Que. No. 7] State the provisions relating to restoration of name of company after striking-off.

Can aggrieved creditor may apply for restoration of the name of the company after 10 years if it's striking-off? If so, how?

CS (Executive) – June 2011 (2 Marks), June 2013 (2 Marks)

Ans.: Appeal to Tribunal [Section 252]: Any person aggrieved by an order of the Registrar, notifying a company as dissolved u/s 248, may file an appeal to the Tribunal within a period of 3 years from the date of the order of ROC. If the Tribunal is of the opinion that the removal of the name of the company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may order restoration of the name of the company. However, before passing any order, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

Application by ROC for restoration of name of company: If the ROC is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of 3 years from the date of passing of the order dissolving the company, file an application before the Tribunal seeking restoration of name of such company.

Filing copy of order of Tribunal with ROC: A copy of the order passed by the Tribunal shall be filed by the company with the ROC within **30 days** from the date of the order and on receipt of the order. The ROC shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

Application for restoration of name of company by the company, member, creditor or workman: If a *company*, or *any member* or *creditor* or *workman* thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by any of them before the expiry of **20 years** from the publication of notice in the Official Gazette may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the ROC.

The Tribunal may give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

CHAPTER 30

AN INTRODUCTION TO E-GOVERNANCE & XBRL

This Chapter Covers:

- *MCA-21 Project*
- *Filing of forms electronically*
- *XBRL*

Que. No. 1] Write a short note on: MCA-21 Project

Write a short note on: SMART Governance **CS (Executive) – Dec 2008 (4 Marks)**

Ans.: MCA-21 stands for e-governance initiative of Ministry of Corporate Affairs (MCA) of the 21st Century. The project is named MCA-21 as it aims at repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st Century. It is based on the Government's vision of National e-governance in the country. E-governance or Electronic Governance is the application of Information Technology to the Government functioning in order to bring about **S**imple, **M**oral, **A**ccountable, **R**esponsive & **T**ransparent **(SMART)** Governance. This project of MCA aims at moving from paper based to nearly paperless environment.

The project serves the interest of all the key stake holders and the public at large. Also professionals need no longer to visit the offices of ROC and are able to interact with the Ministry using MCA-21 portal from their offices or home. The services of the Ministry of Company Affairs with the introduction of MCA-21 will be e-form driven. Form filing will be done using freely downloadable software and it can be done offline. The prerequisite for using the MCA-21 portal will be P-4 computer with printer, windows 2000/XP/Vista/7, internet explorer 6.0 version, Adobe Acrobat Reader from version in 9.4 to version 7.5 and digital signature certificate.

To know better about how MCA-21 will function, one needs to know about the set up of the Ministry of Corporate Affairs.

Set-up of MCA: Ministry of Corporate Affairs has a three tier organizational set-up:

- Headquarters at New Delhi

- Regional Directors (RD) at Mumbai, Kolkata, Chennai, Noida, Ahmedabad and Hyderabad
- Registrar of Companies (RoC) in States and Union Territories

MCA Headquarters handles cases that require approval of the Government of India (GOI) for citizen related functions. RD supervises the functioning of ROCs and handles the matters delegated by GOI while the ROC offices handle the bulk of citizen facing functions.

The Official Liquidators (OL) attached to various High Courts functioning in the country are also under the overall administrative control of the MCA. Its headquarters at Delhi also includes two Directors of Inspection and Investigation and Director of Research and Statistics.

Que. No. 1A] What is general structure of e-filing process under MCA-21?

CS (Executive) - June 2011, June 2013 (4 Marks)

Ans.: An e-Form contains certain standardized features. Each e-Form contains the form reference and the description as well as the particular section of the Companies Act or the relevant rules or regulations under which it is required to be submitted. It starts with the Corporate Identity Number (CIN), which works as a unique identifier of an Indian Company and the Foreign Company Registration Number in the case of a Foreign Company that is required to be filled up. By entering the CIN, the company details to the extent these are available in static form in the database, are automatically filled in by using the pre-fill functionality.

Features of e-form and e-filing process :

- The e-Form contains a number of mandatory fields which are required to be filled-in. Certain other fields are non-mandatory in nature which may be filled-in as may be relevant in any particular case.
- An instruction kit is available for each e-Form, which contains details of the instructions for properly filling the e-Form.
- An e-Form may be filled in either online or offline. Online filling implies that the e-Form is filled while being still connected to MyMCA portal through the Internet. Offline filling denotes that the e-Form is downloaded into the user's computer and filled later without being connected to the Internet.
- An e-Form may require certain mandatory attachments to be filed along with it. Optional attachments may also be filed with an e-Form. The list of such attachments is displayed in the e-Form.
- Next to attachment, there is a declaration that is sought from the person filing the e-Form to the effect that the information given in the e-Form and the attachments is correct and complete.
- Most of the e-Forms require the digital signature of the Managing Director or Director, Manager or Secretary of the company for successful filing/submission.
- Further, the digital signature of a third party may also be required in certain cases. In the case of an e-Form for creation or modification of charges, such digital signature is also required from the Bank or Financial Institution.
- In certain cases, certification from the CS or CA or CWA in practice is also required to authenticate the particulars contained in the e-Form. For example, this requirement is mandatory in the case of an e-Form for creation or modification of charges.
- There are built-in facilities to check the filled-in e-Form for requisite validations, to do pre-scrutiny and to modify the e-Form when the same is required to be re-submitted.

- When the "Submitted" button is pressed, the e-Form gets uploaded into the MCA central document repository.
- Thereafter, the requisite fees as applicable for the e-Form should be paid either on-line or off-line.
- Once the e-Form has been accepted and payment of fees has been acknowledged, a work item is created and assigned to the appropriate MCA employee based on pre-defined assignment rules as part of MCA back office workflow automation.
- In the case of an e-Form, the authorized officer affixes his/her digital signature for registering/approving/rejecting the same.
- After the processing of the e-Form is completed, an acknowledgement email is sent to the user regarding its approval/rejection.

Que. No. 2] Write a short note on: Organization of ROC offices under MCA-21

Front Office represents the interface of the corporate and public users with the MCA-21 system.

CS (Executive) - Dec 2008 (4 Marks)

Ans.: The major components involved in this comprehensive e-governance project are front office and back office.

Front Office (FO): The implementation of FO is done in two ways. These can be called as Virtual Front Office (VFO) and Physical Front Office (PFO).

The VFO is what the citizen has in front while accessing the MCA-21 portal. The PFO will be a replacement to the existing ROC counters. The PFO will also accept paper documents. However, these will be converted into electronic documents by customer service agents manning PFO. Also, the authorized person(s) will have to sign these documents digitally. Consequently the authorized signatories for a given document will need to appear in person at the PFO for the purpose of digitally signing the document.

The user can avail the following services on MCA-21 portal

- e-Filing
- Viewing public document
- Requesting certified copies
- Registering investor complaint
- Tracking transaction status

Back Office: The back office process relates to:

- Dynamic routing of documents that have been electronically filed to the concerned official within MCA based on the type of service request.
- Electronic workflow systems to support speed and certainty in service delivery
- Supporting all routine tasks such as registrations and approvals
- Storing of all approved documents of companies as part of electronic records, including provision of access to electronic records for the stakeholders
- Enhancing identification of defaulters
- Increasing efficiency of Technical Scrutiny
- Ensuring close follow-up on matters related to compliance management including prosecutions

- Enabling quicker responses to investor grievances
- Providing alerts when the tasks are not carried out within stipulated period

Que. No. 3] Write a short note on: Key benefits of MCA-21 Project

Ans.: The key benefits of MCA-21 project are:

- Expeditious incorporation of companies
- Simplified and ease of convenience in filing of Forms/Returns
- Better compliance management
- Total transparency through e-Governance
- Customer centric approach
- Increased usage of professional certificate for ensuring authenticity and reliability of the Forms/Returns
- Building up a centralized database repository of corporate operating
- Enhanced service level fulfilment
- Inspection of public documents of companies anytime from anywhere
- Registration as well as verification of charges anytime from anywhere
- Timely redressal of investor grievances
- Availability of more time for MCA employees for monitoring and supervision

Que. No. 4] What is an e-Form?

Ans.: An e-form is the electronic equivalent of the paper form. The Ministry of Corporate Affairs has recently launched a major e-governance initiative MCA-21. In the new system, it is envisaged that all company related documents would be filed electronically. The new e-Forms have been devised and notified by the Ministry for this purpose.

Que. No. 5] How to sign an e-Form?

Ans.: An e-Form can be signed by the authorized signatory/representative using the Digital Signature Certificate (DSC). Click the red colour signature box in the e-Form to affix the digital signature. To avoid increase in size of the e-Form beyond permissible limit of 2.5 MB, always affix the DSC using the **'Sign and Save As'** option.

Que. No. 6] How are payments made electronically? What to do if someone do not have a credit card or access to banking?

Ans.: Payments can be made electronically through credit card or Internet Banking. During the e-Filing process, the system will prompt you to make payment. You can choose the mode of payment and make the payment accordingly.

If you are not having a credit card or Internet banking facility, you can make payment at the counter of an authorized bank through the pre-filled challan generated by the system after e-Filing.

Que. No. 7] Can the form once submitted, be rectified by the company user?

Ans.: Once filed, the e-Form cannot be rectified. You may, however, re-submit the e-Form, if the concerned MCA office has marked the status of your SRN as 'Required Re-submission'.

Que. No. 8] Write a short note on: Director Identification Number (DIN)

Ans.: All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Only a single DIN is required for an Individual irrespective of number of directorships held by him.

"Director Identification Number" means an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such and includes Designated Partnership Identification Number (DPIN) issued u/s 7 of the Limited Liability Partnership Act, 2008 and rules made there under."

DIN is a unique identification number and once obtained is valid for life time of a director.

Que. No. 9] Write a short note on: Corporate Identity Number (CIN) based search of companies

Ans.: Every company has been allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on:

- ROC Registration No.
- Existing Company Name
- Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).
- Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number].

Every foreign company has been allocated a Foreign Company Registration Number (FCRN).

Que. No. 10] Write a short note on: Digital Signature Certificate

CS (Executive) - Dec 2010 (4 Marks)

Under MCA-21, four types of users identified as users of digital signature. Comment.

CS (Executive) - Dec 2008 (4 Marks)

Ans.: The e-Forms are required to be authenticated by the authorized signatories using digital signatures as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic analogue of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate. Under the MCA-21 system the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (CS, CA, CWA & Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

A person requiring a Digital Signature Certificate can approach any of the Certifying authorities identified by the MCA for issuance of Digital Signature Certificate.

Que. No. 11] Write a short note on: Certified Filing Centre (CFC)

Ans.: Certified Filing Centre (CFC) is an extended arm of the Ministry which is manned by professionals from three core areas i.e., Company Secretaries, Chartered Accountants and Cost Accountants. It is one of the various channels available to the stakeholders to enable them to do the statutory filing with ROC Offices across the country. These are managed and operated by professionals on user charge basis.

Que. No. 12] Write a short note on: Service Request Number (SRN)

Ans.: Each transaction under e-filing is uniquely identified by a Service Request Number (SRN). On filing of an e-form, the system will generate and provide a Service Request Number (SRN). A user can check the status of the document/transaction, by entering the SRN.

Que. No. 13] Write a short note on: Pre-certification of e-Forms

Ans.: Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar. This pre-certification is to be carried out by inter-alia, Company Secretaries, Chartered Accountants, Cost Accountants, in whole-time practice.

Que. No. 14] Briefly explain the following terms used under e-filing:

(i) Pre-fill

(ii) Attachment

(iii) Check Form

(iv) Pre-scrutiny

CS (Executive) - June 2009 (8 Marks)

Ans.: Pre-fill: Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.

Attachment: An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file. The objective of the attachment is to provide details relevant to the e-Form for processing. While some attachments are optional some are mandatory in nature.

The attachments to an e-Form will be only in Adobe PDF format. MCA portal shall not accept attachment file of more than 2.5MB and the user is advised to keep the attachment size to minimum.

Check Form: By clicking "Check Form", the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled-in. For example, if the user enters alphabets in "Date of Appointment of Director" field, he/she will be asked to correct the entered information. If the size of attachment is much bigger than the details may be submitted in a floppy or compact disc at the ROC office. For example, In the case of Annual Return filed by the companies having large shareholders base, the list of shareholders may be submitted separately in a CD at the concerned ROC office indicating SRN No. of e-form filed.

Modify: Once the user has done "Check Form", the form gets locked and it cannot be edited. If the user wishes to make any alterations, the form can be overwritten by clicking "Modify" button.

Pre-Scrutiny: Pre-scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. The user has to login on MCA portal to perform the pre-scrutiny of e-From. The necessary attachments and digital signatures should be affixed before submitting the e-Form for pre-scrutiny.

Addendum to e-Form: The user may have to submit some additional supporting documents that are not submitted during the e-Form (application) filing but are required for the processing of the e-Form. MCA may also ask the applicant to provide some additional documents in support of the e-Form already filed so as to expedite the processing of the same. The user can initiate this on their own by checking the track transaction status on My MCA portal or on being notified by MCA through email. Payment of fees is not required for filing an addendum. The supporting documents that the applicant uploads, as an addendum, gets duly associated with the e-Form that was submitted earlier with the given SRN.

Que. No. 15] Distinguish between: Pre-scrutiny & Check Form

CS (Executive) - June 2013 (4 Marks)

Ans.: The difference between check form and pre-scrutiny is that the Check Form is done by internal features of the form which ensure that all the mandatory and required field are filled up and attachment are made to the e-from, while Pre-Scrutiny is a complete legal and technical scrutiny of an e-form done by the MCA portal before accepting the form.

Que. No. 16] Write a short note on: Online Inspection of Documents

Ans.: The documents filed online, once taken on record by ROC Offices shall be available for public viewing on payment of requisite fees. These documents, which shall be in the domain of public documents, include documents relating to incorporation, charges, annual returns and balance sheets and change in directors. A certified copy of the documents can also be obtained by anyone so interested.

Que. No. 17] Write a short note on: XBRL

Ans.: XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. It is an open standard, free of licence fees, being developed by a non-profit making international consortium. Other pages on this website provide detailed information on XBRL, its technical features and its business opportunities.

XBRL is a data-rich dialect of XML (Extensible Markup Language), the universally preferred language for transmitting information via the Internet. It was developed specifically to communicate information between businesses and other users of financial information, such as analysts, investors and regulators. XBRL provides a common, electronic format for business reporting. It does not change what is being reported. It only changes how it is reported.

XBRL is a world-wide standard, developed by an international, non-profit-making consortium, XBRL International Inc. (XII). XII is made up of many hundred members, including government agencies, accounting firms, software companies, large and small corporations, academics and business reporting experts. XII has agreed the basic specifications which define how XBRL works.

Que. No. 18] Write a short note on: Benefits of XBRL

XBRL offers major benefits at all stages of business reporting and analysis. Comment.

CS (Executive) – June 2014 (4 Marks)

Ans.: XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision-making. All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data. XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and manipulate XBRL information.

Data Collection and Reporting: By using XBRL, companies and other producers of financial data and business reports can automate the processes of data collection. For example, data from different company divisions with different accounting systems can be assembled quickly, cheaply and efficiently if the sources of information have been upgraded to using XBRL. Once data is gathered in XBRL, different types of reports using varying subsets of the data can be produced with minimum effort. A company finance division, for example, could quickly and reliably generate internal management reports, financial statements for publication, tax and other regulatory filings, as well as credit reports for lenders. Not only can data handling be automated, removing time-consuming, error-prone processes, but the data can be checked by software for accuracy.

Data Consumption and Analysis: Users of data which is received electronically in XBRL can automate its handling, cutting out time-consuming and costly collation and re-entry of information. Software can also immediately validate the data, highlighting errors and gaps which can immediately be addressed. It can also help in analyzing, selecting, and processing the data for re-use. Human effort can switch to higher, more value-added aspects of analysis, review, reporting and decision-making. In this way, investment analysts can save effort, greatly simplify the selection and comparison of data, and deepen their company analysis. Lenders can save costs and speed up their dealings with borrowers. Regulators and government departments can assemble, validate and review data much more efficiently and usefully than they have hitherto been able to do.

Que. No. 19] Write a short note on: Approval Services

Ans.: Approval from MCA (Headquarters): It is required in the following cases:

(a) Exemption from attaching annual accounts of subsidiary(s)

(b) Exemption or extension time for repayment of deposits

(c) Recognition as a Nidhi company

(d) Appointment of sole selling agent

(e) Appointment of sole buying agent

(f) Declaration of dividend out of reserves

(g) Exemption from providing depreciation

(h) Consent for holding office or place of profit

(i) Providing loan or guarantee or security in connection with the loan to or by specified category of persons

(j) Modification of the form and content of Balance Sheet and Profit and Loss Account

(k) Appointment of Cost Auditor Forms

Approval Services – Regional Director: The approval of the Regional Director is required in respect of the following matters:

(a) Issue of licence under Section 8 to an existing company

(b) Issue of licence under Section 8 to a new association

(c) Approval for entering into contract under Section 188

(d) Rectification of name of company

(e) Appointment/Removal of auditor

(f) Shifting of registered office of the company from the jurisdiction of one ROC to another within the same State

(g) Opening of new branches by a Nidhi Company Forms

Approval Services – ROCs: ROCs are empowered to accord approval, or to give any direction in relation to the matters pertaining to the change of name of an existing company and the conversion of a public company to private company. In addition, ROC approval is required in following cases:

(a) Extension of time period for holding AGM

(b) Holding AGM at place other than registered address

(c) Declaring of company as defunct

(d) Extension of the period of annual accounts

(e) Amalgamation of companies

(f) Compounding of offences

Que. No. 20] Write a short note on: Informational Services

Ans.: Informational services cover those forms, which are to be filed with ROC for informational purposes, in compliance with the provisions of the Companies Act, 2013. In following cases, forms relating to following informational services are required to be filed:

(a) Consent and withdrawal of consent of persons charged as officers in default

(b) Reporting of Corporate Social Responsibility (CSR)

(c) Resolutions and agreements

(d) Notice of address of place where books of account are kept

(e) Information in relation to any offer of scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company

(f) Order received from Court or Tribunal

Que. No. 21] Distinguish between: 'Informational Services' and 'Approval Services'

CS (Executive) – June 2016 (4 Marks)

Ans.: Following are the main points of distinction between informational services and approval services:

Points	Informational Services	Approval Services
Meaning	Informational services cover those forms, which are to be filed with ROC for informational purposes, in compliance with the provisions of the Companies Act, 2013.	MCA, Regional Directors & ROCs are empowered to accord approval, or to give any direction in relation to the certain matters. Such services are known as approval services.
Example	Forms relating to following informational services are required to be filed: (a) Consent and withdrawal of consent of persons charged as officers in default (b) Voluntary Reporting of Corporate Social Responsibility (CSR) (c) Resolutions and agreements (d) Notice of address of place where books of account are kept (e) Information in relation to any offer of scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company (f) Order received from Court or Tribunal	ROC approval is required in following cases: (a) Extension of time period for holding AGM (b) Holding AGM at place other than registered address (c) Declaring of company as defunct (d) Extension of the period of annual accounts (e) Amalgamation of companies (f) Compounding of offences

Que. No. 22] Write a short note on: Certified Filing Centre (CFC)

Ans.: CFC is an extended arm of the Ministry which is manned by professionals from three core areas *i.e.*, Company Secretaries, Chartered Accountants and Cost Accountants. It is one of the various channels available to the stakeholders to enable them to do the statutory filing with ROC Offices across the country. These are managed and operated by professionals on user charge basis.

CHAPTER 31

LIMITED LIABILITY PARTNERSHIP

This Chapter Covers:

- *Introduction*
- *Salient Features*
- *The important terms as per the Limited Liability Partnership Act, 2008*
- *The important requirements for formation of a Limited Liability Partnership*
- *Partners and Designated Partners*
- *Roles and responsibilities of Designated Partners*
- *Limited Liability Partnership (LLP) Agreement.*
- *LLP for the professionals*
- *Statement of Account and Solvency*
- *Audit of Limited Liability Partnership*
- *Filing of Annual Return*
- *Foreign Limited Liability Partnership*
- *Electronic filing of documents*
- *Investigation of the affairs of LLP*
- *Winding up of LLP*
- *Winding up of unregistered companies*

Important Note: In this chapter, Rule means Limited Liability Partnership Rules & Forms, 2008.

Que. No. 1] What are the salient features of the Limited Liability Partnership (LLP)?

CS (Executive) – June 2009 (8 Marks), Dec 2009 (6 Marks)

Ans.: The salient features of the Limited Liability Partnership (LLP) are as follows:

- The LLP is a body corporate and a legal entity separate from its partners.
- Any 2 or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the ROC, form a LLP.
- The LLP has a perpetual succession.
- The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP.
- A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible and intangible in nature.
- No partner would be liable on account of the independent or un-authorized acts of other partners or their misconduct.
- Every LLP shall have at least 2 partners and shall also have at least 2 individuals as Designated Partners, of whom at least one shall be resident in India.
- A LLP shall maintain annual accounts reflecting true and fair view of its state of affairs.
- A statement of accounts and solvency shall be filed by every LLP with the ROC every year.
- The accounts of LLPs shall also be audited.
- The Central Government has power to investigate the affairs of an LLP by appointment of competent inspector for the purpose.
- The Indian Partnership Act, 1932 shall not be applicable to LLPs.
- A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation.
- The Central Government has made rules for carrying out the provisions of the LLP Act.

Que. No. 2] Distinguish between: Limited Liability Partnership (LLP) and Partnership

CS (Executive) – June 2013, Dec 2013 (4 Marks)

Ans.: Following are the main points of distinction between LLP and Partnership:

Points	Limited Liability Partnership	Partnership
Meaning	Limited liability partnership means a partnership formed and registered under Limited Liability Partnership Act, 2008.	Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
Separate legal entity	LLP is a separate legal entity and therefore, can be sued or it can sue others without involving the partners.	1. A partnership firm is not distinct from the several persons who compose it.
Liability of partners	The partners of a LLP would have limited liability i.e. they would not be liable beyond the money contributed by them.	Partners of a firm would have unlimited liability.
Effect of retirement or death	The retirement or death of a partner would not dissolve the LLP.	The death or retirement of a partner would dissolve the partnership firm.
Property	In a LLP, property of the LLP belongs to the LLP and not to the individuals comprising it.	In a partnership, the property of the firm is the property of the individuals comprising it.
Formation	LLP is formed by an incorporation document and an LLP agreement, thus, giving it legality.	A partnership can be formed either orally or by a deed of agreement whether registered or not

Maximum partners	There shall not be any upper limit on number of partners in an LLP.	As per Section 464 of the Companies Act, 2013 maximum number of partners are 100. However, Rule 10 of Companies (Miscellaneous) Rules, 2014 prescribes 50 persons in this regard.
Perpetual succession	A LLP has perpetual succession, i.e. the death or insolvency of a shareholder or all of them does not affect the life of the LLP.	The death or insolvency of a partner dissolves the firm, unless otherwise provided.
Business with partners	A partner of LLP in his separate capacity as a legal person can do business with the LLP since the LLP is a separate legal entity by itself.	Whereas an individual partner would not be able to conduct business transaction with the partnership firm of which he is a partner.

Que. No. 3] Distinguish between: Limited Liability Partnership (LLP) and Company

Ans.: Following are the main points of distinction between LLP and Partnership:

Points	Limited Liability Partnership	Company
Meaning	Limited liability partnership means a partnership formed and registered under Limited Liability Partnership Act, 2008.	Company means a company incorporated under the Companies Act, 2013 or under any previous company law.
Governing Law	Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008.	Companies are governed by the Companies Act, 2013 and various Rules made thereunder.
Internal rules & regulation	Internal rules and regulation of LLP's are governed by the LLP agreement.	Internal rules and regulation of the companies are governed by the MOA & AOA.
Meetings	In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end.	Every company must hold AGM every year. Every company must hold 4 board meetings and gap between two meetings should not be more than 3 months.
Business	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a company no individual director can conduct the business of the company
Remuneration	There are no provisions in the LLP Act, 2008 regulating the remuneration payable to designated partners.	The Companies Act, 2013 regulates the remuneration payable to directors.
Borrowing power	There are no restrictions on the borrowing powers on the LLP.	There are restrictions on borrowings power on the companies.
Accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Companies have to keep their accounts on accrual basis.
Audit	The audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakhs or if the turnover does not exceed ₹ 40 lakhs.	Audit of a company is compulsory.
Cost Audit	Cost audit is not applicable for LLPs.	Certain companies are required to do cost audit also.
Company Secretary	The appointment of Company Secretaries is not provided in the LLP Act, 2008.	Certain companies are required to appoint Company Secretary.

Que. No. 3A] Distinguish between: Partnership and body corporate

Ans.: Following are the main points of distinction between LLP and Body Corporate:

Points	Limited Liability Partnership	Body Corporate
Meaning	Limited liability partnership means a partnership formed and registered under Limited Liability Partnership Act, 2008.	"Body corporate" or "corporation" includes a company incorporated outside India, but does not include (i) a co-operative society registered under any law relating to co-operative societies and (ii) any other body corporate, which are specified the Central Government by notification
Governing Law	Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008.	Body corporate is regulated by the law under which it is constituted. For example, a company being body corporate, will be regulated by the Companies Act, 2013: RBI is body corporate and will be regulated by the RBI Act, 1934.
Internal rules & regulation	Internal rules and regulation of LLP's are governed by the LLP agreement.	Internal rules and regulation of the body corporates are governed by their MOA & AOA.
Meetings	In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end.	Body corporate has to hold AGM as per the law applicable to it.
Business	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a body corporate business is conducted by the governing body like Board of directors, Trustees or Managing Committees.
Borrowing power	There are no restrictions on the borrowing powers on the LLP.	There are restrictions on borrowings power on the body corporates.
Accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Body corporate has to keep their accounts on accrual basis.
Audit	The audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakh or if the turnover does not exceed ₹ 40 lakhs.	Audit of a body corporate is compulsory.

Que. No. 3B] Distinguish between: Limited liability partnership and producer company

CS (Executive) - Dec 2010 (4 Marks)

Ans.: Following are the main points of distinction between LLP and Producer Company:

Points	Limited Liability Partnership	Producer Company
Meaning	Limited liability partnership means a partnership formed and registered under Limited Liability Partnership Act, 2008.	A producer company means a body corporate, having objects or activities specified in Section 581B of the Companies Act, 1956 and registered as producer company.
Governing Law	Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008.	Producer companies are governed by the Companies Act, 1956.
Internal rules & regulation	Internal rules and regulation of LLP's are governed by the LLP agreement.	Internal rules and regulation of the producer companies are governed by the MOA & AOA.
Meetings	In the LLP Act, there is no stipulation for meeting of partners either periodically or compulsory at the year end.	Every producer company must hold AGM every year. A meeting of the board shall be held not less than once in every 3 months and at least 4 board meetings shall be held in every year

Points	Limited Liability Partnership	Producer Company
Business	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a producer company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act, 2008 regulating the remuneration payable to designated partners.	The Companies Act, 1956 regulates the remuneration payable to directors.
Borrowing power	There are no restrictions on the borrowing powers on the LLP.	There are restrictions on borrowings power on the producer companies.
Accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Producer companies have to keep their accounts on accrual basis.
Audit	The audit of LLP is not compulsory if the capital contributed does not exceed ₹ 25 lakh or if the turnover does not exceed ₹ 40 lakhs.	Audit of a producer company is compulsory.
Company Secretary	The appointment of Company Secretaries is not provided in the LLP Act, 2008.	Every producer company having an average annual turnover exceeding ₹ 5 Crore in each of 3 consecutive financial years shall have a whole-time secretary.

DEFINITIONS

Que. No. 4] Define the following terms as defined in Limited Liability Partnership Act, 2008:

- **Designated Partner**
- **Limited Liability Partnership**
- **LLP Agreement**
- **Partner**

Ans.: Designated Partner [Section 2 (j)]: Designated partner means any partner designated as such pursuant to Section 7.

Limited Liability Partnership [Section 2 (n)]: Limited liability partnership means a partnership formed and registered under the Limited Liability Partnership Act, 2008.

LLP Agreement [Section 2(o)]: LLP agreement means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

Partner [Section 2 (q)]: Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.

NATURE OF LIMITED LIABILITY PARTNERSHIP

Que. No. 5] Limited Liability Partnership is not a body corporate. Do you agree?

Ans.: LLP to be body corporate [Section 3]: A LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

A LLP shall have perpetual succession.

Any change in the partners shall not affect the existence, rights or liabilities of the LLP.

Non-applicability of the Indian Partnership Act, 1932 [Section 4]: The provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

Que. No. 6] Who can become a partner in LLP? Also state the disqualification of partners in LLP.

What are the disqualification of designated partners?

CS(Executive) - June 2014 (4 Marks)

Ans.: Partners [Section 5]: Any individual or body corporate may be a partner in a LLP.

Disqualification of partners in LLP: An individual shall not be capable of becoming a partner of a limited liability partnership, if-

(a) He has been found to be of unsound mind by a Court of competent jurisdiction or

(b) He is an un-discharged insolvent or

(c) He has applied to be adjudicated as an insolvent and his application is pending.

Que. No. 7] Minimum how may partners are required for limited liability partnership? What the liability of partners if number of partners falls below the minimum number of partners?

There are no shareholders in limited liability partnership, instead there are partners.

CS (Executive) - June 2010 (5 Marks)

Ans.: Minimum number of partners [Section 6]: Every LLP shall have at least 2 partners.

If at any time the number of partners of a LLP is reduced below 2 and the business of the LLP is carried by the remaining one partner even after 6 months form the reduction of number below 2, shall be liable personally for the obligations of the LLP incurred after 6 months.

Maximum number of partner: There is no upper limit on number of partners in an LLP.

Que. No. 8] Write a detailed note on: Designated Partners under LLP Act, 2008

Ans.: Number of Designated Partners [Section 7(1)]: Every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India. However, if body corporate is the partner of LLP, nominees of such body corporate shall act as designated partners.

Resident in India means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one year.

Who can be designated partners [Section 7(2)]: If the incorporation document specifies who are to be designated partners, such persons shall be designated partners on incorporation.

However, if the incorporation document specifies states that each of the partners from time to time of LLP is to be designated partner, every such partner shall be a designated partner.

Any partner may become a designated partner by and in accordance with the LLP agreement. A partner may cease to be a designated partner in accordance with LLP agreement.

Consent to act as designated partners [Section 7(3)]: An individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in such form and manner as may be prescribed. As per Rule 7 consent to act as designated partners has to be given in Form No. 9.

Filing with ROC [Section 7(4)]: Every LLP shall file with the ROC the particulars of every individual who has given his consent to act as designated partner in prescribed form and within 30 days of his appointment. As per Rule 8 consent to act as designated partners has to be file with the ROC in Form No. 5.

Eligibility of designated partner [Section 7(5)]: An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

DPIN [Section 7 (6)]: Every designated partner of a LLP shall obtain a Designated Partner Identification Number (DPIN) from the Central Government. As per Rule 10(1) every individual, who is intending to be appointed as designated partner of a LLP shall make an application electronically to the Central Government for allotment of DPIN in Form No. 7.

Que. No. 9] What are the liabilities of designated partners under the Limited Liability Partnership Act, 2008?

Ans.: Liabilities of designated partners [Section 8]: A designated partner shall be--

(a) Responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement and the reports and

(b) Liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Que. No. 10] Write a short note on: Changes in designated partners

Ans.: Changes in designated partners [Section 9]: A LLP may appoint a designated partner within 30 days of a vacancy arising for any reason. However, if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

Que. No. 11] State the provisions relating to incorporation of LLP.

Ans.: Incorporation document [Section 11]: For a LLP to be incorporated-

(a) Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document.

(b) The incorporation document shall be filed in prescribed manner and with prescribed fees, with the ROC of the State in which the registered office of the LLP is to be situated and

(c) There shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a CS or CA or CWA, who is engaged in the formation of the LLP and by anyone who subscribed his name to the incorporation document, that all the requirements of the Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto.

The incorporation document shall--

(a) be in a prescribed form

(b) State the name of the LLP

(c) State the proposed business of the LLP

(d) State the address of the registered office of the LLP

(e) State the name and address of each of the persons who are to be partners of the LLP on incorporation

(f) State the name and address of the persons who are to be designated partners of the LLP on incorporation

(g) Contain other prescribed information

The incorporation document shall be filed with the ROC in **Form No. 2. [Rule 11]**

The statement of CS or CA or CWA that all the requirements of the Act and the rules made thereunder have been complied with has to be filed in **Form No. 3. [Rule 12]**

Incorporation by registration [Section 12]: When the requirements of Section 11 have been complied with, the Registrar shall register the incorporation document and give a certificate that the LLP is incorporated by the name specified therein within a period of 14 days.

The certificate issued shall be signed by the Registrar and authenticated by his official seal.

The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Que. No. 12] State the provisions relating to registered office of LLP. Can LLP change it registered office form one State to another State? If yes, state the procedure for giving effect to the same.

Ans.: Registered office of LLP and change therein [Section 13]:

(1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other prescribed manner, at the registered office and any other address specifically declared by the LLP.

As per **Rule 16(3)**, the intimation of address for service of documents to LLP shall be given to the Registrar in **Form No. 12.**

(3) A LLP may change the place of its registered office and file the notice of change with the ROC in prescribed form. As per **Rule 17(2)**, such notice of change in registered office shall be given to ROC in **Form No. 15.**

Change of registered office form one State to another State [Rule 17(4)]: Where the change in place of registered office is from one state to another state, the LLP shall, not less than 1 month before filing any notice with Registrar, publish a general notice, at least once, in the district in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated and circulating in that district giving notice of change of registered office.

Change of registered office within the state from the jurisdiction of one Registrar to the jurisdiction of another Registrar [Rule 17(5)]: Where the change in place of registered office is from one place to another place within the state from the jurisdiction of one ROC to the jurisdiction of another ROC or from one state to another state, the LLP shall file the notice in form 15 with the ROC from where the LLP proposes to shift its registered office with a copy thereof for the information to the ROC under whose jurisdiction the registered office is proposed to be shifted.

Que. No. 13] Write a short note on: Effect of registration of LLP

Ans.: Effect of registration [Section 14]: Effect of registration is as follows:

(a) A LLP is capable of suing and being sued by its name.

(b) A LLP can acquire, own, hold and develop or dispose of property.

(c) A LLP can have a common seal, if it decides to have one.

(d) A LLP can do and suffer such other acts and things as bodies corporate may lawfully do and suffer.

Que. No. 14] Write a short note on: Name of LLP

Ans.: Name [Section 15]: Every limited liability partnership shall have either the words "Limited Liability Partnership" or the acronym "LLP" as the last words of its name.

No LLP shall be registered by a name which, in the opinion of the Central Government is –

(a) undesirable or

(b) identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a trade mark.

Que. No. 15] What are the provisions for reservation of name of limited liability partnership under the Limited Liability Partnership Act, 2008?

Ans.: Reservation of name [Section 16]: A person may apply in prescribed form to the ROC for the reservation of a name set out in the application as-

(a) the name of a proposed limited liability partnership or

(b) the name to which a limited liability partnership proposes to change its name.

Upon receipt of an application, the ROC may reserve the name for a period of 3 months if he is satisfied that the name to be reserved is not one which may be rejected on any ground referred Section 15. As per Rule 18(6), every such application shall be in Form No. 1.

Que. No. 16] State the provisions of the Limited Liability Partnership Act, 2008 relating to change of name on the direction of the Central Government?

Ans.: Change of name of LLP [Section 17]: If the Central Government is satisfied that a LLP has been registered under a name which is undesirable or identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a trade mark, the Central Government may direct such LLP to change its name, and the LLP shall comply with the said direction within 3 months.

Que. No. 17] XYZ Limited Liability Partnership was incorporated on 1.1.2015. On 15.6.2015 through inadvertence another limited liability partnership having identical name was registered. State the remedies available LLP registered earlier.

Ans.: Application for direction to change name in certain circumstances [Section 18]: Any entity or LLP which is already incorporated and by the same name another LLP is incorporated then such entity or LLP incorporated first may apply to ROC to given direction to LLP incorporated subsequently to change its name.

As per **Rule 19(1)**, entity or LLP incorporated first may apply to ROC in **Form No. 23** to give a direction to that LLP incorporated subsequently to change its name.

Entity or LLP incorporated first has to apply for such direction within 24 months of incorporation of second LLP having similar or identical name.

Que. No. 18] PQR Limited Liability Partnership desires to change its name to MNO Limited Liability Partnership. State the provision and procedure in this regard.

Ans.: Change of registered name [Section 19]: Any LLP may change its name registered with the ROC by filing with him a notice of change of name in prescribed form and on payment of prescribed fees.

As per Rule 20(2), notice of change of name shall be given to the ROC in Form No. 28.

Que. No. 19] Write a short note on: Publication of name and limited liability of LLP

Ans.: Publication of name and limited liability [Section 21]: Every LLP shall ensure that its invoices, official correspondence and publications bear the following, namely:

(a) The name, address of its registered office and registration number of the limited liability partnership and

(b) A statement that it is registered with limited liability.

PARTNERS & THEIR RELATIONS

Que. No. 20] Who can become partner in limited liability partnership?

Ans.: Eligibility to be partners [Section 22]: On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.

Que. No. 21] How mutual rights and duties of the partners of a LLP are governed under the Limited Liability Partnership Act, 2008?

Ans.: Relationship of partners [Section 23]:

1. The mutual rights and duties of the partners of a LLP shall be governed by the LLP agreement.
2. The LLP agreement and any changes in it shall be filed with the ROC in prescribed form. As per Rule 21(1), every LLP shall file information with regard to the LLP agreement in Form No. 4 within 30 days from the date of agreement.
3. An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
4. In the absence of agreement as to any matter, the mutual rights and duties of the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Que. No. 22] Write a short note on: Cessation of partnership interest in LLP

Ans.: Cessation of partnership interest [Section 24]:

(1) A person may cease to be a partner of a LLP in accordance with an agreement with the other partners. A partner may cease to be a partner of a LLP by giving 30 days notice in writing to the other partners of his intention to resign.

(2) A person shall cease to be a partner of a LLP-
- on his death or dissolution of the LLP or
- if he is declared to be of unsound mind by a competent Court or
- if he has applied to be adjudged as an insolvent or declared as an insolvent.

(3) Where a person has ceased to be a partner of a LLP will be continue to be treated as partner of the LLP unless-
- The person has notice that the such partner has ceased to be a partner or
- Notice of cessation of a partner has been delivered to the ROC.

(4) The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

(5) Where a partner of a LLP ceases to be a partner, he or a person entitled to his share (in case of the death or insolvency of the partner), shall be entitled to receive from the LLP –
- An amount equal to the capital contribution actually made by the partner
- His right in accumulated profits determined as at the date the partner ceased to be a partner.

(6) A ceased partner or a person entitled to his share (in case of the death or insolvency of the partner) shall not have any right to interfere in the management of the LLP.

As per **Rule 22(1)**, every partner shall intimate change in his name or address in **Form No. 6.**

As per **Rule 22(2)**, where a person becomes or ceases to be a partner or where there is any change in the name or address of a partner, the LLP shall file with the Registrar, a notice in Form No. 5.

Que. No. 23] What type of compliance has to be made when a person becomes or ceases to be a partner in LLP or when there is change in his name of address.

Ans.: Registration of changes in partners [Section 25]:

(1) Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change. As per Rule 22(1), every partner shall intimate change in his name or address in Form No. 6.

(2) Where a person becomes or ceases to be a partner, A LLP shall file a notice with the ROC within 30 days from the date he becomes or ceases to be a partner.

Where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change.

As per Rule 22(2), such a notice has to be filed in Form No. 5.

(3) A notice filed with the ROC
- Shall be in prescribed form and accompanied by prescribed fees
- Shall be signed and authenticated by the designated partner of the LLP
- If it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed and authenticated by him.

(4) Any person who ceases to be a partner of a LLP may himself file with the ROC the notice if he has reasonable cause to believe that the LLP may not file the notice with the ROC.

EXTENT & LIMITATION OF LIABILITY OF LLP AND PARTNERS

Que. No. 24] Can one partner be treated as agent of other partner in limited liability partnership?

Ans.: Partner as agent [Section 26]: Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.

Que. No. 25] Discuss the extent of liability of limited liability partnership and its partners.

Ans.: Extent of liability of LLP [Section 27]:

(1) A LLP is not bound by anything done by a partner in dealing with a person if-
- The partner in fact has no authority to act for the LLP in doing a particular act and
- The person knows that he has no authority or does not know or believe him to be a partner of the LLP.

(2) The LLP is liable if a partner commits a wrongful act or omit do on his part in the course of the business of the LLP.

(3) An obligation of the LLP shall be solely the obligation of the LLP. Thus, obligation of LLP is not obligation of partners.

(4) The liabilities of the LLP shall be met out of the property of the LLP.

Extent of liability of partner [Section 28]: A partner is not personally liable, directly or indirectly for an obligation of the LLP.

A partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

Que. No. 26] Explain the doctrine of holding out as enunciated in Section 29 of the Limited Liability Partnership Act, 2008.

Ans.: Holding out [Section 29]: Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Example 1: *Arun introduces Balu as a partner in LLP to Chandan. Balu, in fact, was not a partner in LLP but he did not deny the statement. Chandan advanced a loan to LLP. LLP could not repay the loan. Balu is responsible for the repayment of loan because, Balu is a partner by estoppel.*

Where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name shall not make his legal representative or his estate liable for any act of the LLP done after his death.

Que. No. 27] Under which circumstances the liability of the partner of the limited liability partnership is unlimited.

Ans.: Unlimited liability in case of fraud [Section 30]: If any act is carried out by a LLP or its partners with intent to defraud creditors or any other person or for any fraudulent purpose, the liability of the LLP and its partners shall be unlimited for all or any of the debts or other liabilities of the LLP.

In case any fraudulent act is carried out by a partner, the LLP is liable to the same extent as the partner. However, if it is established by the LLP that such act was without the knowledge or the authority of the LLP then LLP will not be liable.

Punishment: Where any business is carried on with to defraud creditors or any other person or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000.

In addition to penalty as stated above, partner may be liable for criminal proceeding and also liable to pay compensation to any person who has suffered any loss or damage due to such fraudulent acts.

However, LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

Que. No. 28] Write a short note on: Whistle blowing under the LLP Act, 2008

Ans.: Whistle blowing [Section 31(1)]: The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that-

(a) Such partner or employee of a LLP has provided useful information during investigation of LLP or

(b) When any information given by any partner or employee leads to LLP or its partner or employee being convicted under the Act or any other Act.

No action whistle blower [Section 31(2)]: Partner or employee of any LLP cannot be discharged, demoted, suspended, threatened, harassed or discriminated merely because of he provides information pursuant to Section 31(1).

CONTRIBUTIONS

Que. No. 29] State the manner of making contribution by the partners in the business of limited liability partnership.

Ans.: Form of capital contribution [Section 32]: A capital contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the LLP, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the LLP in the prescribed manner.

As per **Rule 23(1)**, contribution of partners shall be valued by a practicing CA or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.

Obligation to contribute [Section 33]: The obligation of a partner to contribute money or other property or other benefit or to perform services for a LLP shall be as per the LLP agreement.

A creditor of a LLP, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

FINANCIAL DISCLOSURES

Que. No. 30] State the provisions relating to maintenance of books of account and audit of accounts of LLP.

Novel LLP, Trademark & Patent Attorneys, have been successfully running their business for the last five years. They have fixed assets in the form of intangibles (software) worth ₹ 75 lakh in their balance sheet. Advise as to whether their accounts are to be audited.

CS (Executive) – Dec 2016 (4 Marks)

Ans.: Maintenance of books of account, other records and audit, etc. [Section 34]:

1. The LLP shall maintain proper books of account relating to its affairs for each year of its existence on cash or accrual basis and according to double entry system of accounting. Such books of account shall be maintained at the registered office for 8 years from the date on which they are made.
2. Every LLP shall, within a period of 6 months from the end of each financial year, prepare a Statement of Account and Solvency in Form No. 8 and such statement shall be signed by the designated partners of the LLP.
3. Every LLP shall file the Statement of Account and Solvency with the ROC every year in within the prescribed.
4. The accounts of LLPs shall be audited in accordance with prescribed rules. However, the Central Government may exempt any class or classes of LLPs from the requirements of auditing accounts by notification in the Official Gazette.

As per **Rule 24(10),** a LLP shall be exempt from the audit of its accounts if its turnover does not exceed, in any financial year, ₹ **40,00,000** or its contribution does not exceed ₹ **25,00,000.**

Appointment of auditor [Rule 24(13) to (17)]: An auditor or auditors of a LLP shall be appointed for each financial year of the LLP, unless the LLP is exempt from the provisions of audit.

For each financial year for which an auditor or auditors is or are to be appointed (other than the LLP's first financial year), the appointment must be made within 30 days before the end of the financial year.

The designated partners may appoint an auditor or auditors –

(a) at any time for the first financial year but before the end of the first financial year, or

(b) within 30 days before the end of the each financial year or

(c) to fill a casual vacancy in the office of auditor or

(d) to fill up the vacancy caused by removal of an auditor.

The partners may appoint an auditor or auditors where the designated partners fail to appoint the auditor as stated above.

Only a chartered accountant in practice shall be qualified for appointment as auditor of a LLP.

Que. No. 31] Write a short note on: Annual Return of LLP

Ans.: Annual Return [Section 35]: Every LLP shall file an annual return duly authenticated with the ROC within 60 days of closure of its financial year in prescribed form.

As per Rule 25(1), annual return has to be filed in **Form No. 11.**

As per Rule 25(2), the annual return shall be accompanied by a certificate from a Company Secretary that he has verified the particulars including from the books and records of the LLP and found them to be true and correct.

OTHER PROVISIONS

Que. No. 32] State the provisions relating to investigation of the affairs of limited liability partnership.

There are certain circumstances under which investigation into the affairs of a limited liability partnership is conducted under the LLP Act, 2008. Comment.

CS (Executive) – June 2016 (5 Marks)

Ans.: Investigation of the affairs of LLP [Section 43]: The Central Government shall appoint one or more inspectors to investigate the affairs of a LLP and to report thereon if –

(a) The Tribunal, either suo motu, or on an application received from not less than 20% of the total number of partners, by order, declares that the affairs of the LLP ought to be investigated or

(b) Any Court, by order, declares that the affairs of a LLP ought to be investigated.

The appointment of inspectors may be made,-

(a) if not less than 20% of the total number of partners of the LLP make an application along with supporting evidence and security amount as may be prescribed; or

(b) if the LLP makes an application that the affairs of the LLP ought to be investigated or

(c) if, in the opinion of the Central Government, there are circumstances suggesting-

- That the business of the LLP is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose or
- That the affairs of the LLP are not being conducted in accordance with the provisions of this Act or
- That, on receipt of a report of the ROC or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the LLP ought to be investigated.

Que. No. 33] Write a short note on: Foreign Limited Liability Partnership A limited liability partnership registered in Singapore is proposing to establish a place of business in Mumbai. Comment. **CS (Executive) – June 2013 (5 Marks)**

Ans.: Foreign limited liability partnership [Section 59]: The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLPs within India and carrying on their business.

As per **Rule 18(4),** a foreign LLP or firm or company may apply in **Form No. 27** to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation and not allotting to any LLP in India. Such reservation shall be valid for 3 years but may renewed on a fresh application along with payment of fee.

A foreign LLP shall, within 30 days of establishing a place of business in India, file with the ROC:

(a) A copy of the certificate of incorporation or registration of the LLP;

(b) The full address of the registered or principal office of the LLP in the country of its incorporation;

(c) The full address of the office of the LLP in India which is to be deemed as its principal place of business in India; and

(d) List of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP.

Que. No. 34] State the mode of winding-up of limited liability partnership. Under which circumstances the LLP compulsory wound-up by the order of the Tribunal?

Ans.: Winding up and dissolution [Section 63]: The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

Circumstances in which LLP may be wound up by Tribunal [Section 64]: A LLP may be wound up by the Tribunal-

(a) If the LLP decides that LLP be wound up by the Tribunal;

(b) If the number of partners is reduced below 2 for a period of more than 6 months;

(c) If the LLP is unable to pay its debts;

(d) If the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

(e) If the LLP has made a default in filing with the ROC the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or

(f) If the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

The Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 prescribes the details provisions relating to winding up. Any LLP may be wound-up voluntarily if the LLP passes a resolution to wind up the LLP with approval of at least 75% of the total number of its partners. However, where the LLP has creditors, whether secured or unsecured, the winding up shall not take place unless approval of such creditors takes place.

A copy of the resolution shall be filed with the ROC within **30 days** of passing of such resolution in **Form No. 1.**

Que. No. 35] "Limited liability partnership is the best suited form of entity for professionals". Elaborate. CS (Executive) - Dec 2014 (4 Marks)

Ans.: LLPs are eminently suited to the professionals like Company Secretaries and others. They will get the benefit of limited liability and insulate them from third party claims against professional negligence or deficiency. A cross section of the professionals may come together under the banner of LLP to carry on the professional work in their respective field of specialization, with the respective statutes according sanction for such a dispensation. Such an arrangement will bring the professionals closer and this will benefit the corporate and other clients, as they may be able to get solutions to their problems under one roof. This will also create a strong organization of professionals and acts as a bulwark against keen competition expected to happen from the professionals abroad, with the opening of legal field under the WTO dispensation.

Que. No. 36] Sun & Moon LLP, Trademark and Patent Attorneys, seeks your advice as to the circumstances which would require their accounts to be audited. They have also asked you whether foreign direct investment is allowed in limited liability partnership. Examining the provisions of the Limited Liability Partnership Act, 2008 and the rules thereof, advise whether they can avail external commercial borrowings.

CS (Executive) - June 2016 (4 Marks)

Ans.: As per **Section 34**, of the LLP Act, 2008, the accounts of LLPs shall be audited in accordance with prescribed rules. However, the Central Government may exempt any class or classes of LLPs from the requirements of auditing accounts by notification in the Official Gazette.

As per **Rule 24 (10)** of the **LLP Rules & Forms, 2008**, a LLP shall be exempt from the audit of its accounts if its turnover does not exceed, in any financial year, ₹ **40,00,000** or its contribution does not exceed ₹ **25,00,000.**

Foreign limited liability partnership [Section 59]: The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLPs within India and carrying on their business.

As per **Rule 18 (4)**, a foreign LLP or firm or company may apply in **Form No. 27** to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation and not allotting to any LLP in India. Such reservation shall be valid for 3 years but may renewed on a fresh application along with payment of fee.

A foreign LLP shall, within 30 days of establishing a place of business in India, file with the ROC:

(a) A copy of the certificate of incorporation or registration of the LLP;

(b) The full address of the registered or principal office of the LLP in the country of its incorporation;

(c) The full address of the office of the LLP in India which is to be deemed as its principal place of business in India; and

(d) List of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP.

As per circular issued by RBI, FDI in LLP is allowed subject to compliance of specified conditions *[A.P. (DIR Series) Circular No. 123]*. However, LLP cannot avail external commercial borrowings (ECB).

CHAPTER 32

DRAFTING OF RESOLUTIONS, NOTICES AND MINUTES

This Chapter Covers:

- *Board Resolutions*
- *Ordinary & Special Resolutions*
- *Notices*
- *Minutes*

BOARD RESOLUTIONS

Que. No. 1] Draft a resolution for charging person with the responsibility of 'officer who is in default'.

Ans.:

Officer who is in default: **[Section 2(60)]**

Passing Authority – Board of Directors

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT pursuant to Section 2(60) of the Companies Act, 2013, Mr. X, _____ (designation to be specified) of the Company, who has given his consent dated _____, and placed before the Board, initialled by the Chairman for purposes of identification, be and is hereby charged with the responsibility of compliance with the provisions of sections of the Companies Act, 2013."

"RESOLVED FURTHER THAT the Company Secretary of the Company be and is hereby authorized to file return electronically in prescribed e-Form with the Registrar of Companies, _____ in respect of the aforesaid resolution."

Que. No. 2] Draft a resolution for adopting common seal of the company.

Ans.:

Adoption of Common Seal: **[Section 9]**

Passing Authority – Board of Directors

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT the common seal of the Company as placed by the Chairman and approved by this meeting and an impression of which has been taken at the margin of the minutes be and is hereby adopted as the common seal of the Company."

"RESOLVED FURTHER THAT the common seal be kept under the safe custody of the Company Secretary. The seal shall not be affixed to any document/instrument except, in presence of the two directors and Company Secretary, who shall sign every document/instrument to which seal is affixed in their presence."

Que. No. 2A] Draft a resolution for change of Registered Office of the company within the city.

Ans.:

Change of registered office of the company within the city/local limit: **[Section 12(2)]**

Passing Authority – Board of Directors

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT the Registered Office of the company be shifted from ....., Satara 415002 to ....., Satara-415002 with effect from ....."

"RESOLVED FURTHER THAT the Company Secretary be and is hereby authorized to file e-Form INC 22 with the Registrar of Companies, Pune."

Que. No. 3] Draft a resolution for writing of certain expenses/losses from securities premium account.

Ans.:

Writing of certain expenses/losses from securities premium account: **[Section 52]**

Passing Authority – Board of Directors

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Section 52(2)(d) read with Section 55 of the Companies Act, 2013, a sum of ₹ 85,00,000 out of the "Securities Premium Account", of the Company in which sum of ₹ 90,00,000 is lying unutilized, be and is hereby utilized in providing for the premium payable on the redemption of redeemable preference shares to be made on dt. _____ and also on the redemption of debentures to be made by the Company on dt. _____"

Que. No. 4] Draft a resolution for appointment of Secretary in whole-time practice for signing annual return.

Ans.:

Appointment of Secretary in whole-time practice for signing annual return **[Section 92(2)]**

Passing Authority – Board of Directors

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT Shri N. S. Zad, a Secretary in whole-time practice, of _____, Satara 415002, be and is hereby appointed, at a remuneration of ₹ 1,00,000 to sign the annual return of the Company to be made up to the date of the ensuing Annual General Meeting of the Company, i.e., _____"

Que. No. 5] Draft a resolution for convening of extra-ordinary general meeting by the board of directors of your company.

Ans.:

Convening of extra-ordinary general meeting: **[Section 101]**

Passing Authority – Board of Directors

Nature of the resolution – Resolution with simple majority

"RESOLVED THAT an Extra-Ordinary General Meeting of the members of the company be convened on ..... at 12.00 a.m. at ..... on a shorter notice."

"RESOLVED FURTHER THAT the draft of the notice convening the Extra-Ordinary General Meeting as stated above together with the relevant explanatory statement annexed thereto be considered, approved and be issued to the members under the signatures of Mr. _____ Company Secretary of the Company."

"RESOLVED FURTHER THAT approval of the members be obtained for holding the meeting at less than 21 days' notice as required by Section 101(1) of the Companies Act, 2013."

Que. No. 6] Draft a resolution for recommending payment of dividend to shareholders.

Ans.:

Payment of dividend: – **[Section 123]**

Passing Authority – Board Meeting

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT a dividend @ ₹ 10.0 per share (i.e. 10%) out of the profits of the financial year ending on 31st March, 2016 on 40,00,000 of ₹100 each fully paid up be recommended to the shareholders for declaration in the ensuing Annual General Meeting of the Company."

Que. No. 7] Draft a resolution for appointment of internal auditors.

Ans.:

Appointment of internal auditor: – **[Section 138(1)]**

Passing Authority – Board Meeting

Nature of the Resolution – Resolution with simple majority

"RESOLVED THAT Mr. Rahul Zad, Chartered Accountant, (Reg. No. .....) Satara, be and are hereby appointed as an Internal Auditor of the Company for conducting internal audit of financial year ended 31st March, 2017."

"RESOLVED FURTHER THAT the Internal Audit Report received from the Auditor shall be placed before the Audit Committee of the Board for its consideration and adoption."

"RESOLVED FURTHER THAT Mr. Prathamesh Jambale, Director - Finance of the Company be and is hereby authorized to fix the remuneration of Internal Auditor."

Que. No. 8] Draft a resolution for appointment of Additional Director.

Ans.:

Appointment of Additional Director		**[Section 161]**
Passing Authority	–	Board of Directors
Nature of the Resolution	–	Resolution with simple majority

"RESOLVED THAT Mr. _____ (DIN _____) who has complied with the provisions of Section 161(1) of the Companies Act, 2013 be and is hereby appointed as an Additional Director of the Company in terms of Article 125 of the Company's Articles of Association pursuant to the provisions of Section 161 of the Companies Act, 2013."

"FURTHER RESOLVED THAT Mr. N. S. Zad, Company Secretary be and is hereby authorized to file e-Form DIR-12 with the Registrar of Companies and to make necessary entries in the statutory registers to that effect."

Que. No. 9] Draft a resolution for appointment of Alternate Director.

Ans.:

Appointment of Alternate Director	–	**[Section 161(2)]**
Passing Authority	–	Board of Directors
Nature of the Resolution	–	Resolution with simple majority

"RESOLVED THAT Mr. _____ (DIN _____), who has complied with the provisions of Section 161(2) of the Companies Act, 2013 be and is hereby appointed the Alternate Director to Mr. _____ (DIN _____) with effect from _____ pursuant to the provisions of Section 161(2) of the Companies Act, 2013 during the latter's absence from India."

"RESOLVED FURTHER THAT Mr. _____, Company Secretary of the Company be and is hereby authorized to file e-Form DIR-12 with the Registrar of Companies and communicate the abovesaid status to the Bank, stock exchange and all the concerned authorities and make necessary entries in the statutory registers as per requirement of the Companies Act, 2013."

Que. No. 10] Draft a resolution for "vacation of office by director on account of unsound mind".

Ans.:

Vacation of office by director on account of unsound mind	–	**[Section 164(1)(a)]**
Passing Authority	–	Board of Directors
Nature of the Resolution	–	Resolution with simple majority

"RESOLVED THAT Mr. X, (DIN _____) Director being found to be of unsound mind by the Calcutta High Court in its Order dated _____ and a copy of the same as placed before the Board, pursuant to Section 164(1)(a) of the Companies Act, 2013 be and is hereby deemed to have vacated his office as director of the company w.e.f. _____"

"RESOLVED FURTHER THAT Mr. _____, Company Secretary of the Company be and is hereby instructed to file e-Form DIR-12 with the Registrar of Companies to that effect."

Que. No. 11] Draft a resolution for appointment of Company Secretary

Ans.:

Appointment of KMP - Company Secretary:	–	**[Section 203]**
Passing Authority	–	Board of Director
Nature of Resolution	–	Resolution with simple majority

"RESOLVED THAT pursuant to Section 203 and other applicable provision of the Companies Act, 2013 Board of directors be and hereby approve the appointment of Mr. _____ as Company Secretary of the Company as per recommendation of Nomination and Remuneration Committee on the terms and conditions set out in the Letter of Appointment dated _____ (a copy of which tabled at meeting being authenticated under the signature of the Chairman thereof for the purpose of identification) w.e.f. _____"

"RESOLVED FURTHER THAT Mr. _____ be and is hereby appointed as Compliance Officer of the Company for all matters pertaining to BSE, SEBI, Secretarial, Legal and correspondence with Government as well as other/statutory authorities."

Que. No. 12] Draft a resolution for appointment of Secretarial Auditor.

Ans.:

Appointment of Secretarial Auditor		**[Section 204]**
Appointing authority	–	Board of directors
Nature of Resolution	–	Resolution with simple majority

"RESOLVED THAT M/s _____ & Co., Practicing Company Secretaries, be and is hereby appointed as the Secretarial Auditors of the Company in terms of the provisions of Section 204 of the Companies Act, 2013 and to hold the office until the conclusion of the next annual general meeting on remuneration of ₹ 1,00,000 plus out of pocket expense as may be determined by the Board."

ORDINARY & SPECIAL RESOLUTIONS

Que. No. 13] Draft a resolution along with explanatory statement to change of Registered Office within a State from the jurisdiction of one Registrar to another Registrar.

Ans.:

Change of Registered Office within a State from the jurisdiction of one Registrar to another Registrar		**[Section 12(5)]**
Passing Authority	–	General Meeting
Nature of the Resolution	–	Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 12(5) of the Companies Act, 2013 read with Rule 28 of the Companies (Incorporation) Rules, 2014, and subject to the confirmation by the Regional Director concerned in the Ministry of Corporate Affairs, the place of Registered Office of the Company presently situate at Mumbai, be and is hereby changed to be situate at Pune."

Explanatory Statement

Presently, the Company's Registered Office is located at ..... in the city of Mumbai. The board of directors of your company at their meeting held on ..... have decided to change the location of the Registered Office from Mumbai to the city of Pune, for better operational convenience, in view of the location of the Company's Corporate Office at Pune. According to

Section 12(5) of the Companies Act, 2013 read with Rule 28 of the Companies (Incorporation) Rules, 2014, such a change should be confirmed by the Regional Director concerned in the Ministry of Corporate Affairs. Necessary application in the e-Form INC 23 as prescribed in this behalf shall be made to the Regional Director, along with the copy of the aforesaid resolution for seeking the confirmation. Further, under the proviso to Section 12(5) of the Companies Act, 2013, special resolution is required to be passed for shifting the Registered Office outside the local limits of any city, town. etc. Hence the special resolution is proposed for your approval.

None of the directors and KMP and their relatives are interested in this resolution, except as shareholders of the Company.

Que. No. 14] Draft a resolution along with explanatory statement to change of company.

Ans.:

For change in the name of company **[Section 13]**

Passing Authority – General Meeting

Nature of the Resolution – Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 4 read with Section 13 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 if any and subject to the approval of the RBI, the name of the Company be changed from ..... Leasing & Investments Ltd. to ..... Finance Ltd."

"RESOLVED FURTHER THAT the name ..... Leasing and Investments Ltd. wherever it occurs in the Memorandum and Articles of Association of the Company be substituted by the name ..... Finance Ltd."

"RESOLVED FURTHER THAT the Board of directors be and is hereby authorized to do all such acts, deeds and things as may be deemed expedient and necessary to give effect to this resolution."

Explanatory Statement

The present activities of the Company include leasing, hire purchase, investments, bill discounting, loan syndication, portfolio management, etc. The present name does not convey the magnitude of operations of the Company and expresses only part of its activities.

For some time the directors have been giving thought to changing the name of the Company. The new name proposed contain "....." which reflects our group identity and the full name "..... Finance Limited" reflects the operations of the Company.

The ROC ..... has confirmed that the new name is available upon the application of the Company for change of the name of the Company and subject to the resolution the Board of directors of the Company proposes to make an application to the ROC for confirmation to the change of name. Since the Company is doing its business of financial activities in the name of ..... Financial Services, which is well recognized by adopting the new name, the Company will be well recognized in the field in which it operates. In view of the RBI guidelines applicable for the NBFC companies, your directors will also take necessary approval from the RBI.

None of the Director and KMP and their relatives have any interest in this Resolution except as a member of the Company.

Que. No. 14A] Ria Technologies Ltd. was incorporated 10 years back. The Board of directors now wants to change its name to Ria Systems Ltd. Draft a notice and the explanatory statement for calling an extraordinary general meeting of the company for change of its name, assuming relevant data. CS (Executive) – Dec 2016 (4 Marks)

Ans.:

Ria Technologies Ltd.

Registered Office: _____

CIN: _____ Website: _____ E-mail: _____ Tel: _____ Fax: _____

Date _____

NOTICE

NOTICE is hereby given that an Extraordinary General Meeting of the Company will be held at _____ on _____ day the _____ 2016 at _____ to transact the following business: –

1. To consider and, if thought fit, to pass, with or without modifications, the following resolution as an ordinary resolution, in respect of which a special notice has been received by the Company from a member(s) pursuant to Section 139 read with Section 115 of the Companies Act, 2013:

   "RESOLVED THAT pursuant to the provisions of Section 4 read with Section 13 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 if any and subject to the approval of the RBI, the name of the Company be changed from Ria Technologies Ltd. to Ria Systems Ltd."

   "RESOLVED FURTHER THAT the name Ria Technologies Ltd. wherever it occurs in the Memorandum and Articles of Association of the Company be substituted by the name Ria Systems Ltd."

   "RESOLVED FURTHER THAT the Board of directors be and is hereby authorized to do all such acts, deeds and things as may be deemed expedient and necessary to give effect to this resolution."

For Ria Technologies Ltd.

Dated: _____

By order of the Board,

Company Secretary

Notes:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member.
2. The Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, in respect of special resolution set out above is annexed hereto.

Annexure

Explanatory statement pursuant to Section 102 of the Companies Act, 2013

The present activities of the Company include dealing in hardware and software of computers etc. The present name does not convey the magnitude of operations of the Company and expresses only part of its activities.

For some time the directors have been giving thought to changing the name of the Company. The new name reflects full operations of the Company.

The ROC ..... has confirmed that the new name is available upon the application of the Company for change of the name of the Company and subject to the resolution the Board of directors of the Company proposes to make an application to the ROC for confirmation to the change of name.

None of the Director and KMP and their relatives have any interest in this Resolution except as a member of the Company.

Que. No. 15] Draft a resolution along with explanatory statement for variation in shareholders right. Make suitable assumptions.

Ans.:

Variation of shareholders right		**[Section 48]**
Passing Authority	–	General Meeting
Nature of the Resolution	–	Special Resolution

"RESOLVED THAT the consent of Preference Shareholders be and is hereby accorded pursuant to the provisions of Section 48 and other applicable provisions, if any, of the Companies Act. 2013 and the Rules made there under, to the Board of Directors of the Company for early redemption of 4,54,500 10% Redeemable Cumulative Preference Shares of ₹ 100 each at a discounted rate of 8% p.a. compounded annually which are due for redemption during the period ..... to ....."

"RESOLVED FURTHER THAT the Board of Directors be and is hereby authorized to do all such acts, deeds and things and to sign all such documents as may be necessary, expedient and incidental thereto to give effect to this resolution."

Explanatory Statement

In the context of improved cash flow it is proposed to redeem the preference shares before its due date of redemption i.e. during the period ..... to ..... at the discounted rate of 8% p.a. compounded annually, other terms and conditions would be same as stipulated at the time of issue of preference shares or changed from time to time.

Mr. Ram, Chairman and Managing Director of the Company is also a Director in XYZ Ltd., Preference Shareholder of the Company and hence may be deemed to be concerned or interested in the said resolution as set out above.

Save and except as above, none of the Directors and KMP of the Company and their relatives is, in any way, concerned or interested in this resolution.

The Board of Directors according recommends the resolution set out above for your approval.

Que. No. 16] Draft a resolution along with explanatory statement for inviting deposits from the public.

Ans.:

Invitation of deposits		**[Sections 73 & 76]**
Passing Authority	–	Member
Nature of the Resolution	–	Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 73 and Section 76 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014 and other applicable provisions, if any, and subject to such conditions, approvals, permissions, as may be necessary, consent of the members of the Company be and is hereby accorded to invite/accept/renew from time to time unsecured/secured deposits from public and/or members of the Company up to permissible limits as prescribed under Rule 3(4) of the Companies (Acceptance of Deposits) Rules, 2014,"

"RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors be and is hereby authorized to do such acts, deeds, things and matters as the Board of Directors may in its absolute discretion consider necessary or appropriate for such invitation/acceptance/renewal of Deposits by the Company."

Explanatory statement

The members are hereby apprised that the Company had been accepting deposits from its shareholders, employees and other sections of public as permissible under the provisions of Companies Act, 2013 read with the corresponding Companies (Acceptance of Deposits) Rules, 2014.

Approval of shareholders is required for inviting/accepting renewing deposits under Section 73 and Section 76 read with Companies (Acceptance of Deposits) Rules, 2014. Under Rule 3(4) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible Company shall accept or renew deposits (a) From its members not exceeding 10% of the aggregate of the paid up share capital and free reserves of the Company (b) Other deposits not exceeding 25% of the aggregate of the paid up share capital and free reserves of the Company.

The members may kindly note that under the provisions of the 2013 Act, any Company inviting/accepting/renewing deposits is required to obtain credit rating from a recognized credit rating agency and deposit insurance towards deposits as may be accepted by it. The Company upon obtaining approval of the shareholders will proceed to comply with the requirements stipulated under Sections 73 and 76 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014, before inviting/accepting/renewing deposits.

The Board of Directors of your Company recommend the resolution as set out in the accompanying notice for the approval of the members of the Company.

None of the Directors or KMP of the Company or their relatives is concerned or interested in the Resolution except to the extent of their deposit holding and/or their shareholding in the Company, if any.

Que. No. 17] Draft a resolution along with explanatory statement for appointing new auditor instead of retiring auditor. Make suitable assumptions.

Ans.:

Appointment of Auditors, a person other than retiring auditor		**[Section 140]**
Passing Authority	–	General Meeting
Nature of the Resolution	–	Ordinary Resolution

"RESOLVED THAT M/s _____ & Co, Chartered Accountants, _____ (Registration No. _____) be and are hereby appointed Auditors of _____ of the Company in place of the retiring auditors to hold office from the conclusion of this Annual General Meeting until conclusion of the 16th Annual General Meeting at the Remuneration of ₹ _____ plus out-of-pocket expenses."

Explanatory Statement

The retiring auditors, namely, M/s _____ & Co., have given notice in writing of their unwillingness to be re-appointed and that a special notice in terms of provisions of Section 115 of the Companies Act, 2013 read with Section 140 of the Act has also been received from Shareholders of the Company for the appointment of new Auditors M/s _____ & Co. in place of the retiring auditors M/s _____ & Co., Chartered Accountants. The Company has forthwith communicated to the retiring auditors of the Special Notice and that the retiring auditors have made no representation against the said special notice. A written certificate has been obtained from M/s _____ & Co., Chartered Accountants to the effect that in case of their appointment as Auditors of the Company, the appointment will be in accordance with the limits prescribed under Section 139(1) of the Act.

Your directors recommend the Resolution for your approval.

None of the Directors and KMP and their relatives are concerned or interested in this resolution.

Que. No. 18] Draft a resolution along with explanatory statement for removal of director.

Ans.:

Removal of Director		**[Section 169]**
Passing Authority	–	General Meeting
Nature of Resolution	–	Ordinary Resolution with special notice

"RESOLVED THAT Mr. _____ (DIN _____) be and is hereby removed from the office of director of the company w.e.f. _____"

Explanatory Statement

The Company has received a special notice pursuant to the provisions of Section 169 of the Companies Act, 2013 from members holding 25% equity shares of the Company proposing for a resolution for removal of Mr. _____ from the office of the director of the Company. The Company has also communicated the above said notice to Mr. _____ for submission of his representation, if any.

Your directors submit the above said resolution for consideration and do not purport to support the same.

All the relevant documents are being placed at the Registered Office of the Company for inspection till the date of the annual general meeting.

Except Mr. _____, none of the directors and KMP of the Company and their relatives are concerned or interested in the resolution.

Que. No. 19] Draft a resolution along with explanatory statement for voluntary winding-up of the company.

Ans.:

Voluntary winding-up		**[Section 304]**
Appointing authority	–	General Meeting
Nature of Resolution	–	Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 304(1)(b) of the Companies Act, 2013, the consent of the members of the Company be and is hereby accorded to wind up the affairs of the Company as the members' voluntary winding up, w.e.f. _____"

"RESOLVED FURTHER THAT pursuant to the provisions of Section 275 of the Companies Act, 2013 Shri _____ s/o Shri _____, Chartered Accountant of Satara be and is hereby appointed as 'the Liquidator of the Company' for the purpose of the members' voluntary winding up of the affairs of the Company."

"RESOLVED FURTHER THAT the consent of the members of the Company be and is hereby accorded to sanction the remuneration of liquidator of ₹ 50,000 only (Rupees Fifty Thousand only) in addition to the actual out of pocket expenses for the winding up of the affairs of the Company."

"RESOLVED FURTHER THAT Shri _____, the liquidator be and is hereby authorized to exercise all the powers as per the provisions of the Companies Act, 2013 to effectively winding up the affairs of the Company."

"RESOLVED FURTHER THAT notwithstanding the appointment of liquidator the Board of Directors of the Company be and is hereby authorized to exercise all the powers in consideration with the liquidation of the Company like filing of statement of affairs with the liquidator, filing

of return with the Registrar of Companies, filling up vacancy in the office of liquidator and such other matters incidental to the liquidation of the Company."

Explanatory Statement

The Company was formed for the purpose of dealing in cosmetic products. Initially the business of the Company was quite remunerative and earned adequate profits on capital invested. But as the members are aware the Company is not doing any business activities for the last 2-3 years. The Board of directors of the Company considered the matter and were of the opinion that in view of the non-availability of business prospects, and long-term financial resources it is not financially viable to carry on the business activities. It therefore does not serve any fruitful purpose to maintain the status of the Company. The directors of the Company feel that there is no alternative but to put the Company into voluntary winding-up, realize the assets thereof and distribute the proceeds to the members.

The Board passed a resolution declaring solvency of the Company at a meeting held on the _____ and that such declaration shall be delivered to the Registrar accompanied by a report of the auditors of the Company, as required under Section 488 of the Companies Act, 2013.

Your approval is required for the voluntary winding up of the Company as given in Item No.....

Your approval is also required for appointing Shri _____, as liquidator of the Company at a remuneration of 50,000 in addition to reimbursement of actual out of pocket expenses.

The above said declaration of solvency is available for inspection at the registered office of the Company during business hours on any working day till the date of the meeting.

None of the directors of your Company and their relatives are interested in the proposed resolution, except to the extent of their share holdings in the Company.

NOTICES

Que. No. 20] Draft a notice for first board meeting.

Ans.:

Sundaram Chemicals Ltd.

Registered Office: _____

CIN: _____ Website: _____ E-mail: _____ Tel: _____ Fax: _____

Date _____

Dear Sir,

I am directed to inform that the first meeting of the Board of Directors of the Company will be held on _____, the _____th day of _____ at the Registered Office of the Company at 10 a.m. to transact the business, set out in the Agenda, a copy of which is enclosed.

You are requested to make it convenient to attend the Board Meeting.

Yours faithfully

For Sundaram Chemicals Ltd.

Company Secretary

Encls. As above.

Que. No. 21] Draft a notice for subsequent Board Meeting.

Ans.:

New Infotech (P) Ltd.

Registered Office: _____

CIN:_____ Website:_____ E-mail:_____ Tel:_____ Fax:_____

Date _____

Mr. _____

Dear Sir,

NOTICE is hereby given that a meeting of the Board of Directors will be held at the registered office of the company on _____, the _____th day of _____ at the Registered Office of the Company at 10 a.m. to transact the business, set out in the Agenda, a copy of which is enclosed.

You are requested to make it convenient to attend the meeting.

A copy of the agenda of the business to be transacted at the meeting is enclosed herewith.

Yours faithfully,

New Infotech (P) Ltd.

Company Secretary

Encls. As above.

Que. No. 22] Draft a notice for AGM assuming that no special business is to be transacted at such AGM.

Ans.:

ABC Ltd.

Registered Office: _____

CIN:_____ Website:_____ E-mail:_____ Tel:_____ Fax:_____

Date _____

NOTICE

NOTICE is hereby given that the 6th Annual General Meeting of ABC Ltd. will be held at _____ on Thursday, 18th July, 2016 at 11.00 A.M. to transact the following business:

(1) To receive, consider and adopt the Audited Financial statement, this consists of Balance Sheet of the Company as at 31st March, 2016 and the Profit and Loss Account and Cash Flow Statement along with necessary explanatory notes attached to and forming part of annual financial statements for the year ended 31st March, 2016 and the reports of the Board of Directors and Auditors thereon.

(2) To declare Dividend for the financial year _____ as recommended by the Board of Directors of the Company.

(3) To appoint a Director in place of Mr. P who retires by rotation and being eligible offers himself for re appointment.

(4) To appoint a Director in place of Mr. S who retires by rotation and being eligible offers himself for re appointment.

(5) To appoint Auditors and to fix their remuneration.

By Order of the Board

For ABC Co. Ltd.

Place: Company Secretary

Dated.....

Registered Office:

.....

.....

.....

Notes:

(1) A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and a proxy need not be a member.

(2) An Explanatory Statement pursuant to Section 102 of the Companies Act, 2013 relating to the special business to be transacted at the Annual General Meeting is annexed.

Que. No. 23] Draft a notice of general meeting for removal of auditor.

Ans.:

ABC Ltd.

Registered Office: _____

CIN:_____ Website:_____ E-mail:_____ Tel:_____ Fax:_____

Date _____

NOTICE

NOTICE is hereby given that an Extraordinary General Meeting of the Company will be held at _____ on _____ day the _____ 2016 at _____ to transact the following business:–

1. To consider and, if thought fit, to pass, with or without modifications, the following resolution as an ordinary resolution, in respect of which a special notice has been received by the Company from a member(s) pursuant to Section 139 read with Section 115 of the Companies Act, 2013:

"RESOLVED THAT Mr. XYZ be and is hereby removed from the office of auditor of the Company with effect from the conclusion of this meeting."

A copy of the representation with respect to the resolution set out above for the removal of Mr. XYZ as auditor has been received from members and same is enclosed to this notice.

For ABC Co. Ltd.

Dated: _____ By order of the Board,

Company Secretary

Note:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member.
2. The Explanatory Statement pursuant to section 102 of the Companies Act, 2013, in respect of special resolution set out above is annexed hereto.

Annexure

Explanatory statement pursuant to section 102 of the Companies Act, 2013

[Explanatory statement to the resolution to be set out here]

Que. No. 24] Board of directors of Desire Ltd. decides to go for creditors' winding-up of the company. For this purpose the Board decides to call an extraordinary general meeting on 30th June, 2016. Draft a notice along with explanatory statement for convening the meeting. Assume facts. **CS (Executive) – June 2016 (8 Marks)**

Ans.:

Young Indian Pvt. Ltd.
Registered Office: _____

CIN: _____ Website: _____

Phone No.: _____ Fax: _____

NOTICE

Notice is hereby given that an extra-ordinary general meeting of the members of Young Indian Pvt. Ltd. shall be held at Registered Office of the Company at ..... on 30th June, 2016 at 11 AM to transact the following business:

SPECIAL BUSINESS:

1. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as special resolution:

   "RESOLVED THAT pursuant to provisions of Section 304(b) of the Companies Act, 2013, the consent of the members of the company be and is hereby accorded to wind-up the affairs of the company as the creditors voluntary winding-up, w.e.f. ....."

2. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as special resolution:

   "RESOLVED THAT pursuant to provisions of Section 304(b) of the Companies Act, 2013, Shri Manmohan Gurmukh Singh, Chartered Accountant of Delhi on the panel of the Central Government be and is hereby appointed as the liquidator of the company for the purpose of the creditors voluntary winding-up of the affairs of the company."

   RESOLVED FURTHER THAT subject to consent of creditors and committee of inspection, the consent of the members of the company be and is hereby accorded to sanction the remuneration of liquidator of ₹ 5,000 (Rupees five thousand only) in addition to the actual out of pocket expenses for the winding-up of the affairs of the company.

   "RESOLVED FURTHER THAT Shri Manmohan Gurmukh Singh, the liquidator be and is hereby authorized to exercise all the powers as per the provisions of the Companies Act, to effectively winding up the affairs of the Company."

3. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as special resolution:

"RESOLVED THAT notwithstanding the appointment of liquidator the board of directors of the company be and is hereby authorized to exercise all the powers in consideration with the liquidation of the company like filing of statement of affairs with liquidator, filing of return with Registrar of Companies, filing up vacancy in the office of liquidator and such other matter incidental to the liquidation of the company."

By the orders of the Board

Place: _____

Date: _____ (Director)

Notes:

(a) A member entitled to attend and vote at the meeting, is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not to be a member. Proxy in order to be effective must be received by the company not less than 48 hours before the meeting.

(b) Explanatory statement setting out the material facts in respect of Item Nos. 1 and 2 are annexed hereto.

(c) All documents referred to in the accompanying notice and explanatory statement are open for inspection at the Registered Office of the company on all working days, except Saturdays, between 11.00 AM to 1.00 AM.

Annexure to the notice

Explanatory statement pursuant to the provisions of Section 102 of the Companies Act, 2013 in respect of the special business

Item Nos. 1 and 2

The Company was formed for the purpose of dealing in chemicals, drugs, pharmaceuticals. Initially the business of the company was quite remunerative and earned adequate profits on capital invested but from last 4 four years the company is running into losses and liabilities of the company are far more than assets of the company making it insolvent.

The boards of director of the company considered the matter and were of the opinion that in view of non-availability of business prospectus and continuous losses there is no alternative but to put the company into voluntary winding-up. Since company is not solvent and no declaration of solvency can be filed under the Companies Act, 2013 such voluntary winding-up has to be treated as creditor's voluntary winding-up.

Since, it is creditor's voluntary winding-up a separate meeting of creditors is also required to be held and separate resolution is also required to be passed at the meeting of creditors.

Your approval is required to for the winding-up of the Company as given in Item No.1.

Your approval is also required for appointment of Shri Manmohan Gurmukh Singh as a liquidator of the company at a remuneration of ₹ 5,000 (Rupees five thousand only) in addition to the actual out of pocket expenses.

None of the director and KMP of your company and their relatives are interested in the proposed resolution, except to the extent of their shareholding in the company.

By the orders of the Board

Place: _____

Date: _____ (Director)

MINUTES

Que. No. 25] Draft minutes of the First Board Meeting. Assume facts.

Ans.:

MINUTES OF THE PROCEEDINGS OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF XYZ LTD., HELD AT 11.00 A.M. AND CONCLUDED AT 1:30 PM ON _____ THE _____ AT THE REGISTERED OFFICE OF THE COMPANY, AT.....

The following were present:

1. Mr. R in the Chair
2. Mr. B, Director
3. Mr. C, Director

In attendance

Mr. F – General Manager

1. Appointment of Chairman

(a) Of the meeting: Shri R was unanimously elected Chairman of the meeting.

(b) Of the company: As per Article 55 of the Articles of Association of the Company, the Board may appoint a Chairman of the Company. The Board considered and it was

"RESOLVED THAT pursuant to Article 55 of the Articles of Association, Mr. R be and is hereby appointed as the Chairman of the Board."

2. Certificate of Incorporation

The Certificate of Incorporation bearing CIN. _____, dated _____ issued by the Registrar of Companies, Pune was placed on the table and taken on record by the Board.

3. Memorandum and Articles of Association

A printed copy of the Memorandum and Articles of Association of the Company, as registered with the Registrar of Companies, was placed before the meeting. The Board noted and taken on records the same. The following resolution was passed:

"RESOLVED THAT printed copy of the Original Memorandum and Articles of Association of the Company laid before the meeting, and perused be taken on record and Mr. R, Director of the Company be directed to keep the original copy of the Certificate of Incorporation in safe custody."

4. First Directors

The meeting took note of the first directors named in Article 78 of the Articles of Association of the Company. It was noted that giving consent to act as Director by Mr. R, Mr. B and Mr. C, the first Directors of the Company, had already been filed along with e-Form DIR-12 with the Registrar of Companies. It was also noted that the directors have paid for the qualification shares in accordance with the Articles of Association.

"RESOLVED THAT necessary intimation already given to this effect to the Registrar of Companies by filing e-Form DIR-12 for appointment of Mr. R (DIN.....) Mr. B (DIN.....) and Mr. C. (DIN.....) pursuant to Section 170(2) of the Companies Act, 2013 be and is hereby approved and confirmed as the First Directors of the Company from the date of its incorporation."

5. Registered Office

It was noted that the Registered Office of the Company will be at ..... the intimation of which had already been given in the e-Form INC.22 to the Registrar of Companies from the date of incorporation of the Company.

6. Financial year

The Board discussed the matter of fixing the Accounting year of the Company. The following resolution was passed:

"RESOLVED THAT the financial year of company be and is hereby fixed from 1st April to 31st March, of the following and subsequent years and the first year's accounts be prepared for the period commencing from the date of incorporation *i.e.* .....upto and including 31st March, 2015."

7. Adoption of Commonseal

The art work of the commonseal was produced before the meeting and it was –

"RESOLVED THAT the art work of the common seal as per impression shown below be and is hereby approved, and Shri X, Company Secretary be instructed to get the commonseal prepared and place it before the Board."

8. Vote of thanks

The meeting ended with vote of thanks.

Place:

Date: CHAIRMAN

CHAPTER 33

SECRETARIAL STANDARDS

SECRETARIAL STANDARD - 1: MEETINGS OF THE BOARD OF DIRECTORS

Introduction: This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

Scope: This Standard is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee(s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

1. Convening a Meeting

1.1 Authority

1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

1.1.2 The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.

1.2 Day, Time, Place, Mode and Serial Number of Meeting

1.2.1 Every Meeting shall have a serial number.

1.2.2 A Meeting may be convened at any time and place, on any day.

Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.

1.2.3 Any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.

Directors shall not participate through Electronic Mode in the discussion on certain restricted items. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in Meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.

1.3 Notice

1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Notice.

Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorized by the Board for the purpose.

1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.

1.3.4 The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.

The Notice shall also contain the contact number or e-mail address of the Chairman or the Company Secretary or any other person authorized by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

1.3.5 The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

1.3.6 Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

In case the company sends the Notice by speed post or by registered post, an additional two days shall be added for the service of Notice.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by e-mail or by any other electronic means.

These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post, an additional two days shall be added for the service of Agenda and Notes on Agenda.

Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Agenda and Notes on Agenda.

Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

For this purpose,

"Unpublished Price Sensitive Information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -

(*i*) financial results;

(*ii*) dividends;

(*iii*) change in capital structure;

(*iv*) mergers, de-mergers, acquisitions, de-listings, disposals and expansion of business and such other transactions;

(*v*) changes in key managerial personnel; and

(*vi*) material events in accordance with the listing agreement*.

General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors.

Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes.

Supplementary Notes on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting. However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution.

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at Annexure 'A'.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at Annexure 'B'.

1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.

Numbering shall be in a manner which would enable ease of reference or cross-reference.

1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

1.3.11 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.

2. Frequency of Meetings

2.1 Meetings of the Board

The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.

The company shall hold first Meeting of its Board within thirty days of the date of incorporation. It shall be sufficient if subsequent Meetings are held with a maximum interval of one hundred and twenty days between any two consecutive Meetings.

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a Calendar Year and the gap between the two Meetings of the Board is not less than ninety days.

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

2.2 Meetings of Committees

Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.

2.3 Meeting of Independent Directors

Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.

The Meeting shall be held to review the performance of Non-Independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

The Company Secretary, wherever appointed, shall facilitate convening and holding of such Meeting, if so desired by the Independent Directors.

3. Quorum

3.1 Quorum shall be present throughout the Meeting.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

3.2 A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.

For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:

(a) with any body corporate, if such Director, along with other Directors holds more than two per-cent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or

(b) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

If the item of business is a related party transaction, then he shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

3.3 Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

3.4 Meetings of the Board

3.4.1 The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.

Any fraction contained in the above one-third shall be rounded off to the next one.

Where the Quorum requirement provided in the Articles is higher than one third of the total strength, the company shall conform to such higher requirement.

Total strength for this purpose, shall not include Directors whose places are vacant.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.

If a Meeting of the Board could not be held for want of Quorum, then, unless otherwise provided in the Articles, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

3.4.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a General Meeting.

If the number of Directors is reduced below the Quorum fixed by the Act for a Meeting of the Board, the continuing Directors may act for the purpose of increasing the number of Directors to that fixed for the Quorum or of summoning a general meeting of the company, and for no other purpose.

3.5 Meetings of Committees

Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

4. Attendance at Meetings

4.1 Attendance register

4.1.1 Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee. The pages of the attendance register shall be serially numbered. If an attendance register is maintained in loose-leaf form, it shall be bound periodically, at least once in every three years.

4.1.2 The attendance register shall contain the following particulars:

Serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names and signatures of the Directors, the Company Secretary and also of persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode.

4.1.3 The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorized by the Chairman and the fact of such participation is also recorded in the Minutes.

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairman shall take a roll call. The Chairman or Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes. The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

4.1.4 The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.

The attendance register may be taken to any place where a Meeting of the Board or Committee is held.

4.1.5 The attendance register is open for inspection by the Directors.

Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.

The Company Secretary in Practice appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can also inspect the attendance register as he may consider necessary for the performance of his duties.

A Member of the company is not entitled to inspect the attendance register.

4.1.6 The attendance register shall be preserved for a period of at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.

4.1.7 The attendance register shall be in the custody of the Company Secretary.

Where there is no Company Secretary, the attendance register shall be in the custody of any other person authorized by the Board for this purpose.

4.2 Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorized by the Board to issue Notice of the Meeting.

The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

5. Chairman

5.1 Meetings of the Board

5.1.1 The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

5.1.2 The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting.

The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.

If the item of business is a related party transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall take due and reasonable care to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures to record proceedings and safe keeping of the recordings. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting

where Director(s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.

The Chairman shall ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon.

Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

5.2 Meetings of Committees

A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

6. Passing of Resolution by Circulation

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

6.1. Authority

6.1.1 The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

An illustrative list of items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at Annexure 'A'.

6.1.2 Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

6.2. Procedure

6.2.1 A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.

6.2.2 The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognized electronic means.

The draft of the Resolution and the necessary papers shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of the addresses appearing in the Director Identification Number (DIN) registration of the Director.

Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

6.2.3 Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed.

The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.

Each Resolution shall be separately explained.

The decision of the Directors shall be sought for each Resolution separately.

Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.

An additional two days shall be added for the service of the draft Resolution, in case the same has been sent by the company by speed post or by registered post or by courier.

6.3. Approval

6.3.1 The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

Every such Resolution shall carry a serial number.

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.

An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as interested in a contract or arrangement entered or proposed to be entered into by the company:

(*a*) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or

(*b*) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

6.3.2 The Resolution, if passed, shall be deemed to have been passed on the earlier of:

(*a*) the last date specified for signifying assent or dissent by the Directors, or

(*b*) the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and shall be effective from that date, if no other effective date is specified in such Resolution.

Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

Directors shall append the date on which they have signed the Resolution. In case a Director does not append a date, the date of receipt by the company of the signed Resolution shall be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director shall disclose his interest before the last date specified for the response and abstain from voting.

In case not less than one-third of the Directors wish the matter to be discussed and decided at a Meeting, each of the concerned Directors shall communicate the same before the last date specified for the response.

In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

6.4 Recording

Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

6.5. Validity

Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.

This shall not dispense with the requirement for the Board to meet at the specified frequency.

7. Minutes

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

7.1. Maintenance of Minutes

7.1.1 Minutes shall be recorded in books maintained for that purpose.

7.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.

7.1.3 A company may maintain its Minutes in physical or in electronic form.

Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorized by the Board.

7.1.4 The pages of the Minutes Books shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

7.1.6 Minutes Books, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

7.1.7 Minutes Books shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.

7.2. Contents of Minutes

7.2.1 General Contents

7.2.1.1 Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement of the Meeting.

In respect of a Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

7.2.1.2 Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items.

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.

7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board.

7.2.2 Specific Contents

7.2.2.1 Minutes shall inter-alia contain:

(*a*) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.

(*b*) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.

(*c*) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.

(*d*) Record of election, if any, of the Chairman of the Meeting.

(*e*) Record of presence of Quorum.

(*f*) The names of Directors who sought and were granted leave of absence.

(*g*) Noting of the Minutes of the preceding Meeting.

(*h*) Noting the Minutes of the Meetings of the Committees.

(*i*) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.

(*j*) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related party transaction such director was not present in the meeting during discussions and voting on such item.

(*k*) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.

(*l*) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.

(*m*) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.

(*n*) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.

(*o*) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.

(*p*) The time of commencement and conclusion of the Meeting.

7.2.2.2 Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarize the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a Resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record such fact.

7.3 Recording of Minutes

7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorized by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

7.3.2 Minutes shall be written in clear, concise and plain language.

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

7.3.3 Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are

referred to in the Minutes, shall be identified by initialing of such documents by the Company Secretary or the Chairman.

7.3.4 Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

7.4. Finalization of Minutes

Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments.

Where a Director specifies a particular means of delivery of draft Minutes, these shall be sent to him by such means. Proof of sending draft Minutes and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalized and entered in the Minutes Book within the specified time limit of thirty days.

If any Director communicates his comments after the expiry of the said period of seven days, the Chairman, if so authorized by the Board, shall have the discretion to consider such comments.

In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.

A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

7.5 Entry in the Minutes Book

7.5.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

Where there is no Company Secretary, it shall be entered by any other person duly authorized by the Board or by the Chairman.

7.5.3 Minutes, once entered in the Minutes Book, shall not be altered.

Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting.

7.6. Signing and Dating of Minutes

7.6.1 Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.

Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.

7.6.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

7.6.3 Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard.

7.6.4 Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorized by the Board, shall be circulated to all the Directors, as on the date of the Meeting and appointed thereafter, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes.

Proof of sending signed Minutes and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

7.7. Inspection and Extracts of Minutes

7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.

7.7.2 Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.

A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

Extracts of the duly signed Minutes may be provided in physical or electronic form.

8. Preservation of Minutes and other Records

8.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

8.3 Minutes Books shall be in the custody of the Company Secretary.

Where there is no Company Secretary, Minutes Books shall be in the custody of any Director duly authorized for the purpose by the Board.

9. Disclosure

The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.

Effective Date: This Standard shall come into effect from 1st October, 2017.

Annexure 'A' (Para 1.3.8)

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

General Business Items

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

Specific Items

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director/Manager in more than one company.
- In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Sale of subsidiaries.
- Purchase and Sale of material tangible/intangible assets not in the ordinary course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.

Corporate Actions

- Authorize Buy-Back of securities.
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

Additional list of items in case of listed companies

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of Key Managerial Personnel.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.

- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken
- by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

Annexure 'B' (Para 1.3.8)

Illustrative list of items of business for the Agenda for the First Meeting of the Board of the company

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarized copy of lease/rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company, if any.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorize printing of share certificates and correspondence with the depositories, if any.
13. To authorize the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

SECRETARIAL STANDARD-2: GENERAL MEETINGS

Introduction: This Standard seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot.

Scope: This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to General Meetings.

The principles enunciated in this Standard for General Meetings of Members are applicable mutatis-mutandis to Meetings of debenture-holders and creditors. A Meeting of the Members or class of Members

or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

1. Convening a Meeting

1.1 Authority

A General Meeting shall be convened by or on the authority of the Board.

The Board shall, every year, convene or authorize convening of a Meeting of its Members called the Annual General Meeting to transact items of Ordinary Business specifically required to be transacted at an Annual General Meeting as well as Special Business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company.

The Board may also, whenever it deems fit, call an Extra-Ordinary General Meeting of the company.

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition,

(*a*) in the case of company having a share capital, not less than one-tenth of the paid-up share capital carrying Voting Rights or (b) in the case of a company not having share capital, not less than one-tenth of total voting power of the company, call an Extra-Ordinary General Meeting of the company.

If, on receipt of a valid requisition having been made in this behalf, the Board, within twenty-one days from the date of such receipt, fails to call a Meeting on any day within forty-five days from the date of receipt of such requisition, the requisitionists may themselves call and hold the Meeting within three months from the date of requisition, in the same manner in which the Board should have called and held the Meeting.

Explanatory statement need not be annexed to the Notice of an Extra-Ordinary General Meeting convened by the requisitionists and the requisitionists may disclose the reasons for the Resolution(s) which they propose to move at the Meeting.

Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

1.2 Notice

1.2.1 Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

In case of a Nidhi, Notice may be served individually only on Members who hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital of the company, whichever is less. For other Members, Notice may be served by a public notice in newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the Notice Board of the company.

In the case of Members, Notice shall be given at the address registered with the company or depository. In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the company or the depository, as the case may be. In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him.

Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

(*a*) where securities are held singly, to the Nominee of the single holder;

(*b*) where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;

(*c*) where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;

In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.

In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.

In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

1.2.2 Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. 'Electronic means' means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.

In case the Notice and accompanying documents are given by e-mail, these shall be sent at the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

The company shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending" for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

In case of the Directors, Auditors, Secretarial Auditors and others, if any, the Notice and accompanying documents shall be sent at the e-mail addresses provided by them to the company, if being sent by electronic means.

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

(*a*) if the company provides the facility of e-voting ;

(*b*) if the item of business is being transacted through postal ballot.

If a Member requests for delivery of Notice through a particular mode, other than the one followed by the company, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

Notice shall be sent to Members by registered post or speed post or e-mail if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.

1.2.3 In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting.

In case of a private company, the Notice shall be hosted on the website of the company, if any, unless otherwise provided in the Articles.

1.2.4 Notice shall specify the day, date, time and full address of the venue of the Meeting.

Notice of Annual General Meeting shall also specify the serial number of the Meeting.

Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark, if any, for easy location, except in case of -

(*i*) a company in which only its directors and their relatives are members;

(*ii*) a wholly owned subsidiary.

An Annual General Meeting and a Meeting called by the requisitionists shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday.

Annual General Meetings shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India. A Meeting called by the requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

In case of a Government company, the Annual General Meeting shall be held at its registered office or any other place with the approval of the Central Government, as may be required in this behalf.

Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more Proxies, to attend and vote instead of himself and that a Proxy need not be a Member.

In case of a private company, the Notice shall specify the entitlement of a member to appoint Proxy in accordance with this para, unless otherwise provided in the Articles.

1.2.5 Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice.

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:

(*a*) Directors and Manager;

(*b*) Other Key Managerial Personnel; and

(*c*) Relatives of the persons mentioned above.

In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager and of every other Key Managerial Personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that company, also be stated in the explanatory statement.

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.

In case of a private company, explanatory statement shall comply with the above requirements, unless otherwise provided in the Articles.

In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, Membership/Chairmanship of Committees of other Boards shall be given in the explanatory statement.

In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.

1.2.6 Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting.

For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice.

In case of a private company, the period of sending Notice including accompanying documents shall be as stated above, unless otherwise provided in the Articles.

In case a valid special Notice under the Act has been received from Member(s), the company shall give Notice of the Resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

Where this is not practicable, the Notice shall be published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district, at least seven days before the Meeting, exclusive of the day of publication of the Notice and day of the Meeting. In case of companies having a website, such Notice shall simultaneously be hosted on the website.

1.2.7 Notice and accompanying documents may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic means, by not less than ninety-five percent of the Members entitled to vote at such Meeting.

The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice and the Meeting shall be held only if the consent is received prior to the time fixed for the Meeting from not less than ninety-five percent of the Members entitled to vote at such Meeting.

The company shall ensure compliance of provisions relating to appointment of Proxy unless all the Members entitled to vote at such Meeting, consent to holding of the General Meeting at shorter Notice.

In case of a private company, consent for shorter Notice shall be obtained from such number of members as specified in this para, unless otherwise provided in the Articles.

1.2.8 No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.

However, any accidental omission to give Notice to, or the non-receipt of such Notice by any Member or other person who is entitled to such Notice for any Meeting shall not invalidate the proceedings of the Meeting.

1.2.9 No items of business other than those specified in the Notice and those specifically permitted under the Act shall be taken up at the Meeting.

A Resolution shall be valid only if it is passed in respect of an item of business contained in the Notice convening the Meeting or it is specifically permitted under the Act.

Items specifically permitted under the Act which may be taken up for consideration at the Meeting are:

(*a*) Proposed Resolutions, the Notice of which has been given by Members;

(*b*) Resolutions requiring special Notice, if received with the intention to move;

(*c*) Candidature for Directorship, if any such Notice has been received.

Where special Notice is required of any Resolution and Notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business shall be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner prescribed under the Act.

Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the Notice of the Meeting at least twenty-one clear days before the Meeting.

1.2.10 Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.

1.2.11 A Meeting convened upon due Notice shall not be postponed or cancelled.

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

2. Frequency of Meetings

2.1 Annual General Meeting

Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.

Every company shall hold its first Annual General Meeting within nine months from the date of closing of the first financial year of the company and thereafter in each Calendar Year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Annual General Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies, in case of any Annual General Meeting other than the first Annual General Meeting. If a company holds its first Annual General Meeting, as aforesaid, it shall not be necessary for the company to hold any Annual General Meeting in the Calendar Year of its incorporation.

2.2 Extra-Ordinary General Meeting

Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.

3. Quorum

3.1 Quorum shall be present throughout the Meeting.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

(*a*) in case of a public company, -

(*i*) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;

(*ii*) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;

(*iii*) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;

(*b*) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement.

Members need to be personally present at a Meeting to constitute the Quorum.

Proxies shall be excluded for determining the Quorum.

3.2 A duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. However, to constitute a Meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than 1000 members with a Quorum requirement of five Members, an authorized representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more Member is personally present.

Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of Quorum.

A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.

The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

4. Presence of Directors and Auditors

4.1 Directors

4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other Member of any such Committee authorized by the Chairman of the respective Committee to attend on his behalf, shall attend the General Meeting.

4.1.2 Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.

The Company Secretary shall assist the Chairman in conducting the Meeting.

4.2 Auditors

The Auditors, unless exempted by the company, shall, either by themselves or through their authorized representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.

The authorized representative who attends the General Meeting of the company shall also be qualified to be an Auditor.

4.3 Secretarial Auditor

The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorized representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.

The Chairman may invite the Secretarial Auditor or his authorized representative to attend any other General Meeting, if he considers it necessary.

The authorized representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor.

5. Chairman

5.1 Appointment

The Chairman of the Board shall take the Chair and conduct the Meeting.

If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the Chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the Meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

In case of a private company, appointment of the Chairman shall be in accordance with this para, unless otherwise provided in the Articles.

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted. The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.

5.2 The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.

The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

5.3 In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any Non -Interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.

6. Proxies

6.1 Right to Appoint

A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more Proxies, to attend and vote instead of himself and a Proxy need not be a Member.

A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty Proxies received as valid.

In case of a private company, the Proxy shall be appointed in accordance with this para, unless otherwise provided in the Articles.

6.2 Form of Proxy

6.2.1 An instrument appointing a Proxy shall be in the Form prescribed under the Act.

Such instrument shall not be questioned on the ground that it fails to comply with any special requirements specified by the Articles of a company.

The instrument of Proxy shall be signed by the appointer or his attorney duly authorized in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.

6.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

6.3 Stamping of Proxies

An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

6.4 Execution of Proxies

6.4.1 The Proxy-holder shall prove his identity at the time of attending the Meeting.

6.4.2 An authorized representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

6.5 Proxies in Blank and Incomplete Proxies

6.5.1 A Proxy form which does not state the name of the Proxy shall not be considered valid.

6.5.2 Undated Proxy shall not be considered valid.

6.5.3 If a company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.

6.6 Deposit of Proxies and Authorizations

6.6.1 Proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.

Any provision in the Articles of a company which specifies or requires a longer period for deposit of Proxy than forty-eight hours before a Meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit.

In case of a private company, the Proxy shall be deposited with the company in accordance with this para, unless otherwise provided in the Articles.

6.6.2 If the Articles so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

6.6.3 In case of remote e-voting:

(*i*) the letter of appointment of representative(s) of the President of India or the Governor of a State; or

(*ii*) the authorization in respect of representative(s) of the Corporations;

shall be received by the scrutinizer/company on or before close of e-voting.

In case of postal ballot such letter of appointment/authorization shall be submitted to the scrutinizer along with physical ballot form.

If the representative attends the Meeting in person to vote thereat, the letter of appointment/authorization, as the case may be, shall be submitted before the commencement of Meeting.

6.7 Revocation of Proxies

6.7.1 If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

6.7.2 A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

6.7.3 A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

An undated notice of revocation of Proxy shall not be accepted. A notice of revocation shall be signed by the same Member (s) who had signed the Proxy, in the case of joint Membership.

6.7.4 When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.

6.8 Inspection of Proxies

6.8.1 Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any Resolution at least three days before the commencement of the Meeting.

6.8.2 Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

Inspection shall be allowed between 9 a.m. and 6 p.m. during such period.

In case of a private company, inspection of Proxies shall be as stated above, unless otherwise provided in the Articles.

6.8.3 A fresh requisition, conforming to the above requirements, shall be given for inspection of Proxies in case the original Meeting is adjourned.

6.9 Record of Proxies

6.9.1 All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.

6.9.2 In case any Proxy entered in the register is rejected, the reasons therefore shall be entered in the remarks column.

7. Voting

7.1 Proposing a Resolution at a Meeting Every Resolution, except a Resolution which has been put to vote through Remote e-Voting or on which a poll has been demanded, shall be proposed by a Member and seconded by another Member.

7.2 E-voting

7.2.1 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.

Other companies presently prescribed are companies having not less than one thousand Members.

Nidhis are not required to provide e-voting facility to their Members.

The facility of Remote e-voting does not dispense with the requirement of holding a General Meeting by the company.

7.2.2 Voting at the Meeting

Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.

Ballot process may be carried out by distributing ballot/poll slips or by making arrangement for voting through computer or secure electronic systems.

Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid.

A Proxy can vote in the ballot process.

7.3 Show of Hands

Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

A Proxy cannot vote on a show of hands.

In case of a private company, the voting by show of hands shall be in accordance with this para, unless otherwise provided in the Articles.

7.4 Poll

The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

Poll in such cases shall be through a Ballot process.

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

The poll may be taken by the Chairman, on his own motion also.

In case of a private company, the poll shall be conducted in accordance with this para, unless otherwise provided in the Articles.

7.5 Voting Rights

7.5.1 Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him.

A Member present in person or by Proxy shall, on a poll or ballot, have votes in proportion to his share in the paid up equity share capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Preference shareholders have a right to vote only in certain cases as prescribed under the Act.

In case of a private company, the Voting Rights shall be reckoned in accordance with this para, unless otherwise provided in the Memorandum or Articles of the company.

In case of a Nidhi, no Member shall exercise Voting Rights on poll in excess of five percent of total Voting Rights of equity shareholders.

7.5.2 A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.

In case of a private company, a member who is a related party is entitled to vote on such Resolution.

A member who is a related party is entitled to vote on a Resolution pertaining to approval of any contract or arrangement to be entered into by:

(*a*) A Government company with any other Government company; or

(*b*) An unlisted Government company with the prior approval of competent authority, other than those contract or arrangements referred in clause (a).

7.6 Second or Casting Vote

Unless otherwise provided in the Articles, in the event of equality of votes, whether on show of hands or electronically or on a poll, the Chairman of the Meeting shall have a second or casting vote.

Where the Chairman has entrusted the conduct of proceedings in respect of an item in which he is interested to any Non-Interested Director or to a Member, a person who so takes the Chair shall have a second or casting vote.

8. Conduct of e-voting

8.1 Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard.

8.2 Every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialized form.

8.3 The facility for Remote e-voting shall remain open for not less than three days.

The voting period shall close at 5 p.m. on the day preceding the date of the General Meeting.

8.4 Board Approval

The Board shall:

(*a*) appoint one or more scrutinizers for e-voting or the ballot process;

The scrutinizer(s) may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the Board, scrutinize the e-voting process or the ballot process, as the case may be, in a fair and transparent manner.

The scrutinizer(s) so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior consent to act as a scrutinizer(s) shall be obtained from the scrutinizer(s) and placed before the Board for noting.

(*b*) appoint an Agency;

(*c*) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;

The cut-off date for determining the Members who are entitled to vote through Remote e-voting or voting at the meeting shall be a date not earlier than seven days prior to the date fixed for the Meeting.

Only Members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.

8.5 Notice

8.5.1 Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means.

An advertisement containing prescribed details shall be published, immediately on completion of dispatch of Notices for Meeting but at least twenty one days before the date of the General Meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district and at least once in English language in an English newspaper, having country-wide circulation, and specifying therein, inter-alia the following matters, namely:

(*a*) A statement to the effect that the business may be transacted by e-voting;

(*b*) The date and time of commencement of Remote e-voting;

(*c*) The date and time of end of Remote e-voting;

(*d*) The cut-off date as on which the right of voting of the Members shall be reckoned;

(*e*) The manner in which persons who have acquired shares and become Members after the dispatch of Notice may obtain the login ID and password;

(*f*) The manner in which company shall provide for voting by Members present at the Meeting;

(g) The statement that:

(i) Remote e-voting shall not be allowed beyond the said date and time;

(ii) a Member may participate in the General Meeting even after exercising his right to vote through Remote e-voting but shall not be entitled to vote again; and

(iii) a Member as on the cut-off date shall only be entitled for availing the Remote e-voting facility or vote, as the case may be, in the General Meeting;

(h) Website address of the company, in case of companies having a website and Agency where Notice is displayed; and

(i) Name, designation, address, e-mail ID and phone number of the personresponsible to address the grievances connected with the e-voting.

Advertisement shall simultaneously be placed on the website of the company till the conclusion of Meeting, in case of companies having a website and of the Agency.

8.5.2 Notice shall simultaneously be placed on the website of the company, in case of companies having a website, and of the Agency.

Such Notice shall remain on the website till the date of General Meeting.

8.5.3 Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility.

Notice shall clearly state that the company is providing e-voting facility and that the business may be transacted through such voting.

Notice shall describe clearly the Remote e-voting procedure and the procedure of voting at the General Meeting by Members who do not vote by Remote e-voting.

Notice shall also clearly specify the date and time of commencement and end of Remote e-voting and contain a statement that at the end of Remote e-voting period, the facility shall forthwith be blocked.

Notice shall also contain contact details of the official responsible to address the grievances connected with voting by electronic means.

Notice shall clearly specify that any Member, who has voted by Remote e-voting, cannot vote at the Meeting.

Notice shall also specify the mode of declaration of the results of e-voting.

Notice shall also clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the cut off date should treat this Notice for information purposes only.

Notice shall provide the details about the login ID and the process and manner for generating or receiving the password and for casting of vote in a secure manner.

8.6 Declaration of results

8.6.1 The scrutinizer(s) shall submit his report within three days from the date of the Meeting to the Chairman or a person authorized by him, who shall countersign the same and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

8.6.2 The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting along with the scrutinizer's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.

8.6.3 The Resolution, if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant General Meeting.

8.7 Custody of scrutinizers' register, report and other related papers The scrutinizer's register, report and other related papers received from the scrutinizer(s) shall be kept in the custody of the Company Secretary or any other person authorized by the Board for this purpose.

9. Conduct of Poll

9.1 When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.

9.2 In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.

If the date, venue and time of taking the poll cannot be announced at the Meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be within twenty four hours of closure of the Meeting.

A Member who did not attend the Meeting can participate and vote in the poll in such cases.

In case of a private company, the demand and conduct of poll shall be as stated above, unless otherwise provided in the Articles.

9.3 Each Resolution put to vote by poll shall be put to vote separately.

One ballot paper may be used for more than one item.

9.4 Appointment of scrutinizers

The Chairman shall appoint such number of scrutinizers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.

In case of a private company, the appointment of scrutinizer(s) shall be in accordance with this para, unless otherwise provided in the Articles.

9.5 Declaration of results

9.5.1 The scrutinizer(s) shall submit his report within seven days from the last date of the poll to the Chairman who shall countersign the same and declare the result of the poll within two days of the submission of report by the scrutinizer, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

In case Chairman is not available, for such purpose, the report by the scrutinizer shall be submitted to a person authorized by the Chairman to receive such report, who shall countersign the scrutinizer's report on behalf of the Chairman.

The result shall be announced by the Chairman or any other person authorized by the Chairman in writing for this purpose.

The Chairman of the Meeting shall have the power to regulate the manner in which the poll shall be taken and shall ensure that the poll is scrutinized in the manner prescribed under the Act.

In case of a private company, the declaration of result of poll shall be in accordance with this para, unless otherwise provided in the Articles.

9.5.2 The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and in case of companies having a website, shall also be placed on the website.

9.5.3 The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken.

10. Prohibition on Withdrawal of Resolutions

Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn. Further, any resolution proposed for consideration through e-voting shall not be withdrawn.

11. Rescinding of Resolutions

A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

12. Modifications to Resolutions

Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.

No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

13. Reading of Reports

13.1 The qualifications, observations or comments or other remarks, if any, mentioned in the Auditor's Report on the financial transactions, which have any adverse effect on the functioning of the company shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations/comments given by the Board of Directors in their report.

13.2 The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, which have any material adverse effect on the functioning of the company, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations/comments given by the Board of Directors in their report.

14. Distribution of Gifts

No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.

15. Adjournment of Meetings

15.1 A duly convened Meeting shall not be adjourned unless circumstances so warrant. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.

Meetings shall stand adjourned for want of requisite Quorum.

The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

15.2 If a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.

15.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

However, if a Meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the Meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned Meeting, the company may also opt to give Notice of such adjourned Meeting either individually or by publishing an advertisement, as stated above.

15.4 If a Meeting, other than an Annual General Meeting and a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day or at such other time and place as may be determined by the Board.

If a Meeting is adjourned for want of a Quorum to the same day on the next week, at the same time and place or with a change of day, time or place, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which

the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

An adjourned Annual General Meeting, adjourned for want of quorum or otherwise, shall not be held on a National Holiday, only if any item relating to filling up of vacancy of a director retiring by rotation is included in the agenda of such adjourned Meeting.

The company shall ensure compliance of the provisions of holding the Annual General Meeting every year, including adjournment thereof within a gap of not exceeding 15 months from the date of the previous Annual General Meeting or within such extended period permitted by the Registrar of Companies.

In case of a private company, the adjournment of Meeting for want of quorum shall be in accordance with this para, unless otherwise provided in the Articles.

15.5 If, within half an hour from the time appointed for holding a Meeting called by requisitionists, a Quorum is not present, the Meeting shall stand cancelled.

In case of a private company, the requisitioned meeting shall stand cancelled in accordance with this para, unless otherwise provided in the Articles.

15.6 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

16. Passing of Resolutions by postal ballot

16.1 Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.

The list of items of businesses requiring to be transacted only by means of a postal ballot is given at Annexure.

The Board may however opt to transact any other item of special business, not being any business in respect of which Directors or Auditors have a right to be heard at the Meeting, by means of postal ballot.

Ordinary Business shall not be transacted by means of a postal ballot.

16.2 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.

Other companies presently prescribed are companies having not less than one thousand Members.

Nidhis are not required to provide e-voting facility to their Members.

16.3 Board Approval

The Board shall:

(*a*) identify the businesses to be transacted through postal ballot;

(*b*) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;

(*c*) authorize the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents;

(*d*) appoint one scrutinizer for the postal ballot;

The scrutinizer may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company and, who can in the opinion of the Board, scrutinize the postal ballot process in a fair and transparent manner.

The scrutinizer shall however not be an officer or employee of the company.

The scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior consent to act as a scrutinizer shall be obtained from the scrutinizer and placed before the Board for noting.

(*e*) appoint an Agency in respect of e-voting for the postal ballot;

(*f*) decide the cut-off date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent.

Only Members as on the cut-off date shall be entitled to vote on the proposed Resolution by postal ballot.

16.4 Notice

16.4.1 Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the company.

The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.

In case the Notice and accompanying documents are sent to Members by e-mail, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

An advertisement containing prescribed details shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the Notice and the ballot papers.

16.4.2 In case of companies having a website, Notice of the postal ballot shall simultaneously be placed on the website.

Such Notice shall remain on the website till the last date for receipt of the postal ballot forms from the Members.

16.4.3 Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.

Notice shall also specify the mode of declaration of the results of the voting by postal ballot.

16.4.4 Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.

In case the facility of e-voting has been made available, the provisions relating to conduct of e-voting shall apply, mutatis mutandis, as far as applicable.

Notice shall describe clearly the e-voting procedure.

Notice shall also clearly specify the date and time of commencement and end of e-voting, if any and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.

Notice shall clearly specify that any Member cannot vote both by post and e-voting and if he votes both by post and e-voting, his vote by post shall be treated as invalid.

The advertisement shall, inter alia, state the following matters:

(*a*) a statement to the effect that the business is to be transacted by postal ballot which may include voting by electronic means;

(*b*) the date of completion of dispatch of Notices;

(*c*) the date of commencement of voting (postal and e-voting);

(*d*) the date of end of voting (postal and e-voting);

(*e*) the statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid;

(*f*) a statement to the effect that Member who has not received postal ballot form may apply to the company and obtain a duplicate thereof;

(*g*) contact details of the person responsible to address the queries/grievances connected with the voting by postal ballot including voting by electronic means, if any; and

(*h*) day, date, time and venue of declaration of results and the link of the website where such results will be displayed.

Notice and the advertisement shall clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the cut-off date should treat this Notice for information purposes only.

16.4.5 Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

16.5 Postal ballot forms

16.5.1 The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutinizer.

A single postal ballot form may provide for multiple items of business to be transacted.

16.5.2 The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutinizer.

The postal ballot form may specify instances in which such form shall be treated as invalid or rejected and procedure for issue of duplicate postal ballot forms.

16.5.3 A postal ballot form shall be considered invalid if:

(*a*) A form other than one issued by the company has been used;

(*b*) It has not been signed by or on behalf of the Member;

(*c*) Signature on the postal ballot form doesn't match the specimen signatures with the company;

(*d*) It is not possible to determine without any doubt the assent or dissent of the Member;

(*e*) Neither assent nor dissent is mentioned;

(*f*) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;

(*g*) The envelope containing the postal ballot form is received after the last date prescribed;

(*h*) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;

(*i*) It is received from a Member who is in arrears of payment of calls;

(*j*) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;

(*k*) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

A postal ballot form which is otherwise complete in all respects and is lodged within the prescribed time limit but is undated shall be considered valid.

16.6 Declaration of results

16.6.1 The scrutinizer shall submit his report within seven days from the last date of receipt of postal ballot forms to the Chairman or a person authorized by him, who shall countersign the same and declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.

16.6.2 The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutinizer's report shall

be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.

16.6.3 The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.

16.7 Custody of scrutinizer's registers, report and other related papers The postal ballot forms, other related papers, register and scrutinizer's report received from the scrutinizer shall be kept in the custody of the Company Secretary or any other person authorized by the Board for this purpose.

16.8 Rescinding the Resolution

A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.

16.9 Modification to the Resolution

No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.

17. Minutes

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein.

Minutes help in understanding the deliberations and decisions taken at the Meeting.

17.1 Maintenance of Minutes

17.1.1 Minutes shall be recorded in books maintained for that purpose.

17.1.2 A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act.

Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.

17.1.3 A company may maintain its Minutes in physical or in electronic form.

Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall, however, follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorized by the Board.

17.1.4 The pages of the Minutes Books shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialed by the Chairman who signs the Minutes.

17.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

17.1.6 Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically at least once in every three years.

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

17.1.7 Minutes Books shall be kept at the Registered Office of the company.

17.2 Contents of Minutes

17.2.1 General Contents

17.2.1.1 Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement of the Meeting.

Minutes of Annual General Meeting shall also state the serial number of the Meeting.

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of Quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

17.2.1.2 Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

17.2.2 Specific Contents

17.2.2.1 Minutes shall, inter alia, contain:

(*a*) The Record of election, if any, of the Chairman of the Meeting.

(*b*) The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act were available for inspection.

(*c*) The Record of presence of Quorum.

(*d*) The number of Members present in person including representatives.

(*e*) The number of Proxies and the number of shares represented by them.

(*f*) The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and

Stakeholders Relationship Committee or their authorized representatives.

(*g*) The presence if any, of the Secretarial Auditor, the Auditors, or their authorized representatives, the Court/Tribunal appointed observers or scrutinizers.

(*h*) Summary of the opening remarks of the Chairman.

(*i*) Reading of qualifications, observations or comments or other remarks on the financial transactions, which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.

(*j*) Reading of qualifications, observations or comments or other remarks, which have any material adverse effect on the functioning of the company, as mentioned in the report of the Secretarial Auditor.

(*k*) Summary of the clarifications provided on various Agenda Items.

(*l*) In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed.

Where a motion is moved to modify a proposed Resolution, the result of voting on such motion shall be mentioned. If a Resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes shall contain the details of voting for the modified Resolution.

(*m*) In the case of poll, the names of scrutinizers appointed and the number of votes cast in favour and against the Resolution and invalid votes.

(*n*) If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.

(*o*) The time of commencement and conclusion of the Meeting.

17.2.2.2 In respect of Resolutions passed by e-voting or postal ballot, a brief report on the e-voting or postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report shall be recorded in the Minutes Book and signed by the Chairman or

in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by e-voting or postal ballot.

17.3 Recording of Minutes

17.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorized by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

17.3.2 Minutes shall be written in clear, concise and plain language.

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

17.3.3 Each item of business taken up at the Meeting shall be numbered.

Numbering shall be in a manner which would enable ease of reference or cross-reference.

17.4 Entry in the Minutes Book

17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

17.4.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

Where there is no Company Secretary, it shall be entered by any other person authorised by the Board or the Chairman.

17.4.3 Minutes, once entered in the Minutes Book, shall not be altered.

17.5 Signing and Dating of Minutes

17.5.1 Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorized by the Board for the purpose, within thirty days of the General Meeting.

17.5.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

17.6 Inspection and Extracts of Minutes

17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.

Minutes of all General Meetings shall be open for inspection by any Member during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its Articles or in General Meeting, impose so, however, that not less than two hours in each business day are allowed for inspection.

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorized by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

17.6.2 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided the same is certified by the Chairman or any Director or the Company Secretary.

When a Member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company shall furnish the same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company. In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings held during a period immediately preceding three financial years, the company shall furnish the same on payment of such fee as prescribed under the Act.

Copies of the Minutes or the extracts thereof as requisitioned by the Member, duly certified by the Company Secretary or where there is no Company Secretary, an officer duly authorized by the Board in this behalf, may be provided in physical or electronic form.

18. Preservation of Minutes and other Records

18.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

18.2 Office copies of Notices, scrutinizer's report and related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

Office copies of Notices, scrutiniser's report and related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

18.3 Minutes Books shall be kept in the custody of the Company Secretary.

Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

19. Report on Annual General Meeting

Every listed public company shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.

Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:

(*a*) the day, date, time and venue of the Annual General Meeting;

(*b*) confirmation with respect to appointment of Chairman of the Meeting;

(*c*) number of Members attending the Meeting;

(*d*) confirmation of Quorum;

(*e*) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;

(*f*) business transacted at the Meeting and result thereof with a brief summary of the discussions;

(*g*) particulars with respect to any adjournment, postponement of Meeting, change in venue; and

(*h*) any other points relevant for inclusion in the report.

Such report shall be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

20. Disclosure

The Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year.

Effective Date: This Standard shall come into effect from **1st October, 2017.**

Annexure (Para 16.1)

Items of business which shall be passed only by postal ballot:

1. Alteration of the objects clause of the Memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the Main Objects of the Memorandum

2. Alteration of Articles of Association in relation to insertion or removal of provisions which are required to be included in the Articles of a company in order to constitute it a private company
3. Change in place of Registered Office outside the local limits of any city, town or village
4. Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised
5. Issue of shares with differential rights as to voting or dividend or otherwise
6. Variation in the rights attached to a class of shares or debentures or other securities
7. Buy-back of shares by a company
8. Appointment of a Director elected by Small Shareholders
9. Sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings
10. Giving loans or extending guarantee or providing security in excess of the limit specified
11. Any other Resolution prescribed under any applicable law, rules or regulations

QUESTIONS & ANSWERS ON SECRETARIAL STANDARDS

Question 1] Whether secretarial standard relating to general and board meeting is required to be complied by the companies under the Companies Act, 2013.

Ans.: Compliance with Secretarial Standard relating to general and board meeting [Section 118(10)]: Every company shall observe secretarial standards with respect to General & Board Meetings specified by the ICSI constituted u/s 3 of the Company Secretaries Act, 1980, and approved by the Central Government.

In the context of this provision, observance of Secretarial Standard issued by the ICSI on 23rd April, 2015 assumes special relevance and companies will have to ensure that there is compliance with these standards on their part. The ICSI has already issued the Secretarial Standard relating to Board and General Meeting, which are effective from 1st June 2015.

Question 2] Introduction of Secretarial Standards by the Institute of Company Secretaries of India (ICSI) is a unique and pioneering effort towards attainment of good Corporate Governance. Do you agree? Explain briefly.

CS (Executive) - Dec 2014 (4 Marks)

Ans.: The formulation of Secretarial Standards by the Secretarial Standards Board (SSB) of the ICSI is a unique and pioneering step towards standardization of diverse secretarial practices prevalent in the corporate sector.

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.

The SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent.

Secretarial Standards are developed:

- in a transparent manner;
- after extensive deliberations, analysis, research; and
- after taking views of corporates, regulators and the public at large.

SSB was constituted in the year 2000. The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of regulatory authorities such as the Ministry of Corporate Affairs, SEBI, the Department of Economic Affairs, RBI, Department of Public Enterprises, Chamber of Commerce and the sister professional bodies viz. the ICAI and the ICWA. The ICSI-CCGRT (Centre for Corporate Governance Research & Training) provides technical support to SSB.

The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best

practices in the world. Many companies today are voluntarily adopting the Secretarial Standards in their functioning. The annual reports of several companies released during the last few years include a disclosure with regard to the compliance of the Secretarial Standards.

Question 3] Mrs. Rukmini is the statutory auditor of Energies Ltd. Free reserves of the company are four times more than the paid-up share capital. The company has Rohit, as secretarial auditor. There is a cost auditor, Amit, and an internal auditor, Sunil. Examining the provisions of the Companies Act, 2013 read with the secretarial standards, advise the company as to who is/are required to be present at the forthcoming annual general meeting of the company.

CS (Executive) - Dec 2016 (4 Marks)

Ans.: *Presence of Directors and Auditors at AGM:*

Directors: If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other Member of any such Committee authorized by the Chairman of the respective Committee to attend on his behalf, shall attend the General Meeting.

Auditors: The Auditors, unless exempted by the company, shall, either by themselves or through their authorized representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.

The authorized representative who attends the General Meeting of the company shall also be qualified to be an Auditor.

Secretarial Auditor: The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorized representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.

The Chairman may invite the Secretarial Auditor or his authorized representative to attend any other General Meeting, if he considers it necessary.

The authorized representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor.

This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

Considering the provisions of SS-2, following person should be present at the AGM:

(1) Chairman
(2) All directors
(3) Mrs. Rukmini - Statutory Auditor
(4) Rohit - Secretarial Auditor
(5) Amit - Cost Auditor
(6) Sunil - Internal Auditor
(7) Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other Member of any such Committee authorized by the Chairman of the Committee.

Solved Paper
CS Executive - June 2017

Q1. Comment on the following :

(*a*) A Limited Liability Partnership can become member in a company incorporated under the provisions of the Companies Act, 2013.

(*b*) Consolidation of financial statements is mandatory for all companies including unlisted companies and private companies.

(*c*) A statutory auditor of a private limited company is restricted to take up any other assignment in the companies.

(*d*) Merger of a 'Subsidiary' Company into 'Holding' Company.

(*5 marks each*)

Ans. 1:

(*a*) Subject to the MOA & AOA, any person who is competent to contract can become a member of a company. Being an incorporated body under the statute, LLP can become a member of a company.

(*b*) A company is required to present a 'consolidated financial statement' if it is holding company and other is subsidiary of earlier company.

As per **Section 129**, where a company has one or more subsidiaries, it shall, in addition to financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the AGM of the company along with the laying of its financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed.

The Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation: The word "subsidiary" shall include associate company and joint venture.

Thus, consolidation of financial statement is mandatory for all companies including unlisted and private company.

(*c*) As per **Section 144**, an auditor shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, but which shall not include any of the following services whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:

(*i*) Accounting and book keeping services
(*ii*) Internal audit
(*iii*) Design and implementation of any financial information system
(*iv*) Actuarial services
(*v*) Investment advisory services
(*vi*) Investment banking services
(*vii*) Rendering of outsourced financial services
(*viii*) Management services and
(*ix*) Any other kind of prescribed services

(*d*) **Section 233** provides that a scheme of merger or amalgamation may be entered into between:

- Two or more small companies or
- Between a holding company and its wholly-owned subsidiary company or
- Such other class or classes of companies as may be prescribed.

Conditions [Section 233(1)]:

(*a*) A notice of the proposed scheme inviting objections or suggestions from the ROC and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme **within 30 days** is issued by the transferor and the transferee company.

(*b*) The objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least **90% of the total number of shares.**

(*c*) Each of the companies involved in the merger files a declaration of solvency with ROC where the registered office of the company is situated.

(*d*) The scheme is approved by majority representing **9/10th** in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of **21 days** along with the scheme to its creditors for the purpose or otherwise approved in writing.

Filing of copy of the scheme [Section 233(2)]: The transferee company shall file a copy of the scheme in prescribed manner with the Central Government, ROC and the Official Liquidator where the registered office of the company is situated.

Confirmation order by the Central Government [Section 233(3)]: On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

Communication of objection to the Central Government [Section 233(4)]: If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of 30 days. However, if no such communication is made, it shall be presumed that they have no objection to the scheme.

Application by Central Government to the Tribunal [Section 233(5)]: If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of 60 days of the receipt of the scheme stating its objections and requesting that the Tribunal may consider the scheme u/s 232.

Tribunal's action [Section 233(6)]: On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per Section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit.

Registrar to be communicated [Section 233(7)]: A copy of the order confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

Effect of registration of the scheme [Section 233(8) & (9)]: The registration of the scheme shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.

The registration of the scheme shall have the following effects:

(*a*) Transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company.

(*b*) The charges on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company.

(*c*) Legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company.

(*d*) Where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

Cancellation of shares held by transferee company [Section 233(10)]: A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

Filing of copy registered scheme with ROC [Section 233(11)]: The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorized capital and pay the prescribed fees due on revised capital.

However, the fee paid by the transferor company on its authorized capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company.

Q2. Distinguish between the following :

(*a*) 'E-voting' and 'Voting by show of hands'.
(*b*) 'Key-managerial personnel' and 'Managing Director'.
(*c*) 'Internal Audit' and 'Secretarial Audit'.
(*d*) 'Punishment for false statement' and 'punishment for false evidence' under the provisions of the Companies Act, 2013.

(*4 marks each*)

Ans. 2:

(*a*) Following are the main points of difference between 'E-voting' and 'voting by show of hands':

Points	E-voting	Voting by show of hands
Meaning	Electronic voting, a form of machine based voting in which voters make their selections with the aid of machine or computer.	Vote given by members personally presenting at the meeting by raising their hands is known as voting by show of hands.
Applicability	The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.	At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands.
Section	Section 108 of the Companies Act, 2013 makes provisions relating to e-voting.	Section 107 of the Companies Act, 2013 makes provisions relating to show of hands.
Mandatory	Every listed company or a company having not less than 1,000 members shall provide to its members facility to vote on resolutions by electronic means.	Voting by show of hands can be adopted by any company and it's optional.
Physical presence	Physical presence of members at meeting is not necessary in case of e-voting.	Physical presence of members at meeting is necessary in case of voting by show of hands.

(*b*) Following are the main points of difference between 'key managerial personnel' and 'managing director':

Points	Key Managerial Personnel	Managing Director
Meaning	Key managerial personnel 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*) Other prescribed officers	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.
Power	Many powers as delegated by management/board of directors can be exercised by the key managerial personnel.	Managing director has substantial powers of management of the affairs of the company.
Director	Every key managerial personnel need not to be director.	Managing director is essentially a director. If person appointed as 'managing director' cease to be 'director' he also ceases to be managing director.
Position	Every key managerial personnel are not a managing director.	Every managing director is key managerial personnel.
Appointment	A company can appoint or re-appoint any person as its KMP except MD for a term exceeding 5 years at a time.	A company shall not appoint or re-appoint any person as its Managing Director for a term exceeding 5 years at a time. **[Section 196(2)]**

Procedure for appointment	Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.	In case of appointment of MD in addition to approval of board at its meeting approval of shareholders at general meeting is also necessary.

(*c*) The following are the main points of distinction between Secretarial and Internal audit:

Points	Secretarial Audit	Internal Audit
Meaning	Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company.	Internal audit is the independent appraisal activity within an organization for the review of accounting, financial and other business practices as protective and constructive arms of management.
By whom	Secretarial Audit has to be carried out by Practicing Company Secretary.	Internal audit is conducted by the internal audit staff who may be Chartered Accountant, Cost Accountant or officer of the company.
Companies covered	As per Section 204 (1) of Companies Act, 2013 read with Rule 9 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, the following companies are required to obtain Secretarial Audit Report: - Every listed company - Every public company having a paid-up share capital of ₹ 50 Crore or more - Every public company having a turnover of ₹ 250 Crore or more.	The following class of companies shall be required to appoint an internal auditor: (*a*) Every listed company (*b*) Every unlisted public company having— (*i*) Paid up share capital of ₹ 50 Crore or (*ii*) Turnover of ₹ 200 Crore or more or (*iii*) Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 Crore or more or (*iv*) Outstanding deposits of ₹ 25 Crore or more (*c*) Every private company having- (*i*) Turnover of ₹ 200 Crore or more or (*ii*) Outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 Crore
Employee	Secretarial Auditor can never be employee of the company.	Internal auditor may or may not be an employee of the company
Form	Secretarial Audit Report is required to be provided in the format prescribed in Form MR-3.	There is no Form prescribed for the internal audit.

(*d*) **Punishment for false statement [Section 448]:** A person is liable to penalty prescribed in Section 447 if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder, he makes a statement —

(*a*) which is false in any material particulars, knowing it to be false or

(*b*) which omits any material fact, knowing it to be material.

Punishment for false evidence [Section 449]: A person shall be punishable with imprisonment for a term which shall not be less than **3 years** but which may extend to 7 years and with fine which may extend to ₹ **10 lakh** who intentionally gives false evidence —

(*a*) upon any examination on oath or solemn affirmation, authorized under the Act or

(*b*) in any affidavit, deposition or solemn affirmation, in or about the winding-up of any company under the Act, or otherwise in or about any matter arising under the Act.

OR

Q2A.

(*i*) San Industries Private Limited Company has its paid-up share capital of ₹ 40 lakhs and turnover of ₹ 10 crore as per the last audited Balance Sheet. Examining the provisions of the Companies Act, 2013, decide whether the company will be treated as small company. What would be your answer in case the company is governed by any special Act ?

(*4 marks*)

(*ii*) A2Z Management Services Limited is a listed company quoted at Bombay Stock Exchange Limited. The company closed its register of debenture holders in June and August 2016 for 12 and 21 days respectively. The Chief Financial Officer (CFO) of the company has informed the Secretary of the company to consider closing the register in December for another 15 days for some strategic reasons. Referring to the provisions of the Companies Act. 2013, examine the validity of the above action of the company.

(*4 marks*)

(*iii*) Mr. Atul Rastogi, the Managing Director of ABC Limited has resigned from the Managing Directorship of the company. He, however, wants to continue as a director in the company. Referring to the provisions of the Companies Act, 2013, state whether Mr. Atul can continue as a director in the company.

(*4 marks*)

(*iv*) Innovative Energies Limited has 2,505 members as on the date of the company's extraordinary general meeting. The Executive Director. Mr. Avinash has asked you. The Secretary of the Company, what is the required quorum for the meeting. Referring to the provisions of the Companies Act, 2013, inform the Executive Director, Mr. Avinash, the quorum that must be present for holding the Extraordinary General Meeting of the company. State whether the required quorum must be present throughout the meeting.

(*4 marks*)

Ans. 2A

(*i*) **Small Company [Section 2(85)]:** Small company means a private company,

(*i*) Paid up share capital of which does not exceed ₹ **50 lakh** or such higher amount as may be prescribed which shall not be more than ₹ **10 Crore** or

(*ii*) Turnover of which as per its last profit and loss account does not exceed ₹ **5 Crore** or such higher amount as may be prescribed which shall not be more than ₹ **100 Crore**

Nothing in this definition shall apply to: *(This means following companies cannot be small companies)*

(*a*) Holding or a subsidiary company

(*b*) Company registered u/s 8 or

(*c*) Company or body corporate governed by any Special Act.

As per facts given in case San Industries Private Limited has paid-up capital ₹ 40 lakh and turnover of ₹ 10 Crore. The San Industries Private Limited fulfils both criteria of capital as well as of turnover hence it is small company within the meaning of Companies Act, 2013.

If San Industries Private Limited is governed by Special Act, then it cannot be treated as small company.

(*ii*) **Power to close register of members or debenture holders or other security holders [Section 91]:** A company may close the register of members or the register of debenture holders or the register of other security holders for any period or periods not exceeding in the aggregate **45 days** in each year, but not exceeding **30 days** at any one time, subject to giving of previous notice of at least **7 days** or such lesser period as may be specified by SEBI for listed companies.

Closure of register of members or debenture holders or other security holders [Rule 10 of the Companies (Management & Administration) Rules, 2014]:

A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least 7 days previous notice as specified by SEBI by advertisement at least once in a vernacular newspaper in the vernacular language and at least once in English language at the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website of the Company.

The above provisions shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than 7 days prior to closure of the register of members or debenture holders or other security holders.

As per facts given in case A2Z Management Service Limited has already closed its register of debenture holder for two times for 12 days and 21 days aggregating for 33 days.

As per advice of Chief Financial Officer, register of debenture holder can be closed for further 12 days and not for 15 days so that aggregate period of closing should not exceed 45 days.

(*iii*) The terms "director" and "managing director" are defined under the Companies Act, 2013. On the face of it, a managing director has first to be a director. So long as he is a director and is also appointed as managing director, he continues as managing director.

If such person resigns from his appointment as 'managing director' he continues to be 'director'.

Thus, Mr. Atul Rastogi, the Managing Director of ABC Ltd. can continue as director even he resigns from his Managing Directorship.

(*iv*) Quorum refers to the minimum number of members required to constitute a valid meeting.

Quorum for meetings [Section 103]: Unless the articles of the company provide for a larger number, following shall be the quorum for a meeting of the company -

(*a*) **In case of a public company:**

- 5 members personally present if the number of members as on the date of meeting is not more than 1,000

- 15 members personally present if the number of members as on the date of meeting is more than 1,000 but up to 5,000
- 30 members personally present if the number of members as on the date of the meeting exceeds 5,000

(*b*) **In the case of a private company:** Two members personally present.

Innovative Energies Limited has 2,505 members. Thus, in its extraordinary general meeting 15 members must be present personally in order constitute valid quorum.

Companies Act, 2013 is silent about the situation when quorum is available at the beginning of meeting but quorum is reduced in the middle of the meeting.

In *Hartely Baird* In re (1955) Ch 143, it was held that it is sufficient if the quorum is present at the beginning of the meeting and it not necessary that quorum should present throughout the meeting.

Q3.

(*a*) XYZ Limited has office building in London. The company has been granted a term loan of ₹ 15 crore from a Bank. The company wants to mortgage office building of London. Examining the provisions of the Companies Act, 2013, answer the following :

(*i*) Whether the company can mortgage the above office building ?

(*ii*) Whether a charge can be created for property situated outside India ?

(*4 marks*)

(*b*) Board of Directors of Anil Limited has decided not to preserve the books of account and other related records of accounts, for more than five years immediately preceding the relevant financial year of 2016-17 due to shortage of space in the office premises. Referring to the provisions of the Companies Act, 2013, examine the validity of the Board's decision.

(*4 marks*)

(*c*) RR Limited has decided to make investment in other companies for ₹ 50 lakhs, which is in excess of 60% of the company's paid-up share capital, free reserves and securities premium account. Company has 5 directors. Four directors were present in the Board meeting, three directors have given their consent but one director abstained from voting. The decision of the Board was noted in the minutes of Board meeting and decided to make such investment by passing of Board resolution with majority. Referring to the provisions of Companies Act, 2013, examine the validity of the Board's decision.

(*4 marks*)

(*d*) Mr. X is a director in Greenfield Industries Limited. He is a man of wide knowledge of commercial matters. The company has not filed financial statements with the Registrar of Companies for the years ended 31st March, 2014, 31st March, 2015 and 31st March, 2016. However, it has filed the annual returns for those years in compliance of the provisions of the Companies Act, 2013.

Considering Mr. X's huge experience, Redfield Industries Limited wants to induct him as a director on its Board. Referring to the provisions of the Companies Act, 2013, examine the validity of such proposition.

(*4 marks*)

Ans. 3:

(*a*) As per **Section 179(3)**, the board of directors of company can exercise borrowing power. Thus, XYZ Ltd. can mortgage its office building in London and can avail borrowings.

As per **Section 77**, every company creating a charge shall register the particulars of charge signed by the company and its charge holder together with the instruments creating.

Any charge created within or outside India on property or assets or any of the company's undertakings whether tangible or otherwise, situated in or outside India shall be registered.

Hence, all types of charges are required under the Companies Act, 2013 to be registered whether created within or outside India.

(*b*) **Preservation of books of accounts [Section 128(5)]:** Every company is required to preserve books of accounts along with vouchers of last 8 financial years.

However, if an investigation has been ordered in respect of the company, the Central Government may direct to keep the books of account for longer period.

Thus, board of directors of Anil Ltd. has to preserve its books of account for 8 years even if there is shortage of space in its office premises.

However, all or any of the books of account and other relevant papers may be kept at such other place in India as the Board of Directors may decide. As per **Rule 2A** of the **Companies (Accounts) Rules, 2014**, the company shall, within 7 days file with the Registrar a notice giving the full address of that other place in **Form No. AOC-5**.

(*c*) **Loan and investment by company [Section 186(2)]:** A company can directly or indirectly give loan, guarantee or provide security or make investment other body corporate or person up to higher of the following two limits:

- [Paid-up Capital + Free Reserves + Securities Premium Account] × 60% *or*
- [Free Reserves + Securities Premium Account] × 100%

Higher loan, guarantee or investment by passing special resolution [Section 186(3)]: Where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified Section 186(2), prior approval by means of a special resolution passed at a general meeting shall be necessary.

Consent of board [Section 186(5)]: No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of *all the directors present at the meeting* and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

In board meeting of RR Limited resolution for investment in excess of 60% of paid-up capital and free reserves is approved by four directors out of five directors present in the board meeting. Thus, company has failed to comply with Section 186(5) and hence resolution is not valid.

(*d*) **Disqualification by reason of default made by a company [Section 164(2)]:** A person who is or has been a director of a company shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years which —

(*a*) has not filed financial statements or annual returns for any continuous period of 3 financial years; or

(*b*) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more.

Keeping in view of above provision, Mr. X, director of Greenfield Ltd. is disqualified to be appointed as director in that company as well as in other companies. Thus, Mr. X cannot be appointed as director in Redfield Ltd.

OR

Q3A.

(*i*) Newly incorporated Abhay Limited has not mentioned names of first directors of the company in the Articles of Association. Referring to the provisions of the Companies Act, 2013, advise the Board of Directors regarding the appointment of first directors of the company. What would by your answer in case the company is a One Person Company ? Also state whether provisions of the Act are applicable to a Private Limited Company.

(*4 marks*)

(*ii*) Board of Directors of AVB Limited wants to declare dividend ₹ 15 lakhs out of capital profits for the year ended 31st March, 2017, without making a provisions for depreciation. Referring to the provisions of the Companies Act, 2013, you being the Secretary of the Company advise the board whether it can go ahead with its proposal ?

(*4 marks*)

(*iii*) Charjee Biotech Private Limited is a two year old company. The Board of Directors of the company wants to contribute 2.8% of its average net profits of the last years to the Prime Minister's National Relief Fund. Referring to the provisions of the Companies Act, 2013, advise the board.

(*4 marks*)

(*iv*) CIF Technosystems Private Limited is proposed to be incorporated in Bhubaneshwar, Orissa under the Companies Act, 2013. The company will be a holding company of CIF Holding Private Limited, already incorporated in Brazil under the Company Law of Brazil. The company in Brazil follows financial year 1st January to 31st December of a calendar year. Referring to the provisions of the Companies Act, 2013, state whether the financial year of CIF Technosystem can also be 1st January to 31st December, in order to make it easier to prepare consolidated financial statements.

(*4 marks*)

Ans. 3A:

(*i*) **First Directors [Section 152(1)]:** Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In case of OPC an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member as per provisions of this section.

Thus, subscribers of Abhay Ltd. are deemed to be first directors of the company.

Section 152(1) applies to all companies, whether public or private.

(*ii*) *Dividend cannot be paid out of capital, even if the AOA authorize such payment.*

Sources of dividend [Section 123(1)]: A company can pay dividend from the following sources:

(1) **Dividend out of current profits:** A company can pay dividend out of the profits of the company for that year arrived at after providing for depreciation as per Section 123(2).

(2) **Dividend out of profits of previous financial years:** A company can pay dividend out of profits for any previous financial years after providing for depreciation and remaining undistributed.

(3) **Dividend out of money provided by the Central or State Government:** A company can pay dividend out of money provided by the Central or State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Depreciation [Section 128(2)]: For the purposes of Section 123(1), depreciation shall be provided in accordance with the provisions of **Schedule II**.

Dividend cannot be declared unless previous losses and depreciation are set off [Fourth proviso to Section 128(1)]: No company shall declare dividend unless carried over previous losses and depreciation not provided in previous years are set off against profit of the company for the current year.

Keeping in view above provisions, AVB Ltd. cannot declare dividend out of capital. It can declare dividend out of current profit or out of profits for any previous financial years after providing for depreciation and remaining undistributed.

(*iii*) **Power of Board and other persons to make contributions to national defence fund, etc. [Section 183]:** The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Board can contribute amount under this section by passing resolution at board meeting or passing circular resolution.

No limit on contribution: There is a limit on the amount that a company may contribute under this section.

Disclosure of contribution: Every company shall disclose in its profits and loss account the total amount contributed by it to National Defence Fund or any other Fund approved by the Central Government.

Approved funds u/s 293B of the Companies Act, 1956: *[corresponding to Section 182 of the Companies Act, 2013]*

1. The Chief Secretary to the Government of Andhra Pradesh, Hyderabad, National Defence Fund, Andhra Pradesh
2. The National Defence Fund, Andhra Pradesh State People's Committee, Andhra Pradesh
3. The Bihar State National Defence and Jawans Welfare Fund, Bihar
4. The Chief Minister's Defence Fund, Kerala State Kerala
5. The National Defence Fund, Madras, Tamil Nadu
6. The Chief Minister's Defence Services Welfare Fund, Rajasthan, Rajasthan
7. The Chief Minister's Defence Forces Welfare Fund, Lucknow, Uttar Pradesh
8. The Chief Minister's Defence Purposes Fund of Uttar Pradesh, Lucknow, Uttar Pradesh
9. The Chief Minister's West Bengal Account National Defence Fund, West Bengal
10. Gujarat Chief Minister's Sainik Fund, Gujarat
11. Prime Minister's National Relief Fund

Keeping in view of above provisions, the board of directors of Biotech Private Limited can contribute 2.8% of its average net profits of last years to the Prime Minister's National Relief Fund.

(*iv*) **Financial Year [Section 2(41)]:** 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.

However, 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 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.

Keeping in view of above provisions, CIF Technosystem Private Ltd. a subsidiary of CIF Holding Private Ltd. can adopt its financial year as 1st January to 31st December but only after obtaining approval of Tribunal.

Q4.

(*a*) KPS India Producer Company Limited having an average annual turnover exceeding six crore in each of the three consecutive financial year. The company has to appoint a Company Secretary. Advise the company by referring to the provisions of the Companies Act, 1956 as applicable to producer company relating to such appointment.

(*4 marks*)

(*b*) Shaky Commodities Private Limited could not hold its 10th annual general meeting for the year 2016 by 30th September, 2016. The company sought extension of time for holding the AGM from the Registrar of Companies but failed to hold the meeting within the extended time too. Instead, it held the meeting on 31st March, 2017 and passed resolutions thereat. Certain shareholders have challenged the validity of these resolutions. Referring to the provisions of the Companies Act, 2013, examine whether the contention of the shareholders shall be tenable.

(*4 marks*)

(*c*) From the following information in respect of two companies *viz.* ZYX Limited and CBA Private Limited, compute the amount the companies are required to spend on account of Corporate Social Responsibility (CSR) :

Financial Year	**ZYX Ltd. Net Profit/(Loss) ₹ (In crore)**	**CBA Private Ltd. Net Profit/(Loss) ₹ (In crore)**
2014-15	Not incorporated	(4)
2015-16	6	(1)
2016-17	18	6

(*4 marks*)

(*d*) During the financial year 2016-17, the Board of Directors of CARE Automation Services Limited has issued shares to employees under Employees Stock Option Scheme. Ms. Excellent has recently joined the Board of the company and asks you, the Secretary of the company, as to what details are to be disclosed in the Board's Report for the year ending 31st March, 2017 in this regard. Advise her.

(*4 marks*)

Ans. 4:

(*a*) **Secretary of producer company [Section 581X of Companies Act, 1956]:** Every producer company having an average annual turnover exceeding ₹ **5 Crore** in each of **3 consecutive financial years** shall have a whole-time secretary.

A person possessing membership of the ICSI can only be appointed as whole-time secretary.

As per facts given in case, average annual turnover of KPS India Producer Ltd. exceeds ₹ 6 Crore for each of the last three financial years and hence appointment of Company Secretary is mandatory for the company.

(*b*) **Annual General Meeting [Section 96(1)]:** Every company, other than OPC is required to hold an AGM every year.

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any AGM shall be held. Such extension can be for a period not exceeding **3 months**. **[Proviso to Section 96(1)]**

Punishment for not holding AGM [Section 99]: If any default is made in complying or holding AGM of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to ₹ **1 lakh** and in case of continuing default, with a further fine which may extend to ₹ **5,000** for each day during which such default continues.

An AGM not held by company within the latest date on which AGM ought to have been held does not become invalid. Such meeting is valid and the only consequence is that the company is liable to penalty as per Section 99.

As per facts given in case last date of holding for Shaky Commodities Ltd. is 30th September, 2016 but it held its meeting for year 2015-2016 in year 31st March 2017. The AGM held on 31st March 2017 is valid. However, company can be penalized for holding its AGM beyond the statutory period as per Section 99.

Thus, objection raised by shareholders is not tenable.

(*c*) **Corporate Social Responsibility [Section 135]:** *Every company* fulfilling following criteria shall constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting of 3 or more directors, out of which at least one director shall be an independent director —

- Company having **net worth** of ₹ **500 Crore or more**, or
- Company having **turnover** of ₹ **1,000 Crore or more** or
- Company having **net profit** of ₹ **5 Crore or more**

The Board of directors of company to whom provisions of Corporate Social Responsibility applies shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy.

Keeping in view of above provisions, answer to give case is as under:

(1) **XYZ Ltd.:** Since XYZ Ltd. has yet to complete its first three year after incorporation and hence it is not required to spend anything on CSR activity.

(2) **CBA Private Ltd.:** Average net profit of the company is ₹ 1,00,00,000. Thus, company has to spend ₹ 2,00,000 on CSR activities.

(*d*) The Board of Directors is required to disclose the following details in relation to ESOS & ESPS in the Directors Report:

(*a*) Options granted
(*b*) Pricing formula
(*c*) Options vested
(*d*) Options exercised
(*e*) Total number of shares arising as a result of exercise of option
(*f*) Options lapsed
(*g*) Variation of terms of options
(*h*) Money realised by exercise of options
(*i*) Total number of options in force
(*j*) Employee-wise details of options
(*k*) Diluted Earnings Per Share (DEPS)
(*l*) Weighted-average exercise prices and weighted-average fair values of options
(*m*) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted average information:
- Risk-free interest rate
- Expected life
- Expected volatility
- Expected dividends and
- Price of the underlying share in market at the time of option grant.

Q5.

(*a*) Radhika Textiles Limited has utilized the securities premium during the financial year 2016-17 as follows :

(*i*) ₹ 15 lakhs against expenses of foreign travelling of directors.
(*ii*) ₹ 5 lakhs for writing-off the balance of the preliminary expenses of the company.
(*iii*) ₹ 10 lakhs distributed as dividend for the financial year ending 31st March 2017.

You, being the Secretarial Auditor of the company, referring to the provisions of the Companies Act, 2013 relating to the Securities Premium Account, examine the validity of the above.

(8 marks)

(*b*) Board of Directors of Day Night Prakashani Limited decide to shift its registered office of the company from Mumbai to National Capital Region (NCR). The Board has approved the change. The Board has to seek the approval of the members of the company for going ahead with the legal formalities as required under the Companies Act, 2013, for which the extraordinary general meeting of the members is scheduled to be held on 17th June, 2017. In this connection you are required to draft notice of the EGM for shifting of office outside the state and give explanatory statement in this regard.

(8 marks)

Ans. 5:

(*a*) **Application of premiums received on issue of shares [Section 52]:** Securities premium can be used by the company for the following purposes:

(*a*) Issuing fully paid bonus shares
(*b*) Writing off the preliminary expenses
(*c*) Writing off commission or discount or the expenses on issue of shares or debentures
(*d*) For providing premium on redemption of redeemable preference shares or debentures
(*e*) Buyback of shares and writing of premium on buyback.

Keeping in view of above provisions, answer to given problem is as follows:

(*i*) Balance in securities premium cannot be utilized for writing-off expenses of foreign travelling of directors.
(*ii*) Balance in securities premium can be utilized writing-off preliminary expenses of the company.
(*iii*) Balance in securities premium cannot be utilized for payment of dividend.

(*b*)

Day Night Prakashani Ltd.

Registered Office: .....

CIN: ..... Website: ..... E-mail: ..... Tel: ..... Fax: .....

Date .....

NOTICE

NOTICE is hereby given that pursuant to Section 13 of the Companies Act, 2013 and Rule 22 of the Companies (Management & Administration) Rules, 2014 the company is seeking consent of the shareholders through a Special Resolution, set out below, for the shifting of the Registered Office from the State of Maharashtra (Mumbai) to State of Delhi (National Capital Region) and for alteration in Clause II of the Memorandum of Association of the Company pursuant to the change in the registered office address of the Company.

"RESOLVED THAT pursuant to the provisions of the Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and the rules made thereunder and subject to the approval of the Central Government, consent of the members be and is hereby accorded for shifting of registered office of the Company from State of Maharashtra (Mumbai) to State of Delhi (National Capital Region) and that the Clause II of the Memorandum of Association of the Company be substituted by the following clause:

"**II.** The registered office of the Company will be situated in the State Delhi (National Capital Region) i.e. within the jurisdiction of the Registrar of Companies, Delhi."

RESOLVED FURTHER THAT Board of Directors of the Company be and is hereby authorized to take such steps and to do such acts & deeds as they may deem necessary and proper in this matter."

For Day Night Prakashani Ltd.

Dated: .....

By order of the Board,

Company Secretary

Note:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member.
2. The Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, in respect of special resolution set out above is annexed hereto.

ANNEXURE

Explanatory Statement

(Pursuant to Section 102 of the Companies Act, 2013)

The Company was incorporated under the provision of the Companies Act, 2013, in the State of Maharashtra. As per Clause II of the Memorandum of Association of the Company, the Registered Office of the Company is presently situated in the Maharashtra at Mumbai.

As per the share holding pattern the majority of shares are held by share holders residing in Delhi (National Capital Region).

Your approval is sought for voting by postal ballot in terms of the provisions of Section 110 of the Companies Act, 2013 read with the Companies (Management & Administration) Rules, 2014.

In accordance with the provision of Section 13 of the Companies Act, 2013 pursuant to the shifting of the Registered Office from one state to another alteration in Clause II of the Memorandum of Association of the Company is required, which requires the approval of shareholders in General Meeting by way of Special Resolution to give effect to such change. Further, pursuant to the provisions of Section 110 of the Companies Act, 2013 and the Companies (Management & Administration) Rules, 2014 the Special Resolution for shifting of Registered Office from one state to another is required to be passed by way of Postal Ballot.

In view of the above your approval is sought through Postal Ballot for shifting the Registered Office of the Company from the State of Maharashtra to the State of Delhi (National Capital Region) and for altering Clause II of the Memorandum of Association.

The proposed change will in no way be detrimental to the interest of any member of Public, Employees or other Associates of the Company in any manner whatsoever.

The Board recommends the aforesaid Special Resolution for your approval.

None of the Directors of the Company are concerned or interested in the said resolution except in the capacity as member of the Company.

Q6.

(*a*) Mr. Sunil Goyal, a director of XYZ Limited wants to go on foreign trip. He wants to assign his office to the Vice President of the company. Mr. Sunil Goyal seeks your advise whether he can do so. Referring to the provisions of the Companies Act, 2013 advise him in the matter.

(*4 marks*)

(*b*) Mrs. Beautiful, aged 40 years, is the Managing Director of Beauty Care Products Limited. She has received contribution to superannuation fund and leave encashment during her tenure with the company during the financial year ending 31st March, 2017. The Manager (Accounts) of the company is not very confident, if these perquisites are to be included in the computation of ceiling on remuneration specified in the Companies Act, 2013. Referring to the provisions of the Act, advise the Manager (Accounts).

(*4 marks*)

(*c*) Mr. Solid, a young professional of 29 years, has stayed in India for 150 days in the previous financial year. He does not hold any shares in Happy Retails Limited, which is a quoted (listed) company. Small shareholders have decided amongst themselves that he is proposed to be appointed as small shareholders director who shall not be liable to retire by rotation and his tenure shall be for five years from the date of joining the office of director. Examining the provisions of the Companies Act, 2013, state whether Mr. Solid can be so appointed as small shareholders' director.

(*4 marks*)

(*d*) As a Practising Company Secretary, advise your client company regarding the matters relating to issue of shares with differential rights, to be included in the Board of Directors Report.

(*4 marks*)

Ans. 6:

(*a*) As per **Section 166**, a director of a company shall not assign his office and any assignment so made shall be void. Thus, Mr. Sunil Goyal, a director of XYZ Ltd. cannot assign his office to Vice President of the company.

(*b*) As per **Section IV** of the **Schedule V** to the Companies Act, 2013, a managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:

(*a*) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961;

(*b*) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and

(*c*) Encashment of leave at the end of the tenure.

(*c*) **Small Shareholder [Section 151]:** Small Shareholder means a shareholder holding shares of *nominal value* of ₹ 20,000 or less or such other sum as may be prescribed.

A listed company may have one director elected by small shareholders in prescribed manner and with prescribed terms and conditions.

As per **Rule 7** of the **Companies (Appointment & Qualification) Rules, 2014**, the appointment of small shareholders director shall be subject to the provisions of Section 152 except that —

(*a*) He shall not be liable to retire by rotation.

(*b*) His tenure shall not exceed a period of 3 consecutive years.

(*c*) On the expiry of the tenure, small shareholder director shall not be eligible for re-appointment.

Keeping in view of above provisions, Mr. Solid can be appointed as small shareholder director for 3 year and not for 5 years.

(*d*) As per **Rule 4(4)** of the **Companies (Share Capital & Debentures) Rules, 2014**, following disclosures are required to made in Board's Report in relation to issue of shares with differential voting rights:

(*i*) Number of shares allotted with differential rights.

(*ii*) Details of the differential rights relating to voting rights and dividends.

(*iii*) Percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital.

(*iv*) Price at which such shares have been issued.

(*v*) Particulars of promoters, directors or key managerial personnel to whom such shares are issued.

(*vi*) Change in control, if any, in the company consequent to the issue of equity shares with differential voting rights.

(*vii*) Diluted EPS calculated in accordance with the applicable accounting standards.

(*viii*) The pre and post issue shareholding pattern along with voting rights.

Solved Paper
CS Executive - December 2017

Q1. Comment on the following :

(*a*) Members of a company incorporated under the Companies Act, 2013 are the agents of the company. Therefore, the company can be held liable for their acts.

(*b*) A private company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposits from the public.

(*c*) Only a naturally born person, who is an Indian citizen and resident in India, can form a One Person Company.

(*d*) Three companies incorporated with the same set of shareholders are treated as same companies under the Companies Act, 2013.

(5 marks each)

Ans. 1:

(*a*) The Company is vested with a corporate personality quite distinct from individuals who are its members. Being a separate legal entity it bears its own name and acts under a corporate name. It has a seal of its own. Its assets are separate and distinct from those of its member.

A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind by their acts.

(*b*) **Private Company [Section 2(68)]:** A private company means a company, which has a minimum paid-up capital as may be prescribed, **and by its articles:**

(*a*) Restricts the right to transfer its shares

(*b*) Limits the number of its members to 200 *excluding past and present employee*

(*c*) Prohibits any invitation to the public to subscribe for *any securities* and

A private company may issue debentures to any number of persons. The only condition being that an invitation to the public to subscribe for debentures is prohibited.

Deposits: A private company can only accept deposit from its members only and not from public.

(*c*) **Rule 3** of **Companies (Incorporation) Rules, 2014** relating to One Person Company make the following provision:

Only a natural person who is an Indian citizen and resident in India—

(*a*) shall be eligible to incorporate a OPC

(*b*) shall be a nominee for the sole member of a OPC.

"Resident in India" means a person who has stayed in India for a period of not less than **182 days** during the immediately preceding one calendar year.

Thus, only naturally born person who is Indian citizen and resident in India can form OPC.

(*d*) By registration a company becomes vested with corporate personality, which is independent and distinct from its members. Even if two or more companies are incorporated with the same set of shareholders, they are distinct and cannot be treated as same company.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Q2. Distinguish between the following :

(*a*) 'Red-Herring Prospectus' and 'Abridged Prospectus'.

(*b*) 'Free Reserves' and 'Net Worth' under the provisions of Companies Act, 2013.

(*c*) 'Related Party' and 'Relative' as defined and applied under the Companies Act, 2013.

(*d*) 'Inspection' and 'investigation' of companies in India.

(4 marks each)

Ans. 2:

(*a*) Following are the main points of distinction between Red-herring & Abridged Prospectus:

Points	Red-herring Prospectus	Abridged prospectus
Meaning	Red-herring prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities offered.	Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf.
Section	It is governed by section 32 of the Companies Act, 2013.	It is governed by Section 33 of the Companies Act, 2013.
Applicability	Provisions of red herring prospectus are applicable to all companies except those are covered under shelf prospectus. The provision is mainly applicable for book building.	Provisions of abridged prospectus are applicable to all companies.
Filing	A company proposing to issue a red herring prospectus shall file it with the ROC at least 3 days prior to the opening of the subscription list and the offer.	Abridged prospectus is not required to be filed with ROC.
Scope	A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.	No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.

(*b*) **Free Reserve [Section 2(43)]:** Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

However, following cannot be treated as free reserve—

(*i*) Any amount representing unrealized 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.

Net Worth [Section 2(57)]: 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.

"Net worth" is wider term and "free reserve" is part of "net worth".

(*c*) **Related Party [Section 2(76)]:** Related party, with reference to a company, means—

(*i*) A director or his relative;

(*ii*) A key managerial personnel or his relative;

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

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

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

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

(*vii*) Any person on whose advice, directions or instructions a director or manager is accustomed to act *(However, clauses* (vi) *and* (vii) *shall apply to the advice, directions or instructions given in a professional capacity);*

(*viii*) Any company which is—

(A) A holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(*ix*) Such other person as may be prescribed.

Relative [Section 2(77)]: Relative, with reference to any person, means any one who is related to another, if—

(*i*) they are members of HUF;

(*ii*) they are husband and wife; or

(*iii*) one person is related to the other in such manner as may be prescribed.

As per **Rule 4** of the **Companies (Specification of Definitions Details) Rules, 2014**, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:—

(1) Father (the term "Father" includes step-father)

(2) Mother (the term "Mother" includes the step-mother)

(3) Son (the term "Son" includes the step-son)

(4) Son's wife

(5) Daughter

(6) Daughter's husband

(7) Brother (term "Brother" includes the step-brother)

(8) Sister (the term "Sister" includes the step-sister)

(*d*) Following are the main points of distinction between inspection and investigation:

Points	Inspection	Investigation
When	If no information or explanation is furnished or it is inadequate, ROC may by written notice call on the company to produce for his inspection books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice. **[Section 206(3)]** If the Central Government is satisfied that the circumstances so warrant, it may direct inspection of books and papers of a company by an inspector appointed by it. **[Section 206(5)]**	In following cases the Central Government ***may*** order an investigation into the affairs of the company if it is of the opinion that it is necessary to investigate into the affairs of a company— (*a*) On the receipt of a report of the Registrar or inspector u/s 208 (*b*) On intimation of a **special resolution** passed by a company that the affairs of the company ought to be investigated or (*c*) In public interest. **[Section 210(1)]** Where an order is passed by a Court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government ***shall*** order an investigation into the affairs of that company. **[Section 210(2)]**
By whom	Inspection may be carried out by ROC or the inspector authorized by the Central Government and in case of listed company SEBI is also authorized to inspect.	Investigation is always carried out by the inspector or authorized officer of Central Government.
Nature	Inspection is routine exercise.	The investigation means in-depth analysis of books of account, transaction, and event and always carried out with specific objectives.

OR (Alternate question to Q. No. 2)

Q2A.

(*i*) A company has taken a term loan from a financial institution and is regularly paying the loan instalments and interest. The financial institution proposes to convert 20% of the loan into equity shares of the company as per terms of the agreement. Advise the company, whether the financial institution can enforce such a convertibility clause ? Also examine the validity of such a clause.

(4 marks)

(*ii*) A company has 120 members. It sends notice of general meeting to all of them. 20 members did not attend the meeting. Out of remaining 100 members who were present, 20 members abstained from voting. Advice the company, how many members should vote in favour of a resolution, if it has to be passed as a special resolution ?

(4 marks)

(*iii*) American Trading Ltd. to whom Rs. 2,00,000 was due and payable by ABC Pvt. Ltd. against their supply of material in the year 2015 was shocked to find that the name of ABC Pvt. Ltd. has been struck off by the Registrar of Companies under Section 248 of the Companies Act, 2013. Advise American Trading Ltd. as to how it should proceed for recovering its dues as an unpaid creditor.

(4 marks)

(*iv*) A company wants to include a provision in its Articles of Association by altering them to limit the company's share capital to a fixed amount. Can it do so ? Will your answer be different if 100% shareholders agree for such alteration ?

(4 marks)

Ans. 2A:

(*i*) **Further issue of share capital [Section 62]:** Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to:

(1) **Existing shareholder** in proportion to the paid-up share capital on those shares by sending a letter of offer. Such right issue is subject to the following conditions:

- The offer shall be made by notice specifying the number of shares offered, time for accepting offer which may be minimum 15 days and maximum 30 days.
- The notice shall be dispatched through registered post or speed post or through electronic mode to all the existing shareholders at least 3 days before the opening of the issue.
- If offer is not accepted within period specified, it shall be deemed to have been declined.
- The offer shall include a right to renounce the shares in favour of any other person and this fact should be specifically mentioned in the notice.
- After the expiry of the time specified in the notice or on receipt of earlier intimation from the person that he declines to accept the shares offered, the Board of Directors may dispose of them in manner which is advantageous to the shareholders and the company.

(2) **To employees** under a scheme of employees stock option by passing special resolution and complying with prescribed conditions.

(3) **To other persons** by passing a special resolution either for cash or for a consideration other than cash. The price of such shares has to be determined by the valuation report of a registered valuer subject to prescribed conditions.

However, above provisions shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

It must be noted that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

Thus, as per facts given in case a company can convert its loan into equity shares as per the terms of agreement provided that the terms of loan containing such an option have been approved before raising of loan by a special resolution passed by the company in general meeting.

(*ii*) As per **Section 114**, a resolution shall be a special resolution when:

(*a*) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution.

(*b*) The notice required under this Act has been duly given and

(*c*) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

As per the facts given in case, a company has total 120 members. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting.

Total number of members voting is 80. Thus, in order to pass special resolution company needs 60 or more votes in favour of resolution.

(*iii*) **Appeal to Tribunal [Section 252]:** Any person aggrieved by an order of the Registrar, notifying a company as dissolved u/s 248, may file an appeal to the Tribunal within a period of **3 years** from the date of the order of ROC. If the Tribunal is of the opinion that the removal of the name of the company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may order restoration of the name of the company. However, before passing any order, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

Application by ROC for restoration of name of company: If the ROC is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of 3 years from the date of passing of the order dissolving the company, file an application before the Tribunal seeking restoration of name of such company.

Filing copy of order of Tribunal with ROC: A copy of the order passed by the Tribunal shall be filed by the company with the ROC within **30 days** from the date of the order and on receipt of the order. The ROC shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

Application for restoration of name of company by the company, member, creditor or workman: If a *company*, or *any member* or *creditor* or *workman* thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by any of them before the expiry of **20 years** from the publication of notice in the Official Gazette may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the ROC.

The Tribunal may give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

Keeping in view of above provisions, American Trading Ltd. as a creditor of ABC Ltd. can apply to the Tribunal for restoration of name of the company. After restoration of name, American Trading Ltd. can take appropriate legal action against the company for the recovery of its dues.

(*iv*) **Alteration of Articles [Section 14]:** Subject to the provisions of the Act and the conditions contained in its memorandum, a company may alter its articles by passing a **special resolution**.

However, in spite of the power to alter its articles, a company can exercise this power subject only to certain limitations.

A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum.

The right to alter the articles is so important that a company cannot in any manner, either by express provisions in the articles or by independent contract, deprive itself of the powers to alter its articles. *[Walker v. London Tramway Co. (1879) 12 Ch. D. 705]*

As per facts given in case, the company wants to include a provision in its AOA by altering them to limit the company's share capital to a fixed amount which is in fact limiting the power of company to alter its AOA in relation to share capital of company in future and hence against the spirit of law and hence not valid.

It will be still invalid even if 100% shareholders agree for such alteration.

Attempt all parts of either Q. No. 3 or Q. No. 3A

Q3.

(*a*) The minutes of 24th Annual General Meeting of Poly Bank Ltd. are to be signed by the chairman. However, the chairman of Poly Bank Ltd. met with an accident 2 days after the AGM was held. Minutes of AGM are, therefore, pending for signatures. Advise the company secretary of Poly Bank Ltd. about the procedure for signing of minutes in such a case as if the chairman has become permanently in capable of signing. Will your answer be different if chairman suffers only minor injury and gets back to his office in one week ?

(*4 marks*)

(*b*) ABC Ltd. holds 75% equity share capital of DEF Ltd. and controls composition of Board of Directors of DEF Ltd. ABC Ltd. goes for public issue for raising further share capital. Board of Directors of ABC Ltd. allot 10% of the issue to DEF Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of Board's decision to allot 10% of issue to DEF Ltd. DEF Ltd. holds certain number of shares as a legal representative of a deceased member of ABC Ltd. and has a right to vote at a general meeting of ABC Ltd. in respect of such shareholding, will this right be affected by issue of 10% to DEF Ltd. by ABC Ltd. ?

(*4 marks*)

(*c*) One of the subscribers to Memorandum of Association of a company under process of incorporation is a foreign national residing outside India. State the provisions of Companies Act, 2013 regarding authentication of his signature and address. Will the requirement of business visa be applicable to his case if he is a person of Indian origin or overseas citizen of India ?

(*4 marks*)

(*d*) XYZ Ltd. has 6 directors on its Board of Directors. Out of 6 directors 5 are foreigners and they reside in America. The company wants to convene its Board meeting in Mumbai but all the 5 directors are pre-occupied and are *not in* a position *to* travel *to* India. Advice the company regarding conduct of such a Board meeting as per provisions of the Companies Act, 2013 and relevant Rules. Will the same Rules or provisions be applicable in case the company wants to approve annual financial statements in the Board meeting ?

(*4 marks*)

Ans. 3:

(*a*) **Rule 25** of the **Companies (Administration & Management) Rules, 2014** contains the following provisions with regards to signing of minutes of meetings.

Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

- In the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- In the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;
- In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of 30 days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Keeping in view of above provisions answer to given case is as follows:

The Chairman of the Poly Bank Ltd. met with accident 2 days after the AGM and become permanently in capable of signing. Thus as per above provisions, in such case minutes of the AGM will be signed by the director duly authorized by the Board for the purpose.

However, if the Chairman of the Poly Bank Ltd. suffers only minor injury and gets back to office in one week the minutes of the AGM has to be signed by the Chairman of the AGM within the period of 30 days from the date of AGM.

(*b*) **Subsidiary company not to hold shares in its holding company [Section 19]:** Subsidiary company shall not either by itself or through its nominees hold shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Therefore, no company shall hold any interest in its holding company.

Exceptions: In following circumstances, a subsidiary can hold the shares of its holding company:

(*a*) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company.

(*b*) Where the subsidiary company holds such shares as a trustee.

(*c*) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

However, the subsidiary company referred above shall have voting right only in respect of the shares held by it as a legal representative or as a trustee.

Keeping in view of above provisions, ABC Ltd. (Holding Company) cannot allot shares to DEF Ltd. (Subsidiary Company) in its public issue. However, DEF Ltd. can continue to hold its shares already held as legal representative of a deceased member of the holding company. It can also exercise its voting rights in relation to such shares.

(*c*) As per **Rule 13** of the **Companies (Incorporation) Rules, 2014**, the MOA and AOA of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber(s), who has subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in".

Where subscriber to the memorandum is a foreign national residing outside India—

(*a*) In a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(*b*) In a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostillised in accordance with the said Hague Convention.

(*c*) In a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same.

(*d*) Visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

(*d*) **Manner of participation in Board Meetings [Section 173(2)]:** The participation of directors in a meeting of the Board may be either in person (personally present) or through video conferencing or other audio visual means.

The system of video conferencing or other audio visual means must be capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

As per **Rule 4** of the **Companies (Meetings of Board and its Powers) Rules, 2014** following matters shall not be dealt with in a meeting through video conferencing or other audio visual means:

(*i*) The approval of the annual financial statements

(*ii*) The approval of the Board's report

(*iii*) The approval of the prospectus

(*iv*) The Audit Committee Meetings for consideration of accounts and

(*v*) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

The company should also comply with the **Rule 3** of the **Companies (Meetings of Board and its Powers) Rules, 2014**.

Thus, XYZ Ltd. can hold the meeting of its directors through video conferencing or other audio visual means. However, it cannot pass motion relating to approval of the annual financial statements in such meeting.

OR (Alternate question to Q. No. 3)

Q3A.

(*i*) ABC Ltd. has altered its name from BCD Ltd. to ABC Ltd. However, the fact of alteration of name of the company was not brought to the notice of NCLT. Please advise the company ABC Ltd. whether it has a right to execute a decree in its new name after the change of name.

(*4 marks*)

(*ii*) KAJ Ltd., a company incorporated under the Companies Act, 2013 wants to go for issue of secured debentures. Referring to relevant provisions and Rules, state the conditions to be satisfied before the company goes for such issue of debentures. Will your answer be different in case such issue of debentures is by a Government company where the Central Government has given a guarantee ?

(*4 marks*)

(*iii*) Robert, a member of MLM Ltd. submitted his proxy to the company before the scheduled time of the Annual General Meeting. The Articles of the company provided that proxy can be submitted to the company 70 hours before the scheduled time of the meeting. The chairman of the company rejects the proxy on the ground that it is in violation of the Articles. Referring to the provisions of the Companies Act, examine the validity of the chairman's decision to reject the proxy.

(*4 marks*)

(*iv*) The Board of Directors of American Express Ltd. declared interim dividend third time during the financial year 2015-16. After declaration, the Board of Directors decided to revoke third interim dividend as they noticed that company's financial position did not permit payment of such interim dividend. The Board of Directors seek your advice in this matter. Please advise the Board as a company secretary. Will your advice be different in case it was a regular dividend instead of interim dividend ?

(*4 marks*)

Ans. 3A:

(*i*) As per section 13, a company may, by a **special resolution** and after complying with specified procedure, alter the provisions of its memorandum.

Any change in the name of a company shall not have effect except with the **approval** of the **Central Government** in writing.

When any change in the name of a company is made, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate 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.

A company shall, in relation to any alteration of its memorandum, file with the ROC—

(*a*) The special resolution passed by the company

(*b*) The approval of the Central Government, if the alteration involves any change in the name of the company.

An application shall be filed in **Form No. INC-24** along with the fee for change in the name of the company and a new certificate of incorporation in **Form No. INC-25** shall be issued to the company consequent upon change of name.

When name change is not allowed: The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the ROC or which has failed to pay or repay matured deposits or debentures or interest thereon.

However, the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

Effect of change in name of the company: The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name.

However, where a company changes its name and the new name has been registered by the ROC, the commencing of legal proceedings in the former name is not valid. *[Malhati Tea Syndicate Ltd. v. Revenue Officer, (1973) 43 Com Cases 337]*

In spite of a change in name the entity of the company continues. The company is not dissolved nor does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name. *[Pioneer Protective Glass Fibre (P) Ltd. v. Fibre Glass Pilkington Ltd., (1986) 60 Com Cases 707 (Cal.)]*

The Courts have held that proceedings commenced by the company in its former name can be continued under its new name. *[Solvex Oils and Fertilizers v. Bhandari Cross-Fields (P) Ltd., (1978) 48 Com Cases 260 (P & H)]*

By change of name, the constitution of the company is not changed, only the name changes. It is not similar to the reconstitution of a partnership which means creation of a new legal entity altogether. *[Economic Investment Corporation Ltd. v. CIT (WB) AIR (1970) 40 Com Cases I (Cal.)]*

If a company has power to execute a decree in its old name, it has right to execute the decree in its new name, even if fact of change of name was not brought to notice of court. *[D Srinivasaiah v. Vellore Varulakshmi Bank (1954) 24 Comp Cas 55, Madras HC]*

(*ii*) As per **Section 71**, a company may issue secured debentures subject to prescribed terms and conditions.

As per **Rule 18** of the **Companies (Share Capital & Debentures) Rules, 2014** makes the following provisions in this regard.

The company shall not issue secured debentures, unless it complies with the following conditions, namely:—

(*a*) **Term of issue of debentures:** An issue of secured debentures may be made, provided the date of its redemption shall not exceed **10 years** from the date of issue. However, following classes of companies may issue secured debentures for a period exceeding **10 years** but not exceeding **30 years**—

(*i*) Companies engaged in setting up of infrastructure projects;

(*ii*) Infrastructure Finance Companies

(*iii*) Infrastructure Debt Fund Non-Banking Financial Companies

(*iv*) Companies permitted by a Ministry or Department of the Central Government or by RBI or by the NHB or by any other statutory authority to issue debentures for a period exceeding 10 years.

(*b*) **Creation of charge:** Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.

(*c*) **Appointment of debenture trustee:** The Company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than **60 days** after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

(*d*) **Creation of security in favour of debenture trustee:** The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on:

(*i*) Any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise.

(*ii*) Any specific immovable property wherever situate, or any interest therein.

However, in case of a non-banking financial company, the charge or mortgage may be created on any movable property.

Relaxation to Government companies from creation of charge: In case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge shall not apply.

In case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage may also be created on the properties or assets of the holding company.

(*iii*) As per **section 105**, the instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

As per facts given in case, the Article of MLM Ltd. provided in its article that proxy can be submitted to the company 70 hours before the scheduled time of the meeting. Such provision is not valid and as per section 105 all the proxy form presented before 48 hours of the meeting are valid and must be accepted by the company. Thus, Chairman's decision to reject the proxy form on the ground that it is not submitted before 70 hours before the scheduled time of the meeting is not valid.

(*iv*) **Declaration of interim dividend [Section 123(3)]:** The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

A dividend when declared becomes a debt and a shareholder is entitled to sue for recovery of the same after expiry of the period of 30 days prescribed u/s 207. A dividend when proposed does not become a debt but only becomes debt when declared.

Revocation of declared dividend: A dividend including interim dividend once declared becomes a debt and cannot be revoked, *except with the consent of the shareholders.* But where a dividend has been illegally declared, the directors will be justified in revoking the declared dividend. If an illegally declared dividend is paid then the directors shall be responsible, liable and accountable to the company personally.

As per **section 2(35)**, "dividend includes any interim dividend." Hence, interim dividend also cannot be revoked.

Q4.

(*a*) Ram is a chartered accountant in practice. His proprietory concern has been appointed as the statutory auditor of a private limited company. Subsequently, it came to light that Mrs. Ram has been holding less than 1% shares of that private limited company. Examine the legal validity of the appointment of statutory auditor.

(*4 marks*)

(*b*) The Board of Directors of Goodwill (India) Ltd. wish to appoint an alternate director on the Company's Board in the absence of Mr. Prince, a director, who proceeded on leave. Referring to the provisions of the Companies Act, 2013, state the conditions to be satisfied before Board appoints such a director. What shall be the tenure of such alternate director in case Mr. Prince incurs a disqualification and ceases to be a director ?

(*4 marks*)

(*c*) Bright Pvt. Ltd. is a private company. Its Board of Directors want to convert the company into an One Person Company. Can it be converted into an One Person Company ? Please advise the company about the conditions and procedure for such a conversion.

(*4 marks*)

(*d*) XYZ Ltd., a company, has a paid up share capital of Rs. 60 crores and free reserves of Rs. 25 crores. It desires to make a loan of Rs. 20 crores to M Ltd. The company XYZ Ltd. has already made investments in many other companies including loans to the extent of Rs. 35 crores. Can the company go ahead with loan to M Ltd. ? Please advise the company about the procedure to be followed by it.

(*4 marks*)

Ans. 4:

(*a*) As per **Section 141(3)(d)**, a person who is holding *any security* of the company or its subsidiary is disqualified for appointment as auditor. Since, Ram has been holding some shares of the company, he is disqualified for appointment as auditor and his appointment is *not valid.*

(*b*) **Appointment of alternate director [Section 161(2)]:** The Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint an alternate director for a director during his absence for a period of not less than 3 months from India. A person can be appointed as alternate director only for one director and not for more than one director.

Alternate director for an independent director: A person can be appointed as an alternate director for an independent director only if he is qualified to be appointed as an independent director as per section 149(6).

Term of office of alternate director: An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Automatic reappointment applies to original director: If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors shall apply to the original, and not to the alternate director.

As per **Section 167**, the office of a director shall become vacant in case he incurs any of the disqualifications specified in Section 164. Thus, if original director incurs disquali-

fication and cease to be director, the person appointed as alternate director in place of original director also cease to be director.

(*c*) **Conversion of companies already registered [Section 18]:** A company of any class registered may convert itself as a company of other class by alteration of MOA and AOA of the company. The Registrar shall on an application by the company, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

The new registration of a company shall not affect any debts, liabilities, obligations or contracts incurred or entered before conversion.

Conversion of private company into OPC [Rule 7 of Companies (Incorporation) Rules, 2014]:

(1) A private company having paid up share capital of Rs. 50 lakhs or less or average annual turnover during the relevant period is Rs. 2 Crore or less may convert itself into OPC by passing a **special resolution** in the general meeting.

(2) Before passing such resolution, the company shall obtain no objection in writing from members and creditors.

(3) The OPC shall file copy of the special resolution with the ROC within **30 days** from the date of passing such resolution in **Form No. MGT 14**.

(4) The company shall file an application in **Form No. INC 6** for its conversion into OPC along with prescribed fees by attaching the following documents, namely:

- The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is Rs. 50 lakhs or less or average annual turnover is less than Rs. 2 Crore.
- List of members and list of creditors.
- Latest Audited Balance Sheet and the Profit & Loss A/c.
- Copy of 'no objection' letter of secured creditors.

On being satisfied and complied with requirements, the ROC shall issue the certificate.

(*d*) **Loan and investment by company [Section 186(2)]:** A company can directly or indirectly give *loan, guarantee* or provide *security* or make *investment* other body corporate or person up to higher of the following two limits:

- [Paid-up Capital + Free Reserves + Securities Premium Account] × 60% *or*
- [Free Reserves + Securities Premium Account] × 100%

Higher loan, guarantee or investment by passing special resolution [Section 186(3)]: Where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified section 186(2), prior approval by means of a special resolution passed at a general meeting shall be necessary.

Paid-up capital	: Rs. 60 crore
Free Reserves	: Rs. 25 crore
Securities Premium	: *Nil*

Calculation of overall limit: Higher of the following two.

- [60 + 25] × 60%	= Rs. 51 crore
- 25 × 100%	= Rs. 25 crore

Existing investment and loan by XYZ Ltd.	35 Crore
Proposed loan by XYZ Ltd. to M Ltd.	20 Crore
Total	55 Crore

Since, proposed investment exceed prescribed limit, proposed investment can be made by taking prior approval by means of a special resolution passed at a general meeting. **[Section 186(3)]**

The XYZ Ltd. should also comply with other provisions of the section 186 of the Companies Act, 2013.

Q5.

(*a*) Directors of ABC Ltd. want to incorporate a producer company. ABC Ltd. itself is in the production and harvesting business. You are the company secretary of ABC Ltd. You are requested to advise the Board of ABC Ltd. about incorporation of such a producer company and set out its objectives as per relevant provisions of the Companies Act.

(*8 marks*)

(*b*) SUP Ltd. is a public company incorporated in India. It wants to propose a scheme of arrangement (merger) with another company in the same line of business in India. Help the company in preparing such a scheme of arrangement firstly. Secondly, help the company in taking approval of NCLT. Advise how company should approach NCLT for its approval to the scheme and discuss grounds on the basis of which NCLT will accord its approval.

(*8 marks*)

Ans. 5:

(*a*) **Formation of Producer Company & its registration [Section 581C(1) of the Companies Act, 1956]:** Specified number of person desirous of forming a producer company having its objects specified in section 581B and complying with the requirements in respect of registration, may form an incorporated company as a producer company.

Specified person are as follows:

- Any 10 or more individuals being a producer or
- Any 2 or more producer institutions, or
- A combination of 10 or more individuals and producer institutions

Issue of certificate of registration [Section 581C(2)]: If the Registrar is satisfied that all the requirements with in respect of registration and matters precedent and incidental thereto have been complied with, he will issue within 30 days of the receipt of the documents required for registration, a certificate of incorporation.

Objects of Producer Company [Section 581B(1) of the Companies Act, 1956]: The objects of the Producer Company shall relate to all or any of the following matters, namely:

(*a*) Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit. However, the Producer Company may carry on any of the specified activities either by itself or through other institution.

(*b*) Processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members.

(*c*) Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members.

(*d*) Providing education on the mutual assistance principles to its Members and others.

(*e*) Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members.

(*f*) Generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce.

(*g*) Insurance of producers or their primary produce.

(*h*) Promoting techniques of mutuality and mutual assistance.

(*i*) Welfare measures or facilities for the benefit of Members as may be decided by the Board.

(*j*) Any other activity, ancillary or incidental to any of the activities referred to in clauses (*a*) to (*i*) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.

(*k*) Financing of procurement, processing, marketing or other activities specified in clauses (*a*) to (*j*) which include extending of credit facilities or any other financial services to its Members.

(*b*) Salient aspects emerge in every proposal containing a scheme of compromise or arrangement:

- A scheme of compromise or arrangement should be in accordance with the provisions of the Companies Act, 2013.
- Whenever necessary a scheme of compromise or arrangement should receive sanction from the Tribunal in order to become effective and binding.
- The scheme of compromise or arrangement should be prepared as a written document.
- It should be presented to the Tribunal.
- Tribunal may direct the convening of meetings of creditors or a class of them and/or Tribunal may direct the convening of meetings of members or a class of them.
- Tribunal gives opportunity to all concerned.
- Tribunal may give directions with regard to conducting of meetings.

Merger and Amalgamation of Companies [Section 232]:

(1) Where an application is made to the Tribunal u/s 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(*a*) That the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies.

(*b*) That under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions section 230(3) to (6) shall apply *mutatis mutandis*.

(2) Where an order has been made by the Tribunal as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:

(*a*) The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(*b*) Confirmation that a copy of the draft scheme has been filed with the Registrar;

(*c*) A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(*d*) The report of the expert with regard to valuation, if any;

(*e*) A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than 6 months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Tribunal, after satisfying itself that the procedure specified clauses (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:

(*a*) The transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise.

(*b*) The allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person. However, a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished.

(*c*) The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer.

(*d*) Dissolution, without winding-up, of any transferor company.

(*e*) The provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

(*f*) Where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order.

(*g*) The transfer of the employees of the transferor company to the transferee company.

(*h*) Where the transferor company is a listed company and the transferee company is an unlisted company—

(A) The transferee company shall remain an unlisted company until it becomes a listed company;

(B) If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal. However, the amount of payment or valuation for any share shall not be less than what has been specified by the SEBI under any regulations framed by it.

(*i*) Where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation.

(*j*) Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out. However, no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed u/s 133.

(4) Where an order of Tribunal provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within 30 days of the receipt of certified copy of the order.

(6) The scheme shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by *Chartered Accountant* or *Cost Accountant* or *Company Secretary in practice* indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend Rs. 25 lakh and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh, or with both.

Q6.

(*a*) Explain the significance and meaning of 'officer in default' as per provisions of Companies Act, 2013.

(*4 marks*)

(*b*) What do you understand by 'class action suit' as introduced by the Companies Act, 2013? Explain the objective behind introducing this provision in the Companies Act and the persons who can initiate such class action suit.

(*4 marks*)

(*c*) An investigation was ordered into affairs of RST Ltd. by the Central Government under section 210 of the Companies Act, 2013. After carrying out investigation, a report was submitted by the inspector under section 223 of the Companies Act, 2013. In such a case, what should be done by the Board of Directors of the Company ? Please also inform the Board why such investigation might have been ordered.

(*4 marks*)

(*d*) A group of Indian citizens hold 60% of the paid up share capital of a foreign company. This group of shareholders claim that since the company was incorporated outside the country, the company is not bound to comply with the provisions of the Companies Act, 2013 in relation to its business in India. Examine the validity of such a claim by the group.

(*4 marks*)

Ans. 6:

(*a*) Many provisions of the Companies Act, 2013 use the word 'officer' and 'officer in default'. Thus, it is essential to know the meaning of these words.

Officer [Section 2(59)]: Officer includes any director, manager or KMP 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.

Officer who is in default [Section 2(60)]: Officer who is in default, for the purpose of any provision in the Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

(*i*) Whole-time director

(*ii*) Key managerial personnel (KMP)

(*iii*) Where there is no KMP, director(s) as specified by the board and who has or have given consent in writing, or all the directors, if no director is so specified

(*iv*) Any person who is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default

(*v*) Any person in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act *(However, a person who gives advice to the board in a professional capacity will not be treated as officer in default)*

(*vi*) Every director, who is aware of contravention of any provisions of the Act or where such contravention had taken place with his consent or connivance

(*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.

(*b*) **Meaning of Class Action:** *In case of large companies many investors and depositors are small and they do not have time, money and energy to fight for their rights. In such cases,*

some of investors and depositors can take action on behalf all those who are affected. This is known as class action.

Class Action [Section 245(1)]: Such number of member(s) or depositor(s) as are indicated in section 245(3), if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, may file an application before the Tribunal for seeking following orders, namely:

(*a*) To restrain the company from committing *ultra vires* acts and breach of any provision of the company's MOA or AOA

(*b*) To declare a resolution altering the MOA or AOA as void if the resolution was passed by suppression of material facts or obtained by mis-statement

(*c*) To restrain the company and its directors from acting on such resolution;

(*d*) To restrain the company from doing an act which is contrary to the provisions of the Act or any other law

(*e*) To restrain the company from taking action contrary to any resolution passed by the members

(*f*) To claim damages or compensation or demand any other suitable action from or against—

- The company or its directors for any fraudulent, unlawful or wrongful act or omission
- The auditor for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct or
- Any expert or advisor or consultant or any other person for any incorrect or misleading statement or for any fraudulent, unlawful or wrongful act or conduct

(*g*) To seek any other appropriate remedy.

Joint liability of auditors [Section 245(2)]: Where the members or depositors seek any damages or compensation or demand any other suitable action against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement.

Who can apply Tribunal for class action [Section 245(3)]: The requisite number of members provided in section 245(1) shall be as under:

(*a*) **In the case of a company having a share capital:** 100 members or prescribed percentage of the total members, whichever is less. *(The applicants must have paid all calls and other sums due on their shares. Thus, holders of partly paid-up shares cannot apply)*

(*b*) **In the case of a company not having a share capital:** 20% of the total number of its members.

In case of depositors class action can be taken by 100 depositors or prescribed percentage of the total number of depositors, whichever is less.

Matters to be considered by Tribunal [Section 245(4)]: In considering an application under section 245(1), the Tribunal shall take into account following—

(*a*) Whether the member or depositor is acting in good faith

(*b*) Whether there is any evidence of involvement of any person other than directors or officers of the company

(*c*) Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under class action (*i.e.* individual action)

(*d*) Views of the members or depositors who have no personal interest, direct or indirect, in the matter being proceeded under the class action

(*e*) Where the act or omission could be or likely to be authorized or ratified by the company before it occurs.

Procedure to be followed by the Tribunal [Section 245(5)]: If class application is admitted by the Tribunal, then following procedure should be followed:

(*a*) **Public Notice:** Public notice shall be served to all the members or depositors of the class in prescribed manner.

(*b*) **Clubbing of similar applications:** All similar applications prevalent in any jurisdiction should be consolidated into a single application.

(*c*) **No parallel proceedings:** Two class action applications for the same cause of action shall not be allowed.

(*d*) **Cost or expenses connected with application:** The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

To whom order passed by Tribunal will bind [Section 245(6)]: Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.

Punishment [Section 245(7)]: Any company which fails to comply with an order passed by the Tribunal shall be punishable with fine which shall not be less than Rs. 5,00,000 but which may extend to Rs. 25,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years and with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Penalty for frivolous or vexatious applications [Section 245(8)]: Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall reject the application after recoding reasons in writing and make an order that the applicant shall pay to the opposite party such cost, not exceeding Rs. 1,00,000.

No class actions against banking company [Section 245(9)]: Nothing contained in section 245 shall apply to a banking company.

Reimbursement the cost of litigation [Section 125(3)(d)]: Legal expenses incurred in pursing the class action can be reimbursed from Investor Education & Protection Fund, if sanctioned by Tribunal.

(*c*)

Part A: Why investigation might have been ordered?

Power of the Central Government to order investigation into affairs of company [Section 210(1)]: In following cases the Central Government ***may*** order an investigation into the affairs of the company if it is of the opinion that it is necessary to investigate into the affairs of a company—

(*a*) On the receipt of a report of the Registrar or inspector u/s 208

(*b*) On intimation of a special resolution passed by a company that the affairs of the company ought to be investigated or

(*c*) In public interest.

Duty of the Central Government to order investigation into affairs of company [Section 210(2)]: Where an order is passed by a Court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government ***shall*** order an investigation into the affairs of that company.

Appointment of inspectors [Section 210(3)]: The Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

Part B: What should be done by the board of directors of the company?

Duty of officers of the company to provide information etc. to Investigating Officer [Section 212(5)]: The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

Officer [Section 2(59)]: Officer includes any director, manager or KMP 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.

(*d*) **Application of Act to foreign companies [Section 379]:** Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter XXII and such other provisions of the Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

As per facts given in case 60% of the paid-up capital of the foreign company is held by a group of Indian citizen and hence the foreign company must comply with the provisions of the Companies Act as stated above.

Solved Paper
CS Executive - June 2018

Q. 1. Comment on the following :

(*a*) A private limited company can accept deposit from its members under the provisions of the Companies Act, 2013.

(*b*) Appointment and rotation of statutory auditor is mandatory for one person company and small company.

(*c*) International Financial Service Centre (IFSC) companies are attractive for foreign investment.

(*d*) Secretarial Standard does not empower Company Secretary of a company to call a meeting of Board of Directors on its own.

(*5 marks each*)

Ans. 1:

(*a*) As per **Section 2(68)** of the Companies Act, 2013, a private company means a company, which has a minimum paid-up capital as may be prescribed, **and by its articles:**

(*a*) Restricts the right to transfer its shares;

(*b*) Limits the number of its members to 200 *excluding past and present employee;*

(*c*) Prohibits any invitation to the public to subscribe for any securities.

A private company may issue debentures to any number of persons. The only condition being that an invitation to the public to subscribe for debentures is prohibited.

Deposits: A private company can only accept deposit from its members only and not from public.

(*b*) As per **Section 139(2)** of the Companies Act, 2013, a listed company or a company belonging to such class or classes of companies as may be prescribed, shall not appoint or re-appoint -

(*a*) An individual as auditor for more than one term of 5 consecutive years and

(*b*) An audit firm as auditor for more than two terms of 5 consecutive years.

As per **Rule 5** of the **Companies (Audit & Auditors) Rules, 2014** for the purposes of Section 139(2), the class of companies shall mean the following classes of companies *excluding one person companies and small companies* :-

(*a*) All unlisted public companies having paid up share capital of ₹ **10 Crore** or more;

(*b*) All private limited companies having paid up share capital of ₹ **20 Crore** or more;

(c) All companies having public borrowings from financial institutions, banks or public deposits of ₹ **50 Crore** or more.

Thus, Section 139(2) read with Rule 5 of Companies (Audit & Auditors) Rules, 2014 does not cover one person companies and small companies and hence provisions relating to rotation of auditor are not applicable to such companies.

(c) **Meaning:** An International Financial Service Centre (IFSC) caters to customers outside the jurisdiction of the domestic economy. IFSCs are set up in special economic zones as a unit of SEZ or as a special economic zone after approval from Central Government, and deal with flows of finance, financial products and services across borders.

Specified IFSC Public Company: It is an unlisted public company which is licensed to operate by the RBI or the SEBI or the IRDA from the International Financial Services Centre located in an approved multi services SEZ set-up under the Special Economic Zones Act, 2005.

Specified IFSC Private Company: It is a private company which is licensed to operate by the RBI or the SEBI or the IRDA from the International Financial Services Centre located in an approved multi services SEZ set-up under the Special Economic Zones Act, 2005.

Services offered by IFSC(s):

1. Fund raising services for individuals, corporations and Governments.
2. Asset management and global portfolio diversification undertaken by pension funds, insurance companies and mutual funds.
3. Wealth management.
4. Global tax management and cross-border tax liability optimization, which provides a business opportunity for financial intermediaries, accountants and law firms.
5. Global and regional corporate treasury management operations that involve fund-raising, liquidity investment and management and asset liability matching.
6. Risk management operations such as insurance and reinsurance.
7. Merger and acquisition activities among transnational corporations.

In exercise of powers under section 462(1) of Companies Act, 2013, the MCA has exempted several exemptions to such International Financial Services Centre companies.

(d) As per **SS-1: Meetings of the Board of Directors** issued by ICSI, any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

Thus, Secretarial Standard-1 does not authorize Company Secretary to call meeting of board of directors on its own. He can send the notice of board meeting if authorized the board of directors of the company.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Q. 2. Distinguish between the following :

(a) Oppression and mismanagement application and Class action suits.

(b) Chief Executive Officer and Managing Director.

(c) Redemption of shares and Redemption of debentures.

(d) XBRL tags and XBRL taxonomies.

(4 marks each)

Ans. 2:

(a) Following are the main points of distinctions between oppression and mismanagement & class action suit:

Points	Oppression & Mismanagement	Class action suit
Meaning	The term 'oppression' is not defined in the Companies Act, 2013. Oppression, according to the dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The term 'Mismanagement' is also not defined in the Companies Act, 2013. Normally mismanagement means gross misconduct of affairs of the company or misuse of powers given to directors or members under the Companies Act, 2013.	In case of large companies many investors and depositors are small and they do not have time, money and energy to fight for their rights. In such cases, some of investors and depositors can take action on behalf all those who are affected. This is known as class action.
When such action can be taken	Members of a company as specified in Section 244 may apply to the Tribunal for relief in cases of oppression & mismanagement. Such application can be made in following cases: (a) Where the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (b) The material change has taken place in the management or control of the company and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members. *Such change may relate to alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever.*	Such number of member(s) or depositor(s) as are indicated in Section 245(3), if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, may file an application before the Tribunal for seeking following orders, namely: (a) To restrain the company from committing *ultra vires* acts and breach of any provision of the company's MOA or AOA. (b) To declare a resolution altering the MOA or AOA as void if the resolution was passed by suppression of material facts or obtained by mis-statement (c) To restrain the company and its directors from acting on such resolution (d) To restrain the company from doing an act which is contrary to the provisions of the Act or any other law (e) To restrain the company from taking action contrary to any resolution passed by the members (f) To claim damages or compensation or demand any other suitable action from or against -

Points	Oppression & Mismanagement	Class action suit
		- The company or its directors for any fraudulent, unlawful or wrongful act or omission - The auditor for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct or - Any expert or advisor or consultant or any other person for any incorrect or misleading statement or for any fraudulent, unlawful or wrongful act or conduct (g) To seek any other appropriate remedy.
Who can apply Tribunal	The following members of a company shall have the right to apply u/s 241, namely: (a) **In the case of a company having a share capital:** 100 members of the company *or* 10% of the total number of members, whichever is less. *(The applicants must have paid all calls and other sums due on their shares. Thus, holders of partly paid-up shares cannot apply)* (b) **In the case of a company not having a share capital:** 20% of the total number of members However, the Tribunal may, on an application, waive all or any of the above requirements so as to enable the members to apply u/s 241.	The requisite number of members provided in Section 245(1) shall be as under: (a) **In the case of a company having a share capital:** 100 members or prescribed percentage of the total members, whichever is less. *(The applicants must have paid all calls and other sums due on their shares. Thus, holders of partly paid-up shares cannot apply)* (b) **In the case of a company not having a share capital:** 20% of the total number of its members. In case of depositors class action can be taken by 100 depositors or prescribed percentage of the total number of depositors, whichever is less.
Reimbursement of legal expenses	There is no specific provision for reimbursement of legal expenses incurred in case of oppression or mismanagement though tribunal is competent to pass such order.	Legal expenses incurred in pursing the class action can be reimbursed from Investor Education & Protection Fund, if sanctioned by Tribunal. **[Section 125(3)(d)]**

(*b*) Following are the main points of difference between 'Managing Director' and 'Chief Executive Officer':

Points	Managing Director	Chief Executive Officer
Meaning	As per Section 2(54), 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.	As per Section 2(18), Chief Executive Officer means an officer of a company, who has been designated as such by it.
Power	Managing director has substantial powers of management of the affairs of the company.	Chief Executive Officer exercise the powers delegated by the board of directors.
Director	Managing director is essentially a director. If person appointed as 'managing director' cease to be 'director' he also ceases to be managing director.	Chief Executive Officer need not be a director.
Procedure for appointment	In case of appointment of MD in addition to approval of board at its meeting, approval of shareholders at general meeting is also necessary.	Chief Executive Officer is appointed by the board at its meeting.

(*c*) Following are the main points of difference between 'Managing Director' and 'Chief Executive Officer':

Points	Redemption of shares	Redemption of debentures
Meaning	When preference shareholders of the company are paid back their capital balances it is known as redemption of preference shares.	When debenture shareholders of the company are paid back their capital balances it is known as redemption of debentures.
To whom	Redemption of preference shares is payment to owner of the company.	Redemption of debentures amount to repayment of loan as debenture holders are creditors of the company.
Redemption	Preference shares can be issued for maximum period of 20 years after which such preference shares must be redeemed as provided in Section 55.	Companies can issue redeemable as well as irredeemable debentures. Redeemable debentures are required to be redeemed within period specified in offer document while irredeemable debentures are redeemed only at the time of liquidation of the company.
Proceeds at the time of redemption	As Section 55, preference shares shall be redeemed: - Out of the profits available for dividend *or* - Out of the proceeds of a fresh issue of shares.	Debentures can be redeemed only out of the profit of the company and not out of proceeds of a fresh issue of shares.
Transfer to reserve	Where preference shares are proposed to be redeemed out of the profits a sum equal to the nominal amount of the shares should be transferred to the Capital Redemption Reserve A/c.	When debentures are redeemed then amount equal to nominal value of debentures are transferred to General Reserve as sound accounting policy. If sinking fund is created then balance of sinking fund is transferred to general reserve.

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(*d*) XBRL tagging is the process by which any financial data is tagged with the most appropriate element in an accounting taxonomy (a dictionary of accounting terms) that best represents the data in addition to tags that facilitate identification/classification (such as enterprise, reporting period, reporting currency, unit of measurement etc). Since all XBRL reports use the same taxonomy, numbers associated with the same element are comparable irrespective of how they are described by those releasing the financial statements.

XBRL taxonomy is a dictionary of widely accepted accounting terms that conform to a GAAP (US GAAP, UK GAAP, IFRS etc.).

OR (Alternate question to Q. No. 2)

Q. 2A.

(*i*) The Board of Directors of Peculiar Ltd. proposes to recommend a final dividend of ₹ 25 each to all the equity shareholders of the company. The company seeks your opinion on the following :

(1) The company wants to deposit the dividend amount to co-operative bank.

(2) The company is a defaulter in the repayment of deposits and proposes to repay its all deposit after the payment of dividend within 10 days.

(3) Dividend will be declared out of the capital reserves of the company.

(4) The company wants to pay such dividend through the cash counter by way of cash voucher.

(4 marks)

(*ii*) Perfect Pvt. Ltd. wishes to appoint its Secretary, Satish, as an internal auditor. Referring to the provisions of the Companies Act, 2013 advise the company.

(4 marks)

(*iii*) Nice Ltd. proposes to alter its liability clause of Memorandum of Association. Referring to the provisions of the Companies Act, 2013 advise the company.

(4 marks)

(*iv*) Fabulous Ltd. is in the process of finalisation of its annual return. It is a listed company with paid-up capital ₹ 1 crore. The company seeks your advice on the following :

(1) Who will sign the return on behalf of the company ?

(2) What are the requirements of certification of annual return by a practising Company Secretary ?

(4 marks)

Ans. 2A:

(*i*) Keeping in view the provisions of the Companies Act, 2013 advice to the board of directors of Peculiar Ltd. is as follows:

(1) As per **Section 123(4)** of the Companies Act, 2013, the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend. Thus, the board of directors of Peculiar Ltd. cannot deposit such amount in co-operative bank.

(2) As per **Section 123(6)** of the Companies Act, 2013, if a company fails to comply with the provisions of Section 73 (Prohibition of acceptance of deposits from public) & Section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not declare any dividend on its equity shares so long as such failure continues.

Thus, during the continuance of default in repayment of deposit the Peculiar Ltd. cannot declare dividend. The company is advised to make good the default of repayment of deposit first and then to declare the dividend.

(3) The term capital profits may be defined to mean those profits which arise otherwise than in the normal course of the business and earned out of capital transactions.

The Act does not mention specifically whether capital profits *i.e.* profits which arise where a company sells part of its fixed assets at a price higher than the original cost of such asset, can be distributed as dividend. However, in the two important cases *Lubbock vs. British Bank of South America (1892) 2 Ch. 198* and *Foster vs. The New Trinidad Lake Asphalt Co. Ltd. (1901) 1 Ch.208*, the Courts have held that capital profits cannot be considered as available for distribution as dividend *unless*:

(*a*) The AOA authorize such a distribution and

(*b*) The surplus is realized and remains after a valuation of the whole of the assets and liabilities.

(4) A dividend payable may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend. Thus, Peculiar Ltd. cannot pay dividend through cash counter by way of cash voucher.

(*ii*) As per **Section 138** of the Companies Act, 2013, such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a Chartered Accountant or a Cost Accountant, or *such other professional* as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Thus, Perfect Pvt. Ltd. can appoint secretary, Satish, as an internal auditor of the company.

(*iii*) As per **Section 13** of the Companies Act, 2013, a company may, by a **special resolution** and after complying with the specified procedure, alter the provisions of its memorandum. It means that a company can change the liability clause of its MOA by passing a special resolution. A company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution in **Form No. MGT-14** passed by the company.

(*iv*) As per **Section 92(1)** of the Companies Act, 2013, Annual Return has to be and signed by a director and the Company Secretary, or where there is no Company Secretary, by Practicing Company Secretary.

In case of OPC and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.

The Central Government may prescribe abridged form of annual return for OPC, small company and such other classes of companies.

Annual return in case of bigger companies [Section 92(2)]: The annual return, filed by a listed company or, by a company having prescribed paid-up capital or turnover, shall be certified by a Practicing Company Secretary [PCS] in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

The annual return, filed by a listed company or a company having **paid-up share capital of ₹ 10 Crore or more** or **turnover of ₹ 50 Crore or more**, shall be certified by Practicing Company Secretary and the certificate shall be in **Form MGT-8**. [Rule 7(2) of the Companies (Management & Administration) Rules, 2014]

Attempt all parts of either Q. No. 3 or Q. No. 3A

Q. 3.

(*a*) RS Ltd. has incurred ₹ 5 lakh for the fulfilment of Labour Law, Land Acquisition Act and Food Safety & Standards Act in the month of May, 2018. The company has accounted for this ₹ 5 lakh as Corporate Social Responsibility (CSR) expenditure. Explaining the provisions of the Companies Act, 2013 discuss whether the company has rightly accounted for the amount in CSR.

(*4 marks*)

(*b*) Enkebee Ltd. wants to purchase its own 1,00,000 equity shares @ ₹ 10 each out of the following:

(*a*) Unsecured loan ₹ 5 lakh

(*b*) Balance of depreciation reserve for ₹ 3 lakh

(*c*) Securities premium account ₹ 4 lakh.

Examine the legality of the above transactions for the buy-back of securities of the company under the provisions of the Companies Act, 2013.

(*4 marks*)

(*c*) Who will appoint Secretarial Auditor of the company : Board of Directors or Shareholders ? What is the duty of Board of Directors towards secretarial auditor and audit report ?

(*4 marks*)

(*d*) Mohan has been appointed as a passive partner in the Limited Liability Partnership (LLP). He seeks your advice on the responsibilities of designated partner where the LLP has contravened the provisions of LLP Act. Referring to the provisions of the LLP Act, 2008 advise him in the matter. Can he sign cheques on behalf of the LLP ?

(*4 marks*)

Ans. 3:

(*a*) As per **Section 135(5)** of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least **2% of the average net profits** of the company made during the **3 immediately preceding financial years**, in pursuance of its CSR Policy.

The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities are specified in **Schedule VII** of the Companies Act, 2013.

Amount incurred by RS Ltd. ₹ 5 lakh for the fulfilment of Labour Laws, Land Acquisition Act and Food Safety & Standard Act are not covered in Schedule VII of the Companies Act, 2013. Thus, the company has defaulted in provisions relating to Corporate Social Responsibility.

(*b*) As per **Section 68** of the Companies Act, 2013, a company may buy-back its own shares or other specified securities out of:

- Free reserves or
- Securities premium account or
- Proceeds of the issue of any shares or other specified securities.

Keeping in view above provisions, answer to case is as follows:

(*a*) Enkebee Ltd. can avail unsecured loan of ₹ 5 lakh but it cannot be used for buy back of equity shares.

(*b*) Enkebee Ltd. cannot use depreciation reserve of ₹ 3 lakh for buy back of equity shares.

(*c*) Enkebee Ltd. can use balance of ₹ 4 lakh in securities premium account buy back of equity shares.

(*c*) As per **Section 204** of the Companies Act, 2013, every listed company and a company belonging to prescribed class shall annex with its Board's report, a secretarial audit report, given by **Practicing Company Secretary (PCS)** in prescribed form.

As per **Rule 8** of the **Companies (Meetings of Board & its Powers) Rules, 2014**, secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.

It shall be the duty of the company to give all assistance and facilities to the PCS, for auditing the secretarial and related records of the company.

The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the PCS.

If a company or any officer or PCS, contravenes the provisions of this section, they shall be punishable with fine which shall not be less than ₹ **1,00,000** but which may extend to ₹ **5,00,000**.

Secretarial Audit Report [Rule 9 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014]: For the purposes Section 204(1), the other class of companies shall be as under-

(*a*) Every public company having a paid-up share capital of ₹ **50 Crore** or more or

(*b*) Every public company having a turnover of ₹ **200 Crore** or more.

The format of the Secretarial Audit Report shall be in **Form MR-3**.

(*d*) **Liabilities of designated partners [Section 8 of the LLP Act, 2008]:** A designated partner shall be—

(*a*) Responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Act including filing of any document, return, statement and the reports and

(*b*) Liable to all penalties imposed on the LLP for any contravention of those provisions.

Responsibilities of Designated Partner - Where the LLP has contravened the provisions of LLP Act: The designated partner would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and as such the designated partner would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP. Further in the following instances apart from the LLP, the designated partner would also be imposed monetary penalties under the Act -

- For non-compliance with the directions of the Central Government for change of name.

- For non-maintenance of books of account, non-filing of accounts, duly audited where such an audit is mandatory.
- For non-filing of the annual return of the LLP.

Mohan is not designated partner and hence cannot sign the cheques on behalf of LLP.

OR (Alternate question to Q. No. 3)

Q. 3A.

(*i*) Aniket has fraudulently sold his shares to two different transferees. Who will be entitled to the shares in priority ?

(*4 marks*)

(*ii*) The authorised share capital of Shine Ltd. is ₹ 50 lakh. The paid-up capital of the company is ₹ 20 lakh. The Board of Directors at its 100th meeting held in the residence of Managing Director of the company resolved to create charge on uncalled share capital of ₹ 30 lakh. With reference to the provisions of the Companies Act, 2013 ascertain if the resolution is valid.

(*4 marks*)

(*iii*) R Systems Ltd. is holding 40% of paid-up share capital of ATC Aviation Pvt. Ltd. R Systems appointed representative director in ATC Aviation Pvt. Ltd. to safeguard its interest. Board of Directors of R Systems Ltd. wishes to know whether the director appointed by them shall be treated as nominee director. Advise the Board.

(*4 marks*)

(*iv*) Sand Ltd. wants to appoint River as Managing Director of the company for a period of three years with effect from 1st August, 2018. River has given a written statement to the company that he has paid rupees one thousand to the prescribed authorities for a conviction of an offence under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on 30th June, 2018. State whether River can be appointed as Managing Director of the company under the Companies Act, 2013.

(*4 marks*)

Ans. 3A:

(*i*) It was held in *Society General De Paris v. Jonet Walker and other (1886) 11 Ac 20* that where a shareholder has fraudulently sold his shares to two different transferees, the first purchaser will, on the ground of time alone, be entitled to the shares in priority to the second.

For example, C assigned all his property to P as trustee for his creditors. The property included some shares. P asked for the share certificates but was unable to obtain them from C. He then gave notice of the assignment to the company. C, after the date of the assignment to P, sold the shares to X, who applied for registration. Held, P having the equitable title which was prior in time, was entitled to registration. [*Peat v. Clayton (1906) 1 Ch. 659*]

(*ii*) A company does not have implied power of charging its uncalled share capital and a company may charge its uncalled capital if its MOA or AOA authorize it to charge it. The memorandum may give an express power to charge uncalled capital, or the power may be so wide that it can be inferred by implication.

In *Newton vs. Debenture holders of Anglo-Australian Investment Co. (1895) A.C. 224*, the MOA authorized the company to borrow upon any security of the company. It was held

that the power was wide enough to include a charge on uncalled capital. However, a company cannot mortgage or charge any part of its "reserve capital" *i.e.* such portion of its uncalled capital as is incapable of being called up except in the event of winding-up of the company.

Keeping in view above discussion, the board of directors of Shine Ltd. cannot create charge on its uncalled capital unless there is provision their AOA to create charge on uncalled capital, as company does not have implied authority in this regard.

(*iii*) Nominee director means a director appointed by a third parties e.g. a director appointed by a financial institutions or a bank which has provided financial assistance to the company.

Nominee Director [Section 161(3)]: Subject to the articles of a company, the Board may appoint following types of nominee director:

- Person nominated by any institution in pursuance of any law for the time being in force.
- Person nominated by any institution in pursuance of any agreement.
- Person nominated by the Central or State Government by virtue of its shareholding in a Government company.

For the purpose of Section 149, nominee director means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or *any other person* to represent its interests. **[Explanation to Section 149(7)]**

The difference between Section 161(3) and *Explanation* to Section 149(7) is as follows:

(A) The word used in Section 161(3) is **'institution'**, while the word used in *Explanation* to Section 149(7) is **'financial institution'**.

(B) *Explanation* to Section 149(7) makes provision for director nominated by 'any other person' but there is no corresponding provision in Section 161(3).

Directors nominated by collaborators/major investor: Section 161(3) does not make any specific provisions for nominating a director by collaborators/major investor. However, such directors can be appointed if there is provision in the Articles of the Company.

As facts given in case R System Ltd. is holding 40% share capital of the ATC Aviation Pvt. Ltd. and thus R System Ltd. can appoint nominee director in ATC Aviation Pvt. Ltd. if there is provision in Articles of the ATC Aviation Pvt. Ltd.

(*iv*) **Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government appointments [Part I of the Schedule V]:** A person shall be eligible for appointment as a managing or whole-time director or a manager of a company only if satisfies the following conditions, namely:

(*a*) He had not been sentenced to imprisonment for any period, or to a fine **exceeding ₹ 1,000**, for the conviction of an offence under any of the following Acts, namely -

- The Indian Stamp Act, 1899
- The Central Excise Act, 1944
- The Industries (Development & Regulation) Act, 1951
- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Companies Act, 2013 or any previous company law
- The Securities Contracts (Regulation) Act, 1956

- The Wealth-tax Act, 1957
- The Income-tax Act, 1961
- The Customs Act, 1962
- The Competition Act, 2002
- The Foreign Exchange Management Act, 1999
- The Sick Industrial Companies (Special Provisions) Act, 1985
- The Securities and Exchange Board of India Act, 1992
- The Foreign Trade (Development and Regulation) Act, 1922
- The Prevention of Money-Laundering Act, 2002 (15 of 2003);

(*b*) He had not been detained for *any period* under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974.

However, where the Central Government has given its approval to the appointment of a person convicted or detained under clauses (*a*) & (*b*) no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

As per facts given in case, River has paid only fine of ₹ 1,000 for conviction under Foreign Exchange & Prevention of Smuggling Activities Act, 1974; he has not detained for any period under the same Act and thus he is not disqualified and previous approval of Central Government is not necessary for his appointment as Managing Director.

Q. 4.

(*a*) Fun and Frolic Ltd. has received ₹ 5 lakh from its Promoters as unsecured loan in pursuance of the stipulation of credit facilities from Bank. Can the company accept the unsecured loan ? What would be your answer if the company has repaid in full its amount of credit facilities and after such repayment, company continues this unsecured loan ? Referring to the provisions of the Companies Act, 2013 advise the company.

(4 marks)

(*b*) South Village Farmers' Producer Company Ltd. wants to give loan to its Directors for ₹ 5 lakh. The company seeks your advice regarding the loan to Directors. Explain the provisions with reference to the Companies Act. What would be your answer if loan is being given to its members ?

(4 marks)

(*c*) Phosphate Ltd. has suffered a major loss of ₹ 100 crore in May, 2018 on the dealing of commodity exchange. The annual accounts and Board's report for the year 2017-18 are under finalization. The Chief Financial Officer (CFO) of the company does not want to disclose this loss in the Board's report for year 2017-18 because this loss does not pertain to said financial year. Is the view of CFO correct ? The Board of Directors seek your advice in this matter.

(4 marks)

(*d*) Confident Ltd. has forfeited 50,000 equity shares of the company @ ₹ 10 each and same were re-issued. After the filing of the annual return, the Registrar of Companies (ROC) has issued show cause notice to the company for default of provisions of section 39 of the Companies Act, 2013. Is the action of the ROC tenable under the provisions of the Companies Act, 2013 ? Discuss with relevant case law, if any.

(4 marks)

Ans. 4:

(*a*) As per **Rule 2(1)(c)(xiii)** of the **Companies (Acceptance of Deposits) Rules, 2014**, deposit does not include any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfilment of the following conditions:

(*a*) The loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance and

(*b*) The loan is provided by the promoters themselves or by their relatives or by both.

The exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

As per facts given in case, Fun & Frolic received ₹ 5 lakh from its promoters as unsecured loan in pursuance of stipulation of credit facility from the bank. Such unsecured loan will not be treated as deposit as per Rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, 2014. However, after repayment of credit facility if the company continues the unsecured loan of its promoter then it will be treated as deposit.

(*b*) As per **Section 581ZK** of the Companies Act, 1956, the Board may, subject to the provisions made in articles, provide financial assistance to the members of the producer company by way of -

(*a*) Credit facility, to any member, in connection with the business of the producer company, for a period not exceeding 6 months

(*b*) Loans and advances, against security specified in articles to any member, repayable within a period exceeding 3 months but not exceeding 7 years from the date of disbursement of such loan or advances.

However, any loan or advance to any director or his relative shall be granted only after the approval by the members in general meeting.

Thus, South Village Farmers Producer Ltd. can give loan of ₹ 5 lakh to its director only after obtaining the approval by the members in general meeting.

South Village Farmers Producer Ltd. can give loan of ₹ 5 lakh to its member subject fulfilment of conditions specified in Section 581ZK of the Companies Act, 1956.

(*c*) According to **Section 128(1)** of the Companies Act, 2013, every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which gives a true and fair view of the state of the affairs of the company.

The books and papers and financial statement are said to be give a true and fair view if the financial statements comply with the accounting standards.

As per AS-4, events occurring after the balance sheet date are those **significant events** that occur **between**:

- The balance sheet date and
- The date on which the financial statements are approved by appropriate authority (*e.g.* board of directors in the case of a company)

AS-4 requires disclosure in respect of events occurring after the balance sheet date representing **unusual changes affecting the existence or substratum of the enterprise** after the date of the balance sheet. In the present event, the loss of ₹ 100 Crore on dealing in commodity exchange can be considered to be an event affecting the substratum of the enterprise. Hence, an appropriate disclosure should be made in the report of the board of directors.

(*d*) As per **Section 39** of the Companies Act, 2013 read with **Rule 12** of the **Companies (Prospectus & Allotment of Securities) Rules, 2014**, whenever a company having a share capital makes any allotment of its securities, the company shall file with the ROC a return of allotment in **Form PAS-3** within **30 days**.

The Supreme Court held that no return of allotment is required to be filed for forfeited shares when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorized and un-appropriated capital. *[Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd. 1963-(033)-Com Cases-0862- SC]*

Thus, Confident Ltd. need not to file return of allotment for reissue of forfeiture of 50,000 shares and action taken by the ROC is not tenable under the law.

Q. 5.

(*a*) Spectacular Ltd. wants to make an application to Registrar of Companies (ROC) for removal of its name under section 248(2) of the Companies Act, 2013 from register. It is understood that the application, *inter alia*, shall be accompanied by an 'affidavit' by every director of the company. You are a practising Company Secretary. The company has approached you to draft such an affidavit. Help the company.

(*8 marks*)

(*b*) In the 25th Annual General Meeting (AGM) of Lazy Ltd. some shareholders demanded that a poll be taken in respect of one of the resolution proposed in the notice of AGM on which voting was yet to be taken on a show of hands. Prepare the announcement to be made by the Chairman of the meeting in connection with the poll.

(*8 marks*)

Ans. 5:

(*a*)

FORM No. STK - 4

AFFIDAVIT

(*To be given individually by every Director*)

[Pursuant to Section 248(2) read with clause (iii) of sub-rule (3) of Rule 4]

1.I _____ Director of _____ (hereinafter called "the Company"), incorporated on _____ under the Companies Act, 2013 or the Companies Act, 1956 having its registered office at _____ and having CIN _____ do solemnly affirm and state as under:

(*i*) I _____ S/o Shri _____ Holder of DIN/Income Tax PAN/Passport number _____ *(copy of Income Tax PAN/Passport duly attested by a Company Secretary)* am Director of the Company stated above since _____ *(mention date of appointment)*.

(*ii*) My present residential address is _____ *(copy of documentary evidence duly attested by Company Secretary)* is enclosed.

(*iii*) My permanent address is _____ *(copy of documentary evidence duly attested by a Company Secretary)* is enclosed.

(*iv*) The Company does not maintain any bank account as on date.

(*v*) The Company _____ (mention name of the Company) does not have any assets and liabilities as on date.

(*vi*) The Company has been inoperative from the date of its incorporation/The Company commenced business/operations/commercial activity after incorporation but has been inoperative for the past _____ year(s) due to following reasons _____ :

(*Give the reasons here*)

(*vii*) As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/Banks and Financial Institutions; and other Central or State Government Departments/ Authorities or any Local Authorities.

(*viii*) I further affirm that -

(*i*) No inquiry, technical scrutiny, inspection or investigation is ordered or pending against the company;

(*ii*) No prosecution or any compounding application for any offence under the Act or under any of the other Acts is pending against the company or against the undersigned;

(*iii*) The company is neither listed nor delisted for non-compliance of listing agreement;

(*iv*) The company is not a company incorporated for charitable purposes under section 8 of the Companies Act, 2013 or Section 25 of the Companies Act, 1956;

(*v*) The company does not have any management disputes or there is no litigation pending with regard to management or shareholding of the company;

(*vi*) No order is in operation staying filing of the documents by a court or tribunal or any other competent authority;

(*vii*) The company is not prevented from making the applications for strike off as mentioned in Section 249 of the Companies Act, 2013.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature: _____

(Deponent)

Verification:

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place: _____ Signature: _____

(Deponent)

Date: _____

Note: *Attention is also drawn to provisions of Section 449 which provide for punishment for false evidence.*

(*b*) **Voting by show of hands [Section 107]:** At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands.

A declaration by the Chairman of the meeting of the passing of a resolution by show of hands shall be conclusive evidence of the fact of passing of such resolution, unless a poll is demanded before or immediately on declaration by Chairman.

Demand for Poll [Section 109]: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following persons:

(*a*) **In the case a company having a share capital:** By the members present in person or by proxy, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than Rs. 5,00,000 or such higher amount as may be prescribed, has been paid-up and

(*b*) **In the case of any other company:** By any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

Time for taking poll and declaring the result: A poll shall be taken forthwith, if it is demanded for adjournment of the meeting or appointment of Chairman of the meeting.

A poll shall be taken at such time, not being later than 48 hours from the time when the demand was made on any other question.

Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Announcement by chairman

As per Section 109 of the Companies Act, 2013 a poll has to be taken before or on the declaration of the result of the voting on any resolution on show of hands.

As some shareholder holding requisite shares as stated in Section 109 of the Companies Act, 2013 requested to take poll on Item No. ..... listed in notice of the meeting and in line with best practice, poll voting at the meeting will be conducted at the end of meeting using the electronic system provided by ....., the Company's Registrar.

I believe that voting on a poll will result in the most accurate reflection of the views of shareholders by ensuring that every vote is recognized, including all votes of proxies.

On a poll, each shareholder has one vote for every share held.

Poll voting will conducted at the end of meeting as discussed. I request all the members and proxies to cast their valuable votes and help the company to conduct voting in fair and transparent manner.

Q. 6.

(*a*) Semon Ltd., a strategic investor was introduced in Raybon Pvt. Ltd. to bring a new technology or investment. Such strategic investor wishes to protect its interests in the company. Advise how he can safeguard its interests through Articles of Association of the company.

(*4 marks*)

(*b*) Serious Ltd. is having three factories in Chennai. The company wants to sell one of the factory. Can the company sell its factory ? Further, assuming that the company has also borrowed credit facilities from the bank, explain the statutory provisions under the Companies Act, 2013.

(*4 marks*)

(*c*) The Mumbai Bench of National Company Law Tribunal has received a petition for winding up of Presentable Commodities Ltd. Pramod, Manager (Human Resource) of the company wants to know from you, Secretary of the company, what orders can be passed by the Tribunal in this regard. Advise Pramod, under the relevant provisions of the Companies Act, 2013.

(*4 marks*)

(*d*) In a scheme of amalgamation, it was proposed that name of the transferor company shall be deemed to be name of transferee company. The Regional Director (RD), Ministry of Company Affairs, objected to the same on the ground that proposed name is undesirable if it is identical with or too nearly resembling name of an existing company. Decide if the stand taken by the RD is valid under the Companies Act, 2013. Reference may be made of decided case laws.

(*4 marks*)

Ans. 6:

(*a*) As per **Section 2(5)** of the Companies Act, 2013, Article 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.

The articles of association of a company are its by-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company *inter se.*

The Companies Act, 2013 recognizes an interesting concept of entrenchment. The entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of greater conditions or restrictions than those prescribed under the Act. (such as obtaining a 100% consent)

This provision acts as a protection to the minority shareholders. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures and strategic investors.

Thus, by making entrenchment provisions the article may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with. **[Section 5(3)]**

The provisions for entrenchment shall be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. **[Section 5(4)]**

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed form. **[Section 5(5)]**

Keeping in view above discussion, Semon Ltd. is advised to bring necessary amendments by incorporating entrenchment provisions in the article of association of Raybon Ltd. to protect its interest.

(*b*) As per **Section 180(1)** of the Companies Act, 2013, the board of directors of a public company shall exercise the following powers only with the consent of company by a *special resolution*:

(*a*) Sell, lease or dispose of the whole of the undertaking of the company;

(*b*) Invest the amount of compensation received by it as a result of any merger or amalgamation;

(*c*) Borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves and securities premium; *(however, if amount borrowed is temporary loan from the company's bankers in the ordinary course of business then this clause is not applicable, hence members consent by way of special resolution is not required)*

(*d*) Remit, or give time for the repayment of, any debt due from a director.

Undertaking shall mean an undertaking in which the investment of the company exceeds 20% of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year.

Substantially the whole of the undertaking in any financial year shall mean 20% or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

Keeping in view above provisions answer to given case is as follows:

(*i*) Serious Ltd. can dispose of its undertaking by passing special resolution if the investment in its undertaking which it proposed to sell exceeds 20% of its net worth as per the audited balance sheet of the preceding financial year or if such undertaking generates 20% of the total income of the company during the previous financial year.

However, if the undertaking proposed to be sold does not fulfil the criteria stated above then such undertaking can be sold by passing resolution at the board meeting subject to compliance of provisions of the article of association of the company.

(*ii*) If Serious Ltd. also has borrowed facilities from the bank then prior approval of bank should also be taken if the loan agreement contains a provision regarding disposal of any assets or undertaking subject to prior approval of the bank.

(*c*) **Powers of Tribunal [Section 273]:** The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:

(*a*) dismiss it, with or without costs;

(*b*) make any interim order as it thinks fit;

(*c*) appoint a provisional liquidator of the company till the making of a winding up order;

(*d*) make an order for the winding up of the company with or without costs; or

(*e*) any other order as it thinks fit.

An order shall be made within 90 days from the date of presentation of the petition.

Before appointing a provisional liquidator, the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.

The Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

Power to Order Costs [Section 298]: The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the Tribunal thinks just and proper

(*d*) *In Re: Michelin India Private Limited [MANU/TN/0817/2015] Madras High Court:*

In a scheme of amalgamation, it was proposed that name of the transferor company shall be deemed to be name of the transferee company. The Regional Director, Ministry of Company Affairs (MCA), objected to the same on the ground that as per General Circular of MCA on Name Availability Guidelines, 2011, a proposed name is considered to be

undesirable if it is identical with or too nearly resembling with name of the company in existence and names already approved by the Registrar of Companies. The Transferee Company shall follow the Procedures and Rules laid down for such change of name.

Madras High Court held that General Circular of MCA does not have any mandatory effect and it is merely advisory in character. High Court also considered section 13 of the Companies Act, 2013 and observed that Chapter XV of Companies Act, 2013 is a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement.

Thus, objections raised by Regional Director is not valid.