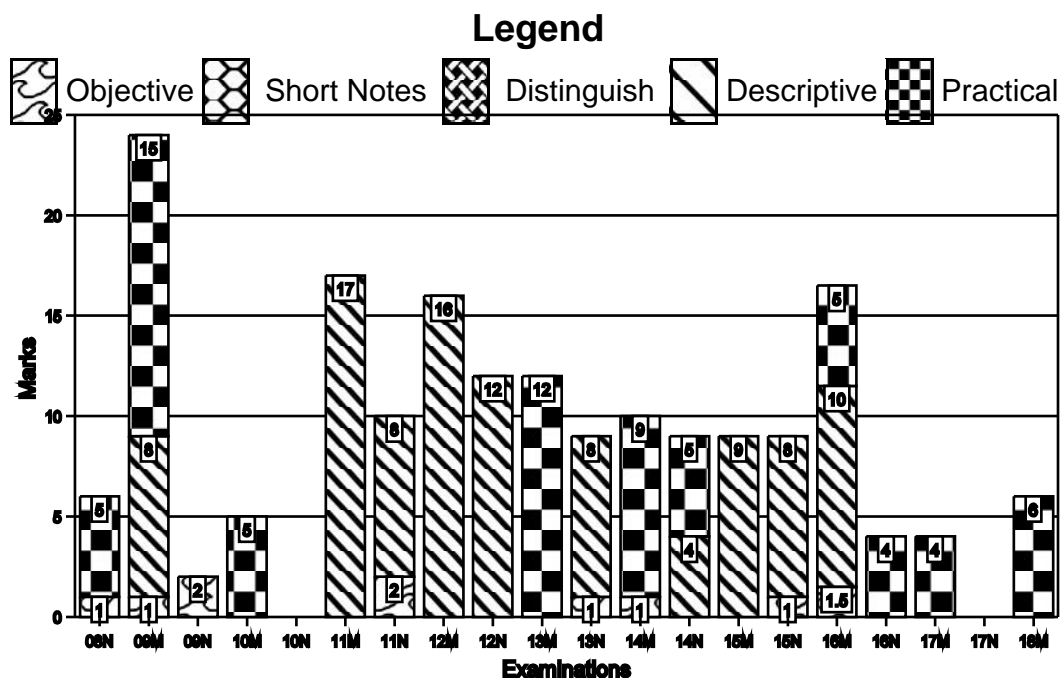


CHAPTER	<b>Preliminary and Incorporation of Company</b>
<b>1</b>	
<b>This chapter covers:</b> Study's Chapter: 1 and 2	
<b>Chapter Comprises:</b> ⚡ Definitions ⚡ Formation of Company ⚡ MOA ⚡ AOA ⚡ Incorporation of company ⚡ Alteration of Memorandum ⚡ Alteration of Articles ⚡ Service of Documents ⚡ Authentication of documents, proceedings and contracts.	

### THE GRAPH

..... Trend Analysis

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



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TIME MANAGER		..... Plan and Manage your Time						
Time	First In-depth learning	Instant Revision (in hours)		Periodic Revision (in hours)				
	i.e.....	Next day i.e....	After 7 days i.e. on	After 30 days i.e. on	After 60 days i.e. on	After 90 days i.e. on	Fix as per your need.	
	..... Day 1	..... Day 2	..... Day 8	..... Day 30	..... Day 60	..... Day 90		
1. Budgeted								
2. Actual								
3. Variance (1-2)								

QUICK LOOK		..... Weightage Analysis	
Repeatedly Asked Questions	Common Answered Questions	Must Try Question	
2.6, 6.2, 7.1	6.1, 8.2, 10.2, 11.1	3.2, 5.5, 6.1, 10.2	

Q.1.1	2018 - May [1] {C} (a)	Practical
<p>MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid Up Share Capital of ₹ 45 lakh and turnover of ₹ 3 crores. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:</p> <p>(i) Whether the MNP Private Ltd. can avail the status of small company?</p> <p>(ii) What will be your answer if the turnover of the company is ₹ 1.50 crore?</p> <p style="text-align: right;">(6 marks)</p>		

Q.2.1	2007 - Nov [8]	Descriptive
What is meant by 'Pre-Incorporation Contracts' ? Can these contracts be enforced by the prospective company after its incorporation against the third parties with whom the promoters had entered into certain contracts? Explain. (5 marks)		

**Answer :**

**Preliminary Contracts or Pre-Incorporation Contracts:** When the contracts are agreed, on behalf of the company, before its incorporation they are called the preliminary or pre-incorporation contracts. These contracts may relate either to the property, which the promoter wants to purchase for the company or the technical knowledge which is essential for the success of the company. These types of contracts cannot bind the company until it is incorporated.

**The legal position in case of preliminary contracts can be studied under two heads :**

1. Position before passing of Specific Relief Act, 1963, and
  2. Position after passing of Specific Relief Act, 1963
1. **Position Before 1963 :**
    - (i) The preliminary contract made before passing of Specific Relief Act 1963, cannot bind the company because it has no legal existence before incorporation.
    - (ii) The companies are not in a position to sue on a pre-incorporated contracts.
    - (iii) Ratification are not possible in the case of the preliminary contract, as the ostensible principal not exist at the time of the contract.
  2. **Position After 1963 :** The promoters found difficulties in carrying out the work before the Specific Relief Act 1963, because the contracts prior to incorporation were void. The Specific Relief Act 1963 came as a relief to the promoters. The Act provides that where the promoters of a public company have made a contract before its incorporation, for the purpose of the company and if the contract is warranted by the terms of its incorporation, the company may enforce it.

**Pre incorporation contracts under Companies Act, 2013:** The Companies Act, 2013 does not lay down any provisions relating to pre incorporation contracts. Hence, such contracts can be entered into by the promoters in their own names. If entered into in the name of the company, such contracts will be void as on the date of contract, the company not being in existence is not competent to contract and under the Indian Contract Act, 1872 such a contract will be void. Pre incorporation contracts cannot also be ratified when the company is formed as the same are void to begin with. The company not being in existence cannot also appoint promoters as agents to act on its behalf.

**Effect of Pre-Incorporation Contracts :**

**1. Where a company adopts a pre- incorporation contract**

- (i) The contract can be enforced by the company.
- (ii) The contract becomes binding on the company.
- (iii) The promoters are not personally liable on such a contract.

**2. Where a company does not adopt a pre- incorporation contract:**

- (i) The pre- incorporation contract shall not bind the company.
- (ii) Even if the contract stipulates that the company, after incorporation, shall be bound by it, the company shall not be bound by such contract.
- (iii) Even if the company takes the benefit of pre- incorporation contract, it is not bound by it. **[Re, English & Colonial Produce Co. Ltd.]**
- (iv) A company cannot ratify a pre- incorporation contract.
- (v) The company, after incorporation, cannot enforce a pre- incorporation contract. *[Natal Land & Colonisation Co. Ltd. v Pauline Colliery & Development Syndicate Ltd.]*
- (vi) The promoters are personally liable on pre- incorporation contract **[Kelner v Baxter]**.

**3. Requirements of adoption of a pre- incorporation contract.**

As per Sec.. 15 and 19 of the Specific Relief Act, 1963 a company as well as the other party to the contract is bound by a pre- incorporation contract, if the following conditions are satisfied:

- (i) The promoters entered into a contract before incorporation of a company.
- (ii) The contract so entered is for the purpose of the company, i.e. the promoters entered into the contract on behalf of the proposed company.

- (iii) Such contract is warranted by the terms of incorporation of the company (i.e. the contract must fall within any of the clauses contained in 'object clause').
- (iv) The company has accepted such contract after incorporation of the company.
- (v) The company has communicated such acceptance to the other party to the contract.

Thus, the rules in respect of preliminary contracts may be summarised as follows:

- (a) The vendor cannot sue, or be sued by the company thereof, after its incorporation;
- (b) Person who acts for the intended company remains personally liable to the vendor even if the company purports to ratify the agreement, unless the agreement provides that:
  - his liability shall cease if the company adopts the agreement; and
  - either party may rescind the agreement, if the company does not adopt it within a specified time;
- (c) After incorporation, the company may adopt the preliminary agreement. But this must be by novation which may be implied from the circumstances. But in some cases, the memorandum directs the directors to execute such contracts. The company can enforce a pre-incorporation contract if it is warranted by the terms of incorporation and for purposes of company.

<b>Q.2.2</b>	<b>2009 - Nov [2] (c)</b>	<b>Objective</b>
Pick out the correct answer from the following and give reasons :		
(i) Contracts which entered into, by agents or trustees on behalf of a prospective company before it has come into existence are called:		
(1) Provisional contracts		
(2) Pre-incorporation contracts		
(3) Both provisional and pre-incorporation contracts		
(4) None of the above.		
		(1 mark)

**Answer:**

**2.6****Solved Scanner CA Inter Gr. I Paper - 2A (New**

**Option 2: Pre-incorporation Contracts:** Contracts made by promoters who act as agents or trustees of the company before its incorporation, are called pre-incorporation contracts. Such contracts cannot bind the company because the company has no legal status prior to its incorporation.

Q.2.3	2014 - Nov [7] (b)	Descriptive
Attempt the following: Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain. (4 marks)		

**Answer:**

**Definition of Promoter:** As per Sec. 2(69) of the Companies Act, 2013

**Promoter** means a person:

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Sec. 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

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

**Thus as per the provisions of Companies Act, 2013,** “Promoter is a person who originates a scheme for the formation of the company, gets the memorandum and articles prepared, executed and registered and finds the first directors, settles the terms of preliminary contracts and prospectus and makes arrangements for advertising and circulating the prospectus and placing the capital”.

The term ‘promoter’ is not a term of law. It is term of business i.e. this term is to be understood in the practical business sense.

Q.2.4	2015 - May [7] (b)	Descriptive
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Answer the following question:

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 Amendment Act, 2017**

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 ten crore rupees, and
- (b) Turnover of which as per its Profit and Loss Account for the immediately preceding financial year does not exceed two crore rupees or a higher prescribed amount which shall not be more than one hundred 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.

Q.2.5	2016 - May [4] (c)	Descriptive
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;

**2.8****Solved Scanner CA Inter Gr. I Paper - 2A (New**

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.

Q.2.6	2001 - Nov [3] (b), 2013 May [6] (a)	Practical
<p>K Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of the above furniture. As a result supplier sued the promoters of the company for the recovery of money.</p> <p>Examine whether promoters can be held liable for the payment under the following situations:</p> <ol style="list-style-type: none"><li>(i) When the company has already adopted the contract after incorporation?</li><li>(ii) When the company makes a fresh contract with the suppliers in substitution of pre-incorporation contract? (6, 8 marks)</li></ol>		

**Answer:**

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name, (*Scot v. Lord Ebury*) even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on



its behalf before it came into existence as ratification by the company when formed is legally impossible.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-of the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

- (i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.
- (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

### 3

### *Formation of Company*

Q.3.1	2007 - May [10]	Descriptive
Mr. Ram Lal and his friend desire to incorporate a Public Company and approach you for help. Advise.		(5 marks)

**Answer :**

**Formation of Company:** Sec. 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company with or without limited liability any 7 or more persons can form a company for any lawful purpose by subscribing their

names to memorandum and complying with the requirements of this Act in respect of registration. Persons who form the company are known as promoters. It is they who conceive the idea of forming the company. They take all necessary steps for its registration.

**Formation of a company involves following procedures:**

1. Reservation of name by filing e-application.
2. Drafting, signing and Submission of Memorandum of Association to ROC. The documents have to be e-filed and e-stamped.
3. Drafting, signing and submission of Articles of Association electronically. Stamp duty is to be paid electronically.
4. Consent of persons nominated as Directors to act as Directors to be submitted electronically.
5. Submission of statutory declaration of compliance.
6. Obtain certificate of incorporation digitally signed by ROC.
7. Allotment of Corporate Identity Number (CIN) by ROC on and from date mentioned in certificate of incorporation.

**Documents to be filed for incorporation of a company:**

For incorporation of a company, the following documents are to be filed:

1. Memorandum and articles of the Company duly signed by all the subscribers to the memorandum in the manner prescribed.
2. A declaration in the prescribed form by an advocate, a Chartered Accountant or Company Secretary in practice who is engaged in the formation of the Company any by a person named in the articles as a director, manager or secretary of the Company that all requirements of this Act and the rules made thereunder in respect of registration and matters precedent and incidental thereto have been complied with.
3. An affidavit from each of the subscribers to the memorandum and from persons named as first directors, if any, in the articles giving particulars specified in Sec. 7(1)(e).
4. The address for correspondence till its registered office is established.
5. Particulars of every subscriber to the memorandum alongwith proof of identity as required in Sec. 7(1)(e).
6. Particulars of the persons mentioned in the articles as first directors of the Company, the Director Identification Number, proof of identity as specified in Sec. 7(1)(e).

7. Particulars of the interests of the persons mentioned in the articles as first directors in other firms or bodies corporate alongwith their consent to act as directors of the Company in the manner prescribed.

**Certificate of Incorporation:**

The Registrar of Companies (ROC), on the basis of documents and information furnished under Sec. 7(1) of the 2013 Act registers all documents filed for incorporation of a company and on satisfaction, issues a certificate called 'Certificate of Incorporation' in prescribed form, No. INC 11 of the Companies (Incorporation) Rules, 2014 to the effect that the company has been incorporated under the Act. [Sec. 7(2) of the 2013 Act].

**Certificate of incorporation does not mean all objects are legal:** The certificate only proves conclusively that it has been properly incorporated. It does not prove that all the objects mentioned in it are legal or permissible.

**Leading Case:** *Bowman v. Secular Society Ltd.*

The certificate cannot validate illegal objects. A company cannot carry out an illegal object even if it is specified in the memorandum. [e.g. if a business or product is reserved for public sector or it requires license, the business cannot be started just because it is mentioned in the memorandum]

Q.3.2	2007 - Nov [9]	Descriptive
Mr. V, alongwith six other persons desires to float a company for charitable purposes, as permissible under Section 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 23 of Companies (Incorporation) Rules, 2014]**

Q.3.3	2016 - May [5] (b)	Descriptive
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 be 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).

Q.3.4	2014 - May [7] (c)	Practical
<p>Attempt the following: (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)</p>		

**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.

**2.16****■ Solved Scanner CA Inter Gr. I Paper - 2A (New**

<b>Q.3.5</b>	<b>2014 - Nov [1] {C} (b)</b>	<b>Practical</b>
<p>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.</p> <p>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?</p> <p style="text-align: right;">(5 marks)</p>		

**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 fifty 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 fifty, XYZ Traders Association is having a legal status.

And this legal status will continue even if member of members falls to 18.

## 4

**Memorandum of Association**

Q.4.1	2008 - Nov [2] {C} (b) (i)	Objective
State whether the following statement is True or False and give reasons: 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]

Q.4.2	2013 - Nov [6] (c)	Objective
State whether the following statement is correct or incorrect : (iii) Memorandum of Association is the Charter of the company. (1 mark)		

**Answer:**

Correct.

Q.4.3	2010 - May [8]	Practical
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.*]

<b>Q.5.1</b>	<b>2007 - May [2] {C} (b) (iv)</b>	<b>Objective</b>
Answer the following: A model form of Articles contained in Table 'F' relates to a company limited by (a) Shares (b) Guarantee (c) Shares and Guarantee (d) None of the above		
		(1 mark)

**Answer :**

Shares

<b>Q.5.2</b>	<b>2009 - May [2] {C} (b) (ii)</b>	<b>Objective</b>
State whether the following statement is 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.

<b>Q.5.3</b>	<b>2009 - Nov [2] (b) (i)</b>	<b>Objective</b>
State whether the following statement is true or false and give reasons: 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.

<b>Q.5.4</b>	<b>2012 - May [4] (a)</b>	<b>Descriptive</b>
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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.

Q.5.5	2015 - May [1] {C} (b), RTP	Descriptive
<p>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. (5 marks)</p>		

**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

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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. 30*

Q.5.6	2007 - May [11]	Practical
Explain the doctrine of 'Indoor management' in brief. The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name. (5 marks)		

**Answer :**

**Doctrine of Indoor Management:**

The doctrine of indoor management is an exception to rules 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*]

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 [Rulen 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. The doctrine of Indoor Management as discussed in the Royal British Bank vs. Turquand (1890) 13 Q.B. 283. 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 inquiry or when an instrument purporting to be enacted on behalf of the company is a forgery.

**Present Case** : In the instant problem the doctrine of indoor management can apply only in case of irregularities which might otherwise affect the transaction but it cannot apply to forgery which must be regarded as nullity. Hence, 'B' will not succeed in getting the share registered in his name.

Q.5.7	2016 - Nov [7] (b)	Practical
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		

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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.

**6*****Incorporation of Company***

<b>Q.6.1</b>	<b>1998 - Nov [3] (b), RTP</b>	<b>Descriptive</b>
Explain the meaning of 'Corporate Veil'. Under what circumstances it can be lifted? (6 marks)		
<b>OR</b>	<b>2000 - Nov [1] {C} (a)</b>	<b>Descriptive</b>
'A company is a person separate from its members.' Explain. Examine the circumstances under which the Courts may disregard the Company's Corporate Personality. (12 marks)		



OR	2002 - Nov [8] (a)	Descriptive
	<p>Explain clearly the meaning of Lifting the Corporate Veil, as applicable in case of companies incorporated under the Companies Act, 2013. Under what circumstances the veil of a company can be lifted by the court?</p> <p>(5 marks)</p>	
OR	2004 - Nov [7] {C} (a)	Descriptive
	<p>Answer the following:</p> <p>Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.</p> <p>(5 marks)</p>	

**Answer:**

As per the judicial point of view, a company is a separate legal entity different from its members (Saloman Vs. Saloman & Co. Ltd.). When there are cases of dishonesty and fraudulence in incorporation, the law lifts the veil. This veil is a fictional veil and not a wall between the company and its members, lifting the corporate veil may be defined as looking behind the company as a legal person and identifying the persons who are behind the scene and are responsible for the preparation of fraud.

The circumstances under which the court may lift the corporate veil may be broadly divided into following two heads :

1. Judicial Interpretations.

2. Statutory Provisions.

1. **Judicial Interpretations** : Following are the cases under which the court has lifted the corporate veil:

- (i) **Avoidance of welfare legislation**: Where the device of incorporation is used for reducing the amount to be paid by way of bonus to the workmen, the Supreme Court can uphold the lifting of the veil to look at the real transactions: [*Workmen of Associated Rubber Industry v. Associated Rubber Co. (1986)*].

- (ii) **Protection of Revenue** : Where the medium of the company has been used for tax evasion or to circumvent tax obligation, courts have lifted the veil and looked at the realities of situation. [*In Sir Dinshaw Mancekjee Petit, Re (1927)*].
  - (iii) **Where company is a sham** : When the court finds that company is a mere cloak or sham and is used for some illegal or improper purpose, it may lift veil. The leading case on this was *P.N.B. Finance. v. Shital Prashad (1983)*, where a person borrowed money from a company and invested it into three different companies in all of which he and his sons were the only members, the lending company was advised to bring together the assets of all the three companies, as they were created to do fraud with the lending company.
  - (iv) **Where the company is acting as the agent of the shareholders** : Where a company is devised to act as an agent of its shareholders or of another company it will be responsible for its acts. However, it will be a question of fact every case whether the company is acting as agent for its shareholders.
  - (v) **Determination of character** : Test of control is adopted in the cases when the trade is conducted with enemy country. In such cases the court will lift the veil at the times of war to see whether a company is controlled by enemy aliens. Consequently a company registered in England may be 'alien enemy' if its agents or the persons in defect control of its affair, are alien. (*Daimler Co. Ltd. Vs. Continental Tyre And Rubber Co. Ltd. (1916)*)
  - (vi) **Prevention of fraud or improper conduct** : The court will disregard the separate existence of the company, where it is shown the company is formed for evading contractual and statutory obligations [*Gilford Motor Co. Ltd. v. Horne. (1933)*].
2. **Statutory Provision** : Cases are as follows :
- (i) **Number of member below statutory minimum [Sec. 3A of the Companies Amendment Act, 2017]** : If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six

months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor."

- (ii) **Failure to refund application money [Sec. 39]** : In case of issue of shares by a company to the public, if the company is unable to receive minimum subscription within thirty days from the first issue of the prospectus then all moneys received from applicants shall have to be returned. If the amount is not refunded within fifteen days from the closure of issue the directors shall be liable to repay the money with interest at the rate of fifteen percent annum.
- (iii) **Fraudulent trading [Sec. 339]** : On the winding up procedure of the company, if it is found that any business of the company has been carried on to defraud creditors, the court shall declare those persons personally liable for the debts and other liabilities of the company.
- (iv) **Group Accounts [Sec. 129]**: Where the company has subsidiaries and group accounts, than the principle of separate legal entity may be disregarded. Along with the own profit and loss account and balance sheet, subsidiaries and group accounts have also to be laid down.

Q.6.2	2003 May [7] {C} (c), 2011 - May [1] {C} (c)	Descriptive
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, 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

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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.

Q.6.3	2011 - May [7] (b)	Descriptive
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:**

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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.

<b>Q.6.4</b>	<b>2011 - Nov [6] (c) (iii)</b>	<b>Objective</b>
State whether the following statement is correct or incorrect: (iii) A company is a legal person but not a citizen. (1 mark)		

**Answer :**

(iii) Correct

<b>Q.6.5</b>	<b>2014 - May [6] (c) (i)</b>	<b>Objective</b>
State whether the following statement is correct or incorrect: The concept of legal personality of a company is of absolute nature. (1 mark)		

**Answer:**

This statement is correct.

<b>Q.6.6</b>	<b>2015 - Nov [6] (c) (i)</b>	<b>Objective</b>
State whether the following statement is correct or incorrect: 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.

<b>Q.6.7</b>	<b>2009 - May [8], RTP</b>	<b>Practical</b>
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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*.

## 7

### ***Registered Office of the Company***

Q.7.1	2011 - Nov [4] (a), 2013 - Nov [6] (a), 2015 - Nov [6] (a)	Descriptive
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 each)		

**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, within thirty days of the Companies (Amendment) Act, 2017 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)]. Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance: [Inserted by Companies (Amendment) Act, 2017]
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)]

<b>Q.7.2</b>	<b>2008 - May [11], RTP</b>	<b>Practical</b>
VD Company Ltd. is registered in Mumbai within the jurisdiction of the		

Registrar of Companies, Pune. 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.	<b>Passing of Special Resolution</b>	The company shall convene a General Meeting of Shareholders and pass a <b>Special Resolution</b> .
2.	<b>Publication and Serving of Notice as per Rule 28</b>	Not less than one month before filing application with the Regional Director for the change of Registered Office, the Company shall: <ul style="list-style-type: none"> <li>(i) <b>Publish a Notice</b>, 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</li> <li>(ii) Serve <b>Individual Notice</b> on each Debenture Holder, Depositor and Creditor of the Company:               <ul style="list-style-type: none"> <li>(a) clearly indicating the matter of application, and</li> <li>(b) stating that any person whose interest is likely to be affected by the</li> </ul> </li> </ul>

		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.	<b>Application to Regional Director</b>	File an application in <b>Form No. INC.23</b> , 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.	<b>Rule as to change</b>	<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.	<b>Confirmation from RD</b>	Confirmation from Regional Director shall be communicated to the Company within <b>thirty days</b> from the date of receipt of application.
6.	<b>Filing with ROC</b>	<p>The Company shall file the following documents with ROC within the specified time limits:</p> <p>(i) Confirmation obtained from Regional Director, within <b>60 days</b> of the date of confirmation.</p> <p>(ii) Copy of Special Resolution in <b>Form No. MGT.14</b> with the ROC within <b>30 days</b> of</p>

		the Resolution. (iii) Notice of new location to ROC, in <b>Form No. INC. 22</b> within <b>15 days</b> of the change in Registered Office.
<b>7.</b>	<b>Certificate by ROC</b>	(a) ROC shall register the confirmation, and certify the registration within <b>30 days</b> from the date of filing the confirmation. (b) Certificate given by ROC shall be <b>conclusive evidence</b> that all the requirements of this Act with respect to 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.

**8*****Alteration of Memorandum***

<b>Q.8.1</b>	<b>2012 - May [6] (a)</b>	<b>Descriptive</b>
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 if 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 the 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]

<b>Q.8.2</b>	<b>2012 - Nov [4] (a)</b>	<b>Descriptive</b>
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)		
<b>OR</b>	<b>2016 - May [1] {C} (b)</b>	<b>Practical</b>
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)		
<b>OR</b>	<b>2017 - May [4] (a) (ii)</b>	<b>Practical</b>
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:**

**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.
- (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.

**9*****Rectification of Name of Company***

Q.9.1	2009 - May [10], RTP	Practical
<p>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 is intending to alter its name.</p> <p>Advice the India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 2013.</p> <p style="text-align: right;">(5 marks)</p>		

**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]

## 10

***Alteration of Article***

Q.10.1	2014 - May [6] (a)	Descriptive
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.

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<b>Q.10.2</b>	<b>2008 - Nov [10], RTP</b>	<b>Practical</b>
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)		
<b>OR</b>	<b>2013 - May [5] (b)</b>	<b>Practical</b>
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 :****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 fifteen days the altered Articles with the Registrar alongwith necessary documents, such as the copy of the special resolution etc, and in such manner as is prescribed under Rule 33 of Companies (Incorporation) Rules, 2014. 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.

**11*****Conversion of Companies Already Registered***

Q.11.1	2007 - Nov [10]	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. (5 marks)		

OR	2011 - May [6] (a)	Descriptive
Describe the procedure for converting a private company into a public company under the provisions of the Companies Act, 2013. (8 marks)		

**Answer :**

**Conversion of Private Company into Public Company:** Where a private company alters its articles by passing special resolution in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company, then such company shall cease to be a private company from the date of such alteration.

**Filing with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar,

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together with a printed copy of the altered articles, within a period of 15 days in such manner as may be prescribed, 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.

Q.11.2	2011 - Nov [6] (c) (iv)	Objective
State whether Correct or Incorrect. If the Central Government permits, a public company can be converted into a private company. (1 mark)		

**Answer :**

Correct

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***Subsidiary Company not to hold share  
in its Holding Company***

Q.12.1	2016 - May [5] (a) (iii)	Objective
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.

Q.12.2	2014 - May [1] {C} (b)	Practical
Anson Limited held equity shares in Booban Limited. Later on Anson Limited became a subsidiary company of Booban Limited. Decide under the Companies Act, 2013 whether it is necessary for Anson Limited to surrender the equity shares of Booban Limited? (5 marks)		

**Answer:**

**Subsidiary company not to hold shares in its holding company:**

According to **Sec. 19 of the Companies Act, 2013**, no company shall either by itself or through its nominees.

- (i) hold any shares in its holding company; and
- (ii) no holding company shall allot or transfer its shares to any of its subsidiary companies; and
- (iii) any such allotment or transfer of shares of a company made to its subsidiary company shall be void.

**Following are the exceptions:**

- (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.

**Present Case:**

Anson Limited held equity shares in Booban Limited. Later on Anson Limited became a subsidiary company of Booban Limited.

Following the provisions of **Sec. 19 of the Companies Act, 2013**, it is not necessary for Anson Ltd. to surrender the equity shares of Booban Ltd. as Anson Ltd. held equity shares before it became a subsidiary company.

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**Service of Document**

Q.13.1	2012 - Nov [7] (c)	Descriptive
<p>Answer the following: Discuss the provisions of law contained in the Companies Act, 2013 as regards to the service of documents. (4 marks)</p>		

**Answer:****Serving of Documents**

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



	<p>of Companies (Incorporation) Rules, 2014.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Provisions of the Act or Rules for filing of documents with the ROC in electronic mode, also apply,</li> <li>• 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.</li> </ul>
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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

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- (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.