

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

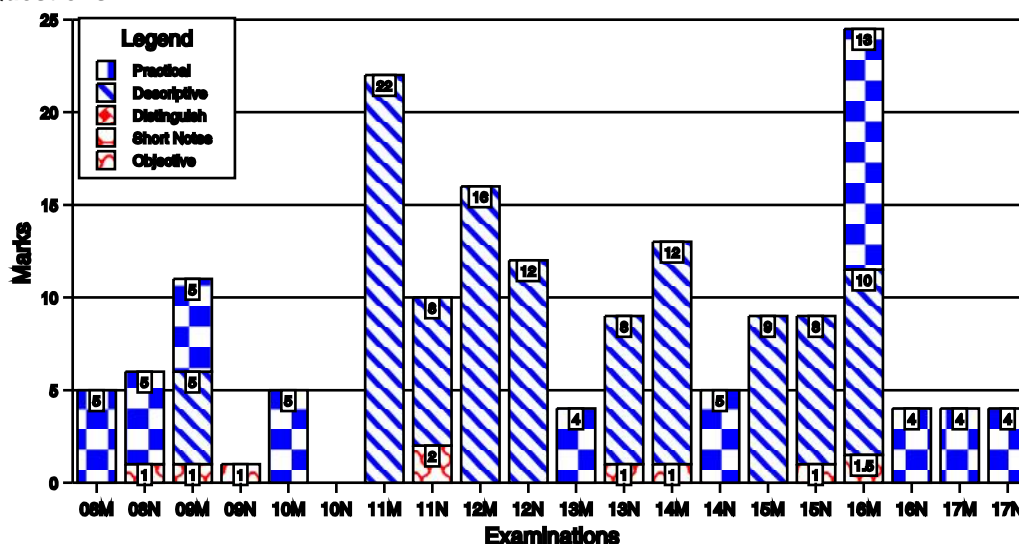
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On the basis of Compulsory questions from a chapter

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CHAPTER	
1	Preliminary and Incorporation of Company
THIS CHAPTER COMPRISES OF	
Definitions Formation of Company MOA AOA Incorporation of company Alteration of Memorandum Alteration of Articles Service of Documents Authentication of documents, proceedings and contracts.	

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



Bloom's Taxonomy (BT)
Keeps You Ahead During Learning

Basis On Which Questions Are Asked In Your Exam. So Learn In a Proper, Systematic & Scientific Way.	Low Level Thinking Skills	Level 1: Knowledge Level 2: Comprehension
	High Level Thinking Skills	Level 3: Application Level 4: Analysis Level 5: Synthesis Level 6: Evaluation

Focus:

Analysis of this chapter on the basis of Bloom's Taxonomy

Objective and Descriptive Questions asked in your exam require Low Level Thinking Skills as well as some High Level Thinking Skill i.e. Application and Analysis skill. But Practical Questions asked require High Level Thinking Skill i.e. Analysis and Evaluation Skill.

Definitions at a Glance

Under Indian Companies Act - 2013

Sec.	Term	Definition
Sec. 2 (1)	Abridged prospectus	Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.
Sec. 2 (2)	Accounting Standards	Accounting Standards means the standards of accounting or any addendum thereto for companies or class of companies referred to in Sec. 133.

Sec. 2 (3)	Alter or Alteration	Alter or alteration includes the making of additions, omissions and substitutions.
Sec. 2 (4)	Appellate Tribunal	Appellate Tribunal means the National Company Law Appellate Tribunal constituted under Sec. 410.
Sec. 2 (5)	Articles	Articles means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.
Sec. 2 (6)	Associate Company	Associate Company , in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation. For the purposes of this clause, “significant influence” means control of at least twenty percent of total share capital, or of business decisions under an agreement.
Sec. 2 (7)	Auditing Standards	Auditing Standards means the standards of auditing or any addendum thereto for companies or class of companies referred to in Sub-Sec. (10) of Sec. 143.
Sec. 2 (8)	Authorised capital or nominal capital	Authorised capital or nominal capital means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.
Sec. 2 (9)	Banking company	Banking company means a banking company as defined in Clause (c) of Sec. 5 of the Banking Regulation Act, 1949.

Sec. 2 (10)	Board of Directors or Board	Board of Directors or Board , in relation to a company, means the collective body of the directors of the company.
Sec. 2 (11)	Body Corporate or Corporation	Body corporate or corporation includes a company incorporated outside India, but does not include: <ul style="list-style-type: none"> (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
Sec. 2 (12)	Book and Paper and Book or Paper	Book and paper and book or paper include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.
Sec. 2 (13)	Books of Account	Books of account includes records maintained in respect of: <ul style="list-style-type: none"> (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed under Sec. 148 in the case of a company which belongs to any class of companies specified under that section.

Sec. 2 (14)	Branch Office	Branch office , in relation to a company, means any establishment described as such by the company.
Sec. 2 (15)	Called-up Capital	Called-up capital means such part of the capital, which has been called for payment.
Sec. 2 (16)	Charge	Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.
Sec. 2 (17)	Chartered Accountant	Chartered Accountant means a chartered accountant as defined in Clause (b) of Sub-Sec. (1) of Sec. 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-Sec. (1) of Sec. 6 of that Act.
Sec. 2 (18)	Chief Executive Officer	Chief Executive Officer means an officer of a company, who has been designated as such by it.
Sec. 2 (19)	Chief Financial Officer	Chief Financial Officer means a person appointed as the Chief Financial Officer of a company.
Sec. 2 (20)	Company	Company means a company incorporated under this Act or under any previous company law.
Sec. 2 (21)	Company limited by Guarantee	Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Sec. 2 (22)	Company limited by Shares	Company limited by shares means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
Sec. 2 (23)	Company Liquidator (Substituted by Insolvency and Bankruptcy Code, 2016 w.e.f. 15.11.2016)	Company Liquidator means a person appointed by a Tribunal as the Company Liquidator in accordance with the provisions of Sec. 275 for the winding up of a company under the Act.
Sec. 2 (24)	Company Secretary or Secretary	Company Secretary or Secretary means a company secretary as defined in Clause (c) of Sub-Sec. (1) of Sec. 2 of the Company Secretaries Act, 1980 (56 to 1980) who is appointed by a company to perform the functions of a company secretary under this Act.
Sec. 2 (25)	Company Secretary in practice	Company Secretary in practice means a company secretary who is deemed to be in practice under sub-Sec. (2) of Sec. 2 of the Company Secretaries Act, 1980 (56 to 1980).
Sec. 2 (26)	Contributory	<p>Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up.</p> <p>Explanation - For the purpose of this act, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.</p>

Sec. 2 (27)	Control	Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
Sec. 2 (28)	Cost Accountant	Cost Accountant means a cost accountant as defined in Clause (b) of Sub-Sec. (1) of Sec. 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).
Sec. 2 (29)	Court	Court means: <ul style="list-style-type: none">(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

		<p>(iv) the Special Court established under Sec. 435;</p> <p>(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.</p>
Sec. 2 (30)	Debenture	Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.
Sec. 2 (31)	Deposit	Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.
Sec. 2 (32)	Depository	Depository means a depository as defined in Clause (e) of Sub-Sec. (1) of Sec. 2 of the Depositories Act, 1996 (22 of 1996).
Sec. 2 (33)	Derivative	Derivative means the derivative as defined in Clause (ac) of Sec. 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).
Sec. 2 (34)	Director	Director means a director appointed to the Board of a company.
Sec. 2 (35)	Dividend	Dividend includes any interim dividend.

Sec. 2 (36)	Document	Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.
Sec. 2 (37)	Employees stock option	Employees stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase or to subscribe for, the shares of the company at a future date at a pre-determined price.
Sec. 2 (38)	Expert	Expert includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
Sec. 2 (39)	Financial institution	Financial institution includes a scheduled bank and any other financial institution defined or notified under the Reserve Bank of India Act, 1934 (2 of 1934).

Sec. 2 (40)	Financial Statement	<p>Financial statement in relation to a company, includes:</p> <ul style="list-style-type: none"> (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). <p>However, in the case of a One Person Company, small company and dormant company, the financial statement may not include the cash flow statement.</p>
Sec. 2 (41)	Financial Year	<p>Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:</p> <p>Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for</p>

		consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.
Sec. 2 (42)	Foreign Company	Foreign company means any company or body corporate incorporated outside India which: (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.
Sec. 2 (43)	Free Reserves	Free reserves means 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.

Sec. 2 (44)	Global Depository Receipt	Global Depository Receipt means any instrument in the form of a depository receipt by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts.
Sec. 2 (45)	Government Company	Government Company means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary company of such a Government company.
Sec. 2 (46)	Holding Company	Holding Company , in relation to one or more other companies, means a company of which such companies are subsidiary companies.
Sec. 2 (47)	Independent Director	Independent Director means an independent director referred to in Sub-Sec. (5) of Sec. 149.
Sec. 2 (48)	Indian Depository Receipt	Indian Depository Receipt means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts.

Sec. 2 (49)	Interested Director	Interested Director means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.
Sec. 2 (50)	Issued Capital	Issued capital means such capital as the company issues from time to time for subscription.
Sec. 2 (51)	Key Managerial Personnel	Key Managerial Personnel , in relation to a company, means: (i) the Chief Executive Officer or the Managing Director or the Manager; (ii) the Company Secretary; (iii) the whole-time Director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed.
Sec. 2 (52)	Listed Company	Listed Company means a company which has any of its securities listed on any recognised stock exchange.
Sec. 2 (53)	Manager	Manager means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole or substantially the whole, of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.



Sec. 2 (54)	Managing Director	<p>Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.</p> <p>Explanation – For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.</p>
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Sec. 2 (55)	Member	<p>Member in relation to a company, means:</p> <ul style="list-style-type: none"> (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company and on its registration, shall be entered as member in its register of members; (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.
Sec. 2 (56)	Memorandum	<p>M e m o r a n d u m means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.</p>
Sec. 2 (57)	Net worth	<p>Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.</p>

Sec. 2 (58)	Notification	Notification means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly.
Sec. 2 (59)	Officer	Officer includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.
Sec. 2 (60)	Officer who is in default	<p>Officer who is in default, 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:</p> <ul style="list-style-type: none"> (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, 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 including maintenance, filing or distribution of accounts or records, authorises, actively participates in knowingly permits

		<p>or knowingly fails to take active steps to prevent, any default;</p> <p>(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;</p> <p>(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same or where such contravention had taken place with his consent or connivance;</p> <p>(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.</p>
Sec. 2 (61)	Official Liquidator	Official Liquidator means an Official Liquidator appointed under sub-Sec. (1) of Sec. 359.
Sec. 2 (62)	One Person Company	One Person Company means a company which has only one person as a member.
Sec. 2 (63)	Ordinary or special resolution	Ordinary or special resolution means an ordinary resolution or as the case may be, special resolution referred to in Sec. 114.
Sec. 2 (64)	Paid-up Share	Paid-up share capital or share

	Capital or Share Capital paid-up	capital paid-up means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.
Sec. 2 (65)	Postal Ballot	Postal ballot means voting by post or through any electronic mode.
Sec. 2 (66)	Prescribed	Prescribed means prescribed by rules made under this Act.
Sec. 2 (67)	Previous Company Law	<p>Previous company law means any of the laws specified below:</p> <ul style="list-style-type: none"> (i) Acts relating to companies in force before the Indian Companies Act, 1866; (ii) the Indian Companies Act, 1866; (iii) the Indian Companies Act, 1882; (iv) the Indian Companies Act, 1913; (v) The Registration of Transferred Companies Ordinance, 1942; (vi) the Companies Act, 1956; and (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force: <ul style="list-style-type: none"> (a) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or (b) in the State of Jammu and Kashmir or any part thereof,

		<p>before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;</p> <p>(viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and</p> <p>(ix) the Registration of Companies (Sikkim) Act, 1961.</p>
Sec. 2 (68) (Companies Amendment Act, 2015)	Private Company	<p>Private company means a company having a minimum paid-up share capital as may be prescribed and which by its articles:</p> <p>(i) restricts the right to transfer its shares;</p> <p>(ii) except in case of One Person Company, limits the number of its members to two hundred:</p> <p>Provided that 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:</p> <p>Provided further that:</p> <p>(a) persons who are in the employment of the company; and</p> <p>(b) persons who, having been formerly in the employment of the company, were</p>

		<p>members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and</p> <p>(iii) prohibits any invitation to the public to subscribe for any securities of the company.</p>
Sec. 2 (69)	Promoter	<p>Promoter means a person:</p> <p>(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Sec. 92; or</p> <p>(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or</p> <p>(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.</p> <p>Provided that nothing in Sub-clause (c) shall apply to a person who is acting merely in a professional capacity.</p>
Sec. 2 (70)	Prospectus	<p>Prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in Sec. 32 or shelf prospectus referred to in Sec. 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.</p>
Sec. 2 (71) (Companies)	Public Company	<p>Public company means a company which:</p>

Amendment Act, 2015)		<p>(a) is not a private company;</p> <p>(b) has a minimum paid-up share capital, as may be prescribed.</p> <p>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.</p>
Sec. 2 (72)	Public Financial Institution	<p>Public financial institution means:</p> <ul style="list-style-type: none"> (i) the Life Insurance Corporation of India, established under Sec. 3 of the Life Insurance Corporation Act, 1956; (ii) the Infrastructure Development Finance Company Limited, referred to in Clause (vi) of Sub-Sec. (1) of Sec. 4A of the Companies Act, 1956 so repealed under Sec. 465 of this Act; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) institutions notified by the Central Government under Sub-Sec. (2) of Sec. 4A of the Companies Act, 1956 so repealed under Sec. 465 of this Act; (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India. <p>Provided that no institution shall be so notified unless:</p>

		<p>(a) it has been established or constituted by or under any Central or State Act; or</p> <p>(b) not less than fifty-one percent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.</p>
Sec. 2 (73)	Recognised Stock Exchange	Recognised stock exchange means a recognised stock exchange as defined in Clause (f) of Sec. 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).
Sec. 2 (74)	Register of Companies	Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.
Sec. 2 (75)	Registrar	Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.
Sec. 2 (76)	Related Party	<p>Related party, with reference to a company, means:</p> <p>(i) a director or his relative;</p> <p>(ii) a key managerial personnel or his relative;</p> <p>(iii) a firm, in which a director, manager or his relative is a partner;</p> <p>(iv) a private company in which a</p>

		<p>director or manager is a member or director;</p> <p>(v) a public company in which a director or manager is a director or holds along with his relatives, more than two percent of its paid-up share capital;</p> <p>(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;</p> <p>(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;</p> <p>Provided that nothing in Sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;</p> <p>(viii) any company which is:</p> <p>(a) a holding, subsidiary or an associate company of such company; or</p> <p>(b) a subsidiary of a holding company to which it is also a subsidiary;</p> <p>(ix) such other person as may be prescribed. A director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company. [Vide Companies (Specification of Definitions Details) Rules, 2014].</p>
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Sec. 2 (77)	Relative	<p>Relative, with reference to any person, means any one who is related to another, if:</p> <ul style="list-style-type: none"> (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is related to the other in such manner as may be prescribed. <p>A person shall be deemed to be the relative of another. If he or she is related to another in the following manner, namely:</p> <ol style="list-style-type: none"> 1. Father: Provided that the term "Father" includes step-father. 2. Mother: Provided that the term "Mother" includes the step-mother. 3. Son: Provided that the term "Son" includes the step-son. 4. Son's wife. 5. Daughter. 6. Daughter's husband. 7. Brother: Provided that the term "Brother" includes the step-brother; 8. Sister: Provided that the term "Sister" includes the step-sister. <p>[Rule 4 of Companies (Specification of Definitions Details) Rules, 2014.]</p>
Sec. 2 (78)	Remuneration	<p>Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 (43 of</p>

		1961) .
Sec. 2 (79)	Schedule	Schedule means a Schedule annexed to this Act.
Sec. 2 (80)	Scheduled Bank	Scheduled bank means the scheduled bank as defined in Clause (e) of Sec. 2 of the Reserve Bank of India Act, 1934 (2 of 1934).
Sec. 2 (81)	Securities	Securities means the securities as defined in Clause (h) of Sec. 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).
Sec. 2 (82)	Securities and Exchange Board	Securities and Exchange Board means the Securities and Exchange Board of India established under Sec. 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
Sec. 2 (83)	Serious Fraud Investigation Office	Serious Fraud Investigation Office means the office referred to in Sec. 211.
Sec. 2 (84)	Share	Share means a share in the share capital of a company and includes stock.
Sec. 2 (85)	Small Company	<p>Small company means a company, other than a public company:</p> <ul style="list-style-type: none"> (i) paid-up share capital of which does not exceed Fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees and [Substituted for 'or' by companies (Removal of Difficulties) order, 2015 w.e.f. 13.02.2015]. (ii) turnover of which as per its last profit and loss account does not

		<p>exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to:</p> <ul style="list-style-type: none"> (a) a holding company or a subsidiary company; (b) a company registered under Sec. 8; or (c) a company or body corporate governed by any special Act.
Sec. 2 (86)	Subscribed Capital	<p>Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company.</p>
Sec. 2 (87)	Subsidiary Company or Subsidiary	<p>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:</p> <ul style="list-style-type: none"> (i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies. <p>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.</p> <p>Explanation – For the purposes of this clause:</p> <ul style="list-style-type: none"> (a) a company shall be deemed to be

		<p>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;</p> <p>(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;</p> <p>(c) the expression "company" includes any body corporate;</p> <p>(d) "layer" in relation to a holding company means its subsidiary or subsidiaries.</p> <p>MCA has vide General Circular No. 20/2013 dated 27.12.2013, clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidary relationship in terms of the provision of Sec. 2 (87) of the Companies Act, 2013.</p>
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Sec. 2 (88)	Sweat Equity Shares	Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
Sec. 2 (89)	Total Voting Power	Total voting power in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.
Sec. 2 (90)	Tribunal	Tribunal means the National Company Law Tribunal constituted under Sec. 408.
Sec. 2 (91)	Turnover	Turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered or both, by the company during a financial year.
Sec. 2 (92)	Unlimited Company	Unlimited company means a company not having any limit on the liability of its members.
Sec. 2 (93)	Voting right	Voting right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.
Sec. 2 (94)	Whole-time Director	Whole-time director includes a director in the whole-time employment of the company.

Sec. 2 (94A)	Winding up (Inserted by Insolvency and Bankruptcy Code 2016, w.e.f. 15.11.2016)	Winding up means winding up under this Act or Liquidation under the Insolvency and Bankruptcy Code, 2016 as applicable.
Sec. 2 (95)	Miscellaneous	Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

▶ OBJECTIVE QUESTIONS

2008 - Nov [2] {C} (b)

Based on BT's Level 3

State whether the following statements are True or False and give reasons:

- (i) An ultra-vires transaction will not effect the right to acquire the property of a Company. (1 mark)

Answer:

True : In case of ultra vires contracts position of a company is like a minor, it can take the benefit but it cannot be made responsible. If a company acquires a property which is ultra vires, still it represents its money, hence the company will have a valid title. **[Ad Sait Vs Bank of Mysore, 1930]**

2009 - May [2] {C} (b)

Based on BT's Level 1

State whether the following statements are true or false and give reasons :

- (ii) Every Company which is registered under the Companies Act, 2013, need not have their own Articles of Association. (1 mark)

Answer :

True: As per Sec. 5 (6) of the Indian Companies Act, 2013, a company limited by shares may either frame its own set of articles or may adopt all or any of the regulations contained in Table F.

2009 - Nov [2] (b)

Based on BT's Level 1

State whether the following statements are true or false and give reasons :

- (i) The articles of Association of a Company can be altered by passing an ordinary resolution in the meeting of the shareholders. (1 mark)

Answer :

Incorrect : The Articles of association can be altered only by special resolution. This is as per Sec. 14 of the Indian Companies Act, 2013.

2011 - Nov [6] (c)

Based on BT's Level 1

State whether the following statements are correct or incorrect :

- (iii) A company is a legal person but not a citizen.
(iv) If the Central Government permits, a public company can be converted into a private company. (1 mark each)

Answer :

- (iii) Correct
(iv) Correct

2013 - Nov [6] (c)

Based on BT's Level 1

State whether the following statement is correct or incorrect :

- (iii) Memorandum of Association is the Charter of the company. (1 mark)

Answer:

- (iii) Correct.

2014 - May [6] (c)

Based on BT's Level 2

State whether the following statements are correct or incorrect:

- (i) The concept of legal personality of a company is of absolute nature. (1 mark)

Answer:

This statement is correct

2015 - Nov [6] (c)

Based on BT's Level 1

State whether the following statements are correct or incorrect:

- (i) A limited company can become a partner in a partnership firm. (1 mark)

Answer:

Correct: As per Sec. 4 of the Indian Partnership Act, 1932, partnership is a relation between persons. A company being an artificial person falls within the definition of a person capable of contracting. Therefore a company can become a partner in a partnership firm.

2016 - May [5] (a)

Based on BT's Level 2

State, giving reasons, whether the following statement is correct or incorrect:

- (iii) A Subsidiary Company cannot hold shares of its Holding Company. (1.5 marks)

Answer :

The given statement is incorrect.

Sec. 19 of the Companies Act, 2013 states exceptions under which subsidiary company can hold shares in its holding company. These are – (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or (b) where the subsidiary company holds such shares as a trustee, or (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

DESCRIPTIVE QUESTIONS

2007 - Nov [9]

Based on BT's Level 1 & 3

Mr. V, alongwith six other persons desires to float a company for charitable purposes, as permissible under Sec. 8 of the Companies Act, 2013. He seeks your advise about the procedure to be followed to give effect to the above proposal. Advise him. (5 marks)

Answer :

Persons/Associations eligible to be registered and licensed as Companies under Sec. 8 of Companies Act, 2013.

A person or association of persons may propose to be registered under the Act as a Limited Company:

- (a) with the objects of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, environment protection 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 payment of any dividend to its members.

Procedure to Obtain license is given in Companies (Incorporation) Rules, 2016:

As per Rule 19,

1. A person or an association of persons (hereinafter referred to in this rule as “the proposed company”), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, shall make an application in **Form No. INC.12** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 **to the Registrar** for a license under sub-section (1) of section 8.
2. The memorandum of association of the proposed company shall be in **Form No. INC.13**.

3. The application under sub-rule (1) shall be accompanied by the following documents, namely:
- (a) the draft memorandum and articles of association of the proposed company;
 - (b) the declaration in **Form No. INC.14** by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
 - (c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
 - (d) the declaration by each of the persons making the application in **Form No. INC.15**.

All privileges and obligations of limited companies to apply to 'Sec. 8 Companies' [Sec. 8(2)].

The company registered under Sec. 8 shall enjoy all the privileges and be subject to all the obligations of limited companies.

Revocation of license: The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence 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. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Intimation to Registrar of Revocation of License: Where the license is granted to a company registered under Sec. 8 has been revoked, the company shall apply to the Registrar in Form No. INC20 along with the fee to convert its status and change of name accordingly. **[Rule 24 of Companies (Incorporation) Rules, 2014]**

2007 - Nov [10]

Based on BT's Level 1 & 3

Board of Directors of a private company decided to convert it into a public company. State the steps to be taken for such conversion in order to comply

with the requirements under the Companies Act, 2013.

(5 marks)

Answer :

Conversion of Private Company into Public Company: Sec. 14 (1) states that 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 including alterations having the effect of conversion of –

- (a) a private company into a public company; or
- (b) a public company into a private company:

As per Proviso to Sec. 14(1)

When a company being a private company alters its articles in such a manner that they no longer include any of the three restrictions and limitations which are required to be included in the articles of a private company under section 2(68), the company shall, as from the date of such alteration, cease to be a private company. It also ceases to have the privileges and exemptions conferred on it by the Act as a private company. It becomes a public company and all the provisions of the Act applicable to such companies become applicable to it.

Filing with the registrar: Every alteration of the articles shall be filed in Form No. INC.27 with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days, who shall register the same. Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

If a private company is converted into a public company, it will have to make the following consequential changes:

1. Change name clause of memorandum of association by deleting the word private from its name.
2. Increase its directors to three.
3. Increase its number of members, to seven.
4. Delete those clauses from articles which are not suitable for a public company.
5. Give notice to ROC.

2009 - May [10]

Based on BT's Level 1 & 3

India Cosmetics Limited was a registered company Under Indian Companies Act, 2013. Later on, another company, India Cosmetics and Assessories Limited was formed and registered. Being similarity in the names of both Companies, India Cosmetics Limited lodged the complaint against India Cosmetics and Assessories Limited to the Registrar of Companies stating that there is sufficient similarity between these two names which may mislead or defraud to the public. India Cosmetics and Accessories Limited

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is intending to alter its name.

Advise the India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 2013.

(5 marks)

Answer :

Provision:

Sec. 13(1) of Indian Companies Act, 2013, provides that the name of a company may be changed at any time by passing a special resolution at a general meeting of the company.

As per Sec. 13(2), any change in the name of a company shall be subject to the provisions of sub-section (2) and (3) of Sec. 4 and shall not have effect except with the approval of Central Government in writing (Power delegated to ROC vide Notification No. SO 1353(E), dated 21.05.2014 w.e.f. 21.05.2014)

Rectification of name of company in case of similarity of Names Sec. 16, provided that if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which –

In the opinion of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016), is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose [**Sec. 16(1)(a)**].

Present Case:

The problem asked in the question is based upon the provision of Sec. 16(1)(a) of the Companies Act, 2013. The new company registered under the name India Cosmetics Accessories Ltd. is identical in name with the existing India Cosmetics Limited. According to the aforesaid provisions of Sec. 16(1)(a) the newly setup company should change its name. In such a case, the company can, on its own, change the name by obtaining previous approval of Central Government (Power now delegated to Regional Director) and then by passing an ordinary resolution. Such a change should be made within three months of the date of the direction of the Regional Director being received or such longer period as the Regional Director may deem fit to allow. The application for changing the name is required to be made to the Registrar of Companies in e-form INC 1 with a fee of one thousand rupees. [w.e.f 24. 7. 2011]

2011 - May [1] {C} (c)***Based on BT's Level 1***

Explain clearly the concept of "perpetual-succession" and "common-seal" in relation to a company incorporated under the Companies Act, 2013/Companies Amendment Act, 2015. (5 marks)

Answer :**Perpetual Succession :**

Unlike a natural person a company never dies. It is an entity with a perpetual succession. The life of the company does not depend upon the life of any of its members; it is independent from the lives of its members. Even the death, insolvency, mental disorder or retirement of a member does not effect the corporate existence of the company. It is created by the process of law and can be put to an end only by the process of law. Members may come and member may go but the company will carry on to exist unless it is wound up. The company continuous to exist even if all its members are dead. The leading case on this point is [K/9 Meat supplies (Guildford Ltd.)] where all the members of the private company were killed by a bomb but still the company was deemed to survive.

A company is of perpetual succession in the sense that inspite of the change in the membership of the company it persists to exist. It is generally said that members may come and members may go but the company goes on forever. Thus, a company never dies.

Common Seal :

Since a company has no physical existence, it cannot sign its name on a contract. So it takes the help of seal which is used as a substitute for its signature.

Companies Act, 2013 required common seal to be affixed on certain documents (such as BOE, share certificate etc).

However as per Companies Amendment Act, 2015 , the use of Common Seal has been made optional . All such documents which required affixing the common seal may now instead be signed by two Directors or one Director and a Company Secretary of the company.

2011 - May [1] {C} (d)***Based on BT's Level 1***

What is the law and procedure relating to registration of a non-profit organisation as a company under the Companies Act, 2013? (5 marks)

Answer:

Please refer 2007 - Nov [9] on page no. 46

2011 - May [6] (a)***Based on BT's Level 1***

Describe the procedure for converting a private company into a public

company under the provisions of the Companies Act, 2013. (8 marks)

Answer :

Please refer 2007 - Nov [10] on page no. 48

2011 - May [7] (b)

Based on BT's Level 1

Which documents are required to be filed with the Registrar of Companies at the time of registration of a company under the provisions of the Companies Act, 2013? (4 marks)

Answer :

Documents required to be filed with ROC at the time of Incorporation of company:

As per Sec. 7 of Companies Act, 2013,

There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:

(a) **Memorandum and Article:**

The Memorandum and Articles of the company duly signed by all the subscribers to the memorandum in such manner as prescribed in Rule 13 of Companies (Incorporation) Rules, 2014.

(b) **Declaration of Compliance:** A declaration in the Form No. INC.8 by an advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

(c) **Affidavit:**

An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) **Address for Correspondence:**

The address for correspondence till its registered office is established;

(e) **Particulars of Subscribers:**

The particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed and in the case of a subscriber being a body corporate, such particulars as is prescribed under Rule 16 of Companies Incorporation Rule 2014.

(f) **Particulars of Persons mentioned in Articles:**

The particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as is prescribed under Rule 17 of Companies Incorporation Rule 2014.

(g) **Particulars of Interest of Persons:**

The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as is prescribed under Rule 17 of Companies Incorporation Rule 2014.

2011 - Nov [4] (a)

Based on BT's Level 1 & 2

What is the importance of registered office of a company? State the procedure for shifting of registered office of the company from one State to another State under the provisions of the Companies Act, 2013.

(8 marks)

Answer :

Registered Office Clause

State in which registered office will be situated has to be specified in Memorandum of Association under Registered office clause. Registered Office is really the permanent address of the company. It is residence of the company. It decides the domicile of the company.

Registered Office of Company as per Sec. 12.

1. A company shall, on and from the fifteenth day 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. [Sec. 12(1)].
2. The company shall furnish to the Registrar in Form No. INC. 22 verification of its registered office within a period of thirty days of its incorporation in such manner as is prescribed under Rule 25 of Companies Incorporation Rules, 2014.
3. Every company shall –
 - (a) Paint or affix its name, and the address of its registered office, and

keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages; [Sec. 12(3)(a)].

- (b) Have its name engraved in legible characters on its seal, if any; [Sec. 12(3)(b)].
- (c) Get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- (d) Have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Importance of Registered Office Clause

Companies Act, 2013 and other Acts provide great importance to registered office. It actually decides domicile of a company.

- 1. Serving of notice on company:** Any document can be served on a company by sending it by post under certificate of posting or by registered post or by speed post or courier or by hand delivery, or by means of such electronic or other mode as is prescribed under Rule 35 of Companies (Incorporation) Rules, 2014 at the registered office. [Sec. 20(1)]
- 2. Holding of AGM:** Annual General Meetings of company must be held either in registered office, or in city/town/village in which registered office is situated. [Sec. 96(2)].
- 3. Publications of advertisements:** Following advertisements have to be published in newspapers in the district/State where registered office is situated:
 - (a) Advertisement inviting public deposits should be published in one English and one vernacular newspaper in the State in which registered office is situated.
 - (b) Notice of closure of register of members and debentureholders is to be published in newspaper circulating in the district in which the registered office of the company is situated.
- 4. Depositing proxy, notice of EOGM, circular resolution:** Proxy for meeting have to be deposited at registered office of the company. [Article 57 of Model Articles of Association Table-F of the 2013 Act]
Sec. 100(2) of the Companies Act, 2013 provides for requisition of

meeting by members. Though section does not specifically say so, as per Sec. 20, of the Companies Act, 2013 the requisition has to be submitted at registered office of the company.

If members want to circulate a resolution under Sec. 111 of the 2013 Act, they have to deposit requisition in writing at registered office.

Change of Registered Office from one State to another

In order to the change its registered office from one State to another the Companies Act, 2013 lays down the following steps and procedure:

1. **Resolution of the Board of Directors:** The first step in changing registered office is that the Board of Directors must adopt a resolution to that effect and convene a general meeting of members in which the change is approved.
2. **Special resolution:** A special resolution must be passed by the company in the general body meeting of shareholders/members. [Sec. 13(1)]
3. **Approval of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016):** The alteration of the Memorandum relating to the change of the registered office from one state to another shall not have any effect, unless it is approved by the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) on an application in Form INC. 23 and in such manner as is prescribed in Rule 30 of Companies (Incorporation) Rules, 2014. Hence, the company will have to make the required application after the name is approved by the members by special resolution. [Sec. 13(4)]
4. **Disposal of application:** The Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) shall dispose of the application within 60 days and before passing its order, it may satisfy itself that the alteration has the consent of creditors, debentureholders and other persons concerned with the company, or that adequate provisions have been made by the company either for the due discharge of their liabilities or adequate security has been provided for such discharge. [Sec. 13(5)]
5. **Registration with Registrar:** The company shall file a certified copy of the Central Government (Power now delegated to Regional Director vide Notification No. SO 4090(E) dt. 19-12-2016 w.e.f 19.12.2016) order approving the alteration with the Registrar of each of the States in Form No. INC.28 along with the fees within 30 days from the date of receipt of certified copy of order, who shall register the same. The Registrar of the

State where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration. [Sec. 13(7)]

2012 - May [4] (a)

Based on BT's Level 1

Explain the doctrine of 'Indoor Management' as applicable in case of companies. Explain also the circumstances in which an outsider dealing with a company cannot claim any relief on the basis of doctrine of 'Indoor Management'. (8 marks)

Answer :

The doctrine of Indoor Management is an exception to doctrine of Constructive Notice.

As per the doctrine of Indoor Management, the persons dealing with the company have right to assume that as far as the internal proceeding of the company are concerned everything has been done properly. It is necessary to read the registered documents and to see that the proposed dealing is not inconsistent therewith. They are not required to do anything more as per the regularity of the internal proceeding. This disadvantage of doctrine of constructive notice is called the Doctrine of Indoor Management. [According to the rule in Royal British Bank V Turquand].

In this case the directors of RBB also gave a bond to T. The Article empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus the persons dealing with the company has notice of irregularity or where the person dealing with the company is put upon on inquiry or when an instrument purporting to be enacted on behalf of the company is a forgery.

The doctrine of Indoor Management is based on the maxim *omnia praesumuntur rit esse acts* (all things are presumed to have been done rightly). The doctrine seeks to protect outsiders against the company.

Exceptions : The doctrine of indoor management is subject to the following exceptions:

- 1. Knowledge of irregularity :** Under the rule of indoor management the benefit cannot be claimed if a person dealing with a company has the knowledge of the irregularity in its internal management [Howard V. Patent Ivory Manufacturing Co. (1888) 38 Ch. D. 156.]
- 2. Acts void ab initio and forgery :** The doctrine of indoor management will not be used, where the acts done in the name of the company are void ab initio. The doctrine is applicable only to those irregularities that otherwise might affect a genuine transaction. It does not apply to forgery.

A company cannot be made liable for forgeries done by its officers [Ruben V. Great Fingall Consolidated Co.]

3. **No knowledge** : A person having no knowledge of Articles cannot ask for protection under indoor management.
4. **Negligence** : If the irregularities are discovered by the persons dealing with a company, on making proper inquiries, he cannot claim the advantages of the rule of indoor management. No protection of the rule is possible, where the circumstances surrounding the contracts are so suspicious as to invite inquiry and the outsider dealing with the Co. does not make proper inquiry [Underwood v Bank of Liverpool]
5. **Act outside the scope of apparent authority** : If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound.

2012 - May [6] (a)

Based on BT's Level 1

Explain the procedure for change of name of a company, as provided in the Companies Act, 2013. (8 marks)

Answer :

Procedure for the change of name under the Companies Act, 2013 and Rule 33 of Companies (Incorporation) Rules, 2014:

According to Sec. 13(1) of the Companies Act, 2013, a company may by special resolution and after complying with the procedure specified in this section after the provisions of its Memorandum.

The Name Clause in the Memorandum states the name of the company. It can be changed in the following manner:

1. **Resolution of Board of Directors:** The first step in changing Name is that the Board of Directors must adopt a resolution to that effect and convene a general meeting of members in which the change is approved.
2. **Special Resolution:** A Special Resolution for name change must be passed by the company in the General Meeting of shareholder's or members.
3. **The change in name must be in accordance with the provisions of Sec. 4(2) and (3):** These sub sections prohibit a company from registering with a name similar to an existing company's name or with names listed as undesirable by the Act.
4. **Approval of Central Government (Power now delegated to ROC vide Notification No. SO 1353(E), dated. 21-05-2014, w.e.f 21.05.2014:** Any change in the name of a company shall be effected only with the approval of the Central Government (Power now delegated to ROC vide

Notification No. SO 1353(E), dated. 21-05-2014, w.e.f 21.05.2014 in writing by filing Form No. INC 24.

However, no such approval shall be necessary where the change in the name of the company is only the deletion therefrom or addition thereto, of the word "Private", on the conversion of any one class of companies to another class. However under Sec. 14 and Rule 33, for alteration of AOA in case of conversion from private to Public Company and *vice versa*, approval of Central Government Power now delegated to ROC vide Notification No. SO 1353(E), dated. 21-05-2014, w.e.f 21.05.2014, shall be obtained by filing Form No. INC.27.

- 5. Documents to be filed:** The documents are required to be filed with the Registrar, who will then register the new name in place of the old name of the company and issue a fresh certificate of incorporation in the new name.

The documents are:

- (i) Special Resolution passed by company under Sec. 13(1).
- (ii) Approval of Central Government under Sec. 13(2) (Power now delegated to ROC vide Notification No. SO 1353(E), dated. 21-05-2014, w.e.f 21.05.2014).

- 6. Entry in Register of Companies by Registrar:** On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate in Form No. INC.25 of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

- 7. Restrictions:** The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures. [The Companies **(Incorporation)** Rules, 2014]

2012 - Nov [4] (a)

Based on BT's Level 1

Explain the provisions of law and procedure relating to alteration of object clause stated in the Memorandum of Association of a company under Indian Companies Act, 2013. (8 marks)

Answer:

Alteration of Object Clause:

According to Sec. 13(1) of the Companies Act, 2013, a company may be special resolution and after complying with the procedure specified in this section alter the provisions of its MOA.

The Object Clause can be altered in the following way:

1. **Resolution of Board of Directors:** The first step in altering object is that the BOD must adopt a resolution to that effect and convene a general meeting of members in which the alteration is approved.
2. **Special Resolution:** Change in object clause can be effected simply by passing a special resolution in general meeting of members. [Sec. 13(1) of the 2013 Act].
3. **Filing with ROC:** The special resolution should be filed with ROC in Form No. MGT 14 within thirty days from the date of resolution [Sec. 13(6)(a) of the 2013 Act].
4. **Entry in Register of Companies by ROC:** The Registrar will register the document and then only the alteration becomes effective. [Sec. 13(10) of the 2013 Act]
5. **Special provision in case of listed Company which has raised money from public and has unutilised amount out of money so raised.**
 - (i) **Passing Special Resolution by Postal Ballot**
 - (ii) **Notice to Shareholders**

Notice in respect of the Resolution for altering the objects shall contain the following particulars:

 - (a) the total money received,
 - (b) the total money utilized for the objects stated in the prospectus,
 - (c) the unutilized amount out of the money so raised through prospectus,
 - (d) the particulars of the proposed alteration or change in the objects,
 - (e) the justification for the alteration or change in the objects,
 - (f) the amount proposed to be utilised for the new objects,
 - (g) the estimated financial impact of the proposed alteration on the Earnings & Cash Flow of the Company,
 - (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution,
 - (i) the place from where any interested person may obtain a copy of the Notice of the Resolution to be passed.
 - (iii) **Publication in Newspaper**
 - (a) Details of the resolution shall be published in the Newspapers (one in English and one in vernacular language) which is in circulation at the place where the Registered Office of the Company is situated.

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- (b) The Advertisement giving details of each resolution to be passed for change in objects shall be published simultaneously with the despatch of Postal Ballot Notices to Shareholders.
- (iv) **Placing on Website of Company**
The Notice shall also be placed on the Website of the Company, if any.
- (v) **Opportunity to Dissenting Shareholders**
Dissenting Shareholders shall be given an opportunity to exit by the Promoters and Shareholders having control, in accordance with SEBI Regulations.

2012 - Nov [7]***Based on BT's Level 1***

Answer the following:

- (c) Discuss the provisions of law contained in the Companies Act, 2013 as regards to the service of documents. (4 marks)

Answer:**Serving of Documents**

Persons Served on	Mode of serving [Sec 20 and Rule 35 of Companies (In-corporation) Rules, 2014.]
Service to Officer [Sec 20(1)]	<p>A document may be served on a Company or an Officer thereof by:</p> <p>(a) by sending it to the Company or the Officer at the Registered Office of the Company:</p> <p style="padding-left: 40px;">(i) by Registered Post, or</p> <p style="padding-left: 40px;">(ii) by Speed Post, or</p> <p style="padding-left: 40px;">(iii) by Courier Service,</p> <p>(b) by leaving it at its Registered Office, or</p> <p>(c) by means of electronic transmission, or</p> <p>(d) by other modes as is prescribed under Rule 35 of Companies (Incorporation) Rules 2014.</p> <p>Note: 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.</p>
Service to ROC/Member [Sec. 20(2)]	<p>A document may be served on the Registrar or any Member:</p> <p>(a) by sending it to him by Post or by Registered Post or by Speed Post or by Courier, or</p> <p>(b) by delivering at his Office or Address, or</p>

	<p>(c) by means of electronic or other prescribed mode, or</p> <p>(d) by other mode as is prescribed under Rule 35 of Companies (Incorporation) Rules, 2014.</p> <p>Note:</p> <ul style="list-style-type: none"> • Provisions of the Act or Rules for filing of documents with the ROC in electronic mode, also apply, • 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 AGM.
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Rule 35 of Companies (Incorporation) Rules, 2014:

A document may be served on a company or an officer, the ROC or any member through electronic transmission.

Electronic transmission means a Communication

(a) delivered by:

- (i) facsimile telecommunication or e-mail when directed to the Facsimile Number or E-Mail Address, respectively, which the Company/Officer/ROC/ Member has provided from time to time for sending communications to the company / Officer/ ROC/Member respectively,
 - (ii) posting of an Electronic Message Board or Network that the Company/Officer/ROC/Member has designated for such communications, and which transmission shall be validly delivered upon the posting, or
 - (iii) other means of electronic communication, in respect of which the Company/Officer/ROC/Member has put in place reasonable systems to verify that the Sender is the person purporting to send the transmission, **and**,
- (b) that **creates a record** that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

Again as per Rule 35(5), Courier (as mentioned in Sec 20) means:

a document sent through

a courier which provides proof of delivery.

In case of delivery by post

Such service shall be deemed to have been effected.

- (i) in the case of a notice of a meeting at the expiration
- (ii) In the case of a notice of a meeting, at the completion of forty-eight hours after the letter containing the same is posted and,

- (iii) In any other case, at the time at which the letter would be delivered in the ordinary course of post.

2013 - Nov [6] (a)

Based on BT's Level 1

What is the importance of registered office of a company? State the procedure for shifting the registered office of a company from one State to another State contained in the Companies Act, 2013. (8 marks)

Answer:

Please refer 2011 - Nov [4] (a) on page no. 53

2014 - May [6] (a)

Based on BT's Level 1

What restrictions are applicable under the Companies Act, 2013 when Articles of Association of a company are altered? (8 marks)

Answer:

Limitations to alteration : The alterations made in the articles will be valid, until they fall within any one of the following categories given below:

1. The alteration must not authorise anything expressly or impliedly forbidden by the Companies Act.
2. The alteration must not exceed the power or modify the memorandum.
3. The alteration must not contain anything illegal.
4. The alteration must not be inconsistent with any alteration made by Tribunal. When its has passed order under operation and Mis-management.
5. The alteration must be *bona fide* for the benefit of the Company as a whole.
6. The alteration must not make the articles unalterable as it is regarded bad in law.
7. Retrospective operation of articles.
8. The alteration must not constitute a fraud on the minority by a majority.
9. An alteration of articles to effect a conversion of a public company into a private company cannot be made without the approval of the Central Government.
10. There cannot be alteration of the articles so as to compel an existing member to take or subscribe for more shares or in any way extend liability to contribute to share capital, unless he gives his consent in writing.
11. A company cannot justify breach of contract with third parties or avoid a contractual liability by altering articles.
12. An alteration should not increase the liability of a member unless he has

agreed thereto in writing.

2014 - May [7]

Based on BT's Level 1 & 6

Attempt the following:

- (c) Decide, under the Companies Act, 2013 whether Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of the company. (4 marks)

Answer:

Provision:

According to the Companies Act, 2013, if any person wants to incorporate a new company then the name of the proposed company should be such one that is allowed under the Companies act and Emblems of Names act. The word "Electoral Trust " is specifically given for the Sec. 8 companies. It means as per Companies Act, 2013, if any person wants to form a Sec. 8 Company then he can use the phrase "Electoral Trust" with the name of the company otherwise he cannot use it. [As per Ministry of Corporate Affairs vide General Circular No. 12/2013 dated 28.06.2013]

Present Case:

Mr. Prabhu wants to incorporate a new company using the phrase "Electoral Trust " with the name of company. He can do so by complying with the provision of above mentioned circular i.e. only if he wants to form Sec. 8 Company.

2015 - May [1] {C}

Based on BT's Level 1 & 4

Answer the following question:

- (b) "The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company." Explain the above statement. Also, state the exceptions to the above rule. (5 marks)

Answer :

As per the Companies Act, 2013, there is a provision which protects the outsiders to the company who are dealing with the company which is known as "The doctrine of Indoor Management". As per this provision, persons dealing with the company though are supposed to have satisfied themselves regarding the competence of the company, can safely presume that internal proceedings have been observed properly or complied with. They need not inquire into the regularity of internal proceeding. This provides the protection to those persons dealing with the company. As the outsider is unknown about the internal proceedings of the company so that he can protect himself for being ruled by the certain circumstances based on the reasonable and justifiable grounds. They are bound to examine the registered documents of the company and ensure the consistency of the proposed dealing, but are

not bound to do more. But there are certain exceptions to this rule of indoor management so that in such ground outsider cannot protect himself on the basis of doctrine of Indoor Management.

Exceptions of Doctrine of Indoor Management:

Please refer 2012 - May [4] (a) on page no. 56

2015 - May [7]

Based on BT's Level 1

Answer the following question:

- (b) Define the term 'Small Company' as contained in the Companies Act, 2013. (4 marks)

Answer :

Small Company:

As per **Sec. 2(85) of the Companies Act, 2013**

Small company means a company other than a public company–

- (a) Paid up share capital of which does not exceed fifty lakh rupees or a higher prescribed amount which shall not be more than five crore rupees, and
- (b) Turnover of which as per its last statement of Profit & Loss Account does not exceed two crore rupees or a higher prescribed amount which shall not be more than twenty crore rupees.

Note:

This clause shall not apply to–

- (a) a holding company or a subsidiary company
- (b) a company registered u/s 8, or
- (c) a company or body corporate governed by any special Act.

2015 - Nov [6] (a)

Based on BT's Level 1 & 2

What is the importance of registered office of a company? State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013.

(8 marks)

Answer:

Please refer 2011 - Nov [4] (a) on page no. 53

2016 - May [4] (c)

Based on BT's Level 1

Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013. (4 marks)

Answer :

Dormant Company:

As per Sec. 455 of Companies Act, 2013, where a company is formed and registered under this Act, for a future project or to hold an asset or

intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as is prescribed under Rule 3 of Companies (Miscellaneous) Rules, 2014 for obtaining the status of a dormant company.

“Significant Accounting transaction” means any transaction other than:

1. Payment of fees by a company to the Registrar;
2. Payment made by it to fulfill the requirements of this Act, or any other law.
3. Allotment of shares to fulfill the requirement of this Act, and;
4. Payment for maintenance of its office and records.

2016 - May [5] (b)

Based on BT's Level 1

State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies.

(6 marks)

Answer :

Documents and Information for registration of a One Person Company (OPC):

For the registration of the One Person Company (OPC), following documents and information are required to be filed with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated –

1. Memorandum and Articles:

The Memorandum and Articles of the company duly signed by the subscriber to the Memorandum in such manner as prescribed in Rule 13 of Companies (Incorporation) Rules, 2014. (The Memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.)

2. Declaration of Compliance:

A declaration in Form No. INC.8 by person who is engaged in the formation of the company (an advocate, a Chartered Accountant, a Cost Accountant or a Company Secretary in practice) and by a person named in the Articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

3. Affidavit:

An affidavit from the subscriber to the Memorandum and from person named as the first director, if any, in the Articles stating that he is not convicted of any offence in connection with the promotion, formation or

management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years, and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

4. Address for Correspondence:

The address for correspondence till its registered office is established.

5. Particulars of the subscriber:

The particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the Memorandum alongwith the proof of identity, and in the case of a subscriber being a body corporate, such particulars as may is prescribed under Rule 16 of Companies Incorporation Rules, 2014.

6. Particulars of persons mentioned in the Articles:

The particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of persons mentioned in the Articles as the first directors of the company and such other particulars including proof of identity as is prescribed, under Rule 17 of Companies Incorporation Rules 2014.

7. Particulars of interest of persons:

The particulars of the interests of the persons mentioned in the Articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as is prescribed under Rule 17 of Companies Incorporation Rules, 2014.

Note:

Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company (The Companies (Incorporation) Rules, 2014).

► PRACTICAL QUESTIONS

2008 - May [11]

Based on BT's Level 1 & 3

VD Company Ltd. is registered in Tamil Nadu within the jurisdiction of the Registrar of Companies, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of Registrar of Companies, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office. (5 marks)

Answer :

Transfer of RO of XY Ltd. from Mumbai (Maharashtra) to Pune (Maharashtra)

Maharashtra has ROC offices at Mumbai as well as at Pune. Thus shifting of RO of XY Ltd. from Mumbai to Pune would mean change of RO within same state but from jurisdiction of one ROC to the jurisdiction of another ROC.

Accordingly the formalities to be complied under Sec. 12(5) of the Companies Act, 2013 and Rule 28 of the Companies (Incorporation) Rules, 2014 are as follows:

Legal requirements:

1.	Passing of Special Resolution	The company shall convene a General Meeting of Shareholders and pass a Special Resolution .
2.	Publication and Serving of Notice as per Rule 28	<p>Not less than one month before filing application with the Regional Director for the change of Registered Office, the Company shall:</p> <ul style="list-style-type: none"> (i) Publish a Notice, atleast once in a daily newspaper published in English and in the principal language of that district in which the registered office of the Company is situated and circulating in that district, and (ii) Serve Individual Notice on each Debenture Holder, Depositor and Creditor of the Company: <ul style="list-style-type: none"> (a) clearly indicating the matter of application, and (b) stating that any person whose interest is likely to be affected by the proposed alteration of the MOA may intimate his nature of interest and grounds of opposition to the Regional Director, with a copy to the Company within 21 days of the date of publication of that notice.

3.	Application to Regional Director	File an application in Form No. INC.23 , seeking confirmation from the Regional Director for shifting the Registered Office within the same State from the jurisdiction of one ROC to the jurisdiction of another ROC.
4.	Rule as to change	<p>(i) If no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the proposed change of Registered Office.</p> <p>(ii) Such shifting of Registered Office shall not be allowed if any inquiry, inspection or investigation has been initiated against the Company or any prosecutions is pending against the Company under the Act.</p>
5.	Confirmation from RD	Confirmation from Regional Director shall be communicated to the Company within thirty days from the date of receipt of application.
6.	Filing with ROC	<p>The Company shall file the following documents with ROC within the specified time limits:</p> <p>(i) Confirmation obtained from Regional Director, within 60 days of the date of confirmation.</p> <p>(ii) Copy of Special Resolution in Form No. MGT.14 with the ROC within 30 days of the Resolution.</p> <p>(iii) Notice of new location to ROC, in Form No. INC.22 within 15 days of the change in Registered Office.</p>
7.	Certificate by ROC	<p>(a) ROC shall register the confirmation, and certify the registration within 30 days from the date of filing the confirmation.</p> <p>(b) Certificate given by ROC shall be conclusive evidence that all the requirements of this Act with respect to</p>

		change of Registered Office in pursuance of Sec. 12(5) have been complied with and the change shall take effect from the date of the Certificate.
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2008 - Nov [10]

Based on BT's Level 1 & 4

The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so ? State the reasons clearly. (5 marks)

Answer :

Provisions:

According to Sec. 10(1) of the Companies Act, 2013, 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 the memorandum and articles.

It means that members can enforce their rights given in the articles of association against the company. But at the same time it is clear that articles are internal rules and regulation for a company hence outsider cannot take advantage of the provision of articles.

Further, under Sec. 14(1) subject to the provisions of this Act and to the conditions contained in the Memorandum a company may by a special resolution alter its Articles.

Moreover, under Sec. 14(2) the company will be required to file within 15 days the altered Articles with the Registrar alongwith necessary documents, such as the copy of the special resolution etc, and in such manner as may be prescribed. On receipt of all documents the Registrar shall register the same.

Sec. 14(3) further provides that any alteration in the Articles on registered will be valid as if they were in the original Articles.

Present Case:

The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association.

In the present case, articles state that Mr. A should be appointed as solicitor and let us assume that there is no separate contract between Mr. A and the company. Now if the articles are changed by passing a unanimous resolution

to appoint B in place of A, it is valid. Mr. A cannot take an objection against the action of the company and will not succeed if he files a case against the company.

2009 - May [8]

Based on BT's Level 1 & 6

F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way F divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose three companies were established ? Whether the legal personality of all the three companies may be disregarded ?

(5 marks)

Answer :

The case is similar to that of *Sir Dinshaw Maneckjee Petit, and Juggilal vs. Commissioner of Income Tax*. The three companies were formed by Mr. F purely and simply as a means of avoiding tax and the companies were nothing more than the assessee himself. Therefore the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to handover them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw*.

2010 - May [8]

Based on BT's Level 1, 4 & 6

The object clause of the Memorandum of Association of RST Limited authorises it to publish and sell text-books for students. The company, however, entered into an agreement with Q to supply 100 laptops of worth ₹ 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra virus the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act, 2013.

(5 marks)

Answer :

According to Companies Act, 2013 the powers of the company are limited to:

- (i) **Express powers** i.e. powers expressly given by the Memorandum or conferred by the Companies Act, 2013 or other statute and;
- (ii) **Implied Powers** i.e. Powers reasonably incidental or necessary to the company's main purpose.

The acts beyond the powers of a company are *ultra vires* and void and cannot be ratified even though every member of the company may have given his consent. [*Ashbury Railway Carriage Company vs Riche*]

The objects clause therefore is of fundamental importance to the shareholder, creditors and others.

The object clause enables shareholders, creditors or others to know what its powers are and what is the range of its activities and enterprises.

Present Case:

In the given problem the main object of RST Limited is to publish and sell textbooks for students. It therefore has no power to enter into an agreement with Q to supply 100 laptops. Such act can never be treated as express or implied power of the company. Q is deemed to be aware of the lack of powers of RST Limited. Thus Q cannot enforce the agreement or liability against RST Limited. Hence the refusal of the company for the payment to Q is valid. [*Ganga Metal Refining Company (Private) Limited CIT case (1963) 38 CC.*]

2013 - May [5] (b)

Based on BT's Level 1 & 4

Article of a public company clearly stated that Mr. L will be the Solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the Solicitor of the company by altering the articles of association. State with reasons, whether the company can do so? If L files a case against the company for removal as a Solicitor, will he Succeed? (4 marks)

Answer:

Please refer 2008 - Nov [10] on page no. 72

2014 - Nov [1] {C} (b)

Based on BT's Level 1, 4 & 6

The XYZ Traders Association was constituted by four joint Hindu families consisting of 25 major and 2 minors members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 2013 or any other law.

State whether the XYZ Traders Association is having any legal status?

Will there be any change in the status of this Association if the members of the XYZ Traders Association subsequently were reduced to 18?

(5 marks)

Answer:

As per Sec.464 of Act, 2013,

1. No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of

carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

2. Nothing in sub-section (1) shall apply to:
 - (a) A Hindu undivided family carrying on any business; or
 - (b) an association or partnership, if it is formed by professionals who are governed by special Acts.
3. Every member of an association or partnership carrying on business in Contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall be also personally liable for all liabilities incurred in such business.

Further, Rule 10 of the Companies (Miscellaneous) Rules, 2014, provides that no association or partnership shall be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Present Case: Thus, as per Sec. 464 of Companies Act, 2013, HUF being exempt, XYZ Traders Association is having a legal status. Also as per Companies (Miscellaneous) Rules, 2014, Since the member of members is below 50, XYZ Traders Association is having a legal status. And this legal status will continue even if member of members falls to 18.

2016 - May [1] {C} (b)

Based on BT's Level 1 & 4

Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause. (5 marks)

Answer :

Please refer 2012 - Nov [4] (a) on page no. 60

2016 - May [3] (a)

Based on BT's Level 1, 2 & 5

Atul Ltd. has passed a resolution in its general meeting regarding accepting deposits from its members. Can this company accept deposits from its members under the Companies Act, 2013 ? if yes, state the conditions to be

fulfilled regarding this.

(8 marks)

Answer :

Acceptance of deposits from members:

According to Sec. 73(2) of the Companies Act, 2013 a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions as prescribed under Rule 3 of Companies (Acceptance of Deposits) Rules, 2014, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely :

1. Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in Form No. DPT.1 and in such manner as is prescribed under Rule 4 of Companies (Acceptance of Deposits) Rules, 2014;
2. Filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
3. Depositing such sum which shall not be less than fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
4. Providing such deposit insurance in such manner and to such extent as is prescribed under Rule 5 of Companies (Acceptance of Deposits) Rules, 2014;
5. Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
6. Providing security [as per Rule 6 of Companies (Acceptance of Deposits) Rules, 2014], if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Provided that:

Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form advertisement or in any document related to invitation or acceptance of deposits.

Present Case: Atul Ltd. has passed a resolution in its general meeting regarding accepting deposits from its members. Hence, Atul Ltd. can accept

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deposits from its members by following the above procedure.

2016 - Nov [7]

Based on BT's Level 1, 4

Answer the following:

- (b) The Articles of Association of XYZ Ltd. provides the Board of Directors has 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.

(4 marks)

Answer:

Provision:

According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

Case Study:

As per the case of the *Royal British Bank Vs. Turquand* [1956] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Present case:

Since the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

2017 - May [4] (a) (ii) The object clause of the Memorandum of Vardhman Industries Ltd., 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.

State whether the company can make such change as per the provisions of the Companies Act, 2013?

(4 marks)

Answer:

Please refer 2012 - Nov [4] (a) on page no. 60

2017 - Nov [5] (b) The paid-up share capital of SAB Private Limited is ` 1 crore, consisting of 8 lakhs Equity Shares of ` 10 each, fully paid-up and 2 lakhs Cumulative Preference Shares of ` 10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lakhs Equity Shares and 50,000 Equity Shares respectively in SAB Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether SAB Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of SAB Private Limited? (4 marks)

Similarly Asked Questions*

No.	Category	Question	Marks	Frequency
1	Descriptive	Board of Directors of a private company decided to convert it into a public company. State the steps to be taken for such conversion in order to comply with the requirements under the Companies Act, 2013. 07 - Nov [10], 11 - May [6] (a)	5, 8	2 Times
2	Practical	Article of a public company clearly stated that Mr. L will be the Solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the Solicitor of the company by altering the articles of association. State with reasons, whether the company can do so? If L files a case against the company for removal as a Solicitor, will he Succeed? 08 - Nov [10], 13 - May [5] (b)	5, 4	2 Times

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3	Descriptive	Answer the following question: “The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company.” Explain the above statement. Also, state the exceptions to the above rule. 12 - May [4] (a), 15 - May [1] {C} (b)	8, 5	2 Times
4	Descriptive /Practical	Explain the provisions of law and procedure relating to alteration of object clause stated in the Memorandum of Association of a company under Indian Companies Act, 2013. (8 marks) 12 - Nov [4] (a), 17 - May [4] (a)	8, 4	2 Times

Table Showing Marks of Compulsory Questions

Year	13 M	13 N	14 M	14 N	15 M	15 N	16 M	16 N	17 M	17 N
Descriptive					5					
Practical				5			5			
Total				5	5		5			

* This table contains the Similarly Asked Questions. Please pay more attention to such question.