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SMART DECISION FOR SMART EDUCATION
SINCE-2005

CA INTER

LAW
QUESTION BANK



THE ULTIMATE SOLUTION

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(AIR-4)

Message from Author

Haanji doston,

Your CA Buddy here! This is the second most important book for your CA Inter Law – Question Bank. Once you are done with the concepts (from the summary notes), this book will help you improve your writing skill and improve your concept clarity.

Key features of this book:

1. 450+ questions covered. It covers all ICAI Module, RTP, MTP and Past Paper questions (till Sept'26 exam) with all answers amended till date.
2. Repeated questions have been merged so students can practice multiple types of questions.
3. All answers are as per Suggested Answer and the way ICAI prefers you to write.
4. Student's confusion has been proactively answered by the Author via comments.
5. Tricky/important/interesting questions are highlighted.

I dedicated this book to my Parents. Without their blessings, making this book was not possible.



Keep going,
Yahin hoon main
Your CA Buddy

Index and Last Day Revision Plan

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	Total	**477**

How to make this question bank yours?

1. Solve the questions chapter wise along with the classes.
2. While solving the questions, mark the questions and categorize it into A/B/C category.
   a. A Category – Important / Difficult Questions
   b. B Category – Question which will either be categorized as either C or A in next revisions.
   c. C Category – Easy questions or questions which you are personally very comfortable with.
3. Mark all the questions which you find tricky, unique, or controversial for your last day revision.
4. Ensure that the no. of questions that you keep for last day revision is less than 100 in total.

1 Preliminary

Question 1

The paid-up share capital of Saras Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs.10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?

[RTP May'18, May'19 – 4 marks]

Answer

Relevant Provisions

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause—

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

Analysis and Conclusion

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e., controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Question 2:

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ₹ 8 crore with 40 members and turnover of ₹ 58 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements?

Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:-
(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively.
[RTP May'23, RTP Sept'26]

OR

Sriram Private Limited is a start-up company. Mr. Lovely has been appointed as Accounts Manager of Sriram Private Limited. The Board meeting for approval of accounts is to be held on 1st August, 2024 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Lovely about the statements that are required to be prepared.
[May'2018, Nov'22, MTP May'25 – 5 marks]

Answer

According to section 2(40) of the Companies Act, 2013, Financial statement in relation to a company, includes:

(i) a balance sheet as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv)

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(40) of the Companies Act, 2013:

(i) One person company – It is given that the company is having 40 members and also its name does not contain the words 'OPC', so it is not a one person company.

(ii) Small company – A company which is a subsidiary company cannot be categorized as a small company as per proviso to section 2(85) even though its paid up capital and turnover are within the prescribed limits and accordingly, as Sankul (P) Ltd. is a subsidiary company of Hastprat Ltd., it cannot be considered as small company also.

(iii) Dormant company – It is given that the company is actively carrying on its business, so it cannot be also categorized as a dormant company based upon the facts given.

(iv) Private company (which is a start-up) – It is given that Sankul (P) Ltd. is not a start- up company and also, as per proviso to section 2(71) of the Act, a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.
So, Sankul (P) Ltd. shall be deemed to be a public company as it is subsidiary of Hastprat Ltd., an unlisted public company and so it will not fall into this category of exemption as well.

Thus, it can be concluded that Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements as it does not fall in any of the categories of companies mentioned under proviso to section 2(40) of the Companies Act, 2013.

Question 3:

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.

[RTP Nov 21]

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.

Question 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.

[ICAI Module, Nov'19, RTP Sept'24, MTP Jan'26]

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.

SKP Limited is advised to follow the above procedure accordingly.

Question 5:

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

(i) Paid-up equity share capital Rs. 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs. 10 each. There is no change in the paid-up share capital thereafter.
(ii) The turnover is Rs. 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed timeline during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account.

You are to advise on the following points explaining the provisions of the Companies Act, 2013:

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?

[July 2021, MTP May 24, MTP May'26, MTP Sept'26 – 5 marks]

Answer

According to section 2(85) of the Companies Act, 2013, small company means a company, other than a public company, having-

a) paid-up share capital not exceeding fifty lakh rupees or such higher amount as may be prescribed

which shall not be more than ten crore rupees; and

b) turnover as per profit and loss account for the immediately preceding financial year not exceeding Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs. 100 crores.

Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), subsidiary company, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs. 10 totaling Rs. 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and not a deemed public company Further, the paid up share capital (Rs. 50 lakhs) and turnover (Rs. 2 crores) is within the limit as prescribed under section 2(85), hence, Smart Solutions Private Limited can be categorized as a small company.

Part (ii)

According to section 2 (40), Financial statement in relation to a company, includes:

a) a balance sheet as at the end of the financial year;
b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
c) cash flow statement for the financial year;
d) a statement of changes in equity, if applicable; and
e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Smart Solutions Private Limited being a small company is exempted from filing a cash flow statement as a part of its financial statements. Thus, Smart Solutions Private Limited has not defaulted in filing its financial statements with ROC.

Question 6: (read after chapter 3)

Johnson Limited goes for public issue of its shares. The issue was oversubscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013. Examine who will be considered in default in the instant case?

[July 2021 – 5 marks]

Answer

Relevant Provisions

As per section 39 of the Companies Act, 2013, which deals with the allotment of securities, states that in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or Rs. 1 lakh, whichever is less.

As per section 2(60) of the Act, Officer who is in default, has been described as:

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the

following officers of a company, namely:—
(i) whole-time director (WTD);
(ii) key managerial personnel (KMP);
(iii) where there is no key managerial personnel, such director or directors as specified by the Board, or all the directors, if no director is so specified;
(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility.
(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
(vi) every director, in respect of a contravention of any of the provisions of this Act,
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Conclusion
In the given case, as stated Johnson Limited, committed a default with respect to the allotment of shares by the officers. As in company there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act. Therefore, in such situation, all the directors of the company may be treated as officers in default.

Question 7:

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of Rs. 2 crore and turnover of Rs. 60 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
(i) Whether the MNP Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is Rs. 130 crores?

[ICAI Module, May'18, MTP Oct'20, MTP Dec'21 – 5 marks]

Answer

Relevant Provisions

Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:
(i) paid-up share capital of which does not exceed Rs. 50 lakhs or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
(ii) turnover of which as per its last profit and loss account does not exceed Rs. 2 crores or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to:
(A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act.

As per the Companies (Specification of Definitions Details) Rules, 2014 amended as on 1st Dec 2025, for the purposes of sub clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed Rs. 10 crores and Rs. 100 crores respectively.

(i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of Rs. 2 crores and having turnover of Rs. 60 crores. Since, both the criteria of share capital not exceeding Rs. 10 crores and turnover not exceeding Rs. 100 crores is met, MNP Private Ltd. can avail the status of small company.

(ii) If the turnover of the company is Rs. 130 crores, turnover exceeds the limit of Rs. 100 crores and hence, MNP Private Limited cannot avail status of small company.

Question 8:

MNP Limited is a registered public company having the following:

(a)	Directors and their Relatives	18
(b)	Employees	26
(c)	Ex-Employees (Shares were allotted during employment)	15
(d)	Members holding shares jointly (7 x 2)	14
(e)	Other Members	137

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

i. Whether the company can be converted into a private company?

ii. Whether existing number of members need to be reduced for the proposed private company?

[ICAI Module, May'22, MTP Sept'25 – 5 marks]

Answer

According to Section 2(68) of the Companies Act, 2013, "Private company" means a company having prescribed minimum paid-up share capital, and which by its articles, limits number of its members to 200. However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

It is further provided that following shall not be included in the number of members –

a) persons who are in the employment of the company; and

b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Accordingly, total number of members in MNP Limited are:

(i)	Directors and their relatives	18
(ii)	Joint shareholders (7x1)	7
(iii)	Other Members	137
	Total	162

i. MNP Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are 162 which is within the prescribed maximum limit of 200, so MNP Limited can be converted into a private company.

ii. There is no need for reduction in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

Question 9:

ABC Private Ltd. has two wholly owned subsidiary companies, D Private Limited and E Private Limited. Examine, whether, D Private Limited and E Private Limited will be treated as related party as per the provisions of the Companies Act, 2013?

[May 2022 – 3 marks]

Answer

According to section 2(76)(viii) of the Companies Act, 2013, Related party, with reference to a company, means 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;

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause(viii) shall not apply with respect to section 188 to a private company, though being a related parties.

Alternate Answer

According to section 2(76)(viii)(B) of the Companies Act, 2013, Related party, with reference to a company, means any body corporate which is a subsidiary of a holding company to which it is also a subsidiary.

However, Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

In the given question, D Private Limited and E Private Limited are wholly owned subsidiary companies of ABC Private Ltd. According to stated clause (B), above, D Private Limited and E Private Limited are related parties.

However, as per the mentioned Notification, clause (viii) shall not apply with respect to section 188 to a private company. Therefore, D Private Limited and E Private Limited are not related parties for the purpose of section 188.

Question 10:

The following securities are issued by different companies:-

Company	Securities Issued
Preshth Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
Module Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
Perfect (P) Ltd.	Listed non-convertible debt securities issued on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

It is also informed that equity shares issued by the Preshth Ltd. and Module Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, analyse, whether the companies mentioned in the table can be considered as listed company(ies)?

[RTP Sept'26, Nov'22, MTP Sept'25 – 5 marks]

Answer

According to Section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange.

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

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

(a) Public cos. which have not listed their equity shares on a recognized stock exchange but have listed their:
  (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
  (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue & Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
  (iii) both categories of (i) and (ii) above.

(b) Public cos. which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Act.

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

In view of the facts of the question and the provisions of the Act,

Company Name	Analysis and Conclusion
Preshth Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed nonconvertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations, which falls in the exceptions to the listed company, and accordingly, Preshth Ltd. shall not be considered as a listed company.
Module Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed nonconvertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, and accordingly, Module Ltd. shall not be considered as a listed company.
Perfect (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company and accordingly, Perfect (P) Ltd. shall not be considered as a listed company.

Question 11

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31 March, 2022 of S Pvt. Ltd., its turnover was Rs. 80 crores; and paid up share capital was 8 crores. The Board of Directors wants to avail the status of a small company. The company secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of practicing company secretary is correct, explaining the relevant provisions of the Act.

[Nov'22, May 2023, RTP May'24, RTP Sept'25 – 5 marks]

Answer

As per section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company:

(i) paid-up share capital of which does not exceed ten crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed hundred crore rupees.

Provided that nothing in this clause shall apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act

In the instant case, as per the last profit and loss account for the year ending 31st March, 2022 of S Pvt. Ltd., its turnover was to the extent of Rs. 80 crore, and paid-up share capital was Rs. 8 crores. Though S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.)

Question 12:

Cross Limited is a company incorporated under the erstwhile the Companies Act, 1956 while XYZ Private Limited is a company registered under the Companies Act, 2013. XYZ Private Limited has issued Rs. 1,00,000 convertible preference shares (carrying right to vote) of Rs. 100 each and 10,00,000 equity

shares of Rs. 10 each fully paid. Cross Limited is holding all the preference share and 1,00,000 equity shares of XYZ Private Limited. Examine whether:
(i) The provisions of the Companies Act, 2013 are applicable on Cross Limited?
(ii) XYZ Private Limited is a public company as per the Companies Act, 2013?

[MTP May'24 – 5 marks]

Answer

(i) Section 1 of the Companies Act, 2013, provides that the provisions of this Act shall apply to companies incorporated under this Act or under any previous company law. Hence, the provisions of the Companies Act, 2013 are also applicable on Cross Limited.

(ii) According to section 2(71) of the Companies Act, 2013, public company means a company which is not a private company.
Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

According to section 2(87) of the Companies Act, 2013, "subsidiary company", in relation to any other company (that is to say the holding company), means a company in which the holding company:

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

In the given question, total voting power in XYZ Private Limited is:

Particulars	Amount in Rs.
Convertible Preference Shares (carrying voting rights)	1,00,00,000
Equity Shares	1,00,00,000
Total Voting Power	2,00,00,000

Cross Limited holds more than one- half of the total voting power [(Rs. 10,00,000 equity shares+ Rs. 1,00,00,000 preference shares)/ Rs 2,00,00,000]. Therefore, XYZ Private Limited is a subsidiary of Cross Limited.

Further, in terms of the provisions of section 2(71), XYZ Private Limited being subsidiary of Cross Limited (a public company), shall also be deemed to be a public company.

Question 13:

MNO Limited are finalising its financial statements and found that the value of one of its properties has increased. The company came across certain other transactions also and got confused as to what should be included as 'free reserves'.

The company has approached you to define to them the meaning of the term "free reserves" for dividend distribution as per the provisions of the Companies Act, 2013.

[MTP Jan'25 – 5 marks]

Answer

As per section 2(43) of the Companies Act, 2013, free reserves mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:
Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

Question 14

Mr. Kaushal is a Chartered and an MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Kaushal can be classified as the Promoter of XYZ Limited? Examine the same under the provisions of the Companies Act, 2013.

[MTP Jan'25, MTP May'26 – 5 marks]

Answer

According to section 2(69) of the Companies Act, 2013, Promoter means a person:

(a) Who has been named as such in a prospectus or is identified by the company in the annual return; or

(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) In accordance with whose advice, directions or instructions the Board of Directors of the Company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

As the job profile of Mr. Kaushal is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that to only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

2 Incorporation of Company and Matters Incidental Thereto

Question 1

The Articles of Association of XYZ Ltd. provides the Board of Directors authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.

[Nov'16]

Answer

Relevant Provisions

Doctrine of Indoor Management:

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The company is bound to Mr. X:

(i) since the lender, Mr. X, had lent the money to the company assuming that the company was authorized to borrow money after obtaining authorization from the members in GM;

(ii) since, on the same facts, the Court held in "Royal British Bank v Turquand" that the outsiders dealing with the company were not required to inquire into the internal management of the company, and the outsiders were entitled to assume that as far as internal proceedings of the company were concerned, everything had been done regularly (termed as doctrine of indoor management).

Conclusion

In the present case, XYZ Ltd. will be bound to return the money to Mr. X.

Question 2

Repeated question. Hence, merged with other question.

Question 3

The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.

[Jan'21 – 5 marks]

OR

The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply.

[Nov'18, ICAI Module, MTP Nov'22, MTP Nov'23– 6 marks]

OR

The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be

authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

[MTP May 2020, Sept'26 - 5 marks]

Answer

According to this doctrine, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company. They can simply assume that all the required things were done properly in the company.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
The doctrine of indoor management was evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management

(i) What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

(ii) If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

(1) Knowledge of irregularity: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

(2) Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available in the circumstances where company does not make proper inquiry.

(3) Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

(4) Where the question is in regard to the very existence of an agency.

(5) Where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

The above doctrines have been well considered while framing the provisions of various Acts pertaining to the companies worldwide. The Companies Act, 2013 and the earlier Acts relevant for the Companies in India are no exception to the same.

Conclusion relevant for the Alternate question of Smart computers:

In the given question, Mr.Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr.Tridev.

Question 4

Mr. Dan, an Indian citizen decides to start a software development company and opts for a One Person Company (OPC). He appoints his friend, Mr. Rohit as the nominee at the time of incorporation, following all legal requirements. After two years, Mr. Rohit wants to withdraw his nomination. Mr. Dan then nominates Mr. Akram in his place and submits the necessary Forms to the Registrar of Companies (RoC).
Considering the legal provisions governing OPCs, analyse the following:

1. What legal process must be followed when a nominee withdraws his consent?
2. How does the change of nominee impact the Memorandum of Association (MoA) of the company?
3. Can Dan own another OPC while still being a member of Dan Technologies OPC Pvt. Ltd.?

[Nov'2020, MTP May'25 – 5 marks]

Answer

A One Person Company (OPC) allows a single entrepreneur to establish a business with limited liability while ensuring continuity through the appointment of a nominee. The role of the nominee is crucial, as they automatically become the company's owner in case of the original member's death or incapacity.

1. Legal Process for Nominee Withdrawal

   In case if a nominee wishes to withdraw his consent the following steps must be followed:

   a. The nominee must submit a written notice to both the sole member (Mr. Dan) and the company.
   b. Mr. Dan has 15 days to appoint a new nominee.
   c. The new nominee, Mr. Akram, must provide written consent in Form INC-3.
   d. The company, within 30 days of receipt of notice of withdrawal of consent by the nominee, shall file with RoC the notice of such withdrawal of consent and intimate the name of such another person (new nominee) in Form INC-4 along with the prescribed fee and the Form INC-3.

2. Impact on the Memorandum of Association (MoA)

   A change in the nominee's name does not alter the Memorandum of Association (MoA). The law ensures that nominee changes do not require formal amendments, simplifying administrative processes.

3. Membership Restriction on Multiple OPCs

   As per Rule 3(2) of the Companies (Incorporation) Rules, 2014, an individual cannot be a member of more than one OPC at any given time. Therefore, Mr. Dan cannot start another OPC unless he exits his current one. Similarly, Mr. Akram cannot be a nominee for multiple OPCs.

Question 5

Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th January till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

[RTP Nov'19, MTP Nov'21 – 4 marks]

Answer

According to section 3A of the Companies Act, 2013, if at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Hence, in the given situation, the number of members in the said public company have fallen below 7 [250-244=6] and these members have continued beyond the specified limit of 6 months, the reduced members of the company shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Question 6

Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.

[RTP May'20, ICAI Module, MTP Sept'25 – 5 marks]

OR

The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.

[Nov'20, MTP Nov'22, MTP 2 Nov'23 – 3 marks]

Answer

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to Registrar of such provisions in prescribed manner [SPICE+ or MGT-14]

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Registrar of Companies regarding entrenchment of articles.

Question 7

Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime.

Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director.
Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013.

[MTP April'21]

Answer

Relevant provisions

As per the provisions of sub-section (3) of section 5 of the Companies Act, 2013, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of special resolution, are met or complied with.

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

Manner of inclusion of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Notice to the Registrar of the entrenchment provision:

As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, where the articles contain provision for entrenchment whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Conclusion

In the said situation the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Question 8

Mr. Ram along with his brothers got registered a company in the state of Telangana by furnishing false information knowingly. What action may be taken against the company and its promoters under the provisions of The Companies Act, 2013?

[MTP May'23, Nov'19, MTP May'24, RTP Sept'24, MTP May'26, MTP Sept'26 – 5 marks]

Answer

Order of the Tribunal:

According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:

(i) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
(ii) direct that liability of the members shall be unlimited; or
(iii) direct removal of the name of the company from the register of companies; or
(iv) pass an order for the winding up of the company; or
(v) pass such other orders as it may deem fit.

However, before making any order-.

(i) the company shall be given a reasonable opportunity of being heard in the matter; and
(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Also, the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.

Question 9

Dhruvika a social worker, to promote tribal art and culture in Southern Rajasthan planned to incorporate a company, the purpose of which was not only promote the tribal art but also to generate income for the tribal people. The people residing in the area are well versed in making the bamboo items, terracotta, leather goods, handmade jewellery, and textiles (hand-printed, tie and dye) but due to poor marketing, their products could not reach the buyers. The tribal products are in great demand among the people. Dhruvika thought of providing the marketing platform to such local producers (artisans) by selling the products through the e-commerce platforms. She discussed her plan with some of the prominent artisans of the

tribal area and invited them to be the members of the proposed company and she had planned to distribute the net profits equally among the members as a goodwill gesture.

(i) Referring to the provisions of the Companies Act, 2013 discuss whether Dhruvika can be granted a licence to incorporate a company under Section 8 of the Companies Act, 2013.

(ii) In case the artisans are unwilling to be members, can Dhruvika incorporate an One Person Company (OPC) under Section 8 of the Companies Act, 2013?

[May'26 – 5 marks]

OR

Mr. Purushottam along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters:

(i) What is the minimum paid-up capital requirement in case of a Section 8 Company?

(ii) Whether a firm can be member of the Section 8 Company?

(iii) Whether the Section 8 Company can pay dividend to its members?

Advise, Purushottam with reference to the provisions of Companies Act, 2013.

[RTP May 2021, MTP May'26 – 5 marks]

Answer

(i) According to sub-section (1) of Section 8 of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government (the power has been delegated to ROC in this behalf) that a person or an association of persons proposed to be registered as a limited company:

a. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

b. intends to apply its profits, if any, or other income in promoting its objects; and

c. intends to prohibit the payment of any dividend to its members,

the Central Government may, by license issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

In the given case, Dhruvika proposed to incorporate a company with the artisans as its members. However, she intended to distribute the net profits equally among the members, which shows a clear intention of distribution of dividend to the members. Since section 8(1) of the Companies Act, 2013 specifically prohibits payment of any dividend to its members and requires the profits to be applied solely towards promotion of its objects, the license for incorporation of the company under Section 8 cannot be granted.

(ii) According to Rule 3(5) of the Companies (Incorporation) Rules, 2014, OPC cannot be incorporated or converted into a company under section 8 of the Act. Thus, even if the artisans are unwilling to be members, Dhruvika cannot incorporate an OPC under section 8 of the Companies Act, 2013.

Question 10

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

However, such alteration in the articles was opposed by Dhwaj & Co., a partnership firm which is its member that there such alteration was not valid.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhwaj & Co. was valid and whether it can be a member in such company?

[RTP May'22, MTP May'25 – 5 marks]

Answer

According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government (the power has been delegated to Registrar of Companies).

Also, a firm may be a member of the company registered under section 8. Here, one of the matters of articles of Dhimaan Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of Dhwaj & Co. was valid. Also, section 8 allows a firm to be a member of such company and hence, Dhwaj & Co. can be its member.

Question 11

Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

[MTP Aug 2018, MTP Oct'18, MTP March 2019, ICAI Module, MTP May'26 – 5 marks]

OR

State Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently, and dividend was paid to its members. Mr. Cool, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the license given to the company.

(i) Is there any provision under the Companies Act, 2013 to revoke the license? If so, state the provisions.

(ii) Whether the Company may be wound up?

(iii) Whether the State Cricket Club can be merged with M/s. Cool Net Private Limited, a company engaged in the business of networking?

[July 2021, MTP Nov'22, MTP Nov'23 – 5 marks]

Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects.

Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

(i) The Central Government may by order revoke the license of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a license is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

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

(ii) Where a license is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

(iii) Where a license is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with

another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Question 12

A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart classroom teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013.
Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

[MTP Oct 2020, May 2019, ICAI Module, Nov 23 – 5 marks]

Answer

Relevant provision

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

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

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

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects.

Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Sec 8 of the Companies Act, 2013.

Therefore, the proposal is not feasible.

Author's Note:
Depending on the marks of the question, student may include the provision of Sec 8(9) in the Relevant provision section of this answer. Sec 8(9) is as stated below:
If on winding up/dissolution, there remains any assets, after satisfaction of its liabilities, they may be:
a. transferred to another section 8 co. having similar objects subject to T&C imposed by Tribunal, or
b. sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed u/s 224 of IBC, 2016

Question 13

Mr. Dinesh incorporated a new Private Limited Company under the provisions of the Companies Act, 2013 and desires to commence the business immediately. Please advise Mr. Dinesh about the procedure for commencement of business as laid under the provisions of the Section 10A of the Companies Act, 2013.

[MTP April'21]

Answer

As per Section 10A of the Companies Act, 2013, a company having a share capital shall not commence any business or exercise any borrowing powers unless:

(i) A declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that

every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(ii) The company has filed with the Registrar a verification of it registered office as provided in sub-section (2) of section 12.

Mr. Dinesh has to comply with the above requirements and procedure for commencing business of company.

Question 14 [Updated Question as per ICAI Module]

XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra, but from Mumbai ROC to Pune ROC). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

[ICAI Module, MTP April'19, MTP Oct'19 – 4 marks]

Answer

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Nashik, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company.

Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of Regional director.

Question 15

Examine the validity of the following different decisions/proposals regarding change of office by A Ltd. under the provisions of the Companies Act, 2013:

(i) The Registered office is shifted from Thane (Local Limit of Thane District) to Dadar (Local limit of Mumbai District), both places falling within the jurisdiction of the Registrar of Mumbai, by passing a special resolution but without obtaining the approval of the Regional Director.

(ii) The Registered office is situated in Mumbai, Maharashtra (within the jurisdiction of the Registrar, Mumbai, Maharashtra State) whereas the Corporate Office is situated in Pune, Maharashtra State (within the jurisdiction of the Registrar, Pune). A Ltd. proposes to shift its corporate office from Pune to Mumbai under the authority of a Board resolution.

(iii) The registered office situated in certain place of a city is proposed to be shifted to another place within the local limits of the same city under the authority of Board Resolution.

[July'21, MTP May'23 – 5 marks]

Answer

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

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

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

(iii) In the third case, change of registered office within the local limits of the same city. Said proposal is valid in terms it has been passed under the authority of Board resolution.

Question 16

Vintage security equipment's limited is a manufacturer of CCTV cameras. It has raised Rs. 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from China are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not, then what advise will you give to company. If yes, then give steps to be followed.

[RTP Nov 2019, ICAI Module]

Answer

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and:

(i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Question 17

The object clause of the Memorandum of Vivek Industries Limited., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business, the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

[ICAI Module]

Answer

Relevant provision

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company.

Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Question 18

Manglu and friends got registered a company in the name of Taxmann Advisory private limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

[ICAI Module, RTP May'23, Jan'25, MTP Sept'26 – 5 marks]

Answer

Relevant provision

According to section 16 of the Companies Act, 2013 if a company is registered by a name which—

(i) in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.

(ii) is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change.

In the given case, owner of registered trade- mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of sec 13.

Question 19

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

[RTP Nov 2018]

Answer

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

(i) Alteration by special resolution: Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

(ii) Filing of alteration with the registrar: Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within 15 days in such manner as may be prescribed, who shall register the same.

(iii) Any alteration made shall be valid: Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

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

Question 20

Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below:

(i) If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?

(ii) If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

[Nov 19, RTP May 2021, RTP Sept 2024]

Answer

As per the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise shall be eligible to incorporate a One Person Company or shall be a nominee for the sole member of a One Person Company.

In line with the above provision:

(i) No, it is not mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as residential status is not relevant. A natural person who is an Indian citizen whether resident in India or otherwise can be a nominee in OPC.

(ii) Navita can continue her nomination in the said OPC irrespective of her residential status as she is a natural person with Indian citizenship.

Question 21

S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholders of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. And 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way?

[RTP N'19, ICAI Module, MTP N'22, MTP M'23, MTP N'23, MTP Sept'25, MTP Jan'26 – 5 marks]

Answer

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule—

(i) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(ii) where the subsidiary company holds such shares as a trustee; or

(iii) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case, it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

Question 22

Kavya Ltd. has a paid up share-capital of Rs. 80 crores. Anjali Ltd. holds a total of Rs. 50 crores of Kavya Ltd. Now, Kavya ltd. is making huge profits and wants to expand its business and is aiming at investing in Anjali Ltd. Kavya Ltd. has approached you to analyze whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of Anjali Ltd.

[MTP March 2021 – 5 marks]

Answer

Relevant provision

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, Anjali ltd. is holding more than one half (50 crores out of 80 crores) of the total voting power of Kavya Ltd., it (Anjali Ltd.) is holding of Kavya Ltd.

Further, as per the provisions of section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

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

(i) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(ii) where the subsidiary company holds such shares as a trustee; or

(iii) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, Kavya ltd. cannot acquire the shares of Anjali Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

Question 23

AB Limited issued equity shares of Rs. 1,00,000 (10000 shares of Rs. 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:

(i) Whether AB Limited is a subsidiary of RS Limited?

(ii) Whether AB Limited can hold shares of RS Limited?

(iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?

[RTP Nov 2021, May 2019, Nov'23 – 5 marks]

Answer

This given problem is based on Section 2(87) read with section 19 of the Companies Act, 2013.

As per sub-clause (87) of Section 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas Section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.
Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e., 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd.

Following are the answers to the questions:

(i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.

(ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01 08.2020), according to the exception to section 19.

(iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

Question 24 [Not well drafted question, student may ignore this question comfortably]

Give answer in the following cases as per the Companies Act, 2013:

(i) X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) In continuation of above facts, Mr. R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the director of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd.

[MTP Oct 2018 – 7 marks]

Answer

As per section 2(87) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.

Further, section 19 of the companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

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

On the basis of the above provisions, following are the answers:

(i) In the given case, X Ltd. already holds shares in ABZ Ltd. before becoming its subsidiary. The given situation falls within the purview of the exceptions when such transfer of shares by holding company to its subsidiary is permissible. So this transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) This situation falls within the purview of exemption stating that such subsidiary company who holds such shares as the legal representative of a deceased member of the holding company, are entitled to hold the shares of the holding company. So, Mr. N being the legal representative of the deceased member of the Holding company, was entitled for the holding of shares of ABZ Ltd.

Question 25

S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders. Accordingly, bonus shares were allotted to S Ltd. Examine under the provisions of the Companies Act, 2013 and decide

(i) the validity of holding of shares by S Ltd. in H Ltd.
(ii) allotment of Bonus shares by H Ltd. to S Ltd.

[Nov'20]

Answer

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

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

In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore -

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

Question 26

Repeated question. Hence, merged with other question

Question 27

Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general 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. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper.
Decide:

(i) Whether the contention of Vijay is valid.
(ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?

[RTP Nov 2020, MTP May'26 – 5 marks]

Answer

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.

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

(i) The contention of Vijay 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 Vijay by registered post at his residential address at Kanpur and not outside India.

Question 28

Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

[MTP M'21, ICAI Mod, MTP N'22, MTP N'23, MTP M'24, MTP M'25, MTP J'26, MTP Sept'26 – 5marks]

Answer

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or 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.

Under section 20 (2), 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.

Question 29

Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai. Mr. Parag signed partnership deed with Firozbhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

[ICAI Module]

Answer

As per section 22 of the Companies Act, 2013 a company may authorize any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by 2 directors of the company or it should be signed by 1 director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority not affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

Question 30:

Sapphire Private Limited has registered its articles along with memorandum as on 1st July 2021. The directors of the company seeks your advice regarding the effect of registration of the company on the company itself and on its members.

[May 2022 – 3 marks]

Answer

As per Section 9 and 10 of the Companies Act, 2013 following shall be the effect of registration of a company:

(1) From the date of incorporation, the subscribers to the memorandum and all members of the company, shall become a body corporate.

(2) Such a registered company shall be capable of exercising all the functions of an incorporated company with the perpetual succession with power to acquire, hold and dispose of property, and to contract and to sue and be sued.

(3) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of memorandum and of the articles.

(4) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Question 31

Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid?

[RTP Nov 2022]

Answer

As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-

(a) shall be eligible to incorporate a One Person Company (OPC);

(b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

Question 32

The Articles of Association of Blue Limited provided that documents upon the company may be served only through email. Mr. Karan sent document to the company by registered post. The company did not accept the document on the ground that sending documents to the company by post was in violation of the Articles. As a result, Mr. Karan suffered loss. Decide the validity of arguments of the company and claim of Mr. Karan for damages in the light of provisions of the Companies, Act, 2013.

[RTP Sept'26, Nov 22 – 5 marks]

Answer

Section 20 of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the Registrars.

Serving of document to Company: Section 20(1) of the Companies Act, 2013, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

- registered post, or
- speed post, or

- courier service, or
- leaving it at its registered office, or
- means of such electronic or other mode as may be prescribed.

However, 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.

In the given instance, even though the Articles of Blue Limited has specifically provided that documents may be served upon the company only through email; this is invalid on the ground that the provisions of the Articles cannot be inconsistent with the provisions of the Companies Act, 2013. Therefore, the argument of the company is not valid. The company was bound to accept the document sent by Mr. Karan by registered post. Since, the company did not accept the documents, Mr. Karan may seek appropriate legal remedies and may claim damages if he suffered loss due to company's wrongful refusal.

Question 33

Amrish after completing his post-graduate degree in mechanical engineering from the United Kingdom returned back to India. Although he got a good placement in a UK-based company, but he thought to build his own business empire in India. Amrish belongs to Barmer district (Rajasthan) where his parents have agricultural land of 20 acres. He planned to manufacture commercial drones for the use of agricultural harvesting and assist in supply chain process. For this purpose, he planned to incorporate a private limited company having the following persons as the first subscribers to the Memorandum and Articles of Association:

(i) Amrish (himself)
(ii) Robert (He is a college friend of Amrish. He is a Citizen of UK. He has technical expertise and in order to incorporate the company visited India on a valid Business Visa).
(iii) Eliza (She is college friend of Amrish. She is a Citizen of Netherlands and has good business contacts in European Countries which will be immensely useful in marketing of the company's products).
(iv) Goma Devi (Mother of Amrish, who is illiterate. She has recently sold part of her agricultural land and has received ₹15 crores, out of which she agreed to subscribe ₹5 crores in the share capital of the proposed company).
(v) Goodwork Technologies LLP (A Limited Liability Partnership having the expertise in the field of remote sensing devices).
(vi) Mohit Electronics Private Ltd. (A Private Limited Company having expertise in the field of providing Electronics and Electricals).

Amrish planned to have the Registered Office of the proposed company at Jaipur while the factory and works office shall be at the Barmer. For incorporation of a company, an application for registration is to be filed with the Registrar. In the given case, the initial subscribers to the company consists of one illiterate person, two foreign nationals, one LLP and one Private Limited Company.

Discuss the procedure, how these persons shall subscribe to the Memorandum of Association and Articles of Association.

[May'25 – 5 marks]

Answer

Procedure as to how the persons shall subscribe to the Memorandum of Association and Articles of Association

In terms of Section 7(1)(a) of the Companies Act, 2013 (the Act), an application for registration shall be filed with the Registrar of Companies, within whose jurisdiction the registered office of the company is proposed to be situated in Form SPICE+ (Simplified Proforma for incorporating company electronically) plus INC 32 along with the fee as provided under the Companies (Registration Offices and Fees) Rules, 2014 and Memorandum (e-MOA in Form No. INC-33) and Articles (e-AoA in Form No. INC-34) of the company duly signed by all the subscribers to the Memorandum as prescribed under Rule 13 of the Companies (Incorporation) Rules, 2014.

S. No.	Particulars (In the case of):	Legal Provision
1	Amrish	In terms of Rule 13(a), each subscriber (in the given case, Amrish) shall add his name, address, description & occupation, if any, in the presence of at least one witness who shall attest the signature, shall sign and add his name, address, description and occupation, if any.
2	Robert	In terms of Rule 13(f), where subscriber to the Memorandum is a Foreign National residing outside India and visited India and intended to incorporate a company, in such case the incorporation shall be allowed if he/she is having a valid Business Visa.
3	Eliza	In terms of Rule 13(e), where the subscriber to the memorandum is a foreign national residing outside India, their signature and address on the Memorandum and Articles of Association and proof of identity shall be notarized by a Notary (Public) with a certificate. Since Eliza is a foreign national residing outside India, her signature and address on the Memorandum and Articles of Association and proof of identity shall be notarized by a Notary (Public) with a Certificate. Rule 13(e) further provides that if a person resides in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer. Note: In the given case, Netherlands is a country outside the Commonwealth; hence, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.
4	Goma Devi	In terms of Rule 13(b), since Goma Devi is an illiterate person, she shall affix her thumb impression or mark which shall be described as such by the person writing for her, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature. He shall also write against the name of the subscriber the number of shares taken by her.
5	Goodwork Technologies LLP	In terms of Rule 13(d), where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership duly authorized by a resolution approved by all the partners of the LLP.
6	Mohit Electronics Private Limited	In terms of Rule 13(c), where the subscriber is a body corporate, the Memorandum and Articles of Association shall be signed by a director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the Board of Directors.

Question 34

A group of five professionals decided to start a private limited company in the anti-drone solutions sector under the name Ddrone Pvt. Ltd. in April 2025. The company wants to have its registered office in Mumbai. On April 2, 2025, it applied for name reservation through RUN (Reserve Unique Name) and received approval on April 6, 2025. On May 15, 2025, due to a delay in documentation, the SPICe+ (Simplified Proforma for Incorporating Company Electronically) Plus (INC-32) form for incorporation was filed after 39 days from the date of name reservation.

The company proposed two directors, one Indian resident and one foreign national residing in the U.S. The foreign director did not have a DIN, and his passport was notarized but not apostilled. The company's registered office address was not finalized at the time of filing INC-32.

The Memorandum of Association (MoA) and Articles of Association (AoA) were signed electronically, but one subscriber used a digital signature of a third party (his consultant), with verbal consent.

Based on the above facts and applicable provisions of the Companies Act, 2013, answer the following questions:

(i) Was the name Ddrone Pvt. Ltd. still valid when INC-32 was filed on May 15, 2025?

(ii) Is it mandatory to provide the company's registered office address at the time of incorporation? What is the time limit to furnish it otherwise?

(iii) What are the consequences if the company fails to file the declaration for commencement of business within the prescribed time, and fails to carry on any business or operations?

[Jan'26 – 5 Marks]

Answer

(i) As per section 4 of the Companies Act, 2013, upon receipt of an application the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period.
In the given question, the company received the approval on 6 April 2025. The approval is valid for 20 days, however, the company filed SPICe+ after 39 days, which falls outside the prescribed period of 20 days. Hence, the name Ddrone Pvt. Ltd. will not be valid when INC- 32 was filed on 15 May 2025.

(ii) As per Section 12(1) of the Companies Act, 2013, a company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

As per Section 12(2), a company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation.
Hence, it is not mandatory to provide the company's registered office address at the time of incorporation.

(iii) As per section 10A of the Companies Act, 2013,

- A company having a share capital shall not commence any business or exercise any borrowing powers unless, a declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.
- If any default is made in complying with the above requirements, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
- Where no declaration has been filed with the Registrar within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.