECORDS OF THE BANK. THE COMPANY, HOWEVER, DID NOT INFORM MR. KUMAR ABOUT THIS DISCREPANCY. COMMENT ON THIS ISSUE WITH REFERENCE TO THE PROVISIONS OF THE COMPANIES ACT, 2013 REGARDING FAILURE TO DISTRIBUTE DIVIDEND.

ANSWER:

RELEVANT PROVISION:

Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

ANALYSIS AND CONCLUSION:

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Q.NO.8. ALEX LIMITED IS FACING LOSS IN BUSINESS DURING THE FINANCIAL YEAR 2022-2023. IN THE IMMEDIATE PRECEDING THREE FINANCIAL YEARS, THE COMPANY HAD DECLARED DIVIDEND AT THE RATE OF 7%, 11% AND 12% RESPECTIVELY. THE BOARD OF DIRECTORS HAS DECIDED TO DECLARE 12% INTERIM DIVIDEND FOR THE CURRENT FINANCIAL YEAR ATLEAST TO BE IN PAR WITH THE IMMEDIATE PRECEDING YEAR. IS THE ACT OF THE BOARD OF DIRECTORS VALID?

ANSWER:

RELEVANT PROVISION:

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

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

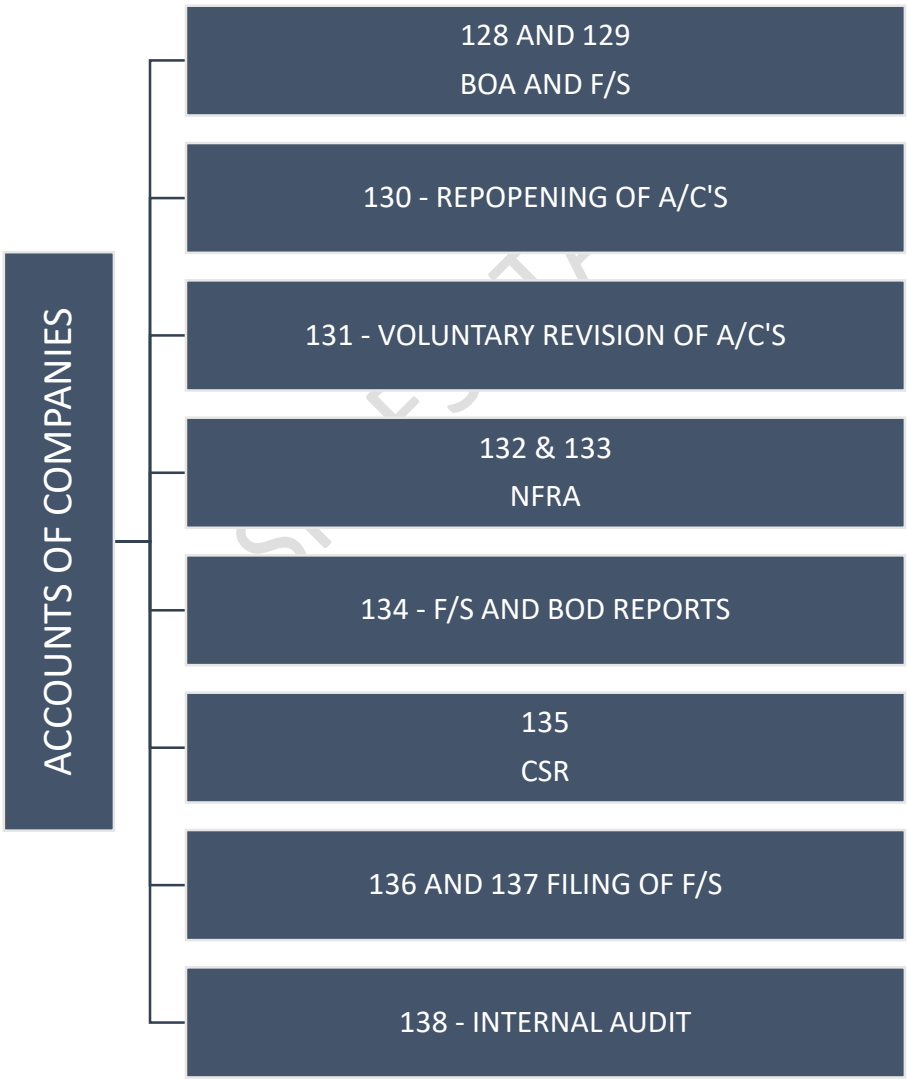
ANALYSIS AND CONCLUSION:

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2022-2023. In the immediately preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2022-2023 is NOT VALID.

9. ACCOUNTS OF COMPANIES

1. Directors who are agents of shareholders and acting in fiduciary capacity, required to report in order to disclose financial results (financial performance and position through financial results) to shareholders so that the shareholders remain aware of the working and affairs of the company.
2. As stated earlier also, chapter IX of the Companies Act, 2013, lays down various provisions related to maintenance of proper books of account of the companies and allied aspects that are explained in this chapter.



Q.NO.1. WRITE ABOUT THE PROVISIONS RELATED TO BOOKS OF ACCOUNTS U/S 128 OF COMPANIES ACT, 2013?

ANSWER:

1. **R.O AND BRANCHES:** Every company shall prepare books of accounts and other relevant books and records and financial statement for every financial year. These books of accounts should give a true and fair view of:
   - **a.** The state of the affairs of the company,
   - **b.** Its branch office(s)and
   - **c.** Explain the transactions effected both at the registered office and its branches.

2. **ACCRUAL AND DOUBLE ENTRY SYSTEM:** These books of accounts must be kept on accrual basis and according to the double entry system of accounting.
   - **a. ACCRUAL:** Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial statements. Accrual concept is one of the four principles of accounting concepts, which involves recording income and expenses as they accrue; distinct from when they are received or paid.
   - **b. DOUBLE ENTRY SYSTEM:** Double entry book-keeping is a method of recording any transaction of a business in a set of accounts, in which every transaction has a dual aspect of debit and credit and therefore, needs to be recorded in at least two accounts. Double aspect enables effective control of business because all the books of accounts must balance.

3. **DEFINITION OF "Books of account" [Section 2(13)]:**

   Books of Accounts includes records maintained in respect of:
   - **a.** All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place.
   - **b.** All sales and purchases of goods and services by the company.
   - **c.** The assets and liabilities of the company; and
   - **d.** The items of cost as may be prescribed under section 148 (Cost Audit) of the Companies Act 2013 ("Act") in the case of a company which belongs to any class of companies specified under that section.

   NOTE: "**Book and paper**" and "**book or paper**" as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

4. **PLACE OF KEEPING BOOKS OF ACCOUNT:**

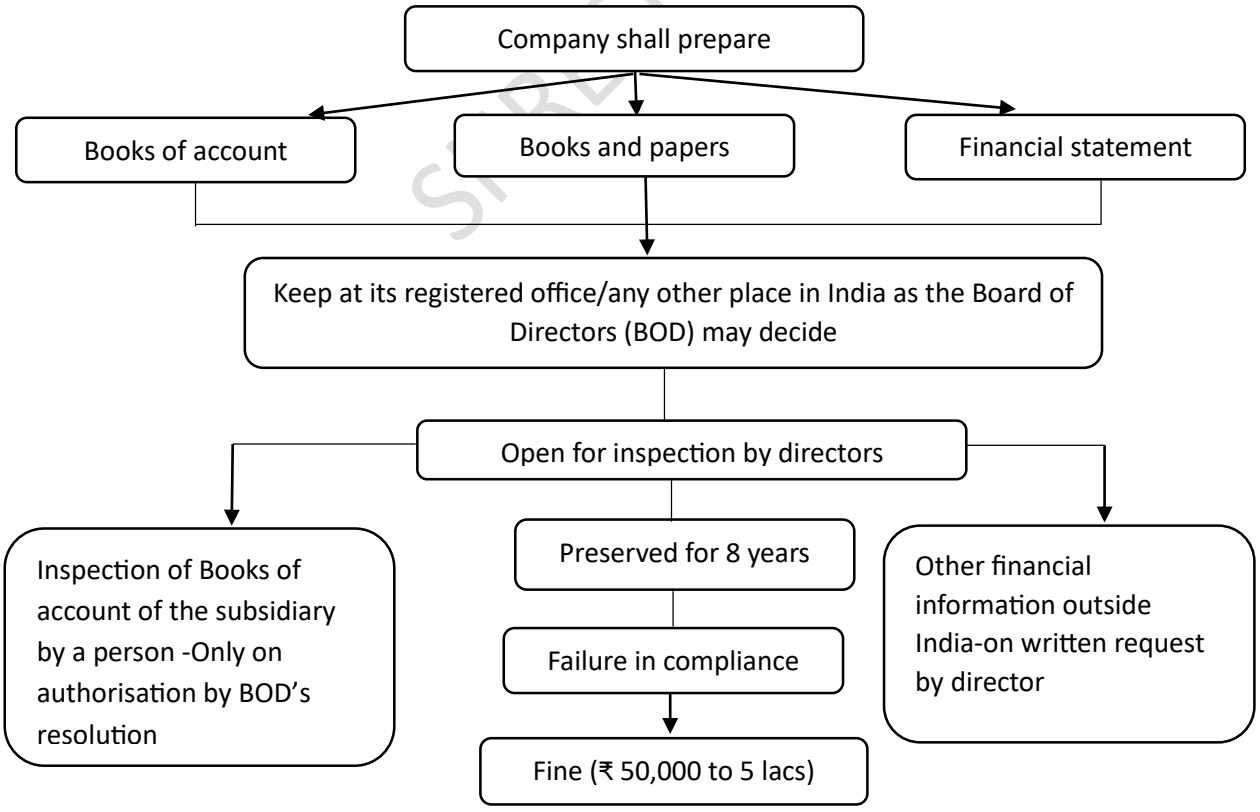
   a. **AT R.O:** Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

   b. **ANY OTHER PLACE – BOD APPROVAL:** Provided all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within 7 days thereof file with the registrar a notice in writing in form AOC-5 giving full address of that other place.

5. **BOOKS OF ACCOUNT - BRANCH OFFICE:**

   a. **BOA AT BRANCH:** Where a company has a branch office in or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office.

   b. **SUMMARY RETURNS – QUARTERLY:** The summarised returns of the books of account of the company kept and **maintained outside** India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.



Q.NO.2. WRITE ABOUT INSPECTION OF BOOKS OF ACCOUNTS UNDER SEC. 128 OF COMPANIES ACT, 2013 AND RETENTION OF BOOKS OF ACCOUNTS?

ANSWER:

1. **INSPECTION BY DIRECTORS:**
   a. **ANY DIRECTOR – BUSINESS HOURS:** As per Section 128(3), Any director can inspect the books of account and other books and papers of the company during business hours. Such inspection may be done by any type of director - nominee, independent, promoter or whole time.

   b. **BOA OF SUBSIDIARY – BOD RESOLUTION:** The proviso to (3) provides that a person can inspect the books of account of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

   c. **ASSISTANCE BY OFFICERS AND EMPLOYEES:** As per Section 128 (4), where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

   d. **OTHER FINANCIAL INFORMATION OUTSIDE INDIA:**
      1. Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought, the period for which such information is sought.
      2. The company shall produce such financial information to the director within 15 days of the date of receipt of the written request.
      3. The Director can seek the information only individually and not by or through his attorney holder or agent or representative with respect to financial information maintained outside the country [Rule 4(4) of the Companies (Accounts) Rules, 2014].

2. **PERIOD FOR PRESERVATION OF BOOKS [SECTION 128(5)]:**
   a. **8 YEARS:** The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than 8 years immediately preceding the relevant financial year.
   NOTE: In case of a company incorporated less than 8 years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved.

b. **MORE THAN 8 YEARS – INVESTIGATION:** As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

3. PERSONS RESPONSIBLE AND PENALTY:

As per Section 128 (6) the person responsible for the maintenance of books of account etc., shall be:

a. Managing Director,

b. Whole-Time Director, in charge of finance

c. Chief Financial Officer,

d. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

PENALTY FOR CONTRAVENTION:

In case the above persons fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable with fine which shall not be less than Rs. 50,000/-, but which may extend to Rs. 5,00,000/-.

Example: XYZ Ltd. wants to maintain its books of account on cash basis. Is this a valid act of XYZ Ltd?

ANSWER: The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of accounts on cash basis.

Q.NO.3. WRITE ABOUT MANNER OF MAINTENANCE OF BOOKS OF ACCOUNTS IN ELECTRONIC FORM UNDER COMPANIES ACT, 2013?

ANSWER:

A company has an option of keeping books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. Rule 3 lays down the manner of books of account to be kept in electronic mode.

1. The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India to be usable for subsequent reference.

2. **AUDIT TRAIL – COMPULSORY:** Provided that for the financial year commencing on or after the 1st day of April 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

3. **RETENTION IN ORIGINAL FORMAT:** The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

4. The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

5. **LEGIBLE FORM:** The information in the electronic record of the document shall be capable of being displayed in a legible form.

6. **STORAGE AND RETRIEVAL:** There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

7. **BACKUP COPY – IN INDIA:** The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a **Daily** basis.

8. **FILING WITH ROC:** The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement following relevant information related to service provider:
   - **a.** The name of the service provider.
   - **b.** The internet protocol (IP) address of service provider.
   - **c.** The location of the service provider (wherever applicable).
   - **d.** Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

e. Where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

Q.NO.4. WRITE ABOUT DEFINITION AND CONCEPT OF FINANCIAL STATEMENTS UNDER COMPANIES ACT, 2013?

ANSWER:

1. **DEFINITION [SEC. 2(40)]:**

   Financial Statements Includes

   a. Balance Sheet,

   b. Profit and Loss account or Income and Expenditure account [for Section 8 co.],

   c. Cash flow Statement,

   d. Statement of change in equity, if applicable and

   e. Any explanatory notes annexed to or forming part of financial statements.

   However, the financial statement with respect to one Person Company, small company and dormant company and Private company [if it is a start-up] may not include the cash flow statement.

   START – UP: For the purposes of this Act, the term "start-up" or "start-up company" means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the of Commerce and Industry."

2. **EXEMPTION - ONLY IF ACTIVE COMPLIANT:** The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

3. **SCH III AND ACCOUNTING STANDARDS:** Financial statement should be prepared for financial year and as per the requirements of:

   a. Schedule III,

   b. Accounting Standards***** and

   c. Shall present true and fair view.

*****Companies engaged in defence production exempted to the extent of application of relevant Accounting Standard on segment reporting".

NOTE:

Schedule III has been amended vide *Notification No. G.S.R. 404(E)* dated 6th April 2016 according to which Schedule III has been divided into 2 divisions.

Division I deal with financial statement for a company whose financial statement are required to comply with the *Companies (Accounting Standards) Rules, 2006.*

Division II deals with financial statement for a company whose financial statement is required to comply with the *Companies (Indian Accounting Standards) Rules, 2015.*

Q.NO.5. WRITE ABOUT THE CONCEPT OF FINANCIAL YEAR UNDER COMPANIES ACT, 2013?

ANSWER:

1. **"Financial year" [Section 2(41)],** in relation to any company or body corporate, means:
   a. **31ST MARCH OF EVERY YEAR:** the period ending on the 31st day of March every year, and
   b. **31ST MARCH OF FOLLOWING YEAR:** where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

   Example: Mahindra and Mahindra Company Limited was incorporated as a company on 22nd February 2014. Now for the purpose of the first financial statements, the period ending shall be 31st March of the following year i.e., 31st March 2015.
2. **DIFFERENT FY - HC / SC OUTSIDE INDIA:** Where a company or body corporate, which is a holding company or a subsidiary or associate company ***of a company incorporated outside India*** and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

NOTE: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of 2 years from such commencement, **align its financial year** as per the provisions of this clause.

NOTE: It is worth noting that in case of a specified IFSC public company and specified IFSC private company that is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required.

Q.NO.6. WRITE ABOUT PREPARATION AND PRESENTATION OF FINANCIAL STATEMENTS UNDER SEC. 129 OF COMPANIES ACT, 2013?

ANSWER:

1. **T & F VIEW + SCH III + AS / IND AS:**
   a. As per section 129(1), the financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified

under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

b. Non-applicability:

i. The provisions of Sec. 129(1) shall not apply to:

1. any insurance or

2. banking company or

3. any company engaged in the generation or supply of electricity, or

4. to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

c. Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose matters that are prohibited from disclosure under respective governing acts. [Example: For an Insurance Company, Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999]

2. LAYING OF F/S AT AGM: At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

3. CONSOLIDATED FINANCIAL STATEMENTS [SEC. 129(3)]:

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

b. STATEMENT OF SALIENT FEATURES OF SC / AC: The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in Form AOC-1 as per Rule 5 of the *Companies (Accounts) Rules, 2014.*

Explanation: For the purposes of this sub-section, the word "subsidiary" shall include associate company and joint venture.

c. **MANNER OF CONSOLIDATION:** Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed. Rule 6 of the Companies (Accounts) Rules, 2014 provides for the consolidation of accounts of companies in the following manner:

1. The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.
2. **In case where company is not required to prepare CFS:** A company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III of the Act.
3. For a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint Ventures or both will not be required to comply with this rule of consolidation of financial statements in respect of associate companies or joint ventures or both, as the case may be, only for the financial year commencing from the 1st day of April, 2014 and ending on the 31st day of March, 2015.
4. Nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India commencing on or after 1st April 2014.

d. **EXEMPTIONS FROM PREPARATION OF CFS:** As per *Companies (Accounts) Amendment Rules, 2016*, preparation of consolidated financial statements by a company is not required if it meets the following 3 conditions:

1. **APPROVAL OF MEMBERS:** It is a wholly owned subsidiary or is a partially-owned subsidiary of another company and ALL its other members, including those not otherwise entitled to vote [PSH's], having been intimated in writing and for which the proof of delivery of such intimation is available with the company, ***do not object to the company not presenting*** consolidated financial statements.
2. **MUST BE AN UNLISTED COMPANY:** It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in or outside India and
3. **HC PREPARES AND FILES CFS:** Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

NOTE: This exemption shall not apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India.

e. The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, also apply to the consolidated financial statements **[Section 129(4)]**.

4. **NON-COMPLIANCE OF AS / IND AS [SEC. 129(5)]:** Where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements:
   - **a.** The deviation from the accounting standards,
   - **b.** The reasons for such deviation and
   - **c.** The financial effects, if any, arising out of such deviation**.**

5. **SPECIAL EXEMPTION BY CG [SEC 129(6)]:** The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. [E.g., Exemptions granted to government companies engaged in production of Defence Equipment's to the extent of application of relevant Accounting Standard on segment reporting.]

   Note: The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in
   - **a.** Filing its financial statements under section 137 of the said act or
   - **b.** Annual return under section 92 of the said act with the registrar

6. **PENAL PROVISIONS [SECTION 129(7)]:**

   If a company contravenes the provisions of this section:
   1. The managing director,
   2. The whole-time director in charge of finance,
   3. The chief financial officer or
   4. Any other person charged by the board with the duty of complying with the requirements of this section and
   5. In the absence of any of the officers mentioned above, all the directors shall be punishable with:

a. **Imprisonment** for a term which may extend to 1 year or
b. with **fine** which shall not be less than 50 thousand rupees, but which may extend to 5 lakh rupees, or
c. with **both.**

Q.NO.7. EXPLAIN THE PROVISIONS RELATED TO PERIODICAL FINANCIAL RESULTS UNDER SEC. 129A OF COMPANIES ACT, 2013?

ANSWER:

The Central Government may, require such class or classes of unlisted companies, as may be prescribed

a. **PREPARE PERIODICAL RESULTS [PR]:** To prepare the financial results of the company on such periodical basis and in such form as may be prescribed.
b. **LIMITED REVIEW / AUDIT OF PR:** To obtain approval of the board of directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed and
c. **FILING WITH ROC:** File a copy with the registrar within a period of 30 days of completion of the relevant period with such fees as may be prescribed.

Additional Reading: *At present there are over 11 lakh unlisted companies actively operating in India. Some of these are really large enough with widely-spread interests [to name top 10 as on Dec 2022 - Serum Institute of India (Valued at ₹ 2,19,700 cr), Byju's (₹ 1,82,000 cr), NSE (₹ 1,39,000 cr), Swiggy (₹ 88,600 cr), OYO (₹ 77,800 cr), Dream 11 (₹ 66,200 cr), Parle Products (₹ 62,600 cr), Razorpay (₹ 62,100 cr), Ola (₹ 60,500 cr), and Intas Pharma (₹ 59,300 cr)] that make corporate governance critical issue in case of such unlisted companies as well. Hence this new section inserted vide Amendment Act of 2020 aims to improve corporate governance of certain class or classes of unlisted companies by requiring them to prepare financial results on 'periodic' basis in addition to annual submission of financial reports.*

Q.NO.8. WRITE ABOUT REOPENING OF ACCOUNTS ON COURT'S ORDER OR TRIBUNALS ORDER u/s 130 OF COMPANIES ACT, 2013?

ANSWER:

A. **APPLICATION BY WHOM:** A company shall not re-open its books of account and not recast its financial statements, **unless an application in this regard** is made by-
   1. The Central Government,

2. The Income-tax authorities,
3. The Securities and Exchange Board of India (SEBI),
4. Any other statutory regulatory body or authority or
5. Any person concerned

B. APPLICATION TO WHOM:

1. A court of competent jurisdiction or
2. The tribunal

C. ORDER OF COURT / TRIBUNAL: The Competent court or Tribunal may pass an order to revise the accounts and recast the financial statements of the company, if they satisfied that:

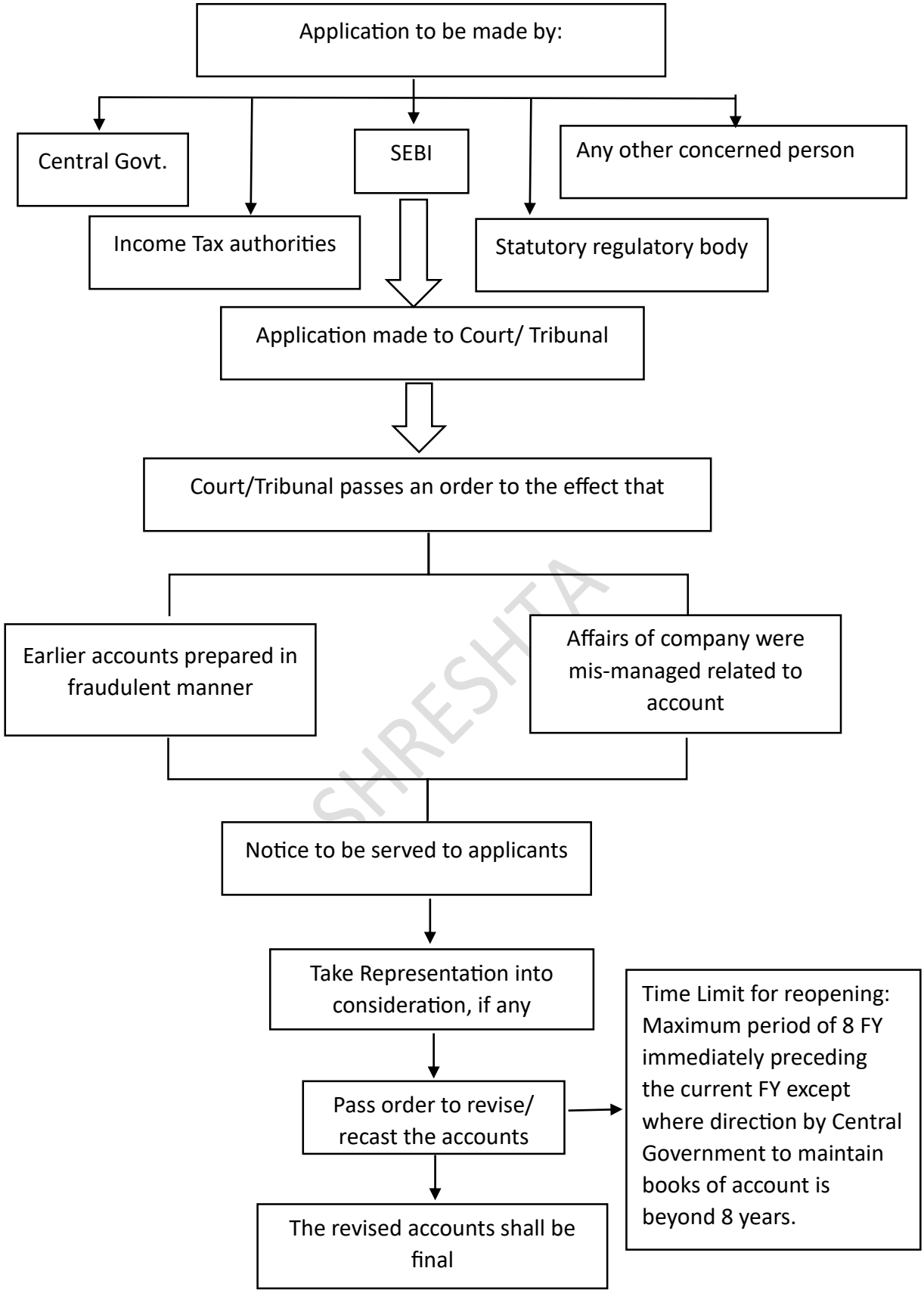
1. The relevant earlier accounts were prepared in a fraudulent manner or
2. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

SEEK REPRESENTATION: the Court or the Tribunal shall give notice to applicant and shall take into consideration the representations, if any, made by them before passing any order under this section [Sub- section (1)].

D. REVISED ACCOUNTS SHALL BE FINAL: The accounts so revised or re-casted, shall be final.

E. 8 YEARS TIME LIMIT FOR PASSING REOPENING OF A/C'S: No order shall be made in respect of re-opening of books of account relating to a period ***earlier than 8 financial years*** immediately preceding the current financial year.

However, If the CG made an order to retain BOA for more than 8 Years then order for Reopening of accounts can be made for such longer period.


Application to be made by:
Central Govt.
SEBI
Any other concerned person
Income Tax authorities
Statutory regulatory body
Application made to Court/ Tribunal
Court/Tribunal passes an order to the effect that
Earlier accounts prepared in fraudulent manner
Affairs of company were mis-managed related to account
Notice to be served to applicants
Take Representation into consideration, if any
Pass order to revise/ recast the accounts
Time Limit for reopening: Maximum period of 8 FY immediately preceding the current FY except where direction by Central Government to maintain books of account is beyond 8 years.
The revised accounts shall be final

Q.NO.9. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [SECTION 131]?

ANSWER:

A. REVISED FINANCIAL STATEMENT OR REVISED BOD: If it appears to the directors of a company that—

1. The financial statement of the company or

2. The report of the board,

Do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the **3** preceding financial years.

B. PRIOR APPROVAL OF NCLT: Revision can only be made only after obtaining approval of the Tribunal on an application made by the company.

C. FILING OF ORDER WITH ROC:

a. After obtaining approval of the Tribunal on an application made by the company in Form No. NCLT 1 within 14 days of the decision taken by the Board.

b. A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy.

D. TRIBUNAL TO SERVE THE NOTICE:

a. Tribunal shall give notice to the Central Government, SEBI, or any Statutory regulatory Body, the Income tax authorities or any other person concerned and

b. Tribunal shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

E. ONLY 1 TIME REVISION:

a. Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

b. In other words, when a company has revised its financial statement or boards report pertaining to any of the 3 preceding financial years and such revised financial statement or boards report shall not be revised again for the period it has been so revised [Later].

F. REASON FOR REVISION TO BE DISCLOSED: The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

G. LIMITS OF REVISIONS – REASONS: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to:

- **a.** The correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134 and
- **b.** The making of any necessary consequential alternation.

H. FRAMING OF RULES BY THE CENTRAL GOVERNMENT: The Central Government may make rules in relation to revised financial statement or a revised director's report and such rules may:

- **a.** Make different provisions according to which the previous financial statement or report are:
  - **i.** replaced or
  - **ii.** supplemented by a document indicating the corrections to be made.
- **b.** Make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report.
- **c.** Require the directors to take such steps as may be prescribed.

I. Rule 77 of the National Company Law Tribunal Rules, 2016 requires:

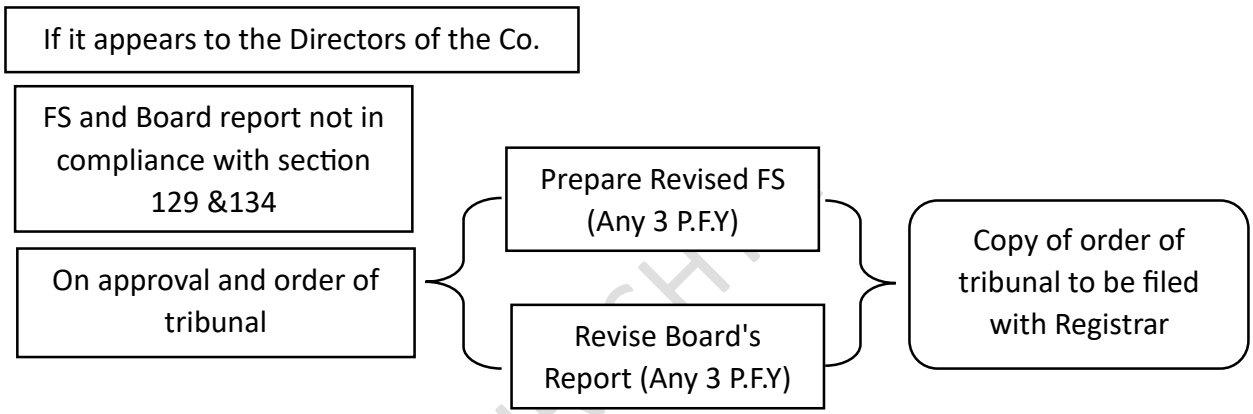
- **a.** The application shall contain the following particulars/details, namely:
  - **i.** Financial year or period to which such accounts relates;
  - **ii.** The name and contact details of the Managing Director, Chief Financial Officer, directors, Company Secretary and officer of the company responsible for making and maintaining such books of account and financial statement;
  - **iii.** Where such accounts are audited, the name and contact details of the auditor or any former auditor who audited such accounts;
  - **iv.** Copy of the Board resolution passed by the Board of Directors;
  - **v.** Grounds for seeking revision of financial statement or Board's Report;
  - **vi.** In case the majority of the directors of company or the auditor of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such facts in the application.
- **b.** The company shall advertise the application at least 14 days before the date of hearing;
- **c.** The Tribunal shall issue notice to the auditor of the original financial statement and heard him.
- **d.** The Tribunal may pass appropriate order in the matter as may deem fit, after considering the application, hearing the auditor and/or any other person.

e. On receipt of approval from Tribunal a general meeting may be called and notice of such general meeting along with reasons for change in financial statements may be published in newspaper in English and in vernacular language.

f. The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

g. In the general meeting, the revised financial statements**,** statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.

h. On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the **Registrar** of Companies **within 30 days** of the date of approval by the general meeting.



Q.NO.10. WRITE ABOUT CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY U/S 132 OF THE COMPANIES ACT, 2013, ITS FUNCTIONS AND POWERS?

ANSWER:

A. CONSTITUTION OF NFRA [SEC 132(1)]: The Central Government may, by notification, constitute the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act. The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

B. FUNCTIONS OF NFRA [SEC 132(2)]: The NFRA shall:

a. Maintain details of particulars of auditors appointed in the companies and bodies corporate governed by NFRA

Note:

For the purpose of recommending accounting standards or auditing standards for approval by the Central Government, Rule 6 requires, the NFRA:

- ❖ *Shall receive recommendations from the Institute of Chartered Accountants of India (ICAI) on proposals for new accounting standards or auditing standards or for Amendment to existing accounting standards or auditing standards;*
- ❖ *May seek additional information from the ICAI on the recommendations received under clause (a), if required.*

The Authority shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

b. Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards.

c. Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed

Note: *NFRA:*

1. *May review the financial statements of such company or body corporate, as the case may be, and if so required, direct such company or body corporate or its auditor by a written notice, to provide further information or explanation or any relevant documents relating to such company or body corporate, within such reasonable time as may be specified in the notice.*
2. *May require the personal presence of the officers of the company or body corporate and its auditor for seeking additional information or explanation in connection with the review of the financial statements of such company or body corporate.*
3. *Shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.*
4. *Where the Authority finds or has reason to believe that any accounting standard has or may have been violated, it may decide on the further course of investigation or enforcement action through its concerned Division.*

*For the purpose of monitoring and enforcing compliance with **auditing standards** under the Act by a company or a body corporate, Rule 8 requires NFRA:*

1. *May review working papers (including audit plan and other audit documents) and communications related to the audit;*
2. *May evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and*
3. *May perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.*

4. *May require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.*
5. *May seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.*
6. *Shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.*
7. *Shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.*
8. *Shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.*
9. *May send a separate report containing proprietary or confidential information to the Central Government for its information.*
10. *Where the Authority finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.*

d. Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed and

Notes

1. *On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.*
2. *It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.*
3. *The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.*
4. *The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.*

5. *The NFRA may take the assistance of experts for its oversight and monitoring activities.*

e. Promote awareness in relation to the compliance of accounting standards and auditing standards;

f. Co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and

g. Perform such other functions ad duties as may be necessary or incidental to the aforesaid functions and duties.

Note:

The Central Government may,

a. By notification,

b. Delegate any of its powers or functions under the Act to NFRA, other than the power to make rules;

c. Subject to such conditions, limitations and restrictions as may be specified in such notification.

Sub-section 2 has overriding effects anything contained in any other law for the time being in force.

C. POWERS OF NFRA [SEC 132(4)]: The NFRA shall have:

a. The power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants.

NOTE: **No other institute or body shall initiate or continue** any proceedings in such matters of misconduct where the NFRA has initiated an investigation under this section.

b. The same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

i. Discovery and production of books of account and other documents, at such place and at such time as may be specified by the NFRA.

ii. Summoning and enforcing the attendance of persons and examining them on oath.

iii. Inspection of any books, registers and other documents of any person referred in clause (b)**members of ICAI**.

iv. Issuing commissions for examination of witnesses or documents.

c. Where **professional or other misconduct** [as per CA Act, 1949] is **proved**, the NFRA shall have the power to make order for:

   a. Imposing **penalty** of:

      i. Not less than 1 lakh rupees, but which may extend to 5 times of the fees received, **in case of individuals** and

      ii. Not less than 5 lakh rupees, but which may extend to 10 times of the fees received, **in case of firms**

   b. **Debarring** the member or the firm from:

      i. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate or

      ii. Performing any valuation as provided under section 247,

      for a minimum period of 6 months or such higher period not exceeding 10 years as may be determined by the National Financial Reporting Authority.

d. **Appeal to NCLAT against orders of NFRA:** Any person aggrieved by any order of the National Financial Reporting Authority may prefer an appeal before the Appellate Tribunal in such manner and on payment of such fee as may be prescribed.

Q.NO.11. WRITE ABOUT COMPOSITION OF NFRA AND OTHER ADMINISTRATIVE ASPECTS OF NFRA U/S 132 OF COMPANIES ACT? [NOT IMP FOR EXAMS]

ANSWER:

A. COMPOSITION OF NFRA [SEC 132(3)]: [NOT IMP FOR EXAMS]

1. The NFRA shall consist of a chairperson, who shall be a person of eminence and having expertise in *accountancy, auditing, finance or law* to be appointed by the Central Government and such other members not exceeding 15 consisting of parttime and full-time members as may be prescribed.
2. Each division of the NFRA shall be presided over by the Chairperson or a full-time member authorised by the Chairperson.
3. There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions.
4. Chairperson and Members shall be appointed by the Central Government in the manner and on the terms as prescribed under the National Financial Reporting Authority (Manner of

Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018

5. The chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.
6. The chairperson and members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and 2 years after ceasing to hold such appointment.
7. The following persons shall be appointed as part time members of NFRA, namely:
   a. One member to represent the MCA, who shall be an officer not below the rank of Joint Secretary, ex-officio;
   b. One member to represent the CAG of India, who shall be an officer not below the rank of Accountant General or Principal Director, ex-officio;
   c. One member to represent the RBI, who shall be an officer not below the rank of Executive Director, ex-officio;
   d. One member to represent the SEBI, who shall be an officer not below the rank of Executive Director, ex-officio;
   e. President, ICAI, ex-officio;
   f. Chairperson, Accounting Standards Board, ICAI, ex-officio;
   g. Chairperson, Auditing and Assurance Standards Board, ICAI, ex-officio; and
   h. Two experts from the field of accountancy, auditing, finance or law.
8. Sub-section 11 empowers the Central Government to appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

B. **MEETINGS OF NFRA:** The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.

C. **SECRETARY AND OTHER EMPLOYEES:** The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

D. **HEAD OFFICE OF NFRA:** The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.

E. **MAINTENANCE OF BOOKS BY NFRA:** The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.

F. **AUDIT OF ACCOUNT OF NFRA:** The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

G. **ANNUAL REPORT ON WORKING OF NFRA:** The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

Q.NO.12. WRITE ABOUT CLASS OF COMPANIES COVERED UNDER NFRA?

ANSWER:

Rule 3 of NFRA Rules, the classes of companies and bodies corporate governed by the NFRA includes:

a. **LISTED COMPANIES:** Companies whose securities are listed on any stock exchange in India or outside India.

b. **UNLISTED PUBLIC COMPANIES:** Unlisted public companies having:
   - **a.** Paid-up capital of not less than rupees 500 crores **or**
   - **b.** Annual turnover of not less than rupees 1,000 crores **or**
   - **c.** In aggregate, outstanding loans, debentures and deposits of not less than rupees 500 crores as on the 31st of March of immediately preceding financial year.

c. **SPECIAL ENTITIES:**

   a. Insurance companies,

   b. Banking companies,

   c. Companies engaged in the generation or supply of electricity,

   d. Companies governed by any special Act for the time being in force or

   e. Bodies corporate incorporated by an Act.

d. **ENTITIES REFERRED BY CG:** Any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and

e. **MATERIAL SC / AC OF ABOVE:** A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.

NOTE:

1. **FORM NFRA - 1:** Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules. [REDUNDANT PROVISION]

2. A company or a body corporate shall continue to be governed by the NFRA for a period of 3 years **after it ceases to be listed** or **its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated** therein [i.e., mentioned in points (a) to (e) above].

3. **PUNISHMENT IN CASE OF NON-COMPLIANCE:** If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of NFRA Rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per under section 450 of the Act.

Q.NO.13. WRITE ABOUT PRESCRIBING OF ACCOUNTING STANDARDS BY CENTRAL GOVERNMENT U/S 133 OF COMPANIES ACT, 2013?

ANSWER:

ACCOUNTING STANDARDS [SECTION 133]

Section 133 of the Companies Act, 2013 deals with the power of the Central Government to prescribe the accounting standards.

1. The Central Government may prescribe the standards of accounting, or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA.
2. Provided that until the NFRA is constituted under section 132 of the Companies Act, 2013, the Central Government may prescribe the standards of accounting, or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards (NACAS) constituted under the previous company law.

Q.NO.14. WRITE ABOUT APPROVAL OF FINANCIAL STATEMENTS BY BOARD OF DIRECTORS?

ANSWER:

A. **SNAPSHOT:** Section 134 provides that the financial statement including consolidated financial statements should be approved by the Board of Directors **before** they are signed and submitted to auditors for their report. The auditor's report is to be attached to every financial statement. A report by the Board of Directors containing details on the matters specified including Director's responsibility statement shall be attached to every financial statement laid before the company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company in case of any contravention.

B. **AUTHENTICATION OF FINANCIAL STATEMENTS [SECTION 134(1), (2) & (7)]:**

1. The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board **AT LEAST BY:**
   a. The chairperson of the company where he is authorised by the Board **OR** by 2 directors out of which 1 shall be managing director, if any, **and**
   b. The Chief Executive Officer **and**

c. The Chief Financial Officer **and**

d. The Company Secretary of the company, wherever they are appointed.

2. **ONE PERSON COMPANY:** In the case of One person company, only by 1 director, for submission to the auditor for his report thereon.
3. The auditors' report shall be attached to every financial statement [Sub- section (2)].
4. A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy of [Section 134(7)]:

   a. Any notes annexed to or forming part of such financial statement.

   b. The auditor's report and

   c. The Board's report.

   Example 3: The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

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

   a. any notes annexed to or forming part of such financial statement.

   b. the auditor's report and

   c. the Board's report.

   It, therefore, follows that unaudited accounts **cannot** be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So, such an act of ABC Ltd, is not tenable.

Q.NO.15. WRITE ABOUT BOARD OF DIRECTORS REPORT OR BOARD REPORT AND CONTENTS THERE IN AS PER THE COMPANIES ACT 2013?

ANSWER:

A. BOARD'S REPORT [SECTION 134(3) & (4) READ WITH RULE 8 OF THE COMPANIES (ACCOUNTS) RULES, 2014]:

According to Rule 8 of *the Companies (Accounts) Rules, 2014,* the Board's Report shall be prepared based on the standalone financial statement of the company and shall report on the highlights of performance of **subsidiaries, associates and joint venture** companies and their contribution to the overall performance of the company during the period under report.

B. CONTENTS OF BOARD REPORT [SEC 143(3) and RULE 8]: [NOT IMP FOR EXAMS]

The following are the contents of the board's report:

1. **The web address, if any, where annual return has been placed.**
2. **Number of meetings of the board.**
3. Directors' responsibility statement.
4. Details in respect of frauds reported by auditors under sub-section (12) of section 143 (powers and duties of auditors and auditing standards) other than those which are reportable to the central government.
5. **A statement on declaration given by independent directors under sub-section (6) of section 149 (company to have board of board of directors in relation to independent director).**
6. In case of a company covered under sub-section (1) of section 178 (nomination and remuneration committee and stakeholders relationship committee), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178.

   Note: the above clause shall not apply in the case of a government company.

   The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar
7. **Explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made:**
   a. **By the auditor in his report and**
   b. **By the company secretary in practice in his secretarial audit report.**
8. Particulars of loans, guarantees or investments under section 186.
9. Particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the form aoc-2.
10. The state of the company's affairs.
11. **The amounts, if any, which it proposes to carry to any reserves.**
12. **The amount, if any, which it recommends should be paid by way of dividend.**
13. Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report

14. The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; however, the govt. Companies engaged in producing defence equipment is exempted from disclosure under this clause.

15. A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the board may threaten the existence of the company.

16. The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

17. In case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the board, its committees and of individual directors has been made.

Note: *according to rule 8(4), every listed company and every other public company having a paid-up share capital of 25 crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its board of directors, a statement indicating the manner in which formal annual evaluation has been made by the board of its own performance and that of its committees and individual directors.*

Exemption to government company*- the above clause shall not apply, in case the directors are evaluated by the ministry or department of the central government which is administratively in charge of the company, or, as the case may be, the state government, as per its own evaluation methodology [vide notification dated 5 june 2015].*

18. Such other matters as may be prescribed [see **]**.

Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the board's report.

Note: provided further that where the policy referred to in clause (6) or clause (17) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the board's report and the web-address is indicated therein at which the complete policy is available.

**According to Rule 8 of the *Companies (Accounts) Rules, 2014,* the report of the Board shall also contain–

I. The **financial summary or highlights**.

II. The **change in the nature of business**, if any.

III. The **details of directors or key managerial personnel who were appointed or have resigned** during the year.

IV. A statement regarding **opinion of the board with regard to integrity, expertise and experience (including the proficiency) of the independent directors** appointed during the year.

Explanation: for the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150 (manner of selection of independent directors and maintenance of databank of independent directors).

V. The **names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies** during the year.

VI. The details relating to deposits like:

- **a.** Accepted during the year.
- **b.** Remained unpaid or unclaimed as at the end of the year.
- **c.** Whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved:
  1. At the beginning of the year.
  2. Maximum during the year.
  3. At the end of the year.

VII. The details of deposits which are not in compliance with the requirements of chapter v (acceptance of deposits by companies) of the act.

VIII. The **details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status** and company's operations in future.

IX. The details in respect of adequacy of internal financial controls with reference to the financial statements.

X. A disclosure, as to whether maintenance of cost records as specified by the central government under sub-section (1) of section 148 of the companies act, 2013, is required by the company and accordingly such accounts and records are made and maintained,

XI. A statement that the company has complied with provisions relating to the constitution of internal complaints committee under the sexual harassment of women at workplace (prevention, prohibition and redressal) act, 2013.

XII. ***The details of application made or any proceeding pending under the insolvency and bankruptcy code, 2016 during the year alongwith their status as at the end of the financial year.***

XIII. ***The details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the banks or financial institutions along with the reasons thereof.***

Non- applicability of Rule 8 of Companies (Accounts) Rules, 2014: This rule shall not apply to One Person Company or Small Company. [Abridged BR will apply]

C. **ABRIDGED BOARD'S REPORT [SECTION 134(3A)]:** The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

The Board's Report of One Person Company and Small Company shall be prepared based on the stand-alone financial statement of the company, which shall be in abridged form and contain the following;

a. The web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

b. Number of meetings of the Board;

c. Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

d. Details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

e. Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

f. The state of the company's affairs;

g. The financial summary or highlights;

h. Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

i. The details of directors who were appointed or have resigned during the year;

j. The details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

The particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

D. BOARD'S REPORT IN CASE OF OPC [SECTION 134(4)]: In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

E. SIGNING OF BOARD'S REPORT [SECTION 134(6)]:

The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, 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.

F. PUNISHMENT FOR CONTRAVENTION [SECTION 134(8)]:

If a company is in default in complying with the provisions of this section:

1. **The company** shall be liable to a penalty of RS. 3,00,000/- and
2. **Every officer of the company who is in default** shall be liable to a penalty of RS. 50,000/-.

Example 4: ABC Company is a one person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?
Answer: 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. So, the financial statements signed by one director shall be considered in order.

Q.NO.16. WRITE ABOUT CONTENTS OF DIRECTORS RESPONSIBILITY STATEMENT?

ANSWER:

DIRECTORS' RESPONSIBILITY STATEMENT [SECTION 134(5)]: The Directors' Responsibility Statement shall state that:

1. In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.
2. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period.
3. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.

4. The directors had prepared the annual accounts on a going concern basis.
5. The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

   Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including:

   a. Adherence to company's policies,

   b. The safeguarding of its assets,

   c. The prevention and detection of frauds and errors,

   d. The accuracy and completeness of the accounting records, and

   e. The timely preparation of reliable financial information.
6. The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Q.NO.17. WRITE ABOUT CORPORATE SOCIAL RESPONSIBILITY AND ACTIVIES COVERED AS PER SEC 135 OF THE COMPANIES ACT, 2013?

ANSWER:

Corporate Social Responsibility (CSR) implies a concept, whereby companies decide to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general.

The provisions related with Corporate Social Responsibility are covered under section 135 and Companies (Social Responsibility Policy) Rules, 2014.

A. NON-APPLICABILITY: In case of specified IFSC public & IFSC private company, section 135 shall not apply for period of **5 years from the commencement of business**.

B. KEY DEFINITIONS:

1. **CORPORATE SOCIAL RESPONSIBILITY [CSR]:**

   "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but **SHALL NOT INCLUDE** the following, namely:

   i. **NORMAL COURSE OF BUSINESS:** Activities undertaken in pursuance of normal course of business of the company:

EXCEPTION: Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that:

a. Such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.

b. Details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report:

ii. OUTSIDE INDIA: Any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level.

iii. DONATION TO POLITICAL PARTIES: Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

iv. EMPLOYEE BENEFITS: Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019.

v. SPONSERSHIP SERVICES: Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services.

vi. STATUTORY OBLGATIONS: activities carried out for fulfilment of any other statutory obligations under any law in force in India [Rule 2(d)]

2. **CSR COMMITTEE:** "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act [Rule 2(e)]

3. **CSR POLICY:** "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan [Rule 2(f)]

4. **ADMINISTRATIVE OVERHEADS:** "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but **shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project** or programme [Rule 2(b)]

5. **INTERNATIONAL ORGANISATION:** "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply [Rule 2(g)]

   Note:

   Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

6. **NET PROFIT:** "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but **SHALL NOT INCLUDE** the following, namely:

   i. **OVERSEAS PROFITS:** Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise and
   ii. **DIVIDEND INCOME:** Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

   Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act [Rule 2(h)]

7. **ONGOING PROJECT:** "Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification [Rule 2(i)]

   Example

   Modern Furniture Limited (MFL) undertake a CSR project in light of its CSR policy; of placing and installing benches as public parks and gardens in supervision of district administration. Initially it was estimated that project will completed in span of 8-10 months; but due to renovation of half a dozen of parks the task of installing benches there postponed till the construction completed (which expected to take further couple of quarters). Board of MFL considering the circumstances declare the project an ongoing project, extend the duration beyond one year; and also provides reasonable justification. Whether board of MFL correctly re-categories the project as ongoing project or not?

Rule 2(i) of the CSR rules provides that projects which are initially of less than a year's time (therefore not registered as multi-year project) but duration of which extended beyond the one-year period, by board based on reasonable causes or justification; shall be re-categories as ongoing project. Hence decision of board of MFL is legal and valid.

8. **PUBLIC AUTHORITY:** "Public Authority" means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005 [Rule 2(j)]

Q.NO.18. WHAT ARE THE COMPANIES REQUIRED TO CONSTITUTE CSR COMMITTEE AND ITS COMPOSITION AS PER SEC 135 OF COMPANIES ACT, 2013?

ANSWER:

1. **APPLICAVBILITY OF CSR COMMITTEE:** According to section 135(1), every company having:
   - **a.** NET WORTH of Rs. 500 crore or more, or
   - **b.** TURNOVER of Rs. 1,000 crore or more or
   - **c.** NET PROFIT of Rs. 5 crore or more.

   During the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of *3 or more directors*, out of which **at least 1 director shall be an independent director*.**

   ***Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee 2 or more directors.

2. **HC / SC / FOREIGN COMPANIES:** As per Rule 3(1), every company including its holding or subsidiary, and a foreign company* defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfils the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

   ***Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

3. **MEANING OF NETWORTH:** "Net worth" [As per Section 2(57)] means:
   - **a.** The aggregate value of the paid-up share capital and
   - **b.** All reserves created out of the profits,

c. Securities premium account and

d. Debit or Credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet

BUT DOES NOT INCLUDE reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

["net profit" shall not include such sums as may be prescribed and shall be calculated in accordance with the provisions of section 198.]

Example: The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

ANSWER:

As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

Example: ABC Ltd is a company with a turnover of more than Rs.1000 crores in the preceding three financial years and having incurred a loss in one of the preceding three financial years. Will it be required to comply with CSR?

ANSWER:

As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to comply with the CSR provisions.

Hence, ABC Ltd. will be required to comply with CSR based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

4. ~~**CESSATION OF SEC 135 APPLICABILITY:** Exclusion of Companies [Rule 3(2) of the Companies (CSR) Rules, 2014]. Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for 3 consecutive financial years **SHALL NOT BE REQUIRED TO**~~

~~**a.** Constitute a CSR Committee and~~

~~**b.** Comply with the provisions contained in sub-section (2) to (6) of the said section,~~

~~till such time it meets the criteria specified in sub-section (1) of section 135.~~

5. **COMPOSITION OF CSR COMMITTEE:**

Corporate Social Responsibility Committee of the Board shall consist of 3 or more directors, out of which at least 1 director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee 2 or more directors.

COMPOSITION AS PER RULE 5: According to Rule 5(1) of the Companies (CSR) Rules, 2014:

The companies mentioned in the rule 3 shall constitute CSR Committee as under:

a. A company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director.

b. A private company having only 2 directors on its Board shall constitute its CSR Committee with two such directors.

c. With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least 2 persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

Summary of the constitution of CSR Committee in different scenarios

Category	Sub-category	Constitution
Company covered under section 135(1)	not required to appoint an independent director under section 149(4)	2 or more directors, without Independent director
	private company having only two directors	2 such directors
	a foreign company	At Least 2 persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company
	Not covered in any of subcategories defined above	**3 or more directors**, out of which **at least one shall be an independent director.**

6. DISCLOSURE OF COMPOSITION OF CSR COMMITTEE:

As per SECTION 135(2), the Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

7. WHEN IT IS NOT NECESSARY TO CONSTITUTE A CSR COMMITTEE:

According to section 135(9), where the amount to be spent by a company under sub-section (5) does not exceed 50 lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

Q.NO.19. WHAT ARE THE DUTIES OF CSR COMMITTEE IN RELATION TO CSR ACTIVITIES?

ANSWER:

According to section 135(3), The Corporate Social Responsibility Committee shall:

a. RECOMMEND CSR POLICY: Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII.

b. Recommend the amount of expenditure to be incurred on the activities referred to in clause (a) and

c. Monitor the Corporate Social Responsibility Policy of the company from time to time.

d. **ANNUAL ACTION PLAN:** According to Rule 5(2) of Companies (CSR) Rules, 2014, The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:

   1. The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act.
   2. The manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4.
   3. The modalities of utilisation of funds and implementation schedules for the projects or programmes.
   4. Monitoring and reporting mechanism for the projects or programmes and
   5. Details of need and impact assessment, if any, for the projects undertaken by the company: Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Q.NO.20. WHAT ARE THE DUTIES OF THE BOARD OF BOARD OF DIRECTORS IN RELATION TO CSR?

ANSWER:

According to 135(4), the Board of every company referred to in sub-section (1) shall:

a. **APPROVE THE CSR POLICY:** After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

b. Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

c. **Display of CSR activities on its website:** The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access. [Rule 9 of the Companies (CSR Policy) Rules, 2014]

Q.NO.21. WHAT IS THE MINIMUM AMOUNT TO BE SPENT FOR CSR ACTIVITIES?

ANSWER:

A. **2% OF AVERAGE NET PROFITS:** According to section 135(5), The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year:

   a. **EXISTING CO's: At least 2% of the average net profits** of the company made during the 3 immediately preceding financial years or

b. **NEW CO's:** Where the company has not completed the period of 3 financial years since its incorporation, **during such immediately preceding financial years**, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

B. **FAILURE TO SPEND THE REQUIRED MINIMUM:** If the company fails to spend such amount:

a. **DISCLOSE IN BOD REPORT:** The Board shall specify the reasons for not spending the amount in Board Report and

b. **UNSPENT AMOUNT OTHER THAN ONGOING PROJECTS:** Transfer such unspent amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

c. **UNSPENT AMOUNT FOR ONGOING PROJECTS:** According to section 135(6), any amount remaining unspent under sub-section (5), pursuant to any ongoing project shall be transferred by the company within a period of 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of **3 financial years from the date of such transfer**, FAILING WHICH, the company shall transfer the same to a Fund specified in Schedule VII, within a period of **30 days from the date of completion of the 3RD Financial year**.

C. **CLARIFICATIONS ON CSR EXPENDITURE [Rule 7 of Companies (CSR) Rules, 2014]:**

1. The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.
2. Any surplus arising out of the CSR activities shall **not form part of the business profit** of a company and shall be:
   a. Ploughed back into the same project or
   b. Shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or
   c. Transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

D. **TREATMENT FOE EXCESS EXPENDITURE SPENT:** Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding 3 financial years subject to the conditions that:

a. The excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule. *[Excluding Surplus]*

b. The Board of the company shall pass a resolution to that effect.

E. CAPITAL ASSET FOR CSR ACTIVITIES: The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by:

a. A company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4 or

b. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

c. A public authority.

NEW AMENDMENT: Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 Days with the approval of the Board based on reasonable justification.

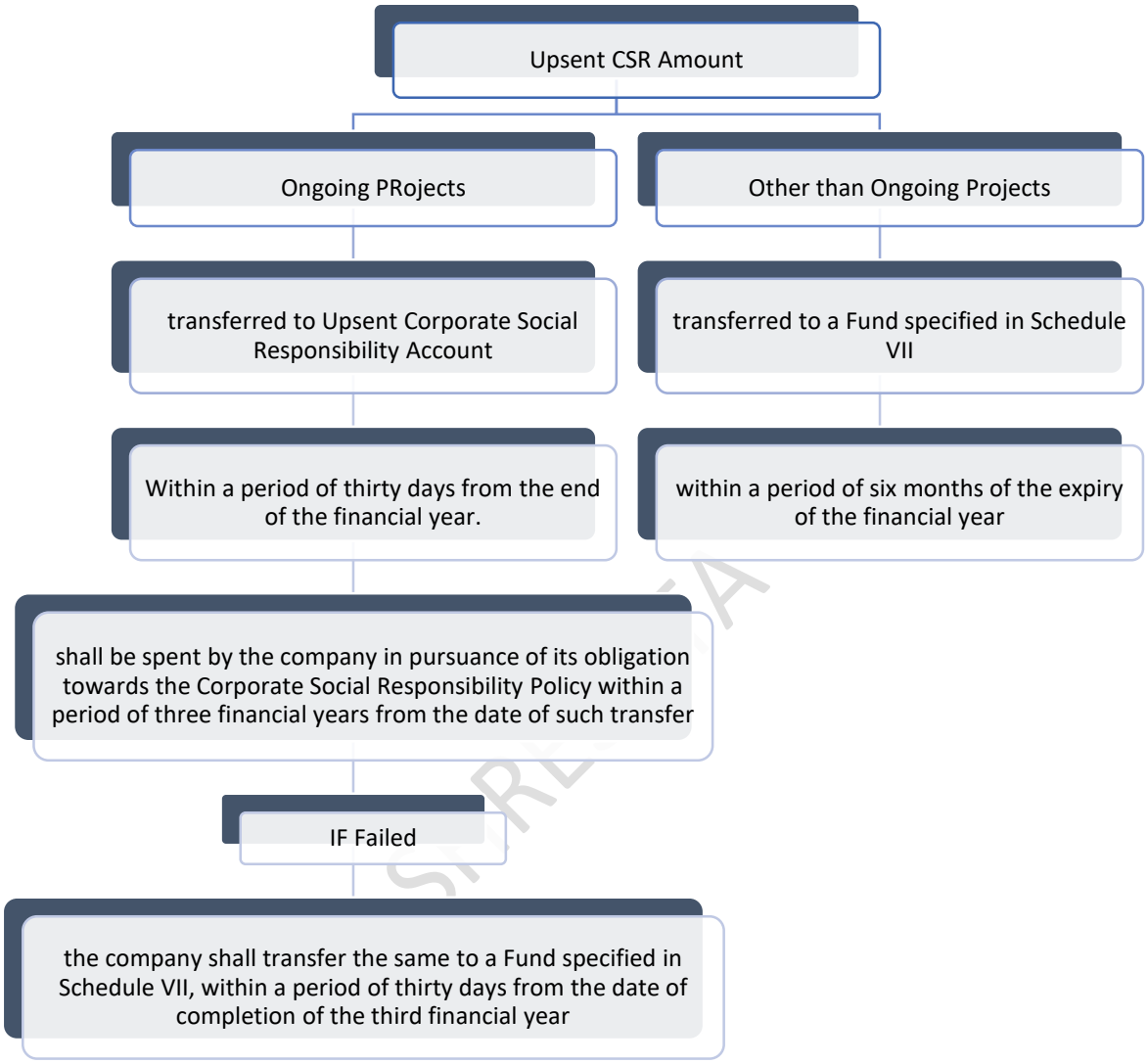
F. PENAL PROVISIONS [SEC 135(7)]:

1. **COMPANY:** If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty, **LOWER of**:
   a. TWICE the amount required to be transferred by the company to the Fund specified in Schedule VII or
   b. TWICE The Unspent Corporate Social Responsibility Account, as the case may be, or
   c. 1 crore rupees

2. **OFFICER IN DEFAULT:** Every officer of the company who is in default shall be liable to a penalty, **LOWER of:**
   a. 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII, or
   b. 1/10th The Unspent Corporate Social Responsibility Account, as the case may be, or
   c. 2 lakh rupees.

G. SPECIAL INSTRUCTIONS OF THE CENTRAL GOVERNMENT:

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions. [Section 135(8)]



Q.NO.22. WRITE ABOUT MANNER OF IMPLEMENTATION OF CSR POLICY [Rule 4 of the Companies (CSR Policy) Rules, 2014]?

ANSWER:

A. ENTITY FOR CSR EXPENDITURE: The Board shall ensure that the CSR activities are undertaken by:

1. The company itself or
2. Through
   a. A company established under section 8 of the Act, or a registered public trust or a registered society, **exempted u/s 10(23C) (iv), (v), (vi) or (via)** registered under section 12A and 80 G of the Income Tax Act, 1961, **established by the company**, either singly or along with any other company, or

b. A company established under section 8 of the Act or a registered trust or a registered society, **established by the Central Government or State Government** or

c. Any entity established under an Act of Parliament or a State legislature or

d. A company established under section 8 of the Act, or a registered public trust or a registered society, **exempted u/s 10(23C) (iv), (v), (vi) or (via)** registered under section 12A and 80G of the Income Tax Act, 1961, and **having an established track record of at least 3 years** in undertaking similar activities. [E.g., JOINT VENTURE for CSR Activities]

B. REGISTRATION OF SUCH ENTITY WITH CG:

a. Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.

b. Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

c. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

NOTE: A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

C. COLLABORATION WITH OTHER COMPANIES: A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position **to report separately** on such projects or programmes in accordance with these rules.

D. CERTIFIED BY CFO:

a. The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and

b. The Chief Financial Officer or the person responsible for financial management shall certify to the effect.

Q.NO.23. WRITE ABOUT CSR REPORTING UNDER COMPANIES ACT, 2013?

ANSWER:

1. **ANNUAL REPORT ON CSR:** The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

2. **FOREIGN COMPANIES:** The balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

3. **IMPACT ASSESSMENT:**
   - **a.** Every company having average CSR obligation of 10 crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking the impact study.
   - **b.** The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
   - **c.** A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed 2% of the total CSR expenditure for that financial year or Rs. 50 lakhs, whichever is **less**.

Q.NO.24. WHAT ARE THE ACTIVITIES SPECIFIED UNDER SCH VII RELATING TO CSR POLICIES UNDER COMPANIES ACT, 2013? [SELF STUDY] [NOT IMP FOR EXAMS]

ANSWER:

Activities which may be included by companies in their CSR Policies (i.e., Activities as specified under Schedule VII) are as follows:

1. **FOR BASIC NEEDS:** Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

2. **FOR EDUCATION AND TRAINING:** Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects.

3. **FOR EQUALITY:** Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

4. **FOR ENVIRONMENTAL SAFETY:** Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga.

5. **FOR HERITAGE, ARTS AND CRAFTS:** Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts.

6. **FOR ARMED FORCES:** Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows.

7. **FOR SPORTS:** Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports.

8. **PM FUNDS:** Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND) any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, Tribes, other backward classes, minorities and women.

9. **CONTRIBUTIONS:**
   - **a.** Contribution to incubators or research development projects in the field of science, technology, engineering and medicine, funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and
   - **b.** Contributions to public funded Universities; Indian Institute of Technology (iits); National Laboratories and Autonomous Bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other

bodies, namely Defense Research and Development Organisation (DRDO);Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGS).

10. **Rural development projects**.

11. **Slum area development**. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

12. **Disaster management**, including relief, rehabilitation and reconstruction activities.

Q.NO.25. FEW IMPORTANT CLARIFICATIONS BY MCA.

ANSWER:

The MCA vide General Circular No. 21/2014 dated 18 June 2014 has provided many clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013 which are as under:

1. The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted **liberally** so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.

2. It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode. **One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.**

3. Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

4. **Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.**

5. 'Registered Trust' would include Trusts registered under Income Tax Act 1961, for those States where registration of Trust is not mandatory.

6. Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as
   a. The Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or
   b. Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Clarifications with respect to CSR on COVID:

1. **General Circular No. 10/2020 dated 23rd March 2020**

   The Ministry of Corporate Affairs have clarified that keeping in view of the spread of novel Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organisation (WHO), and decision of Government of India to treat this as a notified disaster, **spending of CSR funds for COVID-19 is eligible CSR activity.**

   Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and disaster management. Further, as per General Circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

2. **General Circular No. 01/2021 dated 13th January 2021**

   The Ministry of Corporate Affairs have made a clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme. This Circular is in continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID19 is an eligible CSR activity , it is further clarified that **spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity** under item no. (i),(ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively. The companies may undertake the aforesaid activities subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by this ministry from time to time.

3. **General Circular No. 05/2021, dated 22nd April 2021**

A clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, **it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity** under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

4. **General Circular No. 09/2021 Dated 5th May, 2021**

A. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity,

B. It is further clarified that spending of CSR funds for

a. 'Creating health infrastructure for COVID care',

b. 'Establishment of medical oxygen generation and storage plants',

c. 'Manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or

d. Similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

C. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

D. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time.

5. **General Circular 13/2021 dated 30th July, 2021**

The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

6. General Circular 08/2022 dated 26th July, 2022

Subject: Clarification on spending of CSR funds for '**Har Ghar Tiranga' campaign**.

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

Q.NO.26. WRITE ABOUT RIGHTS OF MEMBERS TO COPIES OF AUDITED FINANCIAL STATEMENTS UNDER COMPANIES ACT, 2013?

ANSWER:

A. MUST SEND DOCUMENTS ATLEAST 21 14 Days For Sec. 8 Co's DAYS BEFORE THE MEETING:

Section 136 provides that a copy of financial statements including consolidated financial statement, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following persons **AT LEAST 21 DAYS BEFORE** the date of the meeting:

1. Every member of the company,
2. To every trustee for the debenture-holder of any debentures issued by the company, and
3. To all persons other than such member or trustee, being the person so entitled.

B. CONDITIONS FOR A PERIOD LESS THAN 21 DAYS:

According to Section 136, If the copies of the documents are sent less than 21 days before the date of the meeting, they shall be **VALID ONLY** if the following conditions are satisfied:

a. **HAVING SC:** Members holding, if the company has a share capital, majority in number entitled to vote and who represent not less than 95% Of such part of the paid-up share capital of the company as gives a right to vote at the meeting **or**

b. **NOT HAVING SC:** Members having, if the company has no share capital, not less than 95% of the total voting power exercisable at the meeting.

NOTE: It has been clarified that a company holding general meetings after giving shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/ considered in the same general meeting) at such shorter notice.

C. ADDITIONAL CONDITIONS FOR LISTED COMPANIES: In the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if:

a. The copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting and

b. A statement containing the **salient features** of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.

D. LISTED COMPANIES - PUBLISH ON WEBSITE:

a. A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

b. Every listed company having a subsidiary or subsidiaries shall:

i. **Place** separate audited accounts in respect of each of subsidiary on **its website**, if any.

ii. **Provide** a copy of separate audited or unaudited financial statements as prepared in respect of each of its subsidiary, **to any member of the company** who asks for it.

c. **FOREIGN SUBSIDIARY:** If a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary"):

i. Where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company.

ii. Where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, **a translated copy of the financial statement in English** shall also be placed on the website.

iii. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

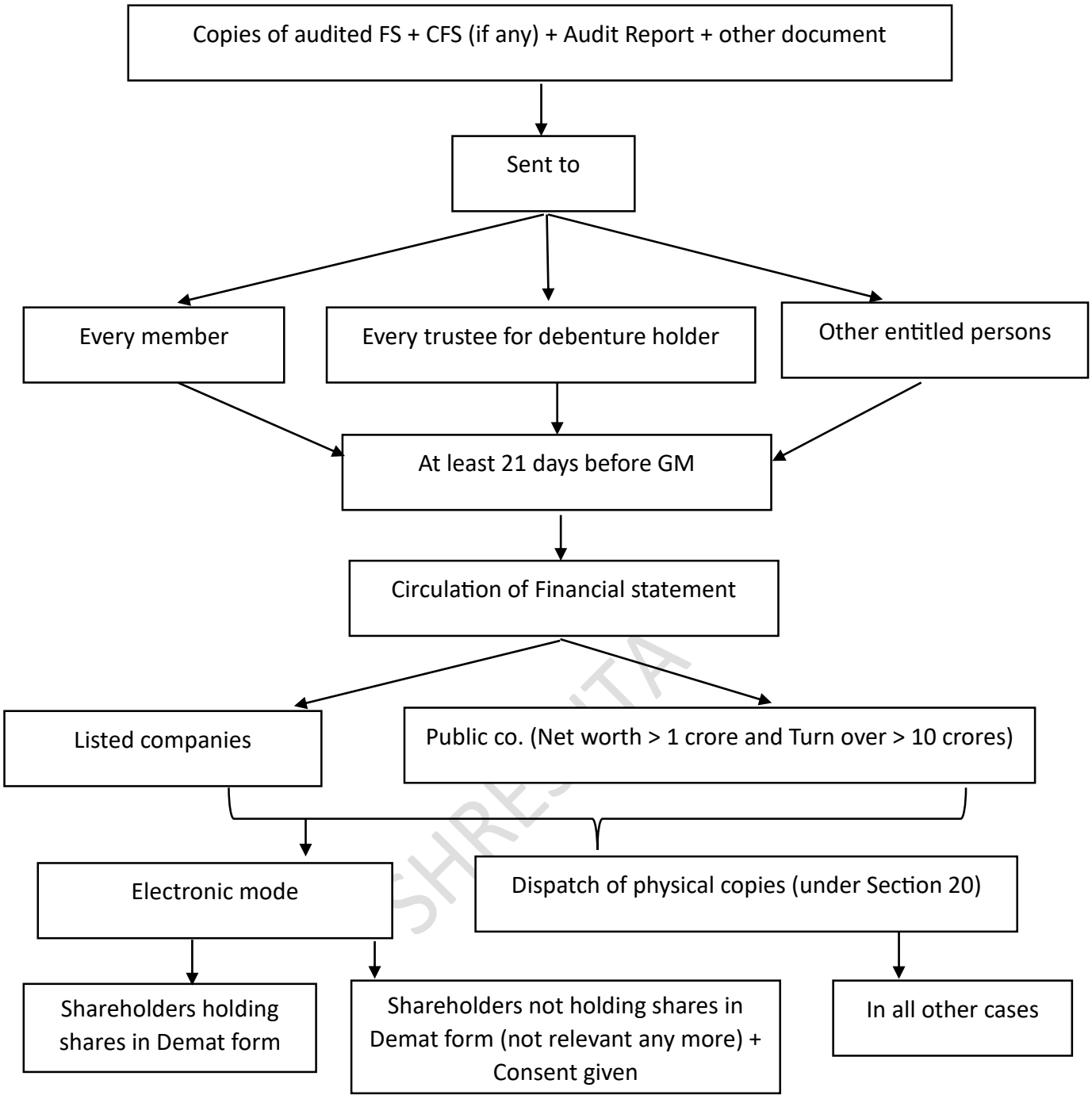
EXAMPLE: Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiary located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

ANSWER:

No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136.

In the case of a listed company, the provision 136(1) shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of not less than 21 days before the date of the meeting Along with it a statement containing the salient features of such documents in the Form AOC-3 [AOC-3A for companies which are required to comply with Companies (Indian Accounting Standard) Rules, 2015]or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company The statement is to be sent not less than 21 days before the date of the meeting **unless** the shareholders ask for full financial statements.

E. IN CASE OF NIDHI COMPANY: Section 136 (1) shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than Rs. 1,000/- in face value or more than 1%, of the total paid-up share capital, whichever is **less**, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy. [For Small Shareholders of Nidhi Company]



Q.NO.27. WRITE ABOUT MANNER OF CIRCULATION OF FINANCIAL STATEMENTS?

ANSWER:

In case of all listed companies and such public companies which have a net worth of more than 1 crore rupees **AND** turnover of more than 10 crore rupees, the financial statements may be sent *[Rule 11 of the Companies (Accounts) Rules, 2014]:*

1. **By electronic mode** to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes.

2. Where shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode (this may not be relevant considering that shareholding is not held otherwise than by dematerialized form anymore) and

3. **By dispatch of physical copies** through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

CONTRAVENTION U/S 136:

If any default is made in complying with the provisions of section 136:

1. The **company** shall be liable to a penalty of 25,000 rupees and
2. Every **officer of the company who is in default** shall be liable to a penalty of 5,000 Rupees.

It has also been clarified that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1), as applicable. These, however, would need to be translated in English, if the original accounts are not in English.

Q.NO.28. WRITE ABOUT FILING OF FINANCIAL STATEMENTS WITH ROC U/S 137 OF THE COMPANIES ACT 2013?

ANSWER:

A. FILING OF FINANCIAL STATEMENTS ADOPTED IN AGM [SECTION 137(1) & (1A)]:

1. A copy of the financial statements with form AOC-4, including consolidated financial statement with form AOC-4 CFS, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the AGM of the company, **shall be filed with the Registrar within 30 days of the date of AGM** in such manner, with such fees or additional fees as may be prescribed. [Rule 12 of the Companies (Account Rules), 2014]

2. Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) **shall file the financial statements with Registrar** together with FORM AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any with FORM AOC-4 CFS NBFC (Ind AS).

3. **XBRL FILING:** As per Rule 1 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015,* The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:
   - **a.** Companies **listed** with stock exchanges in India and their Indian subsidiaries or
   - **b.** Companies having Paid up capital of Rs. 5 Crore or above or
   - **c.** Companies having turnover of Rs. 100 Crore or above or
   - **d.** All companies which are required to prepare their financial statements in accordance *with Companies (Indian Accounting Standards) Rules, 2015.*

NOTE: The companies preparing their financial statements under the *Companies (Accounting Standards) Rules, 2006* shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under *Companies (Indian Accounting Standards) Rules, 2015*, shall file the statements using the Taxonomy provided in Annexure-II A.
Once company started reporting in XBRL format shall continue to report in XBRL format in succeeding years also, even if criteria mentioned above is not met in succeeding years.

SUMMARY OF FORM AND MANNER OF FILLING

Category	Standalone	Consolidated Financial Statement (if any)
1. Companies listed with stock exchanges in India and their Indian subsidiaries; **2.** Companies having paid up capital of five crore rupees or above; **3.** Companies having turnover of one hundred crore rupees or above; **4.** All companies which are required to prepare their financial statements in accordance with the Companies (Indian Accounting Standards) Rules, 2015	Shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format in **e-form AOC-4 XBRL** Using the Taxonomy provided in **Annexure-II** of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, if preparing their financial statements as per the Companies (Accounting Standards) Rules, 2021	
Note - Non-banking financial companies, Housing finance companies and Companies engaged in the business of banking and insurance sector are exempted from filing	Using the Taxonomy provided in **Annexure-II** A of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, if preparing their	

of financial statements under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 i.e., in XBRL format	financial statements as per Companies (Indian Accounting Standards) Rules, 2015	
Non-Banking Financial Company that is required to comply with Indian Accounting Standards	AOC-4 NBFC (Ind AS)	AOC-4 CFS NBFC (Ind AS)
Every Other Company not covered above	Form AOC-4	Form AOC-4 CFS
Every company covered under the provisions of sub-section (1) to section 135 i.e., Corporate Social Responsibility (CSR)	Shall furnish a report on CSR in Form CSR-2 as an addendum to the applicable form (out of those stated above, as the case may be).	

4. **EXEMPTION:** The following class of companies are exempted from the above rules:
   - **a.** Non-banking financial companies,
   - **b.** Housing finance companies and
   - **c.** Companies engaged in the business of banking and insurance sector.

5. **APPLICABILITY FOREVER:**
   - **a.** The companies which have filed their financial statements under sub-rule (1) and erstwhile rules shall continue to file their financial statements and other documents **though they may not fall under the class** of companies specified therein in succeeding years.
   - **b.** The companies which have filed their financial statements under the erstwhile rules, namely the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, shall continue to file their financial statements and other documents as prescribed in sub-rule (1) **though they do not fall under the class of companies specified therein**.

EXAMPLE: Amazon Company Limited, a company incorporated under the Companies Act, 2013, has a turnover of Rs. 150 crores and Rs. 90 crores during the financial year ended 31st March 2019 and 31st March 2020 respectively.

Now Amazon Company Limited shall continue to file the financial statements and other documents under section 137 in e-form AOC-4 XBRL for the financial year ended 31st March 2020 even if the company does not fall in the class of companies provided under Rule 3 of the Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2015.

B. IF THE FINANCIAL STATEMENTS ARE NOT ADOPTED [SECTION 137(1)]:

1. Where the financial statements are not adopted at AGM or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM.

2. The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

3. If the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

C. FILING BY ONE PERSON COMPANY [SECTION 137(1)]:

A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

D. COMPANY HAVING SUBSIDIARIES [SECTION 137(1)]:

1. A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India (fourth proviso to Section 137(1)). **[4th Proviso to Sec 137(1)]**
2. Where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, The **holding Indian company shall file such unaudited financial statement** along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.
3. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

EXAMPLE: Vandana Ltd., based out of India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2019, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements.

The Italian subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how should the Indian parent deal with this financial statement.

ANSWER:

Vandana Ltd. would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

E. ANNUAL GENERAL MEETING NOT HELD [SECTION 137(2)]:

Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be **filed with the Registrar within 30 days of the last date before which the AGM should** have been held and in such manner, with such fees or additional fees as may be prescribed.

F. PENALTY [SECTION 137(3)]: If any of the provisions of this section are contravened:

1. **The company** shall be liable to a penalty of **Rs. 10,000/- and in case of continuing failure, with a further penalty of Rs. 100/- for each day during which such failure continues, subject to a maximum of Rs. 2,00,000/-** and
2. **The managing director and the Chief Financial Officer** of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, **any other director who is charged by the Board** with the responsibility of complying with the provisions of this section, and, in the absence of any such director, **all the directors of the company**, shall be liable to a penalty which shall not be less than **Rs. 10,000/-**, and in case of continuing failure, with further penalty of Rs. 100/- rupees for each day after the first during which such failure continues, subject to a maximum of **Rs. 50,000/-**.

EXAMPLE: The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2018 was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

ANSWER:

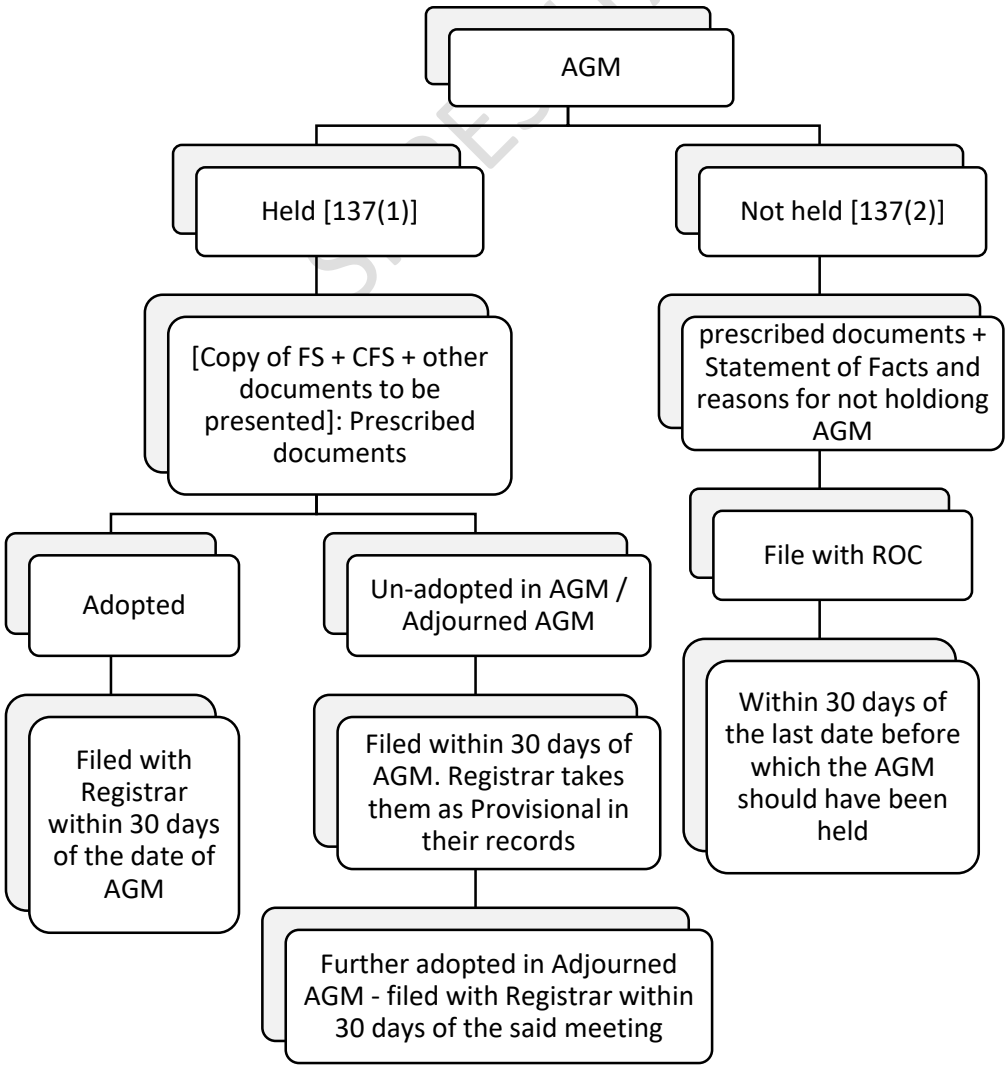
In the present case, though AGM was not held, it ought to be held by 30 September 2018 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held i.e., by 30 October 2018 along with such fees or additional fees as may be prescribed.

EXAMPLE: Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2018 but the same were not adopted by the shareholders?

ANSWER:

Since the AGM has been held in time on 27 September 2018, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the Registrar within 30 days of the date of AGM and the Registrar shall take them in his records as **provisional** till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.



Q.NO.29. WRITE ABOUT APPLICABILITY OF INTERNAL AUDIT U/S 138 OF COMPANIES ACT, 2013?

ANSWER:

A. APPLICABILITY:

The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:

1. Every Listed company.
2. Every unlisted public company having:
   a. **Paid up share capital** of 50 crore rupees or more during the preceding financial year or
   b. **Turnover** of 200 crore rupees or more during the preceding financial year or
   c. **Outstanding loans or borrowings from banks or public financial institutions** exceeding 100 crore rupees or more **at any point of time** during the preceding financial year or
   d. **Outstanding deposits** of 25 crore rupees or more **at any point of time** during the preceding financial year and
3. Every private company having:
   a. **Turnover** of 200 crore rupees or more during the preceding financial year or
   b. **Outstanding loans or borrowings from banks or public financial institutions** exceeding 100 crore rupees or more at any point of time during the preceding financial year.

NOTE: In case of a specified IFSC public company & IFSC private company, section 138 shall apply if the articles of the company provide for the same.

B. SCOPE AND FUNCTIONING: The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

C. WHO CAN BE AN INTERNAL AUDITOR:

1. Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

   The term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not'.
2. The internal auditor may or may not be an employee of the company.

EXAMPLE: Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co LLP, as its internal auditors for the year ended 31st March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

ANSWER:

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co LLP.

ILLUSTRATIONS

Illustration 1. - True false

Statement – Vouchers need not to be preserved as part of requirement of preserving books for period of 8 years.

Answer

False

Reason – As per **section 128(5)** of the Companies Act 2013, the **books of account,** together with **vouchers relevant to any entry** in such books, are required to be preserved in **good order** by the company for a period of **not less than eight years** immediately preceding the relevant financial year.

Illustration 2.

Can XYZ limited maintain its books of account on cash basis?

Answer

The Companies Act 2013 vide section 128(1) requires every company to prepare books of account and other relevant books and papers and financial statement for every financial year on accrual basis and according to double entry system of accounting. No exception has been given by the Act to any class or classes of companies from the above requirement. Hence XYZ Ltd. cannot maintain its books of account on cash basis.

Illustration 3.

Modern Furniture Limited (MFL) is required to prepare the financial statement that comply with accounting standards and shall be in form specified in schedule III. But the financial statement prepared and presented are not in compliance with applicable accounting standards, therefore MFL required to disclose which of following:

i. **Deviation**
ii. **Reason of deviation**
iii. **Financial effects arise out of such deviation.**

Options

a. Only i
b. Only i and ii
c. Only i and iii
d. All of i, ii, and iii

Answer – d

Reason – Where the financial statements of a company, which required to; but do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

Illustration 4.

The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Whether such an act of ABC Ltd. is tenable?

Answer

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

a. Any notes annexed to or forming part of such financial statement;

b. The auditor's report; and

c. The Board's report.

It, therefore, follows that **unaudited accounts cannot be sent to members** or **unaudited accounts cannot be filed with the Registrar** of Companies. So, such an act of ABC Ltd, is not tenable.

Illustration 5.

Modern Furniture Limited a listed entity has internal financial controls in place, during the financial year a failure in control system has been reported; controls were reinstated soon after such incident. Whether directors in Director's Responsibility Statement can states that controls are adequate and operating efficiently?

Answer

Adequacy refers to the design of the control/system and signify whether the control/system that is in place, is fit for purpose or not.

Operating effectively refers to whether the control/system in place has the desired effect of mitigating the risk or not.

Here adequacy and operating effectively together shall be read as adequate, operating effectively and applicable throughout also.

Therefore, directors of Modern Furniture Limited in Director's Responsibility Statement can't state that controls are adequate and operating efficiently.

Illustration 6.

ABC Company is a one-person company and has only one director. Who shall authenticate the balance sheet and statement of profit & loss and the Board's report?

Answer

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. So, the financial statements signed by one director shall be considered in order.

Illustration 7.

ABC Ltd is a company with a turnover of more than ₹ 1000 crores in each of the preceding three financial years and having incurred a loss in one of the preceding three financial years. Will it be required to constitute CSR committee?

Answer

As per section 135(1) of the Act, if any one of the three criteria (whether net worth, or turnover or net profit) gets satisfied then the company is mandatorily required to constitute CSR committee and comply with other CSR provisions. Hence, ABC Ltd. will be required to constitute CSR committee and comply with other CSR provisions based on its turnover. The mere fact that company has incurred loss in one of the preceding three financial years will not be considered for determining the applicability of CSR to the companies.

Illustration 8.

Compute the minimum amount that Modern Furniture Limited is required to spend on account of Corporate Social responsibility year 2022-2023. MFL was incorporated in August 2020. Net-profit made during the financial years 2020-2021 and 2021-2022 are ₹ 20 crore, and ₹ 38 crore respectively

Options

a. ₹ 76 lac

b. ₹ 1.16 crore

c. ₹ 58 lac

d. Since the company has not completed the period of three financial years since its incorporation, hence no CSR spending is required.

Answer – c

Reason – Section 135(5) shall be referred (explained in heading 10.5.1 above).

Illustration 9.

Can an international organisation be engaged for implementation of CSR project?

Answer

Yes, an international organisation may be engaged for implementation of CSR projects; but engagement shall be restricted to the designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR, as per rule 4(3) of CSR rules.

Illustration 10.

Reliance Industries Limited, a company incorporated under the Companies Act, 2013, has its shares listed on a recognized Stock Exchange in India. One of the subsidiaries of Reliance Industries Limited is a foreign company incorporated outside India. In the annual general meeting of the company, Reliance Industries Limited has placed its audited financial statement including consolidated financial statement on its website. Reliance Industries Limited has also placed on its website separate audited accounts of all its subsidiaries located in India except one subsidiary, which is a foreign company and located outside India on the grounds that such foreign company is not required to get its financial statement audited under the company law of its incorporation. You are required to examine whether Reliance Industries Limited has complied with the provisions of section 136?

Answer

No, Reliance Industries Limited has not complied with the provisions of section 136 because Reliance Industries Limited is also required to place unaudited financial statement of its foreign subsidiary on its website even if such foreign subsidiary is not required to get its financial statement audited as per the provisions of section 136. The holding Indian listed company (RIL in this case) may **place such unaudited financial statement** on its website **and** where such financial statement is in a language other than English, **a translated copy of the financial statement in English** shall also be placed on the website.

Illustration 11.

Vandana Ltd., based in India, has many subsidiaries in India and outside India. It also had associates and joint ventures. For the purpose of finalization of the consolidated financial statements of the company for the year ended 31 March 2021, the company's management requested its foreign subsidiary, based out of Italy, to provide its standalone financial statements. The Italian subsidiary company prepares its financial statements in the local language of the

country and the same is provided to the Indian parent company as unaudited as the audit is not required by the Italian subsidiary company. Please advise how the Indian parent should deal with this financial statement.

Answer

Vandana Ltd. Would have to get the standalone financial statements of Italian subsidiary company translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further as per the requirements of section 137(1) of the Companies Act 2013, Vandana Ltd. Would need to file such unaudited financial statement of Italian subsidiary company along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Italian subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Illustration 12.

The AGM of R Ltd., for laying the Annual Accounts there at for the year ended 31 March 2022 was not held. What remedy is available with the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statements with the Registrar of Companies?

Answer

In the present case, though AGM was not held, it ought to be held by 30 September 2022 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2), the financial statements along with the documents required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e., by 30 October 2022 along with such fees or additional fees as may be prescribed.

Illustration 13. (In continuation to above illustration)

Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27 September 2022 but the same were not adopted by the shareholders?

Answer

Since the AGM has been held in time on 27 September 2022, the un-adopted financial statements along with the required documents under sub-section (1) of section 137 shall be filed with the

Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

Illustration 14.

Perfect Ltd is a listed company. The company is in the business of manufacturing of steel and had its head office at Karnataka. The company's operations are spread out across India. The company appointed a firm of Chartered Accountants, N & Co LLP, as its internal auditors for the year ended 31st March 2019. However, for the financial year 2019-20, the company is planning to have an in-house internal audit system commensurate with its size and operations. If the company does that then it is planning not to continue with N & Co LLP as its internal auditors. Please advise.

Answer

In the given situation, if the internal audit function of the company is fine as per its size and operations then it may decide not to continue with N & Co LLP.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **ABC Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2023, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of account of the Company. You, as an expert, are called upon by SEBI to advise the earliest financial year to be quoted in application for reopening of books of account may be granted by Tribunal?**
   a. **2018-2019**
   b. **2016-2017**
   c. **2013-2014**
   d. **2014-2015**

2. **During the half year ended September 2022, the board of directors (BOD) of New Era Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2020. Further during the year ended March 2023, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2022. You are required to state the validity of the acts of the Board of directors.**
   a. **The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.**
   b. **The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.**
   c. **The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.**
   d. **The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2023. The application made for revision in the Board report is however valid in law.**

3. **As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities:**
   a. **The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.**
   b. **The surplus shall not form part of the business profit of a company**

c. **The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.**

d. **The surplus shall form part of the business profit of a company**

4. **Shri Limited (a company having CSR Committee as per the provision of Section 135 of the Companies Act, 2013) decides to spend and utilize the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of Shri Limited. As per the provision of Companies Act, 2013 this would mean that:**

   a. **This is the total amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year**

   b. **No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year**

   c. **Only half of the total amount spent, shall be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year**

   d. **Only the amount that has been spent on the employees having salary of ₹ 20,000 per month or less, shall be considered be considered to be spent on Corporate Social Responsibility activities by Shri Limited for that financial year.**

Answer to MCQ based Questions

1.	**d.**	2014-2015
2.	**b.**	The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.
3.	**b.**	The surplus shall not form part of the business profit of a company
4.	**b.**	No amount spent on Corporate Social Responsibility activities by Shri Limited for that financial year

PRACTICAL QUESTIONS

Q.NO.1. THE REGISTERED OFFICE OF THE BHARAT LTD. IS SITUATED IN A CLASSIFIED BACKWARD AREA OF MAHARASHTRA. THE BOARD WANTS TO KEEP ITS BOOKS OF ACCOUNT AT ITS CORPORATE OFFICE IN MUMBAI WHICH IS CONVENIENTLY LOCATED. THE BOARD SEEKS YOUR ADVICE ABOUT THE FEASIBILITY OF MAINTAINING THE ACCOUNTING RECORDS AT A PLACE OTHER THAN THE REGISTERED OFFICE OF THE COMPANY. PLEASE ADVISE.

ANSWER:

RELEVANT PROVISION:

a. **AT R.O:** Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.
b. **ANY OTHER PLACE – BOD APPROVAL:** Provided all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within 7 days thereof file with the registrar a notice in writing in form AOC-5 giving full address of that other place.

CONCLUSION:

Therefore, the Board of Bharat Ltd. can keep its books of account at its corporate office in Mumbai by following the above-mentioned procedure.

Q.NO.2. THE BOARD OF DIRECTORS OF VISHWAKARMA ELECTRONICS LIMITED CONSISTS OF MR. GHANSHYAM (DIRECTOR), MR. HYDER (DIRECTOR) AND MR. INDERSEN (MANAGING DIRECTOR). THE COMPANY HAS ALSO EMPLOYED A FULL TIME SECRETARY.
THE PROFIT AND LOSS ACCOUNT AND BALANCE SHEET OF THE COMPANY WERE SIGNED BY MR. GHANSHYAM AND MR. HYDER. EXAMINE WHETHER THE AUTHENTICATION OF FINANCIAL STATEMENTS OF THE COMPANY WAS IN ACCORDANCE WITH THE PROVISIONS OF THE COMPANIES ACT, 2013?

ANSWER:

RELEVANT PROVISION:

1. The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board **AT LEAST BY:**
   a. The chairperson of the company where he is authorised by the Board **OR** by 2 directors out of which 1 shall be managing director, if any, **and**
   b. The Chief Executive Officer **and**
   c. The Chief Financial Officer **and**

d. The Company Secretary of the company, wherever they are appointed.

2. **ONE PERSON COMPANY:** In the case of One person company, only by 1 director, for submission to the auditor for his report thereon.

CONCLUSION:

In the instant case, the Balance Sheet and Profit and Loss Account have been signed only by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Q.NO.3. A HOUSING FINANCE LTD. IS A HOUSING FINANCE COMPANY HAVING A PAID UP SHARE CAPITAL OF RS. 11 CRORES AND A TURNOVER OF RS. 145 CRORES DURING THE FINANCIAL YEAR 2022-23. EXPLAIN WITH REFERENCE TO THE RELEVANT PROVISIONS AND RULES, WHETHER IT IS NECESSARY FOR A HOUSING FINANCE LTD. TO FILE ITS FINANCIAL STATEMENTS IN XBRL MODE.

ANSWER

RELEVANT PROVISION:

1. **XBRL FILING:** As per Rule 1 of the *Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015,* The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:
   - **a.** Companies **listed** with stock exchanges in India and their Indian subsidiaries or
   - **b.** Companies having Paid up capital of Rs. 5 Crore or above or
   - **c.** Companies having turnover of Rs. 100 Crore or above or
   - **d.** All companies which are required to prepare their financial statements in accordance *with Companies (Indian Accounting Standards) Rules, 2015.*

2. **EXEMPTION:** The following class of companies are exempted from the above rules:
   - **a.** Non-banking financial companies,
   - **b.** Housing finance companies and
   - **c.** Companies engaged in the business of banking and insurance sector.

CONCLUSION:

Hence A housing Finance Ltd., **being a housing finance company**, is exempted from filing its financial statement in XBRL mode.

Q.NO.4. HERRY LIMITED IS A COMPANY REGISTERED IN THAILAND. SKP LIMITED (REGISTERED IN INDIA), A WHOLLY OWNED SUBSIDIARY COMPANY OF HERRY LIMITED DECIDED TO FOLLOW DIFFERENT FINANCIAL YEAR FOR CONSOLIDATION OF ITS ACCOUNTS OUTSIDE INDIA. STATE THE PROCEDURE TO BE FOLLOWED IN THIS REGARD.

ANSWER:

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

Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of 2 years from such commencement, align its financial year as per the provisions of this clause.

SKP Limited is advised to follow the above procedure accordingly.

Q.NO.5.

i. **RAVI LIMITED MAINTAINED ITS BOOKS OF ACCOUNTS UNDER SINGLE ENTRY SYSTEM OF ACCOUNTING. IS IT PERMITTED UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013?**
ii. **STATE THE PERSONS RESPONSIBLE FOR COMPLYING WITH THE PROVISIONS REGARDING MAINTENANCE OF BOOKS OF ACCOUNTS OF A COMPANY.**
iii. **WHETHER A COMPANY CAN KEEP BOOKS OF ACCOUNTS IN ELECTRONIC MODE ACCESSIBLE ONLY OUTSIDE INDIA?**

ANSWER:

i. According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of account should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of account must be kept on accrual basis and according to the double entry system of accounting.

Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is **not permitted.**

ii. **Persons responsible to maintain books:** As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

a. Managing Director,

b. Whole-Time Director, in charge of finance

c. Chief Financial Officer

d. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

iii. A Company has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of *the Companies (Accounts) Rules, 2014*. According to such Rule,

a. The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

b. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

c. The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.
Hence, a company cannot keep books of Account in electronic mode accessible only outside India.

Q.NO.6. THE GOVERNMENT OF INDIA IS HOLDING 51% OF THE PAID-UP EQUITY SHARE CAPITAL OF SUN LTD. THE AUDITED FINANCIAL STATEMENTS OF SUN LTD. FOR THE FINANCIAL YEAR 2021-22 WERE PLACED AT ITS ANNUAL GENERAL MEETING HELD ON 31ST AUGUST 2022. HOWEVER, PENDING THE COMMENTS OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG) ON THE SAID ACCOUNTS THE MEETING WAS ADJOURNED WITHOUT ADOPTION OF THE ACCOUNTS. ON RECEIPT OF CAG COMMENTS ON THE ACCOUNTS, THE ADJOURNED ANNUAL GENERAL MEETING WAS HELD ON 15TH OCTOBER, 2022 WHEREAT THE ACCOUNTS WERE ADOPTED. THEREAFTER, SUN LTD. FILED ITS FINANCIAL STATEMENTS RELEVANT TO THE FINANCIAL YEAR 2021-22 WITH THE REGISTRAR OF COMPANIES ON 12TH NOVEMBER, 2022. EXAMINE, WITH

REFERENCE TO THE APPLICABLE PROVISIONS OF THE COMPANIES ACT, 2013, WHETHER SUN LTD. HAS COMPLIED WITH THE STATUTORY REQUIREMENT REGARDING FILING OF ACCOUNTS WITH THE REGISTRAR?

ANSWER

RELEVANT PROVISION:

1. If the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.
2. Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be **filed with the Registrar within 30 days of the last date before which the AGM should** have been held and in such manner, with such fees or additional fees as may be prescribed.

ANALYSIS AND CONCLUSION:

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October 2022 and filing of financial statements with Registrar was done on 12th November, 2022 i.e. within 30 days of the date of adjourned AGM But Sun Ltd. has not filed its unadopted financial statements within 30 days of the date of the annual general meeting held on 31st August 2022. Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Q.NO.7. THE INCOME TAX AUTHORITIES IN THE CURRENT FINANCIAL YEAR 2022-23 OBSERVED, DURING THE ASSESSMENT PROCEEDINGS, A NEED TO RE-OPEN THE ACCOUNTS OF CHETAN LTD. FOR THE FINANCIAL YEAR 2011-12 AND, THEREFORE, FILED AN APPLICATION BEFORE THE NATIONAL COMPANY LAW TRIBUNAL (NCLT) TO ISSUE THE ORDER TO CHETAN LTD. FOR RE-OPENING OF ITS ACCOUNTS AND RECASTING THE FINANCIAL STATEMENTS FOR THE FINANCIAL YEAR 2011-12. EXAMINE THE VALIDITY OF THE APPLICATION FILED BY THE INCOME TAX AUTHORITIES TO NCLT

ANSWER

RELEVANT PROVISION:

A. **APPLICATION BY WHOM:** A company shall not re-open its books of account and not recast its financial statements, **unless an application in this regard** is made by-

1. The Central Government,
2. The Income-tax authorities,
3. The Securities and Exchange Board of India (SEBI),
4. Any other statutory regulatory body or authority or
5. Any person concerned

B. APPLICATION TO WHOM:

1. A court of competent jurisdiction or
2. The tribunal

C. ORDER OF COURT / TRIBUNAL: The Competent court or Tribunal may pass an order to revise the accounts and recast the financial statements of the company, if they satisfied that:

1. The relevant earlier accounts were prepared in a fraudulent manner or
2. The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

D. 8 YEARS TIME LIMIT FOR PASSING REOPENING OF A/C'S: No order shall be made in respect of re-opening of books of account relating to a period ***earlier than 8 financial years*** immediately preceding the current financial year.

ANALYSIS AND CONCLUSION:

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e., 2022-2023, is invalid.

10. AUDIT AND AUDITOR's

Q.NO.1 WHAT ARE THE QUALIFICATIONS TO BECOME COMPANY AUDITOR?

ANSWER:

A. QUALIFICATIONS OF COMPANY AUDITOR [Sec 141(1)]:

1. An Individual is eligible for appointment as an auditor only if he is a chartered accountant.
2. A firm/LLP is also eligible for appointment as an auditor where majority of partners are chartered accountants and are **practicing in India**.

B. WHO SHALL SIGN [Sec. 141(2)]:

If a firm/LLP is appointed as an auditor, then the partner who is in practice shall sign the audit report on behalf of the firm.

Q.NO.2 WRITE ABOUT THE DISQUALIFICATIONS OF A COMPANY'S AUDITOR? OR CASES WHERE A PERSON CANNOT BE APPOINTED AS AN AUDITOR OF A COMPANY?

ANSWER:

DISQUALIFICATIONS OF COMPANY AUDITOR: [Sec 141(3)]

The following persons are not eligible for appointment as an auditor of a company even though they possess chartered accountancy qualification:

a. A Body corporate other than a limited liability partnership.

b. An Officer or Employee of the company.

According to Section 2(59) of the Companies Act, 2013, the term 'Officer' includes:

- **i.** Director.
- **ii.** Manager.
- **iii.** Key Managerial personnel.
- **iv.** Shadow Directors.

Examples:

1. G, a CA in practice is a director in RST Ltd. On combined reading of Section 141(3)(b) and Section 2(59), it may be concluded that CA G would be disqualified to be appointed as an auditor of RST Ltd.
2. G, a CA in practice is a director in Zed Ltd., holding company of RST Ltd. On combined reading of Section 141(3)(b) and Section 2(59), it may be concluded that CA. G would be disqualified to be appointed as an auditor of Zed Ltd. but would not be disqualified in case of RST Ltd.

c. A person who is a Partner, or who is in the Employment, of an officer or employee of the company.

Note: In other words, The below mentioned persons are disqualified:

1. Partner of an officer of the company.
2. Employee of an officer of the company.
3. Partner of an employee of the company.
4. Employee of an employee of the company.

d. A person who, or his relative or partner -

i. Is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (Group companies). (Ref: Note No. 1 to 5)

ii. Is indebted to the company or the group companies in excess of Rs 5,00,000. (Ref Note No.6 & 7) **[DIRECT INDEBTNESS]**

iii. Has given a guarantee or provided any security on behalf of any third person to the Company or the group companies in excess of Rs 1,00,000. **[INDIRECT INDEBTNESS]**

NOTES:

1. The Limit of Rs. 1,00,000/- shall applies even for companies not having share capital.
2. The relative of the auditor may hold security or interest in the company for an amount Not exceeding a face value of Rs 1,00,000.
3. Also, it is to be observed that if the auditor is holding securities in **HIS** name / partner's name this exception does not apply.
4. The value of shares of Rs. 1,00,000 that can be held by relative is the face value and not the market value.
5. Limit of Rs. 1,00,000 and grace period of 60 days would be applicable where securities are held in the company only. ***[Author Note – This is absolutely a wrong interpretation]***
6. If an auditor purchases goods on credit from the company of a value exceeding Rs. 5,00,000, he shall be indebted to the company. It is immaterial that the credit period allowed to the auditor is same as allowed to other customers in the ordinary course of business.
7. If an auditor recovers fees from the company on a progressive basis, even though the audit has not been completed, it is not treated as indebtedness.

EXAMPLE: "Mr. Avi", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of Rs. 990/-. Whether Mr. Avi is qualified for appointment as an Auditor of "XYZ Ltd."?

ANSWER:

PROVISION AND ANALYSIS: As per section 141(3)(d)(i), a person is disqualified to be appointed as an auditor if he, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

CONCLUSION: In the present case, Mr. Avi. is holding security of Rs. 900 in XYZ Ltd, therefore, he is NOT eligible for appointment as an auditor of "XYZ Ltd".

EXAMPLE: "Mr. PK" is a practicing Chartered Accountant and "Mr. Qurashi", the relative of "Mr. PK", is holding securities of "ABC Ltd." having face value of Rs. 99,000/-. Whether "Mr. PK" is Qualified for being appointed as an auditor of "ABC Ltd."?

ANSWER:

PROVISION AND ANALYSIS: As per section 141(3)(d)(i), a person is disqualified to be appointed as an auditor if he, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further, as per proviso to this Section, the relative of the person may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

CONCLUSION: In the present case, Mr. Qurashi (relative of Mr. PK), is having securities of Rs. 99,000 face Value in ABC Ltd., which is as per requirements of proviso to section 141(3)(d)(i). Therefore, Mr. PK will not be disqualified to be appointed as an auditor of ABC Ltd.

EXAMPLE: "M/s Bhavin & Co." is an Audit Firm having partners "Mr. Bala" and "Mr. Chandu". "Mr. A" the relative of "Mr. Chandu", is holding securities of "AMD Ltd." having face value of Rs. 1,00,100/-. Whether "M/s Bhavin & Co." is qualified for being appointed as an auditor of "AMD Ltd."?

ANSWER:

PROVISION AND ANALYSIS: As per section 141(3)(d)(i), a person is disqualified to be appointed as an auditor if he, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the person may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

CONCLUSION: In the instant case, M/s Bhavin & Co, will be disqualified for appointment as an auditor of AMD Ltd as the relative of Mr. Chandu (i.e., partner of M/s Bhavin & Co.), is holding the securities in AMD Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

EXAMPLE: M/s Rajamohan & Co. is an audit firm having partners CA. Raja and CA. Mohan. The firm has been offered the appointment as an auditor of Inn Ltd. for the Financial Year 2019-20. Mr. Bee, the relative of CA. Raja, is holding 8,000 shares (face value of Rs. 10 each) in Inn Ltd. having market value of Rs. 1,60,000. Whether M/s Rajamohan & Co. is disqualified to be appointed as auditors of Inn Ltd.?

ANSWER:

PROVISION AND ANALYSIS: As per section 141(3)(d)(i), a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner is holding any security of

or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. However, as per proviso to this section, the relative of the person may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.
In the instant case, M/s Rajamohan & Co. is an audit firm having partners CA. Raja and CA. Mohan. Mr. Bee is a relative of CA. Raja and he is holding shares of Inn Ltd. of face value of Rs. 80,000 only (8,000 shares x Rs. 10 per share).
CONCLUSION: Therefore, M/s Rajamohan & Co. is not disqualified for appointment as an auditor of Inn Ltd. as the relative of CA. Raja (i.e., partner of M/s Rajamohan & Co.) is holding the securities in Inn Ltd. which is within the limit mentioned in proviso to section 141(3)(d)(i) of the Companies Act, 2013.

e. A person or a firm (including LLP) who or which has business relationship with the Company, or its Subsidiary, or its Holding or Associate Company or *Subsidiary of* such holding company or *associate company*, whether directly or indirectly

Exceptions: The term "Business relationship" includes any transaction entered for commercial purpose **except** the following Commercial transactions:

1. Professional services permitted to be rendered by an auditor or audit firm under the Companies Act, 2013 and the Chartered Accountants Act, 1949.
2. Transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and any other similar businesses.

f. A person whose relative is a Director or is in the employment of the Company as a director or key Managerial Personnel. (KMP also known as officer)

g. A person who is in full time employment elsewhere. OR A person or partner of a firm holding appointment of more than 20 company audits as on the date of proposed appointment. [Refer Q No. 4]

h. A person who has been convicted by a Court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.

Note: If such conviction is held by tribunal then prohibition is only for 5 years. (Sec.140 (5))

i. Any person who directly or indirectly renders any services as specified in section 144 to the company, its holding company or its subsidiary company. [REFER Q NO. 3]

Note: For the purposes of this sub-section, the term "directly or indirectly" shall include rendering of services by the auditor:

IN CASE OF INDIVIDUAL AUDITOR:

1. Either himself or

2. Through his relative or

3. Any other person connected or associated with such individual or

4. Through any other entity, whatsoever,

In which such individual has significant influence or control, or whose name or trademark or brand is used by such individual.

IN CASE OF FIRM [INCLUDING LLP]:

1. Either itself or

2. Through any of its partners or

3. Through its parent, subsidiary or associate entity or

4. Through any other entity, whatsoever,

In which the firm or any partner of the firm has significant influence or control, or whose name or trademark or brand is used by the firm or any of its partners.

EXAMPLE: CA. P is providing the services of Design and implementation of financial information system to C Ltd. Later on, he was also offered to be appointed as an auditor of the company for the current financial year. Advise.

ANSWER:

PROVISION AND ANAYSIS: Section 141(3)(i) of the Companies Act, 2013 disqualifies a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in section 144. Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor which includes Design and implementation of financial information system.

CONCLUSION: Therefore, CA. P is advised not to accept the assignment of auditing as the service he is rendering is specifically notified in the list of services not to be rendered by him as per section 141(3)(i) read with section 144 of the Companies Act, 2013.

SUBSEQUENT DISQUALIFICATION AFTER APPOINTMENT: [SEC. 141(4)]

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned above after his appointment, he shall vacate immediately his office as auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Note: However, If the relative of auditor is holding securities exceeding Face value Rs. 1,00,000 after being appointed as an auditor then corrective action shall be taken within 60 days of such acquisition. In this case immediate vacation does not apply as 60 days' time limit is provided.

CASE STUDY: Mr. Ajay, a Chartered Accountant has been appointed as an auditor of Bharat Ltd. in the Annual General Meeting of the company held in September 2019, which assignment he accepted. Subsequently in February 2020, he joined Mr. Bajaj, another Chartered Accountant, who is the Manager Finance of Bharat Ltd., as partner.

PROVISIONS AND EXPLANATION: Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Further as per Section 141(4), an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

CONCLUSION: In the present case, Mr. Ajay, an auditor of Bharat Ltd., joined as partner with Mr. Bajaj, who is Manager Finance of Bharat Limited. The given situation has attracted sub-section (3)(c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Bharat Limited.

Note: Definition of "RELATIVE": [sec 2(77)]: 'Relative' with reference to any person, means anyone who is related to another, if

1. They are members of a Hindu Undivided Family.
2. They are husband and wife.
3. One person is related to the other in the manner as given below:
   - **a.** Father (including step- father)
   - **b.** Mother (including step-mother),
   - **c.** Brother (including step- brother),
   - **d.** Sister (including step- sister),
   - **e.** Son (including step- son),
   - **f.** Son's wife,
   - **g.** Daughter,
   - **h.** Daughter's husband.

Q.NO.3 STATE THE SERVICES WHICH AN AUDITOR OF A COMPANY IS PROHIBITED TO RENDER TO THE CLIENT BEING AUDITED AS PER SEC 144 OF THE COMPANIES ACT 2013?

ANSWER:

As per Sec. 144, Prohibited services by auditors of the company to the company, holding company or subsidiary company:

1. Accounting and bookkeeping services.
2. Internal audit.
3. Design and implementation of any financial information system.
4. Actuarial services.
5. Investment advisory services.
6. Investment banking services.
7. Outsourced financial services.
8. Management services.
9. Any other kind of services as may be prescribed.

Therefore, any person engaged in providing any of the above services then he cannot be appointed as auditor of the same company or group companies.

If at all the proposed auditor withdraws from rendering the above services then he can be appointed as an auditor after such withdrawal.

Q.NO.4 WRITE ABOUT CEILING ON NUMBER OF AUDITS THAT CAN BE ACCEPTED BY AN AUDITOR?

ANSWER:

1. A Chartered Accountant in practice cannot hold appointments as auditor for more than 20 companies at any time.
2. In case of a partnership firm the limit of 20 shall be counted per partner in practice.
3. If a person acting as partner in multiple firms, then the limit will be counted only for one partnership and in the name of such partner only.
4. In other words, the limit of 20 shall be counted per person holding COP. Whether he is a sole proprietor or partner, in one or multiple firms.
5. **COMPANIES EXCLUDED FROM CEILING LIMIT:** For the purpose of computation of ceiling limits following companies are excluded:
   a. One person companies,
   b. Dormant companies,

c. Small companies and

d. Private limited companies having a paid-up capital less than Rs.100 crores. (Note 1)

Note 1: Private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

CEILING ON TAX AUDIT ASSIGNMENTS: The specified number of tax audit assignments that an auditor, as an individual or as a partner of a firm, can accept is 60 in number. ICAI has notified that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts in a financial year, more than the specified number of tax audit assignments u/s 44AB of the Income Tax Act, 1961.

Notes:

1. The number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.
2. A Chartered Accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of Chartered Accountants, or by any of the partner of the firm in his individual name or as a partner of any other firm as far as possible, in the prescribed manner.

CASE STUDY: "PQRST & Co." is an Audit Firm having partners "Mr. P", "Mr. Q", "Mr. R", "Mr. S" and "Mr. T", Chartered Accountants. "Mr. P", "Mr. Q", "Mr. R", "Mr. S" and "Mr. T" are holding appointment as an Auditor in 4, 5, 6, 10 and 15 Companies respectively.

i. Provide the maximum number of Audits remaining in the name of "PQRST & Co."

ii. Provide the maximum number of Audits remaining in the name of individual partner i.e., "Mr. P", "Mr. Q", Mr. R, Mr. S and Mr. T.

iii. Can PQRST & Co. accept the appointment as an auditor in 80 private companies having paid-up share capital less than Rs. 100 crore which has not committed default in filing its financial statements under section 137 or annual return under section 92 of the Companies Act with the Registrar, 2 small companies and 1 dormant company?

iv. Would your answer be different, if out of those 80 private companies, 65 companies are having paid-up share capital of Rs. 115 crore each?

ANSWER:

FACT OF THE CASE: In the instant case, Mr. P is holding appointment in 4 companies, Mr. Q is holding appointment in 5 companies, Mr. R is holding appointment in 6 companies, whereas Mr. S is having appointment in 10 Companies and Mr. T is having appointment in 15 Companies. In aggregate all five partners are having 40 audits.

PROVISIONS AND EXPLANATIONS: As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies *other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crores* (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar). As per section 141(3)(g), this limit of 20 company audits is per person.

In the case of an audit firm having 5 partners, the overall ceiling will be 5 × 20 = 100 company audits. Sometimes, a Chartered Accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits on his account.

CONCLUSION:

i. Therefore, PQRST & Co. can hold appointment as an auditor of 60 more companies:

1. Total Number of Audits available to the Firm = 20*5 = 100
2. Number of Audits already taken by all the partners In their individual capacity = 4 + 5 + 6 + 10 + 15 = 40
3. Remaining number of Audits available to the Firm = 60

ii. With reference to above provisions, an auditor can hold more appointment as auditor = ceiling limit as per section 141(3)(g)- already holding appointments as an auditor. Hence

1. Mr. P can hold: 20 - 4 = 16 more audits.
2. Mr. Q can hold: 20 - 5 = 15 more audits.
3. Mr. R can hold: 20 - 6 = 14 more audits.
4. Mr. S can hold 20-10 = 10 more audits and
5. Mr. T can hold 20-15 = 5 more audits.

iii. In view of above discussed provisions, PQRST & Co. can hold appointment as an auditor in all the 80 private companies having paid-up share capital less than Rs. 100 crore (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar), 2 small companies and 1 dormant company as these are excluded from the ceiling limit of company audits given under section 141(3)(g) of the Companies Act, 2013.

iv. As per fact of the case, PQRST & Co. is already having 40 company audits and they can accept only 60 more company audits. In addition, they can also conduct the audit of one person companies, small companies, dormant companies, and private companies having paid up share capital less than Rs. 100 crores (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar).

In the given case, out of the 80 private companies PQRST & Co. is being offered, 65 companies have paid-up share capital of Rs. 115 crore each.

Therefore, PQRST & Co. can accept the appointment as an auditor for 2 small companies, 1 dormant company, 15 private companies having paid-up share capital less than Rs. 100 crore (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.") and 60 private companies having paid-up share capital of Rs. 115 crore each in addition to above 40 company audits already held.

Q.NO.5 EXPLAIN THE PROVISIONS RELATING TO AUDIT COMMITTEE AND SELECTION PROCESS OF THE COMPANY AUDITOR?

ANSWER:

A. APPLICABILITY OF AUDIT COMMITTEE:

The Following classes of companies shall constitute an Audit Committee -

1. Listed companies
2. All public companies
   - **a)** With a paid-up capital of Rs. **10** crore or more;
   - **b)** With turnover of Rs. **100** crore or more;
   - **c)** With aggregate outstanding loans or borrowings or debentures or deposits, Rs. **50** crore or more.

Explanation: The above limits shall be taken as on **preceding audited balance sheet date**.

EXAMPLE: Radheshyam Ltd., a public company having paid up capital of Rs. 7 crores but having turnover of Rs. 130 crores, will be required to constitute an Audit Committee under section 177 because the requirement for constitution of Audit Committee arises if the company falls into any of the prescribed condition.

B. MANNER AND PROCEDURE OF SELECTION AND APPOINTMENT OF AUDITORS: 139(11)

Following is the manner and procedure of selection & appointment of auditors-

1. If the audit committee is constituted then they shall select the auditor (Including a case of casual vacancy) on appropriate basis and recommend to the BOD. If No audit committee is constituted, then BOD shall select the auditor on an appropriate basis.
2. The BOD may agree with the proposed auditor recommended by audit committee and shall recommend the same to members at AGM.
3. If BOD disagrees with the recommendation made by audit committee then it shall refer back to audit committee for the further revision.
4. If the audit committee after considering the revision appeal made by BOD, decided not to change their recommendation then they can inform the same to the BOD.
5. Nevertheless, the BOD can finally recommend to the members the proposed auditor selected by them and record the reasons for disagreement with the audit committee's selection.
6. Finally, the members may take an appropriate action regarding the appointment of auditor.

C. COMPOSITION OF AUDIT COMMITTEE:

The audit Committee shall consist of minimum of three directors, Majority must be Independent directors and shall be able to read and understand the financial statements.

NOTE:

1. The audit committee or Board of Directors, will take into account the size and requirements of the company, will select the auditor having such experience and qualifications that commensurate with the company size and complexities.
2. It shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.
3. In case where Audit committee is not required to be constituted under section 177, but constituted by the company voluntarily, then such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of such committee.

Categories of Companies	Competent authority	Responsibility of the competent authority

A company which is **required** to constitute an Audit Committee under section 177	Audit Committee*	The competent authority **shall take into consideration the qualifications and experience** of the individual or the firm proposed to be considered for appointment as auditor and such qualifications and experience are commensurate with the size and requirements of the company. It shall have regard to **any order or pending proceeding relating to professional matters of conduct** against the proposed auditor before the Institute of Chartered Accountants of India (ICAI) or any competent authority or any Court. It may call for **such other information** from the proposed auditor as it may deem fit.
A Company which is **not required** to constitute an Audit Committee under section 177	Board of Directors	

Q.NO.6 EXPLAIN THE PROVISIONS RELATED TO APPOINTMENT OF AUDITOR OF A COMPANY?

ANSWER:

Section 139 of the Companies Act, 2013 contains provisions regarding Appointment of Auditors. The section divides the appointment into two parts:

A. Appointment of First Auditors.

B. Appointment of Subsequent Auditors.

Further the appointment procedure is separately dealt for Government Company and Non-Government Company.

Note: Appointment includes re-appointment

APPOINTMENT OF FIRST AUDITOR

1. IN CASE OF NON-GOVERNMENT COMPANY: [SEC. 139(6)]

a. The first auditor of Non-government Company shall be appointed by the Board of Directors within 30 days from the date of registration of the company.

b. If the Board fails to appoint, it shall inform the members of the company and the members shall appoint the auditor within 90 days at an extraordinary general meeting.

c. Appointed auditor shall hold office till the conclusion of the first annual general meeting.

EXAMPLE: Managing Director of PQR Ltd. himself wants to appoint Shri Ganpati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

PROVISIONS AND EXPLANATION: Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company sh all be appointed by the Board of directors within 30 days from the date of registration of the company".

In the instant case, the proposed appointment of Shri Ganpati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company.

CONCLUSION: In view of the above, the Managing Director of PQR Ltd cannot appoint the first auditor of the company.

2. IN CASE OF A GOVERNMENT COMPANY: [SEC. 139(7)]

- **a.** The first auditor shall be appointed by the Comptroller and Auditor-General of India (CAG) within 60 days from the date of registration of the company.
- **b.** If CAG fails to appoint the auditor, then the Board of directors shall appoint within next 30 days.
- **c.** If BOD also fails, then they shall inform the members who shall appoint such auditor within 60 days at an extraordinary general meeting.
- **d.** The Auditors appointed as above shall hold office till the conclusion of the first annual general meeting.

EXAMPLE: The first auditor of Healthy Wealthy Ltd., a Government company, was appointed by the Board of Directors.

PROVISIONS AND EXPLANATION: Section 139(6) of the Companies Act, 2013 (the Act) lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Thus, the first auditor of a company can be appointed by the Board of Directors within 30 days from the date of registration of the company. However, in the case of a Government Company, the appointment of first auditor is governed by the provisions of Section 139(7) of the Companies Act, 2013 which states that in the case of a Government company, the first auditor shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company.

Hence, in the case of Healthy Wealthy Ltd., being a government company, the first auditors shall be appointed by the Comptroller and Auditor General of India.

CONCLUSION: Thus, the appointment of first auditors made by the Board of Directors of Healthy Wealthy Ltd. is null and void.

APPOINTMENT OF SUBSEQUENT AUDITORS

1. **IN CASE OF NON-GOVERNMENT COMPANIES: [SEC. 139(1)]**
   - **a.** Every company shall at the Annual General Meeting appoint an individual or a firm as an auditor and the appointed auditor shall hold office from the conclusion of that AGM till the conclusion of its sixth AGM and thereafter till the conclusion of every 6th meeting.
   - **b.** The following certificates shall be obtained from the proposed auditor:
     - **i.** Before such appointment is made, the written consent of the auditor to such appointment shall be obtained.
     - **ii.** A Certificate indicating that he is eligible and not disqualified shall be obtained.
     - **iii.** A Certificate that his total number of company audits after accepting the proposed appointment will be within the ceiling limit specified under law.
     - **iv.** List of Pending Proceedings against the auditor or his partner or firm shall be indicated in an appropriate manner.
   - **c.** The company shall file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed. (Form ADT – 1)

   Note:

   1. As per Rule 3 (2) of NFRA Rules, every existing body corporate other than a company governed by NFRA rules, shall inform the National Financial Reporting Authority (NFRA) within 30 days of the commencement of the NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the NFRA rules.
   2. According to Rule 3(3) of NFRA Rules, everybody corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate, provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

2. **IN CASE OF GOVERNMENT COMPANIES: [SEC. 139(5)]**
   - **a.** The Comptroller and Auditor-General of India (CAG) shall appoint a chartered accountant in practice within a period of 180 days from the commencement of the financial year.

b. The auditor appointed as above shall hold office till the conclusion of the next annual general meeting.

Note: Where at any AGM, NO auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. **[Sec. 139(10)].**

Practically this case is not possible as appointment and reappointment are ordinary businesses in an AGM which cannot be ignored.

A. DEFINITION OF GOVERNMENT COMPANY:

"Government company" is a company:

a. In which not less than 51% of the paid-up* share capital is held by the Central or any State Government or Governments or partly by the Central and partly by one or more State Governments and

b. Includes a company which is a subsidiary company of such a Government company.

***Amendment 2020:** In case of a Government company which has shares with DVR's, the words paid-up capital shall be substituted with the **word Voting power**.

B. POWERS OF CAG:

The Comptroller and Auditor-General of India shall within 60 days from the date of receipt of the audit report have a right to:

SUPPLMENTARY AUDIT:

1. Conduct a supplementary audit under section 143(6)(a), of the financial statement of the company by such person or persons as he may authorize in this behalf and
2. Comment upon or supplement such audit report under section 143(6)(b). It may be noted that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub-section (1) of section 136 i.e., every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled and
3. Also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

TEST AUDIT U/S 143(7):

Further, without prejudice to the provisions relating to audit and auditor, the Comptroller and Auditor- General of India may, in case of any company covered under sub-section (5) or sub-section

(7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

Q.NO.7 EXPLAIN THE PROVISIONS TO FILL THE CASUAL VACANCY ARISING IN THE OFFICE OF AN AUDITOR?

ANSWER:

As per **Section 139(8),** any casual vacancy in the office of an auditor shall-

A. NON-GOVERNMENT COMPANY:

1. **Other than Resignation:** Shall be filled by the Board of Directors, on recommendation of audit committee, within 30 days.
2. **Resignation:** The appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board.

B. GOVERNMENT COMPANY:

1. It shall be filled by the CAG within 30 days.
2. In case if the CAG does not fill the vacancy within 30 days, then the Board of Directors shall fill the vacancy within next 30 days.

C. PERIOD OF APPOINTMENT IN BOTH THE CASES:

The Auditor appointed under casual vacancy shall hold the office until conclusion of Next AGM only.

MEANING OF CASUAL VACANCY: If vacancy arises in the auditor's office on account of any reason other than expiry of term. In other words, concept of casual vacancy arises only before expiry of term of appointment of auditor.

SAMPLE QUESTIONS:

i. PQR & Co., Chartered Accountants, resigned from the audit of a Government Company and filed the resignation with the company and the registrar within 30 days. Comment, whether PQR & Co. has complied with the provisions of the Companies Act, 2013. **A.**	**CA INTER**
ii. At the AGM of HDB Private Ltd., Mr. R was appointed as the statutory auditor. He, however, resigned after 3 months since he wanted to pursue his career in	**CA INTER**

banking sector. The Board of Director has appointed Mr. L as the statutory auditor in board meeting within 30 days. Comment on the matter with reference to the provisions of Companies Act, 2013. **A.**	
iii. Mr. A was appointed auditor of AAS Ltd. by Board to fill the casual vacancy that arose due to death of the auditor originally appointed in AGM. Subsequently, Mr. A also resigned on health grounds during the tenure of appointment. The Board filled this vacancy by appointing you through duly passed Board resolution. Comment. **A.**	**CA INTER**
iv. A vacancy arose in the office of an auditor of XYZ Ltd due to death of the Auditor Mr. Z and the Managing Director of the company filled that vacancy. Comment citing the provisions of the Companies Act, 2013. **A.**	**CA INTER**

Q.NO.8 EXPLAIN THE DUTIES OF AN AUDITOR IN CASE OF RESIGNATION?

ANSWER:

1. As per **section 140(2),** the auditor who has resigned from the company shall file a form with the company and the Registrar in ADT-3 within a period of 30 days from the date of resignation.
2. Further in case of Government Company, He shall also inform the same to CAG.
3. The statement shall indicate the reasons and other facts as may be relevant with regard to his resignation.
4. As per Sec. 140(3), in case of failure to comply with the above provisions, the auditor shall be liable with a fine not less than Rs.50,000 or Remuneration, whichever is lower and **Rs.500 per day for continuing failure** after the first during which the failure continues. Also, the fine levied shall be subject to a maximum of Rs. 2,00,000/-.

Particulars	In case of Government Co.	In other Case
Form of statement	ADT-3	ADT-3
Time Period for filling	Within 30 days of resignation	Within 30 days of resignation
Statement filled with	Company, Registrar & CAG	Company and Registrar

SAMPLE QUESTION:

1. CA. Donald was appointed as the auditor of PS Ltd. at the remuneration of Rs.30,000/-. However, after 4 months of continuing his services, he could not continue to hold his office of the auditor as his wife got a government job at a distant place and he needs to shift along with her to the new place. Thus, he resigned from the company and did not perform his responsibilities relating to filing of statement to the company and the registrar indicating the reasons and other facts as may be relevant with regard to his resignation. **How much fine may he be punishable with under section 140(3) for non-compliance of section 140(2) of the Companies Act, 2013?** **A.** **Provisions and Explanation:** For non-compliance of sub-section (2) of section 140 of the Companies Act, 2013, the auditor shall be punishable with fine, which shall not be less than Rs. 50,000/- or the remuneration of the auditor, whichever is less but which may extend to Rs.2,00,000/-, under section 140(3) of the said Act. Also in case of continuing failure an additional fine of Rs.500 per day shall be levied. **Conclusion:** Thus, the fine under section 140(3) of the Companies Act, 2013 shall not be less than Rs. 30,000/- but which may extend to Rs. 2,00,000/-.	

Q.NO.9 EXPLAIN THE PROVISIONS RELATING TO ROTATION OF AN AUDITOR?

ANSWER:

A. APPLICABILITY OF ROTATION OF AUDITORS: [Sec. 139(2)]

1. All Listed Companies.
2. All Unlisted Public Limited Companies:
   a. With paid up share capital of rupees 10 crore or more.
   b. With borrowings from PFI's or Banks or Public Deposits of 50 crore or more.
3. All Private Limited Companies:
   a. With paid up share capital of rupees 50 crore or more.
   b. With borrowings from PFI's or Banks or Public Deposits of 50 crore or more.

Note: This provision shall not apply to One Person Company and Small Companies. Also, Rotation shall not apply for Government companies.

EXAMPLE: Mishra Ltd. is a private limited Company, having paid up share capital of rupees 48 crore but having public borrowing from nationalized banks and financial institutions of rupees 42 crore, manner of rotation of auditor will not be applicable.

B. MANNER OF ROTATION:

1. Every company to which the concept of rotation is applicable, shall not appoint or re-appoint-
   a. An Individual as auditor for more than ONE term of 5 consecutive years and
   b. A Firm of auditors for more than TWO terms of 5 consecutive years.
2. **COOLING PERIOD:** An INDIVIDUAL auditor or an AUDIT FIRM who or which has completed their respective term namely 5 years or 10 years (AKA retiring auditors) as the case may be, shall not be eligible for re-appointment as auditor in the same company for a period of 5 years from the completion of their respective term (AKA Break in service or Cooling period)**.** [REFER EXAMPLES 1 & 2]
3. **AUTHOR NOTE:** For the sake of convenience Retiring auditor is referred as outgoing auditor. New auditor is referred as Incoming auditor.
4. The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
5. **PRINCIPLES OF ROTATION:**
   a. **COMMON PARTNERS:** If there is a common partner(s) in incoming and outgoing auditor's firm, then such incoming auditor is not eligible for appointment under rotation for a period of 5 years. [EXAMPLE 3]
   b. **SAME NETWORK:** Also, if the incoming auditor and outgoing auditor belong to "Same Network", then also such incoming auditor shall not be eligible for appointment. The term "same network" includes the firms operating or functioning under the same brand name, trade name or common control.
   c. If a partner who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

NOTE: Subject to the provisions of this Act, members of the company may resolve that:

1. In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members. (AKA Internal Rotation) or
2. The audit shall be conducted by more than one auditor (Joint Audit).

NOTE: In case of audits of listed entities, SQC 1 requires rotation of engagement partner after a pre-defined period normally not more than 7 years.

NOTE: For computing number of years for the purpose of rotation, the period of appointment before commencement of this act shall also be considered i.e., auditor's period under companies acts, 1956 shall also be computed for calculating 1 term of 5 years or 2 terms of 5 years.

EXAMPLE 1: PRTK Ltd. is a listed company engaged in the business of textiles. The company has appointed Rahul & Co. as its statutory auditor in its AGM dated 29th September, 2018. Rahul & Co. will hold office of auditor from the conclusion of this meeting up to conclusion of sixth AGM i.e., AGM to be held in the year 2023. Now as per sub-section (2), Rahul & Co. shall not be re-appointed as auditor in PRTK Ltd. for further term of five years i.e., he cannot be appointed as auditor upto year 2028.
EXAMPLE 2: Meet Ltd., a listed company, appointed M/s Preet & Co., a Chartered Accountant firm, as the statutory auditor in its AGM held at the end of September 2019 for 11 years. Here, the appointment of M/s Preet & Co. is not valid as the appointment can be made only for one term of five consecutive years and then another one more term of five consecutive years. It cannot be appointed for two terms in one AGM only. Further, a cooling period of five years from the completion of term is required i.e., the firm cannot be re-appointed for further 5 years after completion of two terms of five consecutive years.
EXAMPLE 3: M/s PQR & Co., is an audit firm having partner Mrs. P, Mr. Q and Mr. R, whose tenure has expired in the company immediately preceding the financial year, M/s APJ & Co., is another audit firm in which Mr. P is a common partner, will also be disqualified for the same company along with M/S PQR & Co. for the period of 5 years.

Summary

Auditor	Appointed/Reappointed for	Not eligible for re-appointment
Individual	One term of five consecutive years (1st AGM to 6th AGM)	For **five years** from the completion of his term (till 11th AGM)
Firm	Two terms of five consecutive years (1st AGM to 11th AGM)	For **five years** from the completion of its second term (till 16th AGM)

Q.NO.10 BRIEFLY EXPLAIN THE PROVISIONS RELATING TO REMOVAL OF AUDITOR OF A COMPANY BEFORE EXPIRY OF HIS TERM?

ANSWER:

PROCEDURE FOR REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM [SEC. 140(1)]:

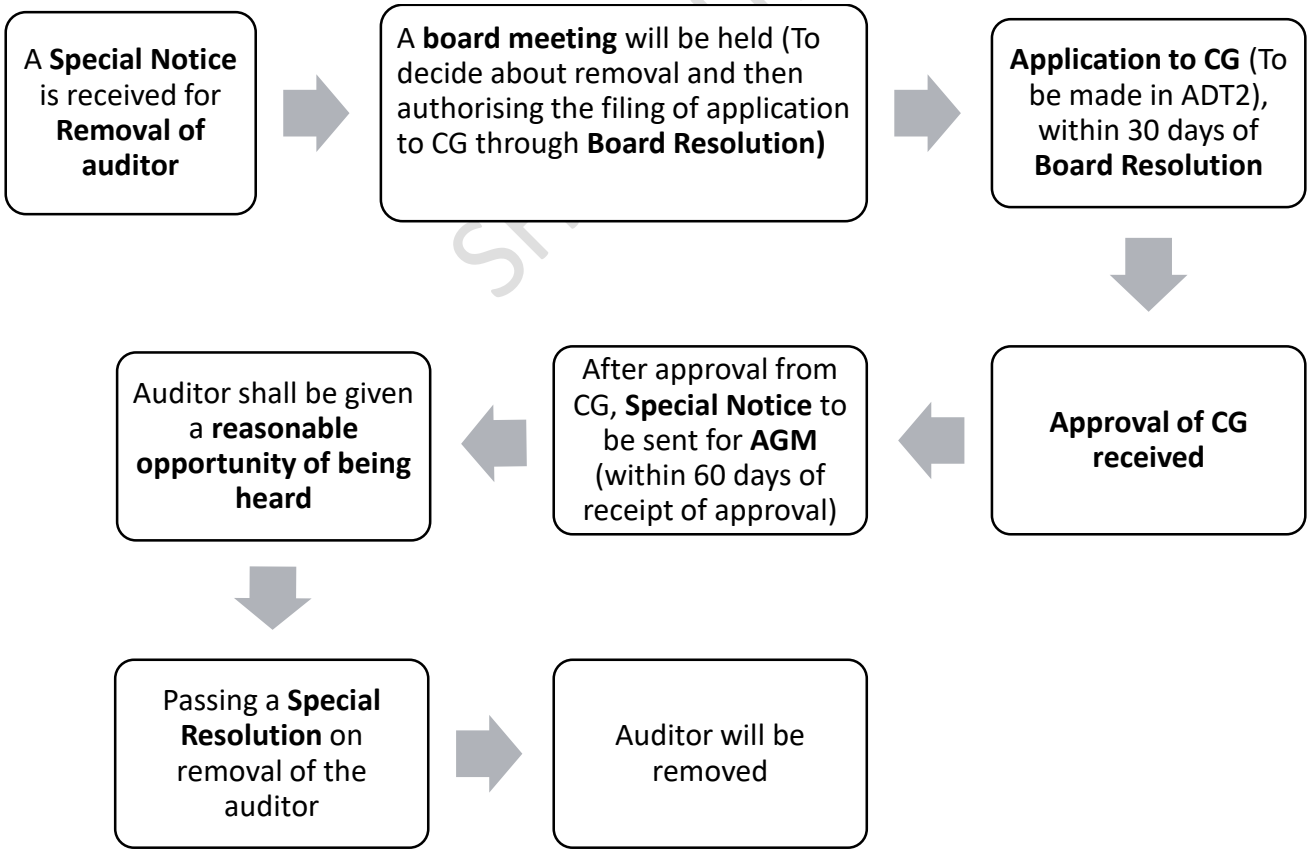
1. **BOARD RESOLUTION:** A BOD resolution shall be passed to remove the auditor before expiry of term.

2. **CG APPROVAL:** An application to the Central Government for removal of auditor shall be made in Form ADT-2 within 30 days of board resolution.
3. **SPECIAL RESOLUTION:** The company shall hold the general meeting within 60 days upon receipt of approval from the Central Government for passing the special resolution. Convene the General Meeting and pass the special resolution removing the auditor.

NOTE: An opportunity of being heard **(Audi Alteram Partem)** shall be given to the auditor before removing him.

The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard to respond to the charge, evidence or action against them.

In case of a Specified IFSC public company and Specified IFSC private company , where, within a period of 60 days from the date of submission of the application to the Central Government under this sub-section, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.



SUMMARY OF STEPS FOR REMOVAL OF AUDITOR

Q.NO.11 EXPLAIN THE PROCEDURE FOR REMOVAL OF AUDITOR BY TRIBUNAL U/S 140(5)?

ANSWER:

A. APPLICATION BY WHOM:

1. The Tribunal on its own
2. The Central Government
3. Any person concerned

B. APPLICATION TO WHOM: The tribunal.

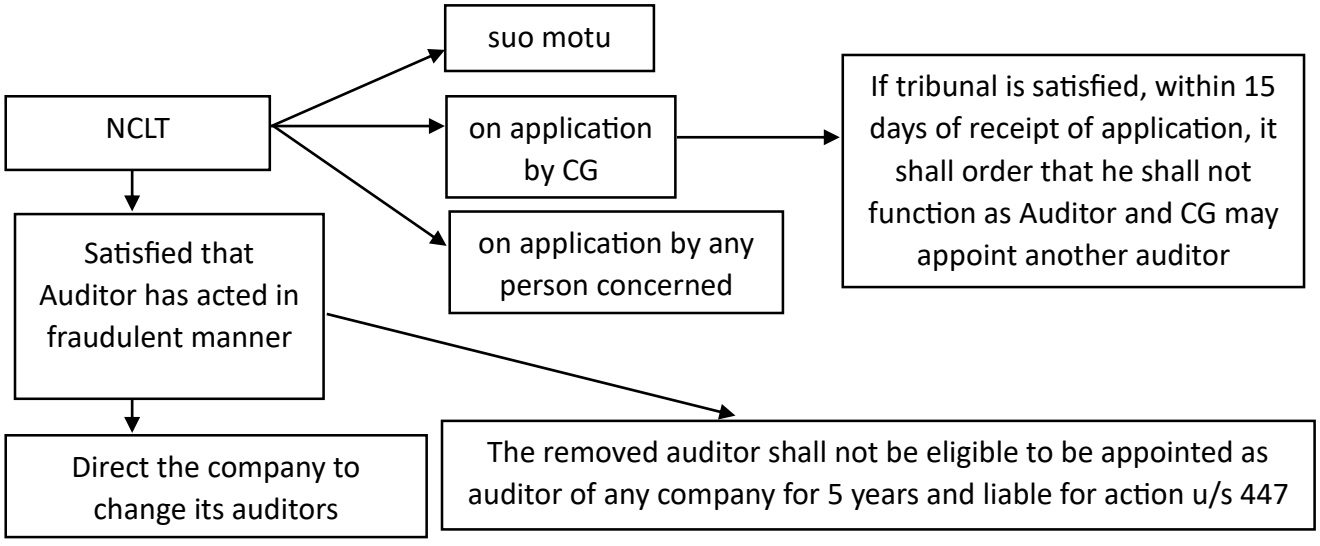
C. PROCEDURE FOR REMOVAL:

1. If the tribunal is satisfied that the auditor of a company has acted in a fraudulent manner or colluded in any fraud with directors or officers of the company then it may direct the company to change its auditors.
2. If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall make an order that he shall not function as an auditor within 15 days of receipt of such application and the Central Government may appoint another auditor in his place.

D. PROHIBITION ON FURTHER APPOINTMENTS: An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible for appointment as an auditor of ANY company for a period of 5 years from the date of passing of the order and such auditor shall also be liable for action u/s 447.

Note: It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Note: If the conviction is by court, then the prohibition shall be 10 years.



Q.NO.12 EXPLAIN THE PROCEDURE FOR APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR?

ANSWER:

Section 140(4) lays down procedure to appoint an auditor other than retiring auditor -

1. Special notice shall be required for a resolution at an annual general meeting appointing a person as auditor other than a retiring auditor **or** providing expressly that a retiring auditor shall not be re-appointed.
2. On receipt of such notice, the company shall immediately send a copy thereof to the retiring auditor for getting the representation of retiring auditor.
3. The retiring auditor can make a representation (not exceeding a reasonable length) in writing to the company with respect to special notice and requests it to circulate the members.
4. The company shall send a copy of the representation to every member to whom notice of the meeting is sent (Circulation).
5. If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may require that the representation shall be read out at the meeting.
6. Further if a copy of representation is not sent as aforesaid, a copy thereof shall be field with the Registrar.

PROHIBITION ON RIGHT TO REPRESENTATION:

If the Tribunal is satisfied that the right of representation being abused by the auditor then it may direct not to send or read out the representation at AGM. The application can be made either by the company or any other aggrieved person

Note: This provision need not be applied where the retiring auditor has completed a consecutive tenure of **five years or ten years and** are liable for rotation u/s 139(2).

Q.NO.13 WHAT ARE THE POWERS OF AN AUDITOR AS PER SEC. 143(1)?

ANSWER:

The auditor has the following powers/rights while conducting an audit:

A. RIGHT OF ACCESS TO BOOKS:

1. The auditor of a company shall have a right of access to the books of account and vouchers of the company at all times, whether kept at the registered office of the company or at any other place including branches.
2. Further this right can be exercised during working days and business hours.

3. Right to access to books of accounts of subsidiary company and associate companies in so far as they related to consolidated financial statements.
4. Right to access to other records namely minutes of board meeting, MIS reports and any other books as may require by the auditor.

Note: Books of accounts definition includes cost records also. The phrase 'books, accounts and vouchers' include all books which have any bearing, or are likely to have any bearing on the accounts, whether these be the usual financial books or the statutory or statistical books; memoranda books, e.g., inventory books, costing records and the like may also be inspected by the auditor. Similarly, the term 'voucher' includes all or any of the correspondence which may in any way serve to vouch for the accuracy of the accounts. Thus, the right of access is not restricted to books of account alone and it is for the auditor to determine what record or document is necessary for the purpose of the audit.

EXAMPLE: While conducting the audit of a limited company for the year ended 31st March, 2020, the auditor wanted to refer to the Minute Books. The Board of Directors refused to show the Minute Books to the auditor.

ANSWER:

PROVISIONS AND EXPLANATION: Section 143 of the Companies Act, 2013 grants powers to the auditor that every auditor has a right of access, at all times, to the books and account including all statutory records such as minute books, fixed assets register, etc. of the company for conducting the audit.

In order to verify actions of the company and to vouch and verify some of the transactions of the company, it is necessary for the auditor to refer to the decisions of the shareholders and/or the directors of the company. It is, therefore, essential for the auditor to refer to the Minute Books. In the absence of the Minute Books, the auditor may not be able to vouch/verify certain transactions of the company.

CONCLUSION: In case the directors have refused to produce the Minute Books, the auditor may consider extending the audit procedure and also consider modifying/ qualifying his report in an appropriate manner.

B. RIGHT TO OBTAIN INFORMATION AND EXPLANATION:

1. The auditor has right to obtain from the officers of the company such information and explanations as he may think necessary for the performance of his duties as auditor.
2. The information and explanation can be obtained from either officers or employees of the company.

In the absence of such power, the auditor would not be able to obtain details of amount collected by the directors, etc. from any other company, firm or person as well as of any benefits in kind derived by the directors from the company, which may not be known from an examination of the books.

C. RIGHT TO RECEIVE NOTICES AND DUTY TO ATTEND GENERAL MEETING (Sec. 146):

1. The auditors of a company are entitled to attend any general meeting of the company (the right is not restricted to those at which the accounts audited by them are to be discussed); to receive all the notices to the general meetings, which members are entitled to receive.
2. Further it is the duty of the auditor to attend the general meeting as per sec. 146.
3. So, it can be concluded that it is both right and duty to attend the general meetings.

Note: However, he can with the prior approval of BOD can skip general meetings.

D. RIGHT TO LIEN: (General Principles of Law)

1. As per General principles, any person having lawful possession of others property, on which he worked on, can retain such property, on account of non-payment of dues.
2. The auditor can exercise lien on books and documents belonging to client for Non-Payment of fees.
3. Lien can be exercised only on records and documents in respect of which audit is conducted.
4. Lien can be exercised only on an authority from client. I.e., Lawful possession.
5. There must be a direct connection between the 'Documents & Records on which work performed' and 'Fees not being received'.
6. Further Due to the condition u/s 128, i.e., the books of accounts of the company shall only be kept at registered office, it is impracticable for the auditor to exercise lien as it amounts to violation of Sec. 128.
7. Taking an overall view of the matter, it seems that though legally, auditor may exercise right of lien in cases of companies, it is mostly impracticable for legal and practicable constraints.

Note: The question of exercising lien by auditor on audit working papers does not arise. As working papers are property of the auditor.

E. RIGHT TO REPORT TO THE MEMBERS OF THE COMPANY ON THE ACCOUNTS EXAMINED BY HIM: The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required by or under this Act to be laid before the company in general meeting.

Note

The auditor while making the report shall take into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Actor any rules made thereunder or under any order made under section 143(11).

The auditor shall express his opinion on the accounts and financial statements examined by him. He shall express an opinion, according to him and to the best of his information and knowledge, whether the said accounts/financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Q.NO.14 WHAT ARE THE DUTIES OF THE AUDITOR?

ANSWER:

A. DUTY TO REPORT: 143(2)

1. The author shall make a report to the members on
   - **a)** The Accounts examined by him; and
   - **b)** Financial Statements which are required to be laid before the company in general meeting.
2. The auditor shall state in his report as to whether the accounts examined by him and financial statements give a true and fair view of:
   - **a)** The statement of the company's affairs as at the end of its financial year;
   - **b)** The Profit/Loss for the year; and
   - **c)** Cash Flow Statement for the year.
3. The auditor shall prepare his report after taking into account the provisions of this Act and the Accounting and Auditing Standards.
4. As per Sec. 143(4), If auditor has given any qualifications or remarks in the audit report, he shall state reasons thereof in the said report.
5. The auditors' report shall also state:
   - **a.** Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
   - **b.** Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

c. Whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

d. Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

e. Whether, in his opinion, the financial statements comply with the accounting standards;

f. The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

g. Whether any director is disqualified from being appointed as a director under sub section (2) of section 164;

h. Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

i. Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;

j. Such other matters as may be prescribed**.**

In context of clause j states above, the Rule 11 of the Companies (Audit & Auditors) Rules,2014 i.e. Other Matters to be Included in Auditors Report requires the auditor's report shall also include their views and comments on the following matters, namely:

i. Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

ii. Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

iii. Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

iv. Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been;

1. Advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

2. Received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

3. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) [i.e. pt 1] and (ii) [i.e. pt 2] contain any material mis-statement.

v. Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

vi. Whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

B. **DUTY TO SIGN THE AUDIT REPORT:** As per **section 145** of the Companies Act, 2013, the person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company, in accordance with the provisions of **section 141(2)**. The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditors' report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

C. **DUTY TO COMPLY WITH AUDITING STANDARDS:** As per **section 143(9)** of the Companies Act, 2013, every auditor shall comply with the auditing standards prescribed under Sec 143(10). Further, as per sub-section 10 of section 143 of the Act, the Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. Students may note that until any auditing standards are notified, any standard, or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

D. DUTY TO ATTEND GENERAL MEETINGS: Sec.146

1. All notices of general meeting must be sent to the Auditor of the company whether the financial statements are discussed or not in that General Meeting.
2. The auditor shall attend the GM either by himself or through his authorized representative, who shall also be qualified to be an auditor (unless otherwise exempted by the company).
3. The right is only in respect of General Meetings only and not in respect of any Board Meetings.

Q.NO.15 REPORTING ON FRAUD IDENTIFIED BY THE AUDITOR IN ACCORDANCE WITH SEC. 143(12)?

ANSWER:

According to section 143(12) and Rule 13 of the Companies (Audit and Auditors) Rules, 2014, the following are the duties of auditor in relation to any fraud identified during the course of his audit:

A. IF THE AMOUNT OF FRAUD IS RS. 1 CRORE OR MORE

a. **Reporting to the Central Government:** If the auditor has reason to believe that an offence of fraud involving an amount of Rs. 1 crore or above, is being or has been committed against the company *by its officers or employees*, the auditor shall report the matter to the CG in the following manner.

b. **The manner of reporting the matter to the Central Government is as follows: [Rule 13]**

1. First, the auditor shall report the matter to the Board or the Audit Committee, as the case may be, not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days.
2. On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments on such reply or observations to the CG within 15 days from the date of receipt of such reply or observations.
3. In case the auditor fails to get any reply or observations within the stipulated period of 45 days, he shall forward his report to the CG along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations.
4. The report shall be on the letterhead of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
5. The report shall be in the form of a statement as specified in Form ADT-4**.**

B. IF THE AMOUNT OF FRAUD IS LESS THAN RS. 1 CRORE:

a. Reporting to the Audit Committee or Board: If the auditor has reason to believe that an offence of fraud involving an amount of less than Rs.1 Crore, is being or has been committed against the company *by its officers or employees*, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases, not later than 2 days of knowledge of fraud, specifying the following:

1. Nature of Fraud with description.

2. Approximate amount involved and

3. Parties involved.

b. Disclosure in the Board's Report: The following details of each of the fraud reported to the Audit committee or the Board shall be disclosed in board's report:

1. Nature of Fraud with description.

2. Approximate Amount involved.

3. Parties involved, and

4. Remedial actions taken.

C. OTHER RELATED PROVISIONS:

Sec. 143 (12) - It states that no duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter above if it is done in good faith.

The provisions regarding fraud reporting shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

If any auditor, cost accountant or company secretary in practice does not comply with the provisions of sub-section (12) of section 143, he shall be liable to a penalty of five lakh rupees in case of a listed company and a penalty of one lakh rupees in case of any other company.

D. CARO 2020 AND STANDARDS ON AUDIT IN CONTEXT OF FRAUD:

1. The auditor is also required to report under clause (x) of paragraph 3 of Companies (Auditor's Report) Order, 2020 [CARO, 2020] on whether any fraud by the company or any fraud on the Company has been noticed or reported during the year. If yes, the nature and the amount involved is to be indicated.
2. The definition of fraud as per SA 240 and the explanation of fraud as per Section 447 of the 2013 Act are similar, except that under section 447, fraud includes 'acts with an intent to injure the interests of the company or its shareholders or its creditors or any other person, whether

or not there is any wrongful gain or wrongful loss.' However, an auditor may not be able to detect acts that have intent to injure the interests of the company or cause wrongful gain or wrongful loss, unless the financial effects of such acts are reflected in the books of account/financial statements of the company. For example,

a. An auditor may not be able to detect if an employee is receiving payoffs for favouring a specific vendor, which is a fraudulent act, since such payoffs would not be recorded in the books of account of the company.

b. If the password of a key managerial personnel is stolen and misused to access confidential/restricted information, the effect of the same may not be determinable by the management or by the auditor.

Therefore, the auditor shall consider the requirements of the SAs, insofar as it relates to the risk of fraud, including the definition of fraud as stated in SA 240, in planning and performing his audit procedures in an audit of financial statements to address the risk of material misstatement due to fraud.

EXAMPLE:

The Senior Manager on the instruction of Chief Executive Officer of a company entered fake invoices of credit purchases in the books of account aggregating to Rs. 95 lakh and cleared all the payments to such bogus creditor. Here, the auditor of the company is required to report the fraudulent activity to the Board or Audit Committee (as the case may be) within 2 days of his knowledge of fraud. Further, the company is also required to disclose the same in Board's Report. It may be noted that the auditor need not to report to the Central Government as the amount of fraud involved is less than Rs. 1 crore, however, reporting under CARO, 2020 is required.

Q.NO.16 WRITE ABOUT AUDIT OF BRANCH OFFICE ACCOUNTS [SEC. 143(8)]?

ANSWER:

A. WHO CAN BE APPOINTED AS A BRANCH AUDITOR: Where a company has a branch office, the accounts of that office shall be audited either by:

a. The auditor appointed for the company (i.e., Principal auditor) or

b. Any chartered accountant holding certificate of practice, or

c. Where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:

1. The company's auditor or

2. By an accountant or

3. By any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

B. WHO CAN APPOINT BRANCH AUDITORS:

1. Usually, the branch auditors are also appointed by the members.
2. However, the shareholders can delegate such power to BOD to appoint branch auditor.

C. REPORTING REQUIREMENTS OF BRANCH AUDITORS:

1. The branch auditor shall prepare a report on the accounts of the branch examined by him.
2. The branch auditor shall submit his report to the company's auditor.
3. The reporting requirements u/s 143(1), (3), (11) and (12) are equally applicable to branch auditors.

D. USING THE WORK OF ANOTHER AUDITOR (SA – 600): Where another auditor is appointed for a component then the principal auditor is entitled to reply on the work of such other auditor. Further the principal auditor has to perform certain audit procedures to obtain evidence that the work of component auditor is adequate for the principal auditor work. The principal auditor would ordinarily perform the following procedures:

1. The principal auditor would inform the other auditor of matters requiring special consideration, procedures for the identification of inter -component transactions that may require disclosure and the timetable for completion of audit.
2. Make sufficient arrangements for co-ordination of their efforts at the planning stage of the audit.
3. Advise the other auditor of the significant accounting, auditing and reporting requirements and obtain representation as to compliance with them.
4. The principal auditor might discuss with the other auditor the audit procedures applied or review a written summary of the other auditor's procedures and findings which may be in the form of a completed questionnaire or checklist.
5. The principal auditor may also wish to visit the other auditor.

RELEVANT QUESTIONS:

1. **When the accounts of the branch are audited by a person other than the company's auditor, there is need for a clear understanding of the role of such auditor and the company's auditor in relation to the audit of the accounts of the branch and the audit of the company as a whole; also, there is great necessity for a proper rapport between these two auditors for the purpose of an effective audit. Explain.**

A. Write **Part – D.**

Q.NO.17 EXPLAIN THE PROVISIONS RELATING TO AUDITOR'S REMUNERATION U/S 142 OF COMPANIES ACT, 2013. (SELF STUDY)

ANSWER:

1. As per section 142 of the Act, the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.
2. Board may fix remuneration of the first auditor appointed by it.
3. The remuneration, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him.
4. The remuneration does not include any remuneration paid to him for any other service rendered by him at the request of the company.
5. Therefore, it has been clarified that the remuneration to Auditor shall also include any facility provided to him.

   Example: *SHRD Private Ltd is engaged in the business of software and consultancy. The company has an annual turnover of ₹ 2,000 crore but its profit margins are not very good as compared to the industry standards. For the financial year ended 31st March 2019, the company proposed appointment of its statutory auditors at its Board meeting, however, the remuneration was not finalized. The statutory auditors completed the engagement formalities including the engagement letter between the company and the auditors and it was decided that the engagement letter be signed without fee i.e., with the clause that the fee to be mutually decided. In this situation, engagement letter with such arrangement* ***is valid****.*

Q.NO.18 EXPLAIN PROVISIONS RELATING TO MAINTENANCE OF COST RECORDS AND COST AUDIT U/S 148 OF COMPANIES ACT 2013? (SELF STUDY)

ANSWER:

A. MAINTENANCE OF COST RECORDS:

1. **APPLICABILITY:** Rule 3 of the Companies (Cost Records and Audit) Rules, 2014 provides that the following conditions for companies (including foreign companies) which are required to maintain cost records,
   - **a)** Company must be engaged in the production of goods or providing services, and
   - **b)** It must be having an overall turnover from all its products and services of Rs.35 crore or more during the immediately preceding financial year.

   Exceptions: Companies classified as a Micro enterprise or a Small enterprise under Micro, Small and Medium Enterprises Development Act, 2006 are not required are to maintain cost records even it satisfies the above limits.

2. **CLASSIFICATION OF COMPANIES FOR THE PURPOSE OF APPLICABILITY OF THE RULES:** The said rule has divided the list of companies into regulated sectors and non-regulated sectors. Some of the companies/ industry/ sector/ product/ service prescribed under the said rule are given below:

   a. **Regulated Sectors: (Not covered in Study Material)**

      i. Telecommunication services regulated by the telecom Regulatory Authority of India (TRAI)

      ii. Generation, transmission, distribution and supply of electricity regulated by the relevant regulatory body or authority under the Electricity Act, 2003, other than for captive generation.

      iii. Petroleum products regulated by the Petroleum and Natural Gas Regulatory Board.

      iv. Drugs and Pharmaceutical.

      v. Sugar and industrial alcohol.

      vi. Fertilizers.

   b. **Non - Regulated Sectors: (Not Covered in study material)**

      i. Turbo jets and turbo propellers.

      ii. Tyres and Tubes.

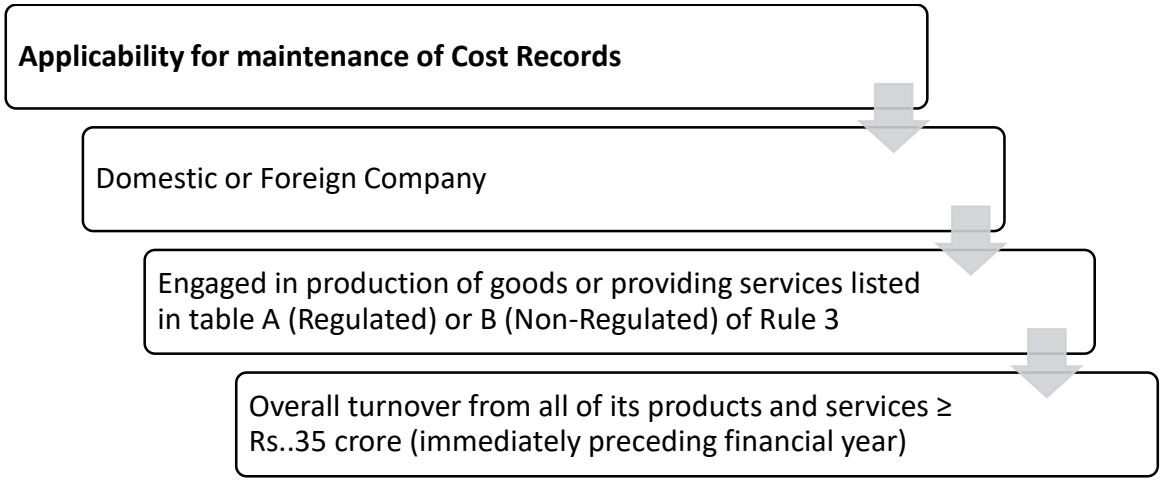
      iii. Steel; Cement.

3. **PRESCRIBED FORM FOR MAINTENANCE OF COST RECORDS:** As per Rule 5 of the companies (Cost Records and Audit) Rules, cost records shall be maintained in Form CRA - 1.

   a. The cost records shall be maintained on regular basis in such manner as to facilitate calculation of per unit cost of production or cost of operations, cost of sales and margin for each of its products and activities for every financial year on monthly or quarterly or half-yearly or annual basis.

   b. The cost records shall be maintained in such manner so as to enable the company to exercise, as far as possible, control over the various operations and costs to achieve optimum economies in utilisation of resources and these records shall also provide necessary data which is required to be furnished under these rules.

4. **REQUIREMENT AS PER CARO, 2016:** As per clause (vi) to Paragraph of the CARO, 2016, where maintenance of cost records has been specified by the Government under section 148(1) of the Companies Act, 2013, the auditor has to report whether such accounts and records have been made and maintained.



Case	Turnover (Figures in Crore)					Applicability of Cost Records
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	
1.	10	10	20	10	30	No
2.	10	10	20	20	40	Yes
3.	0	10	10	30	40	Yes
4.	10	0	10	30	40	Yes
5.	20	20	40	0	40	Yes
6.	0*	0*	0	40	40	No

* Not-engaged in the production of the goods or providing services, specified in the Table A (6 Regulated Sectors) and/or Table B (33 Non-Regulated Sector)

B. COST AUDIT u/s 148:

1. **APPLICABILITY OF COST AUDIT:** Rule 4 of the companies (Cost Records and Audit) Rules, 2014 states the provisions related to the applicability of the cost audit.

   The applicability of Cost Audit to a company depends upon certain Turnover criteria as follows

   a. **For Companies specified under "Regulated Sectors":**

      i. The overall annual turnover of the company from all its products and services during the immediately preceding financial year is Rs.50 crore or more **and**

      ii. The aggregate turnover of the individual product(s) or service(s) covered in the sector is Rs.25 crore or more.

   b. **For Companies specified under "Non-Regulated Sectors"**:

      i. The overall annual turnover of the company from all its products and services during the immediately preceding financial year is Rs.100 crore or more and

      ii. The aggregate turnover of the individual product(s) or service(s) covered in the sector is Rs.35 crore or more.

2. **NON - APPLICABILITY OF COST AUDIT:** Sub - rule (3) of Rule 4 provides that the requirement for cost audit under these rules shall not be applicable to a company which is covered under Rule 3.

   a) Whose revenue from exports, in foreign exchange, exceeds 75% of its total revenue (or)

   b) Which is operating from a special economic zone. (or)

   c) A company which is engaged in generation of electricity for captive consumption.

Case	Turnover (Figures in Crore)					Applicability of	
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	Cost Records	Cost Audit
1.	10	10	20	10	30	No	No
2.	10	10	20	20	40	Yes	No
3.	20	20	40	0	40	Yes	No
4.	10	20	30	10	40	Yes	No
5.	10	20	30	20	50	Yes	Yes, but only for table A
6.	0	20	20	20	40	Yes	No
7.	20	10	30	80	110	Yes	Only Table A Product
8.	20	20	40	70	110	Yes	Both Tables A & B Products
9.	10	10	20	80	100	Yes	No
10.	15	15	30	10	40	Yes	No
11.	20	20	40	8	48	Yes	No

3. **APPOINTMENT OF COST AUDITOR: SEC 148**

   a) Qualification, disqualification, rights, duties and obligations of Cost Auditor: Similar to the company auditor appointed under section 139.

   b) Who can be appointed as a cost auditor: The Cost audit shall be conducted by a Cost Accountant in practice Provided that person appointed under section 139 as an auditor of the company shall not be appointed as its cost auditor.

   c) Who can appoint Cost Auditor: Board of Directors.

   However, if there is Audit committee in the company, then the appointment can be made after considering the recommendation of audit committee.

   d) Time limit for appointment: within 180 days of the commencement of every financial year.

e) **Communication with CG:** Every referred company shall file a notice of such appointment with the central Government within a period of 30 days of the Board meeting in which such appointment is made or within a period of 180 days of the commencement of the financial year, Whichever is earlier, through electronic mode, in Form CRA-2.

f) **Tenure of Cost Auditor:** The cost auditor appointed as such shall continue in such capacity till the expiry of 180 days from the closure of the financial year, or till he submits the cost audit report, for the financial year for which he has been appointed.

4. **CASUAL VACANCY IN THE OFFICE OF COST AUDITOR:** Any casual vacancy in the office of a cost Auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within 30 days of occurrence of such vacancy and the company shall inform the CG in Form CRA-2 within 30days of such appointment of cost auditor.
5. **REMOVAL OF COST AUDITOR:** The cost Auditor may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the cost auditor and recording the reasons for such removal in writing.

C. PROCEDURE FOR SUBMISSION OF COST AUDIT REPORT:

1. **COST AUDITOR TO BOD:** The cost auditor shall submit the cost audit report along with his his reservations or qualifications, if any, in **Form CRA-3** to the BOD within a period of 180 days from the closure of the financial year.
2. **BOD to CG:**
   a) The company shall within 30 days from the dated of receipt of a copy of the cost audit report prepared furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein in Form CRA-4.
   b) If after considering the cost audit report and the information and explanation furnished by the company as above, the central Government may call for any further information or explanation as is necessary.
3. **DUTY TO REPORT ON FRAUD:** The provisions of section 143(12) of the Companies Act, 2013 and the relevant rules on duty to report on fraud shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and these rules.

Summary of Rule 4 i.e., Applicability of Cost Audit

<table>
<tr><td colspan="7">Companies that are covered under rule 3 and engaged in any of</td></tr>
<tr><td colspan="4">6 Regulatory Sectors (Table A)</td><td colspan="3">33 Non-Regulatory Sectors (Table B)</td></tr>
<tr><td>Overall annual turnover from all its products and services during the immediately preceding financial year is rupees fifty crore or more</td><td rowspan="2">Revenue from exports, in foreign exchange, exceeds 75%</td><td rowspan="2">Operating from a special economic zone</td><td rowspan="2">Engaged in generation of electricity for captive consumption.</td><td rowspan="2">Engaged in generation of electricity for captive consumption.</td><td rowspan="2">Operating from a special economic zone</td><td rowspan="2">Engaged in generation of electricity for captive consumption.</td><td>Overall annual turnover from all its products and services during the immediately preceding financial year is rupees one hundred crore or more</td></tr>
<tr><td>Aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees twenty five crore or more</td><td>Aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees thirty five crore or more</td></tr>
<tr><td>Cost Audit is required</td><td colspan="5">Rule 4 i.e., Cost Audit shall not apply; only Rule 3 i.e., Cost Records will apply</td><td>Cost Audit is required</td></tr>
</table>

Summary of different form pertaining to cost records and cost audits

Form	Purpose
CRA-1	The manner in which cost records to be maintained
CRA-2	For intimation of appointment of cost auditor by company to the Central Government
CRA-3	Cost Audit Report
CRA-4	Filling of the cost audit report with the Central Government

Q.NO.19 UNDER WHAT CIRCUMSTANCES THE RETIRING AUDITOR CANNOT BE REAPPOINTED? (SELF STUDY)

ANSWER:

1. **IN THE FOLLOWING CIRCUMSTANCES, THE RETIRING AUDITOR CANNOT BE REAPPOINTED [Sec. 139(9)]:**
   - **a.** The auditor proposed to be reappointed does not possess the qualification prescribed under section 141 of the Companies Act, 2013.
   - **b.** The proposed auditor suffers from the disqualifications under section 141(3), 141(4) and 144 of the Companies Act, 2013.
   - **c.** He has given to the company notice in writing of his unwillingness to be reappointed.
   - **d.** A written certificate has not been sent to the effect that the appointment or reappointment, if made, will be in accordance within the limits specified under section 141(3) (g) of the Companies Act, 2013.
   - **e.** A resolution has been passed in AGM appointing somebody else or providing expressly that the retiring auditor shall not be reappointed.
2. **WHERE AT ANY AGM, NO AUDITOR IS APPOINTED OR RE-APPOINTED: [Sec. 139(10)]** The existing auditor shall continue to be the auditor of the company.

Q.NO.20 EXPLAIN THE PENALTY FOR NON-COMPLIANCE U/S 147 OF COMPANIES ACT, 2013. (SELF STUDY)

ANSWER:

A. IN THA HANDS OF COMPANY AND OFFICER IN DEFAULT:

1. **FOR COMPANY:** If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5,00,000/- and
2. **EVERY OFFICER** of the company who is in default shall be punishable with fine which shall not be less than Rs.10,000/- but which may extend to Rs.1,00,000/-.

B. IN THE HANDS OF AUDITOR: If an auditor of a company contravenes any of the provisions of section 139 section 143, section 144 or section 145, the auditor shall be punishable with fine:

1. **UN-INTENTIONAL CONTRAVENTION:** Penalty of Not be less than:
   - **a.** Rs.25,000/- but which may extend to Rs.5,00,000/- or
   - **b.** **4 TIMES** the remuneration of the auditor, **WHICHEVER IS LESS.**

2. **INTENTIONAL CONTRAVENTION:** If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with:
   a. Imprisonment for a term which may extend to 1 YEAR **AND**
   b. With fine which:
      i. Shall not be less than Rs.50,000/- but which may extend to Rs.25,00,000/- or
      ii. **8 TIMES** the remuneration of the auditor, **WHICHEVER IS LESS.**

3. **REFUND REMUNERATION AND PAY DAMAGES:** Where an auditor has been convicted under sub-section (2), he shall be liable to-
   a. Refund the remuneration received by him to the company.
   b. Pay for damages to the company statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.

c. **CIVIL AND CRIMINAL LIABILITY:** Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in an fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

d. **CRIMINAL LIABILITY – CONCERNED PARTNER ONLY:** It may be noted that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner(s), who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

ILLUSTRATIONS

Illustration 1.

Modern Furniture Limited (MFL), despite not mandated by Section 177 of the Act, read with Companies (Meetings of Board and its Powers) Rules, 2014 to constitute audit committee; on their own on voluntary basis constitute such audit committee.

Such committee recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but board didn't consider the recommendation of such committee. Examine the legal validity of act of audit committee and board of MFL.

Answer – Rule 6(1) read in conjunction with rule 6(2) of the Companies (Audit & Auditors) Rules, 2014 provides that in case where Audit committee not required to be constituted under section 177, but constituted by company, then also such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of said audit committee.

Hence, act of audit committee and board at MFL is legally valid.

Illustration 2.

Unicorn Steel Private Limited is incorporated as on 02.06.2022, board of directors of the company held board meeting as on 15.06.2022 to appoint Jain Ajmera & Associates as a first auditor of the company for a term of 5 years. As per section 139(6) of the Companies Act, 2013, the board shall appoint first director within 30 days from the date of registration of the company. Evaluate the legal validity;

Options

a. Valid

b. Invalid

c. Valid after approval of shareholder in General Meeting

d. Valid only after approval of Central Government

Answer - b

Reason – As per section 139(6), the first auditor so appoint by Board of Director shall hold office until the conclusion of the first AGM.

If the **Board fails to exercise its powers** i.e., appointment of first auditor, it shall

a. Inform the members of the company and

b. The company may appoint the first auditor within 90 days at an extra ordinary general meeting (EGM) and

c. Such auditor shall hold office till the conclusion of the first AGM.

Illustration 3.

Managing Director of PQR Limited wanted to appoint Mr. Ganpati, a practicing Chartered Accountant, as first auditor of company. He himself without consulting the board, appointed Shri Ganpati as auditor. Evaluate legal validity

Answer - Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". Hence in the instant case, the appointment of Mr. Ganpati by the Managing Director himself is invalid due to violation of Section 139(6) of the Companies Act, 2013.

Illustration 4.

Special Resolution to remove auditor at general meeting shall be passed within _____, form the approval from central government.

a. 30 days

b. 1 month

c. 60 days

d. 3 months

Answer - c

Reason – Rule 7(3) of the Companies (Audit & Auditors) Rules, 2014 that states the company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Illustration 5.

FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crore. During the year ended 31st March 2023, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case.

Answer – The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfill their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

Illustration 6.

Mr. Anil, a Chartered accountant, is a partner of a firm and has been appointed as an auditor of Laxman Ltd. in the Annual General Meeting of the company held in September 2022 in which he accepted the assignment. Subsequently, in January 2023, he offered Bharat, another Chartered Accountant, who is the Manager Finance of Laxman Ltd., to join the firm of Anil as a partner.

Answer

Section 141(3)(c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, shall be deemed to have vacated his office as an auditor.

In the present case, Anil is auditor of M/s Laxman Limited and any employee of Laxman Limited cannot become the Partner of the firm where Anil is a Partner. In case that happens, he/the firm shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

Illustration 7.

"Mr. Ashish", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ₹ 900/-. Whether Mr. Ashish is qualified for appointment as an Auditor of "XYZ Ltd."?

Answer

As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his partner holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. In the present case, Mr. Ashish is holding security of ₹ 900 in the XYZ Ltd, therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

Note – In earlier act i.e., Companies Act 1956 the holding securities of par value upto the limit of ₹ 1000 by auditor was not the disqualification criteria. Under current Act i.e., Companies Act 2013, not a single rupee of holding by auditor is allowed.

Illustration 8.

"Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." Having face value of ₹ 90,000/-. Whether "Mr. P" is qualified for being appointed as an auditor of "ABC Ltd."?

Answer

As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this

Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹ 90,000 face value in ABC Ltd., which is as per requirement of proviso to section 141(3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

Though rule 10(1) says, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh but here rather than a literal interpretation, reasonable construction is required. And holding of all the relatives together shall be checked against the threshold.

Further, even if relative of one of the partners of any firm hold securities or interests exceeding the threshold then, not only such partner even firm shall not be eligible to appointed as auditor.

The threshold condition specified above shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities.

If the relative acquires any security or interest above the prescribed threshold i.e. ₹ 1,00,000, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.

Illustration 9.

"BC & Co." is an audit firm having partners "Mr. B" and "Mr. C" and "Mr. A", relative of "Mr. C", is holding securities of "MWF Ltd." having face value of ₹ 1,10,000. Whether "BC & Co." is qualified for appointment as auditor of "MWF Ltd."?

Answer

Ltd."? Answer As per section 141(3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000. In the instant case, BC & Co, will be disqualified for appointment as an auditor of MWF Ltd as the relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i).

Illustration 10.

"ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as auditors in 4, 6 and 10 companies respectively.

i. Provide the maximum number of audits remaining in the name of "ABC & Co."

ii. Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

Answer

In the instant case, Mr. A is holding appointment in 4 companies, Mr. B is having appointment in 6 companies and Mr. C is having appointment in 10 companies. In aggregate all three partners are having 20 audits.

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

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60 companies' audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Total Number of audits for which the firm would be eligible	= 20*3	= 60
Number of audits already taken by all the partners		
In their individual capacity	= 4+6+10	= 20
Remaining number of audits available to the firm		= 40

With reference to above provisions, an auditor can hold more appointment as auditor (i.e. ceiling limit as per section 141(3)(g) - already holding appointments as an auditor). Hence

i. Mr. A can hold: 20 – 4 = 16 more audits.

ii. Mr. B can hold 20 - 6 = 14 more audits and

iii. Mr. C can hold 20-10 = 10 more audits.

Note - It has been assumed that the companies given in the question are not one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crore.

Illustration 11.

MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded.

During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded.

Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements.

Answer

In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit these additional information.

Hence the auditor should conclude the work without delaying because of this additional information.

Illustration 12.

NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspect transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor dealt with such matter?

Answer

As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor. In this case, the suspicious transactions have been identified by the management first and information about the

same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

Note - The auditors need to report about this matter appropriately in their CARO report.

Illustration 13.

Whether entire audit report need to read before the company in general meeting?

Answer

No, as per section 145 of the Companies Act 2013, **qualifications, observations or comments** on financial transactions or matters, which have any **adverse effect** on the functioning of the company mentioned in the auditor's report shall be **read before the company** in **general meeting** and shall be **open to inspection** by any member of the company.

Illustration 14.

Regarding the general meeting for which notice is served on auditor;

i. **Whether auditor is mandatorily required to be attend the said general meeting?**
ii. **If yes, whether he is required to attend the meeting personally?**

Answer

Answer to first part is yes, while no in case of second, because as per section 146 of the Companies Act 2013, the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.

Illustration 15.

Can a professional LLP which have CAs and CMAs as its partners, appointed as Cost Auditor u/s 148 as well as Statutory Independent Auditor u/s 139

Answer

No, because as per proviso to section 148(3), no person (or firm including LLP) appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records or vice-versa.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Birthday Card Limited, a listed company can appoint or re-appoint, Mishra & Associates (a firm of Chartered Accountants), as their statutory auditors for:**
   a. **One year only**
   b. **One term of 3 consecutive years only**
   c. **One term of 4 consecutive years only**
   d. **Two terms of 5 consecutive years**

2. **Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its:**
   a. **Second annual general meeting**
   b. **Fourth annual general meeting**
   c. **Sixth annual general meeting**
   d. **Eight annual general meeting**

3. **For appointing an auditor other than the retiring auditor,**
   a. **Special notice is required.**
   b. **Ordinary notice is required**
   c. **Neither ordinary nor special notice is required**
   d. **Approval of Central Government is required.**

4. **The word 'firm' for the purpose of Section 139 shall include-**
   a. **An individual auditor**
   b. **LLP**
   c. **An individual auditor and LLP both**
   d. **A company**

Answer to MCQ based Questions

1.	**d.**	Two terms of 5 consecutive years
2.	**c.**	Sixth annual general meeting
3.	**a.**	Special notice is required.
4.	**a.**	An individual auditor

DESCRIPTIVE QUESTIONS

Q.NO.1 STATE THE PROCEDURE FOR THE FOLLOWING, EXPLAINING THE RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013;

i. **APPOINTMENT OF FIRST AUDITOR, WHEN THE BOARD OF DIRECTORS DID NOT APPOINT THE FIRST AUDITOR WITHIN ONE MONTH FROM THE DATE OF REGISTRATION OF THE COMPANY.**

ii. **REMOVAL OF STATUTORY AUDITOR (APPOINTED IN LAST ANNUAL GENERAL MEETING) BEFORE THE EXPIRY OF HIS TERM.**

ANSWER

i. As per Section 139(6) of the Companies Act, 2013 the first auditor of a company shall be appointed by the Board of Directors within 30 days of the registration of the company.

Section 139 (6) continues to provide further that if the Board of Directors fails to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

From the above provisions of law if the Board of Directors fails to appoint the first auditors within the stipulated 30 days, it shall take the following steps:

a. Inform the members of the Company;

b. Immediately take steps to convene an extra ordinary general meeting not later than 90 days;

c. Members shall at that extra ordinary meeting appoint the first auditors of the company;

d. The first auditors so appointed shall hold office upto the conclusion of the first AGM of the company.

ii. Section 140 of the Companies Act, 2013 prescribes certain procedure for removal of auditors.

PROCEDURE FOR REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM [SEC. 140(1)]:

1. **BOARD RESOLUTION:** A BOD resolution shall be passed to remove the auditor before expiry of term.
2. **CG APPROVAL:** An application to the Central Government for removal of auditor shall be made in Form ADT-2 within 30 days of board resolution.
3. **SPECIAL RESOLUTION:** The company shall hold the general meeting within 60 days upon receipt of approval from the Central Government for passing the special resolution. Convene the General Meeting and pass the special resolution removing the auditor.

NOTE: An opportunity of being heard shall be given to the auditor before removing him.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, following steps should be taken for the removal of an auditor before the completion of his term:

a. The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

b. The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

c. The company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

Q.NO.2 ONE-FOURTH OF THE SUBSCRIBED CAPITAL OF AMC LIMITED WAS HELD BY THE GOVERNMENT OF RAJASTHAN. MR. NEERAJ, A CHARTERED ACCOUNTANT, WAS APPOINTED AS AN AUDITOR OF THE COMPANY AT THE ANNUAL GENERAL MEETING HELD ON 30 APRIL, 2018 BY AN ORDINARY RESOLUTION. MR. SANJAY, A SHAREHOLDER OF THE COMPANY, OBJECTS TO THE MANNER OF APPOINTMENT OF MR. NEERAJ ON THE GROUND OF VIOLATION OF THE COMPANIES ACT, 2013. DECIDE WHETHER THE OBJECTION OF MR. SANJAY IS TENABLE? ALSO EXAMINE THE CONSEQUENCES OF THE ABOVE APPOINTMENT UNDER THE SAID ACT.

ANSWER

PROVISION AND EXPLANATION: As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

CONCLUSION: Therefore, the contention of Mr. Sanjay is **not tenable**. The appointment is valid under the Companies Act, 2013.

Q.NO.3 EF LIMITED APPOINTED AN INDIVIDUAL FIRM, NARESH & COMPANY, CHARTERED ACCOUNTANTS, AS AUDITORS OF THE COMPANY AT THE ANNUAL GENERAL MEETING HELD ON 30 SEPTEMBER 2022. MRS. KAMALA, WIFE OF MR. NARESH, INVESTED IN THE EQUITY SHARES FACE VALUE OF ₹ 1 LAKH OF EF LIMITED ON 15 OCTOBER 2022. BUT NARESH & COMPANY CONTINUES TO FUNCTION AS STATUTORY AUDITORS OF THE COMPANY. ADVICE.

ANSWER

PROVISION AND EXPLANATION: As per sub-section (3)(d)(i) of Section 141 of the Companies Act, 2013 along with Rule 10 of the Companies (Audit and Auditors) Rule, 2014, a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh.

Also, as per sub-section (4) of Section 141 of the Companies Act, 2013, where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

CONCLUSION: In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2022 i.e., after the investment made by his wife in the equity shares of EF Limited.

Q.NO.4 EXPLAIN HOW THE AUDITOR WILL BE APPOINTED IN THE FOLLOWING CASES:

i. **A GOVERNMENT COMPANY WITHIN THE MEANING OF SECTION 394 OF THE COMPANIES ACT, 2013.**
ii. **A PUBLIC COMPANY WHOSE SHAREHOLDERS INCLUDE XYZ BANK (A NATIONALIZED BANK) HOLDING 18% OF THE SUBSCRIBED CAPITAL OF THE COMPANY.**

ANSWER

i. The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

ii. In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

1. The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th annual general meeting and thereafter till the conclusion of every 6th meeting.
2. Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Q.NO.5 EXAMINE THE FOLLOWING SITUATIONS IN THE LIGHT OF THE COMPANIES ACT, 2013

"MR. ABHI", A PRACTICING CHARTERED ACCOUNTANT, IS HOLDING SECURITIES OF ABHIMAN LTD. HAVING FACE VALUE OF ₹ 1000/-. WHETHER MR. ABHI IS QUALIFIED FOR APPOINTMENT AS AN AUDITOR OF ABHIMAN LTD.?

ANSWER

As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

ANALYSIS AND CONCLUSION: In the present case, Mr. Abhi is holding security of ₹ 1000 in the Abhiman Ltd, therefore, he is not eligible for appointment as an auditor of Abhiman Ltd.

Q.NO.6 EXAMINE WHETHER THE FOLLOWING PERSONS ARE ELIGIBLE FOR BEING APPOINTED AS AUDITOR UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013:

i. "MR. PRAKASH" IS A PRACTICING CHARTERED ACCOUNTANT AND "MR. AAKASH", WHO IS A RELATIVE OF "MR. PRAKASH" IS HOLDING SECURITIES OF "ABC LTD." HAVING FACE VALUE OF ₹ 70,000/- (MARKET VALUE ₹ 1, 10,000/-). DIRECTORS OF ABC LTD. WANT TO APPOINT MR. PRAKASH AS AN AUDITOR OF THE COMPANY.

ii. **MR. RAMESH IS A PRACTICING CHARTERED ACCOUNTANT INDEBTED TO MNP LTD. FOR RUPEES 6 LAKH. DIRECTORS OF MNP LTD. WANT TO APPOINT MR. RAMESH AS AN AUDITOR OF THE COMPANY.**

iii. **MRS. KVJ SPOUSE OF MR. KUMAR, A CHARTERED ACCOUNTANT, IS THE STORE KEEPER OF PRC LTD. DIRECTORS OF PRC LTD. WANT TO APPOINT MR. KUMAR AS AN AUDITOR OF THE COMPANY**

ANSWER

i. **PROVISION:** As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

ANALYSIS AND CONCLUSION: In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ₹ 70,000 (market value ₹ 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

ii. **PROVISION:** According to section 141(3)(d)(ii) of the Companies Act, 2013, a person is not eligible for appointment as auditor of any company, if he is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs.5,00,000/.

ANALYSIS AND CONCLUSION: In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for rupees 6 Lakh.

iii. **PROVISION:** As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

ANALYSIS AND CONCLUSION: In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Q.NO.7 THE BOARD OF DIRECTORS OF A LIMITED REQUESTED ITS STATUTORY AUDITOR TO ACCEPT THE ASSIGNMENT OF DESIGNING AND IMPLEMENTATION OF SUITABLE FINANCIAL INFORMATION SYSTEM TO STRENGTHEN THE INTERNAL CONTROL MECHANISM OF THE COMPANY. HOW WILL YOU APPROACH TO THIS PROPOSAL, AS A STATUTORY AUDITOR OF A LTD., TAKING INTO ACCOUNT THE CONSEQUENCES, IF ANY, OF ACCEPTING THIS PROPOSAL?

ANSWER

PROVISION: According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system

ANALYSIS AND CONCLUSION: In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

11. COMPANIES INCORPORATED OUTSIDE INDIA

Q.NO.1 WRITE A SHORT NOTE ON FOREIGN COMPANY?

ANSWER:

I. FOREIGN COMPANY [SECTION 2(42)]:

"Foreign company" means any company or body corporate incorporated outside India which-

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner.

Example: *ABC Entertainment Limited (Indian Company) having foreign subsidiary UVW Limited rendering satellite services to the group will be covered under the definition of Foreign Company under the Companies Act, 2013.*

Example: *Airline companies who operate through their booking agents in India will be covered under the definition of Foreign Company under the Companies Act, 2013.*

II. ELECTRONIC MODE: According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

a. business to business and business to consumer transactions, data interchange and other digital supply transactions;

b. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

c. financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

d. online services such as telemarketing, telecommuting, telemedicine, education and information research; and

e. all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice, or data transmission or otherwise.

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

Example: *Zakpak Ltd. is a shipping company incorporated in Japan. The Company has set up a branch office in India after obtaining necessary approvals from RBI. Branch Offices are generally considered as a reflection of the Parent Company's office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.*

Q.NO.2 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 APPLICABLE TO FOREIGN COMPANY REGARDING PAID UP SHARE CAPITAL?

ANSWER:

APPLICATION OF ACT TO FOREIGN COMPANIES [SECTION 379]

According to this section:

A. APPLICABILITY OF ACT TO FOREIGN COMPANIES:

1. Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies.
2. It implies that all companies which falls within the definition of foreign company as per section 2(42), shall comply with the provisions of this Chapter.

B. REQUIREMENT OF HOLDING OF PAID-UP SHARE CAPITAL:

1. Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:
   - **i.** one or more citizens of India; or
   - **ii.** by one or more companies or bodies corporate incorporated in India; or
   - **iii.** by one or more citizens of India and one or more companies or bodies corporate incorporated in India,
2. Whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

   Note: Chapter XXII referred to above deals with the legal provisions for companies incorporated outside India.

   Example: *The shareholding of Emaar Company LLC, incorporated in Dubai and having a place of business in India, is as follows:*

   1. *Hinduja Company Limited (Indian Company): 26%*
   2. *Vaishali Company Limited (Indian Company): 25%*

3. *Citizens of Dubai: Remaining holding*

3. As per section 379(2), Emaar Company LLC will also be required to comply with the provisions of Chapter XXII as not less than 50% of the shareholders of Emaar Company LLC consists of body corporates incorporated in India. Emaar Company LLC will also be required to comply with other provisions of this Act as may be prescribed with regard to the business carried on by its place of business in India as if it were a company incorporated in India.

Q.NO.3 WHAT ARE THE DOCUMENTS TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES?

ANSWER:

DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES [SECTION 380]

1. According to section 380 (1) of the Companies Act, 2013,

i. Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:

a. A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instrument is not in the English language, a certified translation thereof in the English language;

b. The full address of the registered or principal office of the company;

c. A list of the directors and secretary of the company containing such particulars as may be prescribed;

ii. In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

1. Personal name and surname in full;

2. Any former name or names and surname or surnames in full;

3. Father's name or mother's name or spouse's name;

4. Date of birth;

5. Residential address;

6. Nationality;

7. If the present nationality is not the nationality of origin, his nationality of origin;

8. Passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

9. Income-tax permanent account number (PAN), if applicable;

10. Occupation, if any;

11. Whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);

12. Other directorship or directorships held by him;

13. Membership Number (for Secretary only); and

14. E-mail ID.

a. The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

b. The full address of the office of the company in India which is deemed to be its principal place of business in India;

c. Particulars of opening and closing of a place of business in India on earlier occasion or occasions;

d. Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

e. Any other information as may be prescribed.

2. FORM, PROCEDURE AND TIME FOR MAKING APPLICATION AND SUBMISSION OF PRESCRIBED DOCUMENTS: According to the Companies (Registration of Foreign Companies) Rules, 2014,

a. The above information shall be filed with the Registrar within 30 days of the establishment of its place of business in India, in Form FC-1 along with prescribed fees and documents required to be furnished as provided in section 380(1).

b. The application shall also be supported with an attested copy of approval from the Reserve Bank of India under the Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.

3. OFFICE WHERE DOCUMENTS TO BE DELIVERED AND FEE FOR REGISTRATION OF DOCUMENTS:

a. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

b. It shall be accompanied with the prescribed fees.

c. If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

4. Every foreign company existing at the commencement of the Companies Act 2013, which has not delivered to the Registrar the documents and particulars specified in section 592(1) of the Companies Act, 1956, it shall continue to be subject to the obligation to deliver those documents and particulars in accordance with the Companies Act, 1956.

5. FORM, PROCEDURE AND TIME WITHIN WHICH ALTERATION IN DOCUMENTS SHALL BE INTIMATED TO REGISTRAR:

a. Where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall deliver to the Registrar for registration a return containing the particulars of the alteration in the prescribed form within 30 days of such alteration.

b. The particulars of the alteration shall be filed in form FC-2 along with prescribed fees.

Q.NO.4 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING ACCOUNTS OF FOREIGN COMPANIES?

ANSWER:

ACCOUNTS OF FOREIGN COMPANY [SECTION 381]

1. Every foreign company shall, in every calendar year, —

a. make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

b. deliver a copy of those documents to the Registrar.

2. Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

a. Documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.

b. The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

Note:

a. "Financial year" in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

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

c. Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

d. It is important to note that a foreign company having its place of business in India may not necessarily follow a financial year ending on the 31 st day of March every year provided it has obtained the requisite approvals from the Central Government for the same.

Example:

ROK Limited, is a company incorporated outside India having a place of business in India. ROK Limited is a subsidiary of HOK Limited (Holding company), registered in Australia and is required to consolidate its accounts with HOK Limited. Accordingly, if HOK Limited is required to follow financial year other than 31st day of March every year, ROK can make an application to Central Government to follow the financial year as per HOK Limited.

3. The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) given above shall not apply or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf [Section 381(1)].

4. If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

5. Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

a. Every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules,

2014, a list of all the places of business established by the foreign company in India as on the date of balance sheet.

c. If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

6. Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -

a. Statement of related party transaction

b. Statement of repatriation of profits

c. Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

7. All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Note: the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

Example: *Mukesh & Jordan LLC is a foreign company and is required to file its financial statements within six months of the close of the financial year with Registrar on an annual basis alongwith following additional documents:*

1. *Statement of related party transaction*

2. *Statement of repatriation of profits*

3. *Statement of transfer of funds (including dividends, if any)*

However, where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted.

8. AUDIT OF ACCOUNTS OF FOREIGN COMPANY: According to the [11]Companies (Registration of Foreign Companies) Rules, 2014,

a. Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) and Rules thereunder, shall be audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

b. The provisions of Chapter X i.e., Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

Q.NO.5 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING DISPLAY OF NAME OF FOREIGN COMPANY?

ANSWER:

DISPLAY OF NAME, ETC., OF FOREIGN COMPANY [SECTION 382]

Every foreign company shall—

a. conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate.

b. cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

c. If the liability of the members of the company is limited, cause notice of that fact—

i. to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

ii. to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

Q.NO.6 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING COMMUNICATIONS WITH FOREIGN COMPANY?

ANSWER:

SERVICE ON FOREIGN COMPANY [SECTION 383]

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if

a. addressed to any person whose name and address have been delivered to the Registrar under section 380 and

b. left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Q.NO.7 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING INSPECTION OF BOOKS AND ANNUAL RETURNS OF FOREIGN COMPANY?

ANSWER:

DEBENTURES, ANNUAL RETURN, REGISTRATION OF CHARGES, BOOKS OF ACCOUNT AND THEIR INSPECTION [SECTION 384]

1. **DEBENTURES:** The provisions of section 71 (Issue of Debentures) shall apply mutatis mutandis to a foreign company.
2. **ANNUAL RETURNS:**
   - **a.** The provisions of section 92 (Preparation and filing of Annual return) shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.
   - **b.** Further, a foreign company which fulfils the criteria specified under Section 135(1) of the Companies Act 2013 is required to comply with Section 135 of the Companies Act, 2013, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.
   - **c.** Every foreign company shall prepare and file an annual return in Form FC-4 along with prescribed fees, within a period of 60 days from the last day of its financial year, to the Registrar containing the particulars as they stood on the close of the financial year.
3. **BOOKS OF ACCOUNT:** The provisions of section 128 (Books of account, etc., to be kept by company) shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to
   - **a.** monies received and spent,
   - **b.** sales and purchases made, and
   - **c.** assets and liabilities, in the course of or in relation to its business in India.
4. **CHARGES:** The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
5. **INSPECTION, INQUIRY AND INVESTIGATION:** The provisions of Chapter XIV (Inspection, inquiry and investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.
6. **FEE FOR REGISTRATION OF DOCUMENTS [SECTION 385]**
   - **a.** There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

b. According to the Companies (Registration of Foreign Companies) Rules, 2014, the fees to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.

NOTE

For the purposes of the foregoing provisions of this Chapter, the expression:

a. *"Certified" means certified in the prescribed manner to be a true copy or a correct translation;*

b. *"Director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and*

c. *"Place of business" includes a share transfer or registration office.*

Q.NO.8 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING ISSUE OF PROSPECTUS BY FOREIGN COMPANY?

ANSWER:

1. DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN [SECTION 387]

According to this section:

i. PROSPECTUS TO BE DATED AND SIGNED [SECTION 387(1)]: No person shall issue, circulate, or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

a. contains particulars with respect to the following matters, namely: —

1. The instrument constituting or defining the constitution of the company.

2. The enactments or provisions by or under which the incorporation of the company was effected.

3. Address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;

4. The date on which and the country in which the company would be or was incorporated; and

5. Whether the company has established a place of business in India and, if so, the address of its principal office in India; and

b. states the matters specified under section 26 (Matters to be stated in prospectus).

Note: Points (1), (2) and (3) of point (a) above shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

Example: *Mir Company LLC, a company incorporated in Dubai, on 28th April 2017. Mir Company LLC has established a place of Business in Mumbai in the year 2020. Now the place of business in India proposes to offer subscription to securities of Mir Company LLC. Now the place of business in India before going with the subscription will have to file a prospectus dated and signed and the prospectus shall not be required to contain the particulars mentioned in points (1), (2) and (3) of point (a) above as the prospectus will be getting issued after a period of more than 2 years since the Mir Company LLC has commenced its business.*

ii. NO WAIVER OF COMPLIANCE IN PROSPECTUS [Section 387(2)]:

a. Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of section 387(1) or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

b. It is to be understood that section 387 (2) does not provides any exception with respect to the non-compliance of the requirements stated under section 387 (1) by any person responsible for issuing or circulating prospectus.

iii. FORM OF APPLICATION FOR SECURITIES TO BE ISSUED ALONG WITH PROSPECTUS [SECTION 387(3)]: No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless

a. The form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and

b. Such issue does not contravene the provisions of section 388:

Exception: If it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

iv. According to section 387(4), the provisions of section 387 shall not apply to the issue of prospectus or form of application relating to securities of the company to existing member or debenture holders of a company; and

The provisions of section 387 shall not apply in respect of issue of prospectus dealing with offer for securities which are uniform in all respects with securities previously issued and such previously issued securities are listed on a recognised stock exchange. However, provisions relating to dating of prospectus shall continue to apply.

v. Nothing in Section 387 shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under the Companies Act, 2013 apart from Section 387.

2. PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT [SECTION 388]

According to this section:

i. No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—

a. If, where the prospectus includes a statement purporting to be made by an expert,

b. The Expert has given his written consent to the issue of the prospectus and

c. The Expert has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and

d. A statement to that effect shall be included in the prospectus.

e. if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of section 33 (Issue of application forms for securities) and section 40 (Securities to be dealt with in stock exchanges), so far as applicable.

ii. For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

3. REGISTRATION OF PROSPECTUS [SECTION 389]

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

a. A copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and

b. The prospectus states on the face of it that a copy has been so delivered, and

c. There is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, namely:

a. Any consent to the issue of the prospectus required from any person as an expert;

b. A copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

c. A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

d. A copy of underwriting agreement; and

e. A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Q.NO.9 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING ISSUE OF INDIAN DEPOSITORY RECEIPTS BY FOREIGN COMPANY?

ANSWER:

OFFER OF INDIAN DEPOSITORY RECEIPTS [SECTION 390]

1. **INDIAN DEPOSITORY RECEIPTS (IDR)** means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.
2. Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—
   - **i.** The offer of Indian Depository Receipts (IDR);
   - **ii.** The requirement of disclosures in prospectus or letter of offer issued in connection with IDR;
   - **iii.** The manner in which the IDR shall be dealt with in a depository mode and by custodian and underwriters; and
   - **iv.** The manner of sale, transfer or transmission of IDR,

   by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.
3. According to Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India shall make an issue of Indian Depository Receipts (IDRs) unless it complies with the conditions mentioned under this rule, in addition to the
   - **a.** Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and
   - **b.** any directions issued by the Reserve Bank of India.

   The Rules relating to offer, disclosure requirements and manner of transfer, sale etc., related to IDR are contained in Companies (Registration of Foreign Companies) Rules, 2014.

   Note: Standard Chartered PLC was the first global company to file for an issue of IDR in India in 2010.

Q.NO.10 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING ISSUE OF INDIAN DEPOSITORY RECEIPTS BY FOREIGN COMPANY?

ANSWER:

APPLICATION OF CHAPTER XV (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) [SECTION 234]

1. Section 234(1) states that the provisions of Chapter XV unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes or mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.
   Note: The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.
2. Section 234(2) states that subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.
   Explanation: For the purposes of sub-section (2) above, the expression "foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.

Q.NO.11 DISCUSS THE PROVISIONS OF COMPANIES ACT 2013 REGARDING PUNISHMENTS FOR CONTRAVENTION BY FOREIGN COMPANY?

ANSWER:

I. APPLICATION OF SECTIONS 34 TO 36 AND CHAPTER XX [SECTION 391]

Section 391 of the Companies Act, 2013 provides for Application of sections 34 to 36 and Chapter XX. According to this section:

According to sub-section (1), the provisions of sections 34 to 36 (both inclusive) shall apply to—

- **i.** The issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;
- **ii.** The issue of IDR by a foreign company.

  Section 34 deals with criminal liability for mis-statements in prospectus.

  Section 35 deals with Civil Liability for mis-statement in prospectus.

Section 36 deals with punishment for fraudulently inducing persons to invest money.

Sub-section (2) provides that, subject to the provisions of section 376 (Power to wind up Foreign companies although dissolved), the provisions of Chapter XX (i.e. Chapter on Winding up) shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

II. PUNISHMENT FOR CONTRAVENTION [SECTION 392]

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013 (i.e. Chapter on Companies incorporated outside India),

a. The foreign company shall be punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine which may extend to 50,000 rupees for every day after the first during which the contravention continues and

b. Every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5,00,000 rupees.

Thus, the punishment for contravention may be summed up as under:

1. Fine on defaulting foreign company in the range of 1 lac rupees to 3 lac rupees.

2. In case of continuing default an additional fine on the foreign company to the tune of 50,000 rupees per day after the first during which the contravention continues.

3. Punishment for every officer of the foreign company who is in default shall be imposition of a fine of a minimum amount of 25,000 rupees, but which may extend to 5,00,000 rupees.

III. COMPANY'S FAILURE TO COMPLY WITH PROVISIONS OF THIS CHAPTER NOT TO AFFECT VALIDITY OF CONTRACTS, ETC [SECTION 393]

1. Any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013, shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.

2. However, the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Companies Act, 2013, applicable to it.

IV. ACTION FOR IMPROPER USE OR DESCRIPTION AS FOREIGN COMPANY:

1. It states that if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder,
2. That person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder,

shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

Q.NO.12 DISCUSS THE POWERS OF CENTRAL GOVERNMENT EXEMPTING FOREIGN COMPANIES FROM CERTAIN PROVISIONS OF COMPANIES ACT?

ANSWER:

EXEMPTIONS UNDER THIS CHAPTER

The Central Government may, by notification, exempt any class of-

a. foreign companies;

b. companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

in so far as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.

ILLUSTRATIONS

Illustration 1.

SEARCH & FIND PTE. LTD., INCORPORATED IN SINGAPORE. THE COMPANY SELLS ITS GOODS THROUGH ELECTRONIC MODE ON THE E-COMMERCE PLATFORMS IN INDIA, HOWEVER, IT DOES NOT HAVE ANY BRANCH OR OFFICE IN INDIA. IS THE COMPANY REQUIRED TO SUBMIT THE DOCUMENTS AS REQUIRED UNDER SECTION 380 OF THE COMPANIES ACT, 2013.

ANSWER:

Yes, as per 2(42) of Companies Act, 2013, any company or body corporate incorporated outside India which

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner shall be considered as a foreign company.

Accordingly, as Search & Find Pte. Ltd., is conducting its business through electronic mode, it is considered a foreign company as per Companies Act, 2013 and is required to submit the documents mentioned under Section 380 of the Companies Act, 2013.

Illustration 2.

EXAMINE WITH REFERENCE TO THE PROVISIONS OF THE COMPANIES ACT, 2013 WHETHER THE FOLLOWING COMPANIES CAN BE TREATED AS FOREIGN COMPANIES:

i. A COMPANY INCORPORATED OUTSIDE INDIA HAVING A SHARE REGISTRATION OFFICE AT MUMBAI.

ii. INDIAN CITIZENS INCORPORATED A COMPANY IN SINGAPORE FOR THE PURPOSE OF CARRYING ON BUSINESS THERE.

ANSWER:

Section 2(42) of the Companies Act, 2013 defines a "foreign company" as any company or body corporate incorporated outside India which:

a. Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. Conducts any business activity in India in any other manner.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office.

Further, to qualify as a 'foreign company' a company must have the following features:

a. it must be incorporated outside India; and

b. it should have a place of business in India.

c. That place of business may be either in its own name or through an agent or may even be through the electronic mode; and

d. It must conduct a business activity of any nature in India.

i. Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

ii. In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore, it will not fall within the definition of a foreign company. Its incorporation outside India by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must also conduct a business activity in India.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. **Jackson Communications LLC, incorporated in Arizona, USA, has established a principal place of business at Kolkata, West Bengal. It is required to deliver requisite documents to the specified authority. You are required to select an appropriate option from the four given below which indicates the number of days within which such documents shall be delivered:**
   a. **Jackson Communications LLC shall, within 10 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.**
   b. **Jackson Communications LLC shall, within 15 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.**
   c. **Jackson Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.**
   d. **Jackson Communications LLC shall, within 45 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.**

2. **Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents:**
   a. **Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.**
   b. **Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 20,000 rupees for every day after the first during which the contravention continues.**
   c. **Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.**

d. **Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.**

3. **Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. Select the incorrect statement from those given below as to the nature of the Radix Healthcare Ltd. in the light of the applicable provisions of the Companies Act, 2013:**
   a. **Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.**
   b. **Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.**
   c. **Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.**
   d. **Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.**

4. **Fam Software Company Inc., a company incorporated in Australia, proposes to establish a place of business at Mumbai. The list of the Directors includes (i) Mr. Arjun – Managing Director, (ii) Mr. Ranveer – Director, (iii) Mr. Ramesh Malik - Director and (iv) Mr. Arbaaz - Director. Ms. Lavina has been appointed as the Secretary of Fam Software Company Inc. It is to be noted that Mr. Ramesh Malik and Mr. Arbaaz, resident in India, are the persons who have been authorised by Fam Software Company Inc. to accept on behalf of the company service of process, notices or other documents required to be served on Fam Software Company Inc. In relation to the company's establishment, you are required to enlighten the Fam Company Inc. with respect to whose, a declaration will be required to be submitted to the Registrar of Companies by Fam Software Company Inc. for not being convicted or debarred from formation of companies in or outside India.**
   a. **Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.**
   b. **Mr. Arjun, Mr. Ramesh Malik, Mr. Arbaaz and Ms. Lavina.**
   c. **Mr. Ramesh Malik and Mr. Arbaaz.**
   d. **Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik and Mr. Arbaaz.**

5. **5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act, 2013:**
   a. **Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.**
   b. **Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.**
   c. **Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.**
   d. **Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.**

Answer to MCQ based Questions

1.	c.	Jackson Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
2.	d.	Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.
3.	a.	Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.
4.	d.	Mr. Arjun, Mr. Ranveer, Mr. Ramesh Malik and Mr. Arbaaz.
5.	d.	Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.

DESCRIPTIVE QUESTIONS

Q.NO.1

i. **ABC LTD., A FOREIGN COMPANY HAVING ITS INDIAN PRINCIPAL PLACE OF BUSINESS AT KOLKATA, WEST BENGAL IS REQUIRED TO DELIVER VARIOUS DOCUMENTS TO REGISTRAR OF COMPANIES UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013. YOU ARE REQUIRED TO STATE, WHERE THE SAID COMPANY SHOULD DELIVER SUCH DOCUMENTS.**

ii. **IN CASE, A FOREIGN COMPANY DOES NOT DELIVER ITS DOCUMENTS TO THE REGISTRAR OF COMPANIES AS REQUIRED UNDER SECTION 380 OF THE COMPANIES ACT, 2013, STATE THE PENALTY PRESCRIBED UNDER THE SAID ACT, WHICH CAN BE LEVIED**

ANSWER:

i. The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

ii. The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non- filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than 1,00,000 but which may extend to 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than 25,000 but which may extend to 5,00,000.

Q.NO.2 DEJY IS A COMPANY LIMITED INCORPORATED IN SINGAPORE DESIRES TO ESTABLISH A BRANCH OFFICE AT MUMBAI. YOU BEING A PRACTICING CHARTERED ACCOUNTANT HAVE BEEN APPOINTED BY THE COMPANY AS A LIAISON OFFICER FOR COMPLIANCE OF LEGAL FORMALITIES ON BEHALF OF THE COMPANY. EXAMINING THE PROVISIONS OF THE COMPANIES ACT, 2013, ANSWER THE FOLLOWING:

i. **WHETHER BRANCH OFFICE WILL BE CONSIDERED AS A COMPANY INCORPORATED OUTSIDE INDIA.**

ii. IF YES, STATE THE DOCUMENTS YOU ARE REQUIRED TO FURNISH ON BEHALF OF THE COMPANY, ON THE ESTABLISHMENT OF A BRANCH OFFICE AT MUMBAI.

ANSWER:

i. According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner.

Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

ii. According to section 380 (1) of the Companies Act, 2013,

1. Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:

a. A certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instrument is not in the English language, a certified translation thereof in the English language;

b. The full address of the registered or principal office of the company;

c. A list of the directors and secretary of the company containing such particulars as may be prescribed;

2. In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

1. Personal name and surname in full;

2. Any former name or names and surname or surnames in full;

3. Father's name or mother's name or spouse's name;

4. Date of birth;

5. Residential address;

6. Nationality;

7. If the present nationality is not the nationality of origin, his nationality of origin;

8. Passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
9. Income-tax permanent account number (PAN), if applicable;
10. Occupation, if any;
11. Whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
12. Other directorship or directorships held by him;
13. Membership Number (for Secretary only); and
14. E-mail ID.

a. The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

b. The full address of the office of the company in India which is deemed to be its principal place of business in India;

c. Particulars of opening and closing of a place of business in India on earlier occasion or occasions.

d. Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

e. Any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Q.NO.3 GALILIO LTD. IS A FOREIGN COMPANY IN GERMANY, AND IT HAS ESTABLISHED A PLACE OF BUSINESS IN MUMBAI. EXPLAIN THE RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013 AND RULES MADE THEREUNDER RELATING TO PREPARATION AND FILING OF FINANCIAL STATEMENTS, AS ALSO THE DOCUMENTS TO BE ATTACHED ALONGWITH THE FINANCIAL STATEMENTS BY THE FOREIGN COMPANY.

ANSWER:

PREPARATION AND FILING OF FINANCIAL STATEMENTS BY A FOREIGN COMPANY:

According to section 381 of the Companies Act, 2013:

1. Every foreign company shall, in every calendar year, —
   a. make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and
   b. deliver a copy of those documents to the Registrar.
2. Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:
   a. Documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.
   b. The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.
3. The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) given above shall not apply or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf [Section 381(1)].
4. If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]
5. Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.
   a. Every foreign company shall file with the Registrar, along with the financial statement, in Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014, a list of all the places of business established by the foreign company in India as on the date of balance sheet.
   b. If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.
6. Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -
   a. Statement of related party transaction

b. Statement of repatriation of profits

c. Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

7. All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Q.NO.4 IN THE LIGHT OF THE PROVISIONS OF THE COMPANIES ACT, 2013, EXAMINE WHETHER THE FOLLOWING COMPANIES CAN BE CONSIDERED AS A 'FOREIGN COMPANY':

i. RED STONE LIMITED IS A COMPANY REGISTERED IN SINGAPORE. THE BOARD OF DIRECTORS MEETS AND EXECUTES BUSINESS DECISIONS AT THEIR BOARD MEETING HELD IN INDIA.

ii. XEN LIMITED LIABILITY COMPANY REGISTERED IN DUBAI HAS INSTALLED ITS MAIN SERVER IN DUBAI FOR MAINTAINING OFFICE AUTOMATION SOFTWARE BY CLOUD COMPUTING FOR ITS CLIENT IN INDIA.

ANSWER:

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

a. business to business and business to consumer transactions, data interchange and other digital supply transactions;

b. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

c. financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

d. online services such as telemarketing, telecommuting, telemedicine, education and information research; and

e. all related data communication services,

Whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

ANALYSIS AND CONCLUSION:

i. In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

ii. In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013.

Q.NO.5 ABROAD LTD., A FOREIGN COMPANY WITHOUT ESTABLISHING A PLACE OF BUSINESS IN INDIA, PROPOSES TO ISSUE PROSPECTUS FOR SUBSCRIPTION OF SECURITIES IN INDIA. BEING A CONSULTANT OF THE COMPANY, ADVISE ON THE PROCEDURE OF SUCH AN ISSUE OF PROSPECTUS BY ABROAD LTD.

ANSWER:

PROVISION:

As per section 389 of the Companies Act, 2013,

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

a. A copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and

b. The prospectus states on the face of it that a copy has been so delivered, and

c. There is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

ANALYSIS AND CONCLUSION:

Accordingly, the Abroad Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Q.NO.6 JACKSON & JACKSON LLC, INCORPORATED IN GERMANY, IS PROPOSING TO ESTABLISH A BUSINESS IN MUMBAI, INDIA. ITS OFFICIAL DOCUMENTS ARE IN GERMAN LANGUAGE. WHETHER JACKSON & JACKSON LLC CAN FILE THE REQUIRED DOCUMENTS WITH REGISTRAR IN THE SAME LANGUAGE.

ANSWER:

Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver the documents to the Registrar as per Section 380 of the Companies Act, 2013. Further, if the original instruments/ documents are not in the English language, a certified translation in the English language is required for the same and submitted to Registrar.

Q.NO.7 SWIFT PHARMACEUTICALS, A COMPANY REGISTERED IN SINGAPORE, HAS STARTED ITS BUSINESS IN INDIA DURING THE FINANCIAL YEAR 2016. THE COMPANY HAS SUBMITTED ALL THE REQUIRED DOCUMENTS WITH REGISTRAR WITHIN THE DUE DATE. ON MARCH 1, 2023, SWIFT PHARMACEUTICALS HAS SHIFTED ITS PRINCIPAL OFFICE IN SINGAPORE. DOES THE COMPANY REQUIRED TO UNDERTAKE ANY STEPS DUE TO CHANGE IN ADDRESS OF PRINCIPAL OFFICE.

ANSWER:

PROVISION: Section 380 (3)

Where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall deliver to the Registrar for registration a return containing the particulars of the alteration in the prescribed form within 30 days of such alteration. The particulars of the alteration shall be filed in form FC-2 along with prescribed fees.

ANALYSIS AND CONCLUSION:

Accordingly, Swift Pharmaceuticals is required to submit the full address of the new registered or principal office of the company by March 30, 2023.

12. THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

1. The Ministry of Law and Justice on 9th January 2009 notified the Limited Liability Partnership Act, 2008.
2. The Parliament passed the Limited Liability Partnership Bill on 12th December 2008 and the President of India has assented the Bill on 7th January 2009 and called as the Limited Liability Partnership Act, 2008 (the "LLP Act, 2008").
3. This Act has been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.

The LLP Act, 2008 is applicable to the whole of India

4. The LLP Act, 2008 has 81 sections (of which section 81 is now omitted with effect from 1st April 2022) and 4 schedules.
   a. **The First Schedule deals** with mutual rights and duties of partners and limited liability partnership and its partners where there is absence of a formal agreement amongst them.
   b. **The Second Schedule** deals with conversion of a firm into LLP.
   c. **The Third Schedule** deals with conversion of a private company into LLP.
   d. **The Fourth Schedule** deals with conversion of unlisted public company into LLP.
5. The Ministry of Corporate Affairs and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.
6. It is also to be noted that the Indian Partnership Act, 1932 is not applicable to LLPs.
7. The Limited Liability Partnership Act, 2008 has been recently amended through the Limited Liability Partnership (Amendment) Act, 2021 dated 13th August 2021.

Q.NO.1 WRITE A SHORT NOTE ON LIMITED LIABILITY PARTNERSHIP?

ANSWER:

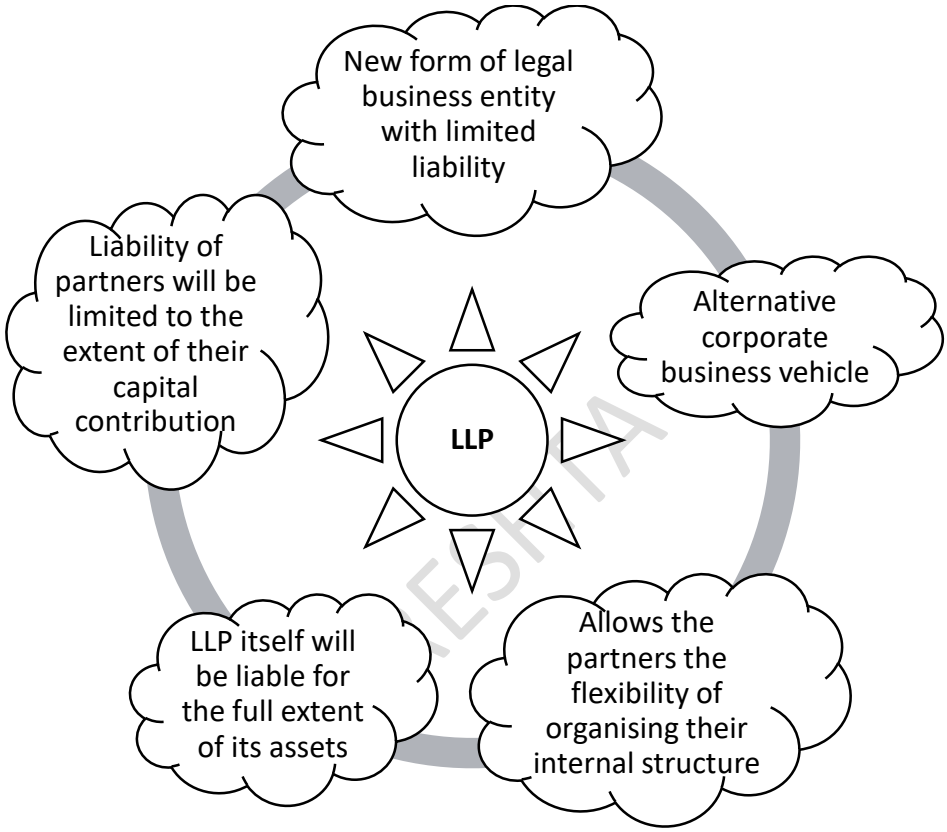
LIMITED LIABILITY PARTNERSHIP - MEANING AND CONCEPT

1. **MEANING:**
   a. LLP is a new form of legal business entity with limited liability. It is an alternative corporate business vehicle that not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership.

b. The LLP is a separate legal entity and, while the LLP itself will be liable to the full extent of its assets, the liability of the partners will be limited to the extent of their capital contribution.

c. LLP as a separate legal entity and business organisation is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

d. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.



Q.NO.2 DEFINITIONS

A. ADDRESS [(Section 2(1)(a)]: "Address" in relation to a partner of a limited liability partnership, means—

i. if an **individual**, his usual residential address; and

ii. if a **body corporate**, the address of its registered office.

B. BODY CORPORATE [(Section 2(1)(d)]: It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes—

i. A LLP registered under this Act;

ii. A LLP incorporated outside India; and

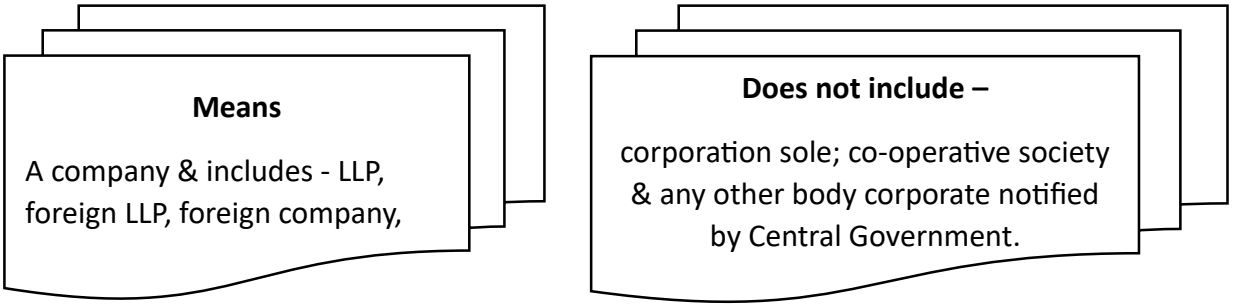
iii. A company incorporated outside India,

but **does not include**—

i. a corporation sole;

ii. a co-operative society registered under any law for the time being in force; and

iii. any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.



C. BUSINESS [Section 2(1)(e)]: "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

D. CHARTERED ACCOUNTANT [Section 2(1)(f)]: means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

E. DESIGNATED PARTNER [Section 2(1)(j)]: "Designated partner" means any partner designated as such pursuant to section 7.

F. ENTITY [Section 2(1)(k)]: ''Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.

G. FINANCIAL YEAR [Section 2(1)(l)]: "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.

However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

Example 1: *If a LLP has been incorporated on 15th October, 2022, then its financial year may be from 15th October, 2022 to 31st March, 2024. However, the LLP can always maintain its first accounts from 15th October, 2022 to 31st March, 2023 i.e., for a period of less than 12 months. The period for which the first accounts of LLP are prepared shall not exceed 18 months.*

The Income Tax department has prescribed uniform financial year from 1st April to 31st March of next year. In keeping with the Income tax law, the financial year for LLP should always be from 1st April to 31st March each year.

H. FOREIGN LLP [section 2(1)(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.

I. **LIMITED LIABILITY PARTNERSHIP [Section 2(1)(n)]:** Limited Liability Partnership means a partnership formed and registered under this Act.

J. **LIMITED LIABILITY PARTNERSHIP AGREEMENT [Section 2(1)(o)]:** It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

The First Schedule shall be applicable for all matters not covered by the Agreement w.r.t the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

K. **NAME [Section 2(1)(p)]:** in relation to a partner of a limited liability partnership, means—

(i) If an individual, his forename, middle name and surname; and

(ii) If a body corporate, its registered name;

L. **PARTNER [Section 2(1)(q)]:** Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

M. **REGIONAL DIRECTOR [Section 2(1)(ra)]:** means a person appointed as such by the Central Government for the purpose of this Act or the Companies Act 2013, as the case may be.

N. **REGISTRAR [Section 2(1)(s)]:** means a person appointed by Central Government as Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, for the purpose of this Act or the Companies Act, 2013, as the case may be.

O. **SMALL LIMITED LIABILITY PARTNERSHIP [Section 2(1)(ta)]:** It means a limited liability partnership—

i. The **contribution** of which, does not exceed ₹ 25,00,000 or such higher amount, not exceeding ₹ 5 crore, as may be prescribed; **and**

ii. The **turnover** of which, as per the statement of accounts and solvency for the immediately preceding financial year, does not exceed ₹ 40,00,000 or such higher amount, not exceeding ₹ 50 crore, as may be prescribed: **or**

iii. Which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Contribution	Up to ₹ 25L, &
Turnover for immediately preceding F.Y	Up to ₹ 40 L, or
Fulfills	prescribed terms and conditions

P. **TRIBUNAL [Section 2(1)(u)]:** means the National Company Law Tribunal constituted u/s 408 of Companies Act 2013.

Note:

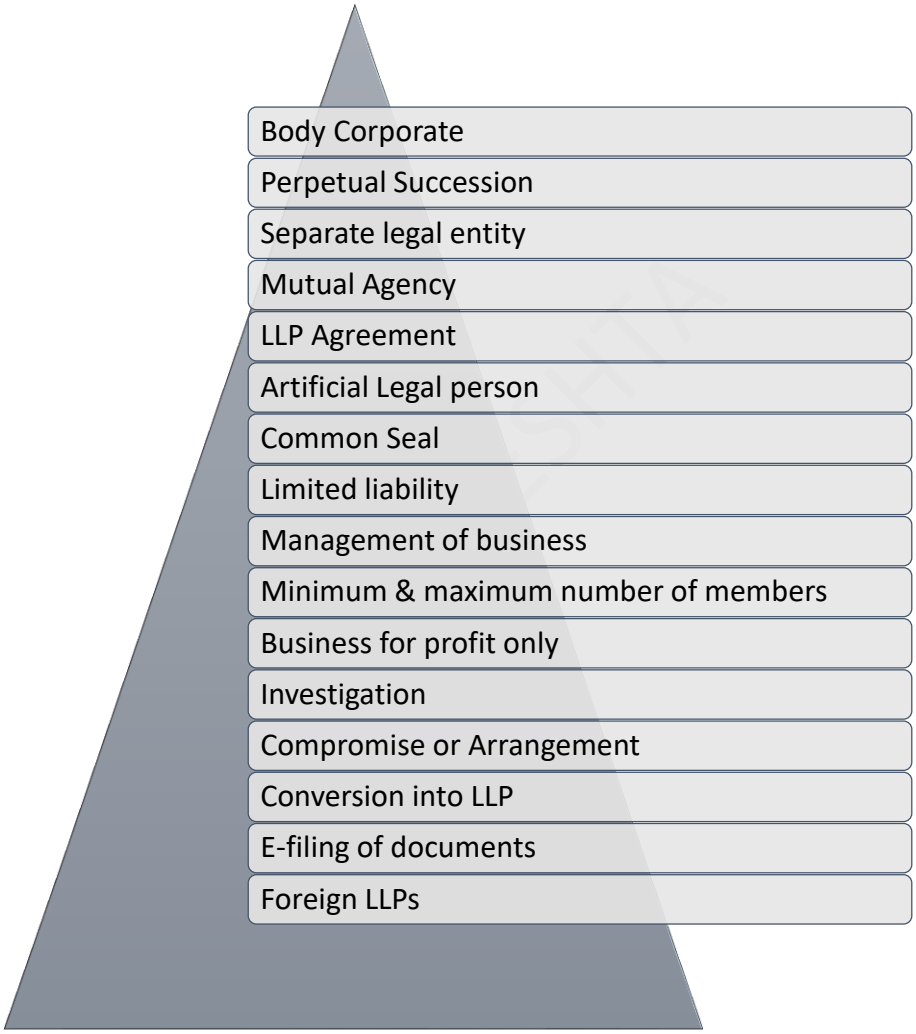
Applicability of the Companies Act, 2013: *Words and expressions used and not defined in this Act but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them in that Act. [Section 2(2)]*

Non-applicability of the Indian Partnership Act, 1932: *Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP. [Section 4]*

Q.NO.3 STATE THE CHARACTERISTICS OF LIMITED LIABILITY PARTNERSHIP?

ANSWER:

CHARACTERISTIC OF LLP



1. LLP IS A BODY CORPORATE:

a. Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act.

b. Section 3 of the LLP Act provides that LLP is a legal entity separate from that of its partners and shall have perpetual succession. Therefore, any change in the partners of a LLP shall not affect the existence, rights or liabilities of the LLP.

2. **PERPETUAL SUCCESSION:**
   a. The LLP can continue its existence irrespective of changes in partners.
   b. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.
3. **SEPARATE LEGAL ENTITY:**
   a. Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
   b. The LLP is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.
4. **MUTUAL AGENCY:** No partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.
5. **LLP AGREEMENT:**
   a. Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners.
   b. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by Schedule I of the LLP Act, 2008.
6. **ARTIFICIAL LEGAL PERSON:**
   a. A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual.
   b. It can do everything which any natural person can do, **except** of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine.
   c. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.
7. **COMMON SEAL:**
   a. A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)].
   b. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

8. **LIMITED LIABILITY:** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26). The liability of the partners will be limited to their agreed contribution in the LLP. Such contribution may be of tangible or intangible nature or both.
   Example: *The professionals like Engineering consultants, Legal Advisors and Accounting Professional are afraid of entering into business due to unlimited liability. Hence, the LLP Act provides an avenue for these professionals to enter into Limited Liability Partnership firms which restrict their liability to the agreed amount. This has encouraged Professionals to form LLP.*
9. **MANAGEMENT OF BUSINESS:** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.
10. **MINIMUM AND MAXIMUM NUMBER OF PARTNERS:** Every LLP shall have at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.
11. **BUSINESS FOR PROFIT ONLY:** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.
12. **INVESTIGATION:** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competent authority for the purpose.
13. **COMPROMISE OR ARRANGEMENT**: Any compromise or agreements including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.
14. **CONVERSION INTO LLP:** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.
15. **E-FILLING OF DOCUMENTS:** Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.
16. **FOREIGN LLPS [SEC 2(1)(m)]**: Foreign limited liability partnership "is a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India". Foreign LLP can become a partner in an Indian LLP.

Q.NO.4 WHAT ARE THE ADVANTAGES OF LIMITED LIABILITY PARTNERSHIP?

ANSWER:

ADVANTAGES OF LLP FORM

LLP form is a form of business model which:

1. Is organised and operates on the basis of an agreement.

2. Provides flexibility without imposing detailed legal and procedural requirements.
3. Easy to form.
4. All partners enjoy limited liability.
5. Easy to dissolve.

Q.NO.5 WHO CAN BE THE PARTNER OF LIMITED LIABILITY PARTNERSHIP?

ANSWER:

PARTNERS [Section 5]

1. Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—

   a. He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
   b. He is an undischarged insolvent; or
   c. He has applied to be adjudicated as an insolvent and his application is pending.
2. The following persons can become partner in LLP:
   i. Individuals (Resident Indians including Non Resident Indians & Overseas Citizen of India as well as foreign nationals)*
   ii. Limited Liability Partnerships
   iii. Companies (including foreign companies)*
   iv. Foreign Limited Liability Partnerships*
   v. Limited Liability Partnerships incorporated outside India
   vi. Foreign Companies.

   Co-operative society and corporation sole cannot become partner in a LLP.

NOTE: In case of introduction of capital / acquisition of existing stake in LLP by Persons resident outside India (other than NRIs & OCIs investing on a non-repatriation basis), the Foreign Direct Investment (FDI) compliances shall have to be undertaken by the LLP in which such investment is made.

Q.NO.6 STATE THE MINIMUM NUMBRE OF PARTNERS REQUIRED TO FORM A LIMITED LIABILITY PARTNERSHIP?

ANSWER:

MINIMUM NUMBER OF PARTNERS [SECTION 6]

1. Every LLP shall have at least two partners.

2. If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than 6 months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those 6 months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Q.NO.7 WRITE A SHORT NOTE ON DESIGNATED PARTNER IN LIMITED LIABILITY PARTNERSHIP?

ANSWER:

A. DESIGNATED PARTNERS [SECTION 7]

1. Every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India.

Note: If in LLP, all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least 2 individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

Example: *A LLP has three partners, one individual i.e. Mr. X and two bodies corporates viz. M/s XYZ Ltd and M/s ABC Ltd. In this case Mr. X and one nominee of any body's corporate shall be designated partners.*

Example: *A LLP by the name SMY LLP has three partners namely 1. SI Limited, 2. MIS Limited, 3. YI Private Limited. As there is no individual as partner in LLP, nominees of any two said body corporates shall act as designated partners.*

Example: *There is a LLP by the name Indian Helicopters LLP having 5 partners namely Mr. A (Non-Resident), Mr. B (Non-Resident) Ms. C (resident), Ms. D (resident) and Ms. E (resident). In this case, at least 2 should be named as Designated Partner out of which 1 should be resident. Hence, if Mr. A and Mr. B are designated then it will not serve the purpose. One of the designated partners should be there out of Ms. C, Ms. D and Ms. E.*

2. IDENTIFICATION OF DESIGNATED PARTNER

a. If the incorporation document

i. Specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

ii. States that each of the partners from time to time of LLP is to be designated partners, every partner shall be a designated partners.

b. Any partner may become a designated partner by and in accordance with the LLP agreement and a partner may cease to be a designated partners in accordance with LLP agreement.

3. An individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in such form and manner as may be prescribed.

4. Every LLP shall file with the Registrar the particulars of every individual who has given his consent to act as designated partners in such form and manner as may be prescribed within 30 days of his appointment.

5. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

6. Every designated partner of the LLP shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 153 to 159 of the Companies Act, 2013 shall apply mutatis mutandis for the said purpose.

B. LIABILITIES OF DESIGNATED PARTNERS [SECTION 8]

Unless expressly provided otherwise in this Act, a designated partner shall be—

a. Responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

b. Liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

C. CHANGES IN DESIGNATED PARTNERS [SECTION 9]

1. A limited liability partnership may appoint a designated partner within 30 days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner
2. If no designated partner is appointed, or if at any time there is only one designated partner then each partner shall be deemed to be a designated partner.

D. PUNISHMENT FOR CONTRAVENTION OF SECTIONS 7 AND 9 [SECTION 10]

1. If the LLP contravenes the provisions of section 7(1) (meaning that the number of designated partners are less than two or none of the designated partner is a resident in India), the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for every partner of such LLP.

2. If the LLP contravenes the provisions of section 7(4) (failure to file the consent of appointment of designated partner within 30 days of his appointment), the LLP and its every designated partner shall be liable to a penalty of ₹5,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹50,000 for LLP and ₹25,000 for every designated partner.
3. If the LLP contravenes the provisions of section 7(5) or section 9, the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for every partner of such LLP.

Q.NO.8 STATE THE PROCEDURE FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP?

ANSWER:

INCORPORATION OF LLP

A. INCORPORATION DOCUMENT [Section 11] The most important document needed for registration is the incorporation document.

1. For a LLP to be incorporated:

a. 2 or more persons associated for carrying on a lawful business with a view to earn profit shall subscribe their names to an incorporation document;

b. The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated (Incorporation documents are now processed electronically by Registrar, Central Registration Centre since 2nd October 2018); and

c. Statement to be filed:

i. There shall be filed along with the incorporation document, a statement in the prescribed form:

- Made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
- By anyone who subscribed his name to the incorporation document,
- That all the requirements of this Act and the rules made thereunder have been complied with,
- In respect of incorporation and matters precedent and incidental thereto.

2. The incorporation document shall—

a. Be in a form as may be prescribed;

b. State the name of the LLP;

c. State the proposed business of the LLP;

d. State the address of the registered office of the LLP;

e. State the name and address of each of the persons who are to be partners of the LLP on incorporation;

f. State the name and address of the persons who are to be designated partners of the LLP on incorporation;

g. Contain such other information concerning the proposed LLP as may be prescribed.

3. If a person makes a statement as discussed above which he—

a. Knows to be false; or

b. Does not believe to be true, shall be punishable (Penalty for false declaration)

i. With imprisonment for a term which may extend to 2 years and

ii. With fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

B. INCORPORATION BY REGISTRATION [SECTION 12]

1. When the requirements imposed have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed has not been complied with, he shall, within a period of 14 days—

a. Register the incorporation document; and

b. Give a certificate that the LLP is incorporated by the name specified therein.

2. The Registrar may accept the statement delivered as sufficient evidence that the requirement imposed has been complied with.

3. The certificate issued shall be signed by the Registrar and authenticated by his official seal.

4. The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

C. REGISTERED OFFICE OF LLP AND CHANGE THEREIN [SECTION 13]

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

2. A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

3. A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
4. If the LLP contravenes any provisions of this section, the LLP and its every partner shall be punishable with penalty of ₹ 500 per day subject to maximum ₹ 50,000.

D. Effect of registration [Section 14]

On Registration, LLP shall by its name, be capable of –

i. Suing and being sued;
ii. Acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
iii. Having a common seal, if it decides to have one; and
iv. Doing and suffering other acts and things as bodies corporate may lawfully do and suffer.

Q.NO.9 EXPLAIN THE PROVOSIONS REGARDING SLECTION OF NAME OF LIMITED LIABILITY PARTNERSHIP?

ANSWER:

A. NAME [SECTION 15]

1. Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

Limited Liability Partnership LLP

2. No LLP shall be registered by a name which, in the opinion of the Central Government is—
   a. Undesirable; or
   b. Identical or too nearly resembles to that of any other LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999.

B. RESERVATION OF NAME [SECTION 16]

1. A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
   a. The name of a proposed LLP; or
   b. The name to which a LLP proposes to change its name.
2. Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of 3 months from the date of intimation by the Registrar.

C. RECTIFICATION OF NAME OF LLP [SECTION 17]

1. Notwithstanding anything contained in sections 15 and 16, if through inadvertence, or otherwise, the LLP, on its first registration or on its registration by new name, is registered by a name which is identical with or too nearly resembles to-

a. That of any other LLP or a company; or

b. A registered trademark of a proprietor under the Trademarks Act, 1999

As likely to be mistaken, then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the Central Government may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction,

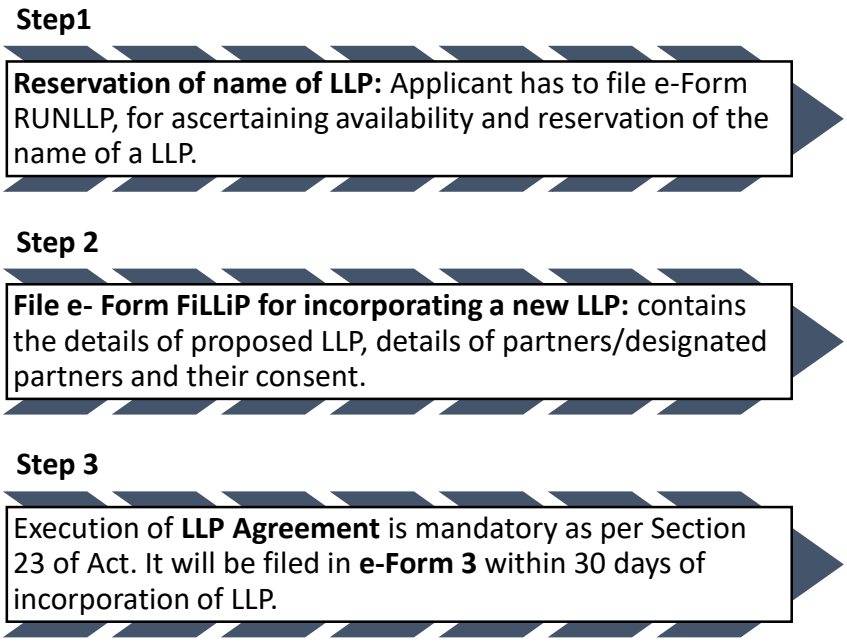
Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act.

2. Where an LLP changes its name or obtains new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.

3. If the LLP is in default in complying with any direction given under subsection (1), the Central Government shall allot a new name to the LLP and the Registrar shall enter the new name in the register of LLP in place of the old name and issue a fresh certificate of incorporation with new name.

Note: Nothing contained in this sub-section shall prevent a LLP from subsequently changing its name.

STEPS TO INCORPORATE LLP



Q.NO.10 EXPLAIN THE RELATIONSHIP OF PARTNERS WITH LIMITED LIABILITY PARTNERSHIP?

ANSWER:

PARTNERS AND THEIR RELATIONS

A. ELIGIBILITY TO BE PARTNERS [SECTION 22]

On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.

B. RELATIONSHIP OF PARTNERS [SECTION 23]

1. Save as otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
2. The LLP agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.
3. An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
4. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.

Q.NO.11 EXPLAIN CHANGES OF PARTNERS IN LIMITED LIABILITY PARTNERSHIP?

ANSWER:

A. CESSATION OF PARTNERSHIP INTEREST [SECTION 24]

1. A person may cease to be a partner of a LLP in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.
2. A person shall cease to be a partner of a LLP—
   a. On his death or dissolution of the LLP; or
   b. If he is declared to be of unsound mind by a competent court; or
   c. If he has applied to be adjudged as an insolvent or declared as an insolvent.
3. Where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—
   a. The person has notice that the former partner has ceased to be a partner of the LLP; or
   b. Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.
4. The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.
5. Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the LLP—
   a. An amount equal to the capital contribution of the former partner actually made to the LLP; and
   b. His right to share in the accumulated profits of the LLP, after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner.
6. A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.

B. REGISTRATION OF CHANGES IN PARTNERS [SECTION 25]

1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change.

2. A LLP shall—
   a. Where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days from the date he becomes or ceases to be a partner; and
   b. Where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.
3. A notice filed with the Registrar under sub-section (2)—
   a. Shall be in such form and accompanied by such fees as may be prescribed;
   b. Shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed; and
   c. If it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.
4. **Penalty for Contravention:**
   a. If the LLP contravenes the provisions of sub-section (2), the LLP and every designated partner of the LLP shall be 'liable to penalty of ₹10,000.
   b. If any partner contravenes the provisions of sub-section (1), such partner shall be 'liable to penalty of ₹10,000.
5. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice. However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

Q.NO.12 DISCUSS THE EXTENT AND LIMITATION OF LIABILITY OF PARTNERS IN LIMITED LIABILITY PARTNERSHIP?

ANSWER:

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

A. PARTNER AS AGENT [SECTION 26]: Every partner of a LLP is the agent of the LLP for the purpose of the business of the LLP but not of other partners.

B. EXTENT OF LIABILITY OF LLP [SECTION 27]

1. A LLP is not bound by anything done by a partner in dealing with a person if—

a. The partner in fact has no authority to act for the LLP in doing a particular act; **and**

b. The person knows that he has no authority or does not know or believe him to be a partner of the LLP.

2. The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority.

3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.

4. The liabilities of the LLP shall be met out of the property of the LLP.

C. EXTENT OF LIABILITY OF PARTNER [SECTION 28]

1. A partner is not personally liable, directly or indirectly for an obligation referred to section 27(3) solely by reason of being a partner of the LLP.
2. The provisions of section 27(3) and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

D. HOLDING OUT [SECTION 29]

1. Any person,

a. Who by words spoken or written or by conduct,

b. Represents himself, or knowingly permits himself to be represented to be a partner in a LLP

c. Is liable to any person

d. Who has on the faith of any such representation

e. Given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

However,

a. Where any credit is received by the LLP as a result of such representation,

b. The LLP shall,

c. Without prejudice to the liability of the person so representing himself or represented to be a partner,

d. Be liable to the extent of credit received by it or any financial benefit derived thereon.

2. Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not by itself make his legal representative or his estate liable for any act of the LLP done after his death.

E. UNLIMITED LIABILITY IN CASE OF FRAUD [SECTION 30]

1. In case of fraud:

a. In the event of an act carried out by a LLP, or any of its partners,

b. With intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose,

c. The liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose

Shall be unlimited for all or any of the debts or other liabilities of the LLP.

However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.

2. Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with

a. Imprisonment for a term which may extend to 5 years **and**

b. With fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs.

3. Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Q.NO.13 WRITE A SHORT NOTE ON WHISTLE BLOWING IN LIMITED LIABILITY PARTNERSHIP?

ANSWER:

WHISTLE BLOWING [SECTION 31]

1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that—

a. Such partner or employee of an LLP has provided useful information during investigation of such LLP; or

b. When any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.

2. No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

Q.NO.14 WRITE A SHORT NOTE ON PARTNERS CONTRIBUTION TO LIMITED LIABILITY PARTNERSHIP?

ANSWER:

CONTRIBUTIONS

A. FORM OF CONTRIBUTION [SECTION 32]

1. A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.
2. The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

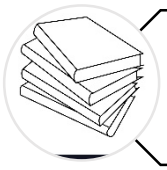
B. Obligation to contribute [Section 33]

1. The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.
2. A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

Q.NO.15 DISCUSS THE PROVISIONS OF LIMITED LIABILITY PARTNERSHIP ACT REGARDING MAINTENANCE OF BOOKS AND AUDIT OF BOOKS OF ACCOUNTS?

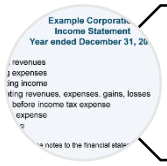
ANSWER:

FINANCIAL DISCLOSURES



1. Maintain proper books of account in presribed manner.

2. File Statement of Account and Solvency within 6 months from end of each F.Y.



3. Statement of Account and Solvency shall be filed with the Registrar every year in prescribed form and manner and with prescribed fees.

4. Audit of Accounts. Central Government may exempt.

A. Maintenance of books of account, other records and audit, etc. [Section 34]

1. Proper Books of account:

- **a.** The LLP shall maintain such proper books of account as may be prescribed
- **b.** Relating to its affairs for each year of its existence
- **c.** On cash basis or accrual basis and
- **d.** According to double entry system of accounting and
- **e.** Shall maintain the same at its registered office
- **f.** For such period as may be prescribed.

2. Statement of Account and Solvency:

- **a.** Every LLP shall,
- **b.** Within a period of 6 months from the end of each financial year,
- **c.** Prepare a Statement of Account and Solvency
- **d.** For the said financial year as at the last day of the said financial year
- **e.** In such form as may be prescribed, and
- **f.** Such statement shall be signed by the designated partners of the LLP.

3. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.
4. The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.
5. Penalty for non-compliance of provisions of sub-section 3-
   a. LLP – ₹100 per day subject to maximum ₹1,00,000
   b. Every Designated Partners - ₹100 per day subject to maximum ₹50,000.
6. Penalty for non-compliance of provisions of sub-section 1, 2 & 4 –
   a. LLP – not less than ₹25,000 which may extend to ₹ 5 Lakhs.
   b. Every designated partner –not less than ₹10,000 which may extend to ₹1 Lakh.

C. ACCOUNTING AND AUDITING STANDARDS [SECTION 34A]

Central Government may, in consultation with the National Financial Reporting Authority constituted under Section 132 of the Companies Act 2013 —

a. Prescribe the standards of accounting; and
b. Prescribe the standards of auditing, as recommended by ICAI.

D. ANNUAL RETURN [SECTION 35]

1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

Example: *Suppose, the financial year of a LLP closes on 31st March, 2022 then the LLP has to file an annual return with the Registrar latest by 30th May, 2022.*

Note: The LLP contra-distinct from Partnership Act, 1932 has prescribed the filing of Annual Return in accordance with Companies Act, 2013. This is a new feature of the LLPs.

2. Penalty for non-filing of annual return –
   a. LLP – ₹100 per day subject to maximum ₹1,00,000
   b. Every Designated Partners - ₹100 per day subject to maximum ₹50,000

E. INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]

The incorporation document, name of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each LLP with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

F. PENALTY FOR FALSE STATEMENT [SECTION 37]

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—

a. Which is false in any material particular, knowing it to be false; or

b. Which omits any material fact knowing it to be material,

He shall, save as otherwise expressly provided in this Act, be punishable with

a. Imprisonment for a term which may extend to 2 years, and

b. Fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

G. POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]

1. In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.

2. In case any person referred to in sub-section (1)

a. does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person,

b. the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.

3. Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than ₹ 2000 but which may extend to ₹ 25,000.

H. COMPOUNDING OF OFFENCES [SECTION 39]

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

2. Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of 3 years from the date on which similar offence committed by it or him was compounded under this section. Explanation—For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.
3. Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.
4. Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of 7 days from the date on which the offence is so compounded.
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
6. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.
7. The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the LLP to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.
8. Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the LLP who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under subsection (7), the maximum amount of fine for the offence, which was under consideration Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

Q.NO.16 DISCUSS THE PROVISIONS OF LIMITED LIABILITY PARTNERSHIP ACT REGARDING ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS?

ANSWER:

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

A. PARTNER'S TRANSFERABLE INTEREST [SECTION 42]

1. The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.
2. The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
3. The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

Q.NO.17 STATE THE EFFECT OF CONVERSION OF FIRMS INTO LIMITED LIABILITY PARTNERSHIP ACT?

ANSWER:

A. CONVERSION INTO LLP

1. **CONVERSION FROM FIRM INTO LLP [Section 55]:** A firm may convert into an LLP in accordance with the provisions of this Chapter and the Second Schedule.
2. **CONVERSION FROM PRIVATE COMPANY INTO LLP [Section 56]:** A private company may convert into an LLP in accordance with the provisions of this Chapter and the Third Schedule.
3. **CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LLP [Section 57]:** An unlisted public company may convert into an LLP in accordance with the provisions of this Chapter and the Fourth Schedule.

B. REGISTRATION AND EFFECT OF CONVERSION [SECTION 58]

1. The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the respective Schedules, provisions of this Act and the rules made thereunder,
   - **a.** Register the documents submitted under such schedules and
   - **b.** Issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.

2. The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 (Now Companies Act, 2013) as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.
3. Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the LLP to which such firm or such company has converted, and the partners of the LLP shall be bound by the respective Schedules, as the case may be, applicable to them.
4. Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the respective schedules, as the case may be.

C. **EFFECT OF REGISTRATION:** Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the respective Schedule, as the case may be, —

a. There shall be a LLP by the name specified in the certificate of registration registered under this Act;
b. All tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
c. The firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Q.NO.18 DISCUSS THE PROVISIONS OF LIMITED LIABILITY PARTNERSHIP ACT REGARDING ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS?

ANSWER:

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

A. COMPROMISE OR ARRANGEMENT OF LIMITED LIABILITY PARTNERSHIPS [SECTION 60]

1. Where a compromise or arrangement is proposed—
   a. Between a limited liability partnership and its creditors; or
   b. Between a limited liability partnership and its partners,

   The Tribunal may, on the application of

a. the limited liability partnership or

b. any creditor or

c. partner of the limited liability partnership, or,

d. in the case of a limited liability partnership which is being wound up, of the liquidator,

order a meeting of the creditors or of the partners, as the case may be,

to be called, held, and conducted in such manner as may be prescribed or as the Tribunal directs.

2. If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.

3. An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within 30 days after making such an order and shall have effect only after it is so filed.

4. If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing default, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.

5. The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

B. POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT (SECTION 61)

1. Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it—

a. Shall have power to supervise the carrying out of the compromise or an arrangement; and

b. May, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

2. If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

C. PROVISIONS FOR FACILITATING RECONSTRUCTION OR AMALGAMATION OF LIMITED LIABILITY PARTNERSHIPS [SECTION 62]

1. Where an application is made to the Tribunal under section 60 for sanctioning of a compromise or arrangement proposed between a limited liability partnership and any such persons as are mentioned in that section, and it is shown to the Tribunal that—

a. Compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership or limited liability partnerships, or the amalgamation of any two or more limited liability partnerships; and

b. Under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (in this section referred to as a "transferor limited liability partnership") is to be transferred to another limited liability partnership (in this section referred to as the "transferee limited liability partnership"), the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:—

i. The transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;

ii. The continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;

iii. The dissolution, without winding up, of any transferor limited liability partnership;

iv. The provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

v. Such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Note:

a. No compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a limited liability partnership, which is being wound up, with any other limited liability partnership or limited liability partnerships, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest:

b. No order for the dissolution of any transferor limited liability partnership under clause (iii) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the limited liability partnership, made a report to the Tribunal that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

2. Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

3. Within 30 days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

4. If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.

Explanation:

a. In this section "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description.

b. a LLP shall not be amalgamated with a company.

Q.NO.19 DISCUSS THE PROVISIONS OF LIMITED LIABILITY PARTNERSHIP ACT REGARDING WINDING UP AND DISSOLUTION?

ANSWER:

WINDING UP AND DISSOLUTION

1. **WINDING UP AND DISSOLUTION [SECTION 63]:** The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.
2. **CIRCUMSTANCES IN WHICH LLP MAY BE WOUND UP BY TRIBUNAL [SECTION 64]:** A LLP may be wound up by the Tribunal:
   - **a.** If the LLP decides that LLP be wound up by the Tribunal;
   - **b.** If, for a period of more than 6 months, the number of partners of the LLP is reduced below two;
   - **c.** If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order[1] ;
   - **d.** If the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
   - **e.** If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

[1] *Omitted by the Insolvency and Bankruptcy Code, 2016 (w.e.f. 15.11.2016)*

Rules for winding up and dissolution [Section 65]: The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

Q.NO.20 DISCUSS THE PROVISIONS OF LIMITED LIABILITY PARTNERSHIP ACT REGARDING

a. BUSINESS TRANSACTIONS OF PARTNER WITH LLP

b. APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT

c. PAYMENT OF ADDITIONAL FEE

d. ENHANCED PUNISHMENT

ANSWER:

i. **BUSINESS TRANSACTIONS OF PARTNER WITH LLP [SECTION 66]:** A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

ii. **APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT [SECTION 67]**

1. The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—
   - **a.** Shall apply to any LLP; or
   - **b.** Shall apply to any LLP with such exception, modification, and adaptation, as may be specified, in the notification.

2. A copy of every notification proposed to be issued under sub-section (1)
   a. Shall be laid in draft before each House of Parliament, while it is in session,
   b. For a total period of 30 days which may be comprised in one session or in two or more successive sessions, and
   c. If, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification,
   d. The notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

iii. **PAYMENT OF ADDITIONAL FEE [SECTION 69]**

Any document or return required to be registered or filed under this Act with Registrar, if, is not registered or filed in time provided therein, may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:

Note:

a. Such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act:
b. A different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.

iv. **ENHANCED PUNISHMENT [SECTION 70]**

In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Q.NO.21 **DISTINCTION BETWEEN LLP AND PARTNERSHIP FIRM**

The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

	Basis	LLP	Partnership firm
1.	**Regulating Act**	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.

2.	**Body corporate**	It is a body corporate.	It is not a body corporate,
3.	**Separate legal entity**	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	**Creation**	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	**Registration**	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	**Perpetual succession**	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues forever.	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	**Name**	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	**Liability**	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited. It can be extended up to the personal assets of the partners.
9.	**Mutual agency**	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	**Designated partners**	At least two designated partners and at least one of them shall be resident in India.	There is no provision for such partners under the Partnership Act, 1932.
11.	**Common seal**	It may have its common seal as its official signatures.	There is no such concept in partnership
12.	**Legal compliances**	Only designated partners are responsible for all the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act

13.	**Annual filing of documents**	LLP is required to file: **(i)** Statement of accounts and solvency (to be filed annually) **(ii)** Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.
14.	**Foreign partnership**	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	**Minor as partner**	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

Q.NO.22 DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY

	Basis	LLP	Limited Liability Company
1.	**Regulating Act**	The LLP Act, 2008.	The Companies Act, 2013.
2.	**Members/ Partners**	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	**Internal governance structure**	The internal governance structure of a LLP is governed by contract agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	**Name**	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Pvt. Co. to contain the word "Private limited" as suffix.
5.	**No. of members/ partners**	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees.	Private company: Minimum – 2 members Maximum 200 members Public company: Minimum – 7 members Maximum – No such limit on the members.

			Members can be organizations, trusts, another business form or individuals.
6.	**Liability of members/ partners**	Liability of a partners is limited to the extent of agreed contribution in case of intention is fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	**Management**	The business of the company is managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected by the shareholders.
8.	**Minimum number of directors/ designated partners**	Minimum 2 designated partners	Pvt. Co. – 2 directors Public co. – 3 directors

TEST YOUR KNOWLEDGE

MCQ Based Questions

1. **Which of the following cannot be converted into LLP?**
   a. **Partnership firm**
   b. **Private company**
   c. **Listed company**
   d. **Unlisted company**

2. **The approved name of LLP shall be valid for a period of ___ from the date of approval:**
   a. **1 Month**
   b. **2 Months**
   c. **3 Months**
   d. **6 Months**

3. **Name of the Limited Liability Partnership shall be ended by:**
   a. **Limited**
   b. **Limited Liability partnership or LLP**
   c. **Private Limited**
   d. **OPC**

4. **Which one of the following statements about limited liability partnerships (LLPs) is incorrect?**
   a. **An LLP has a legal personality separate from that of its members.**
   b. **The liability of each partner in an LLP is limited.**
   c. **Members of an LLP are taxed as partners.**
   d. **A listed company can convert to an LLP.**

5. **For the purpose of LLP, Resident in India means:**
   a. **Person who has stayed in India for a period of not less than 182 days during the current year.**
   b. **Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.**
   c. **Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year**
   d. **Person who has stayed in India for a period of not less than 120 days during the financial year.**

Answer to MCQ based Questions

1.	**c.**	Listed company
2.	**c.**	3 months
3.	**b.**	Limited Liability partnership or LLP
4.	**d.**	A listed company can convert to an LLP
5.	**d.**	Person who has stayed in India for a period of not less than 120 days during the financial year

DESCRIPTIVE QUESTIONS

Q.NO.1 "LLP IS AN ALTERNATIVE CORPORATE BUSINESS FORM THAT GIVES THE BENEFITS OF LIMITED LIABILITY OF A COMPANY AND THE FLEXIBILITY OF A PARTNERSHIP". EXPLAIN.

ANSWER:

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section 26 of the LLP Act, 2008). The liability of the partners will be limited to their agreed contribution in the LLP, while the LLP itself will be liable for the full extent of its assets.

Flexibility of a partnership: The LLP allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.

Q.NO.2 MR. ANKIT SHARMA WANTS TO FORM A LLP TAKING HIM, HIS WIFE MRS. ARCHIKA SHARMA AND ONE HUF AS PARTNERS FOR THAT. WHETHER THIS LLP CAN BE INCORPORATED UNDER LLP ACT, 2008? EXPLAIN.

ANSWER:

PROVISION:

1. Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if—
   - **a.** He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
   - **b.** He is an undischarged insolvent; or
   - **c.** He has applied to be adjudicated as an insolvent and his application is pending.
2. Further, Section (2)(1)(e) provides that a **Body Corporate** it means a company as defined in 'clause (20) of section 2 of the Companies Act, 2013 and includes—
   - **a.** An LLP registered under this Act;
   - **b.** An LLP incorporated outside India; and
   - **c.** A company incorporated outside India,

but does not include—

a. A corporation sole;

b. A co-operative society registered under any law for the time being in force; and

c. Any other body corporate (not being a company as defined in 'clause (20) of section 2 of the Companies Act, 2013' or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

CONCLUSION: Therefore, HUF is not covered in the definition of body corporate and cannot be partner in LLP.

Q.NO.3 THERE IS AN LLP BY THE NAME RAM INFRA DEVELOPMENT LLP WHICH HAS 4 PARTNERS NAMELY MR. RAHUL, MR. RAHEEM, MR. KARTAR AND MR. ALBERT. MR. RAHUL AND MR. ALBERT ARE NON – RESIDENT WHILE OTHER TWO ARE RESIDENT. LLP WANTS TO TAKE MR. RAHUL AND MR. RAHEEM AS DESIGNATED PARTNER. EXPLAIN IN THE LIGHT OF LIMITED LIABILITY PARTNERSHIP ACT, 2008 WHETHER LLP CAN DO SO?

ANSWER:

PROVISION: According to Section 7 of LLP Act, 2008 every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India. Further, explanation to the section provides, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

CONCLUSION: Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Q.NO.4 MR. MUDIT IS THE CREDITOR OF DEVI RAM FOOD CIRCLE LLP. HE HAS A CLAIM OF ₹10,00,000 AGAINST THE LLP BUT THE WORTH OF THE ASSETS OF LLP ARE ONLY ₹7,00,000. NOW MR. MUDIT WANTS TO MAKE THE PARTNERS OF LLP PERSONALLY LIABLE FOR THE DEFICIENCY OF ₹3,00,000. WHETHER BY VIRTUE OF PROVISIONS OF LIMITED LIABILITY ACT, 2008, MR. MUDIT CAN CLAIM THE DEFICIENCY FROM THE PARTNERS OF DEVI RAM FOOD CIRCLE LLP?

ANSWER:

PROVISION: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners. The LLP itself will be liable for the full extent of its assets but the liability of the partners will be limited. Creditors of LLP shall be the creditors of LLP alone. In other words, creditors of LLP cannot claim from partners. The liability of the partners will be limited to their agreed contribution in the LLP.

CONCLUSION: Hence the creditors of Devi Ram Food Circle LLP are the creditors of Devi Ram Food Circle LLP only. Partners of LLP are not personally liable towards creditors. Mr. Mudit cannot claim his deficiency of ₹ 3,00,000 from the partners of Devi Ram Food Circle LLP.

Q.NO.5 M/S VARDHMAN STEELS LLP WAS INCORPORATED ON 01.09.2022. ON 01.01.2023, ONE PARTNER OF A PARTNERSHIP FIRM NAMED M/S VARDHIMAAN STEELS IS REGISTERED WITH INDIAN PARTNERSHIP ACT, 1932 SINCE 01.01.2000 REQUESTED ROC THAT AS THE NAME OF LLP IS NEARLY RESEMBLES WITH THE NAME OF ALREADY REGISTERED PARTNERSHIP FIRM, THE NAME OF LLP SHOULD BE CHANGED. EXPLAIN WHETHER M/S VARDHMAN STEELS LLP IS LIABLE TO CHANGE ITS NAME UNDER THE PROVISIONS OF LIMITED LIABILITY ACT, 2008?

ANSWER:

PROVISION: Section 15 of LLP Act, 2008 provides no LLP shall be registered by a name which, in the opinion of the Central Government is—

a. Undesirable; or

b. Identical or too nearly resembles to that of any other 'LLP or a company or a registered trademark of any other person under the Trade Marks Act, 1999'.

Further, section 17 provides, if the name of LLP is identical with or too nearly resembles to-

a. That of any other LLP or a company; or

b. A registered trademark of a proprietor under the Trademarks Act, 1999

Then on an application of such LLP or proprietor referred to in clauses (a) and (b) respectively or a company, the CG may direct that such LLP to change its name within a period of 3 months from the date of issue of such direction.

ANALYSIS & CONCLUSION: Following the above provisions, LLP need not change its name if its name resembles with the name of a partnership firm. These provisions are applicable only in case where name is resembles with LLP, company or a registered trademark of a proprietor.

Hence, M/s Vardhman Steels LLP need not change its name even it resembles with the name of partnership firm.

Q.NO.6 KANIK, PRIYANSH, ABHINAV AND BHAWNA WERE PARTNERS IN SINGH JAIN & ASSOCIATES LLP. ABHINAV RESIGNED FROM THE FIRM W.E.F. 01.11.2022 BUT THIS WAS NOT INFORMED TO ROC BY LLP OR ABHINAV. WHETHER ABHINAV WILL STILL BE LIABLE FOR THE LOSS OF FIRM OF THE TRANSACTIONS ENTERED AFTER 01.11.2022?

ANSWER:

PROVISION: According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless—

a. The person has notice that the former partner has ceased to be a partner of the LLP; or

b. Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar.

CONCLUSION: Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022.

THE END