(i) if provision with respect to such variation is contained in the Memorandum or Articles of association of the company; or
(ii) in the absence of any such provision in a Memorandum or Articles of association of the company, if such a variation is not prohibited by the terms of issue of the shares of that class.

Shareholders' Democracy

The concept of shareholders' democracy in the present day corporate world denotes the shareholders' supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives.

- Under the Companies Act the powers have been divided between two segments: one is the Board of Directors and the other is of shareholders.
- The directors exercise their powers through meetings of Board of directors and shareholders exercise their powers through General Meetings.
- Although constitutionally all the acts relating to the company can be performed in General Meetings but most of the powers in regard thereto are delegated to the Board of directors by virtue of the constitutional documents of the company viz. the Memorandum of Association and Articles of Association.

Shareholder's Agreement

Shareholders' agreements (SHA) are quite common in business. In India shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses. There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on. Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations. shareholders' agreement. SHAs are the result of mutual understanding among the shareholders of a company to which, the

company generally becomes a consenting party. Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.

Veto Power or Rights

- A right is inherent. Shareholders rights refer to rights enshrined in the constitutional document of the company or as provided by the law. A power has its genesis under the provisions of law.
- As per the provisions of the Companies Act, 2013 there are some resemblance where the management can take decisions own their own, by virtue of law.
- However, there are some instances where the consent of the shareholders is mandatory to approve any decision or transaction which is said to be as the veto power or veto right of shareholders of the company.
- For instance in case of related-party transactions, promoters, who are majority shareholders, cannot vote in special resolutions in cases of related-party transactions.

Veto Power and Casting Vote

Veto power is different than casting vote of Chairman. Casting vote is applicable on in case of equality of votes in favour and against.

- In case of equality the Chairman may give vote either in favour or against the resolution and it can be carried accordingly.
- Veto power has not been defined in Companies Act.
- However, dictionary meaning of veto power is: "to refuse to admit or approve; specifically: to refuse assent to (a legislative bill) so as to prevent enactment or cause reconsideration."

Assignment of Shares in a Company

Section 44 of the Companies Act, 2013 defines the nature of property in the shares of a company. It lays down: “The shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company."

SHORT NOTES

2013 - Dec [6] Write a note on the following:

(d) Rights of dissentient shareholders. **(4 marks)**

Answer:

1.	**Rights of dissentient shareholders, Sec. 48(2) of Companies Act, 2013**	According to this section- • Where the right of any class of shares are varied. • The holders of not less than ten percent of the shares of that class, being persons who did not consent to such variation or vote in favour of the special resolution for the variation. • Can apply to the **Tribunal** to have the variation cancelled.
2.	**Confirmation by Tribunal**	Where any such application is made to the **Tribunal,** the variation will not be effective unless and until it is confirmed by the **Tribunal**.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

2008 - Dec [1] {C} Comment on the following :

(v) All the shareholders of a company are members and all the members of a company are shareholders. **(5 marks)** ***[CSEM - II]***

Answer:

1.	**Authenticity of the statement**	• Every shareholder of a company is also known as a member, while every member may not be known as a shareholder.

2.	**Definition of member, Sec. 2(55)**	• As per **Section 2(55) of the Companies Act, 2013,** a subscriber to the memorandum of association and any other person who agrees in writing to become a member of the company and whose name is entered in the register of member, shall be member of the company.
3.	**Importance of registration of transfer in the register of members.**	• Thus generally speaking, every shareholder of the company is also a member of the company but it may not be true all the time. • A shareholder who has sold his shares to another person may continue to be a member of the company until and unless the transfer is registered by the company and name of its transferee is entered in the register of its members.
4.	**Legal repre-sentative of decreased person**	• Similarly, the legal representative of the deceased member is not a member until he applies for registration. • He is however, a share holder even though his name does not appear in the register of members. • Thus, a person may be in possession of shares that he is a shareholder, but he may not be member of a company.
5.	**Conclusion**	• Thus, in these exceptional cases, a person may be a member without being a shareholder, or he may be a shareholder without being a member.

Space to write important points for revision

2009 - June [3] (a) In what manner 'membership' in a company can be sought? **(8 marks)** ***[CSEM - II]***

Answer:

Provisions of Sec. 2(55) of Companies Act, 2013 regarding modes of acquiring membership
Membership of a company can be acquired by any one of the following ways: (a) By subscribing to the memorandum of association of a company. (b) By agreeing in writing to become a member: (i) by making an application to the company for allotment of shares. (ii) by consenting to the transfer of share of a deceased member in his name. (iii) by transmission of shares. (iv) by estoppel. (c) By holding equity shares of a company and whose name is entered as beneficial owner in the records of a depository shall be deemed to be a member of the concerned company. **(Under the Depositories Act, 1996)**

Space to write important points for revision

2010 - June [4] (c) Four types of persons, *viz.*, a **Section 8 of Companies Act, 2013** company, an insolvent individual, a trade union and a pawnee, apply for membership in your public limited company. Will you accept them as members of your company? Why? **(4 marks)** ***[CSEM - II]***

Answer:

1	**Section 8 company**	Can become member, if authorised by memorandum	A non-profit making company licensed Under **Section 8 of the Companies Act, 2013**, can become a member of another company if it is authorised by its Memorandum of Association to invest into shares of the other company.

2	**An Insolvent Individual**	Eligibility to become members	An insolvent cannot become member of a company, but a member who becomes insolvent continues to remain a member, as long as his name appears on the register of members.
		Voting rights on appointment of receiver	Mere appointment of an official receiver cannot deprive the person, whose name appears on the register of members of his right to vote at the meeting of the company.
3	**Trade Union**	Eligibility to become member	A trade union registered under the Trade **Union Act, 1926** can be registered as a member and can hold shares in a company in its own corporate name.
4	**Pawnee**	Eligibility of Pawnee and Pawner	In view of foregoing, a Pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member.
		Conclusion	So, a pawnee cannot apply for membership of a company.

Space to write important points for revision

2010 - Dec [3] (a) Explain when a person ceases to be a member of the company. **(8 marks)** ***[CSEM - II]***

Answer:

When a member ceases to be a member of a company	A person ceases to be a member of a company when his name is deleted/removed from its register of members, which may occur in any of the following situations :

	(i) on transfer of shares; (ii) forfeiture of shares; (iii) his shares are sold by the company to enforce a lien; (iv) on death of a shareholder; (v) he is adjudged insolvent and the official assignee disclaims his shares; (vi) redemption of redeemable shares; (vii) he rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake; (viii) his shares are purchased under **Section 242 of Companies Act, 2013**; (ix) the member is a company which is being wound up in India, and the liquidator disclaims the shares; (x) the company is wound up; (xi) share warrants have been issued in exchange of fully paid shares.

Space to write important points for revision

2017 - June [1] Comment on the following:

(a) A Limited Liability Partnership can become member in a company incorporated under the provisions of the Companies Act, 2013.

(2 marks)

Answer:

Subject to the Memorandum and Articles, any *sui juris* (a person who is competent to contract on its own behalf) except the company itself, can become a member of a company. Yes, Limited Liability Partnership, being an incorporated body and separate legal entity, under the statute, can become a member of a company.

Space to write important points for revision

2018 - Dec [2A] (Or) (iii) A member of an incorporated company becomes insolvent. He claimed right to vote and receive dividend from the company. Referring to the provisions of the Companies Act, 2013 discuss whether his claim is valid. **(3 marks)**

Answer:

An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver *[Morgan v. Gray, (1953)]*. Therefore, his claim is invalid and his dividend shall be paid to official assignee.

Space to write important points for revision

2019 - June [1] (d) Every shareholder of a company is known as member while every member may not be known as shareholder. **(5 marks)**

Answer:

A company is composed of, members though it has its own separate legal entity. The members of the company are the persons who constitute the company as a corporate entity.

In the case of a company limited by shares, the shareholders are the members. The terms "members" and "shareholders" are usually used interchangeably being synonymous, as there can be no membership except through the medium of shareholding. Thus, generally speaking every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share(s) by transfer but will not become its member until the transfer is registered in the books of the company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company under **Section 88 of the Companies Act, 2013**. A member is a person who has subscribed to the memorandum of association of the company. A shareholder is a person who owns the shares of the company. The bearer of a share warrant is not a member, but the bearer of a share warrant can be a shareholder.

2019 - June [2A] (Or) (ii) Draft "A specimen of deed of Assignment of shares of a company". **(3 marks)**

Answer:

Specimen of Deed of Assignment of Shares of Company:

This Assignment is made this _____ day of _____ between AB, son of _____ resident of _____(hereinafter called "the Assignor') of the one part, and CD, son of _____ resident of _____ (hereinafter called "the Assignee") of the other part.

The Deed Witnesses: That in consideration of the sum of ₹_____ (Rupees) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD _____ Equity Shares of ₹ _____ each, fully paid up ,bearing consecutive Nos _____ to _____(inclusive), which stand in the name of the assignor in the Register of Members of_____ Co. Ltd. To Hold the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

And the assignee hereby agrees to take the said Equity Shares subject to such conditions.

In Witness Whereof the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness : Witness :

Assignor : Assignee :

Space to write important points for revision

2019 - June [3] (c) A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the no. of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company **(5 marks)**

Answer:

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

In view of the above provision, if the company continued to carry on the business with that reduced membership (i.e. 6) beyond six months period, only those members who are cognisant of the fact that it is carrying on business with less than seven members shall be severally liable for the payment of the whole of debts of the company contracted during that time, and may be severally sued therefor.

—— Space to write important points for revision ——

2019 - Dec [2A] (Or) (i) Who is a 'Significant Beneficial Owner' under the Companies Act, 2013? Is Significant Beneficial Owner required to file BEN-1 to the reporting company? **(3 marks)**

PRACTICAL QUESTIONS

2009 - Dec [7] (b) Fortune Ltd. refused to enter the name of the minor son of a deceased member in the register of members on the ground that the minor cannot enter into a contract as per **Section 11 of the Indian Contract Act, 1872.** The shares are fully paid-up. Comment on the decision of the company and suggest remedies available. **(4 marks)** ***[CSEM - II]***

Answer:

1.	**Minor incompetent to contract**	A member who is a minor, is wholly incompetent to enter into a contract and as such cannot become a member of a company. Consequently, an agreement by a minor to take shares is void *ab-initio*. Also, in India, a minor is not competent to enter into any contract as per **Section 11 of the Indian Contract Act, 1872.**
2.	**Minor acting through lawful guardians - Case Law Analysis**	However, in ***Diwan Singh v. Minerva Films Ltd. (Ltd. (1958) Comp. Case 191,*** it was held that there is nothing in law to prevent minors acquiring or holding shares in a joint stock company if they are properly represented by lawful guardians.
3.	**Decision by Tribunal**	The **Tribunal** held that an agreement in writing for a minor to become a member may be signed on behalf of a minor, acting through his/her guardian, cannot be refused on the ground that the transferee is a minor, specially when the shares are fully paid up.
4.	**Conclusion**	**In the present case**, the shares are fully paid up. If the minor enters into a contract on behalf of a lawful guardian, Fortune Ltd. cannot refuse to enter the name of the minor son of deceased member.

Space to write important points for revision

2009 - Dec [8] (d) Vayu Ltd. holds more than 50% of nominal value of the equity capital of Stream Ltd. In these circumstances, Stream Ltd. wants to become a member of Vayu Ltd. Can Stream Ltd. do so? Discuss the rights of the said subsidiary in such a case. **(4 marks)** ***[CSEM - II]***

Answer:

1.	**Provision of Sec. 19 of Companies Act, 2013**	• As per this section 19 of the Companies Act, 2013, 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. • Any such transaction shall be considered void.
2.	**Exceptions**	However, there are certain exceptions to the provision. (a) Where the subsidiary company holds such shares on the legal representative of a deceased member of holding company; or (b) Where the subsidiary company holds shares as a trustee; or (c) Where the subsidiary company is a shareholder even before it be came a subsidiary company of the holding company.

Space to write important points for revision

2011 - June [7] (b) John, who is a member of Alex Ltd., is of unsound mind. Can the shareholder of unsound mind exercise his voting rights in respect of his membership in the said company ? Give your advice.

(4 marks) ***[CSEM - II]***

(c) Thrive Ltd. is a public limited company, incorporated under the **Companies Act, 2013.** The Board of Directors of the said company has recently decided to insert an article in its articles of association relating to expulsion of a member by the Board of directors of the company where the directors were of the view that the activities or conduct of such a member was detrimental to the interests of the company. Is the Board's decision valid in the eyes of law ? **(4 marks)** ***[CSEM - II]***

Answer:

(b)

1.	**Unsound person acting through committee or guardian**	In reference to **TABLE F of Schedule I of Companies Act, 2013**
		A member of unsound mind, or in respect of whom an order has been made by a **Tribunal** having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
2.	**Conclusion**	In this respect, a member of unsound mind may exercise his voting rights in respect of his membership in the Said Company.

(c)

1.	**Provision for expulsion of a member in Articles *ultra vires* the company**	• The articles of association of a company cannot provide for expulsion of a member, as such a power is opposed to the fundamental principle of the company jurisprudence and, therefore, *ultra vires* the company. • Such a provision is repugnant to the various provisions of the Companies Act pertaining to the rights of members.
2.	**Opposed to Natural Justice**	• The article of association is a contract between the company and its members setting out the rights of members inter-se under the contract and expulsion of a member is not only the violation of this contract but it also opposed to the principle of natural justice.

3.	**Clarification by MCA**	• MCA has, therefore, clarified that any assumption of the powers by the Board of Directors to expel a member by alteration of article of association shall be illegal and void.

Space to write important points for revision

2011 - June [8] (d) Rahees, who is a member of Vivek Ltd., a public company, has very recently become an insolvent. Can the insolvent Rahees continue as a member of the company? **(4 marks)** ***[CSEM - II]***

Answer:

1.	**Membership of a person becoming insolvent-Entry in Register of Member**	An insolvent may be a member of a company as long as he is on the register of members, he is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the official Assignee or Receiver ***[Morgan Vs. Gray]***
2.	**Conclusion**	*Hence, Rahees can continues as a member of the company even after becoming insolvent.*

Space to write important points for revision

2012 - Dec [8] (b) 1,000 Shares of Astro Ltd. are registered in the names of three persons P, Q and R jointly. Interestingly, the articles of the company provide that the survivors shall be the only person to be recognised by the company as having any title to the shares of the company. Unfortunately, P and Q died in an air crash. In these circumstances, R, being the survivor claims to be the full owner of the said 1,000 shares. However, the legal heirs of P and Q are also making counter claims. Who will succeed? Explain.

(c) A, B and C are joint holders of shares in Clearhead Ltd. The joint holders now ask the company for altering or rearranging the serial order of their names in the register of members of the company. In reply, the company intends to ask the joint holders to execute a transfer deed for transposition of names in the register of members. Advise the company on the course of action. **(4 marks each)** ***[CSEM - II]***

Answer:

(b)

1.	**Facts of the case**	In this case, few shares are registered in joint names as the articles of association of the company provide that the survivor shall be the only person to be recognised by the company as having any title to the shares.
2.	**Supremacy of Article as a contract**	As per **Section 10 of Companies Act, 2013,** the article will be binding on the joint shareholders as contract between them and the company.
3.	**Conclusion**	***In the present case**, Astro Ltd. cannot be compelled to register any of the heirs of a deceased joint shareholder jointly with the survivor.* *Therefore, R the only survivor holds the titles of the shares.*

(c)

1.	**Transposition of shares**	In the case of joint shareholders one or more of them may require the company to alter or rearrange the serial order of their names in the register of members of the company. This is called Transposition of shares.
2.	**Conditions required in Share Certificates**	In this process, there will be need for effecting consequential change in the share certificates issued to them.
3.	**Conditions prescribed by Articles**	If the company provides in its articles that the senior most among the joint holders will be recognized for all the purposes like: • Service of notice • A copy of balance sheet • Profit and loss account • Voting at a meeting etc

		then the request of transposition may be duly considered and approved by the Board or other authorised officer of the company.
4.	**No Transfer deed required to be filled**	Since no transfer of any interest in the shares takes place on such transposition, the question of insisting on filing transfer deed with the company, may not arise.
5.	**Clarification By MCA**	The Ministry of Corporate Affairs is of the view that there is no need of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint holders.
6.	**When Transfer deed is required to be filled**	If transposition is required in respect of a part of the holding execution of transfer deed will be required.

Space to write important points for revision

2013 - Dec [3] (b) ABC & Co., a partnership firm applied for shares in XYZ Ltd. The company allotted the shares required by the partnership firm. In the given context, what is the liability of the partners and the partnership firm?

(4 marks)

Answer:

1.	**Partnership firm not a legal person**	A partnership firm is not a legal person and as such it cannot, in its own name, become a member of a company except incase a company registered **u/s 8 of the Companies Act, 2013.**
2.	**Firm can not become a member**	A firm in its own name cannot be registered as a member, as a firm is not a legal person like a company incorporated under the Act.
3.	**Eligibility of partners**	Only the partners can be recognised and registered as joint holders [In Re Vagliano & Anthracite Callieries Ltd., (1910) 79 LJCh 769.

4.	**LLP can become a member**	However, Limited Liability Partnership, being an incorporated body under the statute, can become a member of a company.
5.	**Conclusion**	**Hence, in the given case** the allotment made by the company XYZ Ltd. in the name of the partnership firm ABC & Co. is invalid. Therefore, neither the partnership nor the partners are liable in this situation.

Space to write important points for revision

2017 - June [2A] (Or) (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)**

Answer:

By virtue of the provisions of the **Companies Act, 2013,** as contained in **Section 91(1)**, 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.

In the given case, A2Z management Services Limited has closed its register of debenture holders for 12 and 21 days in June and August, 2016 respectively. Therefore, the closure is within the time limits prescribed in **Section 91(1)** as each closure has not exceeded 30 days.

If the company closes the register again in December, 2016 for another 15 days, the aggregate closure during the year would be 48 days which will exceed the prescribed time limit of 45 days.

Hence, the proposal of CFO of the company is not valid under the above provisions of the **Companies Act, 2013.**

2019 - Dec [3] (c) Ram Singh is a shareholder of Alexandra India Ltd. The Board of directors of the company are of the view that the conduct of Ram Singh has been detrimental to the interest of the company. Further, the Board also noted that Ram Singh is director in a company which is a competitor company of Alexandra India Ltd. The Articles of Association of Alexandra India Ltd. permit expulsion of members. The Board unanimously decided to expel Ram Singh from the company. Discuss the relevant provisions of Companies Act, 2013 in this regard. If Ram Singh files a case against the Board whether he will win the case? **(5 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short on Significant Beneficial Owner.

Answer:

- Section 90 of the Act provides that every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of Section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.
- Further every company shall maintain a register of the interest declared by individuals stated above and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

- The register so maintained shall be open to inspection by any member of the company on payment of such fees as may be prescribed.
- Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

Space to write important points for revision

Q2. Write short on the following:
(a) Shareholders' Democracy
(b) Shareholders' Agreement

Answer:

(a) Shareholders' Democracy

- The concept of shareholders' democracy in the present day corporate world denotes the shareholders' supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives.
- Under the Companies Act the powers have been divided between two segments: one is the Board of Directors and the other is of shareholders.
- The directors exercise their powers through meetings of Board of directors and shareholders exercise their powers through General Meetings.
- Although constitutionally all the acts relating to the company can be performed in General Meetings but most of the powers in regard thereto are delegated to the Board of directors by virtue of the constitutional documents of the company viz. the Memorandum of Association and Articles of Association.
- Proviso to this section restricts the power of the Board of directors to do things which are specifically required to be done by shareholders in the General Meetings under the provisions of Companies Act or Memorandum of Association or the Articles of Association.

- Thus the Companies Act has tried to demarcate the area of control of directors as well as that of shareholders. Basically all the business to be transacted at the meetings of shareholders is by means of an ordinary resolution or a special resolution or by postal ballot.

(b) Shareholder's Agreement

- Shareholders' agreements (SHA) are quite common in business. In India shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses.
- There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on.
- Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations. shareholders' agreement.
- SHAs are the result of mutual understanding among the shareholders of a company to which, the company generally becomes a consenting party.
- Such agreements are specifically drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.

Enforceability of the Shareholder's Agreement

- Though the international view is split but to a large extent courts are inclined towards favouring SHA as long as they are not found to be detrimental to the minority stakeholder's rights.
- In the leading case of Russell v. Northern Bank Development Corporation Ltd [1992] BCC 578; [1992] 1 WLR 588, the House of Lords found that though a company cannot deprive itself of its power to alter its constitution, the members of the company could agree in a shareholders' agreement as to how they will exercise their voting rights on a resolution to alter the articles/constitution. The US Courts have largely accepted shareholder agreements. [Blount v. Taft]

Space to write important points for revision

DISTINGUISH BETWEEN

Q3. Distinguish Between Veto Power and Costing Vote.
Answer:

- Veto power is different than casting vote of Chairman. Casting vote is applicable on in case of equality of votes in favour and against.
- In case of equality the Chairman may give vote either in favour or against the resolution and it can be carried accordingly.
- Veto power has not been defined in Companies Act. However, dictionary meaning of veto power is: "to refuse to admit or approve; specifically: to refuse assent to (a legislative bill) so as to prevent enactment or cause reconsideration."
- Shareholders Agreement and Articles of Association of a company may provide for certain rights to the minority shareholder who has invested funds in the company.
- Such powers may include power to refuse capital expenditure over certain specified limit.
- In case the representative of the minority group is not in favour of the capital expenditure proposed by the company, he can exercise his right under the Articles which in common terminology is referred to as "veto powers".

Space to write important points for revision

DESCRIPTIVE QUESTIONS

Q4. What do you understand by Veto Power or Rights.
Answer:

- A right is inherent. Shareholders rights refer to rights enshrined in the constitutional document of the company or as provided by the law. A power has its genesis under the provisions of law.

- As per the provisions of the Companies Act, 2013 there are some resemblance where the management can take decisions own their own, by virtue of law.
- However, there are some instances where the consent of the shareholders is mandatory to approve any decision or transaction which is said to be as the veto power or veto right of shareholders of the company.
- For instance in case of related-party transactions, promoters, who are majority shareholders, cannot vote in special resolutions in cases of related-party transactions.
- As stated under the provisions of Section 188 any related-party transaction that is not done in the ordinary course of business and is not at an arm's length will need approval of minority shareholders by way of a special resolution.
- The other instance where the law provides veto power to shareholders is in case of class action suits. Section 245 of Companies Act, 2013 provides for class action to be instituted against the company as well as the auditors of the company.
- Under the provisions of sub-section (3) of Section 245, in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

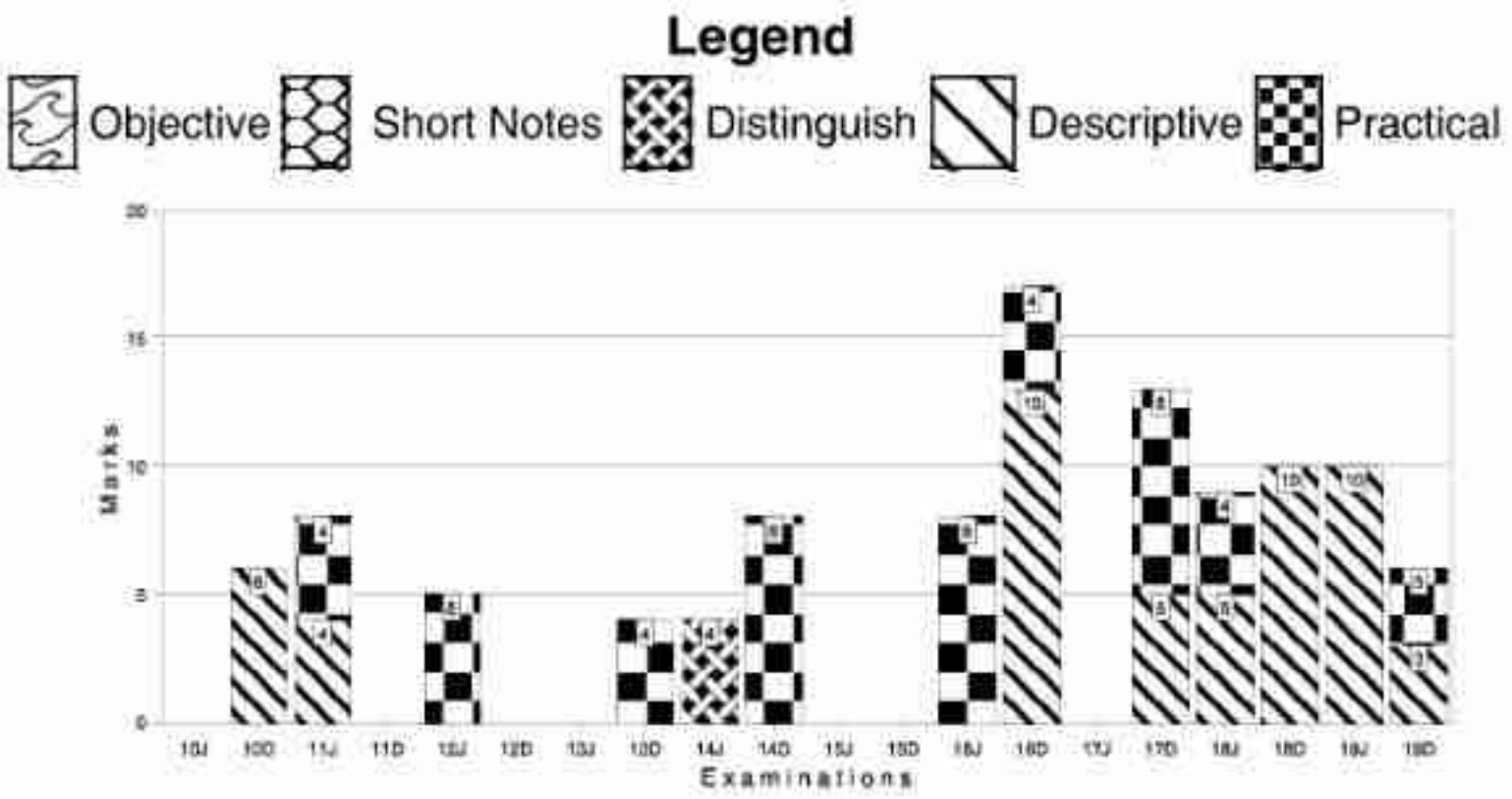
Space to write important points for revision

4 DEBT CAPITAL

THIS CHAPTER INCLUDES

- Borrowing power of the company
- Unauthorized or ultra vires borrowing
- Intra vires borrowing but outside the scope of agent's authority
- Types of borrowing
- Distinction between debenture and shares
- Debentures
- Kinds of debentures
- Role of debenture trustee
- Creation of Debenture Redemption Reserve
- Appointment of debenture trustee
- Debenture Trust Deed
- Duties of debenture trustee
- Overview of deposit
- Acceptance of deposit
- Procedure of acceptance of deposit from members
- Procedure of acceptance of deposit from public
- Exemption for private companies

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



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CHAPTER AT A GLANCE

Borrowing
All companies are given power to borrow by their articles which fix the maximum limit of borrowings.
Power to borrow
The power to borrow monies and to issue debentures (whether in or outside India) can only be exercised by the Directors at a duly convened meeting.
***Ultra vires* borrowings**
Where the company borrows without the authority conferred on it by the Articles or beyond the amount set out in the Articles, it is an *ultra vires* borrowing and hence void. *Ultra vires* borrowings cannot even be ratified by a resolution passed by the company in general meeting. In case of *ultra vires* borrowings the lender has the following remedies: (a) Injunction and Recovery, (b) Subrogation, (c) Suit against Directors.
Debenture
A debenture is a document given by a company under its seal as an evidence of a debt to the holder usually arisen out of a loan and most commonly secured by a charge. **Amendment made by Companies (Amendment) Act, 2017** In Section 2 in clause (30), the following proviso shall be inserted, namely: "Provided that- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (b) such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company, shall not be treated as debenture."

Kinds of debentures
Debentures may be of different kinds, viz. redeemable debentures, registered and bearer debentures, secured and unsecured or naked debentures, convertible debentures.
Debenture stock
A debenture stock is a borrowed capital consolidated into one mass for the sake of convenience.
Debenture Redemption Reserve
Section 71(4) of the Act required every company to create a debenture redemption reserve account to which adequate amount shall be credited out of its profits available for payment of dividend until such debentures are redeemed and shall utilize the same exclusively for redemption of a particular set or series of debentures only.
Appointment of Debenture Trustees
Section 71(5) read with Rule 18(2) of aforesaid rules, provide that a company before making issue of prospectus or an offer or inviting public or members to more than 500 persons, shall appoint one or more debenture trustees. The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders. Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee.
Duties of Debenture Trustees
Section 71(6) read with Rule 18(3) of aforesaid rules provide that a debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances. It shall be the duty of every debenture trustee to— (a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
(c) call for periodical status or performance reports from the company;
(d) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;
(e) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

Debenture trust deed

Debenture trust deed is a document created by the company, whereby debenture trustees are appointed to protect the interest of Debentureholders before they are offered for public subscription.

Company

Company may accept deposit from its members by passing a resolution in general meeting and subject to conditions as may be prescribed in the Rules including Credit rating, Deposit insurance etc..

Eligible company

Eligible company public company may accept deposits, if it has a net worth of not less than ₹100 crore or a turnover of not less than ₹ 500 crore and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.

Deposit trustees

No company under **sub-section (2) of section 73** or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits.

Deposit insurance
Amendment made by companies (Amendment) Act, 2017 Contract providing for deposit insurance at least thirty days before the issue of circular or advertisement. In **Section 73 of the principal Act,** in sub- Section (2),— clause (d) shall be omitted;
Foreign investment
Repatriation Capital flow from a foreign country to the country of origin. This usually refers to returning returns on a foreign investment in case of a corporation or transferring foreign earnings home in case of an individual.

16. Quantum of deposits

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the paid-up share capital, free reserves and Security Premium Account.	Upto 25% of aggregate of the paid up share capital free reserves and Security Premium Account.
Company other than Eligible Company	Upto 35% of aggregate of the paid up share, free reserves and Security Premium Account.	Prohibited
Government Company	-	Upto 35% of aggregate of the paid-up share capital, free reserves and Security Premium Account.

17. Procedure of acceptance of deposit			
(a) Points of difference			
Category of Company	Private Company	Public Company (other than eligible company)	Public company (eligible company under **Section 76** of the Act)
Source of Deposits	From directors and members	From directors and members	From directors, members and general public
Condition for deposits to be taken from shareholders	It is allowed to be taken subject to the limit of 35% of the paid-up share capital, free reserves and Premium Security Account.	It is allowed to be taken subject to the limit of 35% of the paid-up share capital, free reserves and Premium Security Account.	It is allowed to be taken subject to the limit of 10% of the paid-up share capital, free reserves and Premium Security Account.
Conditions for deposits to be taken from Public	Prohibited	Prohibited	It is allowed to be taken subject to the limit of 25% of the paid-up share capital, free reserves and Premium Security Account.
Resolution	The company should pass a resolution in a general meeting	The company should pass a resolution in a general meeting	The company should pass a special resolution in a general meeting and file the same with the Registrar.

			However, ordinary resolution would be sufficient if the amount is within the limit specified under Section 180 of the Act.
Advertisement	Not necessary	Not necessary	Necessary
Circular	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1	Circular shall be issued to its members by registered post with Acknowledgement due or by speed post or by electronic mode in Form DPT-1
Display of circular on website	Optional	Optional	Mandatory, if any
Credit Rating	Required to be taken before the submission of the circular to the registrar	Required to be taken before the submission of the circular to the registrar	Required to be taken
(b) Points of Similarity			
Category of Company	Private Company	Public Company (other than eligible)	Public company (eligible company under Section company 76 of the Act)

Tenure of deposits	The deposit shall not be repayable on demand or upon receiving a notice within a period less than 6 months and more than 36 months.
Registration of circular	The circular signed by majority of directors or their agents duly authorised along with the statement shall be submitted to registrar 30 days before the date of such issue.
Validity of circular	6 (six) months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier.
Return of deposits	A return shall be filed on or before 30th June of every year with the Registrar in Form DPT-3 along with fee giving the status as on 31st March of that year duly audited by the auditor of the company.
Penal rate interest	A penal Rate of 18% p.a. shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.
Premature payment	In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.

Amendment Made by Companies (Amendment) Act, 2015
Punishment for Contraction of Section 73 or 76

"**Section *76A.*** *Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under* ***Section 73 or Section 76*** *or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under* ***Section 73 or 76*** *or rules made thereunder or such further time as may be allowed by the Tribunal under* ***Section 73:***

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than ₹ 1 crore but which may extend to ₹ 10 crores; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than ₹ 25 lakhs but which may extend to ₹ 2 crores, or with both.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under ***Section 447.***"

List of Important Forms

Form No	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DPT-1	Physical Form	Circular or Circular in the form of Advertisement inviting Deposits	73 (2)(a), (76)	4(1), 4(2)
DPT-2	Physical Form	Deposit Trust Deed	—	7(2)
DPT-3	Physical Form	Return of deposits		16
DPT-4	Physical Form	Statement regarding deposits existing on the commencement of the Act		20

DISTINGUISH BETWEEN

2014 - June [2] Distinguish between the following:

(b) 'Debentures' and 'shares'. **(4 marks)**

Answer:

'Debentures' and 'shares'

Basis	Debentures	Shares
1. Status	Debenture holder is only a creditor of the company.	A Shareholder or a member is an owner of the company.

2. Voting right	They do not have any voting rights.	They enjoy voting rights.
3. Income	Interest on debenture is payable even if no profit is available.	Dividend on shares is to be paid only out of profit and not otherwise, if declared.
4. Repayment	Debentures are repayable / redeemable as per terms of the issue.	Share, are not refundable unless the company goes into liquidation.
5. Repurchase	A company may purchase its own debentures unless they are perpetual or irredeemable.	Whereas it is not open to a company to purchase its own shares as per **Section 67 of Companies Act, 2013.**
6. Discount on issue	Debentures can be issued at a discount.	Shares cannot be issued at a discount.
7. Security	Debentures are generally secured and carry a charge on the asset of the company.	Shares have no charge.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

2009 - June [1] {C} Comment on the following :

(v) Provisions of Section 73(1) are not applicable to guarantee companies and Section 8 companies (i.e., associations not for profit).

(5 marks) ***[CSEM - II]***

Answer:

1.	**Authenticity of the statement**	The statement is not correct.
2.	**Applicability of Section 73(1)**	**Section 73(1) of the Companies Act, 2013,** and Companies (Acceptance of Deposit) Rules, 2014, are also applicable to companies limited by guarantee and association not for profit viz, **Section 8** companies; having share capital and formed for promoting commerce, art, science, religion, charity or any other useful object.
3.	**Provisions of Sec. 73(1)**	**Acceptance of deposit:** • no company shall invite, accept or renew deposits under **Companies Act, 2013** from the public • except in a manner provided under this Chapter • Provided that nothing in this sub-section shall apply to • a banking company and NBFC as defined in the Reserve Bank of India Act, 1934 and • to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Space to write important points for revision

2010 - Dec [5] (c) What are the rights, powers and disabilities of debenture trustees? **(6 marks)** ***[CSEM - II]***

Answer:

Rights of Debenture Trustee	(i) The right to have the possession of the instrument of trust and title deed relating to trust property. (ii) When a trustee properly continues his task he is entitled to get a discharge to the effect in writing. (iii) The right to be reimbursed of all cost expenses and liabilities incomes in administrator of the trust.

Powers of debenture trustee	(i) He can sell the trust property subject to agreement. (ii) A trustee has a power to vary investment. (iii) In case of death of one of the trustees the other trustees have of right to act unless contrary intention appears from the instrument of trust.
Disabilities of debenture trustee	(i) If the person hold shares in the company for benefit, will be disqualified to hold the post of debenture trustee. (ii) If the company pays any money for benefit to debenture trustee. (iii) If debenture trustee has entered into any guarantee in respect of principal debts secured by debentures on interest thereon. (iv) If debenture trustee is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Space to write important points for revision

2011 - June [6] (c) A single fixed deposit holder, after marriage, applied for adding the name of his wife as joint-holder. The company refused to do so. What are the remedies available to the deposit holder?

(4 marks) ***[CSEM - II]***

Answer:

Remedy not available	There is no remedy available to the deposit holder because addition of one or more name(s) as joint holder(s), on a fixed deposit receipt during the period of the fixed deposit is not permissible.

Space to write important points for revision

2016 - Dec [1] Comment on the following:

(c) Issue of unsecured debentures by a company to another company, where the debentures have an option for compulsory conversion into equity shares within seven years, cannot be termed as deposits.

(5 marks)

Answer:

1.	**Analysis of the Present Case**	**Section 73 of Companies Act, 2013** read with **Rule 2(1) (c)** of **Companies (Acceptance of Deposits) Rules, 2014** define the term 'deposit'. As per **clause (ix) of Rule 2 (1)(c),** deposit shall not include any amount raised by issue of bonds or debentures secured by first charge or a charge ranking *pari passu* with the first charge on any assets referred to in **Schedule III** of **the Companies Act, 2013** excluding intangible assets of the company or the bonds or debentures compulsorily convertible into shares of the company within 10 years. In view of comprehensive reading of the above clause the unsecured debenture issued having option of compulsory conversion into shares of the company within 10 years shall not be treated as deposits. **Amendment made by Companies (Amendment) Act, 2017** In **Section 73 of the Principal Act**, in sub-Section (2),— clause (d) shall be omitted;
2.	**Conclusion**	**In the above case** the unsecured debentures issued by the company having option of compulsory conversion into shares of the company within seven years cannot be treated as deposits.

Space to write important points for revision

2016 - Dec [5] (b) Define the term 'deposits' and list out the receipts of money which are not considered as deposits. **(8 marks)**

Answer:

As per **Section 2(31) of the Companies Act, 2013** "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include:

(i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(ii) any amount received from foreign governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of **Foreign Exchange Management Act, 1999** and rules and regulations made there under;

(iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government **under Section 51 of the Banking Regulation Act, 1949**, or a corresponding new bank as defined in **clause (d)** of **Section 2 of the Banking Companies** (Acquisition and Transfer of Undertakings) **Act, 1970**, or in clause (b) of Section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 or from a co-operative bank as defined in **clause (b-ii)** of **Section 2 of the Reserve Bank of India Act, 1934**;

(iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India, or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the **Reserve Bank of India Act, 1934**;

(v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) any amount received by a company from any other company;

(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for.

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company. The director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking *pari passu* with the first charge on any assets referred to in **Schedule III** of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within ten years. If such bonds or debentures are secured by the charge of any assets referred to in **Schedule III** of the Act excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

(x) any amount received from an employee not exceeding his annual salary, under a contract of employment with the company in the nature of non-interest bearing security deposit;

(xi) any non-interest bearing amount received or held in trust;

(xii) any amount received in the course of or for the purposes of the business of the company:
  (a) as an advance for the supply of goods or provision of services provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from acceptance of such advance. In case of any advance which is subject matter of any legal proceedings before any Court of law, the said time limit of three hundred and sixty five days shall not apply.
  (b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement.
  (c) as security deposit for the performance of the contract for supply of goods or provision of services.
  (d) As advance received under long term projects for supply of capital goods except those covered under item (b) above.

  If the amount received under (a), (b) and (d) above becomes refundable (with or without interest) because the company accepting the money does not have necessary permission or approval to deal in the goods or properties or services for which the money is taken, the amount received shall be deemed to be a Deposit under these rules.

(xiii) 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 fulfillment 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 and
  (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.

(xiv) any amount accepted by a Nidhi Company in accordance with the rules made under **Section 406** of the Act.

2017 - Dec [1] Comment on the following:

(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. **(5 marks)**

Answer:

According to the definition of private company under **Section 2(68)**, a private limited company may not make an invitation to the public to subscribe for any securities of the company. However, under **Section 42** read with **Section 2(68)**, if may issue such security to any person (number of persons not exceeding 200).

In terms of provisions of **Section 73(2)** read with Exemption Notification dated 5th June, 2015, a private company may accept from its members monies not exceeding one hundred percent of aggregate of the paid-up share capital and free reserves, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, as may be agreed upon between the company and its members, subject to the fulfilment of certain conditions, as provided under the Act.

Space to write important points for revision

2018 - June [1] Comment on the following:

(a) A private limited company can accept deposit from its members under the provisions of the Companies Act, 2013. **(5 marks)**

Answer:

A private limited company can accept deposit from its members in accordance with **Section 73 of the Companies Act, 2013** and rules made thereunder. Moreover, the Government has exempted the private companies *vide* notification dated 13th June, 2017, from applicability of Section 73(1)(a) to (e).

Accordingly, a private company may accept deposit from its members:

(A) not exceeding one hundred percent of aggregate of the paid up share capital, free reserves and securities premium account; or

(B) is a start-up, for five years from the date of its incorporation; or

(C) if it fulfils all of the following conditions, namely:
(a) is not an associate or a subsidiary company of any other company;
(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clause (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Space to write important points for revision

2018 - Dec [1] Comment on the following:
(c) A public company may issue secured irredeemable debentures.

(5 marks)

Answer:
A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture.

As per Rule 18(1)(a) Companies (Share Capital and Debentures) Rules, 2014 an issue of secured debenture may be made for a period of redemption not exceeding ten years from the date of issue. In case of certain companies such redemption period may exceed ten years but not exceed thirty years.

After the commencement of the Companies Act, 2013, no company either public or private can issue perpetual or irredeemable debentures.

Space to write important points for revision

2018 - Dec [4] (d) Draft an appropriate resolution to authorise the Board to borrow for company's business upto a limit beyond paid-up share capital and free reserves. Assume facts and figures.

(5 marks)

Answer:

Special Business

To consider and, if thought fit, to pass with or without modification(s), the following resolution as Special Resolution:

"RESOLVED THAT pursuant to the provisions of Section 180(3)(c) and other applicable provisions, if any, of the Companies Act, 2013, and subject to such approval as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sum of money as may not exceed ₹ .....(Rupees .....), for the purpose of the business of the company, notwithstanding that the moneys to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of ..... (Rupees .....) at any one time.

Resolved further that the Board be and is hereby authorized to do all the acts, deed and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution".

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on ..... passed a special resolution under Section 180(3)(c) for borrowing the maximum amount of Rupees ....., upto which the Board of directors of the company could borrow funds from financial institutions and banks in excess of the company's paid-up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of Rupees (.....) has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees _____.

Therefore, the proposed resolution for consideration and approval by the members of the company. None of the directors is concerned or interested in the proposed resolution.

Space to write important points for revision

2019 - June [1] (a) A private company and a banking company, can freely accept deposits. (5 marks)

Answer:

Rule 1(3) of the Companies (Acceptance of Deposits) Rule, 2014 made under **Section 73 and 76 of the Companies Act, 2013** provide that the Companies (Acceptance of Deposits) Rule, 2014 shall apply to a company other than —

(i) a banking company;
(ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 registered with the Reserve Bank of India;
(iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987; and
(iv) a company specified by the Central Government under the proviso to sub-Section (1) of Section 73 of the Act.

Accordingly, the Companies (Acceptance of Deposits) Rules 2014 is not applicable to banking company. Hence, a banking company can freely accept deposits.

A private company is allowed to accept deposits from its members subject to fulfillment of conditions provided under Section 73(2)(a) to (e) of the Companies Act, 2013.

However, the Ministry of Corporate Affairs vide the notification dated 13th June 2017 provides that the Section 73(2)(a) to (e) shall not apply to following classes of private companies.

(A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account; or
(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfills all of the following conditions, namely:—
(a) which is not an associate or a subsidiary company of any other company;
(b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

The company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in Form DPT-3.

Space to write important points for revision

2019 - June [3] (a) With reference to the provisions of the Companies Act, 2013 and the rules framed there under, state the disqualifications for a Debenture Trustee. Explain whether the following persons can be appointed as Debenture Trustee?
(i) A relative of whole-time director of the company.
(ii) A shareholder who has no beneficial interest. **(5 marks)**

Answer:

Section 71 of the Companies Act 2013, read along with rule 18(2) of the Companies (Share capital and Debentures) Rules, 2014 provides that a person shall not be appointed as a debenture trustee, if he
(a) beneficially holds shares in the company;
(b) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associated company;
(c) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
(d) is indebted to the company, or its subsidiary or its holding or associated company or a subsidiary of such holding company;
(e) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(f) has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(g) is relative of any promoter or any person who is the employment of the company as a director or key managerial personnel.

Accordingly, the explanations to the questions would be as under:

(i) A relative of whole-time director of the company (KMP) cannot be appointed as debenture trustee.

(ii) A shareholder who has no beneficial interest can be appointed as debenture trustee.

Space to write important points for revision

2019 - Dec [2] (e) What are disqualifications for debenture trustees? **(3 marks)**

PRACTICAL QUESTIONS

2011 - June [8] (a) Shine Well Ltd. has accepted deposits from the public under the Companies (Acceptance of Deposits) Rules, 2014. The company has now decided to repay some of its deposits before maturity. Can the company do so ? If yes, what are the conditions attached thereto? **(4 marks)** ***[CSEM - II]***

Answer:

Provisions of Companies (Acceptance of Deposits) regarding premature repayment of deposits, Rules 2014.		
1.	**Repayment after 6 months but before the expiry period of the deposit**	The said rule states that a company may, on the request of the depositor, repay its deposits, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted

		1. Interest Rate	The rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced.
		2. Exception	Nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of- (a) complying with the provisions of Rule 3; or (b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution.

		3. Renewal on higher rate of interest	• where a company referred to in under sub-section (2) of Section 73 or any eligible company • permits a depositor to renew his deposit, • before the expiry of the period for which such deposit was accepted by the company, • for availing of a higher rate of interest, • the company shall pay interest to such depositor at the higher rate • if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.

Space to write important points for revision

2012 - June [2] (b) Ajay Ltd. borrowed ₹ 100 crore from Prem, without the authority conferred on it by the articles of association. Later, the money borrowed by Ajay Ltd. was used by its Board of directors to pay off lawful debts of the company. In this scenario, Prem, the lender seeks your advice for recovery of his money. Advise him. **(5 marks)** ***[CSEM - II]***

Answer:

1.	**Ultra vires borrowing by the company**	**Case Law - *T.R. Pratt (Bombay) Ltd. v E.D. Sassoon and Co. Ltd.,***
		In this case, it was held that the borrowing by the company itself was *ultra vires*.

2.	**General Principle of Law**	As per general principle of law, if any agent borrows money for the principle(s) without authority of principle(s) and principle(s) takes benefit from the borrowed money or when the borrowed money has gone into the coffers of the principle(s), the law implies a promise to repay.
3.	**A promise to repay**	The lender has given money as a loan not as gift and the principle(s) has taken benefit from the money, therefore the law-implies a promise to repay.
4.	**Position in my opinion**	The position in my opinion, would be that of principle(s) takes benefit of the money whether he has not authorised the agent to borrow. I do not think the company can repudiate its liability to repay on ground that the agents had no authority from companies to borrow.
5.	**Conclusion**	*Hence, the money borrowed by Ajay Ltd. from Prem is ultra vires, the company is liable to repay that amount. It is advised to Prem to sue for recovery of moneys.*

Space to write important points for revision

2013 - Dec [3] (a) Balance sheet of Duck Ltd. shows a paid-up capital of ₹ 5 crore and free reserves of ₹ 2 crore. Due to heavy financial requirements of the company, it plans to apply for a loan of ₹ 8 crore with XYZ Bank Ltd. Advise the company on the formalities required to be fulfilled. Also advise on the alternative course of action, if any. **(4 marks)**

Answer:

1.	**Borrowing power of the company, sec.180(1)(c) of Companies Act, 2013**	As per this section, A public company can borrow only up to the aggregate of its paid up capital and free reserves without the approval of shareholders in general meeting.

2.	**Special resolution required in the present case**	**In the present case**, since the loan requirement is over and above the aggregate of the paid-up capital and free reserves. Duck Ltd. will have to convene a general meeting and a special resolution needs to be passed thereat.
3.	**Alternative available**	The alternative course of action is that Duck Ltd. may limit its borrowing only up to ₹ 7 crores, in which case the special resolution is not necessary.

Space to write important points for revision

2014 - Dec [5] (b) Sun-beam Ltd. failed to pay interest on repayment of deposits. One depositor approached the consumer forum with the request to issue order against the company for payment of interest on deposits. The company contended that the consumer forum was not a proper authority to issue such directions. Advise the company suitably. **(8 marks)**

Answer:

1.	**Analysis of given Problem**	The given facts are similar to a decided case law. The National Consumer Dispute Redressal Commission pointed out that after the Amendment Act, 1993, a consumer forum can direct payment of amounts due to a depositor under the provisions of **Section 18 of the Consumer Protection Act, 1986.** An order directing payment of the outstanding amount to the depositors can now be made under the provisions of the **Section 14.**
2.	**Conclusion**	Hence, the contention of Sun beam Ltd. is not valid. Payment of interest to the deposit holder should be made as per the order of the consumer forum.

Space to write important points for revision

2016 - June [2A] (Or) (iii) Prism Ltd. has accepted ₹ 10 lakh as advance towards the supply of goods to certain parties. As per the agreement, the company will supply the goods after two years from the date of deposit. Later on, internal auditors qualified their report on the ground that the company has violated the provisions of the Companies Act, 2013. Directors explained that this is required to complete the order. Examining the relevant provisions of the Companies Act, 2013 state whether the explanation given by the directors is justified. **(4 marks)**

Answer:

1.	**Section 2(31)**	According to the **Section 2(31)** of the Act read with Rule 2(c) of **Companies (Acceptance of Deposits) Rules, 2014** "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include any amount received in the course of or for the purposes of the business of the company as an advance for the supply of goods or provision of services provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from acceptance of such advance.
2.	**Analysis of the given Problem**	In case of any advance which is subject matter of any legal proceedings before any Tribunal of law, the said time limit of three hundred and sixty five days shall not apply. **In the present case** Prism Ltd. has accepted ₹ 10 lakhs as advance towards the supply of goods to certain parties on an agreement to supply goods after two years from date of deposit.
3.	**Conclusion**	Considering the legal provision the amount so accepted by the company is deposit.

Space to write important points for revision

2016 - June [6] (c) Board of Directors of Green Field Ltd. decides to accept deposits from the public at a compound interest rate of 12% per annum. Examining the provisions of the Companies Act, 2013, advise whether the Board can go ahead with its proposal. **(4 marks)**

Answer:

1.	**Section 73(2)**	As per **Rule 3(6) of the Companies (Acceptance of Deposits) Rules,2016** no company under **Section 73(2)** or any eligible company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies. **Amendment made by Companies (Amendment) Act, 2017** In **Section 73 of the principal Act**, in sub- section (2),— clause (d) shall be omitted;
2.	**Conclusion**	Green Field Ltd. is advised to go ahead with the proposal carrying a rate of interest not exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Space to write important points for revision

2016 - Dec [3] (d) Suresh, a member of Ruchi Ltd., wants to inspect the register of deposits maintained by the company as required under the provisions of the Companies Act, 2013. The company refused to provide the register for inspection without assigning any reason. Referring to the provisions of the Act, examine the validity of the company's refusal. What shall be your answer if the same Register is demanded by the statutory auditors of the company for inspection and for their audit? **(4 marks)**

Answer:

1	**Rule 14 of Companies (Acceptance of deposits) Rules, 2014**	According to **Rule 14 of Companies (Acceptance of deposits) Rules, 2014,** every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed. In absence of any enabling provision, this register is not open for inspection by members and company may refuse to open it for inspection.
2	**Conclusion**	**In the given case** Ruchi Limited can refuse to provide the register for inspection without giving any reason because it is not open for inspection but in case of statutory auditors, the company cannot to do so. The Statutory Auditors have a right to inspect and check every register maintained by the company.

Space to write important points for revision

2017 - Dec [2A] (Or) (i) A company has taken a term loan from a financial institution and is regularly paying the loan installments 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)**

Answer:

Section 62(3) states the provisions of **Section 62** shall not apply to the increase of the subscribed capital of the company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the companies to convert such debentures/loan into the shares in the company. Further, the terms of issue of such debentures or loan containing such an option should have been approved before the issue of such debentures or raising of loan by a special resolution passed by the company in General Meeting.

Thus, **in the given case**, if raising of loan is already approved by the shareholders by special resolution, then the financial institution can enforce the convertibility.

—— Space to write important points for revision ——

2017 - Dec [3A] (Or) (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)**

Answer:

Section 71(2) states that no company shall issue any debentures carrying any voting rights. Secured Debentures to comply with terms and conditions prescribed Section 71(3) states that Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014, prescribes the following conditions;

The company shall not issue secured debentures, unless it complies with the following conditions, namely:

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;

(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and

(d) the security for the debentures by way of a charge or mortgage shall be treated in favour of the debenture trustee on-
  (i) any specific movable property of the company (not being in the nature of pledge); or
  (ii) any specific immovable property wherever situate, or any interest therein.

In case of a non-banking financial company, the charge or mortgage may be created on any movable property. Further 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, there is no requirement for creation of charge under this sub-rule.

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.

Space to write important points for revision

2018 - June [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)**

Answer:

According to Rule 2 of the Companies (Acceptance of Deposit) Rules, 2014 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, shall not be treated as deposit, subject to fulfillment of the following conditions, namely:

(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
(b) the loan is provided by the promoters themselves or by their relatives or by both; and
(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

Accordingly, in case of Fun and Frolic Ltd. ₹ 5 Lakhs may be accepted from the Promoters, as the same is in pursuance to stipulation of credit from bank. Once the credit facilities are paid in entirety and the company continues to retain the unsecured loan, it shall be treated as deposit under the Companies Act, 2013.

Space to write important points for revision

2019 - Dec [2A] (Or) (iii) IOL, a manufacturing company, issued partly convertible debentures with ₹6 crore few years back. The convertible option is only for 50% of the issue and debentures are redeemable in the current financial year. What is the quantum of Debenture Redemption Reserve (DDR) required to be created by the company now and how much should be deposited or invested by the company? **(3 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short note on the following:
(a) Ultra virus borrowing
(b) Intra virus borrowing
(c) Debenture stock

Answer:

(a) Where a company borrows without the authority conferred on it by the articles or beyond the amount set out in the Articles, it is an ultra vires borrowing. Any act which is ultra vires the company is void. In such a case the contract is void and the lender cannot sue the company for the return of the loan. The securities given for such ultra-vires borrowing are also void and inoperative. Ultra vires borrowings cannot even be ratified by a resolution passed by the company in general meeting.

However, equity assists the lender where the common law fails to do so. If the lender has parted with his money to the company under an ultra vires borrowing, and is, therefore, unable to sue for its return, or enforce any security granted to him, he nevertheless has, in equity, the following remedies:

(A) **Injunction and Recovery:** Under the equitable doctrine of restitution he can obtain an injunction provided he can trace and identify the money lent, and any property which the company has bought with it. Even if the monies advanced by the lender cannot be traced, the lender can claim repayment if it can be proved that the company has been benefited thereby.

(B) **Subrogation:** Where the money of an ultra vires borrowing has been used to pay off lawful debts of the company, he would be subrogated to the position of the creditor paid off and to that extent would have the right to recover his loan from the company. Subrogation is allowed for the simple reason that when a lawful debt has been paid off with an ultra vires loan, the total indebtedness of the company remains the same. By subrogating the ultra vires lender, the Court is able to protect him from loss, while debt burden of the company is in no way increased.

(C) **Suit against Directors:** In case of ultra vires borrowing, the lender may be able to sue the directors for breach of warranty of authority, especially if the directors deliberately misrepresented their authority.

(b)
- A distinction should always be made between a company's borrowing powers and the authority of the directors to borrow. Where the directors borrowed money beyond their authority and the borrowing is not ultra vires the company, such borrowing is called Intra vires borrowing but outside the Scope of Agents' Authority.
- The company will be liable to such borrowing if the borrowing is within the directors' ostensible authority and the lender acted in good faith or if the transaction was ratified by the company.

- Where the borrowing is intra vires the company but outside the authority of the directors e.g. where the articles provide that the directors shall have the power only up to ₹ 100 lacs and prior approval of the shareholders would be required to borrow beyond ₹100 lacs; any borrowing beyond ₹ 100 lacs without shareholders approval i.e. intra vires borrowing by the company but outside the authority of directors can be ratified by the company and become binding on the company.
- The company would be liable, particularly if the money has been used for the benefit of the company.
- Here the legal position is quite clear. The company has power or capacity to borrow, but the authority of the directors is restricted either by the articles of the company or by the statute, and they have exceeded it.

(c)
- A company, instead of issuing debentures, each in respect of separate and distinct debt, may raise one aggregate loan fund or composite stock known as 'debenture stock'.
- Accordingly, a debenture stock is a borrowed capital consolidated into one mass for the sake of convenience.
- Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum being a portion of one large loan.
- It is generally secured by a trust deed. As in the case of shares, a person may subscribe for, or transfer any amount even a fraction amount.
- Debenture stock is the indebtedness itself, and the debenture stock certificate furnishes evidence of the title or interest of the holder in the indebtedness.
- Debenture is the document which furnishes evidence of the debt. Debenture stock must be fully paid, while debenture may or may not be fully paid.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

Q2. Is it compulsory to maintain a Debenture Redemption Reserve Account? If yes, how?

Answer:

Section 71(4) read Rule 18(7) of aforesaid rules provides that when debentures are issued by a company, the company shall create a debenture redemption reserve account (DRR) out of the profits of the company available for payment of dividend. The amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Quantum of Debenture Redemption Reserve

DRR is not required to be created for the convertible part of partly convertible debentures. The provisions for creation of DRR for various classes of companies are as follows:

Sr. No.	Class of Company	Condition
1	All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies	No DRR for debentures issued by for both public as well as privately placed debentures
2	Financial Institutions (FIs) within the meaning of clause (72) of Section 2 of the Companies Act, 2013	As applicable to NBFCs registered with RBI.

3	For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997	25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, No DRR is required in the case of privately placed debentures.
4	Housing finance companies registered with the National Housing Bank	25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 No DRR is required in the case of privately placed debentures.
5	For other companies including manufacturing and infra-structure companies	25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008
6	Listed Companies	25% DRR is required in the case of privately placed debentures
7	Unlisted companies	25% of the value of outstanding debentures for issue of debentures on private placement basi

For Every company required to create DRR is required to invest or deposit at least 15 % of the debentures maturing during the current financial year ending 31st March of next year.

The company may choose any of the below given methods:

(i) in deposits with any scheduled bank, free from any charge or lien;

(ii) in unencumbered securities of the Central Government or of any State Government;

(iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of **Section 20 of the Indian Trusts Act, 1882;**

(iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of **Section 20 of the Indian Trusts Act, 1882;**

(v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: The amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;

Space to write important points for revision

Q3. What are the duties of debenture trustees?

Answer:

It shall be the duty of every debenture trustee to—

(a) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(c) call for periodical status or performance reports from the company;

(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;

(e) appoint a nominee director on the Board of the company in the event of-

  (i) two consecutive defaults in payment of interest to the debenture holders; or

  (ii) default in creation of security for debentures; or

  (iii) default in redemption of debentures.

(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
(j) do such acts as are necessary in the event the security becomes enforceable;
(k) call for reports on the utilization of funds raised by the issue of debentures;
(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;

Space to write important points for revision

Q4. What is the procedure for accepting deposits from numbers?
Answer:
The procedure to accept deposits from members can be summarized as under:-

1. The companies intending to invite deposits from its members shall convene a Board meeting to consider and Approve the business to propose and accept deposits from members and decide the day, date, time and place of the general meeting.
2. Issue notice of general meeting to the members of the company.
3. Hold the general meeting and pass resolution for acceptance of deposits.
4. Comply with the Rules prescribed in consultation with RBI and terms and conditions mutually agreed by the company and deposit holders either for acceptance or for repayment of deposits.
*5. Issue circular to the members of the company including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards depositors in respect of any previous deposits and such other particulars as may be prescribed. These details indicate the soundness

of the company or a warning about risks involved. The circular shall be published at least once in English language in a leading English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

6. File the copy of aforesaid circular in the Form DPT-1 along with such statement with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.
*8. A company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit Form CHG-1 with Registrar for assets other than intangible assets. Secured deposits including interest thereon can in no case exceed the market value of the charged assets assessed by the registered valuer.
9. After the expiry of 30 days of filing Form DPT-1, the circular in Form DPT-1 along with application form is sent to all members by registered post with acknowledgement due/speed post/electronic mail.
10. Collect duly signed application form along with money from the members.
11. Issue receipts of deposits within 21 days of the receipts of money/realization of cheque.
12. Maintain register of deposits at its registered office which shall contain the details as prescribed under Rule 14 Companies (Acceptance of Deposits) Rules, 2014 from the date of such acceptance.
13. Pay interest as per the rate proposed on agreed terms.
*14. Deposit such sum which shall not be less than twenty percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.

15. Certification that the Company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default

16. Submit return of deposits in Form DPT-3 on or before 30th June each year for information as on 31st March of respective year.

> * Exempted for private companies if it accepts from its members monies not exceeding 100 percent of aggregate of paid- up share capital and free reserves and the company files the details of monies so accepted to Registrar

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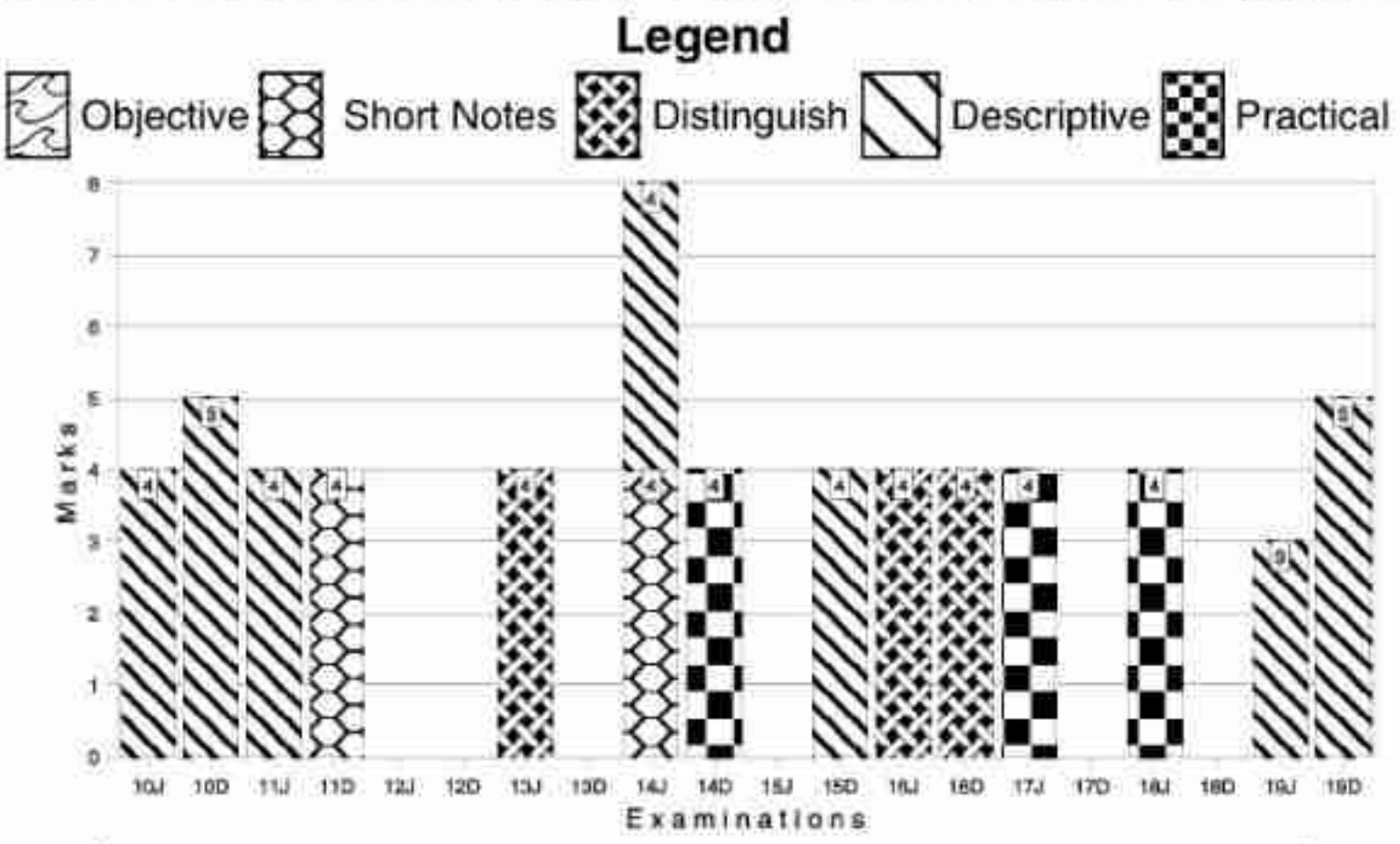
5 CHARGES

THIS CHAPTER INCLUDES	
• Definition of charge • Kinds of a charge viz. fixed charge, floating charge • Judicial pronouncements on different types of charges • Crystallization of floating charge • Registration of charge • Condonation of delay by Registrar • Register of charges • Satisfaction of charges	• Modification of charges • Purchase or Acquisition of a Property Subject to Charge • Condition of delay by Central Government • Application for Registration of charge by charge holder. • Consequences on non- registration of charge

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



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CHAPTER AT A GLANCE

Charge
• A charge is a security given for securing loans or debentures by way of a mortgage on the assets of the company. As mentioned earlier, the power of the company to borrow includes the power to give security also. • A charge may be created either through the act of parties or by operation of law. • A charge created by operation of law does not require registration. But a charge created by act of parties requires registration. • The charge may be in perpetuity. • A charge only gives a right to receive payment out of a particular property. • A charge is good against subsequent transferees with notice. • In case of charge, no personal liability is created. But where a charge is the result of a contract, there may be a personal remedy. • There is no such transfer of interest in the case of a charge.
Two Kinds of Charges
There are two kinds of charges, fixed or specific charge and floating charge.
Fixed Charge
A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied.

Floating Charge

A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.

Crystallisation of Floating Charge

A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right. A floating charge crystallises and the security becomes fixed in the following cases:

(a) when the company goes into liquidation;
(b) when the company ceases to carry on its business;
(c) when the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged;
(d) on the happening of the event specified in the deed.

Mortgage

- A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an agreement which may give rise to pecuniary liability.
- A mortgage is created by the act of the parties.
- A mortgage requires registration under the **Transfer of Property Act, 1882.**
- A mortgage is for a fixed term.

- A mortgage is a transfer of an interest in specific immovable property.
- A mortgage is good against subsequent transferees.
- A simple mortgage carries personal liability unless excluded by express contract.
- A mortgage is a transfer of an interest in a specific immovable property.

Registration of Charges- Section 77(1)

Any charge created
(a) within or outside India,
(b) on its property or assets or any of its undertakings,
(c) whether tangible or otherwise, and situated in or outside India
Shall be registered.

(i) Particulars of charges that is being filed with Registrar of Companies is to be signed by the company creating the charge and the charge holder in Form No. CHG-1 (for other than Debentures) or Form CHG-9 (for debentures) as the case may be.
(ii) The Charge has to be registered within 30 days of its creation.

As per Companies (Amendment), Act, 2019

Time limit for filing charge created on or after 2.11.2018 reduced

The charge should be filed within 30 days from its creation. In case of charges created on or after 2.11.2018, RoC can allow extension upto 30 days (total 60 days from date of creation of charge, on payment of prescribed additional fees. RoC can allow further extension of 60 days on after payment of such ad valorem fees as may be prescribed - first and second proviso to **Section 77(1) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

There is no provision to grant further extension for registration of charges.

Section 87 of Companies Act, 2013 has been amended w.e.f. 2.11.2018 to provide that Central Government cannot order rectification of register of charges in such cases.

Provision in respect of charges created before 2.11.2018

Registrar can allow filing of particulars of such registration within 300 days of such creation, on payment of additional fee as prescribed.

He can grant further extension upto 6 months on payment of additional fees as may be prescribed - first and second proviso to **Section 77(1) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

Registrar can condone delay upto 300 days on being satisfied that company had sufficient cause for not filing particulars and instrument of charge within 30 days, on payment of additional fee - Rule 4 of Companies (Registration of Charges) Rules, 2014.

If the charge is not filed within 300 days of creation, further extension could be granted by Central Government under **section 87 of Companies Act, 2013 - second proviso to Section 77(1) of Companies Act, 2013** as existing upto 2.11.2018 [powers delegated to Regional Director]. Now, such extension cannot be granted.

Punishment for not filing charges or giving false information

Punishment for non-filing of charge or its satisfaction is fine upto ₹ 10 lakhs on company (minimum ₹ on lakh). Further, every Officer who is in default shall be punishable with imprisonment which can extend upto 6 months and fine upto ₹ one lakh (minimum ₹ 25,000 - **Section 86(1) of Companies Act, 2013** [re-numbered w.e.f. 2.11.2018].

Satisfaction of Charges

According to **Section 82** read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in Form No. CHG-4 along with the fee. The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.

Notice of Charge

According to **Section 80,** where any charge on any property or assets of a company or any of its undertakings is registered under **Section 77,** any person acquiring such property, assets, undertakings or part thereof or any

share or interest therein shall be deemed to have notice of the charge from the date of such registration. The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Consequences of Non- registration of Charge

According to **Section 77 of the Companies Act, 2013,** all types of charges created by a company are to be registered by the ROC, where they are non-compliant and are not filed with the Registrar of Companies for registration, it shall be void as against the liquidator and any other creditor of the company.

Particulars of Charges

The following particulars in respect of each charge are required to be filed with the Registrar:

(a) date and description of instrument creating charge;
(b) total amount secured by the charge;
(c) date of the resolution authorising the creation of the charge; (in case of issue of secured debentures only);
(d) general description of the property charged;
(f) list of the terms and conditions of the loan; and
(g) name and address of the charge holder.

Central Government can Order Rectification of Register of Charges Only When Delay was in Respect of Filing of Satisfaction of Charge or Mistake Made in Filing Charges

The Central Government can order rectification of register on any of the following grounds:

The Central Government on being satisfied that:

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter, or

(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified **Section 87 of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

Central Government cannot order rectification of register of charges if there was delay in filing of the original charge itself, beyond the specified period or extended period as allowable under **section 77 of Companies Act, 2013.**

Application for rectification can be made by company or any person interested. Thus, secured creditor (Bank or FI) can make application if the charge or its modification was not filed in time, as the secured creditor is certainly interested in registration/modification of charge.

Powers to order rectification of register of charges have been delegated to Regional Director vide Notification F No. 1/6/2014 - CL. V dated 21.5.2014.

List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Importa nt Rule
CHG-1	e-Form	Application for registration of certain, modification of charge (other than those related to debentures) including particulars of modification of charge by asset Reconstruction Company in terms of Securitization of Reconstruction	77,78,79 and 384	3(1)

		of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI)		
CHG-2	Physical Form	Certificate of registration of charge	77(1),78	6(1)
CHG-3	Physical Form	Certificate of registration of modification of charge	79(b)	6(2)
CHG-4	e-Form	Particulars for satisfaction of charge thereof	82(1)	8(1)
CHG-5	Physical Form	Memorandum of satisfaction of charge	8283	8(2)
CHG-6	e-Form	Notice of appointment or cessation of receiver or manager	84(1),384	9
CHG-7	Physical Form	Register of charges	85	10(1)
CHG-8	e-Form	Application to Central Government of extension of time for filling particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation / modification satisfaction of charge	77(1) read with Section 87	12(2)
CHG-9	e-Form	Application for registration of creation or modification of charge for debenture or rectification of particulars filled in respect of creation or modification of charge for debentures	71 (3), 77,78 ,79 and 384	3
CHG-10	e-Form	Application to Registrar for delay	-	-

SHORT NOTES

2011 - Dec [3] Write a note on the following:

(iv) Essentials of a mortgage. **(4 marks)** ***[CSEM - II]***

Answer:

Essentials of Mortgage :		
(a)	**Transfer of interest**	A mortgage is a transfer of interest in the specific immovable property. After mortgage, the interest of the mortgagor is reduced by the interest, which has been transferred to the mortgagee.
(b)	**Specific immovable property**	The property must be specifically mentioned in the mortgaged deed.
(c)	**To secure the payment of loan**	The transaction is for the purpose of security of the payment of a loan or the performance of an obligation, which may give rise to pecuniary liability.

Space to write important points for revision

2014 - June [6] Write a note on the following:

(a) Consequences of non-registration of charge **(4 marks)**

Answer:

1.	**Requirement of Registration of Charge, Sec. 77(1) of Companies Act, 2013**	A company creating a charge with in India or Outside India is required to register the said charge with the ROC within 30 days of its creation.

2.	**Consequence of Non Registration of Charge**	Consequences are as follows: (i) The charge is void as against the liquidator and other creditors. (ii) The charge is good against the company. (iii) The money secured by the charge become payable immediately. (iv) During liquidating process, the creditors become unsecured creditors. (v) When a charge is void for non- registration, no right of lien can be claimed on the document of title. (vi) The company may give a subsequently valid mortgage to secure the same debt.
3.	**Penalties**	If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Note:

As per Companies (Amendment) Act, 2019

Punishment for not filing charges or giving false information

Punishment for non-filing of charge or its satisfaction is fine upto ₹ ten lakhs on company (minimum ₹ on lakh). Further, every Officer who is in default shall be punishable with imprisonment which can extend upto 6 months and fine upto ₹ one lakh (minimum ₹ 25,000 - **Section 86(1) of Companies Act, 2013**.

Space to write important points for revision

DISTINGUISH BETWEEN

2013 - June [4] Distinguish between the following:
(i) 'Mortgage' and 'charge'. **(4 marks)** ***[CSEM - II]***

Answer:

	Mortgage	Charge
(i)	The Creation of a mortgage implies the existence of a debt.	The Creation of a Charge does not necessarily imply the existence of debt.
(ii)	A mortgage can only be created by act of parties.	A charge may be created by act of parties or by operation of law.
(iii)	A mortgage deed must be registered and attested by two witnesses.	While a charge need not be made in writing and if reduced to writing, it need not be attested or registered.
(iv)	A mortgage must be executed in respect of specific property.	While a charge may be created upon the wealth or property of a person which may be unspecified.
(v)	Simple mortgage carries personal liability unless excluded by express contract.	In the case of Charge, no Personal liability is generally created.

Space to write important points for revision

2016 - June [2] Distinguish between the following:
(c) 'Notice of a charge' and 'satisfaction of a charge'. **(4 marks)**

Answer:

1.	**Satisfaction of Charges**	According to **Section 82** read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge

		within a period of thirty days from the date of such payment or satisfaction in **Form No. CHG-4** along with the fee. Where the satisfaction of the charge is not filed within thirty days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government, which is later discussed in this chapter. On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling a show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under Section 81 and shall inform the company. If the cause is shown to the registrar shall record a note to that effect in the register of charges and shall inform the company accordingly. However the aforesaid notice shall not be sent, in case intimation to the registrar is in specified form and is signed by the holder of charge. **[Proviso to Section 82(2)].**
2.	**Notice of Charge**	According to **Section 80,** where any charge on any property or assets of a company or any of its undertakings is registered under **Section 77,** any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

		The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Space to write important points for revision

2016 - Dec [2] Distinguish between the following:
(c) 'Mortgage' and 'charge'. **(4 marks)**
Answer:
Please refer 2013 - June [4] (i) on page no. 256

Space to write important points for revision

DESCRIPTIVE QUESTIONS

2009 - June [5] (a) What is 'floating charge'? When does it crystallise ? What is effect of crystallisation of a floating charge ? **(8 marks)** ***[CSEM - II]***
Answer:

Floating Charge	A floating charge is not attached to any definite property, but covers property which is constantly changing and the company can deal with it in normal course of its business, until it becomes fixed on the happening of an event. A charge on the stock- in-trade from time to time of a business is a floating charge.
Crystallization of Floating Charge	A floating charge may crystallize or become fixed in any of the following ways: (a) When the company ceases to carry on business; (b) When the company goes into liquidation;

	(c) When default is made in the payment of principal money or interest and the debenture holder brings an action to enforce his security. (d) When a receiver is appointed.
Effect of Crystallization of a Floating Charge	On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charges or other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding up gets priority over the claims of debenture holders having floating charge.

Space to write important points for revision

2010 - June [3] (d) What is the effect of crystallisation of a floating charge? **(4 marks)** ***[CSEM - II]***

Answer:

1.	**Crystallization of Floating Charge**	A floating charge may crystallise or become fixed in any of the following ways: (a) When the company ceases to carry on business (b) When the company goes into liquidation (c) When default is made in the payment of principal money or interest and the debenture holder brings an action to enforce his security or (d) When a receiver is appointed.
2.	**Effect of Crystallization of a Floating Charge**	On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding-up get priority over the claims of the debenture holders having floating charge.

Space to write important points for revision

2010 - Dec [5] (a) What are the consequences of non-registration of a charge which requires registration under **Section 77(1) of Companies Act, 2013**? **(5 marks)** ***[CSEM - II]***

Answer:

Please refer 2014 - June [6] (a) on page no. 254

Space to write important points for revision

2011 - June [8] (c) Daisy Ltd., a company registered under the Companies Act, 2013, has failed to register a charge which requires registration under Section 125 and the charge is not registered as per Sub-Section (1) of Section 125. What will be the consequences of such non-registration? **(4 marks)** ***[CSEM - II]***

Answer:

Please refer 2014 - June [6] (a) on page no. 254

Space to write important points for revision

2014 - June [3] (d) What is meant by 'floating charge' and how it would be crystallised? **(4 marks)**

Please refer 2009 - June [5] (a) on page no. 258

Space to write important points for revision

2015 - Dec [4] (c) Explain clearly the meaning of the terms 'fixed charge' and 'floating charge'. State the circumstances under which a 'floating charge' automatically becomes 'fixed'. **(4 marks)**

Answer:

1.	**Fixed or Specific Charge**	**(i) When a charge is called fixed**	A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery.

		(ii) **Security of Specific Property**	A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied.
2.	**Floating Charge**	(i) **Security of Fluctuating Property**	A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable.
		(ii) **Charge on Assets of present and Future**	A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.
3.	**Crystallisa-tion of Floating Charges**	(i) **Till when the Floating Charge remains dormant**	A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed.
		(ii) **Right of company to carry on business**	The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right.

		(iv) When a floating charge is crystallized	A floating charge crystallises and the security becomes fixed in the following cases: (a) when the company goes into liquidation; (b) when the company ceases to carry on its business; (c) when the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged; (d) on the happening of the event specified in the deed. In the aforesaid circumstances, the floating charge is said to become fixed or to have crystallised. Until the charge crystallises or attaches or becomes fixed, the company can deal with the property so charged in any manner it likes.

Space to write important points for revision

2019 - June [2] (c) Explain whether a Floating charge attached to the company's property generally remains dormant till it crystallizes or becomes fixed. **(3 marks)**

Answer:

A floating charge attached to the company's property generally remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right.

Crystallization is the process by which a floating charge converts into a fixed charge. A floating charge crystallises and the security becomes fixed in the following cases:

(a) when the company goes into liquidation;
(b) when the company ceases to carry on its business;
(c) when the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged;
(d) on the happening of the event specified in the deed.

In the aforesaid circumstances, the floating charge is said to become fixed or to have been crystallised. Until the charge crystallises or attaches or becomes fixed, the company can deal with the property so charged in any manner it likes. Once crystallized, the security cannot be sold, and the lender may take possession of it.

Space to write important points for revision

2019 - Dec [1] Comment on the following:

(c) An unregistered charge shall be void against the liquidator and other creditors of the company. **(5 marks)**

PRACTICAL QUESTIONS

2014 - Dec [3] (c) Rose Ltd. raised a loan from a State financial institution by creating hypothecation of book debts and also future debts of the company. Incidentally, the charge was not registered with the Registrar of Companies concerned. State financial institution demanded a certificate of registration of charge for the amount of loan so granted by it. The directors of the company replied to the State financial institution that the charge need not be registered for hypothecation of book debts. Is the action of the directors valid? Give reasons. **(4 marks)**

Answer:

1.	**Requirement of Regist-ration of Charge**	• As per the provisions of the Companies Act, a charge by way of hypothecation of book debts requires registration. • A charge on future debts will be void if it not registered as decided in the case of Independent *Automatic Sales Ltd. Vs. Knowles & Foster (1962) 32 Com. Cases 1091 (cd).*
2.	**Corrective action to be taken by the company in this case.**	• **Conclusion** Applying the facts above, it can be concluded that the contention of Directors is invalid. • **Register charge with ROC** He has to register the charges with the Registrar of Companies immediately on payment of additional filing fees and obtain for the ROC and deliver the Certificate of Registration to the State Financial Institution. • **File E form CHG 1** The company should immediately file the particulars of the charge Rules, 2014. • **Certificate of Registration of Charge** Thereafter, it must obtain the certificate of Registration of Charge from the ROC and deliver the same to the State Financial Institution.

Space to write important points for revision

2017 - June [3] (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)

Answer:
In accordance with the provisions of the **Companies Act, 2013,** as contained in **Section 77(1)**, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder in Form No. CHG-1 (for other than Debenture) or Form CHG-9 (for Debentures) as the case may be. The company has to be registered within 30 days of its creation.

Therefore, XYZ Limited can mortgage the office building of London(UK) according to Rule 3 of Companies (Registration of Charges) Rules, 2014; e-form prescribed for the purpose of creating the charge is Form No. CHG-1 and it will be filed within the prescribed period.

Space to write important points for revision

2018 - June [3A] (Or) (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)**

Answer:
A loan taken by a company may be secured by a charge on uncalled capital; A company does not have implied power of charging its uncalled share capital and a company may charge its uncalled capital if its articles or memorandum authorise 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 v. Debenture holders of Anglo-Australian Investment Co.*, (1895) A.C. 224, the memorandum authorised 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.

In present case the company may take a loan secured by charge on uncalled capital only if the article or memorandum of the company so permits.

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short note on Particulars of Charge.

Answer:

The following particulars in respect of each charge are required to be filed with the Registrar:

(a) date and description of instrument creating charge;
(b) total amount secured by the charge;
(c) date of the resolution authorising the creation of the charge; (in case of issue of secured debentures only);
(d) general description of the property charged;
(e) list of the terms and conditions of the loan; and
(f) name and address of the charge holder.

Space to write important points for revision

DISTINGUISH BETWEEN

Q2. What is the difference between Charge and Pledge?

Answer:

According to the generally accepted definition, a 'pledge' is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default. It consists of a delivery of goods by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge.

Unlike a pledge, a 'charge' is not a transfer of property of one to another. It is a right created in favour of one, referred to as "the lender" in the immovable property of another, referred to as "the borrower", as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge.

Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

Q3. State the procedure to be adopted by the company for satisfaction of a registered charge.

Answer:

Satisfaction of Charges

According to Section 82 read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in Form No. CHG-4 along with the fee. The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.

On receipt of such intimation, the Registrar shall issue a notice to the holder of the charge calling a show cause within such time not exceeding fourteen days, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the registrar under section 81 and shall inform the company. If the cause is shown to the Registrar shall record a note to that effect in the register of charges and shall inform the company accordingly.

However the aforesaid notice shall not be sent, in case intimation to the registrar is in specified form and is signed by the holder of charge. [Proviso to Section 82(2)]

Space to write important points for revision

Q4. State the procedure to be followed by a for company for registration of charge.

Answer:

If a company has passed special resolutions under Section 180(2) authorising its Board of directors to borrow funds for the requirements of the company and under Section 180(1)(a), authorising its Board of directors to create charge on the assets and properties of the company to provide security for repayment of the borrowings in favour of the financial institutions/banks or lenders and in exercise of that authority has signed the loan documents and now proposes to have the charge, created it should follow the procedure detailed below:

1. Where the special resolution as required under Section 180 is passed, Form MGT-14 of the Companies (Management and Administration) Rules, 2014 is to be filed with the Registrar.
2. According to Section 77, every company 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 have to be registered. For the purpose of creating/ modifying a charge file particulars of the charge with the concerned Registrar of Companies within thirty days of creating the Form No. CHG-1 (for other than Debentures) or Form No. CHG-9 (for debentures including rectification), as the case may be.
3. Attach the following documents with e-Form No. CHG-9 / CHG-1:
   (a) A certified true copy of every instrument evidencing any creation or modification of charge;
   (b) In case of joint charge and consortium finance, particulars of other charge holders;
   (c) Instrument(s) evidencing creation or modification of charge in case of acquisition of property which is already subject to charge together with the instrument evidencing such acquisitions.

4. Payment of fees can be made online in accordance with Annexure 'B' of Companies (Registration offices and fees) Rules, 2014. Electronic payments through internet can be made either by credit card or by internet banking facility.
5. If the particulars of charge cannot be filed within thirty days due to unavoidable reasons, then it may be filed within three hundred days of such creation after payment of such additional fee as prescribed under Annexure 'B' of Companies (Registration offices and fees) Rules, 2014.
6. Such application for delay to the Registrar shall be made in Form No. CHG-1 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.
7. Where a charge is registered Registrar will issue a certificate of registration of such charge in Form No. CHG-2. Where the particulars of modification of charge are registered the Registrar shall issue a certificate of modification of charge in Form No. CHG-3.
8. A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee as prescribed under Annexure 'B' of Companies (Registration Offices and Fees) Rules, 2014.
9. Where the Registrar enters a memorandum of satisfaction of charge in full, obtain a certificate of registration of satisfaction of charge in Form No. CHG-5.
10. Incorporate changes in relation to creation, modification and satisfaction of charge in the register of charges maintained by the company in Form No. CHG.7 and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge. Such register is to be kept at the registered office of the company.
11. All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.

12. The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.
13. Where the satisfaction of the charge is not filed with the Registrar within thirty days from the date on such payment of satisfaction, an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed under Annexure 'B' of **Companies (Registration Offices and Fees) Rules, 2014.**
14. Where the instrument creating or modifying a charge is not filed with the Registrar within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification an application for condonation of delay shall be filed with the Central Government in Form No. CHG-8 along with the fee as prescribed under Annexure 'B' of **Companies (Registration Offices and Fees) Rules, 2014.**
15. The order passed by the Central Government shall be required to be filed with the Registrar in Form No. INC.28 along with the fee as per the conditions stipulated in the said order.
16. For all other matters other than condonation of delay, application shall be made to the Central Government in Form No. CHG-8 along with the fee.

Note:

As per Companies (Amendment) Act, 2019

Punishment for not filing charges or giving false information

Punishment for non-filing of charge or its satisfaction is fine upto ₹ ten lakhs on company (minimum ₹ on lakh). Further, every Officer who is in default shall be punishable with imprisonment which can extend upto 6 months and fine upto ₹ one lakh (minimum ₹ 25,000 - **Section 86(1) of Companies Act, 2013** [re-numbered w.e.f. 2.11.2018].

Space to write important points for revision

Q5. Draft resolution for creating a charge on the company's assets and properties.

Answer:

Resolution under Section 180(1)(a) for creating charge on company's assets and properties

1. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;
   "Resolved that consent of the Company be and is hereby accorded in terms of Section 180(1) (a) and other applicable provisions, if any, of the **Companies Act, 2013** or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, together with power to takeover the assets of the Company in certain events, to or in favour of Industrial Development Bank of India (IDBI) and The Industrial Finance Corporation of India Ltd. (IFCI) by way of first pari passu Charge to secure the Rupee Term Loans of ₹ 1000.00 lacs and ₹ 880.00 lacs respectively granted to the Company together with interest at the agreed rate(s), liquidated damages, front end fees, *premia* on pre payment, costs, charges, expenses and all other moneys payable by the Company under the Loan Agreements, Deeds of Hypothecation and other documents executed/to be executed by the Company in respect of the Term Loans of IDBI and IFCI.
   Resolved further that the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with IDBI and IFCI the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution."
2. To consider and, if thought fit, to pass with or without modification(s), the following as Special Resolution;
   "Resolved that consent of the Company be and is hereby accorded in terms of Section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013 or any modification or re-enactment thereof, to mortgaging and/or charging by the Board of directors of the Company by

way of equitable and/or legal mortgage on such immovable and movable properties of the Company, both present and future, in favour of State Bank of India, New Delhi the Company's Bankers by way of Second Charge to secure the various fund based/non-fund based credit facilities granted/to be granted to the Company and the interest at the agreed rate, costs, charges, expenses and all other moneys payable by the Company under the Deed(s) of Hypothecation and other documents executed/to be executed by the Company in respect of credit facilities of State Bank of India, in such form and manner as may be acceptable to State Bank of India.

Resolved further that the Board of directors be and is hereby authorised and shall always be deemed to have been authorised to finalise with State Bank of India the documents for creating the aforesaid mortgage and/or charge and to do all acts, deeds and things as may be necessary for giving effect to the above resolution."

Space to write important points for revision

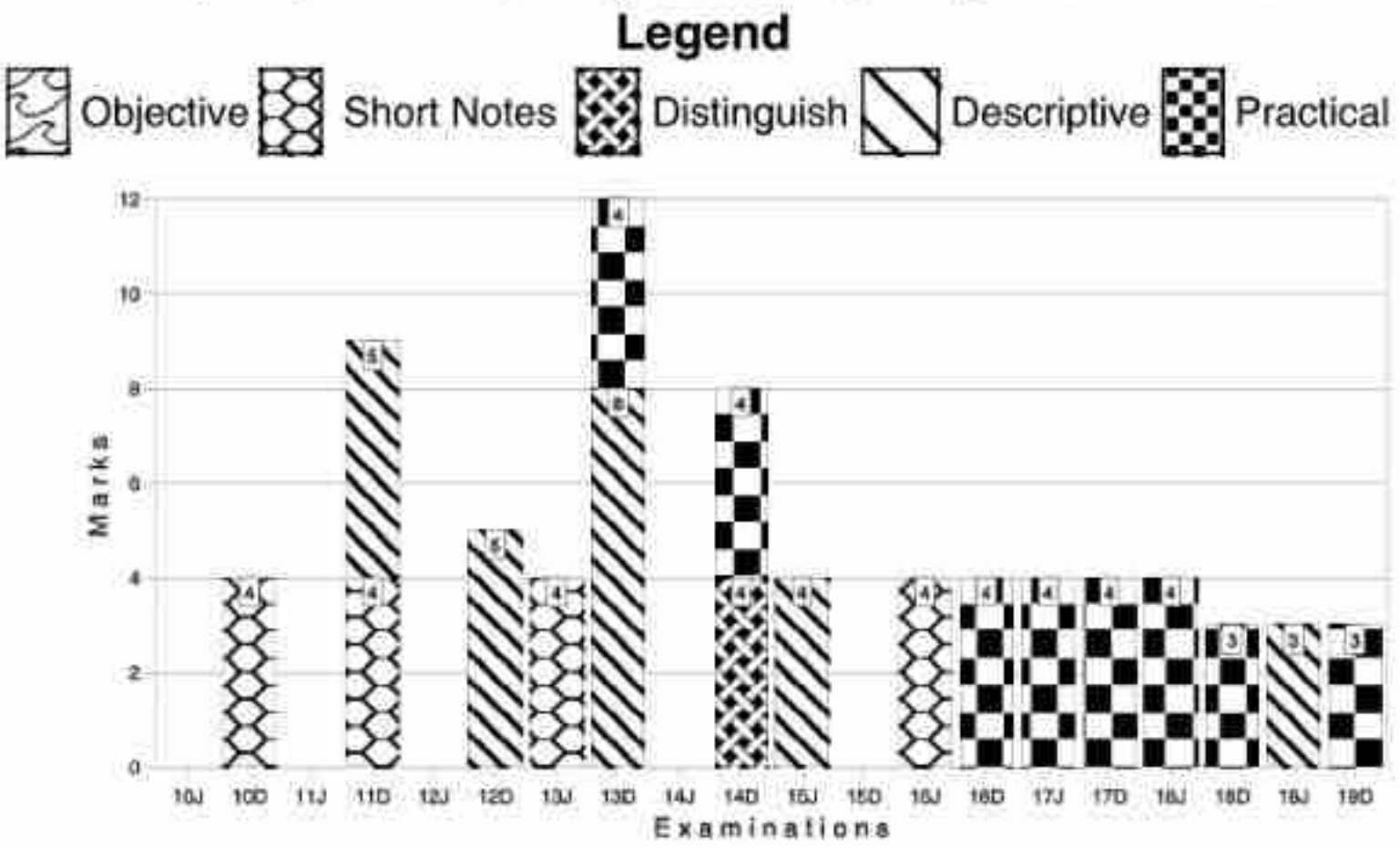
Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Distinguish Between 'Mortgage' and 'charge'. 13 - June [4] (i), 16 - Dec [4] (i)	2 Times
2	What is meant by 'floating charge' and how it would be crystallised? 09 - June [5] (a), 14 - June [3] (d)	2 Times
3	Write a note on the following: Consequences of non-registration of charge . 10 - Dec [5] (a), 11 - June [8] (c), 14 - June [6] (a)	3 Times

6 DISTRIBUTION OF PROFITS

THIS CHAPTER INCLUDES

- Meaning and Definition of dividend
- Difference between dividend and interest
- Types of dividend
- Declaration of dividend
- Unpaid dividend Account
- Investor Education and Protection Fund
- Utilisation of Investor Education and Protection Fund
- Punishment for failure to distribute dividends
- Investor Education and Protection Funds

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



For detailed analysis Login at *www.scannerclasses.com* for registration and password see first page of this book.

CHAPTER AT A GLANCE

Section 2(35)
Under **section 2(35) of the Companies Act, 2013,** 'dividend' includes any interim dividend.
Dividend
Dividend is the share of the company's profit distributed among the members.
Declare Interim Dividend
The Board may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account at any time between two AGM of the company.
Final Dividend
Final Dividend means a Dividend which declared at the Annual General Meeting of the company.
Inadequacy of Profits
In case of inadequacy of profits the company can declare the dividend with accordance with the **Rule 3 of Companies (Declaration and Payment of Dividend) Rules 2014.**
Amount of Dividend
The amount of dividend shall be deposited in a schedule bank in a separate account within 5 days from the date of declaration.
Unpaid Dividend Account
Where the dividend is not paid or claimed within 30 days, the company shall, within 7 days transfer the amount to Unpaid Dividend Account which shall be opened in a scheduled bank.

Investor Education and Protection Fund
The amount remaining unpaid along with interest accrued thereon for 7 years shall be transferred to Investor Education and Protection Fund.
Utilisation of Investor Education and Protection Fund
Section 125 (3) provides the Fund shall be utilised for— (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon; (b) promotion of investors' education, awareness and protection; (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
Punishment for Failure to Distribute Dividends
Section 127 of Companies Act, 2013 provides that when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DIV 5	Physical Form	Statement of amounts credited to Investor Education and Protection Fund	—	—

SHORT NOTES

2009 - June [4] Write short note on the following :

(v) Interim dividend. **(4 marks)** ***[CSEM - II]***

Answer:

1.	**When dividend is said to be interim dividend**	A dividend declared in between two annual general meeting of the company, by the directors is known as 'interim dividend'. However, all the provisions relating to the payment of dividend shall be applicable on the interim dividend also.
2.	**Declaration of interim dividend by BOD, Sec. 123(3)**	**Section 123(3)** provides that 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.
3.	**Rate of Interim dividend in case of loss**	In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividend declared by the company during the immediately preceding three financial years.

Space to write important points for revision

2010 - Dec [4] Write a note on the following :

(iii) Investor education and protection fund **(4 marks)** ***[CSEM - II]***

Answer:

1.	**What shall be credited to IEPF? Sec. 125(2)**	**Section 125(2) of Companies Act, 2013** prescribes the following the list which shall be credited to the Fund— (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund; (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund; (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub section (5) of **Section 124**; (d) the amount in the general revenue account of the Central Government which had been transferred to that account. (e) the amount lying in the investor Education and Protection (f) the interest or other income received out of investments made from the Fund; (g) the amount received **under sub-section (4) of Section 38**; (h) the application money received by companies for allotment of any securities and due for refund; (i) matured deposits with companies other than banking companies; (j) matured debentures with companies; (k) interest accrued on the amounts referred to in clauses (h) to (j); (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

		(m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and (n) such other amount as may be prescribed.

Space to write important points for revision

2011 - Dec [3] Write a note on the following:
(v) Divisible profits **(4 marks)** ***[CSEM - II]***

Answer:

1.	**Which profit of the company is divisible profit**	All the profits of a company cannot be said to be divisible profits. Only those profits which can legally be distributed to the shareholders of the company in the form of dividend are called as divisible profits.
2.	**Meaning of divisible profit**	In ***Buenos Aryes Great Southern Rly, Co. Vs Preston (1911),*** divisible profits' were described to mean the profits which the directors considered should be distributed after making provision for past losses, reserve and for other purposes.
3.	**Determination of divisible profit**	The following four consideration may govern the determination of divisible profits: (a) Principles of Accounting (b) Provisions of Memorandum and Articles (c) Provisions of the Companies Act, and (d) Legal Decisions.

Space to write important points for revision

2013 - June [6] Write a note on the following:
(iv) Investor Education and Protection Fund (IEPF) **(4 marks)** ***[CSEM - II]***

Answer:

Please refer 2010 - Dec [4] (iii) on page no. 276

Space to write important points for revision

2016 - June [3A] (Or) Write note on the following:

(iv) Punishment for failure to distribute dividend and exceptions.

(4 marks)

Answer:

1	**Punishment for Failure to Distribute Dividends**	**Section 127 of Companies Act 2013** provides that when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.
2	**Exceptions**	Proviso to **Section 127** has provided a list where no offence under this section shall be deemed to have been committed: (a) where the dividend could not be paid by reason of the operation of any law; (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him; (c) where there is a dispute regarding the right to receive the dividend; (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

		(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Space to write important points for revision

DISTINGUISH BETWEEN

2014 - Dec [2] Distinguish between the following:
(d) 'Interim dividend' and 'final dividend'. **(4 marks)**

Answer:

The following are the main points of distinguish between interim and final dividend:

Sr. No.	Basis	Interim Dividend	Final Dividend
1.	**Meaning**	Dividend which is paid in the middle of the year is known as interim dividend.	Dividend which is recommended by the board of directors and approved by the shareholders in AGM is known as final dividend.
2.	**Share-holder's approval**	Interim dividend can be declared by the board of directors and it does not require approval of the shareholder.	Final dividend is recommended by the board of directors and must be approved by the shareholders.
3.	**Decrease in rate**	Since interim dividend does not require approval of shareholders, rate of interim dividend cannot be decreased.	The shareholders cannot increase the rate of dividend than the one recommended by the Board. The shareholders

			may, however, declare the payment of dividend on equity shares at a rate lower than the one recommended by the directors in their report.
4.	**Sources**	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 company can pay final dividend form the following sources: - out of current profits - out of profits of previous financial year s - out of money provided by the Central or State Government.
5.	**Restriction in case of loss**	In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.	If due to inadequacy or absence of profits in any financial year, any company proposes to declare final dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made as per Companies (Declaration and Payment of Dividend) Rules, 2014.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

2008 - Dec [3] (c) Can the dividend be declared out of previous years' profits transferred to reserve? **(6 marks)** ***[CSEM - II]***

Answer:

1.	**Dividend in case of absence or inadequacy of profits: Section 123(1) of Companies Act, 2013**	Second proviso to **Section 123(1) of Companies Act, 2013** states that owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.
2.	**Conditions for declaring dividend in case of inadequacy or absence of profits (Rule 3 of Companies Declaration..) 2014**	In the event of adequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely:
	(a) Rate of dividend	The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year: Provided that this sub rule shall not apply to a company which has not declared any dividend in each of preceding 3 financial years.

	(b) Amount to be drawn from profits	The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
	(c) First utilisation of amount so drawn	The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
	(d) Balance of reserve	The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
	(e) Setting off previous losses and depreciation	No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

Amendment Made by Companies (Amendment) Act, 2015:

☞ ***Section 123 of Companies Act, 2013***

"Provided that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year."

Space to write important points for revision

2011 - Dec [1] {C} (a) Comment on the following:

(iv) Dividend can be paid out of capital if the articles of association authorise such payment. **(5 marks)** ***[CSEM - II]***

Answer:

1.	**Authenticity of the statement**	Dividend cannot be paid out of capital as per **Section 123(1) of Companies Act, 2013**
2.	**Sources of dividend**	Dividend may be paid out of the following: **Three sources only:** (a) out of current profits, (b) out of profits for any previous financial year or years, and (c) out of money provided by Central or State Government for the payment of dividend. Accordingly, dividends are not allowed to be declared out of capital. If the memorandum or articles give power to the Company to pay dividends out of capital such a power shall be invalid.

Space to write important points for revision

2012 - Dec [1] {C} Comment on of the following:

(iv) Dividend can be paid out of capital only if the articles of association of a company authorises such payment. **(5 marks)** ***[CSEM - II]***

Answer:

Please refer 2011 - Dec [1] {C} (a) (iv) on page no. 283

Space to write important points for revision

2013 - Dec [4] (a) The Board of directors of a company in a meeting held on 30th April, 2013 declared interim dividend. In another meeting held on 18th May, 2013, the Board revoked the interim dividend declared without assigning any reason. Advise the company in the matter.

(8 marks)

Answer:

1.	**Interim Dividend**	The Board of directors may declare interim dividend. The interim dividend is paid between two annual general meeting of the Company.
2.	**Dividend includes Interim Dividend Sec.2(35) of Companies Act, 2013**	**Section 2(35) of Companies Act, 2013,** defines 'Dividend' to include interim dividend. Interim dividend stands on the same footing as that of the final dividend. Therefore, the interim dividend once declared becomes debt and payable within 30 days of declaration.
3.	**Power of BOD to declare interim dividend Sec. 123(3)**	The Board of directors is authorised to declare interim dividend. Hence, if articles does not provide otherwise, Board may declare interim dividend.
4.	**Revocation of declare dividend**	A dividend including interim dividend once declared becomes a debt and cannot be revoked, except with the consent of the shareholders.
5.	**Liabilities of directors in case of illegal declaration of dividend**	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.
6.	**Conclusion**	Applying the provisions of the Act as stated above to the given case, it can be concluded that the interim dividend declared by the Board of Directors of the company cannot be revoked. Hence, the resolution passed by the Board of directors for revocation of interim divided declared without assigning any reason is invalid.

Space to write important points for revision

2015 - June [6] (d) Due to inadequacy of profits, the Board of directors of Rise Ltd. decided not to recommend any dividend for the financial year ended 31st March, 2015.
Certain shareholders of the company complained to the NCLT regarding mismanagement of the affairs of the company, since the Board of the company did not recommend any dividend. Explaining the provisions of the **Companies Act, 2013,** examine whether the contention of the shareholders is tenable? **(4 marks)**

Answer:

1.	**Basis of petition under Sec. 241 for relief in case of mismanage-ment Sec. 241 of Companies Act, 2013**	**Section 241 of the Companies Act, 2013** provides for relief in cases of mismanagement. For a petition under this section to succeed, it must be established that the affairs of the company are being conducted in a manner prejudicial to the interest of the company of public interest or that, by reason of any change in the management or control of the company, it is likely that the affairs of the company will be conducted in that manner. If the NCLT is convinced, it may with a view to bringing to an end of preventing the matter complained or apprehended, make such order as it thinks fit.
2.	**Case Law Analysis**	It was held in the case of ***Indowind Energy Ltd. V. ICICI Bank Ltd. [2010] 153 Com Cases 394 (CLB)*** that non-declaration of dividend would not amount to oppression and mismanagement.
3.	**Conclusion**	Therefore, applying the above facts and precedent **in the given case**, it can concluded that the non-payment of dividend does not amount to mismanagement and hence the contention of the shareholders shall not be tenable.

Space to write important points for revision

2019 - June [2A] (Or) (i) Referring to the provisions of Companies Act, 2013 advice a public company which declared dividend on 30th September, 2018 as to the procedures to be followed in this regard for payment of dividend. Whether any intervening holidays in the month of October 2018 shall be taken into account in calculating the time limit? **(3 marks)**

Answer:

Section 123(4) of the Companies Act, 2013 provides that the amount of the dividend, including interim dividend shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of dividend.

However, in case of Government Company sub Section 4 of Section 123 shall not apply in which the entire paid up share capital is held by the Central Government, or by any Stale Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.

Inferring from Section 124(1) dividend must be paid to any shareholder entitled to the payment of the dividend, within 30 days from the date of declaration of dividend.

Secretarial Standard-3(SS-3) hereby clarifies that the Dividend shall be deposited in a separate bank account within five days from the date of declaration and shall be paid within 30 days of declaration. The intervening holidays, if any, falling during such period shall be included.

Therefore in the given illustration the dividend shall be deposited into a separate bank account of a scheduled bank on or before 05.10.2018 and the same must be paid to the registered shareholder or to his order or to his banker on or before 30.10.2018.

Space to write important points for revision

PRACTICAL QUESTIONS

2013 - Dec [3] (c) A company for the financial year 2011-12 declared dividend on 19th September, 2012 but failed to distribute the same within the prescribed period. A case was filed against a director in this regard. The

director has contended that he had resigned before the declaration of dividend. Decide fate of the director in the light of the relevant provisions of the **Companies Act, 2013.** **(4 marks)**

Answer:

1.	**Punishment for failure to distribute dividends Sec. 127**	Any failure (director) of the company, who is knowingly a party to the default, liable for punishment with simple imprisonment for a term which may extend to two years and also fine of atleast ₹ 1,000 for every day during which such default continues.
2.	**Case Law Study N. Kumar V.M.O. Roy, Assistant Director S.E.I.O.**	(i) **Brief Facts of the case:** A company for the financial year 1995-96, declared the dividend on 19.9.1996 and failed to distribute same with in the prescribed period. A complaint has been filed against the company and its directors on 23.8.2006 for the contravention of the provision **u/s 127 of the Act**. A director contended that he had resigned before the declaration of dividend so he could not be held liable for the contravention of **Section 127 of Companies Act, 2013.** (ii) **Decision of the court:** The **Tribunal** held that the director was not a whole time director to be aware about the entire affairs of the company. The director could not be held vicariously liable for the contravention under **section 127** and therefore the proceedings were liable to be quashed as against the director.

Space to write important points for revision

2014 - Dec [3] (d) In Evergreen Ltd., the Board of directors declared an interim dividend but could not distribute the dividend due to objections of audit committee that the accounts considered by the Board were false; and true financial results were inflated by not incorporating outstanding liabilities and over-valuation of inventories. A shareholder filed a suit for non-payment of dividend. One of the directors contended that he never attended the Board meeting where the issue relating to payment of interim dividend was declared on the basis of false accounts. Discuss about the validity of contention of the director. **(4 marks)**

Answer:

The contention of the absentee director is correct and he is not liable for the payment of dividend on false accounts declared in a meeting where the director to become liable was absent. The facts of the case is similar to the case law of *Nagendra Prabhu v. the Popular Bank ZLR (1961) 1 Ker 340.*

Space to write important points for revision

2016 - Dec [4] (c) Rise Ltd., a company with diversified interests, has constituted Investor Education and Protection Fund as required under the provisions of the Companies Act, 2013. The company has so far not deposited any amount to the fund. The President (Finance) has asked you, the Company Secretary, to submit a note on amounts payable to the credit of the fund and the period within which amount shall be paid. Prepare the said note. **(4 marks)**

Answer:

Rise Limited

The President (Finance) Date _____

Sir,

Sub: *Details on amount payable to Investor Education and Protection Fund constituted under* ***Companies Act, 2013.***

According to **Section 125(1) of the Companies Act, 2013** the Central Government shall establish a Fund to be called the Investor Education and Protection Fund. Therefore, company is not required to constitute such fund.

According to **Section 125(2) of the Companies Act, 2013** the following amounts shall be credited to the Fund established by the Government by the company:

(a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
(b) donations given to the Fund by the Central Government, State Governments, Companies or any other institution for the purposes of the Fund;
(c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under **sub-section (5) of Section 124;**
(d) the amount lying in the Investor Education and Protection Fund.
(e) the interest or other income received out of investments made from the Fund;
(f) the amount received under **sub-section (4) of Section 38;**
(g) the application money received by companies for allotment of any securities and due for refund;
(h) matured deposits with companies other than banking companies;
(i) matured debentures with companies;
(j) interest accrued on the amounts referred to in clauses (h) to (j);
(k) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
(l) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
(m) such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

This is for your information and record please.

Best Regards

_____

Company Secretary

Space to write important points for revision

2017 - June [3A] (Or) (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)**

Answer:

In accordance with the provisions of the **Companies Act, 2013,** as contained in third proviso to **Section 123(1),** no dividend shall be declared or paid by a company from its reserves other than free reserves. As per **Section 2(43) of the Companies Act, 2013,** "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

Further according to **Section 123(2)**, for the purposes of declaration of dividend by a company as per **Section 123(1)** (a), depreciation shall be provided in accordance with the provisions of **Schedule II.**

Therefore, in the given case, AVB Limited can neither declare dividend from capital profit and nor it can declare dividend without making provision for depreciation.

Space to write important points for revision

2017 - Dec [3A] (Or) (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)**

Answer:

The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within 5 days from the date of declaration of such dividend. A dividend when declared becomes debt and a shareholder is entitled to sue for recovery of the same after expiry of the 30 days prescribed under **Section 127**.

Section 2(35) defines 'Dividend' to include interim dividend.
Therefore, the interim dividend once declared cannot be revoked except with the consent of the shareholders.
Based on aforesaid facts, Board of Directors of American Express Limited cannot revoke the interim dividend and should pay the same.
No, Regular dividend also cannot be revoked even by the shareholders. It's a statutory debt against the company once it is declared.

Space to write important points for revision

2018 - June [2A] (Or) (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)**

Answer:
The Peculiar Ltd. has to follow below procedure for recommending final dividend:

1. Referring to **Section 123(4) of the Companies Act, 2013**, the amount of the dividend has to be deposited in a scheduled bank. The company should first ensure that said Co-operative bank is scheduled bank from the list of scheduled bank available at RBI website, and then it may deposit the dividend amount in the scheduled Co-operative Bank.
2. Referring to **Section 123(6) of the Companies Act, 2013** a company which fails to comply with the provisions relating to acceptance and repayment of deposits shall not, so long as such failure continues, declare any dividend on its equity shares. Hence Peculiar Ltd. cannot declare dividend till the failure persists.

3. Referring to third proviso to **Section 123(1)**, no dividend shall be declared or paid by a company from its reserves other than free reserves.
   Free reserves, as per **Section 2(43)**, means such reserves which,, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that:
   1. Any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
   2. Any change in carrying amount of an asset or of a liability recognised 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;

   Hence dividend cannot be declared out of the capital reserves of the company.
4. Referring to **Section 123(5)** dividend shall not be payable in cash. Hence company's proposal to pay dividend through cash counter by way of cash voucher is not permitted under law.

Space to write important points for revision

2018 - Dec [2A] (Or) (ii) A company declared dividend on 21st November, 2018. It reports on 22nd December, 2018 that it could not pay dividend to 46 members as they are not traceable for last three years. Advise the company with regard to unpaid dividend under the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

Under section 126(1) of the Companies Act, 2013 where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

In the above case, the company declared dividend on 21st November, 2018, the dividend remains unpaid after 30 days of declaration i.e. 22nd December, 2018. The company is advised to transfer the remaining unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account in any scheduled bank within seven days from the date of expiry of the said period of thirty days. Further any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund.

Space to write important points for revision

2019 - Dec [2] (a) While adopting accounts for the year, the Board of directors of Prima Ltd. decided to consider the interim dividend @ 12% as final dividend and did not consider transfer of profit to reserves. Explain whether decisions of the Board were justified referring to relevant provisions. **(3 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short note on Punishment for failure to distribute dividends.

Answer:

Section 127 of Companies Act, 2013 provides that when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such

default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

—— Space to write important points for revision ——

DESCRIPTIVE QUESTIONS

Q2. State the procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection Fund.

Answer:

Any money transferred to the Unpaid Dividend Account of a company in pursuance of Section124 which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund and the company shall send a statement in the prescribed form of the details of such transfer to the Investor Education and Protection Fund Authority and it shall issue a receipt to the company as evidence of such transfer.

1. Every company shall within a period of ninety days after holding of the Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act and every year thereafter till completion of the seven years period, identify the unclaimed dividend, as on the date of holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information through Form No. IEPF-2, separately for each year, containing following information, namely:

(a) the names and last known addresses of the persons entitled to receive the sum;
(b) the nature of amount;
(c) the amount to which each person is entitled;

(d) the due date for transfer into the Invest or Education and Protection Fund; and
(e) such other information as may be considered relevant for the purposes.

2. The amount of unclaimed or unpaid dividend required to be credited by the companies to the Fund shall be remitted into the specified branches of Punjab National Bank, which is the accredited Bank of the Pay and Accounts Office, Ministry of Corporate Affairs and other authorized banks engaged by the MCA-21 system, within a period of thirty days of such amounts becoming due to be credited to the Fund.
3. The amount shall be tendered by the companies along with challan (in triplicate) to the specified Bank Branches of Punjab National Bank and other authorized banks under MCA-21 system who will return two copies of the challan, duly stamped in token of having received the amount, to the Company. The third copy of the challan will be forwarded along with the daily credit scroll by the receiving branch to its Focal Point Branch of the Bank for onward transmission to the Pay and Accounts Office, Ministry of Corporate Affairs.
4. Every company shall file with the concerned Authority one copy of the challan referred to in point (3) indicating the deposit of the amount to the Fund and shall fill in the full particulars of the amount tendered, including the head of account to which it has been credited.
5. The company shall, along with the copy of the challan as required under point(4), furnish a Statement in Form No. IEPF 1 containing details of such transfer to the Authority within thirty days of submission of challan.
6. The amount may also be remitted by Electronic Fund Transfer in such manner, as may be specified by the Central Government.
7. On receipt of the statement, the Authority shall enter the details of such receipt in a Register maintained physically or electronically by it in respect of each company every year, and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.
8. Each designated bank shall furnish an abstract of such receipts during the month to the Authority within seven days after the close of every month.

9. The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records.

Space to write important points for revision

Q3. Enumerate the procedure for declaration of dividend out of Reserve.

Answer:

1. Give notice to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
2. Ensure that the Companies (Declaration and Payment of Dividend), Rules, 2014 are complied with.
3. While calculating the profits of the previous years, take only the net profit after tax.
4. Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.
5. In the case of listed companies, inform the Stock Exchange with which the shares of the company are listed within 30 minutes of closure of Board meeting about decision to recommend declaration of dividend out of Company's Reserves. [Regulation 30 of SEBI (LODR) Regulations, 2015].

6. Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
7. In the case of listed companies, forward copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.
8. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
9. Issue dividend warrants within 30 days from the date of declaration of dividend. Rest of the procedural steps are same as in case of payment of final dividend.

Space to write important points for revision

Q4. Draft resolution for declaration, declaration of interim dividend on Equity Shares.

Answer:

RESOLVED THAT an interim dividend of ₹ 2 (Rupees two) only on each fully paid.....no. of equity shares of ₹ 10 (Rupees ten) each of the company amounting to ₹.....be paid out of the profits of the company for the half year ended.....2014 to those members of the company whose names would appear on the register of members of the company on the.....day of....., 2014.

RESOLVED FURTHER THAT a bank account to be designated as "Interim Equity Dividend (2015) Account of .....Limited" be opened in the name of the company with.....Bank at its Branch at..... and a sum of ₹.....,being the total interim dividend amount, be deposited in the said account within five days.

RESOLVED FURTHER THAT Shri....., Managing Director and Shri....., the Company Secretary be and are hereby authorized to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within thirty days from the date of this resolution.

6. Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
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RESOLVED FURTHER THAT Shri....., Managing director and Shri....., Company Secretary of the company for the time being, be and are hereby authorized to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorized to honour the interim dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

Space to write important points for revision

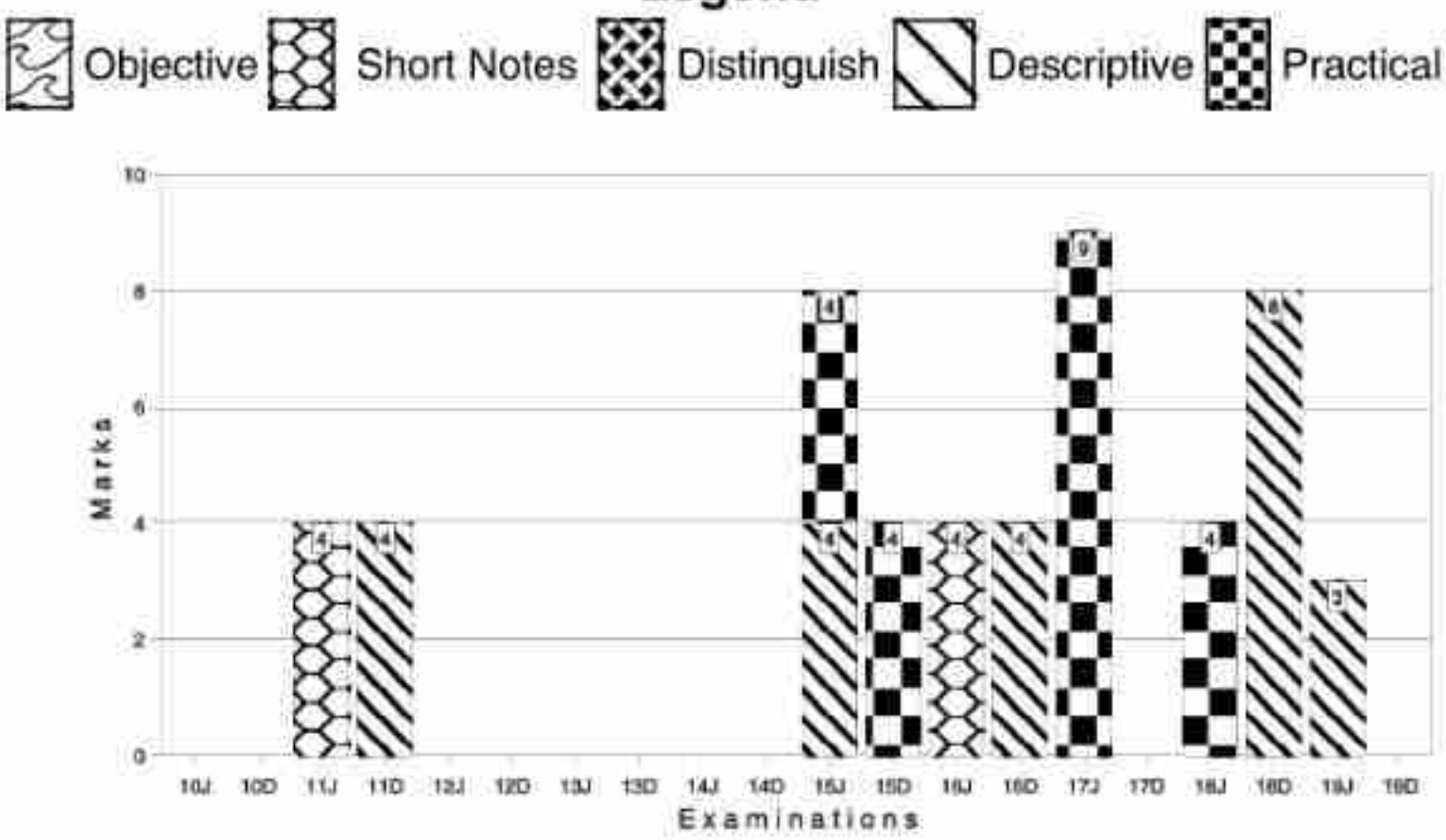
Repeatedly Asked Questions		
No.	**Question**	**Frequency**
1	Write notes on the Investor education and protection fund. 10 - Dec [4] (iii), 13 - June [6] (iv)	2 Times
2	Dividend can be paid out of capital only if the articles of association of a company authorises such payment. 11 - Dec [1] {C} (a) (iv), 12 - Dec [1] {C} (iv)	2 Times

7 CORPORATE SOCIAL RESPONSIBILITY

THIS CHAPTER INCLUDES

• Meaning of CSR	• CSR Policy
• CSR Committee	• CSR Expenditure
• CSR Activities of Company	• Computation of Net Profits

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



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CHAPTER AT A GLANCE

Meaning of CSR
Corporate Social Responsibility is an important business strategy because, to some extent a consumer wants to buy products from companies he trusts, a supplier wants to form business partnership with companies he can rely on, an employee want to work for a company he respects, other concerns want to establish business contacts with companies seeking feasible solutions and innovations in areas of common concern.
CSR Applicability
As per **Section 135 of the Companies Act, 2013,** the CSR provision is applicable to companies which fulfills any of the following criteria during the immediately preceding financial year: • Companies having net worth of rupees five hundred crore or more, or • Companies having turnover of rupees one thousand crore or more or • Companies having a net profit of rupees five crore or more
Functions of CSR Committee
• To formulate and recommend to the Board, a CSR Policy which would indicate the activities to be undertaken in areas or subject, specified in Schedule VII of the Act. • To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy. • To institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company. • To monitor the CSR policy of the company time to time.

List of CSR Activities

(i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

(ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

(iv) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(v) measures for the benefit of armed forces veteran, war widows and their dependents;

(vi) training to promote rural sports, nationally recognized sports, para Olympic sports and Olympic sports;

(vii) rural development projects.

CSR Expenditure

- The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. This amount will be CSR expenditure.
- If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.
- The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

- Expenditure incurred on specified activities that are carried out in India only will qualify as CSR expenditure. Such expenditure includes contribution to the corpus or on projects or programs relating to CSR activities.
- Any surplus arising out of CSR activities will not be considered as business profit for the spending company.

Computation of Net Profit

"Net profit" as per explanation of **Section 135(5)** means that net profit shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of Section 198. The net worth, turnover and net profits are to be computed in terms of Section 198 of the 2013 Act as per the profit and loss statement prepared by the company in terms of Section 381 (1) (a) and Section 198 of the 2013 Act. Every company will have to report its standalone net profit during a financial year for the purpose of determining whether or not it triggers the threshold criteria as prescribed under Section 135(1) of the Companies Act.

Disclosure Requirements

It is mandatory for companies to disclose in Board's Report, an annual report on CSR. The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed containing following particulars –

- A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
- The Composition of the CSR Committee.
- Average net profit of the company for last three financial years
- Prescribed CSR Expenditure
- Details of CSR spent during the financial year.
- In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.

SHORT NOTES

2011 - June [8] Write notes on the following :

(ii) Corporate social responsibility **(4 marks)**

Answer :

Rule 8 of the **Companies (Corporate Social Responsibility Policy) Rules 2014**, Corporate social responsibility refer to the sustained economic growth in the current decades. We still continue to face major challenges on the human side in India - The problems such as :

(a) Poverty
(b) illiteracy
(c) Malnutrition etc.

Have resulted in a large section of the population remaining as un-included from the main stream.

The CSR policy should invariably cover-

(a) Care for all stake holders,
(b) Ethical functioning
(c) Respects for human rights
(d) Respect for environment and
(e) activities for social and inclusive development

At present the MCA is looking forward to more and more business communities coming forward and adopting the CSR voluntary guidelines issued by it.

—— Space to write important points for revision ——

2016 - June [3A] (Or) Write note on the following:

(ii) Corporate social responsibility **(4 marks)**

Answer:

1	**Concept of CSR**	CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (whether towards environmental causes, educational promotion, social

		causes etc.) along with the reinforced duty to conduct the business in an ethical manner. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.
2	**Application of Provision**	1. Companies having net worth of 500 crores or more or 2. Turnover of 1,000 crores or more or 3. Net profit of 5 crores or more.
3	**Note:** As per the provisions of **Section 135 of the Act,** one of the three criteria has to be satisfied to attract **Section 135.** Therefore, if a company satisfies the criterion of turnover, although it does not satisfy the criterion of net profit, it is required to comply with the provisions of Section 135 and the Companies (CSR Policy) Rules, 2014.	
4	**Contribution**	The Companies on which **Section 135** applies are required to contribute 2% of average profits of preceding three years towards CSR activities. **Amendment made by Companies (Amendment) Act, 2017** **Revised Section 135(1)-** "Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during **the immediately preceding financial year** shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under sub-Section (4) of Section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."

		Revised Section 135(3)(a)- "(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company **in areas or subject, specified in Schedule VII."** **Revised Explanation to Section 135(5)** "For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of Section 198."
5	**Constitution of CSR Committee**	(a) Every company to which **Section 135** is applicable, shall constitute a Corporate Social Responsibility Committee of the Board (CSR Committee) (b) The CSR Committee shall consist of 3 or more directors. (c) Out of the 3 directors, at least 1 director shall be an independent director. (d) An unlisted public company or a private company which is not required to appoint an independent director (as per Section 149 of the Companies Act, 2013), shall have its CSR Committee without any independent director. (e) A private company having only 2 directors on its Board, shall constitute its CSR Committee with 2 directors only. (f) In case of a foreign Company, the CSR Committee shall comprise of at two persons of which one person shall be a person resident in India authorized to accept on behalf of the foreign company service of notices and other documents, and the other person shall be nominated by the foreign company.

6	**Disclosures in Board's Report**	The Board's report shall contain 1. The composition of the CSR Committee; 2. The contents of CSR Policy; and 3. The reasons for not spending the amount of 2% in pursuance of its CSR Policy (in case the company fails to spend such amount).
7	**Activities not Amounting to CSR**	As per Rule 4 and Rule 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, following shall not amount to CSR Activities for the purpose of **Section 135.** (a) The CSR projects or programs or activities undertaken outside India. (b) The CSR projects or Programs or activities that benefit only the employees of the company and their families. (c) Contribution of any amount, directly or indirectly, to any political party under Section 182 of the Companies Act, 2013. (d) Any activity undertaken in pursuance of normal course of business of a company.
8	**Display of CSR Policy on the website**	As per Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 and Rule 6 of the Companies (Accounts) Rules, 2014, the CSR Policy and its contents shall be displayed on the company's website, if any, as per the particulars specified in the Annexure to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

As Per Companies (Amendment) Act, 2019		
9.	**After sub-Section (5), the following sub-Sections shall be inserted, namely**	"(6) Any amount remaining unspent under sub-Section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. (7) If a company contravenes the provisions of sub-Section (5) or sub-Section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. (8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this Section and such company or class of companies shall comply with such directions."

DESCRIPTIVE QUESTIONS

2011 - Dec [2] Explain the following pair of terms to bring out their distinctions:

(iv) 'Corporate Governance' and 'corporate social responsibility'.

(4 marks)

Answer :

Corporate Governance : Corporate Governance in simple terms means running of the company by its Board of Directors in an open and honest manner. Corporate Governance is about ethics in business. It is about transparency, openness and fair play in all aspects of business operations.

(a) This lays down the framework for creating long term trust between the company and external providers of capital.

(b) It improves strategic thinking at the top by inducting independent directors who bring a wealth of experience and host of new ideas.

(c) It rationalise the management and monitoring of risk that a corporation faces globally.

(d) It limits the liability of top management and directors, by carefully articulating the decision making process.

Corporate Social Responsibility : Corporate social responsibility is a tool used by business and industry to align operations with social and environmental values. CSR, is generally viewed as the voluntary commitment and action undertaken by a corporation, over and above compliance to existing legal requirements, to behave in ethical manner to address both its own, competitive interest and wider interests of society.

(a) Concern for the quality of life including life at work.

(b) Concern for the physical environmental.

(c) Fair reward for effort and enterprise.

(d) Interest and involvement in activities of the wider community.

(e) Compliance with laws and established customs of the community.

Space to write important points for revision

2015 - June [6] (c) The Companies Act, 2013 has introduced several provisions which would change the way Indian corporates do business and one such provision is spending on corporate social responsibility (CSR) activities which has assumed considerable importance. Discuss the provisions governing CSR as provided in the Companies Act, 2013 and rules made thereunder. **(4 marks)**

Answer:

The provisions of Corporate Social Responsibility are dealt under **Section 135** read with the **Companies (Corporate Social Responsibility Policy) Rules, 2014** and clarifications issued by the Ministry from time to time. Some of the important provisions are as under:

- As per **Section 135** of the **Companies Act, 2013,** every company having net worth of ₹ **500** crores or more, or turnover of ₹ **1,000** crores or more or a net profit of ₹ **5** crores or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors out of which at least one director shall be an independent director. There need not be any independent director on the CSR Committee if the Company is unlisted Public Company or a Private Company.
- In case of Private Company CSR Committee can be formed with two members.
- CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in Schedule VII and also recommend the amount of expenditure to be incurred on CSR activities.
- The Board of every company shall ensure that the company spends in every financial year at least **2%** of the average net profit of the company made during the three immediately preceding financial years in pursuance of its CSR policy.
- Net Profit of a company for the purposes of **Section 135** of the **Companies Act, 2013** does not include the profit arising from any overseas branch of the company and the dividends received from other companies in India which are complying with **Section 135** of the **Companies Act, 2013.**

- The company shall give preference to local areas where it operates, for spending amount earmarked for CSR activities.
- The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.
- The Board of a company may decide to undertake its CSR activities approved by the CSR committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under **section 8** of the Act or otherwise.
- The CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.
- The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with **Section 135** of the Act.
- Contribution of any amount directly or indirectly to any political party under **section 182** of the Act, shall not be considered as CSR activity.
- The CSR Policy of the company is required to be displayed on Company's website.
- The term CSR is not defined under the Act but **Schedule VII** of the **Companies Act, 2013** requires that the CSR policy created by the CSR Committee must involve atleast one of the focus areas as mentioned in that schedule.
- The CSR activities should be according to the stated CSR policy, as projects or programs or activities (either new or ongoing).
- The CSR activities may be decided by the Board to be undertaken through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company, provided that :
  - if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;

- the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.
- A company may also collaborate with other company but the reports of such projects shall be separately made as per the rules.
- CSR projects or programs or activities undertaken in India shall amount to CSR expenditure.
- CSR projects that benefits only the families of the employees shall not be considered as CSR activities.
- Companies can either conduct CSR activities by mobilizing their own personnel or through institutions having a track record of at least three years but such expenditure must exceed **5%** of total CSR expenditure in one financial year.
- Contribution made to the any political party shall not be considered as CSR activity.

Space to write important points for revision

2016 - Dec [6] (b) Referring to the provisions of the Companies Act, 2013 relating to 'corporate social responsibility' (CSR), answer the following:

(i) Which activities would not qualify as CSR?

(ii) Whether the average net profit criteria for CSR is before tax or after tax? **(4 marks)**

Answer:

1.	**Activities which would not be classifies as CSR**	• The CSR projects or programs or activities that benefit only the employees of the company and their families. • One-off events such as marathons/ awards/charitable contribution/ advertisement/sponsorships of TV programmes etc. • Expenses incurred by companies for the fulfillment of any other **Act/Statute of regulations** (such as **Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961** etc.)

		• Contribution of any amount directly or indirectly to any political party. • Activities undertaken by the company in pursuance of its normal course of business. • The project or programmes or activities undertaken outside India.
2.	**Computation of Net Profit**	Computation of Net Profit for **Section 135** is as per **Section 198** of **the Companies Act, 2013** which is primarily profits before tax.

Space to write important points for revision

2018 - Dec [2] (a) Any expenditure incurred for the benefit of the society will be considered as expenditure in pursuance of corporate social responsibility policy. Comment with reference to the provisions of the Companies Act, 2013. **(3 marks)**

Answer:

As per **Section 135 of Companies Act, 2013** provides that a company falling under specified criteria shall put in place a Corporate Social Responsibility Policy specify the activities to be undertaken by the company in areas or subject, specified in Schedule VII of Companies Act, 2013. It is further provided that the Board of Directors of every company shall make sure that the activities as are included in Corporate Social Responsibility Policy of the company are accept by the company.

The expenditure incurred for the benefit of society shall be considered as expenditure in pursuance to **Section 135 of Companies Act, 2013,** only if the same falls under Corporate Social Responsibility Policy of the Company.

Space to write important points for revision

2018 - Dec [4] (c) Logical Solutions Ltd., a listed company, is having a Corporate Social Responsibility (CSR) committee constituted with the following members:

Rohan — Whole-time director and Chairman of CSR committee and Board
Sohan — Non-executive director
Mohan — Independent director
Can company constitute a Nomination and Remuneration committee consisting of same three members of CSR committee with same composition? Discuss. **(5 marks)**

Answer:

Under section 178 of Companies Act, 2013, the Board of Directors of every listed public company shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent director.

The Chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

In the above case the CSR Committee cannot serve as Nomination and Remuneration committee as the composition is different.

Space to write important points for revision

2019 - June [2A] (Or) (iv) Explain whether the Corporate Social Responsibility (CSR) Committee is entrusted with any specific functions under the Companies Act, 2013? **(3 marks)**

Answer:

Section 135 (3) of the Companies Act, 2013 read with Rules made thereunder provides that the following functions shall be carried out by a Corporate Social Responsibility (CSR) Committee:

— To formulate and recommend to the Board. a CSR Policy which would indicate the activities to be undertaken in areas or subject, specified in Schedule VII of the Act.
— To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy.
— To institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
— To monitor the CSR policy of the company time to time.

Space to write important points for revision

PRACTICAL QUESTIONS

2015 - June [6] (a) Brave Ltd. is listed at Bombay Stock Exchange and has a net worth of over ₹ 600 crore. The company has constituted a corporate social responsibility (CSR) committee with Jay and Vijay as its members. Both Jay and Vijay are directors of the company, Jay being an independent director.

Explaining the provisions of the Companies Act, 2013 relating to 'corporate social responsibility', examine whether the company has complied with the provisions of the Act in this regard. **(4 marks)**

Answer:

1.	**Corporate Social Responsibility**	One of the key changes in the **Companies Act, 2013** is the introduction of a Corporate Social Responsibility section making India the first country to mandate CSR through a statutory provision.	
2.	**Rules based on 'Comply or Explain'**	While CSR is not mandatory for companies, the rules are in line with the 'Comply or Explain' principle with penalties applicable only if an explanation is not offered.	
3.	**Provisions in brief**	The provisions of the Section may be summarized as under:	
		1. Companies Covered under the Provisions	The Section applies to the following classes of companies during any financial year: (i) Companies having Net Worth of rupees five hundred crore or more; (ii) Companies having turnover of rupees one thousand crore or more;

			(iii) Companies having Net Profit of rupees five crore or more.
		2. CSR Committee	The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
		3. No of Directors in CSR Committee	The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director.
		4. CSR Policy	After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.
		5. Disclosure in Board's Report	The contents of the Policy shall be disclosed in the Board's report.
		6. Disclosure in Official Website	It shall also be placed on the Company 's website, if any, in a manner to be prescribed by the Central Government.
		7. CSR Activities Specified in Schedule VII	The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

Note: Since the company in question has a net worth of ₹ 600 crore which is more than the required sum of ₹ 500 crore, the company has to comply with the provisions of the Companies Act, 2013, presently, company has only two directors, accordingly there is a need to reconstitute the CSR Committee of Brave Ltd.

Amendment made by Companies (Amendment) Act, 2017

Revised Section 135(1)-

"Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during **the immediately preceding financial year** shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub- section (4) of Section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."

Revised Section 135(3)(a)-

"(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company **in areas or subject, specified in Schedule VII.**"

Revised Explanation to Section 135(5)

"For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of Section 198."

—— Space to write important points for revision ——

2015 - Dec [2A] (Or) (i) Corporate Social Responsibility (CSR) provisions are applicable to Microskill Ltd. The company finalised the project under its CSR initiatives which require funds beyond the mandated 2% of average net profit of the company for last three financial years. Will such excess expense, when incurred, be counted in subsequent financial years as a part of CSR expenditure? Advise. **(4 marks)**

Answer:

In terms of **Section 135(5)** of the **Companies Act, 2013,** the Board of every company to which **Section 135** is applicable shall ensure that the company spends in every financial year, at least **2%** of the average net profits of the company made during the three preceding year.

There is no provision for carry forward or excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over **2%** could be considered as "voluntary higher spending".

Space to write important points for revision

2017 - June [1] (c) Fortune Ltd. had below financial details during the last three financial years:

(₹ In Crores)

Year	Net Worth	Turnover	Net Profit
2016-17	100.00	490.00	5.50
2015-16	95.00	500.00	4.50
2014-15	80.00	380.00	2.00

Discuss the compliance requirements for the Company on Corporate Social Responsibility. Whether Company requires to spend amount on CSR Activities, and what are the consequences if the Company fails to spend any amount? **(5 marks)**

Answer:

Section 135(1) of the Companies Act, 2013 provides that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Section 135(3) requires that the Committee shall formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in **Schedule VII**. The Committee shall further recommend the amount of expenditure to be incurred on CSR activities and monitor the Policy from time to time.

As per **Section 135(5)** of the Act, the Board shall ensure that the company spends, in every financial year, at **least 2%** of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

In Section 135 of the principal Act,—

(a) in sub-section (5),—

(i) after the words "three immediately preceding financial years,", the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years," shall be inserted;

(ii) in the second proviso, after the words "reasons for not spending the amount" occurring at the end, the words, brackets, figure and letters "and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year" shall be inserted;

As Per Companies (Amendment) Act, 2019:

After sub-Section (5), the following sub-Sections shall be inserted, namely :

"(6) Any amount remaining unspent under sub-Section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-Section (5) or sub-Section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this Section and such company or class of companies shall comply with such directions."

Accordingly, Fortune Ltd. whose net profits during the current year exceeds rupees five crore is required to comply with the requirements of **Section 135** and form a CSR Committee as explained above and spend an amount of rupees eight lakh (being 2% of the average net profits of rupees four crore). However, the company shall seek to give preference to the local area and areas around it where it operates for spending the aforesaid amount.

However, if Fortune Ltd. fails to spend such amount, the Board shall, in its report made u/s 134(3)(o), specify the reasons for not spending the amount.

Space to write important points for revision

2017 - June [4] (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	**ZYZ 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)

Answer:

Section 135(1) read with **Section 135(5) of the Companies Act, 2013** provides that every company having net worth of rupees 500 crore or more, or turnover of rupees 1,000 crore or more or a net profit or rupees 5 crore or more during any financial year shall ensure that the company spends, in every financial year, at **least 2%** of the average net profits of the company made during the three immediately, preceding financial years.

As Per Companies (Amendment) Act, 2019:

After sub-Section (5), the following sub-Sections shall be inserted, namely :

"(6) Any amount remaining unspent under sub-Section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-Section (5) or sub-Section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this Section and such company or class of companies shall comply with such directions."

In the given case, in case of ZYX Limited, the net profit for financial year 2016-17 is ₹ 18 crore. The average net profit for preceding 3 financial years is ₹ (0+6+18) crore/3 = ₹ 24 crore/3 = ₹ 8 crore. It is to be noted that though the company was not incorporated in the financial year 2014-15, yet that year is to be considered for calculation of average net profit. Accordingly, the company has to spend 2% of ₹ 8 crore, i.e., ₹ 0.16 crore towards CSR activities.

In case of CBA Private Limited, the net profit for financial year 2016-17 is ₹ 6 crore. The average net profit for preceding 3 financial year is ₹ [(-4)+(-1)+6] crore/3 = 1 crore/3 ₹ 33.33 lakh. It is to be observed that though the company suffered losses in 2 years 2014-15 and 2015-16, yet those 2 years are to be considered for calculation of average net profit. Accordingly, the company has to spend 2% of ₹ 33.33 lakh, i.e., ₹ 0.67 lakh towards CSR activities.

Space to write important points for revision

2018 - June [3] (a) RS Ltd. has incurred ₹ 5 lakh for the fulfillment of Labour Law, Land Acquisition Act and Food Safety and 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)**

Answer:

According to the Provisions of Section 135 of the Companies Act, 2013 and rules and clarifications thereunder, expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act, 2013.

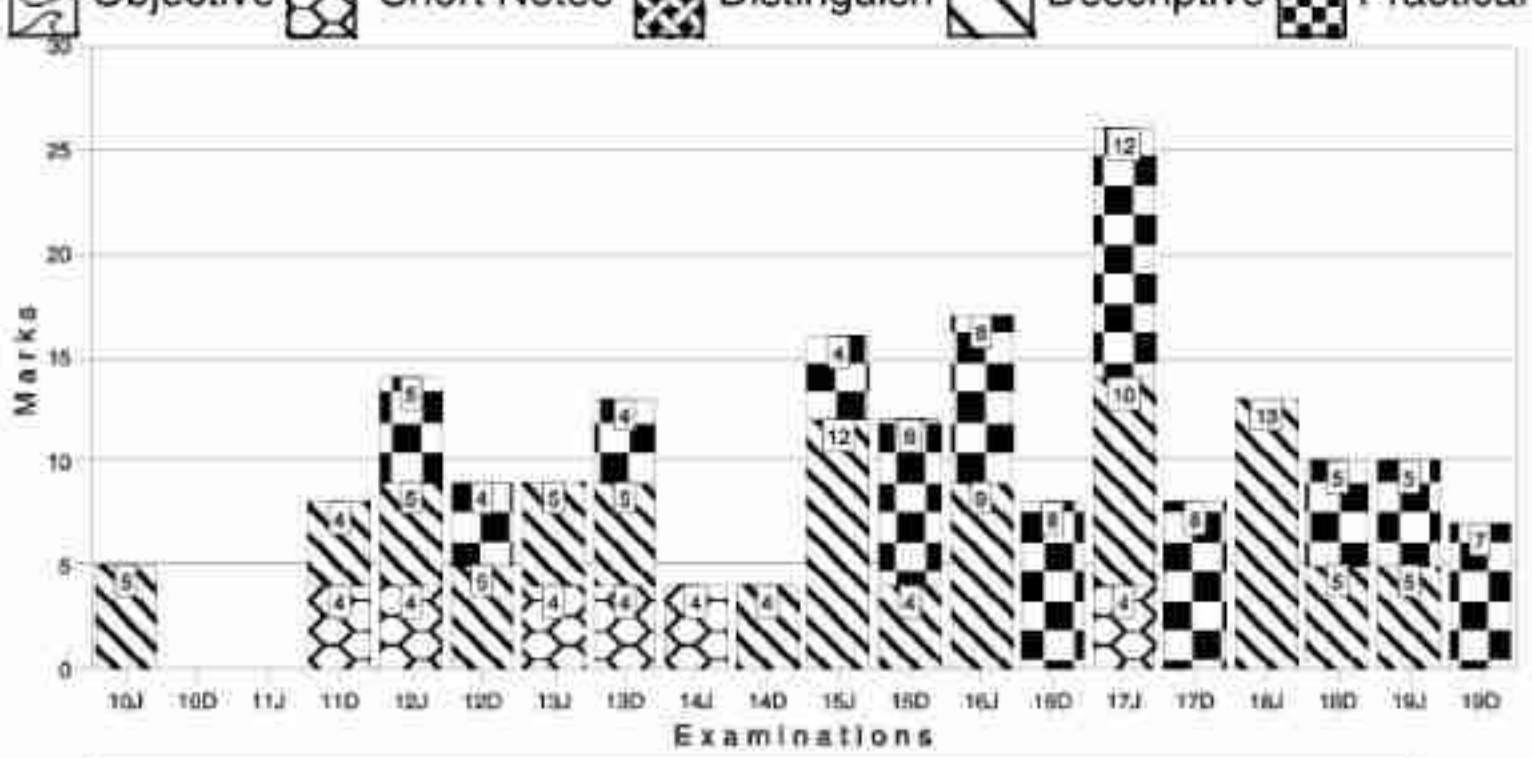
In accordance with the aforementioned clarification, expenditure of ₹ 5 lacs relating to fulfillment of requirement under Labour Law, Land Acquisition Act and Food Safety and Standard Act by RS Ltd., will not be treated as CSR expenditure.

8 ACCOUNTS , AUDIT AND AUDITORS

THIS CHAPTER INCLUDES

- Accounts of Companies
- Requirement of keeping books of account.
- Financial statements
- Consolidated financial statements
- National Financial Reporting Authority (NFRA)
- Internal Audit
- Appointment, qualification, dis-qualification, removal of auditors
- Casual vacancy in the office of auditor
- Audit Report
- Branch Audit
- Secretarial Audit
- Cost Records and Audit

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



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CHAPTER AT A GLANCE

Books of Accounts
Proper books of accounts shall be deemed to have been kept by a company if such books exhibit and explain the transactions and financial position of the business of the company, including books containing sufficiently detailed entries of daily cash receipts and payments.
Kept Book of A/c
Every company is required to keep books of account at its registered office in respect of specified transactions. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide.
Inspection Book of A/c
As per the Act, books of account and other books and papers should be available for inspection by any director on working days during business hours.
Persons Responsible to Maintain Books
(i) Managing Director, (ii) Whole-Time Director, in charge of finance (iii) Chief Financial Officer; or (iv) Any other person of a company charged by the Board with duty of complying with provisions of Section 128.
Financial Statement Section 129
This section provides that the financial statements shall give a true and fair view of the state of affairs of the company or companies in the form as provided for different class or classes in Schedule III and shall comply with accounting standards notified under Section 133 of the Act. Insurance

companies, banking company, companies engaged in generation/ supply of electricity or any other class of companies shall make financial statements in the form as has been specified in or under the Act governing such companies. [Section 129(1)]
The financial statement shall be laid in the annual general meeting of that financial year. [Section 129(2)]

Consolidated Financial Statements

The **Companies Act, 2013** has made preparation of consolidated accounts mandatory for all companies including unlisted companies and private companies having one or more subsidiaries or associates or joint ventures.

Signature of Financial Statement

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.
The auditors' report shall be attached to every financial statement. A report by its Board of Directors shall also be attached to statements laid before a company in general meeting.

National Financial Reporting Authority (NFRA)

Through **Section 132** of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.
NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the

quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms.
Accounting Standards
The Act provides that every financial statement of the company shall comply with the accounting standards.
Object of Audit
The main object of audit is to ensure that the statement of accounts of the relevant financial year truly and fairly reflect the state of affairs of the company. Audit also provides a moral check on those who are entrusted with the task of running business and of keeping and maintaining the books of account of the company. An audit of accounts is conducted with two-fold purpose: (i) detection and prevention of errors; (ii) detection and prevention of fraud.
Appointment of Auditors
The Act provides that every company shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of next annual general meeting. The Act also provides for methods of appointment of auditors along with their qualifications and disqualifications.
Auditor's Report
The Act provides that the auditor's report shall be signed only by the person appointed as an auditor of the company.
Appointment of First Auditor [Section 139(6)]
Appointment of first auditor in case of every company except government company or company owned/ controlled by Central Government/State Government/Central Government and State Government [Section 139(6)] :

- The first auditor of a company, other than a Government company, shall be appointed by the Board within thirty days from the date of registration of the company and if the Board fails to appoint such auditor, it shall inform the members of the company and the members shall make the appointment of first auditor within ninety days of information at an extra ordinary general meeting and such auditor shall hold office till the conclusion of the first annual general meeting.
- Appointment of first auditor shall be made by Comptroller and Auditor-General of India (CAG) within sixty days of registration of the company. If CAG fails to appoint the first auditor within given time then Board of such company shall appoint first auditor within next 30 days. If Board fails to appoint the first auditor within given time then it shall inform to members and members shall make the appointment of first auditor within 60 days of information at an extra ordinary general meeting. The First Auditor shall hold office till the conclusion of first AGM.

Appointment of auditors at AGM (first AGM and subsequent AGM)

Appointment of auditor shall be made by members at First AGM and every subsequent 6th AGM. At the first AGM, every company shall appoint an individual or a firm as an auditor. The auditor so appointed shall hold office from the conclusion of first AGM till the conclusion of 6th AGM.

Rotation of Auditor

In case of an individual as auditor:

(a) No individual shall be appointed or re-appointed as auditor for more than 1 term of 5 consecutive years.

(b) An individual auditor, who has completed his term of 5 consecutive years, shall not be eligible for re- appointment as auditor in the same company for 5 years from the date of completion.

In case of a firm as an auditor:

(a) No audit firm shall be appointed or re-appointed as auditor for more than 2 terms of 5 consecutive years.

(b) An audit firm which has completed its 2 terms of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such terms.
(c) If any firm/LLP which has one or more partners who are also partners in the outgoing audit firm/LLP, cannot be appointed as auditors during the 5 year period.

Appointment of an Auditor in Casual Vacancy

Casual vacancy arising by other than resignation: Whereas casual vacancy is arising by other than resignation then vacancy shall be filled the Board within 30 days.
Casual vacancy arising due to resignation: If casual vacancy is arising due to the resignation of auditor, it shall be filled within 30 days by the Board of Directors, and the appointment made by the Board shall be approved in a general meeting convened within 3 months from the date of recommendation of the Board.

Appointment of auditor in Casual Vacancy in case of Govt. Company

Casual vacancy shall be filled by the CAG within 30 days. If CAG fails to fill the vacancy within given time then BOD shall fill the vacancy within next 30 days.

Auditors not to render certain cases

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;

Cost Auditor

1. Every company referred to in sub-rule (1) shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board Meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in form CRA-2,
2. After the expiry of thirty days, the company shall issue formal letter of appointment to the cost auditor.
3. Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in form CRA-3.
4. Every cost auditor shall forward his report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year.
5. Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in form CRA-4 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.

Branch Audit - Section 143 (8) and Rule 12

Branch Auditor: Accounts of branch office can be audited by –

1. The company's auditor; or
2. Any other person, qualified to be and appointed as an auditor as per the provisions of the Act as branch auditor; or

3. In case of foreign branch, by the company 's auditor or by an accountant or a competent person appointed in accordance with the prevailing laws of the foreign country.

The branch auditor shall prepare a report on the accounts of the branch examined by him and the company's auditor shall deal with such report in his audit report in a manner as he considers necessary.

Secretarial Audit

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non- compliance and to take corrective measures.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation's operations. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more.

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

Secretarial Audit is also applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies as indicated above.

List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
AOC-1	Physical Form	Statement containing salient features of the financial statement of subsidiaries/associate companies/joint ventures	129(3)	5
AOC-2	Physical Form	Form for disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub- section (1) of Section 188 of the Companies Act, 2013 including certain arms length transactions under third provision there to	134(3)(h)	8(2)
AOC-3	Physical Form	Statement containing salient features of Balance Sheet and Profit and Loss Account	136(1)	10
AOC-4	Physical Form	Form for filing financial statement and other documents with the Registrar	137	12(1)
ADT-1	Physical Form	Notice of appointment of auditor by the company	–	4(2)
ADT-2	Physical Form	Application for removal of auditor (s) from his/their office before expiry of term	—	7(1)
ADT-3	Physical Form	Notice of Resignation by the Auditor	—	8
ADT-4	Physical Form	Report to the Central Government	—	13(4)

CRA-2	Company shall inform the Cost Auditor of his appointment.
CRA-3	Cost Audit Report Sent for the Board of Directors.
CRA-4	Cost Audit Report Sent to the Central Government.

SHORT NOTES

2011 - Dec [3] Write a note on the following:

(ii) True and fair view **(4 marks)** ***[CSEM - II]***

Answer:

1	**True and fair view**	As per the provisions of sub-**sections (1) and (2),** every financial statement of the company must give true and fair view of the state of affairs of the company at the end of financial year. True and Fair view in respect of financial statement means- **(a)** financial statements and items contained should comply with accounting standards notified **Under Section 133 of Companies Act, 2013;** **(b)** financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III; **(c)** in case of any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company, not treated to be disclosing a true and fair view of the state of affairs of the company, merely by the reason of the fact that they do not disclose -

		– in the case of an insurance company, any matters which are not required to be disclosed by the **Insurance Act, 1938**, or the **Insurance Regulatory and Development Authority Act, 1999;** – in the case of a banking company, any matters which are not required to be disclosed by the **Banking Regulation Act, 1949**; – in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the **Electricity Act, 2003**; – in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

Space to write important points for revision

2012 - June [5] (b) Write a short note on 'appointment of cost auditor'.

(4 marks) ***[CSEM - II]***

Answer:

1	**Appointment of Cost Auditor by Board [Section 148(3)]**	• Cost audit shall be conducted by a Cost Accountant in practice. • Only a Cost Accountant in practice or a firm of Cost Accountants in practice can be appointed as a cost auditor. • The Cost Auditor shall be appointed by the Board. • The Cost audit shall be in addition to the audit conducted under section 143. • The auditor appointed under section 139 shall not be appointed as the Cost Auditor.

		• The remuneration of the Cost Auditor shall be determined by the members in such manner as may be prescribed. • The company shall given all assistance and facilities to the cost auditor.
2	**Procedure for Appointment and Fixation of remuneration of the Cost Auditor (Rule 14)**	**The company is required to constitute an audit committee** • The Board shall appoint the cost auditor on the recommendations of the Audit Committee. • The Audit Committee shall recommend the remuneration of the cost auditor. • The remuneration of the cost auditor shall be considered and approved by the Board and ratified subsequently by the members.
3	**The Company is not required to constitute an audit committee**	• The Board shall appoint the cost auditor. • The remuneration of the cost auditor shall be fixed by the Board and ratified subsequently by the members.
4	**Compliance with Cost Auditing Standards**	• The cost Auditor shall comply with the cost auditing standards. • Cost auditing standards' mean such standards as are issued by the Institute of Cost and Works Accountants of India, with the approval of the Central Government.
5	**Disqualifica-tions, rights and duties of cost auditor**	The qualifications, disqualifications, rights, duties and obligations applicable to auditors under sections 141 and 143 shall, so far as may be applicable, apply to the cost auditor.
6	**Cost Audit Report**	• The cost auditors shall submit his report to the Board of Directors. • Within 30 days of receipt of cost audit report, the company shall furnish to the Central Government

		(a) A copy of the cost audit report; and (b) Along with full information and explanation on every reservation or qualification contained in the cost audit report. • The Central Government may call for such further information and explanation as it may deem fit. • The company shall furnish such further information and explanation within such time as may be specified by the Central Government. • Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestion, if any in **FORM CRS-3**.

Space to write important points for revision

2013 - June [6] Write a note on the following:

(i) Intangible assets **(4 marks)** ***[CSEM - II]***

Answer:

Intangible means "that cannot be touched."

Some of the assets are such which cannot be touched and do not have physical existence and are called intangible assets.

For example:

(i) Goodwill
(ii) Brands/trademarks
(iii) Computer software
(iv) Mining rights
(v) Recipes formulae, models, designs and proto types.

Space to write important points for revision

2013 - Dec [6] Write a note on the following:
(b) Approval and signing of the financial statement. **(4 marks)**
Answer:

1	**Financial Statement**	The financial statement (including consolidated financial statement) must be approved by the Board of Directors and signed by the directors before they are submitted to the auditors for their report.
2	**In Case of Banking Company**	In case of banking company shall be signed by the person mentioned in clause (a) or (b) of **Sec. 29 (2) of Banking Regulation Act, 1949**.
3	**In Case of Other Company**	Other Companies, financial statement must be signed on behalf of the Board of Directors by not less than two Directors and the Manager or Secretary if any. If the company has a Managing Director he should be one of the signing directors.

Space to write important points for revision

2014 - June [6] Write a note on the following:
(d) Qualifications and disqualifications of auditors. **(4 marks)**
Answer:

1	**Qualifications of Auditor**	**Section 141 (1) and (2) of the Act prescribed the following qualifications of auditor which are as under:** (i) Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor. (ii) Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

2	**Disqualifications of Auditor**	**Section 141 (3) of the Act read with Rule 10 prescribed the following persons shall not be eligible for appointment as an auditor of a company, namely:** (i) A body corporate, except LLP; (ii) An officer or employee of the company; (iii) Any partner/employee of officer or employee of company; (iv) A person who himself or his relative/partner is holding any security or interest in the company, or any company which is its holding, subsidiary, associate; (v) A person whose relative is holding security or interest not exceeding ₹ one lac face value in companies as mentioned above. Provided that this condition be also applicable in the case of a company not having share capital or other securities, wherever relevant. Provided further that in the event of acquiring any security or interest by a relative, above the threshold limit i.e.₹ one lac, the corrective action to maintain the limits (rupees one lac) shall be taken by the auditor within 60 days of such acquisition or interest; (vi) A person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment; (vii) A person who or whose relative or partner has given a guarantee or provided any security in connection with the

		indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment; (viii) A person or a firm who, whether directly or indirectly, has "business relationship" with the company, or its subsidiary, or its holding or associate company;

Space to write important points for revision

2017 - June [2] Distinguish between the following:
(c) 'Internal Audit' and 'Secretarial Audit'. **(4 marks)**

Answer:

'Internal Audit' and 'Secretarial Audit'

Internal Audit	Secretarial Audit
Governed by the provisions of **Section 138.**	Governed by the provisions of **Section 204.**
Applicable on every Private Company having: (i) turnover of ₹ 200 crore rupees or more during the preceding financial year; or (ii) outstanding loans or borrowings from banks or PFIs exceeding ₹ 100 crore or more at any point of time during the preceding financial year.	Not Applicable on Private Companies.
The auditor may be a Chartered Accountant or a Cost Accountant, or a Company Secretary or a firm	The audit is conducted by a Company Secretary in Practice.

thereof or any employee of the company, as may be decided by the Board to conduct internal audit of the functions and activities of the company. The audit committee or Board shall in consultation with the internal auditor formulate the scope, functioning, periodicity and methodology for conduct of internal audit.	If there is qualification or adverse remark in the audit report, the Board of directors have to comment on the same in their report to members. The format of the Secretarial Audit Report shall be in Form No. MR.3. Every listed company and a company belonging to other class of companies shall annex with its Board's report made in terms of **sub-section (3) of Section 134,** a secretarial audit report, given by a Company Secretary in practice.

Space to write important points for revision

DESCRIPTIVE QUESTIONS

2010 - June [1] {C} Comment on the following:

(iii) The power of directors to approve the financial statements can be delegated to a committee of directors or some of the directors.

(5 marks) ***[CSEM - II]***

Answer:

1	**Section 134**	**Section 134** deals with financial statements as well as board's report. The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall

		contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented and approved by the Board of directors before they are signed and submitted to auditors for their report. ***Note:*** **Amendment made by Companies (Amendment) Act, 2017** ***Revised Section 134(1)-*** *"The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."* ***Revised Section 134(3)(a)-*** *"(a) the web address, if any, where annual return referred to in sub-section (3) of Section 92 has been placed;"* ***Revised Section 134(3)(p)-*** *"(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made."*

		Proviso to Revised Section 134(3)- *"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:* *Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web- address is indicated therein at which the complete policy is available."* ***Section 134(3A)-*** *"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."*
2	**Auditor Report**	The auditor's report is to be attached to every financial statement. A report by the Board of directors containing details on the matters specified, including director's responsibility statement, shall be attached to every financial statement laid before company.
3	**Signed on Board Report**	The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report.

4	**Penalty**	The clause also provides for penal provisions for the company and every officer of the company, in case of any contravention.

Space to write important points for revision

2011 - Dec [8] (c) Discuss the term 'profit and loss account' of a company. What are the matters to be disclosed in the profit and loss account?

(4 marks) ***[CSEM - II]***

Answer:

1	**Meaning of Profit and Loss Account**	Profit and loss account is the account by which the directors disclose to the shareholders of the company the result of the actual working of the company. • It serves to give the shareholders an idea of the present capacity of the company in relation, to its capital, and enables them to Judge the administration and management affairs of the company. • Every profit and loss account of a company shall give a true and fair view of the company's profit or loss for the financial year for which it is drawn up.
2	**Special Note**	For this purpose profit and loss account must be drawn in accordance with the requirements of part II of Schedule III of the **Companies Act, 2013.**

Statement of profit and loss should disclose the followings:
1. Revenue from operators
2. Other income
3. Total revenue (1 + 2)
4. Expenses
5. Profit before exceptional and extra ordinary items and tax (3 - 4)
6. Exceptional items

7. Profit before extraordinary items and tax (5-6)
8. Extra ordinary items
9. Profit before tax (7-8)
10. Tax expense
11. Profit (loss) for the period from continuing operations (9 – 10)
12. Profit (loss) from discontinuing operations
13. Tax expense of discontinuing operations
14. Profit (loss) from discontinuing operations after tax (12 – 13)
15. Profit (loss) for the period (11 +14)
16. Earnings per equity share
    (i) basic
    (ii) diluted

Space to write important points for revision

2012 - June [1] {C} Comment on the following:

(i) It is not obligatory for every company to preserve its books of account.

(5 marks) ***[CSEM - II]***

Answer:

1	**Authenticity of the Statement**	Maintenance of books of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under – (i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of **sub-section 2(13) of the Companies Act, 2013** hereinafter referred as Act, which defines "books of account". (ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.

		(iii) The books of account must be kept on accrual basis and according to the double entry system of accounting. (iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches.
2	**Place of Keeping Books of Account**	Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place.
3	Maintenance of Books of account in electronic form	The maintenance of books of account and other books and papers in electronic mode is permitted and is optional. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use (the **Companies (Accounts) Rules, 2014.**
4	**Conclusion**	Hence, it is incorrect to say that it is not obligatory for every company to preserve its book of accounts.

Space to write important points for revision

2012 - Dec [1] {C} Comment on the following:

(v) Adoption of accounts is an important business to be transacted only at general meetings. **(5 marks)** ***[CSEM - II]***

Answer:

(1) An important business to be transacted at an annual general meeting is adoption of the accounts including:
   (a) Financial Statement (including consolidated financial statement)
   (b) Director Report and
   (c) Auditor Report
(2) The financial statement are required to be placed only at an annual general meeting not at any other general meeting.
(3) In case, if the financial statements are not ready for laying at the annual general meeting, the company may adjourn the said annual general meeting to a subsequent date. This may be done by adopting an appropriate resolution adjourning the said annual general meeting to a specified date or to a date to be specified later.

Space to write important points for revision

2013 - June [1] {C} Comment on the following:

(iii) Where a company has a branch office, whether in India or abroad, the original books of account, records, *etc.* of the branch office will have to be maintained in the registered office of the company.

(5 marks) ***[CSEM - II]***

Answer:

1	**Authenticity of the Statement**	The Statement is incorrect.
2	**Reason**	Because, a company has a branch office whether in India or outside, the books of account relating to transaction effected at the branch office may be kept at that office. **(Section 128 of Companies Act, 2013)**

Space to write important points for revision

2013 - Dec [1] Comment on the following:

(c) A director of a company has an absolute right of inspection of the books of account . **(5 marks)**

Answer:

1	**Section 128(3)**	As provided in **sub-Section (3) of Section 128 of the Companies Act, 2013**, any director can inspect the books of accounts and other books and papers of the company during business hours.
2	**Section 2(12)**	The expression "Books and Papers" has been defined in **Section 2(12)** which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors.
3	**Inspection by BOD**	Such inspection may be done by any type of director- nominee, independent, promoter or whole time. The proviso to sub-**Section 3** provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors.
4	**Rule 4(2)**	Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought (Rule 4(2)).
5	**Rule 4(3)**	The said information shall be provided to director within 15 days of receipt of request (Rule 4(3)).
6	**Rule 4(4)**	The director can seek the information only individually and not by or through his attorney holder or agent or representative (Rule 4(4)).

Space to write important points for revision

2014 - Dec [6] (c) Mention the importance of 'notes on accounts'. Will it convey any meaning to stakeholders? **(4 marks)**

Answer:

1	**Notes on Accounts**	• One of the main objectives of the Financial statements of a company is to communicate effectively its strengths and weaknesses. • The bare figures encompassing the amounts are not sufficient by themselves to depict and explain the true and fair view of the state of affairs of a company. • It has, therefore, become necessary to explain and communicate some of the vital information through 'Notes on Accounts'. By and large the notes on accounts are explanatory. • They elucidate the figures in the accounts and explain their significance. • Sometimes, these notes are clarify to meet the requirements of law. • Whether a particular note is explanatory or clarify will depend on the facts in each case and the manner in which it is stated. Notes on accounts form an integral part of the accounts of a company and contain very interesting and vital information.
2	**Contents of Notes on Accounts**	The notes on accounts are intended to clarify and elucidate the financial position of a company as disclosed in its balance sheet and profit and loss account. Generally the notes on accounts dwell on the following matters: 1. Basis of accounting; 2. Significant accounting policies; 3. Material changes, if any, in the method of accounting;

		4. The effect of material changes in the method of accounting on any item in the financial statement in physical terms to the extent ascertainable. Where such amount is not ascertainable, either wholly or in part, the fact should be stated; 5. Method of valuation of fixed assets; 6. Method of valuation of trade and other investments; 7. Method of providing depreciation; 8. Valuation of inventories; 9. Treatment of any income and expenditure on cash basis as against accrual basis; 10. Expenditure in foreign currency account; 11. Foreign exchange conversion; 12. Any disputed liabilities and claims against the company; 13. Any major litigation pending by or against the company; 14. Method of providing for retirement and terminal benefits; 15. Remuneration paid to managerial personnel and their calculation thereof.

Space to write important points for revision

2015 - June [2A] (Or) (iii) "Financial statements shall be signed only by the Chairperson of the company." Explain. **(4 marks)**

Answer:

1	**Section 134**	According to **Section 134 of the Companies Act, 2013,** the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the

		chairperson of the company where he is authorised by the Board or by two directors out of which one shall be Managing Director and the Chief Executive Officer, if he is a Director in the company, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
2	**Conclusion**	Therefore the financial statements are to be signed accordingly.

Note:

Amendment made by Companies (Amendment) Act, 2017

Revised Section 134(1)-

"The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."

Revised Section 134(3)(a)-

"(a) the web address, if any, where annual return referred to in sub-section (3) of Section 92 has been placed;"

Revised Section 134(3)(p)-

"(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made."

Proviso to Revised Section 134(3)-

"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web- address is indicated therein at which the complete policy is available."

Section 134(3A)-

"(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by a One Person Company or small company."

Space to write important points for revision

2015 - June [4] (b) Explain the provisions of the Companies Act, 2013 relating to 'secretarial audit'. State whether 'secretarial audit' is mandatory for all companies. **(4 marks)**

Answer:

1.	**To Which Companies Secretarial Audit is Mandatory?**	As per Section 204 of the Companies Act, 2013 mandates every listed company and such other classes of prescribed companies to annex a Secretarial Audit Report, given by a Company Secretary in practice with its Board's report. • Every listed company • Every public company having a paid-up share capital of Fifty Crore rupees or more • Every public company having a turnover of Two Hundred Fifty Crore rupees or more
2.	**Duty of the company for all assistance to PCS**	It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

3.	**Importance of Secretarial audit**	Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation's operations. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes. No, the secretarial audit is not mandatory to all companies.
4.	**Conclusion**	Hence it is clear that, the secretarial audit is not mandatory to all companies.

Space to write important points for revision

2015 - June [5] (d) Answer the following by explaining the provisions of the Companies Act, 2013 relating to 'internal audit':

(i) Whether a private company is mandatorily required to appoint an internal auditor?

(ii) Who may be appointed as an internal auditor? Whether a Practicing Company Secretary (PCS) can be appointed as an internal auditor?

(2 marks each)

Answer:

1	**Section 138**	**Section 138 of the Companies Act, 2013** provides that 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 of Directors to conduct internal audit of the functions and activities of the company.

2	**Every Private Company Having**	1. Turnover of two hundred crore rupees or more during the preceding financial year; or 2. Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.
3	**Conclusion**	(i) Therefore, a private company falling under any of the above criteria shall have to appoint an internal auditor. (ii) The company's Board is free to appoint any practicing chartered accountant or cost accountant or any other professional to whom it deems fit to be appointed as an internal auditor. Accordingly, where the Board decides a Practicing Company Secretary may be appointed as an internal auditor.

Space to write important points for revision

2015 - Dec [6] (a) Explain with reference to the provisions of the Companies Act, 2013, the meaning and importance of 'secretarial audit'. Which companies are required to get the 'secretarial audit' conducted? **(4 marks)**

Answer:

1.	**What is meant by Secretarial audit**	Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.
2.	**A mechanism to monitor compliance**	Secretarial Audit is a process to check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of

		books records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.
3.	**To Which Companies Secretarial Audit is Mandatory**	Considering the increasing requirement of corporate governance, Section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, mandates following companies to annexe a 'Secretarial Audit Report', given by an independent practicing company secretary, with its board report in MR 3 e- form. • Every listed company • Every public company having a paid-up share capital of Fifty Crore rupees or more • Every public company having a turnover of Two Hundred Fifty Crore rupees or more

Space to write important points for revision

2016 - June [1] Comment on the following:

(c) The time gap between the date of approval of financial statements by the Board of directors of a company and the date of notice of annual general meeting should be 45 days. **(5 marks)**

Answer:

1	**Section 101**	• There is no time prescribed in **Companies Act, 2013** between the date of approval of financial statements by the Board of Directors of a company and the date of notice of Annual General Meeting. • **Section 101 of the Companies Act, 2013** notice of AGM must be issued at least 21 clear days before the date of Annual General Meeting.

2	**Conclusion**	Hence, the gap between the board meeting in which the financial statements are approved and the AGM, should have a minimum gap of 21 clear days, unless the meeting is at a shorter notice.

Space to write important points for revision

2016 - June [6] (d) Referring to the provisions of the Companies Act, 2013, explain whether the Company Secretary being a Chief Financial Officer of the company can be held liable for maintenance of books of account of the company. **(4 marks)**

Answer:

1	**Persons responsible to maintain books**	The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6): (i) Managing Director, (ii) Whole-Time Director, in charge of finance (iii) Chief Financial Officer (iv) Any other person of a company charged by the Board with duty of complying with provisions of **Section 128.**
2	**Conclusion**	Therefore, a Company Secretary being a Chief Financial Officer of the company can be held liable for maintenance of books of accounts of the company.

Space to write important points for revision

2017 - June [1] Comment on the following:

(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. **(5 marks each)**

Answer:

(b)

The **Companies Act, 2013** has made preparation of consolidated accounts mandatory for all companies including unlisted companies and private companies having one or more subsidiaries or associates or joint ventures.

In accordance with the provisions of the **Companies Act, 2013,** as contained in **Section 129(3),** where a company has one or more subsidiaries or associates or joint ventures, it shall, in addition to its financial statements for the financial year, prepare a consolidated financial statement of the company and of all the subsidiaries or associates or joint ventures in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statements, a separate statement containing the salient features of the financial statements of its subsidiaries or associate (s) or joint venture (s) in Form AOC -1(Rule 5).

However, for intermediate holding company, the provisions of **Rule 6 of Companies (Accounts) Rules, 2014** *inter alia* provide certain conditions, compliance of which ensures exemption from consolidation of accounts to such intermediate holding company. These conditions are:-

1. intimation to all members for not consolidating the accounts.
2. shares being unlisted or not in process of listing on any stock exchanges and filing of consolidated financial statement by the ultimate Indian holding company whose 100% subsidiary is the intermediate holding company.

Amendment made by Companies (Amendment) Act, 2017

Revised Section 129(3)-

"Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub- section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that 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 and associate company or companies in such form as may be prescribed:
Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."

(c)

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, (of the company concerned) 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:
(a) accounting and book keeping services
(b) internal audit
(c) design and implementation of any financial information system
(d) actuarial services
(e) investment advisory services
(f) investment banking service
(g) rendering of outsourced financial services
(h) management services and
(i) any other kind of services as may be prescribed.

Space to write important points for revision

2018 - June [1] Comment on the following:
(b) Appointment and rotation of statutory auditor is mandatory for one person company and small company. **(5 marks)**

Answer:

As per **Section 139(1) of the Companies Act, 2013** *inter alia* provides that every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till conclusion of every sixth meeting.

The Companies Act, 2013 has introduced the system of rotation of auditors under Section 139. As per Rule 5 of the Companies (Audit and Auditors) Rules, 2014, rotation of auditors is applicable to:

- All listed companies;
- All unlisted public companies having paid up share capital of ₹10 crore or more;
- All private limited companies having paid up share capital of ₹ 20 crore or more;
- All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of ₹ 50 crore or more.

In view of the above it is clear that appointment is applicable on all the Companies including one person companies and small companies, however, the provisions of rotation of auditors shall not apply to one person companies and small companies.

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2018 - June [2A] (Or) (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)**

Answer:

According to **Section 138(1) of the Companies Act, 2013** read with the Rule 13 of the Companies (Accounts) Rules, 2014, following persons may be appointed as an internal auditor of the company:

(a) a Chartered Accountant or;
(b) a Cost Accountant or;
(c) such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.

Further, Rule 13 of the Companies (Accounts) Rules, 2014 *inter alia* provides that the internal auditor may or may not be an employee of the Company.

Mr. Satish being the Secretary of Perfect Ltd. may be appointed as an internal auditor of the company only if so decided by the Board to conduct internal audit of the functions and activities of the Company.

—— Space to write important points for revision ——

2018 - June [3] (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)**

Answer:

According to Section 204, every listed company and every public company having paid up share capital of fifty crore rupees or more; or public company having a turnover of two hundred fifty crore rupees or more shall attach a Secretarial Audit Report given by Practicing Company Secretary (PCS).

As per **Section 179 of the Companies Act, 2013** read with Rule 8 of the Companies (Meeting of Board and its Powers) Rules, 2014, the Board of Directors, only by means of resolutions passed at meetings of the Board, shall appoint a Secretarial Auditor.

It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice (Secretarial Auditor), for auditing the secretarial and related records of the company. (Section 204(2))

The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

Space to write important points for revision

2018 - Dec [1] Comment on the following:

(d) Chief Financial Officer is responsible to maintain books of account of the company. **(5 marks)**

Answer:

As per **Section 128 of the Companies Act, 2013** provides that to maintenance of Books of accounts by the company. According to sub section (6) of Section 128 if the Managing Director, the Whole-Time Director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of Section 128, fails to comply with the provisions shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Accordingly it is the responsibility of the Chief Financial Officer along with Managing Director and whole time director in charge of finance of the company to maintain the Books of Accounts of the company.

Space to write important points for revision

2019 - June [1] (b) Every financial statement of the company must give true and fair view of the state of affairs of the company at the end of the financial year. **(5 marks)**

Answer:

As per provisions of sub-Sections (1) and (2) of Section 129 of the Companies Act 2013 every financial statement of the company must give true and fair view of the state of affairs of the company at the end of financial year. True and Fair view in respect of financial statement means—

- Financial statements and items contained should comply with accounting standards notified under Section 133;
- Financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III;
- Financial statement shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by the reason of the fact that they do not disclose—
  - — in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
  - — in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
  - — in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
  - — in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

Space to write important points for revision

PRACTICAL QUESTIONS

2012 - June [2] (a) The Board of directors of Grow More Ltd., a public company, has duly delegated its power to approve the financial statements of the company for the year 2011-12 to a committee of directors. The said committee considered the financial statements and approved the same before the accounts were handed over to the statutory auditor of the company. Will you accept such approval of financial statements?

(5 marks) ***[CSEM - II]***

Answer:

1	**Analysis of the Statement**	According to **Section 134 of Companies Act, 2013** the power of the directors to approve the Financial Statements account can not be delegated to a committee of a directors or some other directors. The approval of financial statements which are to be ultimately placed before the shareholders of the company is not to be treated as a routine or part of day-to-day work. Therefore, the Board of directors must themselves consider the financial statements and approve them before the accounts are handed over to the statutory auditor of the company. **Amendment made by Companies (Amendment) Act, 2017** The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the

		company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."
2	**Conclusion**	Hence, such approval can not be accepted. **In the above case**, the financial statements of Grow More Ltd. should have been approved by the Board of directors and can not be delegated to committee.

Space to write important points for revision

2012 - Dec [3] (c) An auditor of a company signed the financial statement including Financial Statement and schedules/notes and furnished the auditors report on the same date on which the reports were signed by the directors on behalf of the Board. One of the directors raised objection stating that the audit can not be completed and certified in a day. Do you agree with the director and if not, why? **(4 marks)** ***[CSEM - II]***

Answer:

1	**Section 143(1)**	**Section 143(1) of the Companies Act, 2013** provides that the auditors having right to access at all times to the: (a) Financial Statement (including financial statement) (b) Vouchers and (c) Every other documents declared by this Act. Which amply suggests that they do not have to remain idle at any time after their appointment, subject to the convenience of the company, he may actually commence the checking up of balance sheet, profit and loss accounts, vouchers etc. which will save time for the auditors in the preparation of their report in due course.

		If the auditor signs the financial statement on the same date on which the directors have approved it, it may not be inferred from the circumstances that the auditor has not performed about efficiently.
2	**Conclusion**	Hence: Objection of director is not valid.

Space to write important points for revision

2013 - Dec [3A] (Or) (ii) A director of the company along with another director was prosecuted for their failure to file annual return, financial statements and audited balance sheet required to be laid before the AGM. The directors filed petition before the Tribunal to quash the prosecution initiated by the Registrar of Companies. As a Company Secretary in Practice, advise in the matter. **(4 marks)**

Answer:

- **Section 137** requires every company to file the financial statements including consolidated financial statement together with Form AOC- 4 with the Registrar within 30 days from the day on which the annual general meeting held and adopted the financial statements with such fees or additional fee as specified in Companies (Registration Offices and Fees) Rules, 2014.
- If the financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents be filed with the Registrar with in thirty days of the date of annual general meeting. The Registrar shall take them in his record as provisional, until the adoption at annual general meeting.
- The One Person Company shall file the copy of financial statements duly adopted by its members within a period of one hundred and eighty days from the closure of financial year.
- The company shall also attach the accounts of subsidiaries incorporated outside India and which have not established their place of business in India with the financial statements.

- The class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies [Rule 12(2).]
- If annual general meeting has not been held, the financial statement duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last days before which the annual general meeting should have been held.
- If company fails to comply with the requirement of submission of financial statement before Registrar, the company shall be liable to penalty of one thousand rupees for every day during which failure continues subject to maximum of rupees ten lakh.
- The managing director and CFO if any, and, in the absence of such managing director or CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, in the absence of such director, all directors of the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" As per Companies (Amendment) Act, 2019.

Space to write important points for revision

2015 - June [4] (a) Vir is a director in DJA Ltd. (the company). The company holds 75% shares of MRN Ltd. Vir wants to inspect the books of MRN Ltd. Examining the provisions of the Companies Act, 2013 advise whether Vir, the director of DJA Ltd. can be allowed to inspect the books of MRN Ltd.

(4 marks)

Answer:

1	**Analysis of given the case**	In accordance with the provisions of the **Companies Act, 2013,** as contained in **Section 128(3),** any director can inspect the books of accounts and other books and papers of the company during business hours. The expression 'Books and Papers' has been defined in **Section 2(12)** which includes accounts, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director-nominee, independent, promoter or whole time. However, according to the proviso to sub-**section (3)** of the section, the inspection in respect of any subsidiary of the company shall be done any person authorised in this behalf by a resolution of the Board of Directors.
2	**Conclusion**	**In the present case** Vir, may inspect the books of MRN Ltd. only when he is authorised by the Board of the DJA Ltd. in this context.

Space to write important points for revision

2015 - Dec [3] (d) Manohar, the auditor of Belle Ltd. appointed by the company in its last general meeting has resigned from the office of auditor of the company for some personal reasons. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Who is the competent authority to accept and approve the resignation?

(ii) State the manner in which the vacancy caused by Manohar's resignation shall be filled in. **(4 marks)**

Answer:

1	**Section 140(2)**	The auditor of the company shall submit the resignation to the Board of Director. **Section 140(2)** provides that the auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in ADT-3 with the company and the Registrar, indicating the reasons and other facts as may be relevant with regard to his resignation. **As per Companies (Amendment) Act, 2019** An auditor may resign on his own. If he resigns, he (i.e. auditor) is required to file a statement with RoC. If he was appointed by C and G, he should file such statement to C and AG also, giving reasons - **Section 140(2) of Companies Act, 2013.** The statement should be filed by auditor to RoC in form ADT.3. If the auditor does not comply with the provisions of Section 140(2), he or it shall be liable to a penalty of ₹ 50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of five lakh rupees - **Section 140(3) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

2	**Section 139(8)**	In terms of **Section 139(8) (i)** vacancy caused due to the resignation of Manohar shall be filled in the following manner: (a) The Board of the company shall fill the casual vacancy in the office of auditor within 30 days. (b) Such appointment should also be approved by the company in general meeting convened within 3 months of the recommendation of the Board and auditor shall hold the office till the conclusion of the next annual general meeting. (c) Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the audit committee where the company is required to constitute such a committee.

Space to write important points for revision

2015 - Dec [3A] (Or) (iv) Adorable Ltd., incorporated under the **Companies Act, 2013** has on its Board, 5 Directors and a Managing Director. The company has also appointed a Company Secretary. The financial statements of the company, viz., balance sheet and statement of profit and loss for the year ended 31st March, 2015, were authenticated under signatures of one director and the Company Secretary.

Referring to the provisions of the **Companies Act, 2013,** examine the validity of authentication. What shall be your answer in case the company in question is a 'one person company'? **(4 marks)**

Answer:

1	**Analysis of the Present Case**	**In the given case** the financial statements have been signed by one director and the Company Secretary, which is in violation of the above provisions. However if the director so signing is the Chairperson of the company, this would be a valid manner. If the director so signing is not the

		Chairperson, the financial statement should have been signed by the managing director and another director and in addition by a Chief Financial Officer if any. *Hence, authentication* ***in the given case*** *is not valid.*
2	**Conclusion**	In case of One Person Company's the section provides that the financial statements shall be signed only by one director. Hence in case the company is a One Person Company the authentication stands valid.
3	**Reference**	As per **Section 134 of the Companies Act, 2013,** The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."

Space to write important points for revision

2016 - June [2A] (Or) (i) Sanjay, a Chartered Accountant, is the financial controller of Sonik Industries (Pvt.) Ltd. for the last five years. The company now wants to appoint him as the statutory auditor of the company. Examining the provisions of the Companies Act, 2013, advise whether the company can appoint Sanjay as its statutory auditor. **(4 marks)**

Answer:

1	**Section 141(3) (b)**	According to **Section 141(3)(b) of the Companies Act, 2013** an officer or employee of the company is not eligible to be appointed as statutory auditor of a company.
2	**Conclusion**	**In the present case** Mr. Sanjay is working as financial controller of Sonik Industries (Pvt.) Ltd., and hence not eligible to be appointed as statutory auditor of the company.

Space to write important points for revision

2016 - June [4] (c) The paid-up equity share capital of Strong Foundry Ltd. is ₹ 45 lakh. President (Finance) of the company seeks your advice whether it is possible to re-open its books of account and recast the company's financial statements of the previous year. You being the Secretary of the company, advise the President (Finance) by preparing a note in this regard. **(4 marks)**

Answer:

Re-opening of Accounts on Tribunals's Orders: Section 130 provides for provisions relating to re-opening or re- casting of books of accounts of the company. Accordingly,

(i) A company shall not re-open its books of account and shall not recast its financial statements, unless an application in this regard is made by any one or more of the following:

(a) the Central Government, or
(b) the Income-tax authorities, or
(c) the Securities and Exchange Board of India (SEBI), or
(d) any other statutory regulatory body or authority or any person concerned, and
(e) an order in this regard is made by a Tribunal of competent jurisdiction or the Tribunal.

(ii) The re- opening and re-casting of financial statements is permitted only for the following reasons:
   (a) the relevant earlier accounts were prepared in a fraudulent manner; or
   (b) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

(iii) The Tribunal, as the case may be, shall give the notice to:
   (a) the Central Government,
   (b) the Income-tax authorities,
   (c) the Securities and Exchange Board,
   (d) any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by Central Government or the income tax authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

(iv) Director's report of the year in which such provisions are invoked, should provide for the reasons or circumstances in which such revisions were warranted.

Further, **Section 131** deals with power of Board to make application to tribunal and obtain approval for voluntary revision of financial statements and Board's Report of any of the preceding three financial years.

Hence, one time revision of financial accounts of the company may be made after obtaining approval of the tribunal subject to applicability and enforceability of **Section 131 of Companies Act, 2013.**
This is for information and record please.

Amendment made by Companies (Amendment) Act, 2017
Section 130(3): No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:

Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of Section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

Space to write important points for revision

2016 - Dec [3] (a) Peculiar Ltd., an unlisted company, did not prepare its financial statements for the year ended 31st March, 2016 in conformity with some of the mandatory accounting standards. With reference to the provisions of the Companies Act, 2013, state the responsibilities of the directors and statutory auditors of the company in this regard. **(4 marks)**

Answer:

1.	• In accordance with the provisions of the **Companies Act, 2013** as contained in **Section 129** read with **Section 133** financial statements of a company shall be prepared in compliance with the accounting standards. Section 129(5) states that where the financial statements of the company do not comply with accounting standards, such companies shall disclose in its profit and loss account and the balance sheet- (a) the deviation from the accounting standards; (b) the reasons for such deviation; and (c) the financial effects, if any, arising out of such deviation. • The Board of Directors is required **under Section 134 of the Companies Act, 2013** to include, in Board's report, a Director's Responsibility Statement indicating therein that in the preparation of the financial statements, the applicable accounting standards have been followed along with proper explanation relating to material departures. • As per this provision the directors need to ensure that the financial statements are prepared in accordance with the accounting standards.

- The statutory auditor of the company has a duty to state if, in his opinion, the financial statements are not in compliance comply with accounting standards.

Space to write important points for revision

2016 - Dec [3A] (Or) (i) Novel LLP, Trademark and 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.

(4 marks)

Answer:

1.	**Section 34(4) of the Limited Liability Act, 2008**	According to **Section 34(4)** of **the Limited Liability Act, 2008** provides that the accounts of a LLP shall be audited in accordance with such rules as may be prescribed. According to **Rule 24** of **LLP Rules, 2009** a LLP whose turnover does not exceed in any financial year ₹ 40 lakh or whose contribution (whether tangible or non-tangible) does not exceed ₹ 25 lakh is not required to get its accounts audited.
2.	**Conclusion**	The audit of LLP may be done by a Chartered Accountant in Practice only. An auditor or auditors of a limited liability partnership shall be appointed for each financial year of the LLP for auditing its accounts.
3.	**[Rule 24(10)].**	Considering the contribution in the form of fixed assets (software) amounting to ₹ 75 lakhs Novel LLP Trademark and Patent Attorney are required to get the accounts audited.

Space to write important points for revision

2017 - June [3] (b) Board of Directors of Anil Limited has decided not to preserve the books of accounts 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)**

(d) Mr. X is a director is 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)

Answer:

(b) According to **sub-section (5)** of **Section 128 of the Companies Act, 2013,** the books of accounts, together with vouchers relevant to any entry in such books are required to be preserved for a period of not less than eight financial years immediately preceding a financial year. Where the company had been in existence for a period less than eight years, the books of account in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. The provisions of the **Income-tax Act, 1961** shall also be complied with in this regard. As per proviso to **sub-section (5)** of **Section128**, where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit and give directions to that effect.

The decision taken by the Board of Directors of Anil Limited is not in accordance with the provisions of the law and the company cannot do so.

(d) Amendment made by Companies (Amendment) Act, 2017 Section 164(2) also provides that no person who is or has been a director of a company which –

(a) Has not filed financial statements or annual returns for any continuous period of three 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 one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

In the given case, Greenfield Industries Limited has not filed its financial statements for the financial years ended 31st March, 2014, 31st March, 2015 and 31st March, 2016. Therefore, it has not filed such statements for a continuous period of 3 financial years. However, it has filed annual return for those 3 financial years. Non-filing of any one of financial statements or annual returns for a continuous period of 3 financial years will disqualify such director from being appointed as a director in any other company.

Applying the above provisions of **Section 164(2)(a), in the given case,** Mr. X, a director of Greenfield Industries Limited cannot be appointed as a director in Redfield Industries Limited till the expiry of five years.

Space to write important points for revision

2017 - June [3A] (Or) (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)**

Answer:

Section 2(41) of the Companies Act, 2013 has defined the term "financial year". It states that financial year in relation to any company or body corporate, means the period ending on the 31st day of March every year.

The financial year of every company registered under the Companies Act in India has to be from April of a calendar year to March of the next calendar year.

However, proviso to **Section 2(41)** reads that on an application made by a company or body corporate, which is a holding company or a subsidiary or Associated company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, if it is satisfied, allow any period as its financial year.

As per Companies (Amendment) Act, 2019

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year-first proviso to **Section 2(41) of Companies Act, 2013** as amended vide the **Companies (Amendment) Act, 2019.**

Earlier, the powers were with NCLT. Applications pending with NCLT as on 2.11.2018 will continue to be dealt by NCLT-second proviso to **Section 2(41) of Companies Act, 2013** as inserted vide the Companies (Amendment) Act, 2019.

Provision as existing upto 2.11.2018- On an application made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the NCLT may, if it is satisfied, allow any period as its financial year, whether or not that period is a year [first proviso to **Section 2(41) of Companies Act, 2013** as existing upto 2.11.2018]. [The words in italics were added w.e.f. 9.2.2018].

On the basis of position of law here in above, CIF Technosystems Private Limited proposed to be incorporated under the **Companies Act, 2013** has to have its financial year to end on 31st March every calendar year.

However, as it is a holding company of CIF Private Limited, a company in Brazil incorporated outside India, and that company follows its financial year 1st January to 31st December of a calendar year, the Indian company CIF Technosystems Private Limited can apply to Tribunal to allow its financial year to be aligned to end on 31st December for ease of consolidation of financial statement. The Tribunal will decide on the basis of merit in application.

—— Space to write important points for revision ——

2017 - Dec [3] (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)**

Answer:

The directors of the company may participate in a meeting of Board/Committee of directors under the Companies Act, 2013 through video conferencing or other audio visual mean. "Video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

A director participating in a meeting through use of video conferencing shall be counted for the purpose of quorum. The minutes shall also disclose the particulars of the directors who attend the meeting through electronic mode. Therefore, to convene Board meeting, the director present in India shall act as Chairman and shall be physically present in Mumbai.

According to Rule 4 of the following matters shall not be dealt with in any meeting held 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 2 consideration of financial statement including consolidated financial statement if any, to be approved by the board under **sub-section (1) of Section 134** of the Act; and
(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Therefore, Annual financial statements cannot be approved in a meeting conducted through video conferencing.

Amendment made by Companies (Amendment) Act, 2017

Second Proviso to Section 173(2)-

"Provided further that where there is quorum in a meeting through physical presence of directors, any other director -may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."

Space to write important points for revision

2017 - Dec [4] (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)**

Answer:

Pursuant to **Section 141**, a person who himself, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company is not eligible for appointment of auditor of the company.

Provided that the relative may hold security or interest in the company of face value not exceeding ₹ **1,000** or such sum as may be prescribed.

As per Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a relative of an auditor may hold securities in the company of face value not exceeding ₹ 1 lakh.

In accordance with provisions stated above, Mrs. Ram may hold shares of the value not exceeding ₹ 1 lakh to render Mr. Ram eligible for appointment as the auditor.

Since the question is silent on the value of the 1% shares of the company, the conclusion regarding the appointment of Ram may be drawn as under:

If the holdings of Mrs. Ram **exceed ₹ 1 lakh** based on aforesaid provision of law Mr. Ram cannot be appointed as auditor.

However, if Mrs. Ram holding is **less than ₹ 1 lakh** Mr. Ram can be appointed as auditor.

Space to write important points for revision

2018 - Dec [3] (a) Ram is a practising Chartered Accountant and partner of two audit firms namely PYMG and YE. In the immediately preceding financial year, PYMG has completed its two terms of five consecutive years in Gayatri Pvt. Ltd. having paid-up share capital of ₹ 60 crore. Now Gayatri Pvt. Ltd. is considering appointing YE firm as its statutory auditors. Can Gayatri Pvt. Ltd. appoint YE firm as its auditors?

What will be your answer in the following cases?

(i) If appointing company is a one person company;

(ii) If appointing company is a small company. **(5 marks)**

Answer:

Under section 139 of the Companies Act, 2013 read with Rule 5 of Companies (Audit and Auditors) Rules, 2014, the following companies are required to appoint and rotate auditors:

(a) All listed companies;

(b) All unlisted public companies having paid up share capital of rupees ten crore or more;

(c) All private limited companies having paid up share capital of rupees fifty crore or more;

(d) All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

- An individual auditor who has completed his term as auditor for more than one term of five consecutive years and an audit firm who has completed the term as auditor for more than two terms of five consecutive years shall not be re-appointed as an auditor of the company.
- It is further provided that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Accordingly in the above case, the company is required to appoint and rotate the auditors on completion of the tenure. Thus Gayatri Ltd. cannot appoint YE audit firm as auditor of the company.

(a) In case the appointee company is a One Person Company, rotation of auditor does not apply and hence the appointing company can appoint YE audit firm as auditor.

(b) In case the appointee company is a Small Company, rotation of auditor does not apply and therefore the appointing company can appoint YE audit firm as auditor.

Space to write important points for revision

2019 - June [3] (b) Vijay is an auditor of XYZ Ltd. a listed public company having paid-up share capital of ₹ 10 crore. Advise him as to whether he can render the following services, keeping in mind, the relevant provisions of Companies Act, 2013?

(i) Vijay wants to conduct internal audit of XYZ Ltd. He also wishes to provide actuarial services to XYZ Ltd.

(ii) Vijay wishes to "design and implement one financial system" and offer management services to ABC Ltd. the holding company of XYZ Ltd.

(iii) What will be your answer in the above two cases if services are provided to PQR Ltd. a subsidiary company of XYZ Ltd.? **(5 marks)**

Answer:

Section 144 of the Companies Act, 2013 provides that an auditor shall provide to the company only such other services as are approved by the Board of Directors/ 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:

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services:
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed.

Therefore based on the above mentioned provisions advice to Vijay will be as under:

(i) Vijay cannot conduct internal audit of XYZ Ltd or carry out actuarial services to XYZ Ltd.

(ii) Vijay cannot provide management services or implementation of financial system to ABC Ltd as such services to the holding company is also not allowed.

(iii) Providing (i) and (ii) services above to PQR Ltd the subsidiary company of XYZ Ltd is also not allowed.

Space to write important points for revision

2019 - Dec [2A] (Or) (v) Reels India Ltd. is a wholly owned subsidiary of Wheels India Ltd. The auditor of Wheels India Ltd. has intimated the Board of directors that the company will not be required to prepare consolidated financial statements if provisions of section 129, Companies Act, 2013 are complied with. As a company secretary give your comments in this regard.
(3 marks)

2019 - Dec [5] (d) ABC & Associates is an audit firm with partners A, B and C. The firm's tenure as statutory auditor in M Ltd. has expired under Companies Act, 2013. M Ltd. is a listed company. XY & Co. another audit firm is appointed as auditor of M Ltd. for the subsequent year. B joins XY & Co. as partner, 4 months after it was appointed as statutory auditor of M Ltd. Comment with reference to the provisions of the Companies Act, 2013.
(4 marks)

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short note on the following:
(a) National Finance Reporting Authority
(b) Consolidated Financial Statement

Answer:

(a) National Financial Reporting Authority (NFRA)

Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms.

The National Financial Reporting Authority shall be a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting- financial as well as non – financial, by the companies in future.

National Financial Reporting Authority shall give its recommendations on accounting standards and auditing standards. It shall only recommend and it is the Central Government who shall prescribe such standards.

Objective

The objectives of National Financial Reporting Authority inter alia shall be as follows:

1. Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
2. Monitor and enforce the compliance with accounting standards, monitor and enforce the compliance with auditing standards;
3. Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service, and
4. Perform such other functions as may be prescribed in relation to aforementioned objectives.

(b) Consolidated Financial Statements

The **Companies Act 2013** has made preparation of consolidated accounts mandatory for all companies including unlisted companies and private companies having one or more subsidiaries or associates or joint ventures.

According to **sub Section 3 of the Section 129 of the Companies Act, 2013,** where a company has one or more subsidiaries or associates companies, it shall, in addition to its financial statements for the financial year, prepare a consolidated financial statement of the company and of all the subsidiaries and associates companies in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub Section 2.

The company shall also attach along with its financial statement, a separate statement containing the salient features of the Financial Statement of its subsidiary/ies or associate/s or joint venture/s in Form AOC-1 (Rule 5).

Manner of Consolidation of Accounts

The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:

Provided that in case of a company covered under **sub-Section (3) of Section 129** which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

Space to write important points for revision

Q2. Write short note on Secretarial Audit.

Answer:

Secretarial Audit:

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non- compliance and to take corrective measures.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation's operations. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.