

### Star Rating

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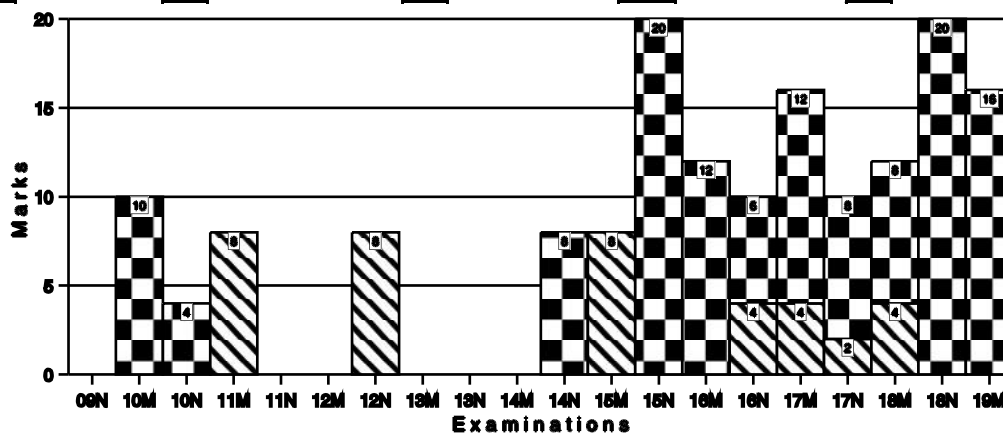
On the basis of Compulsory questions from a chapter

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CHAPTER	
<b>1</b>	<b>Appointment and Qualification of Directors</b>
<b>THIS CHAPTER COMPRISES OF</b>	
Appointment of Directors Allotment of Director Identification Number Obligation to indicate DIN Cancellation or Surrender or Deactivation of DIN Appointment of Additional Director, Alternate Director and Nominee Director Disqualifications for Appointment of Director Number of Directorship Duties of Directors Vacation of Office of Director Resignation of Directors Removal of Directors Register of Directors and Key Managerial Personnel and their Shareholding Members Right to Inspect	

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

### Legend



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## DESCRIPTIVE QUESTIONS

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**2011 - May [6]** (b) Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.

Decide in this connection,

- (i) Which of the directors shall be retiring by rotation and be eligible for re-election ?
- (ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation ?
- (iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences ?
- (iv) What will be your answer, assuming that the matter could not be decided even at the adjourned meeting ? (8 marks)

**Answer :**

- (i) **According to Sec. 152(6) (d)**, first those directors who are the longest in office must retire.
- (ii) **According to Sec. 152(6) (d)**, if two directors have been appointed on the same day, their retirement will be determined mutually or by lot.
- (iii) **According to Sec. 152(7)**, if vacancy is not filled up and the meeting has not expressly resolved not to fill vacancy, meeting will stand adjourned till
  - (a) the same day in next week at same time and place.
  - (b) and in case the same day in the next week is a public holiday, the next succeeding day, at same time and place.
- (iv) **If at the adjourned meeting** fresh appointment is not made and if no resolution against appointment is passed, then the retiring directors shall be deemed to have been appointed except in the following cases:

- (a) Where at the meeting or at the previous meeting the resolution for the reappointment of a particular director was put to vote but lost;
- (b) Where the retiring director has expressed his unwillingness to be reappointed by a written notice addressed to the company or its BOD;
- (c) Where he is unqualified or has been disqualified for appointment; and
- (d) Where any special or ordinary resolution is required for his appointment or reappointment.
- (e) Resolution in contravention of Sec. 162 is passed.

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

**2012 - Nov [2]** (b) Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Decide, whether the said appointment is valid under the provisions of the Companies Act, 2013?

Draft a “Board Resolution” for appointment of a person as an Additional Director in a public company. (8 marks)

**Answer :**

**Provision**

**Contracts voted upon by the Interested Director shall be void where:**

1. His exclusion from quorum would have resulted in a situation of no quorum.
2. Exclusion of his vote would have resulted in failure of such resolution.  
[Victors Ltd. Vs Firestone Tyre & Rubber Co.]

**Present Case :**

Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Thus the appointment of Mr. Soorajbhan as an Additional Director is void.

**Draft Board Resolution:**

**“Resolved that** pursuant to the AOA of the company and Sec. 161 of the Companies Act, 2013, Mr. X be and is hereby appointed as an Additional Director of the company with effect from 1.4.2015 to hold office up to date of the next AGM of the company.

**Resolved further that** Mr. Y who is appointed as an additional director will enjoy the same powers and rights as other directors.

**Resolved further that** Mr. Z, Secretary of the company be and is hereby authorized to electronically file necessary returns with the Registrar of Companies by putting his digital signature and to do all other necessary things required under the Act.”

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**2015 - May [2]** (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

- (i) The Board of Directors of MNP Limited appointed Ms. Neha as a Women Director in the Board Meeting held on 10<sup>th</sup> September, 2014. The said appointment was made to fill the vacancy of the Woman Director, which had occurred as a result of resignation of Ms. Sheela on 30<sup>th</sup> June, 2014.

Will your answer differ if the Board Meeting of the company was held on 8<sup>th</sup> November, 2014? (4 marks)

**Answer:****Appointment of Woman Director****Provision:**

A company incorporated under the Companies Act, 2013 and covered under second proviso of Sec. 149 (1) shall appoint Woman Director within a period of six months from the date of its incorporation.

Any intermittent vacancy of a Woman Director shall be filled-up by the board at next board meeting or three months from the date of such vacancy whichever is later.

**Present Case:**

The vacancy of a woman director of MNP Limited which arose on 30th June 2014, due to the resignation of Ms. Sheela, should be filled up latest by 29<sup>th</sup> September 2014 or the day of the next Board Meeting, whichever is later. Since Ms. Neha was appointed in the next Board Meeting after the vacancy arose, i.e. on 10<sup>th</sup> September 2014, her appointment is valid.

Even if MNP Ltd. appoints Ms. Neha in the Board Meeting held on 8th November 2014, provided the said meeting is the first meeting of the Board after 30th June 2014 i.e. after the resignation of Ms. Sheela.

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**2015 - May [5]** (a) (i) Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. (4 marks)

**Answer:****Intimation of changes in particulars specified in DIN application:****Rule 12 of Companies (Appointment and Qualification of Directors)**

**Rules, 2014** provides for the procedure for intimation of changes in particulars specified in the DIN application.

1. Every individual who has been allotted a DIN under these rules shall in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely:
  - (i) The Applicant shall download Form DIR-6 from the portal and fill in the relevant changes and also attach copy of the proof of the changed particular and verification in the Form DIR-7 all of which shall be scanned and submitted electronically in Form DIR - 6 [Substituted by Companies (Appointment and Qualification of Directors) Amendment Rules, 2014.]

- (ii) The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice
  - (iii) The applicant shall file the Form DIR-6.
2. The Central Government upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
  3. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the RO of the company(s) in which such individual is a director is situated.
  4. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

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**2016 - Nov [7]** (b) Sky Limited, a listed company has been incorporated under the Companies Act, 2013. An intermittent vacancy of a woman director has arisen on 15<sup>th</sup> June, 2016. Advise the company to fill the vacancy as per the provisions of the Companies Act, 2013. The Board meeting was held on 14<sup>th</sup> August, 2016. (4 marks)

**Answer:**

**Provision**

**As per 2<sup>nd</sup> proviso to Sec. 149(1) of the Companies Act, 2013**, all listed company shall require to appoint atleast one woman director.

Further, Sec. 149 provides that where any vacancy arises in office of woman director shall be required to be filled up by the board by passing board resolution within:

- (i) Three months of date of vacancy, or
- (ii) In next Board Meeting of Company, whichever is later.

**Present Case:**

In this case, Sky Limited is which vacant of a woman director has arisen on 15<sup>th</sup> June, 2016 and company held next board meeting on 14<sup>th</sup> August, 2016. In such case vacancy can be filled in board meeting held on 14<sup>th</sup> August, 2016 or also vacancy can also be filled on or before 14<sup>th</sup> September, 2016.

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**2017 - May [4]** (b) (i) Surya, a director in New Age Limited holding Directors Identification Number (DIN) wants to make certain changes in the particulars of his DIN. What procedure would you follow to get changes incorporated in the DIN already allotted to Surya? (2 marks)

(ii) Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (ROC) within the prescribed time.

What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to ROC? (2 marks)

**Answer:**

**(i) Intimation of changes in particulars specified in DIN application**

1. **As per Rule 12 of Companies (Appointment of Directors) Rules 2014**, Surya should intimate changes to Central Government within a period of thirty days of such changes(s) in Form DIR - 6 in the following manner,

- (i) The applicant (Surya) shall download Form DIR - 6 from the portals fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically;
- (ii) The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice;
- (iii) The applicant (Surya) shall submit the Form DIR - 6.

2. The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
3. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR - 6 to the concerned Registrar(s) under whose Jurisdiction the registered office of the company(s) in which such individual is a director is situated.
4. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

**(ii) Resignation of Directors: As per Companies (Amendment) Act, 2017,**

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

Such director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM DIR-11 along with the prescribed fee.

**Provision:**

**As per Sec. 168 of the Companies Act, 2013,** the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

**Present Case:**

**In the present case,** Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR -



11 to the ROC within the prescribed time.

Thus the resignation shall be effective from the date company received the notice, even though the company fails to intimate about the resignation to ROC.

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**2017 - Nov [4]** (a) (ii) (A) Mr. Vinay Kumar, applied for the first time for allotment of a Directors Identification Number (DIN) on 1<sup>st</sup> November, 2016 as he is planning to incorporate a private limited company in Form No. DIN - 3 under the Companies Act, 2013. The status of his DIN applications presently is showing as “Put Under Resubmission”. He seeks your guidance as to whether his application has been rejected and is he required to obtain a fresh DIN. Advise. (2 marks)

**Answer:**

**Provision:**

- **As per Rule 10 of the Companies (Appointment and Qualifications of Directors) Rules, 2014**, if any application in DIR-3 has been made for allotment for DIN and application shows status of “Put Under Resubmission” then applicant is not required to obtain a fresh DIN. But applicant can submit additional documents for rectifying DIN application within a period of fifteen days from the date on which it is marked as Resubmission.

**Present Case:**

- Mr. Vinay Kumar’s DIN applicant in form DIR-3 shows status of “Put Under Resubmission” so, Mr. Vinay Kumar is not required to make a fresh application and his application is not rejected. But he shall require to reply, for following queries within fifteen days from the date on which it is marked as Resubmission. For e.g.:
  - Proof of Identity residence is not enclosed or expired.
  - Proof of Date of Birth is not enclosed.
  - Supporting documents are not properly attested.
  - Non-submission of affidavit (if required).

- On resubmitting with the additional documents same DIN will be approved, if documents are found in correct order as per marked in resubmission.

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**2018 - May [6]** (a) Mr. Bond and Mr. James were appointed as Directors of James bond Ltd. at the AGM held on 30<sup>th</sup> September, 2017 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above Directors by a single resolution?  
(4 marks)

**Answer:**

**As per Sec. 162 of the Companies Act, 2013,**

- (i) Two or more directors of a company cannot be elected as directors by a single resolution.
- (ii) Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- (iii) A resolution moved, in connection of this provision shall be void, whether or not objection thereto was raised at the time it was moved.

**Present Case:**

In this case, it is not possible to appoint Mr. Bond and Mr. James by a single resolution but for this the company shall firstly require to pass a resolution for appointment of two directors by single resolution and no vote has been cast against such agreement.

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## **PRACTICAL QUESTIONS**

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**2010 - May [1]** (a) Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1<sup>st</sup> October, 2009, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31<sup>st</sup> March, 2010, but the same was not held due to delay in the finalisation of the accounts. Some

of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31<sup>st</sup> March, 2010. Advise the company on the complaints made by the shareholders. (5 marks)

**Answer :**

**Additional Director :**

- The Board may appoint the additional directors in pursuance of the provisions of **Sec.161 (1) of the Companies Act, 2013**.
- The Board may, in its discretion appoint the additional directors whenever it deems fit.
- The appointment of additional directors can be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next AGM. A director appointed as an additional director vacates his office, at the latest, on the date of the next annual general meeting or the last date on which AGM should have been held and cannot continue as a director thereafter on the ground that the meeting was not or could not be called within the time prescribed [Krishna Prasad Pilani v Colaba Land and Mills Co. (1959) 29 comp Case 273: Departmental circular No. 8/3(260)/63-PR, dated 5.2.1963].

**Conclusion :**

- (i) The appointment of Mr. Sachin is valid as per Sec. 161(1) of the Companies Act, 2013
- (ii) Mr. Sachin cannot continue as a director after the last date on which annual general meeting should have been held i.e. 31<sup>st</sup> March, 2010.

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**2010 - May [4]** (b) Mr. Ravindranathan is holding the post of Director in three companies out of which Goodluck Colours Limited is one. For the financial year ended on 31<sup>st</sup> March, 2009, Goodluck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1<sup>st</sup> June, 2009 Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited, submitted a declaration that

the disqualification specified in Sec. 164 of the Companies Act, 2013 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order. (5 marks)

**Answer :**

**Disqualification for appointment of Directors**

**Provision:**

**As per Sec. 164(2) of Companies Act, 2013** a director of a company shall be disqualified from being appointed as a director in any other company, if the company of which he is already a director :

- (i) has not filed Financial Statements for any continuous three financial years; or
- (ii) fails to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend declared and such default continues for one year or more. shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

**Provided** that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

**In the present case, Good luck Colours Limited has committed the following defaults:**

- (i) Failure to pay interest on loans taken from a financial institution for the financial year ended on 31<sup>st</sup> March, 2009:  
However, such failure does not attract the disqualification under Sec. 164(2) as the disqualification is said to be incurred only if the default relates to re-payment of public deposits, and not on non-payment of interest on 'loans' obtained from a financial institutions.
- (ii) Failure to repay the matured deposits on due date for the financial year ended on 31<sup>st</sup> March, 2009.

Default in repayment of matured deposits or interest thereon would result in applicability of Sec. 164(2) only if such default continues for one year or more. In the absence of any information, it may be assumed that such fault has not continued for one year, as on 1st June, 2009.

**Accordingly**, none of the directors of Goodluck Colour Limited are disqualified under Sec. 164(2). Hence, Mr. Ravindranathan can be appointed as an additional director of Soma Footwear Limited on 1<sup>st</sup> June, 2009, and so the declaration given by Mr. Ravindranathan is in order.

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**2010 - Nov [4]** (a) In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30<sup>th</sup> September, 2010, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies' Act, 2013 and decide.

Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void. (4 marks)

**Answer :**

**Appointed directors must be voted individually:**

According to **Sec. 162(1) of the Companies Act, 2013**, two or more directors of a company cannot be elected as directors by a single resolution. Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.

**As per Sec. 162(2)** a resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved.

**Further as per Sec 162(3)** a motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as motion for his appointment.

**Principle of Proportional Representation for appointment of Directors:**

According to **Sec. 163(1) of the Companies Act, 2013**, the articles of a company may adopt the principle of proportional representation for appointing not less than two third of the total number of directors, whether by

a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sec. 161(4).

**Present Case:** Appointment will be void under Sec. 162 unless the motion is preceded by an unanimous resolution, authorising appointment of two or more directors by a single resolution.

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

**2014 - Nov [2]** (a) Referring to the provision of the Companies Act, 2013, examine the validity of the following:

- (i) The Board of Directors of AJD Limited appointed Mr. N as an alternate director for a period of two months against a director who has proceeded abroad on leave for a period of six months. Articles of Association of the company are silent. (3 marks)

**Answer:**

**Provision**

As per **Sec. 161(2) of the Companies (Amendment) Act, 2017** the BOD of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, or holding directorship in the same company [Inserted by Companies (Amendment) Act, 2017] to act as an alternate director for a director during his absence for a period of not less than three months from India.

**Present Case:**

Thus, BOD of AJD Limited can appoint Mr. N as an alternate director, but as discussed above, such appointment must be authorised by the articles or by a resolution passed in general meeting, which is not present and thus the appointment of alternate director is not valid.

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

**2014 - Nov [2]** (a) Referring to the provision of the Companies Act, 2013, examine the validity of the following:

- (ii) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director. (2 marks)

**Answer:**

**According to first proviso to section 161(2) of the Companies Act, 2013,** no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

In the present case, Mr. P who is not qualified to be appointed as an independent director, as an alternate director. Thus, the said appointment by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director. Thus, the said appointment is not valid.

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

**2014 - Nov [2]** (a) Referring to the provision of the Companies Act, 2013, examine the validity of the following:

- (iii) On the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power. Further, there is no agreement between the company and the bank for any such nomination. (3 marks)

**Answer:**

**Provision Sec. 161(3) of the Companies Act 2013** contains:

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by Central Government or State Government by virtue of its shareholding in a Government Company.

**Present Case:**

In the present case, the AOA do not confer any such power upon BOD but do not also restrict it from doing so. Thus, the appointment of Mr. Peter as nominee director shall be valid assuming that Board is not prohibited by the articles to appoint a nominee director.

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

**2015 - Nov [3]** (a) (i) In the annual general meeting of XYZ Ltd, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013. (4 marks)

**Answer:****Provision:**

**Sec. 439 of the Companies Act, 2013** provides that offences under the Act shall be non-cognizable. As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in Sec. 212(6) shall be deemed to be non-cognizable within the meaning of the said Code.
2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a *member* (Inserted by Companies (Amendment) Act, 2017) of the company, or of a person authorized by the Central Government in that behalf.



**Present Case:**

Thus, in the given case, the court shall not initiate any *suo moto* action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company *or a member* (Inserted by Companies (Amendment) Act, 2017) of a person authorized by the Central Government in this behalf.

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**2015 - Nov [3]** (b) Queens Limited is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K, as the additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K, as a director on the Company's Board was rejected by the members at the company's Annual General Meeting.

Examining the provisions of the Companies Act, 2013, answer the following:

- (i) Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the Board as additional director, for the first time, can continue to act as a director?(8 marks)

**Answer :**

**Provision:**

**As per Sec. 161(1) of Companies Act, 2013.**

- (A) The AOA of a company may confer upon its BOD the power to appoint any person as an additional director at any time.
- (B) A person, who fails to get appointed as a director in a general meeting of the company cannot be appointed as an additional director in the same company.
- (C) Additional director shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

**Present Case:**

- (i) **Invalid:** Mr. K's appointment as additional director by the Board is not valid as Mr. K was rejected by the members before appointed as additional director. No, additional director is appointed if he was rejected for appointment as director.
- (ii) The power to appoint additional directors vests with the BOD and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company. Therefore, in the present case, the company's AGM cannot appoint Mr. K. as the additional director when the proposal to appoint comes before the meeting for the first time because the company's Articles empower the Board of Directors to appoint additional director.
- (iii) Mr. K who was appointed by the Board as additional director, shall hold office till the AGM, At AGM he is removed and has to vacate the office. However, if the AGM is not held then the last day at which the AGM is to be held would be the last day for Mr. K as additional director.

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

**2015 - Nov [5]** (a) A and B were appointed as first directors on 4<sup>th</sup> April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6<sup>th</sup> July, 2014 and F, G and H were also appointed as directors on 7<sup>th</sup> August, 2014 in the company. In the Annual General Meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and reappointed as directors.

At the AGM, resolution for A's retirement and reappointment was passed. However, before the resolution for 'B' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.

In the light of above and with reference to relevant provisions of the Companies Act, 2013, answer the following:

- (i) Whether proposals for retirement by rotation and reappointment of A and B only were sufficient?
- (ii) What will be the status of B as a director in the company? (8 marks)

**Answer:**

**Provisions:**

**According to Sec. 152(6)(a)(i) of the Companies Act, 2013**, unless the articles provide for the retirement of all directors at every AGM, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

**Further Sec. 152(6)(c) of the Act** states that at the first AGM of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent AGM, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

**Sec. 152(6)(d) further states** that the directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

**Sec. 152(7)(a) provides** that if the vacancy of the director retiring by rotation, is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

**Sec. 152(7)(b) further provides** that if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting unless:

- (a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- (b) the retiring director has, by a notice in writing addressed to the company or its BOD, expressed his unwillingness to be so re-appointed;

- (c) he is not qualified or is disqualified for appointment;
- (d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- (e) Sec. 162 is applicable to the case.

**Present Case:**

- (i) **The proposals for retirement by rotation and reappointment of A & B:** Rotation of one third of the directors of company shall be made at every AGM. As, A & B are first directors and total rotating directors are six and one third of six which is two. Therefore, two directors that is A, B should be removed or be reappointed. In the present case, A & B are first directors and they are required to retire on first AGM held next. And they also to be counted for rotational directors. So, proposal of retirement of rotation and reappointment of A and B are sufficient.
- (ii) According to Sec 152(6)(c), at the AGM, one-third of rotational directors shall retire from office. Thus, B shall retire at the AGM in which he was due to retire even though it was adjourned without the resolution for B's retirement could have been taken up.

Further, at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting as he does not fall in the category of any of the exceptions mentioned in Section 152(7)(b). Hence, B will be deemed to be re-appointed as a director in the company.

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

**2016 - May [2]** (b) On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of shareholders and public interest. Referring to the provisions of the Companies Act, 2013 state the restrictions, if any, on the number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government. (4 marks)

**Answer:**

**As per Sec. 161(3) of Companies Act, 2013**, subject to Articles of a company a board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or SG by virtue of the shareholding of the company.

The Central Government (CG) is empowered to appoint its nominees as directors of a company to effectively safeguard the interest of the company or its shareholders or the public interest. If the CG wants to appoint its nominees as Directors of such a company then it has to make a reference to the Tribunal and if the Tribunal is satisfied that the affairs of the company have been conducted in a manner oppressive to any member of the company or in a manner prejudicial to the interests of the company or to public interest, it may pass an order asking the CG to appoint directors for a period not exceeding three years on any one occasion.

One person can be appointed as a nominee director nominated by CG and for such tenure as may be specified by CG.

**Action taken by Central Government:**

- CG selects a person to be appointed as a nominee director and it takes the charge of affairs of the company.
- All the activities are to be done with prior approval of nominee director.
- Nominee director is required to report the CG regarding affairs of the company.

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

**2016 - May [4]** (b) XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31<sup>st</sup> March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31<sup>st</sup> March, 2015. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) State the minimum number of independent directors that the company should appoint.
- (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company? (4 marks)

**Answer:**

**Provision**

**As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014**, following class or classes of Companies shall have independent director.

- Public Companies having paid up share capital of ten crore rupees or more.
- Public Co. having turnover of hundred crore rupees or more.
- Public Company which have in aggregate, outstanding loans, debentures and deposits exceeding fifty crore rupees.
  - (i) Here company is required to appoint minimum two independent directors.
  - (ii) If this company is a listed company, then it shall have minimum one third of total no. of directors as independent director [Sec 149(4)].

**Present Case:**

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31<sup>st</sup> March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31<sup>st</sup> March, 2015. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have atleast two directors as independent directors.

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

**2016 - May [7]** Answer the following:

- (a) DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advice on the following:
- (i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.
  - (ii) Is it possible to appoint a person, who does not hold any share in the company, as small shareholders' director?

- (iii) What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director. (4 marks)

**Answer:****(i) Small Shareholder:**

As per explanation to Sec. 151 of the Companies Act, 2013, small shareholders means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

**Number of small shareholders who may serve notice on company for a director representing them:**

Not less than one thousand small shareholders or one tenth of the total number of such shareholders whichever is lower.

- (ii) Yes, it is possible to appoint a person, who does not hold any share in the company as a small shareholder's director.
- (iii) Tenure of office of small shareholders Director is subject to Sec. 152 of the companies Act, 2013. Small shareholder director can be appointed for the tenure for not more than 3 consecutive years, he can not be reappointed after expiry of his tenure.

No, such person can not be appointed as an officer of the company on expiry of his tenure as small shareholder's director.

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

**2016 - Nov [1] {C}** (d) Referring to the provisions of the Companies Act, 2013, examine the following:

- (ii) Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid? (2 marks)

**Answer:**

**Appointment of Small Shareholder's Director**

**Provision:**

**As per Rule 7(8) of the Companies (Appointment and Qualification of Directors) Rules, 2014, read with Sec. 151 of the Companies Act, 2013,** where any person appointed as small shareholder's director then he shall not held office as small shareholder's director in more than 2 companies and also another company in which he is appointed as small shareholder's director shall not be engaged in same competitive business.

**Present Case:**

In this case, XYZ Ltd. appointed Mr. Intelligent as a small shareholder's director XYZ Ltd. is engaged in the business of Oil refining and subsequently, A Ltd. and B Ltd. have appointed, him as small shareholder's director. Mr. Intelligent has to choose between A Ltd. & B Ltd. regarding his appointment, as he can choose only one appointment out of two companies. So his appointment is valid only in one companies out of two (i.e. A Ltd. & B Ltd.) and such one company shall not be in some competitive business with XYZ limited. (i.e. it shall be engaged in other than business of Oil refining.)

—— Space to write important points for revision ——

**2016 - Nov [4]** (c) State with reference to the provisions of the Companies Act, 2013, whether the following persons can be appointed as a Director of a company.

- (i) Mr. L, who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls.
- (ii) Mr. G is Director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2014, 2015 and 2016. (4 marks)

**Answer:**

(i) **Provision:**

**As per Sec. 164(1)(f) of the Companies Act, 2013,** which provide for disqualification of director, a person is disqualified for appointment as



a director if he has not paid any call on shares of the company held by him and six months have elapsed from the last day fixed for payment of the call.

**Present Case:**

In this case, Mr. L who has not paid any calls in respect of only shares of the company held by him and five months have been passed from the last day fixed for the payment of calls. So that as per Sec. 164(1)(f), As per the provisions a person is disqualified for appointment as a director if he has not paid any call on shares of the company held by him and six months have been elapsed from the last date fixed for the payment of the call. In the present case only five months have been passed therefore Mr. L is qualified to be appointed as director.

(ii) **Provision:**

**As per Sec. 164(2)(a)**, where a person who is or has been a director of a company shall be disqualified from being appointed as a director of that company or appointed in any other company for a period of five years if the company of which he is or has been a director has not filed financial statements or annual returns for any continuous period of three financial years.

**Present Case:**

In this case, LDT Limited has not filed its annual returns for 2014, 2015 and 2016. So as per above provision Mr. G who has been director of the company shall be disqualified for appointment or reappointment in same company or another company for five years.

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

**2017 - May [1] {C}** (b) Mr. Abhi was appointed as an additional director of Pioneer Limited on 14<sup>th</sup> March, 2016. The annual general meeting of the company was scheduled to be held on 29<sup>th</sup> September, 2016 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the company approached the Registrar of Companies for extension of time for holding the annual general meeting till 30<sup>th</sup> December, 2016. In the light of the Companies Act, 2013 advise Mr. Abhi, who was appointed as additional director during the year. (4 marks)

- (c) The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

Mr. D & Mrs. E vacated their office of Director on 15-03-2017.

You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the Company in this regard? (4 marks)

**Answer:**

**(b) Provision:**

**As per Sec. 161(1) of the Companies Act, 2013**, the additional director shall hold office upto the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

**Again as per the third provision to the Sec. 96 of the Companies Act, 2013**, Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

**Present Case:**

In present case, the AGM was scheduled on 29<sup>th</sup> September, 2016 but was not held on that date and last date on which AGM should have been held is 30<sup>th</sup> September, 2016. So, Mr. Abhi can hold the office after 30<sup>th</sup> September, 2016, as the company have sought the extension for holding AGM till 30<sup>th</sup> December, 2016.

**(c) Provision:**

**As per 2<sup>nd</sup> Proviso to Sec. 149(1) of the Companies Act, 2013**, at least one woman director shall be on the Board of such class or classes of companies as may be prescribed.

It further provides that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but not later than immediate next Board Meeting or three months from the date of such vacancy whichever is later.

**Rule 3 of the Companies (Appointment and Qualification of Director) Rules, 2014**, provides that the following class of companies shall appoint at least one woman director:

- (1) every listed company;
- (2) every other public company having:
  - (A) paid-up share capital of one hundred crore rupee or more; or
  - (B) turnover of three hundred crore rupee or more.

The provision of Section 149(4) provides that every listed company shall have at least  $\frac{1}{3}^{\text{rd}}$  of the total number of Directors as Independent Directors.

**Present Case:**

So, in present situation since the only woman director Mrs. E is vacating her office, one new woman director is required to be appointed.

After new woman director is being appointed the requirement under Sec. 149(4) of Independent director is also to be fulfilled.

**Note:** As per suggested issued by ICAI, it claims a clerical error in the question i.e. date of vacation of office to be read as 15.4.2017 rather than 15.3.2017.

Accordingly the **alternate answer** is as follows:

**As per provisions of Sections 149(1) and 149(4)**, listed company as stated above, shall have at least one women director and one-third of the total number of directors as independent directors in the Board. However, on 15 - 4 - 2017, total number of directors left were five due to vacation of Mr. D and Mrs. E.

As per the requirement of the above sections, there is compliance of Sec. 149(4) as one third of the total number of directors comprises of  $(\frac{1}{3} \times 5) = 1.6$  rounded off as two, which complies with the minimum requirement of two independent directors in the board, however, pertaining to women director, Board have to fill up the intermittent vacancy at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

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

**2017 - May [6]** (a) Examine the following with reference to the provisions of the Companies Act, 2013:

- (i) Mr. Narayan, a Director of KPR Limited who is proceeding on a long foreign tour, appointed Mr. Shankar as an alternate director to act for him during his absence. The Articles of the company provide for appointment of alternate directors. Mr. Narayan claims that he has a right to appoint an alternate director. (2 marks)
- (ii) The Board of Directors of Sakthi Limited decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination. (2 marks)

**Answer:**

- (i) **According to Sec. 161(2) of the Companies (Amendment) Act, 2017**, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as a alternate director for a director during his absence for a period of not less than three months from India.

**Present case:**

Hence, the BOD of KPR Ltd. may appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence, as:

- (a) The Articles of KPR Limited provides for appointment of alternate director.
- (b) Mr. Narayan, director of company is proceeding for a long foreign tour.

However, the power to appoint alternate director lies with the Board of Directors and not with the director himself. Hence, Mr. Narayan cannot himself appoint alternate director.

So, Mr. Narayan's claim that he has a right to appoint an alternate director is not valid.

- (ii) **According to Sec. 161(3) of the Companies Act, 2013.** Nominee Director can be appointed by the Board subject to the articles of a company.

**Present Case:** The Board of Directors of Sakthi Limited cannot appoint alternate director as the Articles of Associations of the company do not confer upon **BOD** any such power to appoint nominee director.

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

**2017 - Nov [1] {C}** (a) Mr. Vikram, a director of M/s Tubelight Limited has made default in filing of annual accounts and annual returns with Registrar of Companies for a continuous period of 3 financial years ending on 31<sup>st</sup> March, 2016. Examine the validity of the following under the Companies Act, 2013:

- (i) Whether Mr. Vikram can continue to be a director of M/s Tubelight Limited (defaulting company) and also M/s Green Light Limited, where he is also a director? Also state whether he can be re-appointed as director in these two companies.
- (ii) What would your answer be in case Mr. Vikram is a nominee director of a Public Financial Institution?
- (iii) What would be your answer in case the defaulting company (i.e. M/s. Tubelight Limited) is a private limited company? (4 marks)

**Answer:**

**Provision:**

**According to Sec. 164(2) of the Companies Act, 2013**, a person who is or has been a director of a company which:

- (a) has not filed the financial statements or annual returns for any continuous three financial year; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debenture on due date or pay interest due thereon or pay any dividends declared and such failure continues for one year or more.

Shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the company fails to do so.

**Provided that** where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

**As per Sec. 167(1) (a) of the Companies Act, 2013**, the office of a director shall become vacant in case he incurs any of the disqualifications specified under Sec. 164(2) of the Companies Act, 2013.

**Present Case:**

In given case, M/s. Tubelight Ltd. has made default in filing of annual accounts and annual returns with ROC for a continuous period of three financial year ending on 31<sup>st</sup> March, 2016. So company has defaulted under Sec. 164(2), so consequences are as follows:

- (i) Here, Mr. Vikram is a director of M/s. Tubelight Limited and M/s. Greenlight Limited. M/s. Tubelight Limited did not file financial statements for three years ended on 31<sup>st</sup> March, 2016. So this, constitutes disqualification under Sec. 164(2) but, Mr. Vikram will not incur disqualification for a period of six months.

Provided that where he incurs disqualification as per Sec. 164(2), the office of director shall become vacant in all the Companies other than the company which is in default under that sub section.

Since, Mr. Vikram has attracted disqualification under Sec. 164(2) of the Companies Act, 2013, he cannot continue to be director of M/s. Greenlight Ltd., has to vacate office of Greenlight Ltd. immediately.

Mr. Vikram is not eligible to be reappointed in those two companies for five years.

- (ii) Nominee director is a director as appointed by Public Financial Institution as per Sec. 161(3), so disqualification under Sec. 164(2) shall not applied to nominee director. Nominee director can not be removed by disqualification as per Sec. 164(2), so if Mr. Vikram is a nominee director then he continue to be the director of both the companies.

- (iii) As per Ministry of Corporate Affairs Notification No. 463(E) and 464(E) dated 5<sup>th</sup> June 2015, provision of Sec. 162 shall not applied to a private company.

So, if M/s. Tubelight Limited is a private company then, Mr. Vikram a director of M/s. Tubelight Limited shall not be disqualified under Sec. 164(2), because provisions of Sec. 164 shall not applied to M/s. Tubelight Pvt. Ltd. So Mr. Vikram can continue to hold office in both the companies, M/s. Tubelight Ltd. & M/s. Greenlight Ltd.

— Space to write important points for revision —

**2017 - Nov [2]** (a) (i) Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors:

- (A) Brown Limited, having a turnover of ₹ 60 crores in the financial year 2016-17 appoints Ms. Rose as the women director on 1<sup>st</sup> March, 2017. Ms. Rose already holds directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice.
- (B) Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited. (4 marks)

**Answer:**

**As per Sec. 165(1) of the Companies Act, 2013** no person after commencement of this Act, shall hold office as a director including alternate directorship in more than twenty Companies.

**Provided that** the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

**Explanation to Sec. 165(1) clarifies** that for reckoning the limit of public companies in which a person can be appointed as director, i.e. ten, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

- (A) **In this case, Ms. Rose**, already holds position as director in twelve companies including ten public companies. Now she is appointed as director in Brown Ltd., a public company. As she already holds

directorship in ten public companies, she cannot accept position as director in Brown Ltd. even though limit of twenty directorship does not exceeds as per Sec. 165.

- (B) **Ms. Jasmine holds** directorship in eight public companies. In addition she also holds alternate directorship in three companies. So that total directorship counts eleven assuming that alternate directorship position is also in a public company. So Ms. Jasmine holds position as director in eleven public companies and now she takes directorship as independent director in three subsidiary company of Brown Limited, a public company. So as per Sec. 165, subsidiary or holding of public company shall be deemed as public company. So, she already holds position as director in public company she cannot be appointed as director in subsidiary of Brown Limited.

— Space to write important points for revision —

**Note: Penalty for violating provisions relating to restriction on number of directorships**

A person cannot be director in more than 20 companies, including alternate directorship. Out of the 20 companies, only maximum 10 can be public companies - **section 165(1) of Companies Act, 2013**.

Penalty for violation of **section 165(1)** can be five thousand rupees for each day after the first during which such contravention continues - **section 165(6) of Companies Act, 2013** amended vide the Companies (Amendment) Ordinance, 2019 w.e.f. 2.11.2018.

Till 2.11.2018, the section provided for fine which could be imposed only by Court. Now, penalty can be imposed by RoC or RD who is authorized for this purpose.

Even earlier, the offence was compoundable. However, procedure of compounding had to be complied with. Now, directly penalty can be imposed after issuing Show Cause Notice.

A person cannot be appointed as director if the number of directorships exceed the prescribed limit-**section 164(1)(i) of Companies Act, 2013** inserted vide the Companies (Amendment) Ordinance, 2019 w.e.f. 2.11.2018.



**2018 - May [1] {C}** (a) CTC Limited is an unlisted public company having a paid up capital of ₹ 100 crores as on 31<sup>st</sup> March, 2017. The company made a turnover of ₹ 300 crores for the financial year ended 31<sup>st</sup> March, 2017. The Articles of Association of the company provides for payment of sitting fee to Directors for each Board Meeting/Committee thereof subject to a maximum of ₹ 40,000 per meeting. The Board of Directors is comprised of Independent Directors and Women Directors also. The Company is having 7 directors in its Audit Committee. Shri PKV, working as Financial Advisor of the company, was designated as Chief Financial Officer from 1<sup>st</sup> April, 2015. He retired from service on superannuation on 31<sup>st</sup> March, 2016. He is in receipt of monthly pension of ₹ 80,000 from the company. It is proposed to appoint Shri PKV as Independent Director of the Company. The Board of Directors proposes to fix sitting fee of ₹ 50,000 per meeting to Independent Director and ₹ 30,000 per meeting to Woman Director, taking into consideration their experience and qualification.

In the light of the provisions of the Companies Act, 2013, advise the Board of Directors in the following matters:

- (1) Appointment of Mr. PKV as Independent Director.
- (2) Fixing sitting fee of ₹ 50,000 to Independent Director and ₹ 30,000 to Woman Director.
- (3) Minimum number of Independent Directors.
- (4) Maximum sitting fee to a Director.

Assuming CTC Ltd. is a Government Company, what will be your advise in the matter of appointment of Mr. PKV as Independent Director.

(8 marks)

**Answer:**

- **According to the Rule - 4 of the Companies (Appointment and Qualification of Directors) Rules 2014**, the following class or classes of companies shall have at least 2 directors as independent directors.
  - (1) the public companies having paid up share capital of ten crore rupees or more; or
  - (2) the public companies having turnover of one hundred crore rupees or more;

(3) the public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

However, in case a company covered under the above rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.

As per **Section 177(2) of the Companies Act, 2013**, the audit committee shall consist of a minimum of three directors with independent directors forming a majority.

- As per **Section 149(6) of Companies Amendment Act, 2017**, a person who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- As per **Section 197 (5) of the Companies Act, 2013**, a director may receive remuneration by way of fee for attending meetings of the Board or committee thereof or for any other purpose whatsoever as may be decided by the Board. Such sitting fees shall not exceed ₹ 1 Lakh per meeting of the Board or committee thereof, [As per the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]. However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fees payable to other directors. So that company can pay sitting fee to independent directors and women director differently.

#### **Present Case**

- In light of above provisions of the Companies Act, 2013 advice given to Board of Directors of CTC Ltd. in following manner.
  1. CTC Ltd. wants to appoint Mr. PKV as independent director. Mr. PKC was working as financial adviser in the company, was designated as Chief Financial officer during 2015-16. As per **Section 149(6)**, as discussed above, Mr. PKC was in pecuniary

relationship with the company during 2 immediately preceding financial year. However the amount of transaction is not clearly given in the question.

Therefore MR. PKC will be eligible if his transaction does not exceed ten percent of his total income or such amount as may be prescribed.

2. As per **Section 197(5)**, the company can pay sitting fees to directors to attend meeting upto one lakh rupees per director per meeting. However, the company can pay sitting fees to Independent Director and women director differently. In this case Articles of the company provides for payment of sitting fee to Directors for each Board meeting/committee thereof subject to maximum of ninety thousand rupees.

Now, company want to pay sitting fee of fifty thousand rupees to Independent Director and thirty thousand rupees to women Director. So company can validly pay sitting fee to Independent and woman director different. But, here the CTC Ltd. Shall require to pass resolution for making alteration in Articles of Association of the Company to increase limit for payment of sitting fee to Independent Director of fifty thousand rupees. As it is within limit of one lakh, the company can pay sitting fee to directors upto one lakh.

3. **In light of provisions of Section 177(2) read with Rule 4 of the companies (Appointment and Qualification of Directors) Rules, 2014**, Minimum number of director shall be two independent director. However, for the purpose of composition of audit committee, the company shall have majority of its directors as independent director. So in this case, the audit committee of the company comprises of Seven directors. So, here minimum number of independent directors shall be four independent directors.
4. The company can pay maximum sitting fee to a director upto one lakh rupees subject to the company shall require to make alteration in Articles of Association for increase in sitting fee.

- If CTC Ltd. would have a government company, then the company can validly appoint a director with pecuniary relationship with the company. As provision of **Sec. 149(6)**, for not appointing a director with pecuniary relationship shall only be applied to non-government company.
- In this case, if CTC Ltd. is a government company, the company can validly appoint Mr. PKV as independent director of the company.

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

**2018 - Nov [1] {C}** (a) The Board of Directors of M/s. Diya Steels and Aluminium Limited, a listed Company having a paid up equity share capital of ₹ 15 crores and preference share capital of ₹ 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:

- (i) Is it mandatory for the Company to appoint a Director to represent Small Shareholders?
- (ii) If the Company decides to appoint such a Director, the procedure to be followed by the Company for such appointment and the tenure for which such appointment can be made.
- (iii) Whether such a Director be considered as an Independent Director?
- (iv) When does a person appointed as a small shareholders Director vacate his office?

Advise suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder. (8 marks)

**Answer:**

- (i) According to Sec. 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and on such terms and such conditions as may be prescribed. Here, small shareholders means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.  
So, it is not mandatory for M/s. Diya steels and Aluminium Ltd., a listed company to appoint a director to represent small shareholders.

(ii) **Procedure for Appointment of Director**

**The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for appointment of small shareholders' director According to which :**

- (i) A listed company, may upon notice of not less than
  - (a) One thousand small shareholders; or
  - (b) One - tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

However, a listed company may opt to have a director representing small shareholders *suomotu* and in such a case the provisions of sub-rule (2), given below, shall not apply for appointment of such director.

- (ii) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least 14 days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

**However**, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

- (iii) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating :
  - (a) his Director Identification Number
  - (b) that he is not disqualified to become a director under the Act; and
  - (c) his consent to act as a director of the company.
- M/s. Diya steels and Aluminium Ltd. shall after the completion of above procedures pass a resolution for appointment of small shareholders' Director at general meeting.

- Such directors' tenure as small shareholders' director shall not exceed a period of three consecutive years.
- (iii) Director as Independent Director. Yes, small shareholders' Director shall be considered as an independent director subject to, his being eligible under Sub-section (6) of Sec. 149 and his giving a declaration of his independence in accordance with Sub-section (7) of Section 149 of the Act.
- (iv) Vacation of office by small shareholder Director. A person appointed as small shareholders' director shall vacate the office if :
  - (a) the director incurs any of the disqualifications specified in Sec. 164;
  - (b) the office of the director becomes vacant in pursuance of Sec. 167;
  - (c) the director ceases to meet the criteria of independence as provided in Sub-section (6) of Sec. 149.

— Space to write important points for revision —

**2018 - Nov [5]** (a) VGP Ltd. is a listed public Company with a paid up capital of ₹ 100 crores as on 31<sup>st</sup> March, 2018. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd. has the following proposals :

- (1) To remove Mr. Z, an Independent Director who was re-appointed for a second term.
- (2) To appoint Mr. N, a nominee Director in the Board as an Independent Director.
- (3) To appoint Mrs. Jasmine as an Independent-cum-Woman Director.

With reference to the relevant provisions of the Companies Act, 2013, examine :

- (i) The validity the above proposals and the appointment of Woman Director already made.
- (ii) Whether Mr. N, can be appointed as an Independent Director of PDS Ltd. ?
- (iii) Is an Independent Director entitled for stock option ? (8 marks)

**Answer:**

**Provision:**

- (i) **As per second proviso to Sec. 149(1)**, second proviso, the listed company or such other company as may be prescribed shall have at least one woman director. Rule 3 of the Companies (Appointment and Qualification of Directors) Rules 2014, provides that the following class of companies shall appoint at least one woman director.
- (1) Every listed company.
  - (2) Every other public company having :
    - (A) paid up share capital of one hundred crore rupees or above; or
    - (B) turnover of three hundred crore rupees or more.

**Present Case:**

Here, VGP Ltd. is a listed company shall require to appoint at least one woman director. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a joint venture company of VGP Ltd.) appointed as woman director of VGP Ltd. Which is valid by law.

**The answers to the proposals shall be given as follows:**

- (1) Mr. Z, an independent director who was re-appointed for a second term can be removed by following procedures as per Section 169. of the Companies Act, 2013.
- (2) As per Section 149(6), Mr. N, a nominee director in the Board cannot be appointed as Independent Director.
- (3) Mrs. Jasmine can be appointed as an independent -cum-woman director.

**Provision:**

- (ii) **As per Sec. 149(6) of the Companies Act, 2013**, any person who neither himself nor any of his relatives holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed can be appointed as an independent director in the company.

**Present Case:**

Here, Mr. N, who was a nominee director in the Board of VGP Ltd. cannot be appointed as an Independent director as per Sec. 149 (6).

- (iii) As per Sub-section (9) Sec. 149, an independent director shall not be entitled for stock option.

— Space to write important points for revision —

**2018 - Nov [6] (Or)** (a) ABC Limited is an unlisted public Company having a paid up equity share capital of ₹ 20 Crores and a turnover of ₹ 150 Crores as on 31<sup>st</sup> March, 2018. The total number of Directors on the Board is 13.

Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) The minimum number of Independent Directors that the Company should appoint.
- (ii) How many Independent Directors are to be appointed in case ABC Limited is a listed Company ? (4 marks)

**Answer:**

- (i) **According to Sec. 149(4) of the Companies Act, 2013**, every listed public company shall have at least one-third of the total number of directors as independent directors.

Any fraction contained in such one-third numbers shall be rounded off as one.

**According to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014**, the following class or classes of the companies shall have at least 2 directors as independent directors :

- (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
- (2) the Public Companies having turnover of 100 crore rupees or more; or
- (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits exceeding 50 crore rupees.

**Present Case:**

In the present case, ABC Ltd. is an unlisted public company having paid up capital of ₹ 20 crores as on 31<sup>st</sup> March, 2018 and a turnover



of ₹ 150 crores during the year ended 31<sup>st</sup> March, 2018. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, ABC Ltd. shall have at least 2 directors as independent directors.

(ii) **According to Section 149(4) of the Companies Act, 2013**, every listed Public Company shall have at least one-third of the total number of directors as independent directors.

- **In the present case**, ABC Ltd. is a listed company and the total number of directors is 13. Hence, in this case, ABC Ltd. shall have at least 5 directors ( $1/3$  of 13 is 4.33 rounded as 5) as independent directors.
- The explanation to Section 149(4) specifies that any fraction contained in such one-third number shall be rounded off as one.
- As the explanation to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that for the purpose of the assessment of the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, their existence on the last date of latest audited financial statements shall be taken into account.
- In the present case, it is mentioned that paid up capital of ABC Ltd. is ₹ 20 crore on 31<sup>st</sup> March, 2018 and turnover is ₹ 150 crore during the period ended 31<sup>st</sup> March, 2018. So, it is assumed that 31<sup>st</sup> March, 2018 is the last date of latest audited financial statements.

—— Space to write important points for revision ——

**2019 - May [1] {C}** (a) Two (2) out of Ten (10) directors on the board of XYZ Limited have retired by rotation at an Annual General Meeting. These two (2) vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved '*not to fill the vacancy*'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve '*not to fill the vacancy*'. Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?
- (ii) What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?
- (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting? (8 marks)

**2019 - May [6]** (a) M/s. Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the board of the company for a period of three years. On 2<sup>nd</sup> October, 2017 Mr. Anmol suffered a severe heart failure and expired. The board of directors of the company on 16<sup>th</sup> October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the board. Subsequently at the AGM held on 29-09-2018. Mr. Prateek's appointment was not proposed or approved as the board was of the view that it is not required. But the CFO of the company is of the opinion that the board of directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide. (4 marks)

**2019 - May [6]** (b) Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s. LT Limited did not file its financial statements for the year ended 31<sup>st</sup> March 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. LT Limited also did not pay interest on loans taken from a public financial institution from 1<sup>st</sup> April 2017 and also failed to repay matured deposits taken from public on due dates from 1<sup>st</sup> April 2017 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

- (i) Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September 2019?

- (ii) Mr. Dhruv is proposed to be appointed as an Additional Director of M/s. MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in M/s. MN Limited? Decide. (4 marks)

Table Showing Marks of Compulsory Questions										
Year	14 N	15 M	15 N	16 M	16 N	17 M	17 N	18 M	18 N	19 M
Practical					2	8	4	8	8	8
Total					2	8	4	8	8	8

Abbreviations Used	
<b>AGM</b>	Annual General Meeting
<b>AOA</b>	Article of Association
<b>BOD</b>	Board of Directors
<b>CG</b>	Central Government
<b>DIN</b>	Directors Identification Number
<b>RO</b>	Registered Office
<b>SG</b>	State Government