



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.

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## DESCRIPTIVE QUESTIONS

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**Q3.** What is the procedure of report fraud.

**Answer:**

**Reporting of Frauds by Auditor- Section 143(12) to 143 (15) and Rule 13**

Section 143(12) and Rule 13 provides that If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to Central Government.

1. The auditor shall report the matter to the Central Government as under:-
  - (a) the auditor shall report the matter to the Board or the Audit Committee, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;

- (b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
  - (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
2. The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same.
  3. The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number.
  4. The report shall be in the Form ADT-4.
  5. In case of a fraud involving lesser than the amount specified above, the auditor shall report the matter to Audit Committee or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:
    - (a) Nature of Fraud with description;
    - (b) Approximate amount involved; and
    - (c) Parties involved.
  6. The fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report specifying the following-
    - (a) Nature of Fraud with description;
    - (b) Approximate Amount involved;
    - (c) Parties involved, if remedial action not taken; and
    - (d) Remedial actions taken.

7. The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under Section 148 and 204 respectively.

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**Q4.** ABC Ltd. wants to appoint FMC and Associates as its internal auditor. What are the conditions of such appointment?

**Answer:**

**Internal Audit:**

Classes of companies requiring Internal Audit

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

- (a) Every listed company;
- (b) Every unlisted public company having –
  - (i) Paid up share capital of fifty crore rupees or more during the preceding financial year; or
  - (ii) Turnover of two hundred crore rupees or more during the preceding financial year; or
  - (iii) 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; or
  - (iv) Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) Every private company having –
  - (i) Turnover of two hundred crore rupees or more during the preceding financial year; or
  - (ii) 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.

The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.



The board may appoint any practicing Chartered Accountant or a Cost Accountant or any other person whom it deems fit to be appointed as its internal auditor. For this purpose, company board may consider the nature and volume of business of company; qualifications, experience and capabilities of such person being appointed as auditor and scope of internal audit.

Who can be an Internal Auditor

- (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.

For this sub-section, Chartered Accountant means a Chartered Accountant, who is a member of the Institute of Chartered Accountants of India and has a valid certificate of practice and Cost Accountant means a member of The Institute of Cost Accountants of India. Other professionals, as may be decided by the company's board, may also be appointed as an internal auditor.

Following classes of companies are required to appoint internal auditor-

1. All Listed Company	2. Public Company with				3. Private Company with	
	Paid up capital	Turnover	Outstanding loans and borrowings	Outstanding deposits	Turnover	Outstanding loans and borrowings
	50 Cr or more or	200 Cr or more or	100 Cr or more or	25 Cr or more	200 Cr or more or	100 Cr or more

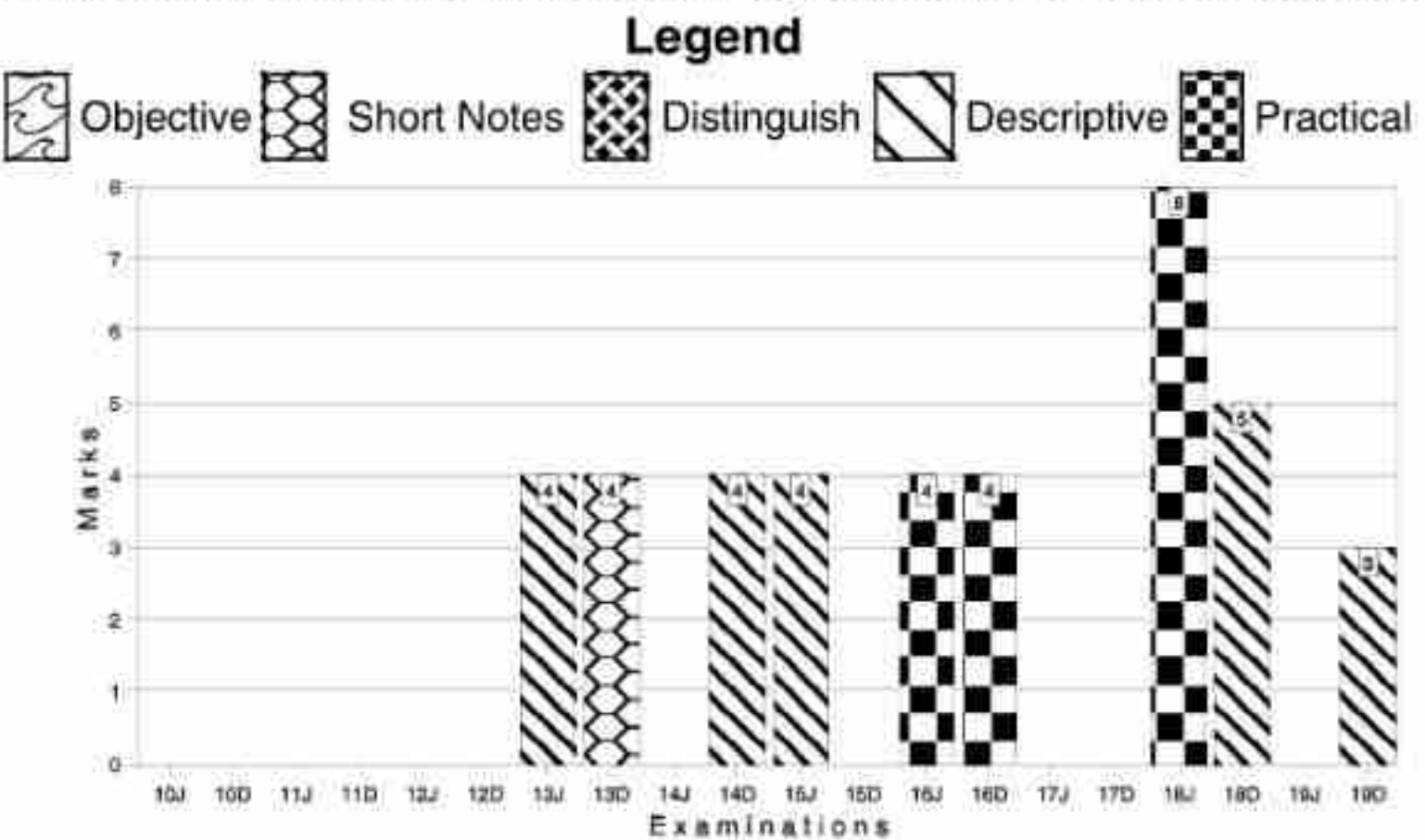
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<div>9</div> <div>TRANSPARENCY AND DISCLOSURES</div>	
THIS CHAPTER INCLUDES	
<ul style="list-style-type: none"><li>• Annual Report</li><li>• Board's Report</li><li>• Annual Return</li></ul>	<ul style="list-style-type: none"><li>• Website Disclosures</li><li>• Policies</li></ul>

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



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**CHAPTER AT A GLANCE****Annual Report**

The annual report is a comprehensive report provided by most public companies to disclose their corporate activities over the past year. The report is typically issued to shareholders and other stakeholders who use it to evaluate the firm's performance including both operating and financial highlights.

Such annual report shall contain the following:

- (a) audited financial statements i.e. balance sheets, profit and loss accounts etc, and Statement on Impact of Audit Qualifications, if applicable;
- (b) consolidated financial statements audited by its statutory auditors;
- (c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013
- (d) directors report;
- (e) management discussion and analysis report - either as a part of directors report or addition thereto;
- (f) for the top five hundred listed entities based on market capitalization

**Board's Report**

The Board's Report is the most important means of communication by the Board of Directors of a company with its shareholders. It is a comprehensive document which serves to inform the shareholders about the performance and various other aspects of the company, its major policies, relevant changes in management, future programmes of expansion, modernization and diversification, capitalization or reserves, etc.

It is mandatory for the Board of Directors of every company to present financial statement to the shareholders along with its report, known as the "Board's Report" at every annual general meeting.

**Disclosure in Board's Report pursuant to the Companies Act, 2013**

- (i) Disclosures under Section 134(3)
- (ii) Details of Employees Stock Option Scheme – section 62(1)(b)
- (iii) Voluntary revision of Financial Statements or Board's Report – Section 131(1)
- (iv) Resignation of Director – Section 168(1)
- (v) Issue of Equity Shares with differential rights
- (vi) Restrictions on purchase by company or giving of loans by it for
- (vii) Corporate Social Responsibility – Section 135
- (viii) Composition of Audit Committee – Section 177(8)
- (ix) Issue of Sweat Equity Shares
- (x) Disclosures pertaining to Consolidated Financial Statements
- (xi) Re-Appointments of an Independent Director – Section 149(10)
- (xii) Details of Vigil Mechanism – Section 177(10)
- (xiii) Disclosures pertaining to remuneration of directors and employees – Section 197(12)
- (xiv) Policy relating to the remuneration for the directors, key managerial personnel and other employees – Section 178(4)
- (xv) Remuneration received by MD and WTD from holding or subsidiary companies – Section 197(14)
- (xvi) Related party transactions – Section 188(2)
- (xvii) Secretarial Audit Report – Section 204(1)
- (xix) Additional Disclosures by Producer Company

**Signing of Board's Report [Section 134(6)]**

(i)	If Chair-person is authorised by the Board	Where Chair-person is not authorised by the Board	Further, as a good practice, the companies should get the annexure to the Board's report also separately signed by the Chairman.
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(ii)	Chairperson of the Company	At least two directors, one of whom shall be a Managing Director, or by the director where there is one director	The Annual Report on CSR may be signed by the Chairman of the CSR Committee.
<b>Annual Return</b>			
<p>As per <b>Section 92 of the Companies Act, 2013</b>, every company is required to prepare the Annual Return in Form No. MGT-7 containing the particulars as they stood on the close of the financial year. Annual Return is to be filed with the Registrar within 60 days from the date on which Annual General Meeting (AGM) is actually held or from the last day on which AGM should have been held.</p> <ul style="list-style-type: none"><li>As provided in sub-Section(2) of Section 384, the provisions of <b>Section 92</b> regarding filing of annual return apply to a foreign company subject to such exceptions, modifications and adoptions as may be provided for in the Rules.</li><li><b>Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014</b> provides that every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC-4 along with fee, containing the particulars as they stood on the close of the financial year.</li></ul>			
<b>Signing of Annual Return</b>			
<p>Under section 92(1) of the Act, the Annual Return is required to be signed both by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in Practice. The Annual Return of One Person Company and Small Company shall be signed by the Company Secretary or where there is no company secretary, by the director of the company. The Act authorises the Central Government.</p>			



#### Website Disclosures

Companies Act, 2013 does not mandates companies to have an active website, but SEBI (LODR), 2015 requires all the listed entities shall maintain a functional website containing the following information about the listed entity:

- (a) details of its business;
- (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc;
- (c) email address for grievance redressal and other relevant details;
- (d) name of the debenture trustees with full contact details;
- (e) the information, report, notices, call letters, circulars, proceedings, etc. concerning non- convertible redeemable preference shares or non convertible debt securities;
- (f) all information and reports including compliance reports filed by the listed entity;

#### SHORT NOTES

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

- (a) Directors' responsibility statement

**(4 marks)**

**Answer:**

1.	<b>Provisions of Section 134 of Companies Act, 2013</b>	<b>Section 134(5)</b> referred to in clause (c) <b>Section 134(3) of Companies Act, 2013</b> shall state that— (a) in the preparation of the financial statements, the applicable accounting standards had been followed along with proper explanation relating to material departures; (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true
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		<p>and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;</p> <p>(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;</p> <p>(d) the directors had prepared the financial statements on a going concern basis; and</p> <p>(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.</p>
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## DESCRIPTIVE QUESTIONS

**2013 - June [8]** (a) The Directors' Report of Ayush Ltd. for the financial year ended 31<sup>st</sup> March, 2012 has been dated 15<sup>th</sup> May, 2012, whereas the Auditors' Report for the same period is dated 16<sup>th</sup> May, 2012. Is this in order ? Explain. **(4 marks) [CSEM - II]**

**Answer:**

1.	<b>Date of Directors' Report and Auditors' report</b>	Ideally, the date of the Director's Report should be later than the date of Auditors' Report. However, both the dates i.e. the date of the Directors' Report and that of the Auditors' Report could be the same.
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2.	<b>In case of Reservation, Qualification or Adverse Remarks by the Auditors</b>	If there is any reservation, qualification or adverse remark/comments has been given by the Auditor in the Auditors' Report, then the Board is required to give in its report the fullest information and explanations on the adverse remarks given by the Auditor pursuant to <b>Section 134(4) of Companies Act, 2013</b> , If the date of the Auditors' Report is subsequent to that of the Directors' Report, then it would not be possible for the Board to comply with the above requirement.
3.	<b>Conclusion</b>	In light of the above, <b>in the present case</b> , the dating of the Directors' Report and Auditors' Report is not in order.

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**2014 - Dec [6]** (d) Narrate briefly the importance of Corporate Governance Report and also state who can certify such report. **(4 marks)**

**Answer:**

1.	<b>Companies that Required to submit Quarterly CGR</b>	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by SEBI from time to time to the recognized stock exchange(s) within fifteen days from close of the quarter.
2.	<b>Disclosures</b>	The CGR has undergone drastic change requiring the following information to be submitted to stock exchange: (a) Composition of Board (b) Names of the Directors, Category, PAN No, Date of appointment, tenure, no. of Directorships/memberships/chairmanships in committees meetings.

		(c) Composition of Audit Committee (mandatory) and other committees (optional). (d) Dates of Board meetings and committee meetings. (e) Whether prior approval of audit committee/shareholders for related party transactions has been taken, if applicable. (f) Whether RPT's entered pursuant to omnibus approval have been reviewed by the Audit Committee. (g) Certain affirmations that the composition of Board, committees, their roles and responsibilities, their meetings were in accordance with the regulations.
3.	Who will certify the CGR	Report shall be signed either by Compliance Officer or by Chief Executive Officer.

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**2015 - June [6]** (b) The Board of directors of Charming Ltd. seek your advice on the matters to be included in the directors' responsibility statement forming part of the company's annual report to shareholders. As the Company Secretary of Charming Ltd., advise the Board. **(4 marks)**

**Answer:**

<b>Provisions of Section 134 of Companies Act, 2013</b>	<b>Section 134(5) referred to in clause (c) Section 134(3)</b> shall state that: (a) in the preparation of the financial statements, the applicable accounting standards had been followed along with proper explanation relating to material departures; (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the
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	<p>state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;</p> <p>(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;</p> <p>(d) the directors had prepared the financial statements on a going concern basis; and</p> <p>(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.</p> <p>(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.</p> <p><b>Note:</b> <b>Amendment made by Companies (Amendment) Act, 2017</b> <b>Revised Section 134(1)-</b> "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."</p>
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	<p><b>Revised Section 134(3)(a)-</b> “(a) the web address, if any, where annual return referred to in sub-Section (3) of Section 92 has been placed;”</p> <p><b>Revised Section 134(3)(p)-</b> “(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.”</p> <p><b>Proviso to Revised Section 134(3)-</b> “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.”</p> <p><b>Section 134(3A)-</b> “(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.”</p>
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**2018 - Dec [1]** Comment on the following:  
 (b) Every company is required to disclose the details of vigil mechanism in the Board Report. **(5 marks)**



**Answer:**

According to **Section 177(9) of Companies Act, 2013**, read with Rule 7 of Companies (Meetings of Board and its Powers) Rules, 2014 the following companies are required to establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances.

- (a) Every listed company;
- (b) The Companies which accept deposits from the public;
- (c) The Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Further the sub-section (10) provides that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

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**2019 - Dec [2]** (b) What are the 'related party disclosures' required to be made by listed entities as per SEBI Regulations? **(3 marks)**

**PRACTICAL QUESTIONS**

**2016 - June [4]** (d) Pioneer Fisheries Ltd. has borrowed an amount of ₹ 50 crore from a financial institution. The annual general meeting of the company was held on 1<sup>st</sup> September, 2015. Examining the provisions of the Companies Act, 2013, state as to who will sign and certify the annual return while filing the same with the Registrar of Companies after the annual general meeting. **(4 marks)**

**Answer:**

1	<b>Section 92</b>	As per <b>Section 92</b> of the Act, every company shall prepare a return in E-form MGT 7 containing the required particulars as they stood on the close of the financial year and signed by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in practice.
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2	<b>Listed Company</b>	The annual return, filed by a listed company or, by a company having paid-up capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice (Form No. MGT 8), stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.
3	<b>Certify the Annual Return</b>	Here, it may be noted that borrowed amount is not any criteria for deciding about the authority/eligibility of the person to sign and certify the annual return.
4	<b>Conclusion</b>	<p>Thus, in the absence of information about whether the company falls under the listing or paid up share capital or Turnover category discussed above, it would not be wise to pronounce whether its annual return shall be signed and certified by a practicing Company Secretary or not.</p> <p><b>Amendment made by Companies (Amendment) Act, 2017</b></p> <p><b>Revised Section 92(1)-</b></p> <p>"Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding:</p> <ul style="list-style-type: none"> <li>(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;</li> <li>(b) its shares, debentures and other securities and shareholding pattern;</li> <li>(c) its members and debenture-holders along with changes therein since the close of the previous financial year;</li> </ul>



	<p>(d) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;</p> <p>(e) meetings of members or a class thereof, Board and its various committees along with attendance details;</p> <p>(f) remuneration of directors and key managerial personnel;</p> <p>(g) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;</p> <p>(h) matters relating to certification of compliances, disclosures as may be prescribed;</p> <p>(i) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and</p> <p>(j) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:</p> <p>Provided that in relation to One Person Company, small company and such other class or classes of companies as may be prescribed, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.</p> <p><b>Provided further that the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed."</b></p>
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**2016 - Dec [3A] (Or)** (iv) Priya, a nominee director on the Board of Aroma Ltd., a listed company, informed the Board of directors during a Board meeting that the next annual report of the company shall contain a 'Management Discussion and Analysis Report'. You being the Company Secretary have been asked by the Board to prepare the said report. State the matters you would include in the report. **(4 marks)**

**Answer:**

A Management Discussion and Analysis Report (MDAR) should form part of the Annual Report to the shareholders. This Management Discussion and Analysis should include discussion on the following matters within the limits set by the company's competitive position:

1. Industry structure and developments.
2. Opportunities and Threats.
3. Segment-wise or product-wise performance.
4. Outlook.
5. Risks and concerns.
6. Internal control systems and their adequacy.
7. Discussion on financial performance with respect to operational performance.
8. Material developments in Human Resources / Industrial Relations front, including number of people employed.

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**2018 - June [2A] (Or)** (iv) Fabulous Ltd. is in the process of finalisation of its annual return. It is a listed company with paid-up capital ₹ 1 crore. The company seeks your advice on the following:

- (1) Who will sign the return on behalf of the company?
- (2) What are the requirements of certification of annual return by a practising Company Secretary. **(4 marks)**

**Answer:**

1. As per **Section 92 of the Companies Act, 2013**, every company shall prepare its annual return containing the required particulars as they stood on the close of the financial year and shall be signed by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in practice.  
Whereas in case of One Person Company and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.
2. Every listed company, or a company with paid up share capital of 10 crore or more or a company with turnover of ₹ 50 crore or more, shall be required to get a certificate by the Practicing Company Secretary (PCS) stating the facts that the requirements of the Companies Act, 2013 and rules thereto have been complied with and Annual Return discloses the facts correctly and adequately.

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**2018 - June [4]** (c) Phosphate Ltd. has suffered a major loss of ₹ 100 crore in May, 2018 on the dealing of commodity exchange. The annual accounts and Board's report for the year 2017-18 are under finalization. The Chief Financial Officer (CFO) of the company does not want to disclose this loss in the Board's report for year 2017-18 because this loss does not pertain to said financial year. Is the view of CFO correct? The Board of Directors seek your advice in this matter. **(4 marks)**

**Answer:**

According to **Section 134(3)(k)** all material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report should form part of the Board's Report.

The Director's Report shall, therefore, contain material changes pertaining to post-financial statement events impacting the operations and performance of the Company. Thus, in present case view of Chief Financial Officer is incorrect. Loss of ₹ 100 Crore incurred during May, 2018, i.e. post financial year, shall be included in the Board's Report for the year 2017-18.

**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION****SHORT NOTES**

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**Q1.** Write short note on Certification of Annual Return.

**Answer:**

**Certification of Annual Return:**

Certification of Annual Return under sub-section (2) of Section 92 of the Act read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014, the Annual Return of a listed company or of a company having a paid up share capital of ₹ 10 Crores or more or turnover of ₹ 50 Crores or more shall be certified by a Company Secretary in Practice in the Form No. MGT- 8. The certificate shall state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

**In Section 92 of the Principal Act, for sub-Section (5), the following sub-Section shall be substituted, namely:**

Section 92(5) if any company fails to file its annual return under sub-Section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand 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".

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**Q2.** Write short note on website disclosure.

**Answer:**

**Website Disclosure:**

- (a) details of its business;
- (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc;





- (c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
  - (d) email address for grievance redressal and other relevant details;
  - (e) name of the debenture trustees with full contact details;
  - (f) the information, report, notices, call letters, circulars, proceedings, etc concerning non-convertible redeemable preference shares or non convertible debt securities;
  - (g) all information and reports including compliance reports filed by the listed entity;
  - (h) information with respect to the following events:
    - (i) default by issuer to pay interest on or redemption amount;
    - (ii) failure to create a charge on the assets;
    - (iii) revision of rating assigned to the non convertible debt securities;
- It is important that the listed entity ensures the contents of the website are correct and updated at any given point of time.

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## DESCRIPTIVE QUESTIONS

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**Q3.** What information is required to be disclosed to be dissolved in Annual Report.

**Answer:**

**Annual Report:**

The annual report is a comprehensive report provided by most public companies to disclose their corporate activities over the past year. The report is typically issued to shareholders and other stakeholders who use it to evaluate the firm's performance including both operating and financial highlights.

Such annual report shall contain the following:

- (a) audited financial statements i.e. balance sheets, profit and loss accounts etc, and Statement on Impact of Audit Qualifications, if applicable;
- (b) consolidated financial statements audited by its statutory auditors;



- (c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in **Section 133 of the Companies Act, 2013**
- (d) directors report;
- (e) management discussion and analysis report - either as a part of directors report or addition thereto;
- (f) for the top five hundred listed entities based on market capitalization Further it is provided that the annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of above mentioned regulations. As per SEBI (LODR), the annual report shall contain the following additional disclosures:
  - A. Related Party Disclosure:
  - B. Management Discussion and Analysis:
  - C. Corporate Governance Report
    - (1) A brief statement on listed entity's philosophy on code of governance.
    - (2) Board of directors:
    - (3) Audit committee
    - (4) Nomination and Remuneration Committee:
    - (5) Remuneration of Directors:
    - (6) Stakeholders' grievance committee:
    - (7) General body meetings:
    - (8) Means of communication:
    - (9) General shareholder information:
  - D. Declaration signed by the chief executive officer stating that the members of board of directors and senior management personnel have affirmed compliance with the code of conduct of board of directors and senior management.
  - E. Compliance certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance shall be annexed with the directors' report.
  - F. Disclosures with respect to demat suspense account/ unclaimed suspense account

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**Q4.** Describe the contents and signing of Annual Return.

**Answer:**

**Annual Return:**

- As per **Section 92 of the Companies Act, 2013**, every company is required to prepare the Annual Return in Form No. MGT-7 containing the particulars as they stood on the close of the financial year.
- Annual Return is to be filed with the Registrar within 60 days from the date on which Annual General Meeting (AGM) is actually held or from the last day on which AGM should have been held.
- As provided in sub-Section(2) of Section 384, the provisions of **Section 92** regarding filing of annual return apply to a foreign company subject to such exceptions, modifications and adoptions as may be provided for in the Rules.
- **Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014** provides that every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC-4 along with fee, containing the particulars as they stood on the close of the financial year.

**Contents of Annual Return**

Annual Return shall contain the following particulars in consonance with the Section 92(1) of the Act:

1. its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. its shares, debentures and other securities and shareholding pattern;
3. its members and debenture-holders along with changes therein since the close of the previous financial year;
4. its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
5. meetings of members or a class thereof, Board and its various committees along with attendance details;
6. remuneration of directors and key managerial personnel;
7. penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

8. matters relating to certification of compliances, disclosures as may be prescribed;
9. details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors and such other matters as may be prescribed.

**Signing of Annual Return**

Under section 92(1) of the Act, the Annual Return is required to be signed both by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in Practice.

The Annual Return of One Person Company and Small Company shall be signed by the Company Secretary or where there is no company secretary, by the director of the company. The Act authorises the Central Government.

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# 10

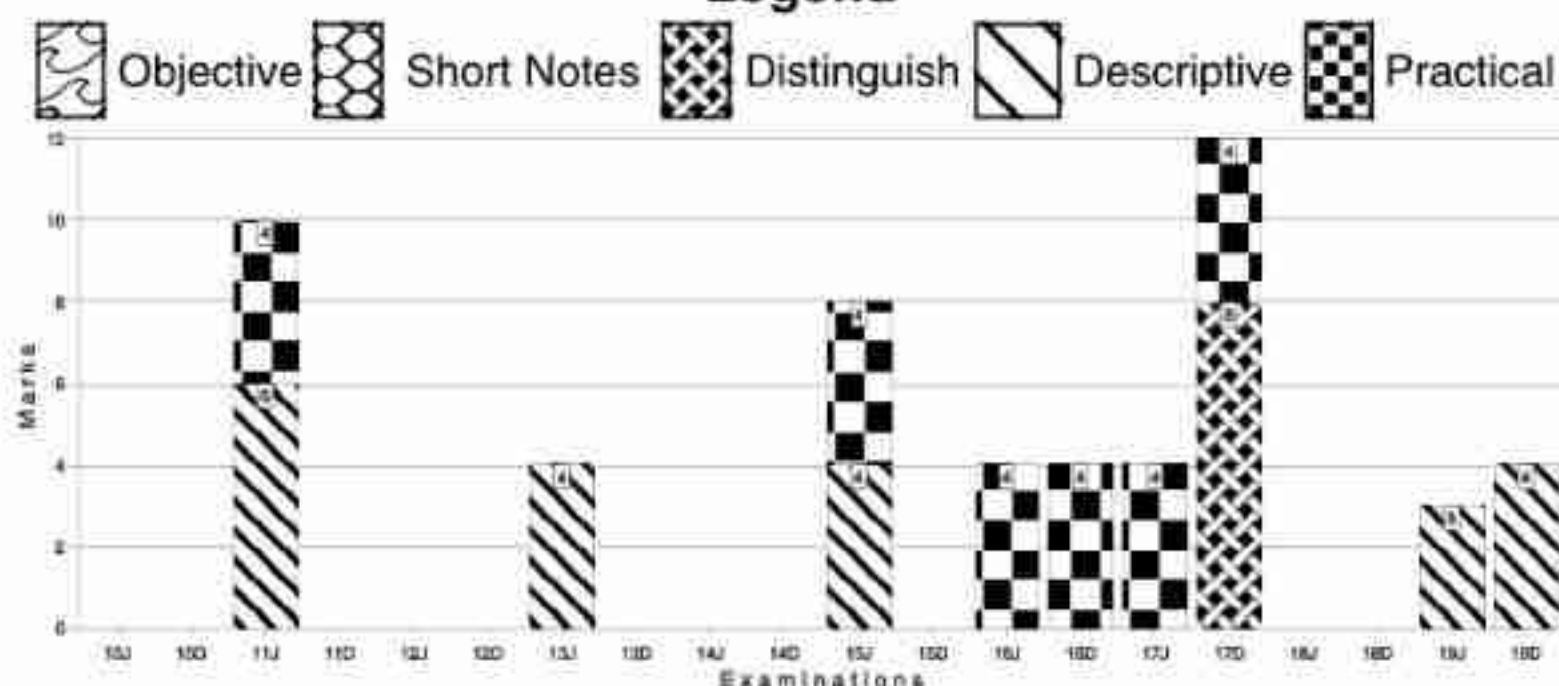
## AN OVERVIEW OF INTER CORPORATE LOANS, INVESTMENTS, GUARANTEES AND SECURITY, RELATED PARTY TRANSACTIONS

### THIS CHAPTER INCLUDES

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Introduction to investment</li> <li>• Loans and investments by companies</li> <li>• Limit for loans, guarantees, security and instrument.</li> <li>• Non applicability of section 186</li> <li>• Penalty for contravention of section 186</li> <li>• Register of loans made, guarantees given, securities provided and investments made.</li> </ul> | <ul style="list-style-type: none"> <li>• Inspection of register.</li> <li>• Punishment for contravention and exemptions.</li> <li>• Investments to be held in company's own name and exemption</li> <li>• Register of investments not held in company's own name</li> <li>• Related Party Transactions</li> </ul> |
|--|---|

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

### Legend



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for registration and password see first page of this book.



**CHAPTER AT A GLANCE****Investments**

Investments' has been used in a limited sense in the lesson to mean the investing of money in shares, stock, debentures or other securities.

**Loans and Investments by Companies (Section 186)**

A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. [Sub-section (1) of section 186]

However, the aforesaid provisions shall not affect,—

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force. [Proviso to sub-section (1) of Section 186]

**Limits for Loans, Guarantees, Security and Investment - Section 186(2)**

No Company shall, directly or indirectly:

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee, or provide security, in connection with a loan to any other body corporate or person; and
- (c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;

exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more unless the same is previously authorised by a special resolution passed in a general meeting.

**Non Applicability of Section 186**

**Sub-section (11) of Section 186** provides that nothing contained in this section, except sub-section (1), shall apply—

- (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;
- (b) to any investment—
  - (i) made by an investment company;
  - (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of Section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
  - (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under **Chapter III-B of the Reserve Bank of India Act, 1934** and whose principal business is acquisition of securities.

**Penalty for Contravention of Section 186**

If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. [Section 186(13)]

**Investments to be held in company's own home**

As per the Act, all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name. This requirement is confined to only those investments which are made by it on its own behalf and not on behalf of someone else. However, in certain circumstances, the Act exempts the companies from complying with the above provisions.

**Investment not held in company's own home**

When any shares or securities in which investments have been made by a company are not held by it in its own name as a beneficial owner when such investments are held in the name of a depository pursuant to permissible conditions given in the Act, the company shall forthwith enter in a register maintained by it for the purpose, particulars as specified in the Act.

**Related Party Transactions**

According to Section 2(76) of Companies Act, 2013, "related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:  
Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any body corporate which is—
  - a holding, subsidiary or an associate company of such company ;
  - a subsidiary of a holding company to which it is also a subsidiary; or
  - an investing company or the venturer of the company.



**Nature of Related Party Transactions**

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013. Section 188 (1) of the Act provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to—

- (i) sale, purchase or supply of any goods or materials;
- (ii) selling or otherwise disposing of, or buying, property of any kind;
- (iii) leasing of property of any kind;
- (iv) availing or rendering of any services;
- (v) appointment of any agent for purchase or sale of goods, materials, services or property;
- (vi) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (vii) underwriting the subscription of any securities or derivatives thereof, of the company:

**List of Important Forms**

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
MBP-1	Physical Form	Notice of interest by director	184(1)	9(1)
MBP-2	Physical Form	Register of loans, guarantee, security and acquisition made by the company	186(9)	12(1)
MBP-3	Physical Form	Register of investments not held in its own name by the company	187(3)	14(1)



2.412	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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MBP-4	Physical Form	Register of contracts with related party and contracts and Bodies etc. in which directors are interested.	189(1)	
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## DISTINGUISH BETWEEN

**2017 - Dec [2]** Distinguish between the following:

- (b) 'Free Reserves' and 'Net Worth' under the provisions of Companies Act, 2013. **(4 marks)**
- (c) 'Related Party' and 'Relative' as defined and applied under the Companies Act, 2013. **(4 marks)**

**Answer:**

**(b) Free Reserves**

As per **Section 2(43)** "free reserves" means such reserves which, as per the latest audited balance Sheet of a company, are available for distribution as dividend:

**Provided that:**

- any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- 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.

**Whereas**

**"Net Worth"** means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Amendment made by Companies (Amendment) Act, 2017**

**account and debit or credit balance of profit and loss account**, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**(c)** According to **Section 2(76) of Companies Act, 2013**, "**related party**", with reference to a company, means:

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any company which is—
  - a holding, subsidiary or an associate company of such company; or
  - a subsidiary of a holding company to which it is also a subsidiary;

According to Notification no. GSR 464(E), dated 05/06/2015 in case of Private Companies this subclause shall not apply with respect to Section 188.

- (ix) such other person as may be prescribed;

**Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014** prescribes, a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

According to Section 2(77), 'relative' with reference to any person means anyone who is related to another, if: (i) they are members of a HUF; (ii) they are husband and wife; or (iii) one person is related to the other in such manner as may be prescribed.

According to **Rule 4 of the Companies (Specification of Definitions Details) Rules, 2014**, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:

- (1) Father: Provided that the term "Father" includes step-father.
- (2) Mother: Provided that the term "Mother" includes the step-mother.
- (3) Son: Provided that the term "Son" includes the step-son.
- (4) Son's wife.
- (5) Daughter.
- (6) Daughter's husband.
- (7) Brother: Provided that the term "Brother" includes the step-brother;
- (8) Sister: Provided that the term "Sister" includes the step-sister.

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## DESCRIPTIVE QUESTIONS

**2009 - Dec [6]** (a) The power to invest funds of the company is the prerogative of the Board of directors under Section 179. Discuss the limitations on such powers of the Board, if any, relating to inter-corporate loans and investments under Section 186. **(6 marks) [CSEM - II]**

Answer:

1.	<b>Powers of Board of Directors</b>	<b>Section 179 of the Companies Act, 2013</b> has given wide powers to the Board of Directors of a company to invest the funds of the company. Every resolution delegating the power referred to in clause (d) of Sub-Section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investment which can be made, by the delegate.	
2.	<b>Power to make loan, borrow money is subject to the limit specified in Sec. 186</b>	<b>Limits under Sec. 186</b>	<p>The Board also has the power to make loan, borrow money etc. However, power of board under <b>Section 179</b> to make loan, give guarantee or provide security has been restricted under <b>Section 186 of Companies Act, 2013</b> which is mentioned hereunder.</p> <p>No company shall directly or indirectly-</p> <ul style="list-style-type: none"><li>(a) give any loan to any person or other body corporate;</li><li>(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and</li><li>(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,</li></ul> <p><b>Exceeding</b></p> <ul style="list-style-type: none"><li>• 60%. of its paid-up share capital, free reserves and securities premium account or</li></ul>



			<ul style="list-style-type: none"> <li>100% of its free reserves and securities premium account, <b>Whichever is more.</b></li> </ul>
		<b>Approval by way of special resolution</b>	Where the aggregate of the loan and investment, etc., so far made in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board of Directors, exceed the aforesaid limits, no investment or loan shall be made or guarantee given or security provided unless previously authorised by a special resolution passed in a general meeting.

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**2011 - June [4]** (b) State the procedure for granting loan by one company to another company. **(6 marks) [CSEM - II]**

**Answer:**

Procedure relating to inter corporate loans and investments		
1.	<b>Board meeting u/s 173</b>	Convene a Board meeting after giving notice to all the directors as per <b>Section 173 of Companies Act, 2013</b> to approve the proposal for making inter-corporate loans or investments.
2.	<b>Proposal in board meeting</b>	Hold board meeting to consider the proposal to give loan or make investment and- 1. If the aggregate amount of proposed loan/investment is within the limits specified in the <b>Section 186(1)</b> of the Act, then pass the resolution with all the directors present at the meeting consenting thereto.



		2. If the aggregate amount of proposed loan/investment exceeds the specified limits under <b>Section 186 of Companies Act, 2013</b> then pass the resolution with all directors present subject to the approval of shareholders in the general meeting. <ul style="list-style-type: none"><li>– Fix time, date and venue for holding general meeting to pass the special resolution.</li><li>– To authorize to send a notice on the behalf of Board of Directors.</li></ul>
3.	<b>Notice for General Meeting</b>	Issue notice in writing at least twenty-one days before the date of general meeting proposing the special resolution.
4.	<b>General meeting and SR</b>	Hold the general meeting and pass the special resolution.
5.	<b>PFI's Approval</b>	Ensure that approval of the public financial institutions has been obtained before implementing the proposal if the company has taken any term loan from any one of the financial institutions.
6.	<b>Entry of register of investment</b>	Enter the requisite particulars in respect of every investment or loan made in the register maintained for this purpose within seven days of making of such loan or investment.

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**2013 - June [7]** (b) Your company, which is a public limited company wishes to make investments in shares of a company. The total investment exceeds the statutory limit stipulated by the Companies Act, 2013. What are the formalities to be complied with in this regard ? **(4 marks) [CSEM - II]**

Answer:

1.	<b>Provisions of Sec. 186</b>	<p>No Company shall, directly or indirectly:</p> <p>(a) give any loan to any person or other body corporate;</p> <p>(b) give any guarantee, or provide security, in connection with a loan to any other person body corporate or person; and</p> <p>(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;</p> <ul style="list-style-type: none"> <li>Exceeding 60% of its paid-up share capital, free reserves and securities premium account OR</li> <li>100% of its free reserves and securities premium account,</li> </ul> <p>Whichever is more unless the same is previously authorised by a special resolution passed in a general meeting.</p>	
2.	<b>Formalities to make investment in excess of the limits as specified u/s 186</b>	<p>A public limited company wishing to make investments in shares of a company in excess of the above statutory limit provided in <b>Section 186 of Companies Act, 2013</b> will have to comply with the following formalities:</p>	
		<b>1. General Meeting and SR.</b>	It has to convene a general meeting and pass a special resolution before making the investment.
		<b>2. Contents of notice to GM</b>	Notice of such resolution shall indicate: <ul style="list-style-type: none"> <li>(i) the specific limits;</li> <li>(ii) the particulars of body corporate in which the investment is proposed to be made;</li> </ul>



			(iii) the purpose of the investment; (iv) specific sources of funding; and (v) any other detail which is material.
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**2015 - June [6]** (c) What transactions are considered as 'related party transactions' under the provisions of the **Companies Act, 2013** ? Explain.  
(4 marks)

**Answer:**

Provisions of Companies Act Regarding Related Party Transaction		
1.	<b>Meaning of related party. Sec. 2(76) of Companies Act, 2013</b>	With reference to company, the term 'related party' means and includes the following: <ul style="list-style-type: none"><li>- a director or his relative,</li><li>- KMP or their relative,</li><li>- a firm in which a director, manager or his relative is a partner,</li><li>- a private company in which a director or manger is a director or members,</li><li>- a public company in which a director or Manager is a director or holds along with his relatives more than 2% of its paid-up share capital.</li><li>- a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is accustomed to act,</li><li>- a holding/ subsidiary or associate company, subsidiary's subsidiary, and such person as would be prescribed.</li></ul>



2.420	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
2.	<b>Related Party Transaction Sec. 188</b>	<p>The scope of dealing with related party transaction has been given in <b>Companies Act, 2013</b>, stating as the contracts or arrangements with above mentioned related party which comes with respect to the following shall be covered under the scope of the provision:</p> <ul style="list-style-type: none"><li>(a) Sale, purchase or supply of any goods or materials;</li><li>(b) Selling or otherwise disposing of, or buying, property of any kind;</li><li>(c) Leasing of property of any kind;</li><li>(d) Availing or rendering of any services;</li><li>(e) Appointment of any agent for purchase or sale of goods, materials, services or property;</li><li>(f) Such, related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</li><li>(g) Underwriting the subscription of any securities or derivatives thereof, of the company.</li></ul>
3.	<b>Ordinary Resolution</b>	<ul style="list-style-type: none"><li>(a) Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a ordinary resolution.</li><li>(b) Provided further that no member of the company shall vote on such ordinary resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. (This proviso is not applicable on private company)</li></ul>

4.	When Prior Approval of	Transaction	When Ordinary Resolution is Required
	<b>Company by Ordinary Resolution Required for Related Party Transactions [Rule 15 of Companies (Meeting of Board and its Powers) Rules, 2014]</b>	<ol style="list-style-type: none"><li>1. Sale, purchase or supply of any goods or materials, directly or through appointment of agent.</li><li>2. Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent.</li><li>3. Leasing of property of any kind</li><li>4. Availing or rendering of any services, directly or through appointment of agent</li><li>5. Is for appointment to any office or place of profit in the company, its</li></ol>	<ol style="list-style-type: none"><li>1. Exceeding ten percent of the turnover of the company or rupees one hundred crore, whichever is lower.</li><li>2. Exceeding ten percent of net worth of the company or rupees one hundred crore, whichever is lower.</li><li>3. Exceeding ten percent of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower</li><li>4. Exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower</li><li>5. At a monthly remuneration exceeding two and half lakh rupees</li></ol>

		subsidiary company or associate company 6. Is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company	6. Exceeding one percent of the net worth.
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**2019 - June [2]** (d) Who is a “related party” as defined in Section 2(76)?  
(3 marks)

**Answer:**

According to **Section 2(76) of the Companies Act 2013**, “related party”, with reference to a company, means —

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) any body corporate which is
- a holding, subsidiary or an associate company of such company;
  - a subsidiary of a holding company to which it is also a subsidiary; or
  - an investing company or the venturer of the company.

**Explanation:** For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate

- (ix) such other person as may be prescribed.

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**2019 - Dec [5]** (e) A company passed a special resolution in its general meeting for grant of loan to another body corporate in excess of limits specified in section 186(2). However, one of the directors contended that prior approval of their financial institution is also required for such lending. Explain whether the contention of the director is acceptable. **(4 marks)**

### PRACTICAL QUESTIONS

**2011 - June [4]** (a) As on 31<sup>st</sup> March, 2010, the balance sheet of ABC Ltd. shows the following :

	₹ in Crores
Paid-up share capital	30
Reserves and surplus	40
Reserve for redemption of debenture	20
Capital reserve	10

The company made loan/stood guarantee for loans to other companies as below :

Loan to DEF Ltd. ₹ 15 crore

Guarantee given on behalf of GHK Ltd. ₹ 15 crore

LKP Ltd. approached ABC Ltd. for loan of an amount of ₹ 20 crore

Advise the management of ABC Ltd. as to whether the company can give loan of ₹ 20 crore to LKP Ltd. **(4 marks) [CSEM - II]**



Answer:

1.	<b>Provision Section 186</b>	As per <b>Section 186 of the Companies Act, 2013</b> , a company can give loan/ guarantee to company/companies to the extent of 60% of paid - up capital, free reserve and Securities Premium Account or 100% of free reserves and Securities Premium Account whichever is higher with the approval of Board. For any amount beyond these limits approval of the company is required.										
2.	<b>Analysis of the given problem</b>	<p>The paid up capital of ABC Ltd. is ₹ 30 Cr. and its free reserves is ₹ 40 Cr. Board of Directors of ABC Ltd. therefore, can give loan/guarantee upto. 60% of (30 + 40) crores = 42 crores or 100% of 40 crores = 40 crores whichever is more. Hence, ₹ 42 crores is limit beyond which the company needs shareholders approval for giving loan/guarantee.</p> <p>Existing loans and guarantee-</p> <table><tr><td>Loan to DEF Ltd.</td><td>₹ 15 Crores</td></tr><tr><td>Guarantee to GHK Ltd.</td><td>₹ 15 Crores</td></tr><tr><td>Total</td><td>₹ 30 Crores</td></tr><tr><td>Proposed loan to LKP Ltd.</td><td>₹ 20 Crores</td></tr><tr><td>Total</td><td>₹ 50 Crores</td></tr></table>	Loan to DEF Ltd.	₹ 15 Crores	Guarantee to GHK Ltd.	₹ 15 Crores	Total	₹ 30 Crores	Proposed loan to LKP Ltd.	₹ 20 Crores	Total	₹ 50 Crores
Loan to DEF Ltd.	₹ 15 Crores											
Guarantee to GHK Ltd.	₹ 15 Crores											
Total	₹ 30 Crores											
Proposed loan to LKP Ltd.	₹ 20 Crores											
Total	₹ 50 Crores											
3.	<b>Conclusion</b>	The amount of ₹ 50 Crores is beyond the authorized powers of the Board hence approval of the shareholders by a special resolution is required to be passed in General meeting. In case the company is a listed company such an approval should be taken through postal ballot.										

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**2015 - June [4]** (d) Board of directors of Joy Ltd., by a resolution passed at its meeting, decide to provide a loan of ₹ 50 crore to Happy Ltd.. The paid-up share capital of Joy Ltd. on the date of resolution was ₹ 100 crore and the aggregate balance in the free reserves and securities premium account stood at ₹ 40 crore. Examining the provisions of the Companies Act, 2013, decide whether the Board's resolution to provide a loan of ₹ 50 crore to Happy Ltd. is valid? **(4 marks)**

**Answer:**

<b>1.</b>	<b>Provisions of Sec. 186(2)</b>	<b>(a) Limits</b>	<p>No company shall directly or indirectly –</p> <p>No company shall directly or indirectly —</p> <p>(a) give any loan to any person or other body corporate;</p> <p>(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and</p> <p>(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,</p> <p><b>Exceeding</b></p> <ul style="list-style-type: none"> <li>• 60% of its paid-up share capital, free reserves and securities premium account or</li> <li>• 100% of its free reserves and securities premium account,</li> </ul> <p>Whichever is more unless the same is previously authorised by a special resolution passed in the company's general meeting.</p>
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		<b>(b) Unanimous Board resolution for loan/ investment</b>	No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all directors present at the meeting.
2.	<b>Analysis of the given problem</b>	<b>Accordingly, in the given case,</b> the company can grant a loan of ₹ 50 crore, since the company can grant a loan up to ₹ 84 crore (i.e. 60% of ₹ 100 crore + ₹ 40 crore i.e. = ₹ 84 or ₹ 40 crore whichever is more) without the approval of the general meeting by a special resolution and the Board meeting with the consent of all the directors present.	
3.	<b>Conclusion</b>	Only Board's resolution to provide a loan of ₹ 50 crore to Happy limited without the approval of general meeting by a special resolution is valid.	

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**2016 - June [2A] (Or)** (iv) Virat, a person of 21 years of age is pursuing MBA (Finance) course at a reputed recognised business school. He is not a shareholder of Grow (Pvt.) Ltd. He wishes to inspect the register of investments in securities not held in company's name and annual return of Grow (Pvt.)Ltd. He also wants to take copies thereof. Examining the relevant provisions of the Companies Act, 2013, advise Virat whether he would be successful in this regard. **(4 marks)**

**Answer:**

1.	<b>Section 187</b>	<b>Section 187</b> read with Rule 14 of Companies (Meetings of Board and its Powers), Rules, 2014 provides that every company shall maintain Register of Investment in securities not held in company's name in Form MBP-3. Sub-section 3 of the section provides that such register shall be open to
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		inspection by any member or debentureholder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.
2.	<b>Conclusion</b>	<b>Thus, in the given case</b> Virat who is not a member of the company is not eligible to inspect the Register of Investment in securities not held in company's name.
3.	<b>Section 94</b>	<b>Section 94</b> provides that copies of annual return filed under <b>Section 92</b> shall be kept at registered office of the company. Further the copies of all the returns shall be open for inspection by any member, debentureholder, other security holder or beneficial owner during business hours without payment of fees and by any other person on payment of such fees as may be prescribed under <b>Companies (Registration Office and Fee) Rules, 2014</b> . Further he may take a copy of the return on payment of such fees as may be prescribed in above said rules.
4.	<b>Conclusion</b>	Hence, Virat may inspect and take copy of Annual Return and not the Register of Investment in securities not held in company's name.

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**2016 - Dec [4]** (b) Barkha Ltd. has four directors on its Board. A Board meeting was convened which was attended by only two directors, where Rekha was appointed as an additional director. Rekha is related to both the directors. Referring to the provisions of the Companies Act, 2013, examine the validity of the appointment. **(4 marks)**



2.428

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Answer:**

1	<b>Section 188 of Companies Act, 2013</b>	<b>Section 188 of Companies Act, 2013</b> provides that except with the consent of the Board of Directors given by way of resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to appointment of such related party or any office or place of profit in the company.
2	<b>Conclusion</b>	Under the given case both the present directors were related to Ms. Rekha who was appointed as additional director at the meeting. Wherein the transaction is at Arm's length basis the appointment stands valid.

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**2017 - June [3]** (c) RR Limited has decided to make investment in other companies for ₹ 50 lakhs, which is in excess of 60% of the company's paid-up share capital, free reserves and securities premium account. Company has 5 directors. Four directors were present in the Board meeting, three directors have given their consent but one director abstained from voting. The decision of the Board was noted in the minutes of Board meeting and decided to make such investment by passing of Board resolution with majority. Referring to the provisions of Companies Act, 2013, examine the validity of the Board's decision. **(4 marks)**

**Answer:**

In accordance with the provisions of the **Companies Act, 2013**, as contained in **Section 186 (5)**, no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

Further, under the provisions of **Section 186(2) and 186(3)**, the loan amount must not exceed 60% of its paid-up capital, free reserves and securities premium account or 100% of free reserves and securities premium account, whichever is more. In case, the company wishes to exceed the said limit, prior approval of company through special resolution would be acquired.

**In the given case**, in absence of adequate information, even if we assume that ₹ 50 lakh does not exceed the 100% of free reserves and securities premium account, RR limited has not complied with the provisions of **Section 186 (5) of the Companies Act, 2013** where consent of all the directors present is required. The resolution of the Board of Directors therefore, is not valid and has no legal effect.

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**2017 - Dec [4]** (d) XYZ Ltd., a company, has a paid up share capital of ₹ 60 crores and free reserves of ₹ 25 crores. It desires to make a loan of ₹ 20 crores to M Ltd. The company XYZ Ltd. has already made investments in many other companies including loans to the extent of ₹ 35 crores. Can the company go ahead with loan to M Ltd. ? Please advise the company about the procedure to be followed by it. **(4 marks)**

**Answer:**

As per **Section 186 of the Companies Act, 2013** a company shall make investments upto 60 percent of paid up share capital and free reserves or 100 percent of free reserves and securities premium account whichever is more.

In this case, company can make maximum investment of 60%

$(60+25) = 51$  crores.

Since company has already invested 35 crores it can further invest 16 crores only.

To invest upto 20 crores they need to take approval of shareholders through a special resolution.

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**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION****SHORT NOTES**

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**Q1.** Write short note on the following:

- (a) Related Party not to vote on resolution
- (b) Arm's length transaction

**Answer:**

- (a)** Second Proviso to Section 188 (1) of the Act provides that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

This shall not apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties.

- Exemption to Private Companies: In case of private companies second proviso shall not apply (Notification No. GSR 464(E) dated 5-6-2015).
- Exemption to Government Companies: In case of Government companies above mentioned Second Proviso to the section 188 (1) of the Act shall not apply to -
  - (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company;
  - (b) a Government company other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be the State Government before entering into such contract or arrangement. (Notification No. GSR 463(E) dated 5-6-2015).





- (b) As per the explanation (2) to Section 188(1) of the Act, the expression “arm’s length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

The phrase ‘on an arm’s length basis’ is in fact ‘at arm’s length’ or ‘an arm’s length relationship’ which means avoiding intimacy or close contact. The phrase ‘at arm’s length’ in relation to dealings between two parties is used to refer to dealings when neither party is controlled by the other.

Arm’s length is the condition or fact that the parties to a transaction are independent and on an equal footing. Arm’s length transaction is a transaction between unrelated persons or organizations, in which there is no improper influence exercisable by one party over another, and no conflict of interests of or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship. Parties are said to deal at “arm’s length” when they conduct the business without being subject to the other’s control or overmastering influence. An arm’s length transaction is a transaction between companies or people that do not have close contact or any financial connections and be or deal at arm’s length means without a close relationship with a person or a company. The burden to establish that a transaction was at arm’s length would be on the company and there must be sufficient and pertinent material to prove that the terms of the transaction with a related party were purely commercial and the same as in the case of a transaction between the company and a non- related party and there were no extra-commercial considerations.

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**DESCRIPTIVE QUESTIONS**

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**Q2.** Discuss the role of Audit Committee in Related Party transactions.

**Answer:**

Section 177(4)(iv) of the Companies Act, 2013 provides that the terms of reference of Audit Committee shall include approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;

Thus, it is the responsibility of audit committee to approve the transactions of the company with related parties.

As per **Rule 6A of Companies (Meeting of Board and its Powers) Second Amendment Rules, 2015**, the audit committee may make omnibus approval for all related party transactions proposed to be entered into by the company subject to the following conditions, namely -

1. The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:
  - (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
  - (b) the maximum value per transaction which can be allowed;
  - (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
  - (d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
  - (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.

2. The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:
  - (a) repetitiveness of the transactions (in past or in future);
  - (b) justification for the need of omnibus approval.
3. The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.
4. The omnibus approval shall contain or indicate the following:-
  - (a) name of the related parties;
  - (b) nature and duration of the transaction;
  - (c) maximum amount of transaction that can be entered into;
  - (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
  - (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.
5. Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.
6. Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

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**Q3.** Which companies are exempt from the provisions with regard to loans and investments by companies?

**Answer:**

**Non Applicability of Section 186**

**Exemptions**

Sub-section (11) of Section 186 provides that nothing contained in this section, except sub-Section (1), shall apply—

- (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;
- (b) to any investment—
  - (i) made by an investment company;
  - (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of Section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
  - (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under **Chapter III-B of the Reserve Bank of India Act, 1934** and whose principal business is acquisition of securities.

**Exemption from Applicability of Section 186 to Government Company**

In view of the Central Government's notification dated 5<sup>th</sup> June, 2015 under **Section 462 of the Companies Act, 2013**, **Section 186** shall not apply to:

- (a) a Government company engaged in defence production;
- (b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

**Penalty for Contravention of Section 186**

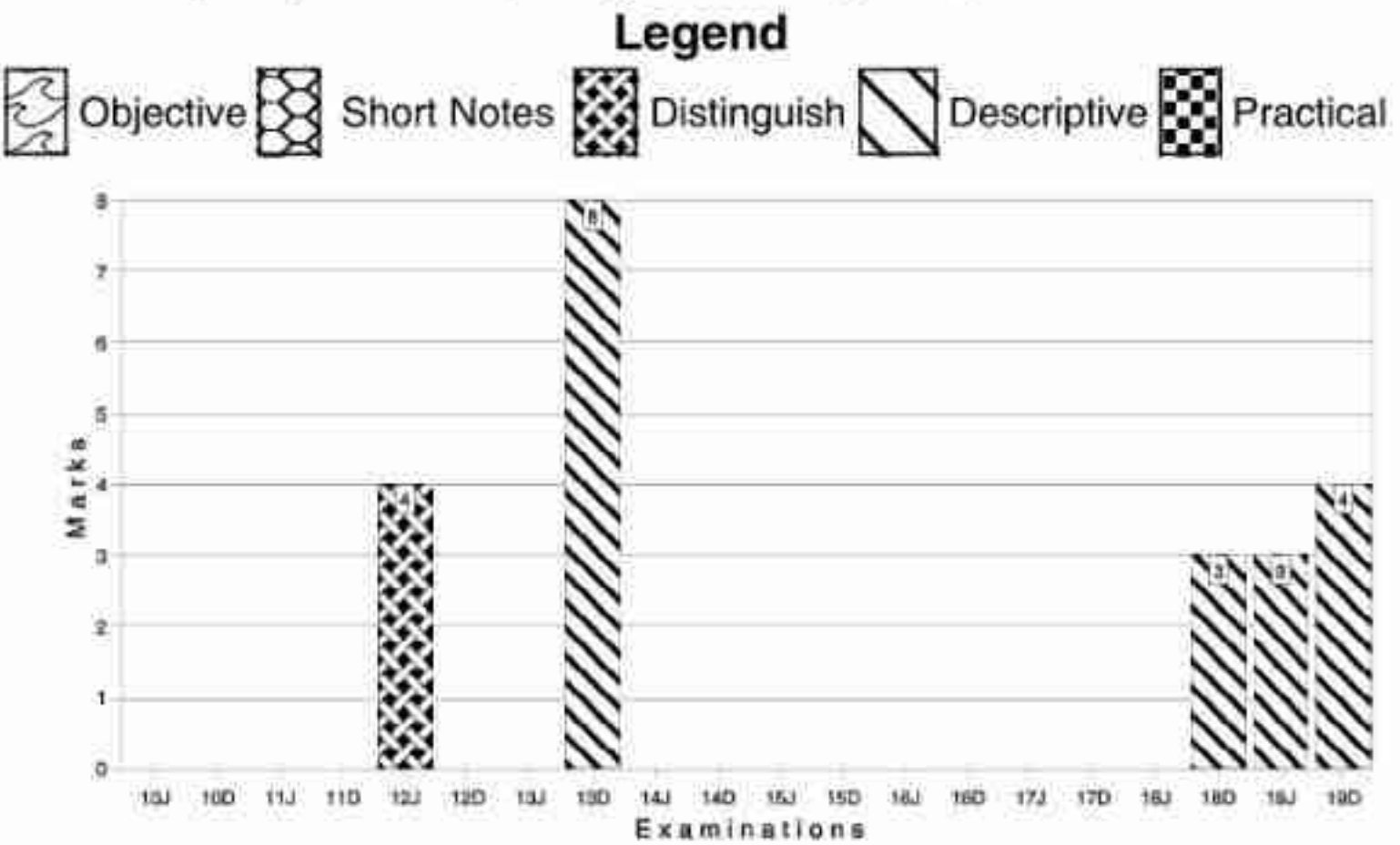
If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. [Section 186(13)]

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<b>11</b>		<b><i>REGISTERS AND RECORDS</i></b>
<b>THIS CHAPTER INCLUDES</b>		
<ul style="list-style-type: none"><li>• Register to be maintained under Companies Act, 2013</li></ul>		<ul style="list-style-type: none"><li>• Returns</li><li>• Preservations of Records</li></ul>

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



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**CHAPTER AT A GLANCE****Introduction**

The **Companies Act, 2013** lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and copies of certain returns, documents etc. and to give certain notices, file certain returns, forms, reports, documents etc. with the Registrar of Companies within certain specified time limits and with the prescribed filing fees. These books are known as Statutory Books.

**Statutory books and registers**

Every company incorporated under the Act is required to keep at its registered office, *inter alia*, the following statutory books and registers:

- Register of securities bought back. (**Section 68 Rule 17(12) of Companies (Share Capital and Debenture) Rules, 2014.**
- Register of deposits. [**Section 73, Rule 14 Companies (Acceptance of Deposits) Rules, 2014.**
- Register of charges (**Section 81 Rule 7 of Company's Registration of Charges, Rules, 2014).**
- Register of members (**Section 88(1) and Rule 3(1) of Companies (Management and Administration) Rules, 2014.**
- Index of members. [**Sections 88(2) and the Rule 6 of Companies (Management and Administration) Rules, 2014]**
- Register of debenture holders **Section 88 (1).**
- Index of debenture holders (**Section 88 (2)).**
- Register and index of beneficial owners. (**Section 88 (3)).**
- "Foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.( **Section 88 (4)**)
- Register of Renewed and Duplicate Share Certificates. [**Rule 6 of the Companies (Share Capital and Debenture) Rules, 2014]**

- Register of sweat equity shares [Section 54 and Rule 8 (14) of Companies (Share Capital and Debenture) Rules, 2014]
- Annual Return (Section 92) Rule 11 of The Companies (Management and Administration) Rules, 2014).
- Register of Postal Ballot [Section 110 and Rule 22 of the Companies (Management and Administration) Rules, 2014]
- Books containing minutes of general meeting and of Board and of committees of Directors. [Section 118] Books of Accounts. [Section 128]
- Register of Directors/ key managerial personnel. (Section 170 (1)).
- Register of investments in securities not held in company's name. [Section 187, Rule 14 of Companies (Meetings and Board Powers) 2014 ].
- Register of loans, guarantees given and security provided or making acquisition of securities (Section 186/9 rule 12 Companies Meetings of Boards and its Powers Rules, 2014).
- Register of contracts with companies/firms in which directors are interested. [Section 189(5) Rule 16 of Companies (Meetings of Boards and its Powers) Rules, 2014].

#### List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
MGT-1	Physical Form	Register of members	88(1)(a)	3(1)
MGT-2	Physical Form	Register of debenture holders/ other securities holders	88(1)(b), (c)	4
MGT-3	Physical Form	Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept	88(4)	7(2)
MGT-4	Physical Form	Declaration by the registered owner of shares who does not hold the beneficial interest in such shares	89(1)	9(1)

2.438	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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MGT-5	Physical Form	Declaration by the beneficial owner who holds or acquires beneficial interest in shares but whose name is not entered in the register of members	89(2), (3)	9(2)
MGT-6	Physical Form	Return to the Registrar in respect of declaration under section 89 received by the company	89(6)	9(3)
MGT-7	Physical Form	Annual Return	92(1)	11(1)
MGT-8	Physical Form	Certificate by a Company Secretary in Practice	92(2)	11(2)
MGT-9	Physical Form	Extract of Annual Return as on the financial year ended on.....	92(3)	12(1)
MGT-10	Physical Form	Changes in shareholding position of promoters and top ten shareholders	93	13
MGT-11	Physical Form	Proxy form	105(6)	19(3)
MGT-12	Physical Form	Polling Paper	109(5)	21(1)(c)
MGT-13	Physical Form	Report of Scrutinizer (s)	109	21(2)
MGT-14	e-Form	Filing of Resolutions and agreements to the Registrar	94(1), 117(1)	–

## DISTINGUISH BETWEEN

**2012 - June [7]** Distinguish between the following:

(I) 'Statutory books' and 'statistical books'. **(4 marks) [CSEM - II]**

**Answer:**

**Please refer 2008 - Dec [4] (b) on page no. 439**

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### DESCRIPTIVE QUESTIONS

**2008 - Dec [4]** (b) Enumerate the differences between 'statutory books' and 'statistical books' of a company? **(4 marks) [CSEM - II]**

**Answer:**

<b>1. Statutory Books</b>	Every company incorporated under the Act is required to keep at its registered office, <i>inter alia</i> , the following statutory books and registers: (i) Register of investments in securities made by the company but not hold by it in its own name under <b>Section 18 of Companies Act, 2013.</b> (ii) Register of charges, under <b>Section 85 of Companies Act, 2013.</b> (iii) Register of members under <b>Section 88(1) of Companies Act, 2013.</b> (iv) Minute Books, under <b>Section 118 of Companies Act, 2013.</b> (v) Book of Account, under <b>Section 128 of Companies Act, 2013.</b>
<b>2. Statistical Books</b>	Besides the above statutory or compulsory books, other books and registers are also generally maintained by companies which are called statistical or optional or non statutory books. The following is a list of such important books : (i) Share Application and allotment Book. (ii) Share call Book (iii) Share certificate Book (iv) Share transfer Book (v) Agenda Book etc.

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2.440

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**2009 - June [6]** (b) List out the various registers required to be maintained statutorily under the Companies Act, 2013. **(8 marks) [CSEM - II]**

**Answer:**

<b>Statutory Books and Registers, to be maintained and kept at the registered office of the company</b>	<p>Every company is an incorporated under the Act is required to keep at its registered office <i>inter alia</i>, the following statutory books and registers.</p> <ul style="list-style-type: none"> <li>• Register of securities bought back. <b>(Section 68 and Rule 17(12)</b> of Companies (Share Capital and Debenture) Rules, 2014</li> <li>• Register of deposits. <b>[Section 73 and Rule 14 Companies</b> (Acceptance of Deposits) Rules, 2014</li> <li>• Register of charges. <b>(Section 85 and Rule 7</b> of Companies (Registration of Charges) Rules 2014)</li> <li>• Register of members <b>(Section 88(1) and Rule 3(1)</b> of Companies(Management and Administration) Rules 2014</li> <li>• Index of members. <b>[Sections 88(2) and the Rule 6</b> of Companies (Management and Admini-stration) Rules, 2014]</li> <li>• Register of debenture holders <b>[Section 88 (1)]</b></li> <li>• Index of debenture holders. <b>(Section 88 (2))</b></li> <li>• Register and index of beneficial owners. <b>(Section 88 (3))</b></li> <li>• "Foreign register" containing the names and particulars of the members, debentureholders, other security holders or beneficial owners residing outside India.( <b>Section 88 (4)</b>)</li> <li>• Register of Renewed and Duplicate Share Certificates. [Rule 6 of the Companies (Share Capital and Debenture) Rules, 2014]</li> <li>• Register of sweat equity shares <b>[Section 54 and Rule 8 (14) of Companies (Share Capital and Debenture ) Rules, 2014]</b></li> </ul>
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	<ul style="list-style-type: none"><li>• Annual Return (<b>Section 92</b>) and Rule 11 of The Companies (Management and Administration) Rules 2014</li><li>• Register of Postal Ballot [<b>Section 110 and Rule 22 of the Companies (Management and Administration) Rules, 2014</b>]</li><li>• Books containing minutes of general meeting and of Board and of committees of Directors. [<b>Section 118</b>]</li><li>• Books of accounts. [<b>Section 128</b>]</li><li>• Register of Directors/ Key Managerial Personnel. [<b>Section 170 (1)</b>]</li><li>• Register of investments in securities not held in company's name. [<b>Section 18</b> and Rule 14 of Companies (Meetings of Board and its Powers) Rules, 2014 ]</li><li>• Register of loans, guarantees given and security provided or making acquisition of securities (<b>Section 186(9)</b> and Rule 12 Companies Meetings of Boards and its Powers Rules 2014)</li><li>• Register of contracts with companies/firms in which directors are interested. [<b>Section 189(5)</b> and Rule 16 of Companies (Meetings of Boards and its Powers) Rules, 2014].</li></ul>
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**2013 - Dec [4]** (b) Chairman of your company wants to know the procedure of condonation of delay by Central Government in filing the document with the Registrar of Companies. As a Company Secretary, prepare a note for consideration of the Chairman. **(8 marks)**

**Answer:**

1.	<b>Condonation of Delay in filling any document with ROC by central Govt. Sec. 460</b>	The Central Government may for reasons to be recorded in writing, condone the delay where any document required to be filed with the Registrar under any provision of the Act is not filed within the time specified therein.
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2. Procedure for condonation by CG-	<p>1. <b>Board Meeting:</b> Convene a Board Meeting and pass a resolution for seeking condonation of delay in filing the document.</p> <p>2. <b>Application to CG with prescribed documents:</b> Submit an application to the Central Government, in pdf format, as attachment to prescribed form in this regard, indicating alongwith the reasons for such delay. The application should be accompanied by a copy of the Board Resolution seeking condonation of delay, latest audited financial statement (consolidated including financial statement), certified copy of the memorandum and articles of the association and filling fees.</p> <p>3. <b>Condonation by CG:</b> The Central Government may for reasons to be recorded in writing, condone the delay.</p>
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**2018 - Dec [2]** (b) Minutes of the meetings of the company shall be preserved for a period of not less than eight years. Comment with reference to the provisions of the Companies Act, 2013. **(3 marks)**

**Answer:**

**Section 118 of Companies Act, 2013**, read with Secretarial Standards on Board Meetings (SS-1) and Secretarial Standards on General Meetings (SS -2), Minutes of all Board Meetings and shareholders meetings shall be preserved permanently in physical or in electronic form with Timestamp.

— Space to write important points for revision —

**2019 - June [2]** (b) What are the requirements as to the maintenance of Register of Postal Ballot? **(3 marks)**



**Answer:**

**Section 110 of the Companies Act, 2013** and Rule 22(10) of the Companies (Management and Administration) Rules, 2014 states that every company which is required to or which proposes to get any resolution passed through postal ballot should maintain a separate register for each postal ballot to record the assent or dissent received through postal ballot.

The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

Entries in the register should be made immediately after the opening of postal ballots. Separate folios should be maintained for each resolution passed through postal ballot. The register should be kept at the registered office of the company after the Scrutinizer has submitted his report.

The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

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**2019 - Dec [5A] (Or)** (iv) You are a company secretary in a company. The Board of Directors want to know the details that should be entered in the Register of Renewed and Duplicate share certificates and the period for which such register should be maintained. Clarify the Board in this regard.

**(4 marks)**







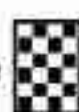
# 12A AN OVERVIEW OF CORPORATE RE-ORGANISATION - MERGER AND AMALGAMATION OF COMPANIES

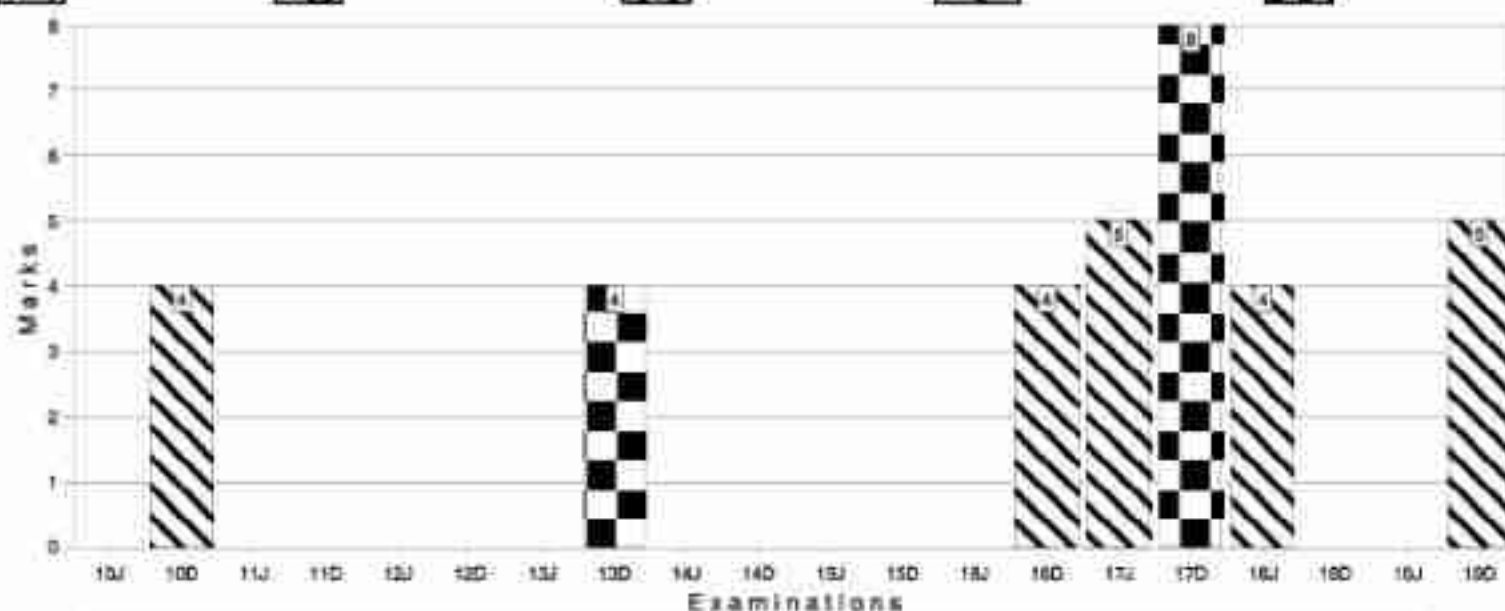
## THIS CHAPTER INCLUDES

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>Regulatory framework for merger/ amalgamation</li> <li>Provisions of Companies Act, 2013</li> <li>Power to Compromise or make arrangements with members or creditors</li> <li>Merger and amalgamation of certain companies</li> </ul> | <ul style="list-style-type: none"> <li>Merger and amalgamation of a company with a foreign company</li> <li>Power to acquire shares of shareholders dissenting from scheme or contract approved by majority</li> <li>Purchase of minority shareholding</li> <li>Power of Central Government to provide for amalgamation of companies</li> </ul> |
|--|---|

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

### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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## CHAPTER AT A GLANCE

### Compromise

A compromise means settlement or adjustment of claims in dispute by mutual concessions.

### Arrangement

Arrangement includes a reorganization of share capital of the Company by consolidation of shares of different classes or division of shares into shares of different classes or by both of these methods.

### Reconstruction

Reconstruction', *inter alia*, indicates the process which involves

- (i) the transfer of undertakings of an existing company to another company, usually incorporated for the purpose. The old company ceases to exist. However, all the assets might not pass to the new company;
- (ii) the carrying on of substantially the same business by the same persons;
- (iii) the rights of the shareholders in the old company are satisfied by their being allotted shares in the new company.

### Amalgamation

Amalgamation is the blending of two or more undertakings (companies) into one undertaking, the shareholders of each blending undertaking becoming substantially the shareholders of the other company which holds blended undertakings.

2.446	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<b>Merger</b>		
Merger is a form of amalgamation where all the properties and liabilities of transferor company get merged with the properties and liabilities of the transferee company leaving behind nothing with the transferor company except its name, which also gets removed through the process of law. In reality, companies do not merge; only the assets and liability merge.		
<b>Reverse Merger</b>		
Reverse Merger is the opposite of Merger. No clear definition of reverse merger has been given in the Companies Act nor the term has been precisely defined by the Indian Courts. Reverse Merger represents a case where the loss making company or less profit earning company extends its embracing arms to the profitable company and, in turn, absorbs it in its fold.		
<b>Binding</b>		
The sanctioned scheme would be binding on all the concerned parties. However, in certain circumstances, the Tribunal shall not sanction a scheme of compromise and arrangement.		
<b>No Objection Certificate</b>		
In a scheme of compromise or arrangement, the Tribunal is bound to seek a report of Registrar of Companies as well as a no objection certificate from the Income Tax Authority in order to ensure that the affairs of the Company have not been conducted in a prejudicial manner.		
<b>Explanatory Statement</b>		
An explanatory statement, as provided for in the act, would be attached to every notice calling the meeting.		



### Supervise the Scheme

The Tribunal has the power to supervise the implementation of the scheme and to sanction modification of the terms of the scheme. While sanctioning the scheme; the Tribunal also has the power to order winding up.

### Cross Border Mergers

**Section 234(2)** states that subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash or in Depository Receipts or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

## DESCRIPTIVE QUESTIONS

**2010 - Dec [7]** (c) A demerger scheme was approved by the shareholders, secured and unsecured creditors. The scheme was neither in violation of any law nor against public interest. However, Accounting Standard-14 was not adopted. Whether the scheme can be sanctioned? Explain.

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

**Answer:**

1.	<b>AS - 14 is not applicable to demerger</b>	It was held by the Gujarat High Court in the case of <b>Gallops Realty (P) Ltd. In re. v. K.A. Puj, J. (2010)</b> that Accounting Standard-14 is applicable only in case of amalgamation and not in case of demerger.
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2.448	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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2.	<b>No violation of any law</b>	Further, the scheme was neither in contravention of any law nor against public interest and it was also approved by shareholder, secured and unsecured creditors.
3.	<b>Conclusion</b>	So, in view of this case, the scheme can be sanctioned.

— Space to write important points for revision —

**2016 - Dec [6]** (d) Examining the provisions of the Companies Act, 2013, explain the powers of the Central Government to order amalgamation of companies in public interest. **(4 marks)**

**Answer:**

**Section 237(1)** states that when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

— Space to write important points for revision —

**2017 - June [1]** Comment on the following:

(d) Merger of a 'Subsidiary' Company into 'Holding' Company. **(5 marks)**

**Answer:**

<b>Merger of a 'Subsidiary' Company into 'Holding' Company</b>	(1) As per <b>Section 233 of the Companies Act, 2013</b> , a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:
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- (a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company
  - (b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. Of the total number of shares
  - (c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated and
  - (d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
- (2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.



2.450	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)
	<p>(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.</p> <p>(4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days: Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.</p> <p>(5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under <b>sub-Section (2)</b> stating its objections and requesting that the Tribunal may consider the scheme <b>under Section 232</b>.</p> <p>(6) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in <b>Section 232</b>, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit: Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.</p>

— Space to write important points for revision —



**2018 - June [6]** (b) Serious Ltd. is having three factories in Chennai. The company wants to sell one of the factory. Can the company sell its factory? Further, assuming that the company has also borrowed credit facilities from the bank, explain the statutory provisions under the Companies Act, 2013.

**(4 marks)**

**Answer:**

According to **Sub-Section (1)(a) of Section 180 of the Companies Act, 2013**, the Board of Directors of a company may sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings only with the consent of the company by a special resolution.

Accordingly the company may sell any of its factory with the consent of the company by a special resolution.

Where the company has credit facility on creating charge on such undertaking, the company may be required to obtain a no-objection-certificate from the bank as per contractual obligation and shall also modify the charge accordingly.

— Space to write important points for revision —

**2019 - Dec [1]** Comment on the following:

(b) The provisions of the Companies Act, 2013 relating to compromises and arrangements are uniformly applicable to all companies. **(5 marks)**

### **PRACTICAL QUESTIONS**

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**2013 - Dec [3A] (Or)** (iv) A transferor company got approval for a scheme of amalgamation with the transferee company. An amount of ₹ 5 lakh was deposited by the transferor company on the direction of the Tribunal for settling the dues of employees. An ex-employee of the transferor company objected to the amalgamation citing that he is also entitled for the claim in the amount deposited. Will he succeed ? Give reasons. **(4 marks)**



**Answer:**

<b>1. Facts of the Case</b>	<b>Webnenuro Services Ltd, In Re. [(2009 149 Com Cases 61 Del)]</b> <ul style="list-style-type: none"> <li>• In this case, the objection of the employee was overruled by the Tribunal and the scheme was sanctioned.</li> <li>• The reason given was that the transferor company had, in accordance, with the direction of the Tribunal, deposited the amount with the Registrar General of the Tribunal and in case the ex-employee was found entitled to the amount, he could get it with interest.</li> <li>• The terms and conditions of service of the employees of the transferor company were not affected and there was no legal impediment in sanctioning the proposed scheme of amalgamation.</li> <li>• The scheme was to be sanctioned and the transferor company was to be wound up without formal winding up.</li> </ul>
<b>2. Tribunal's sanction of scheme only if it <i>bonafide</i></b>	Normally, a Tribunal does not sanction a scheme of amalgamation if it is not <i>bona fide</i> or is intended to cover misdeeds of delinquent directors or if the object of the scheme is to prevent investigation or there is failure in the management of the affairs of the company.
<b>3. Conclusion</b>	In this case, the employee will not succeed and the scheme of amalgamation will be sanctioned. However, the ex-employee can get the amount claimed with interest.

— Space to write important points for revision —

**2017 - Dec [5]** (b) SUP Ltd. is public company incorporated in India. It wants to propose a scheme of arrangement (merger) with another company in the same line of business in India. Help the company in preparing such a scheme of arrangement firstly. Secondly, help the company in taking approval of NCLT. Advise how company should approach NCLT for its approval to the scheme and discuss grounds on the basis of which NCLT will accord its approval. **(8 marks)**

**Answer:**

**Preparation of Scheme of Amalgamation**

The scheme of amalgamation to be prepared by the company should contain *inter-alia* the following information:

1. Brief details of transferor and transferee companies.
2. Appointed date.
3. Main terms of transfer of assets and liabilities from transferor to transferee.
4. Effective date of the scheme.
5. The terms of carrying on the business activities by transferor between 'appointed date' and 'effective date'.
6. Details of Share Capital of Transferor and Transferee Company.

No Companies or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under **Section 133**.

**Approach the Tribunal**

In terms of provisions of **Section 232(1)**, an application is required to be made to the Tribunal for sanctioning a scheme of an arrangement (merger) proposed between a company and another company.

On receiving the application, the Tribunal may order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of Section 230 shall apply *mutatis mutandis*.

2.454

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

The company, after receiving such order must circulate the required documents for members'/creditors' meeting as stated under the provisions of Section 232(2).

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

**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION**

### SHORT NOTES

**Q1.** Write short notes on merger of small companies.

**Answer:**

Accordingly, sub-section (1) of Section 233 states that notwithstanding the provisions of Section 230 and 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:

- (a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
- (b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares;
- (c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
- (d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.



## DESCRIPTIVE QUESTIONS

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**Q2.** Describe the powers of Central Government to provide for amalgamation of companies in public interest.

**Answer:**

- If the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
- The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.
- Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
- Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.



- No order shall be made under this section unless-
  - (a) a copy of the proposed order has been sent in draft to each of the companies concerned;
  - (b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and
  - (c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

— Space to write important points for revision —

**Q3.** Describe the provisions relating to cross border mergers in Companies Act, 2013.

**Answer:**

Section 234(2) states that subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

For the purposes of sub-section (2), the expression "foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.



Section 234(1) states that the provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

— Space to write important points for revision —

**Q4.** What are the requirements relating to notice required under Section 230 of the Companies Act, 2013?

**Answer:**

Section 230(3) states that when a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by

- a statement disclosing the details of the compromise or arrangement,
- a copy of the valuation report, if any, and
- explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders, and
- the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and
- such other matters as may be prescribed;

Such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.




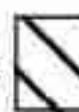

# 12B AN OVERVIEW OF CORPORATE RE-ORGANISATION - MAJORITY RULE AND MINORITY RIGHTS

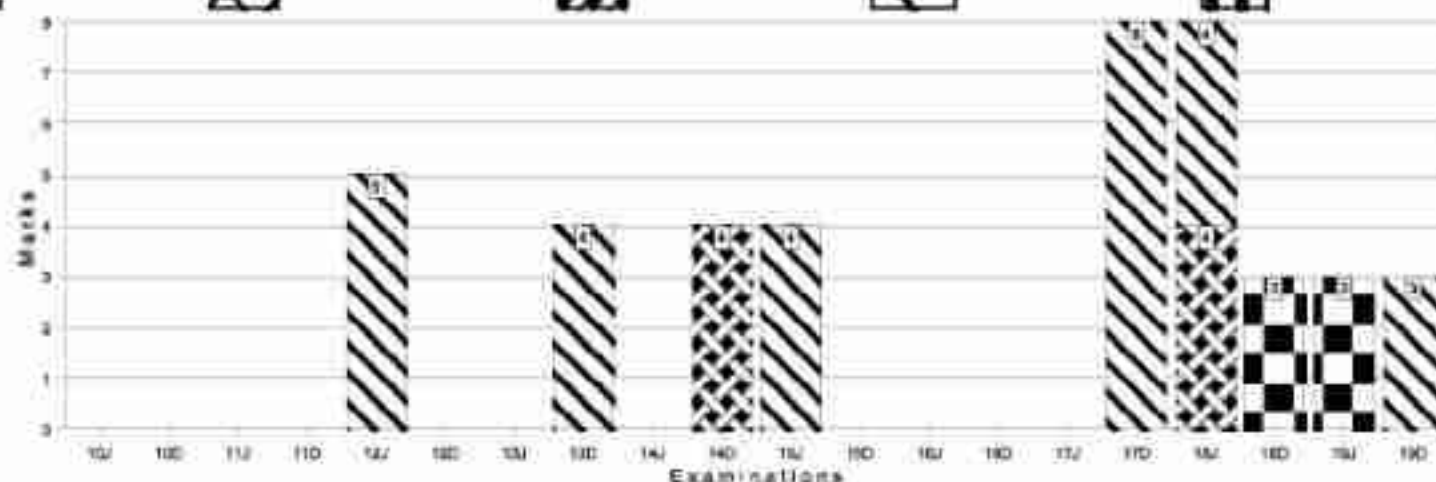
## THIS CHAPTER INCLUDES

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Powers of majority</li> <li>• Principle of Non-interference or Rule in <b>Foss v. Harbottle</b> along with its justification and advantages</li> <li>• Exceptions to the rule- protection of minority rights and shareholders' remedies</li> </ul> | <ul style="list-style-type: none"> <li>• Actions by shareholders in common law</li> <li>• Statutory remedy under the Companies Act</li> <li>• Meaning of oppression and Mis-management.</li> <li>• Persons entitled to apply</li> <li>• Power of Tribunal</li> <li>• Class Action Suits</li> </ul> |
|---|--|

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

### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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## CHAPTER AT A GLANCE

### **Powers**

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 power through Annual General Meetings/Extra- ordinary General Meetings.

### **Principle of company law**

The general principle of company law is that every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company. In case of difference(s) amongst the members, the issue is decided by a vote of the majority.

### **Protection for the minority shareholders**

Since the majority of the members are in an advantageous position to run the company according to their command, the minority shareholders are often oppressed. The company law provide for adequate protection for the minority shareholders when their rights are trampled by the majority.

### **Prejudicial to public interest**

Any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the NCLT by way of petition for relief.



2.460	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<b>Relief</b>		
Relief under the Act will also be available if the affairs of the company are being conducted in a manner prejudicial to public interest. 'Public interest' is a very broad term involving the welfare not only of the individual shareholders but also of the country according to the economic and social policies of the State.		
<b>Violation of the Regulations</b>		
If there is persistent violation of the regulations and statutes and an appeal to general body is not likely to put an end to the matters complained of by reason of the fact that those responsible for the violations control the affairs of the company, then it will be just and equitable to wind up the company.		
<b>Right to Apply</b>		
<p>The following members of a company shall have the right to apply u/s 241, namely:</p> <p><b>(a) In the case of a company having a share capital:</b> Not less than 100 members of the company or not less than one -tenth of the total number of members, whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;</p> <p><b>(b) In the case of a company not having a share capital:</b> Not less than one- fifth of the total number of members.</p> <p>However, the Tribunal may, on an application, waive all or any of the above requirements so as to enable the members to apply u/s 241.</p>		
<b>Exceptions to the Rule in Foss v. Harbottle or Protection of Minority Rights and share-holders remedies</b>		
<ul style="list-style-type: none"> <li>• Ultra Vires Act</li> <li>• Fraud on Minority</li> <li>• Wrongdoers in Control</li> </ul>		



- Resolution requiring Special Majority but is passed by a simple majority
- Personal Actions
- Breach of Duty
- Prevention of Oppression and Mismanagement

**Under the Provision of Companies Act, 2013:**

The first remedy in the hands of an oppressed minority is to move the NCLT. **Section 241** provides that any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the NCLT by way of petition for relief. Following requirements must be satisfied for seeking a relief under **Section 241**:

- (i) That the affairs of the company are being conducted: (a) in a manner prejudicial to public interest; or (b) oppressive to any members.
- (ii) That the fact justified the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.
- (iii) That to wind up the company would unfairly prejudice the petitioners [*Ramji Lal Baiswala v. Britain Cable Ltd.*, (1964) 14 Raj. 135].

On being satisfied about the above requirements, the NCLT may make the necessary orders for ending the matters complained of. The first requirement relates to public interest or oppression. First we analyse and discover the precise connotation of the word "oppression" with the help of judicial decisions.

**Class Action Suits**

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances.

2.462

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Application of Class Action and Reliefs**

- (a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members;

**DISTINGUISH BETWEEN****2014 - Dec [2]** Distinguish between the following:

(b) 'Oppression' and 'mismanagement'.

**(4 marks)****Answer:**

Points	Oppression	Mismanagement
<b>Meaning</b>	The term 'Oppression' is not defined in the Companies Act, 2013. Oppression, according to the dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. Oppression means violation of condition of fair play. The	The term "Mismanagement" is also not defined in the Companies Act, 2013. Normally mismanagement means gross misconduct of affairs of the company or misuse of powers given to directors or members under the Companies Act, 2013.



	complaining member must be under a burden which is unjust, harsh or tyrannical. It involves lack of probity or fair dealing to a member in the matter of rights as a shareholders.	
<b>Examples</b>	<p>Some of the acts held as oppressive are as follows:</p> <ul style="list-style-type: none"><li>• Continuous refusal to register shares to retain control over affairs of the company.</li><li>• Illegal removal of director one group and appointing other director without notice to one group of directors.</li><li>• Calling board meeting with 2 days notice so that NRI directors cannot attend and allotting shares to one group so that it comes into majority.</li><li>• Issuing shares to wife of directors for wholly illusive consideration.</li><li>• Attempt to deprive members of his ordinary membership rights e.g. denial of voting right or denial to contest election as director.</li></ul>	<p>Some of the acts held as mismanagement are as follows:</p> <ul style="list-style-type: none"><li>• Not allowing director to function as director</li><li>• Reckless sanction and disbursement of loans.</li><li>• Serious violation of legal provisions</li><li>• Acting beyond authority of memorandum and articles.</li><li>• Directors do not take serious actions in case of corruption, embezzlement etc.</li><li>• Diversion of funds</li><li>• Operation of bank accounts by unauthorized persons.</li></ul>



**2018 - June [2]** Distinguish between the following:

- (a) Oppression and mismanagement application and Class action suits.

**(4 marks)**

**Answer:**

**Oppression and Mismanagement Application:**

**Section 244 of the Companies Act, 2013** provides that the following members of a company have the right to apply in case of oppression and management referred to under **Section 241** to the tribunal:

- (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one -tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

The Tribunal has the power that on an application made to it in this behalf, waive all or any of the above mentioned requirements so as to enable the members to apply under **Section 241**.

**Class Action Suits:**

**Section 245 of the Companies Act, 2013**, deal with Class action suits. It is provided that members, depositors or any class of them, may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors.

The requisite number of members is as under:

- (a) 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;



(b) in the case of a company not having a share capital, nor less than one-fifth of the total number of its members.

Further, the requisite number of depositors shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

— Space to write important points for revision —

## DESCRIPTIVE QUESTIONS

**2008 - Dec [7]** (b) What reliefs are available to the minority shareholders against wrongful conduct of the majority? **(7 marks) [CSEM - II]**

**Answer:**

Protection is accorded to minority Shareholders under the Companies Act in the following circumstances:

<b>1</b>	<b>The variation of class rights</b>	The rights attached to the shares of any class can be varied as per <b>Section 48(1)</b> with the consent in writing of the holder of not less than 3/4 <sup>th</sup> of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class. But the holders of not less than 10% of the shares of that class who had not assented to the variation may apply to the Tribunal for the cancellation of the variation as per <b>Section 48(2)</b> .
<b>2</b>	<b>Schemes of reconstruction and amalgamation</b>	The minority is accorded protection in cases where they dissent to the scheme of reconstruction or amalgamation.

3	<b>Oppression and mis-management</b>	The principle of majority rule does not apply to cases where <b>Sections 241 to 246</b> are applicable for prevention of oppression and mis-management. A member, who complains that the affairs of the company are being conducted, in a manner oppressive to some of the members including himself, or against public interest, he may apply to the Tribunal.
4	<b>Alternative remedy to winding up</b>	Any member or members, who complain that the affairs of the company are being conducted in a manner oppressive to some of the members including themselves, may apply for winding up of company.
5	<b>Investigation by the Government</b>	As per <b>Section 210</b> the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Central Government may direct.

— Space to write important points for revision —

**2009 - Dec [1] {C}** Attempt the following :

(iv) "Oppression need not be continuous." Discuss(5 marks) [CSEM - II]

**Answer:**

<b>Oppression must be a continuous process</b>	<ul style="list-style-type: none"> <li>The Supreme Court has observed regarding the meaning of term 'oppression' as follows: It is not enough to show that there is just and equitable cause for winding up though that must be shown as preliminary to the application of <b>Section 241 of Companies Act, 2013</b>.</li> <li>It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as part of a consecutive story.</li> </ul>
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	<ul style="list-style-type: none"><li>There must be continuous acts on the part of the majority shareholders continuing up to the date of petition. [<i>Shanti Prashad vs. Kalpana Tubes (1965) 35 Comp. 351</i>].</li></ul>
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Space to write important points for revision

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

- (iii) The NCLT of law will not interfere with the internal management of companies acting within their powers. **(5 marks) [CSEM - II]**

**Answer:**

<b>1</b>	<b>The Principle of Majority Rule</b>	<ul style="list-style-type: none"><li>Majority must prevail is the principle of company management like any democratic set up, the majority has its way in a company though due provision must also be made for the protection of minority interest.</li><li>This principle that the will of the majority should prevail and bind the minority is known as the principle of majority rule.</li><li>The principle of majority rule was first given recognition in the case of <i>Foss. Vs. Harbottle</i>.</li></ul>
<b>2</b>	<b>Fact of the Case</b>	<ul style="list-style-type: none"><li>Two members of an incorporated company took legal proceeding against the directors of the company, charging them guilty of fraudulent acts resulting in loss to the company.</li><li>The minority shareholders, therefore, decided to take an action for damages against the directors.</li><li>The shareholders in general meeting by majority resolved not to take any action against the directors alleging that they were not responsible for the loss which has been incurred.</li><li>The NCLT held that the actions were capable of confirmation by the majority.</li></ul>



**A. General Law:**

1	<b>Act illegal or ultra vires</b>	<ul style="list-style-type: none"><li>• The Rule in <i>Foss Vs. Harbottle</i> applies only where the act complained of is within the powers of the company. If act is ultra vires the company, the rule does not apply, no majority can sanctioned or confirm such an act and every shareholder is entitled to bring on action against the company and its officers in respect of it.</li><li>• Thus every shareholder is entitled to sue for an injunction to restrain the <i>ultra vires</i> acts of the directors or the officers of the company.</li></ul>
2.	<b>Fraud on the minority</b>	Where the majority of a company members use their power to defraud or oppress the minority, their conduct is liable to be impeached even by a single shareholders.
3.	<b>Wrongdoers in control of the company</b>	<ul style="list-style-type: none"><li>• When the persons against whom the relief is sought themselves hold and control the majority of shares in the company and will not permit an action to be brought in the name of the company and shareholders may sue in their own names.</li><li>• Its reason is that if the majority of shareholders will not be given such right their grievance can never reach the NCLT because the wrongdoers themselves, being in control of company would not allow the company to sue.</li></ul>
4	<b>Acts requiring a special resolution</b>	Sometimes the act or the articles of the company require acts to be done only by passing a special resolution at a general meeting of the company and therefore if the majority shareholders purport to do any act without passing a special resolution (i.e. by passing an ordinary resolution), anyone can bring an action to prevent the majority to do so.



5.	<b>Individual membership rights</b>	In case of infringement of the individual membership rights, every shareholder is entitled to bring an action in his own name. "If such a right is in question a single shareholder can, on principal, defy a majority consisting of all the other shareholders."
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**2013 - Dec [2A] (Or)** Explain the following:

- (iv) Mere lack of confidence between the majority shareholders and minority shareholders would not be enough to order for relief under Section 241 . **(4 marks)**

**Answer:**

- The scope of **Section 241** was very succinctly enunciated by the Supreme Court in ***Shanti Prasad Jain v. Kalinga Tubes Ltd.*** where it observed that "It is not enough to show that there is just and equitable cause for winding up of the company though that must be shown as a preliminary to the application **under Section 241**."
- It must further be shown that the conduct of majority shareholders were oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of consecutive story.
- There must be continuous acts on the part of the majority shareholders continuing to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some members. the conduct must be burdensome, harsh and wrongful.
- Mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless lack of confidence springs from oppression of minority by the majority in the management of the company's affairs and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

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**2015 - June [3A] (Or)** (iv) A petition signed by 100 members of a company has been moved to NCLT for prevention of mismanagement. Later on, half of the members (signatories) withdrew their consent after filing the petition. Examine whether the remaining applicants (petitioners/signatories) to the petition would be successful in their complaint to NCLT. **(4 marks)**

**Answer:**

1	<b>Right to apply under Section 241 [Section 244]</b>	<p>The following members of a company shall have the right to apply u/s 241, namely:</p> <p><b>(a) In the case of a company having a share capital:</b> Not less than 100 members of the company or not less than one -tenth of the total number of members, whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;</p> <p><b>(b) In the case of a company not having a share capital:</b> Not less than one- fifth of the total number of members.</p>
2	<b><i>Rajahmundry Electric Supply Co. v. A. Nageshwara Rao, AIR 1956 SC 213</i></b>	<p>However, the Tribunal may, on an application, waive all or any of the above requirements so as to enable the members to apply u/s 241. Once the consent has been given by the requisite number of members by signing the application, the application may be made by one or more of them on behalf and for the benefit of all of them. It has been held by the Supreme Court in <i>Rajahmundry Electric Supply Co. v. A. Nageshwara Rao, AIR 1956 SC 213</i>, that if some of the consenting members have, subsequent to the presentation of the</p>





		<p>application, withdrawn their consent, it would not affect the right of the applicant to proceed with the application.</p> <p>Obtaining of consent is a condition precedent to the making of the application and hence a consent obtained subsequent to the application is ineffective. <i>Makhan Lal Jain Vs. The Amrit Banaspati Co. Ltd.</i>, I. L. R. (1954) I All. 131.</p>
3	<b>Chandramurthy V. K. L. Kapsi (2005) 48 SCL 294 CLB</b>	<p>In <i>L. Chandramurthy V. K. L. Kapsi</i> (2005) 48 SCL 294 CLB, a person who had disposed off his shares was not allowed to apply.</p> <p><b>Therefore, in the above case,</b> the withdrawal of consent by some of the members shall not affect the success of the remaining applicants.</p>

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**2017 - Dec [6]** (a) What do you mean by Class Action Suit? Discuss with reference to eligibility criteria for class action, nature of relief and effect of Tribunal's order. **(4 marks)**

**Answer:**

**Section 245 of the Companies Act, 2013** makes provision for class action by investors. The term 'investors' include shareholders, deposit holders and any class of security holders of the company.

Section 245 permits a representative of any class of investors to file a suit before the National Company Law Tribunal for relief.

In terms of **Section 245 (1)**, Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) of the section may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the relief specified.



**Eligibility criteria for class action**

**Sub-section (3) (i) of Section 245 of the Companies Act, 2013** provides the requisite number of members provided in Sub-Section (1) shall be as under:

- (a) 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;
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

**Nature of Relief**

The order by Tribunal may relate:

- (a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members;

- (g) to claim damages or compensation or demand any other suitable action from or against:
- (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
  - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
  - (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to seek any other remedy as the Tribunal may deem fit.

**Effect**

Any order passed by NCLT shall be binding on the company and all its members, depositors, auditors, consultants and advisors or any other person associated with the company. Non-compliance of the order by the company shall be punishable with fine which shall not be less than ₹ 5 Lakhs but which may extend to ₹ 25 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term upto 3 years and with fine ranging from ₹ 25,000 to ₹ 1 lakh.

— Space to write important points for revision —

**2017 - Dec [6]** (b) What do you understand by 'class action suit' as introduced by the Companies Act, 2013? Explain the objective behind introducing this provision in the Companies Act and the persons who can initiate such class action suit. **(4 marks)**

**Answer:**

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances.

The major objective behind the provision of class action suits is to safeguard the interests of the minority shareholders. So, class action suits are expected to play an important role to address numerous prejudicial and abusive acts committed by the Board of Directors and other managerial personnel.

**Person to initiate Class Action Suit:**

**(A) Members:**

The requisite number of members provided in sub-section (1) shall be as under:—

- (a) 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;
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

**(B) Depositors:**

According to **Section 245(3)(ii)** the requisite number of depositors provided in **Section 245(1)** shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

— Space to write important points for revision —

**2018 - June [6]** (d) In a scheme of amalgamation, it was proposed that name of the transferor company shall be deemed to be name of transferee company. The Regional Director (RD), Ministry of Company Affairs, objected to the same on the ground that proposed name is undesirable if it is identical with or too nearly resembling name of an existing company. Decide if the stand taken by the RD is valid under the Companies Act, 2013. Reference may be made of decided case laws. **(4 marks)**





**Answer:**

It has been held in earlier judgement PMP Auto Industries Ltd. that in case of amalgamation **Chapter XV of the Companies Act, 2013** is a complete code in the nature of a "single window clearance" system, the object of which is to eliminate frequent applications being made to the Court in order effectively to implement a scheme of amalgamation which the Court sanctions in exercise of its powers. Further in case, Michelin India Private Limited High Court held that a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement.

Thus considering the above, in present case the objection of RD is invalid.

— Space to write important points for revision —

**2019 - Dec [2A] (Or)** (iv) "The Companies Act, 2013 attempts to maintain a balance between the rights of majority and minority shareholders." Discuss.  
(3 marks)

## PRACTICAL QUESTIONS

**2018 - Dec [2A] (Or)** (iv) In a case pertaining to oppression and mismanagement, the respondents pleaded that the legal heirs of a deceased member whose name is still on the register of members are not entitled to apply before Tribunal, as only member of the company can complain about oppression and mismanagement. Thus, legal heirs have no *locus standi*. Examine this argument in the light of decided cases. (3 marks)

**Answer:**

According to **Section 241 of Companies Act, 2013** any member of the company may make an application to the Tribunal for relief in cases of oppression or mismanagement under given circumstance. In *Worldwide Agencies (P) Ltd. v. Margaret T. Desor (1990)*, it was decided that the legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition, for relief against oppression or mismanagement.



2.476

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**In the above case**, the above mentioned case is applicable, where the member has died and his name still exists in the register of members, the legal heirs are entitled to maintain the petition.

—— Space to write important points for revision ——

**2019 - June [2A] (Or)** (v) XYZ Ltd. sold a mine, owned by it for ₹ 28.20 crore. A minority shareholder brought an action for damages against their directors and against the company itself stating that the real value of the mine was ₹ 100.00 crore. With reference to provisions of Companies Act, 2013 state whether the action for damages is maintainable ? **(3 marks)**

**Answer:**

In the case of *Pavlides v. Jensen* (1956) Ch. 565, a minority shareholder brought an action for damages against three directors and against the company itself on the ground that they have been negligent in selling a mine owned by the company for £ 82,000, whereas its real value was about £ 10,00,000. It was held that the action was not maintainable. The judge observed, "It was open to the company, on the resolution of a majority of the shareholders to sell the mine at a price decided by the company in that manner, and it was open to the company by a vote of majority to decide that if the directors by their negligence or error of judgement has sold the company's mine at an undervalue, proceedings should not be taken against the directors".

Applying the above interpretation, the action for damages under taken by the minority shareholders of XYZ Ltd. is not maintainable. Hence an action for damages neither against the company nor against the directors is valid.

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## TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

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**SHORT NOTES**

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**Q1.** Write short notes on Class Action Suits.

**Answer:**

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances.

**Application of Class Action and Reliefs [Section 245(1)]**

**Sub - section (1) of Section 245** states that such number of members, depositor or any class of them, as the case may be, may, file an application before the Tribunal for seeking all or any of the following orders, namely:

- (a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members;
- (g) to claim damages or compensation or demand any other suitable action from or against-
  - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

2.478

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- (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
- (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to seek any other remedy as the Tribunal may deem fit.

—— Space to write important points for revision ——

**Q2.** Write short notes on Effect of Order.

**Answer:**

Order shall be binding: Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. **[Section 245(6)]**

Punishment for non-compliance: Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty- five thousand rupees but which may extend to one lakh rupees. **[Section 245(7)]**

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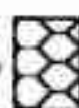



# 12C      *AN OVERVIEW OF CORPORATE RE- ORGANISATION - WINDING UP*

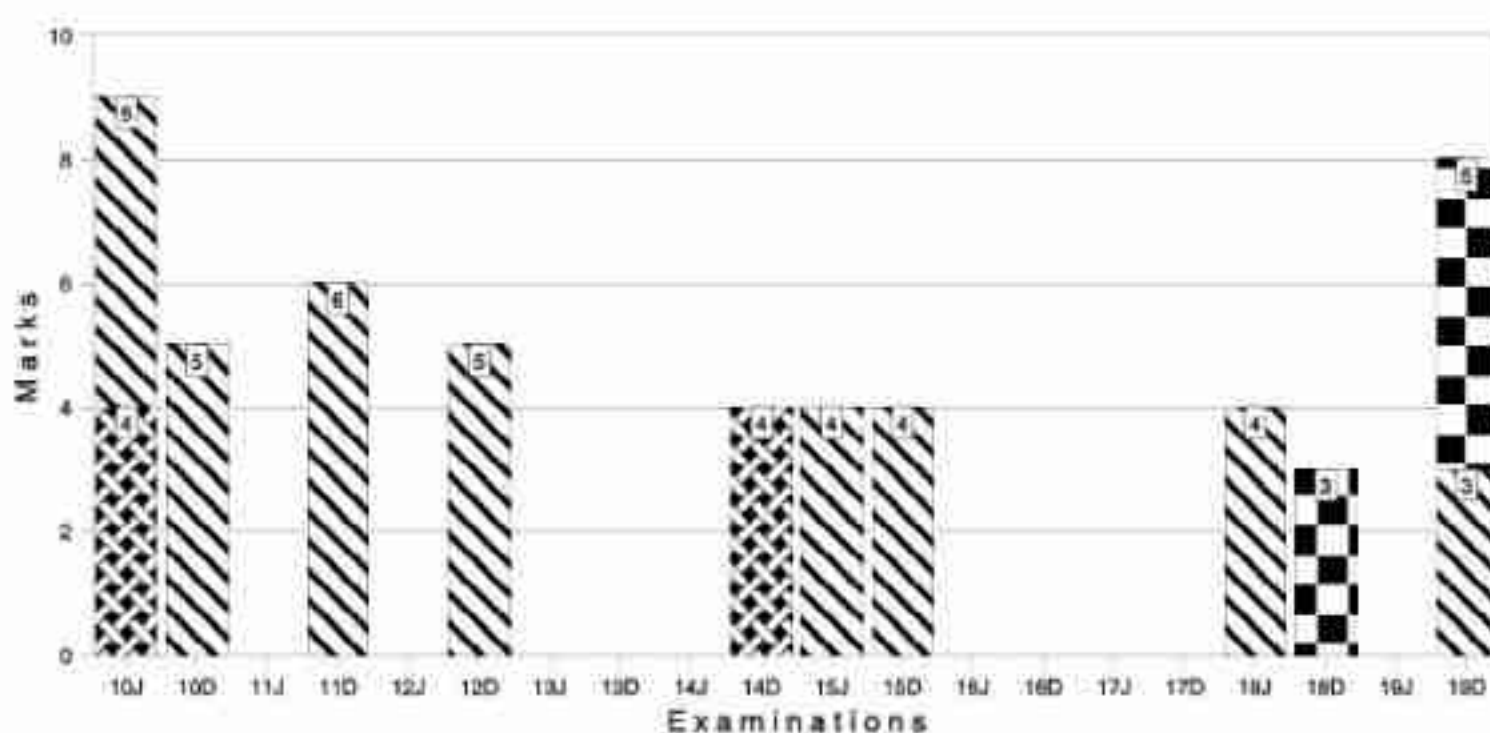
## THIS CHAPTER INCLUDES

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• Meaning of Winding up</li><li>• Legal Provisions for Winding up of Companies</li><li>• Registration offices and fees</li></ul> | <ul style="list-style-type: none"><li>• Company to furnish information or statistics</li><li>• Winding Up by Tribunal</li><li>• Voluntary Winding Up</li></ul> |
|--|--|

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

### Legend

 Objective    Short Notes    Distinguish    Descriptive    Practical



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for registration and password see first page of this book.



**CHAPTER AT A GLANCE****Winding-up of a Company**

- Winding-up of a Company is defined as a process by which the life of a Company is brought to an end and its property administered for the benefit of its members and creditors.
- An administrator called the liquidator is appointed and he takes control of the Company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights.
- At the end of winding up, the Company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the Company takes place.
- On dissolution, the companies name is struck off from the Register of companies and its legal personality as a corporation comes to an end.

**Modes of Winding-up**

There are two modes of winding-up:  
Winding up by Tribunal i.e. Compulsory Winding-up; and Voluntary Winding-up;

**Compulsory Winding- up**

**Section 271 of the Companies Act, 2013** provides that a company may, on a petition under **Section 272**, be wound up by the Tribunal under following circumstances-

- (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have



been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

- (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."

**Petition for the Winding up (Section 272 of Companies Act, 2013)**

**Who may file Petition for the Winding up?**

- (a) the company; or
- (b) any creditor or creditors, including any contingent or prospective creditor or creditors; or
- (c) any contributory or contributories; or
- (d) all or any of the parties specified above in clauses (a), (b), (c) whether together or separately; or
- (e) the Registrar; or
- (f) any person authorised by the Central Government.
- (g) by the Central government or State Govt., in a case falling under clause (c) of Section 271(1).

**Voluntary Winding up**

- (1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.
- (2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions (3) and procedural requirements as may be specified by the Board.
- (3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:

- (a) a declaration from majority of the directors of the company verified by an affidavit stating that-
  - (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - (ii) the company is not being liquidated to defraud any person;
- (b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:
  - (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
  - (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- (c) within four weeks of a declaration under sub-clause (a), there shall be—
  - (i) a special resolution of the members of the company in a general meeting.
  - (ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved.

#### Registered Valuer

Section 247(1) of the Companies Act, 2013 states that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Companies Act, 2013, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.





#### ICSI- RVO

As specified above, Section 247 of the Companies Act, 2013 provides that where a valuation is required to be made in respect of any assets it shall be valued by a person who, having the necessary qualifications and experience, and being a valuer member of a recognised valuer organisation, is registered as a valuer with the Authority. Accordingly, to enable the members of the Institute/others to practice as Registered Valuers, the Institute incorporated ICSI-RVO.

ICSI- RVO is a Section 8 company which has been formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers Rules while establishing and promoting high standards of practice and professional conduct and furthermore, to promote good professionalism, ethical conduct and competency of Registered Valuers for ensuring quality of valuation work.

#### DISTINGUISH BETWEEN

**2010 - June [6]** Distinguish between the following:

- (v) 'Insolvency of an individual/firm' and 'winding-up of a company'.

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

**Answer:**

S. No.	Basis	'Insolvency of an individual/firm'	'Winding-up of a company'
1.	<b>Vesting of Property</b>	The whole of the insolvents property is taken out of his hands and rest in the Tribunal or the official assignee.	The property remain vested in the company, subject to being administered for the purposes of winding up as the company retains its complete existence.



2.	<b>Discharge of the liabilities</b>	An insolvent individual can obtain his discharge and continue living and working free from burden of his debts.	A company in liquidation cannot obtain its discharge and continue free from the burden of its debts.
3.	<b>Administration</b>	The administration of the property by the official Assignee or the official receiver occurs if he is declared an insolvent by the Tribunal.	The directors powers by the liquidator occurs even if the company is fully solvent. Winding up even of a solvent company can be proceeded with the aid of Tribunal, as in voluntary winding up.

— Space to write important points for revision —

**2014 - Dec [2]** Distinguish between the following:

(a) 'Winding-up' and 'dissolution'.

**(4 marks)**

**Answer:**

The term winding up and dissolution are sometimes erroneously used to mean the same thing. But there is a subtle difference between the two terms.

	<b>Winding - Up</b>	<b>Dissolution</b>
(i)	Winding up is a process	Dissolution is its end result.
(ii)	Winding up proceeds dissolution. This means that winding up is the prior stage .	Dissolution, the subsequent one.
(iii)	On the commencement of winding up, the Corporate Status and Power of the Company continue.	It is on dissolution that the name of the company is struck off the register of companies and it ceases to exist.



(iv)	Creditors can prove their debts in the winding up.	But not on the dissolution of the company.
(v)	The liquidator appointed by the company or the Tribunal carries out the winding up proceedings.	But the order for dissolution can be passed by the Tribunal only.

— Space to write important points for revision —

## DESCRIPTIVE QUESTIONS

**2009 - June [7]** (a) Briefly explain the various modes of winding-up of a company. **(8 marks) [CSEM - II]**

**Answer:**

**Modes of Winding Up [Section 270 (1)] of Companies Act, 2013:**

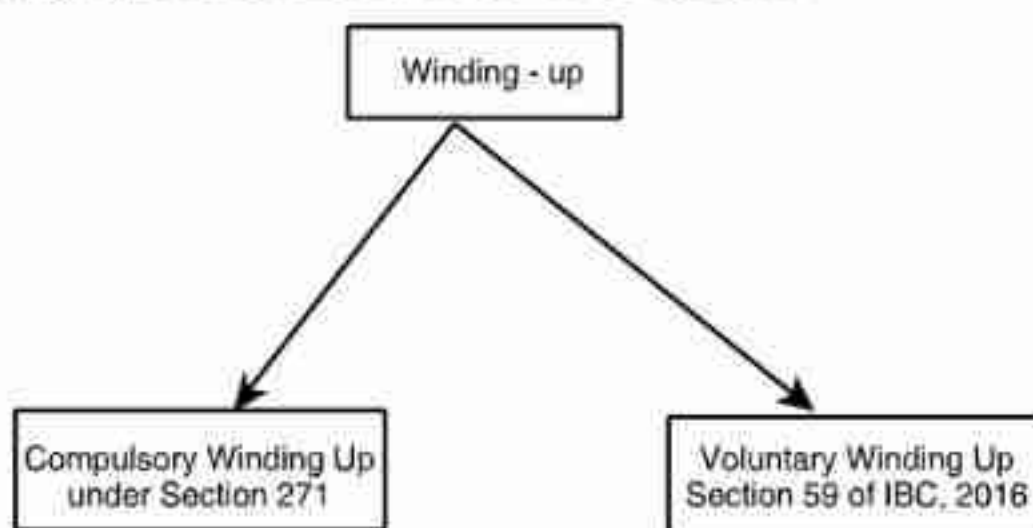
A company may be wound up in any one of the following three ways, namely -

- (i) by the Tribunal (compulsory winding up);
- (ii) by passing of an appropriate resolution for voluntary winding up at a general meeting of members (voluntary winding up).

**Winding-up:**

Compulsory Winding Up under **Section 271 of the Companies Act, 2013**

Voluntary Winding Up under **Section 59 of IBC, 2016**



2.486	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)
1	<p data-bbox="377 1261 633 1507"><b>Compulsory Winding up by the Tribunal (Section 271) of the Companies Act, 2013</b></p> <p data-bbox="667 1261 1392 1386">Winding-up by the Tribunal, also called compulsory winding up, may be ordered in cases mentioned in <b>Section 271</b>.</p> <p data-bbox="667 1386 1392 1470"><b>Circumstances under which the company may be wound up by Tribunal are as follows:</b></p> <ul data-bbox="667 1470 1392 2637" style="list-style-type: none"> <li>(a) If the company is unable to pay its debts;</li> <li>(b) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;</li> <li>(c) If the company has acted against the interests of sovereignty and integrity of India, the security of the State, the friendly relations with foreign States, Public order, decency or morality;</li> <li>(d) If the Tribunal has ordered the winding up of the company under Chapter XIX;</li> <li>(e) If on an application made by the Register or any other person authorised by the Central Government, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound-up;</li> <li>(f) If the company has made a default in filing with the Registrar its financial statements or annual return for immediately preceding five consecutive financial years; or</li> <li>(g) If the Tribunal is of opinion that it is just and equitable that the company should be wound up.</li> </ul>



2	<b>Voluntary Winding up</b>	<p>Chapter V of the Insolvency and Bankruptcy Code of India 2016 deals with the Voluntary Liquidation of Corporate Persons.</p> <p><b>Section 59</b></p> <p>(1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.</p> <p>(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions (3) and procedural requirements as may be specified by the Board.</p> <p>(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:</p> <p>(a) a declaration from majority of the directors of the company verified by an affidavit stating that-</p> <p>(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and</p> <p>(ii) the company is not being liquidated to defraud any person;</p> <p>(b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:</p>
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2.488	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)
	<ul style="list-style-type: none"> <li>(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;</li> <li>(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;</li> <li>(c) within four weeks of a declaration under sub-clause (a), there shall be-             <ul style="list-style-type: none"> <li>(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or</li> <li>(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator: Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.</li> </ul> </li> </ul>



	<p>(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub- Section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.</p> <p>(5) Subject to approval of the creditors under sub-Section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).</p> <p>(6) The provisions of Sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.</p> <p>(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.</p> <p>(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-Section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.</p> <p>(9) A copy of an order under sub-Section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.</p>
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**2010 - June [1] {C}** Comment on the following:  
 (v) In case of a company, the terms 'winding-up' and 'dissolution' convey the same meaning. **(5 marks) [CSEM - II]**

**Answer:**  
*Please refer 2014 - Dec [2] (a) on page no. 484*  
 — Space to write important points for revision —

**2010 - Dec [1] {C}** Comment on the following :  
 (v) The terms 'winding-up' and 'dissolution' are not one and the same thing. **(5 marks) [CSEM - II]**

**Answer:**  
*Please refer 2014 - Dec [2] (a) on page no. 484*  
 — Space to write important points for revision —

**2011 - Dec [8] (b)** Who may petition for winding-up of a company? What are the procedures for winding-up of unregistered company? **(6 marks) [CSEM - II]**

<b>Answer:</b>	
A petition for the compulsory winding up of a company may be presented by: (a) the company; (b) any contributory or contributories; (c) all or any of the persons specified in clauses (a) and (b); (d) the Registrar; (e) any person authorised by the Central Government in that behalf; or (f) in a case falling under clause	
<b>Winding-up of an unregistered Company [Section 375]</b>	The rules relating to winding-up of unregistered companies are: 1. No unregistered company shall be wound up voluntarily [Section 375 (2)]. Thus, an unregistered company can only be compulsorily wound up by the Tribunal.



2. The circumstances under which an unregistered company may be wound up are as follows:
- (a) If the company is dissolved or has ceased to carry on business or is carrying on business only for the purposes of winding-up its affairs.
  - (b) If the company is unable to pay its debts.
  - (c) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up [Section 375 (3)].

As per Section 375 (4) an unregistered company shall be deemed unable to pay its debts in the following circumstances:

- (i) If a creditor, to whom the company is indebted in a sum exceeding rupees one lakh has served on the company a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor.
- (ii) If any suit or other legal proceedings have been instituted against any member for any debt or demand due, or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or proceedings having been served on the company and the company has not, within ten days thereafter:
  - (a) paid, secured or compounded the debt or demand; or
  - (b) procured the suit or legal proceedings to be stayed; or



2.492



Scanner CSEP M-I Paper 2 (2017 Syllabus)

	<p>(c) indemnified the defendant to his satisfaction against the suit or other legal proceeding and against all costs, damages and expenses to be incurred by him by reason of the same.</p> <p>(iii) If execution or other process issued on a decree or order of any Tribunal in favour of a creditor against the company or any member there of is returned unsatisfied in whole or in part.</p> <p>(iv) If it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.</p>
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— Space to write important points for revision —

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

- (iii) Winding-up is only a process while dissolution puts an end to the existence of a company. **(5 marks) [CSEM - II]**

**Answer:**

In the process of winding up the assets of the company are disposed of and the debts of the company are paid off out of the realised assets by a liquidator. If any balance remains in the hands of liquidator, it is distributed among the members of the company in accordance with their rights under the articles.

According to Professor Gower, "winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members."

- An administrator, is called liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.
- At the end of the winding up there will not be type remained any of assets and liabilities in the company, and it will therefore be simply a formal step for it to be dissolved that is for its legal personality as a corporation to be brought to an end.



- In between winding up and dissolution the legal entity of the company remains and its may be sued in a Tribunal.
- A company which has been dissolved no longer exist as a separate entity capable of holding property or of being sued in Tribunal of law, but a company in liquidation though the administration of its affairs has passed the liquidator retains its complete existence.
- If the liquidation should be annulled, the company will resume its powers.
- On dissolution the company's name is struck off the register of companies and its legal personality as a corporation comes to an end.

— Space to write important points for revision —

**2015 - June [3] (a)** Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him. **(4 marks)**

**Answer:**

1.	<b>Meaning of Unlimited Company, Sec. 2(92)</b>	"Unlimited Company" means a company not having any limit on the liability of its members.		
2.	<b>Liability of a member</b>	<b>A</b>	<b>Maximum Liability</b>	Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets.
		<b>B</b>	<b>No direct liability towards creditors</b>	However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm.

		<b>C</b>	<b>Who can ask member to contribute</b>	The liability of the members is only towards the company and in the event of its being wound up only the Liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.
<b>3.</b>	<b>Conclusion</b>	Accordingly, Mr. Mahesh cannot directly sue the members of the company for recovery of his dues. He can file a claim to the liquidator of the company.		

— Space to write important points for revision —

**2015 - Dec [6] (d)** Referring to the provisions of the Companies Act, 2013, state the grounds on which the Registrar of Companies can file a petition for winding-up of a company. **(4 marks)**

**Answer:**

The Registrar shall be entitled to present a petition for winding up under Section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

— Space to write important points for revision —

**2018 - June [6] (c)** The Mumbai Bench of National Company Law Tribunal has received a petition for winding up of Presentable Commodities Ltd. Pramod, Manager (Human Resource) of the company wants to know from you, Secretary of the company, what orders can be passed by the Tribunal in this regard. Advise Pramod, under the relevant provisions of the Companies Act, 2013. **(4 marks)**





**Answer:**

According to **Section 273(1) of the Companies Act, 2013** the Tribunal may, on receipt of a petition for winding up may pass any of the following orders:

- (a) dismiss it, with or without costs;
- (b) make any interim order as it thinks fit;
- (c) appoint a provisional liquidator of the company till the making of a winding up order;
- (d) make an order for the winding up of the company with or without costs;
- or
- (e) any other order as it thinks fit.

— Space to write important points for revision —

**2019 - Dec [2A] (Or)** (ii) Can a contributory file a petition for winding up of the company? Discuss. **(3 marks)**

## PRACTICAL QUESTIONS

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**2018 - Dec [2A] (Or)** (i) On 3<sup>rd</sup> December, 2018 the Registrar of Companies applied to the Regional Director for seeking sanction to file a winding up application against a company. On next day i.e. on 4<sup>th</sup> December, 2018 the Regional Director granted its sanction. Examine the validity of Regional Director's action. **(3 marks)**

**Answer:**

Under **Section 272(1) of Companies Act, 2013**, provides that a petition to the Tribunal for the winding up of a company can be presented by Registrar of Companies. But, Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The section also provides that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations. The Power of Central Government in this context has been assigned to Regional Directors.



2.496

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**In the above case,** Regional Director granted its sanction on the very next day of filing of the petition without giving reasonable opportunity to the company of being heard. Here the action of Regional Director is invalid.

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**2019 - Dec [3]** (b) Amitabh is a director in PQR Overseas Trading Ltd. The company's name has recently been struck off from the register of companies by the Registrar. He does not hold directorship in any other company. Therefore, Amitabh applied to the Registrar for cancellation of his DIN. However, the application was rejected by the Registrar. Is the rejection of application correct in your opinion? **(5 marks)**

**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION**

## SHORT NOTES

**Q1.** Write short notes on Registration Offices and Fees.

**Answer:**

Section 403 states that any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under the Companies Act, 2013, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed. The fees is prescribed under the Companies (Registration Offices and fees) Rules, 2014.

However, in case of failure to submit, file or register or record the above stated documents, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under the Companies Act, 2013, be submitted, filed, registered or recorded as the case may be :-

(a) In case of documents provided under **Section 92 or 137 [First proviso to Section 403]**



- after expiry of the period so provided under **Section 92 or 137**,
- on payment of such additional fee as may be prescribed –
  - (i) which shall not be less than one hundred rupees per day, and
  - (ii) different amounts may be prescribed for different classes of companies.
- (b) In case of any other documents [**Second proviso to Section 403**]:
  - after expiry of the period so provided under relevant Section,
  - on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies.

— Space to write important points for revision —

## DESCRIPTIVE QUESTION

**Q2.** Who shall Conduct the valuation?

**Answer:**

**Section 247(1) of the Companies Act, 2013** states that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the **Companies Act, 2013**, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

The valuer appointed under sub-section (1) shall,—

- (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
- (b) exercise due diligence while performing the functions as valuer;
- (c) make the valuation in accordance with such rules as may be prescribed; and
- (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

**Q3.** What is ICSI - RVO?

**Answer:**

As specified above, **Section 247 of the Companies Act, 2013** provides that where a valuation is required to be made in respect of any assets it shall be valued by a person who, having the necessary qualifications and experience, and being a valuer member of a recognised valuer organisation, is registered as a valuer with the Authority. Accordingly, to enable the members of the Institute/others to practice as Registered Valuers, the Institute incorporated ICSI-RVO.

ICSI- RVO is a Section 8 company which has been formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers Rules while establishing and promoting high standards of practice and professional conduct and furthermore, to promote good professionalism, ethical conduct and competency of Registered Valuers for ensuring quality of valuation work.

The IBBI vide Registered Valuers Organisation Recognition No. IBBI/RVO/2018/003 recognised ICSI RVO as a Registered Valuers Organisation for the Asset Class(es):-

- (i) Land and Building
- (ii) Plant and Machinery
- (iii) Securities or Financial Assets

— Space to write important points for revision —

**Q4.** Who can offer valuation services?

**Answer:**

For conducting valuations required under the **Companies Act, 2013** and the **Insolvency and Bankruptcy Code, 2016**, a person is to be registered with the IBBI as a registered valuer. For registering with IBBI, a person must have necessary qualification and experience, has to be enrolled as a valuer member with a Registered Valuer Organisation (RVO), has to complete a recognised educational course conducted by the RVO, and pass valuation examination conducted by IBBI.



IBBI, being the Authority, in pursuance of the first proviso to **Rule 5 (1) of the Companies (Registered Valuers and Valuation) Rules, 2017** specified the details of educational course for the Asset Class of 'Securities or Financial Assets'. These courses shall be delivered by the RVOs in not less than 50 hours.

A person, who is rendering valuation services under the Companies Act, 2013, may continue to do so without a certificate of registration up to 31<sup>st</sup> March, 2018, thereafter with effect from 1<sup>st</sup> April, 2018 for conducting valuations required under the **Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016**, a person is to be registered with the IBBI as a registered valuer.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between the 'Winding-up' and 'dissolution'. 10 - June [1] {C} (v), 10 - Dec [1] {C} (v), 14 - Dec [2] (a)	3 Times



# 13




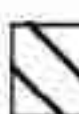

## AN INTRODUCTION TO MCA - 21 AND FILLING IN XBRL

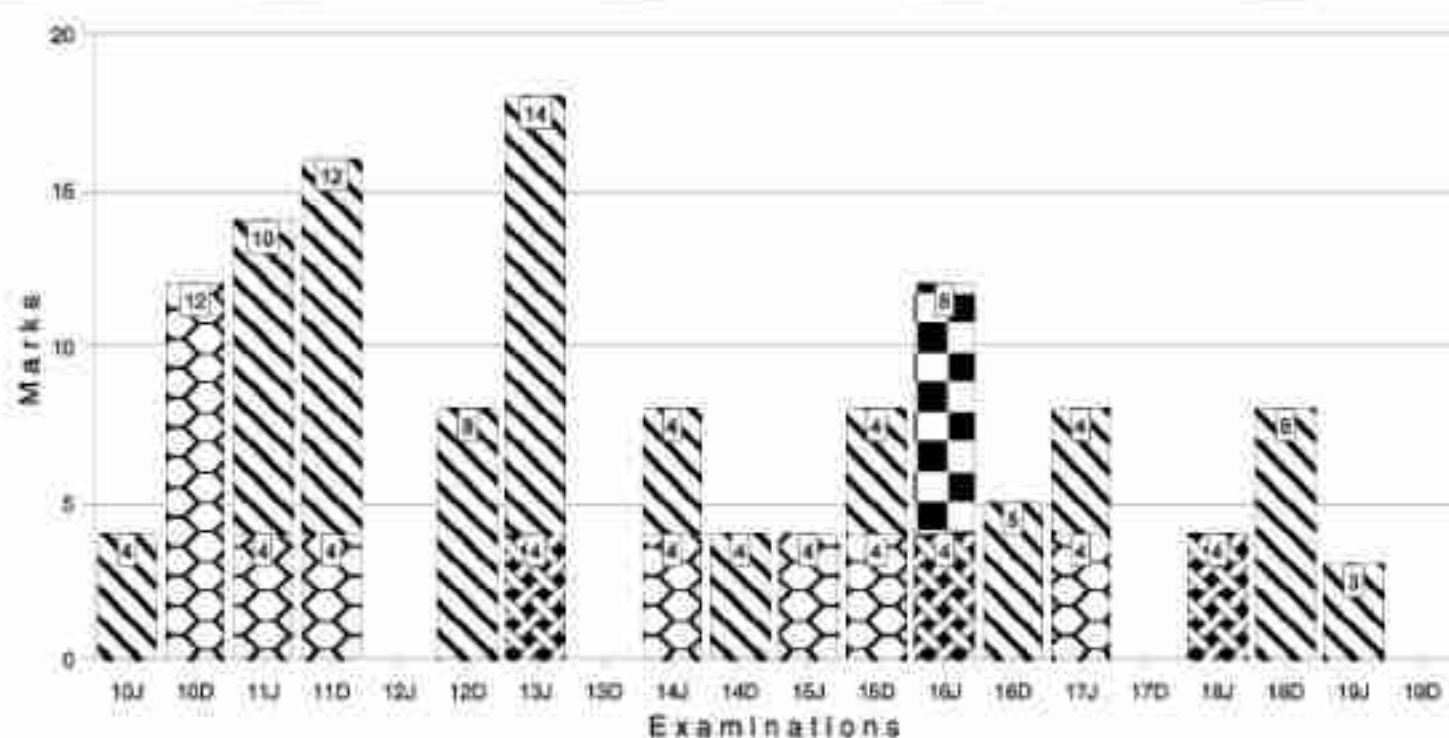
### THIS CHAPTER INCLUDES

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• E- Governance and MCA -21</li> <li>• Important aspects of MCA - 21</li> <li>• MCA services</li> <li>• Benefits of MCA - 21</li> <li>• Filling of E - forms</li> <li>• Pre- requisites for E- filling</li> </ul> | <ul style="list-style-type: none"> <li>• Important terms used in E - filling</li> <li>• Pre- certification of e- forms</li> <li>• Description of e - forms</li> <li>• XBRL</li> <li>• Benefit of XBRL</li> </ul> |
|--|--|

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

### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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for registration and password see first page of this book.



<b>CHAPTER AT A GLANCE</b>
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<b>E-form</b>
An e-form is a re-engineered conventional form, represents a document in electronic format.
<b>Feature of e-governance</b>
Director Identification Number (DIN), Corporate Identity Number (CIN) and Digital Signature Certificate (DSC) are the important features under e-governance mode (MCA-21).
<b>MCA-21</b>
MCA-21 system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/ Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/ VISA].
<b>SRN</b>
Each transaction under e-filing is uniquely identified by a Service Request Number (SRN). On filing of an e-form, the system will generate and provide a Service Request Number (SRN). A user can check the status of the document/ transaction, by entering the SRN.
<b>Stamp duty on documents</b>
If the stamp duty on documents which are required to be filed on non-judicial stamp paper is paid electronically through Ministry of Corporate Affairs portal <a href="http://www.mca.gov.in">www.mca.gov.in</a> , in such case, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form.

2.502	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<b>MCA Services</b>		
1. LLP Services 2. LLP Services for Business User 3. E-Filing 4. Company Services 5. Complaints 6. Document Related Services 7. Fee and Payment Services 8. Public Search of Trademark 9. Investor Services		
<b>Corporate Identity Number(CIN)/ Foreign Company Registration Number (FCRN)</b>		
Every company is allocated a Corporate Identity Number (CIN). CIN can be found from the MCA-21 portal through search based on: <ul style="list-style-type: none"> <li>– ROC Registration No.</li> <li>– Existing Company Name</li> <li>– Old Name of Company (in case of change of name, user is required to enter old name and the system displays corresponding current name).</li> <li>– Inactive CIN [In case of change of CIN, the user is required to enter previous (inactive) CIN Number]</li> </ul>		
<b>Foreign Company Registration Number (FCRN)</b>		
Every foreign company has been allocated a Foreign Company Registration Number (FCRN).		
<b>Director Identification Number (DIN)</b>		
DIN is an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also		



mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Every individual, who is intending to be appointed as Director of a company or designated partner of a limited liability partnership is required to make an application electronically in Form DIR -3 to Central Government for obtaining Director Identification Number (DIN) or in case the company is being incorporated through Form SPICe, a maximum of three directors can apply for DIN. DIN is a unique identification number and once obtained is valid for life time of a director. A single DIN is required to be obtained irrespective of the number of directorships.

**Digital Signature Certificate (DSC)**

For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

**E-forms**

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always use latest e- forms from the MCA Portal.



**XBRL Extensive Business Reporting Language****XBRL Filing**

XBRL (Extensible Business Reporting Language) is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It helps in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (extensible Business Reporting Language) mode and by using the XBRL taxonomy:

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid-up capital of Rupees five crore and above; or
- (iii) all companies having turnover of Rupees one hundred crore and above; or
- (iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders.

**SHORT NOTES**

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

- (v) Digital signature certificate.

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

**Answer:**

**Please refer 2008 - Dec [7] (a) (ii) on page no. 513**

— Space to write important points for revision —

**2010 - Dec [7]** (b) Write notes on the following :

- (i) Filing of document in physical form in the context of MCA-21 (4 marks)
- (ii) Corporate Identification Number (CIN) (4 marks)

**Answer:**

- (i) After the **MCA-21** was introduced wherein all the forms which were previously filed in physical form with the ROC are now being electronically filed with the Registrar of Companies.

Following are the main features of e-filing of documents under **MCA-21** system:

- To support the provisions of e-filing the Central Government under **Section 397 and 398 of the Companies Act** have enacted the **Companies Rules, 2006**.
- The e-forms are required to be authenticated by the authorised signatories using digital signatures as defined under the **Information Technology Act, 2000**.
- Every Company has been allocated a Corporate Identity Number (CIN). CIN can be found from the **MCA-21** portal through search based on ROC Registration No., Existing Company's Name etc.
- **MCA-21** system provides for the facility of payment of statutory fees through multiple modes i.e.
  - (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/Cash.
  - (ii) On-line payments through Internet Banking and Credit Cards.

- (ii) Corporate Identity Number (CIN) is a **21** digit number designed to help in easily identifying companies belonging to a state, industry, ownership or age and allocated to all companies registered on or after November 1, 2000. The CIN assigned to a company indicates the following: listing status, economic activity (Industry), State, year of incorporation, ownership, Sequential number assigned by ROCs.

The first digit of the CIN represents the listing status of a company. If the company is unlisted, the alphabet entered is 'U' and in case the company is listed the alphabet entered is 'L'. The second five digits

2.506

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

represent the economic activity of the company. The next two places represent the state in which the company's registered office is located. All States are represented by a two alphabet code.

The next four places indicate the year in which the company was incorporated. Next, the ownership code is indicated through a three alphabet code.

The last six places in the CIN are the sequential number assigned to every company by the concerned ROC office of the State. There is no space, hyphen, oblique sign, etc., between the various code components.

— Space to write important points for revision —

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

(i) Online inspection of documents

**(4 marks)**

**Answer:**

The documents filed online, once taken on record by ROC offices are available for public viewing on payment of requisite fees. These documents, which are in domain of public documents, include-

1. Documents relating to incorporation,
2. Charges,
3. Annual returns,
4. Balance sheet,
5. Change in directors.

**Note:** A certified copy of the documents can also be obtained by anyone so interested.

— Space to write important points for revision —

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

(iii) Digital signature

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

**Answer:**

**Please refer 2008 - Dec [7] (a) (ii) on page no. 513**

— Space to write important points for revision —



**2014 - June [3A] (Or)** Write notes on the following:

- (i) XBRL

**(4 marks)**

**Answer:**

Extensible Business Reporting Language (XBRL) is a language for the electronic communication of business and financial data revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

The Ministry of Corporate Affairs has mandated for selected class of companies to file their Balance Sheet and Profit and Loss Account and other documents as required under **Section 137 of Companies Act, 2013** with the Registrar of Companies in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy.

— Space to write important points for revision —

**2015 - June [3A] (Or)** Write notes on the following:

- (iv) XBRL filing.

**(4 marks)**

**Answer:**

The applicability of e-form AOC-4 XBRL on classes of companies has been amended.

Filing of financial statements with Registrar.- The following class of companies shall file their financial statements and other documents under **Section 137** of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I:

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) companies having paid up capital of five crore rupees or above;
- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015:



2.508

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

Provided that the companies preparing their financial statements under the **Companies (Accounting Standards) Rules, 2006** shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under **Companies (Indian Accounting Standards) Rules, 2015**, shall file the statements using the Taxonomy provided in Annexure-II A:

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

**Key benefits of XBRL filing are as under:**

Relevant data has tags and selective information can be fetched for specific purposes by various government and regulatory agencies.

It is in conformity with Global Reporting Standards, which helps in improved data mining and relevant information search.

— Space to write important points for revision —

**2015 - Dec [3A] (Or)** Write notes on the following:

- (iii) Keeping documents, records, registers, minutes, etc., of the company in electronic form **(4 marks)**

**Answer:**

According to **Section 120**, the documents, records, registers, minutes etc. may be kept and inspected in electronic form.

**Rule 27 of Companies (Management and Administration) Rules, 2014** initially mandated every listed company or a company having not less than one thousand shareholders, debentureholders and other security holders may maintain its records, as required to be maintained under the Act or Rules made thereunder in electronic form.

According to **Rule 27(2)** the records in electronic form shall be maintained in such manner as the Board of Directors of the company may think fit, provided that:

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;

- (b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;
- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;
- (e) the records, once dated and signed digitally shall not be capable of being edited or altered;
- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made thereunder and the date of updating shall be capable of being recorded on every updating.

— Space to write important points for revision —

**2017 - June [3A] (Or)** Write notes on the following:

- (ii) Pre-certification of e-forms

**(4 marks)**

**Answer:**

**Pre-certification of e-forms**

Apart from authentication of e-forms by authorized signatories using digital signatures, certain e-forms are also required to be pre-certified by practicing professionals who are members of professional bodies namely ICAI, ICSI or ICWAI with the responsibility of ensuring correctness, completeness and integrity of documents filed by them with MCA in electronic mode including filing of financial statements in XBRL mode. Pre-certification is not required in the case of one person companies and small companies.

Once an e-form has been pre-certified by a professional towards its authenticity based on the particulars contained in the books of accounts and records of the company, MCA21 system takes that e-form on file by way of straight through process. Professionals are responsible for certifying documents through digital signature and the system would accept the documents online without approval by ROC.

This process of taking the forms on record by way of straight through process requires professionals to be extra cautious and vigilant towards the information, he/she certifies in the forms. If a professional certifies incorrect information or omits any material information, which later on proves that the

2.510

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

same was done knowingly, he/she will be liable for the punishment under **Section 448 read with Section 447 of the Companies Act, 2013**, besides disciplinary action by the respective Institute, which issued the certificate of practice to the professionals.

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## DISTINGUISH BETWEEN

**2013 - June [4]** Distinguish between the following:

(iii) 'Pre-scrutiny' and 'check form'.

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

**Answer:**

Pre-Scrutiny	Check Form
It is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. Before submitting the e-Form for pre-scrutiny the user has to make the necessary attachments in PDF format.	By clicking " <b>CHECK FORM</b> " the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled - in. For example, if the user enters alphabets in "Date of appointment of director" field, he/she will be asked to correct that.

— Space to write important points for revision —

**2016 - June [2]** Distinguish between the following:

(b) 'Informational services' and 'approval services (Registrar of Companies)' for categories of e-forms.

**(4 marks)**

**Answer:**

Approval Services (Registrar of Companies)	e - form
One Person Company - Application for Conversion	e - Form INC-6
Application for approval of Central Government for change of name	e - Form INC-24





Application to Registrar for obtaining the status of dormant company	e - Form MSC-1
Application for seeking status of active company	e - Form MSC-4
Applications made to Registrar of Companies	e - Form GNL-1
Application for striking off the name of company under the Fast Track Exit (FTE) Mode	e - Form FTE

**Informational Services:**

Intimation to Registrar of revocation/surrender of license issued under <b>section 8</b>	e - Form INC-20
Notice of Order of the Court or any other competent authority	e - Form INC-28
Information to be furnished in relation to any offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company.	e - Form 35A

— Space to write important points for revision —

**2018 - June [2]** Distinguish between the following:

(d) XBRL tags and XBRL taxonomies.

**(4 marks)**

**Answer:**

In XBRL, information is not treated as a static block of text or set of numbers. Instead, information is broken down into unique items of data (e.g. total liabilities = 100). These data items are then assigned mark-up tags that make them computer-readable. For example, the tag<Liabilities>100</Liabilities> enables a computer to understand that the item is liabilities, and it has a value of 100.

Computers can treat information that has been tagged using XBRL 'intelligently'; they can recognize, process, store, exchange and analyze it automatically using software.



Because XBRL tags are formed in a universally-accepted way, they can be read and processed by any computer that has XBRL software. XBRL tags are defined and organized using categorization schemes called taxonomies.

**XBRL Taxonomies:**

Different countries use different accounting standards. Reporting under each standard reflects differing definitions. The XBRL language uses different dictionaries, known as 'taxonomies', to define the specific tags used for each standard. Different dictionaries may be defined for different purposes and types of reporting. Taxonomies are the computer-readable 'dictionaries' of XBRL. Taxonomies provide definitions for XBRL tags, they provide information about the tags, and they organize the tags so that they have a meaningful structure.

As a result, taxonomies enable computers with XBRL software to:

- understand what the tag is (e.g. whether it is a monetary item, a percentage or text);

In tagging Section, "N" refers to navigation, "A" refers to attaching the disclosures "T" refers to text entry etc.

- what characteristics the tag has (e.g. if it has a negative value);
- its relationship to other items (e.g. if it is part of a calculation).

Taxonomies differ according to reporting purposes, the type of information being reported and reporting presentation requirements.

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## DESCRIPTIVE QUESTIONS

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**2008 - Dec [4]** (a) What are the key benefits of MCA-21 project?

**(6 marks)**

**Answer :**

**MCA-21** seeks to fulfill the requirements of the various stakeholders including the Corporates, Professionals, Public Financial institutions and Banks, Government and the MCA employees. The Key benefits of MCA Project are as follows :

- (i) On-line incorporation of companies.
- (ii) Simplified and easy mode of filing forms and Returns through electronic mode.
- (iii) Registration as well as verification of charges on any day, anytime and from anywhere.
- (iv) Inspection of public document of companies on any day anytime and from anywhere.
- (v) Corporate centric approach.
- (vi) Building up a centralized database depository of corporates operating in India.
- (vii) Enhanced service level fulfillment and customer relationship building.
- (viii) Total transparency through e-governance.
- (ix) Timely redressal of investor grievances.
- (x) Availability of more time for MCA employee for qualitative analysis of corporate information.

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**2008 - Dec [7]** (a) Discuss the following :

- (i) Front office represents the interface of the corporate and public users with the MCA –21 system . **(4 marks) [CSEM - II]**
- (ii) In MCA– 21, four types of users which are identified as users of digital signature. **(3 marks) [CSEM - II]**
- (iii) SMART governance. **(3 marks) [CSEM - II]**

**Answer:**

(i)

1.	<b>Authenticity of the Statement</b>	Statement is Correct.	
2.	<b>Front Office</b>	Front office represents the interface of the corporate and public users with the MCA 21 System.	
		<b>Virtual Front Office</b>	<b>Registrar's Front Office</b>
		Virtual front office is one of the mode of various	Registrar front office has been started by the

	channels available to stakeholders (companies and professionals) to enable them to do the statutory filing with ROC office across the country. It merely means of a computer facility for filing of digitally signed e-forms by accessing in the MCA portal through internet. It has facilities to convert documents into PDF format and scanning of documents wherever required.	ministry to provide facility of changing over from physical document filing to digital document filing. It is one of the different kinds of channel available to stakeholders to enable them to do the statutory filing with ROC offices across the country.
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(ii)

1.	<b>Mandate of Digital Signature Certificate</b>	Digital signature certificate is essential for every user who is required to sign in e - form for submission with MCA.
2.	<b>Users of Digital Signature</b>	For MCA -21, there are four types of users that are given below and are identified as user of digital signature and are required to obtain digital signature certificate: (i) MCA (Government) Employees (ii) Professionals (Company Secretaries, chartered accountants, cost Accountants and lawyers). (iii) Authorised signatories of the company including managing director, directors, manager or secretary. (iv) Representatives of banks and financial Institutions.

(iii)

1.	<b>Meaning</b>	SMART means Simple, Moral, Accountable, Responsive and Transparent Governance.
2.	<b>Objective</b>	SMART Governance is a project of MCA with the objective to move from paper based governance to nearly paperless environment. It makes government functioning very simple and smooth.

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**2009 - June [6]** (b) State the important features of electronic filing of documents under the Companies Act, 2013. **(5 marks)**

(c) Mention against the following e-forms, the subject matter for which these forms are meant :

(ii) e-form- SH- 11 **(1 mark)**

**Answer :**

**(b) Important feature of electronic filing of documents are :**

<b>Director Identification Number (DIN)</b>	All existing and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN).
<b>Corporate Identity Number (CIN)</b>	Every company is being allocated a Corporate Identity Number (CIN).
<b>Digital Signature Certificate (DSC)</b>	The e-forms are required to be authenticated by the authorized signatories using digital signatures as defined under the <b>Information Technology Act, 2000</b> . A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent to a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate.



<b>Pre-certification by professionals in whole time practice</b>	Amongst other, Forms No. <b>INC 22, PAS 3, DIR 12</b> are to be pre certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in whole time practice.
<b>Mode of payment</b>	<b>MCA-21</b> system provides for the facility of payment of statutory fees through multiple modes i.e. (i) Off-line payment through a challan generated by the system and payment of fees at the counter of the notified bank branches through DDs/Cash; (ii) on-line payments through Internet Banking and Credit Cards [Master Card/VISA]
<b>Service Request Number (SRN)</b>	Each transaction under e-filing is uniquely identified by a service Request Number. On filing of an e-form, the system generates and provides a Service Request Number. A user can check the status of the document/transaction, by entering the SRN.

**Answer:**

(c) (ii) **e-form SH. 11** : Return in respect of buy Back of Shares.

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**2009 - June [7]** (b) Briefly explain the following terms used under e-filing-

- (i) Pre-fill
- (ii) Attachment
- (iii) Check form
- (iv) Pre-scrutiny

**(2 marks each) [CSEM - II]**

**Answer:**

**(i) Pre-Fill:**

<b>1. What is PRE-FIL</b>	Pre fill is functionality in an e-Form that is used for filling automatically the requisite data from the system without repeatedly entering the same.
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2.	<b>For Example</b>	By entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.
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**(ii) Attachment:**

1.	<b>Meaning</b>	An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file.
2.	<b>Objective</b>	The objective of the attachment is to provide important details to the e-Form for processing. While some attachments are optional some are mandatory in nature.
3.	<b>Nature</b>	While some attachments are optional some are mandatory in nature.
4.	<b>Format and size of attachment</b>	The attachments to an e-Form have to be in Adobe PDF format only. Users are advised to keep the attachment size to minimum as MCA portal does not accept big attachment.
5.	<b>How it is filed</b>	The attachment may be filed through an addendum.
6.	<b>What if the size exceeds the prescribed limit</b>	If the size of e-Form including attachment is more than the prescribed limit. In such cases, the details may be submitted in a floppy or compact disc at the ROC office.

**(iii) Check Form**

1.	<b>Importance</b>	By clicking "CHECK FORM" the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled in.
2.	<b>Example</b>	If the user enters alphabets in "Date of appointment of director" field, he/she will be asked to correct that.

**(v) Pre - Scrutiny**

<b>1.</b>	<b>What is the use</b>	Pre scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e- Form. Before submitting the e-Form for pre-scrutiny the user has to make the necessary attachments in PDF format.
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— Space to write important points for revision —

**2009 - Dec [7] (a) Enumerate the search facilities in MCA-21. (6 marks)**

**Answer :**

The following search facilities are available to locate the requisite information:

- (a) **Search for viewing public document:** Public documents are those documents that are available for viewing by anyone on payment of requisite fees. Users may need to see public documents of any company registered with MCA for various purposes. Similarly, banks and financial institutions may also need to view these documents while sanctioning loan.

The following are the categories of public documents:

- (i) Incorporation documents
- (ii) Charge documents
- (iii) Annual Return and Balance Sheet
- (iv) Change in directors
- (v) Other documents.

- (b) **Search for getting certified copy:** The user selects one or more document(s) for viewing and clicks the "Get Certified copy" button. User has the option to choose more than one document at a time. This is a paid service. User will have the facility to add the documents to his cart and make the payment collectively. The user has the option to mention the number of pages in the document for which he wants a certified copy as well as the number of copies.

Once the request reaches to the pending work list of the concerned MCA official, the official will take the printouts of the documents and sign it with seal and deliver it to the requester. The certified copy will be delivered in the physical form.

- (c) Finding the Corporate Identify Number (CIN).
- (d) Checking availability of Company Name.

— Space to write important points for revision —

**2010 - June [7]** (b) State the matter along with relevant section(s) of the Companies Act, 2013 for which the following E-Forms are required to be filed:

- (i) E-Form INC-27
- (ii) E-Form MGT 9
- (iii) E-Form ADT-1
- (iv) E-Form MR 1.

(1 mark each)

**Answer :**

- (i) **E-Form INC 27:** Application for approval of the Central Government for change of name (**Section 13**) or conversion of a public company into a private company (**Section 14**).
- (ii) **E-Form MGT 9:** Form for filling Annual Return by a company having a share capital with ROC.
- (iii) **E-Form ADT 1:** Information by the company Registrar intimating about Auditor's appointment [**Section 139 (1) of Companies Act, 2013**].
- (iv) **E-Form MR 1:** Return of appointment of Managing Director or whole-time Director or Manager.

— Space to write important points for revision —

**2011 - June [5]** (a) Assume yourself to be a Company Secretary in whole-time practice engaged in formation of a public limited company and you are required to give the declaration under Section 7 in respect of compliance with the relevant provisions of the Companies Act, 2013 and rules framed thereunder as regards registration of the company. By reference to e-form INC 8, write down the declaration you would be making (keep the space for names blank).

(6 marks)



2.520

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Answer :**

-----son / daughter / wife of-----do solemnly declare as under:

- (i) That I am
  - (a) a Company Secretary (in whole - time practice) in India who is engaged in the formation of the Company.
- (ii) And, I further declare that the particulars given above are true to the best of my knowledge and belief
- (iii) Forms **INC 22** and **DIR 12** are also being filed simultaneously
- (iv) The company has paid correct stamp duty as per applicable stamp Act
- (v) That the subscribers have given declaration of details of his / her conviction by any Tribunal for any offence involving moral turpitude
- (vi) That the subscribers have given declaration that he / she has not been declared as proclaimed offender by any economic offence Tribunal or judicial Magistrate Court or High Court.

----- Space to write important points for revision -----

**2011 - June [5]** (b) What is the general structure of e-filing process under MCA-21? **(4 marks) [CSEM - II]**

**Answer:**

<b>1.</b>	<b>Features of E-Filling</b>	E-filing or electronic filing is a Key feature of the MCA 21 System. An e-form contains certain standardized features. Each e-form contains guidelines for filling up the form.	
<b>2.</b>	<b>On-Line/Off-Line filling</b>	An e-form may be filled in either on line or off line.	
		<b>On Line filling</b>	<b>Off Line Filling</b>
		On line filling implies that the e-form is filled while being connected to My MCA portal through the internet.	Off line filling denotes that the e-form is downloaded into users computer and filled later without being connected to internet.



3.	Other requirements	<ul style="list-style-type: none"><li>• E-form requires some mandatory attachments, declaration to the effect that the information and attachments are correct and complete, digital signatures of third parties may be required.</li><li>• Prescribed fees as application will be made either on-line or off line.</li><li>• After completion of filling e-form duly signed (Digital Signature) an acknowledgment e-mail is sent to user regarding its approval/rejection.</li></ul>
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**2011 - Dec [2]** Explain the following pair of terms to bring out their distinctions:

- (ii) 'Registrar of Companies' and 'Regional Director' of Ministry of Corporate Affairs. **(4 marks)**

**Answer:**

**Registrar of Companies:** According to **Section 2(75)** of the **Companies Act, 2013**. Registrar means a Registrar or an additional, a joint, a deputy or an Assistant Registrar having the duty of registering companies under the Act.

- (i) ROCs are the field officers who deal directly with companies registered or going to be registered within their jurisdiction.
- (ii) They are officers of Govt. of India under the Ministry of Corporate Affairs although operating on State level.
- (iii) They not only register companies but are also responsible for overlooking the affairs of the companies registered with them by receiving information by
- way of return
  - resolutions etc.

2.522

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Regional Director :**

- (i) He is also an officer of Ministry of Corporate Affairs having jurisdiction over a region earmarked by Ministry.
- (ii) His role is primarily to discharge the functions allotted to it by the companies Act or delegated to it by the Central Govt.

— Space to write important points for revision —

**2011 - Dec [3] (b) In regard to e-form MR 1, state —**

- (i) The purpose;
- (ii) Attachment(s) required;
- (iii) Contents of the certificate required; and
- (iv) Declaration required.

(1 mark each)

**Answer :**

**E-form MR 1**

- (i) **Purpose:** Return of appointment of managing directors or whole time director or manager [**Section 203 and Schedule V of the Companies Act, 2013**]
- (ii) **Attachment:**
  - (a) Copy of Board resolution is to be attached.
  - (b) Copy of shareholder resolution
  - (c) Any other information can be provided as an optional attachment.
- (iii) **Certificate:** Certified that the requirements of schedule read with **Section 203 of the Companies Act, 2013** have been complied with,
- (iv) **Declaration:** The best of our knowledge and belief, the information given in this form and its attachments is correct and complete.

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**2011 - Dec [7] (b) Mention any four grounds for rejection of application for Director Identification Number (DIN). (4 marks)**

**Answer :**

**Common causes of Rejection for Director Identification Number (DIN)**

- (i) The applicant details are not as per the PAN.
- (ii) The particulars filed in form **DIR 3** do not match with the details given in the supporting documents submitted along with DIN application.

- (iii) Residence proof like :
  - (a) Bank statement
  - (b) Electricity bill
  - (c) Telephone bill
  - (d) Utility bill etc.Submitted are older than **2** months of submitting the application for verification.
- (iv) The supporting document are not duly attested that is :
  - (a) Name
  - (b) Designation
  - (c) Membership
  - (d) Practicing certificate number etc. are not clearly indicated
- (v) Passport/Driving License/Identity proofs etc. attached are expired only such documents which are currently valid should be attached.

— Space to write important points for revision —

**2012 - Dec [2]** (b) In relation to e-form CRA - 2, state the:

- (i) Reasons for filing this form
- (ii) Particulars required to be filled in the form
- (iii) Documents required to be enclosed with the form
- (iv) Person who is to sign and certify the form. **(1 mark each)**

**Answer:**

**(i) Reasons for filling this form**

This is a form of application to the Central Government for appointment of cost auditor.

**(ii) Particulars required to be filled in the form**

1. Corporate Identity Number (CIN) or Foreign Company Registration Number (FCRN) of the company;
2. Name of the company;
3. Category of cost audit order;
4. Details of the cost auditor proposed to be appointed;
5. Proposed remuneration of the cost auditor; and
6. Date of Board Meeting of Directors proposing the name of the cost auditor.



**(iii) Documents required to be enclosed with the form**

- (i) Copy of the board resolution of the company sanctioning the proposal for which the Government approval has been sought.
- (ii) Copy of the certificate obtained from cost auditor.

**(iv) Person who is to sign and certify the form**

The form is required to be digitally signed by Managing Director or Director or Manager or Secretary of the company (in case of Indian Company) or an authorized representative (in case of a Foreign Company).

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**2012 - Dec [4]** (ii) Who are the persons required/obliged to use digital signature for filing/certifying e-forms? **(4 marks)**

**Answer:**

Digital signature certificate is essential for every users who is required to sign in e-form for submission with MCA. For **MCA - 21** there are four types of users that is given below are identifies as user of digital signature and are required to obtain digital signature certificate:

- (1) MCA (Government) Employee.
- (2) Professional (Company Secretaries, Chartered Accountants, Cost Accountants).
- (3) Authorised signatories of the company including managing director, directors, manager or secretary.
- (4) Representatives of Banks and Financial Institutions.

— Space to write important points for revision —

**2013 - June [4]** (b) When a Director Identification Number (DIN) application is rejected by the Ministry of Corporate Affairs portal, does the applicant necessarily need to apply for a fresh DIN? Discuss. **(4 marks)**

**(c)** Is online viewing of public documents of a company open to any member of the public? How one (who is eligible) can view online public documents of a company? Is a copy of a public document available to the public? Give two examples of company documents filed online with the Registrar of Companies. **(6 marks)**

**Answer:**

**(b) Please refer 2011 - Dec [7] (b) on page no. 522**

- (c)** Viewing public documents is open to any member of public because the very term 'public document' means a document to which a member of public has access. There is no issue on eligibility to view public document. Any member of public or citizen can access MCA portal for viewing public documents of any company registered with ROC. The feature of viewing is available after login. One who wishes to view will select the company concerned after login. Then the documents under each category will come on the screen. Contents of the documents can be seen only after payment of requisite fee. Once payment is made the person can view the documents during the next 7 days and once the view is started then it is available for a maximum of 3 hours. The documents can be viewed from anywhere i.e. from any online facility available without visiting Registrar of Companies' office, using the 'My documents' tab available after logging into the portal. Apart from viewing public documents, a person can also obtain certified copies of documents of payment. In this regard, an application is to be made to the concerned ROC within whose jurisdiction the company's registered office is situated. Examples of public documents are:
- (i) Documents relating to incorporation of a company
  - (ii) Annual returns and balance sheets

**Note:** Examples of public documents are given below:

- (i) Documents relating to incorporation of company.
- (ii) Annual returns and financial statement.

— Space to write important points for revision —

**2013 - June [5] (d)** What is the general structure of e-filing process under MCA-21? **(4 marks) [CSEM - II]**

**Answer:**

**Please refer 2011 - June [5] (b) on page no. 520**

— Space to write important points for revision —

2.526

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**2014 - June [3A] (Or)** (ii) "XBRL offers major benefits at all stages of business reporting and analysis". Discuss. **(4 marks)**

**Answer:**

<b>1</b>	<b>Benefits of XBRL</b>	<p>XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision-making.</p> <ol style="list-style-type: none"> <li>1. It saves costs and improves efficiency in handling business and financial information.</li> <li>2. It is extensible and flexible which can adapt any changes according to the requirements.</li> <li>3. It enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data.</li> <li>4. The users of financial data are able to make more effort on analysis.</li> </ol>
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**2014 - Dec [2A] (Or)** (iv) List out the resolutions which require filing of e-Form MGT-14 with the Registrar of Companies. **(4 marks)**

**Answer:**

**Section 117 of the Companies Act, 2013** provides that a copy of every resolution and an agreement in respect of matters specified therein together with a explanatory statement shall be filed in Form No. **MGT-14** with the Registrar within thirty days of its passing.

Resolutions and agreements to be filed with the Registrar are as under:

- (a) special resolutions;
- (b) resolutions which have been agreed to by all the members of a company, but which if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;



- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment or variation of the terms of appointment, of a managing director;
- (d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;
- (e) resolutions passed by a company according consent to be exercised by its Board of Directors of any of the powers under clause (a) and clause (c) of **Sub-Section (1) of Section 180**;
- (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of **Section 304**;
- (g) resolutions passed in pursuance of **Sub-Section (3) of Section 179**, and
- (h) any other resolution or agreement as may be prescribed and placed in the public domain.

— Space to write important points for revision —

**2015 - Dec [2A] (Or)** (iv) Mention the classes of companies which are mandated by the Ministry of Corporate Affairs to file their financial statements in extensible Business Reporting Language (XBRL) mode with its key benefits. State exceptions, if any. **(4 marks)**

**Answer:**

**Please refer 2015 - June [3A] (Or) (iv) on page no. 507**

— Space to write important points for revision —

**2016 - Dec [1]** (d) "The e-forms are required to be authenticated by the authorised signatories using digital signatures." With reference to e-filing of documents with the Registrar of Companies, identify the users of digital signature who are required to obtain Digital Signature Certificate (DSC) and enlist the requirements of obtaining DSC in the case of foreign directors.

**(5 marks)**



2.528

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Answer:**

The following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

- (1) MCA (Government) Employees.
- (2) Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
- (3) Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
- (4) Representatives of Banks and Financial Institutions.

**Requirements for obtaining DSC in case of foreign directors:**

Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal). The process of registration of DSC is same as applicable to others.

In case of Foreign Director, the DSC application is to be made to one of the Indian Certifying Authorities which is licensed **u/s 24 of the Information Technology Act, 2000** and mentioned in the list available on the MCA portal. The said application should be duly filled by such applicant with the relevant enclosures. Such DSC application then to be physically submitted with the necessary documents. Further, the said documents be attested and notarized by the Notary Public by the Foreign Ambassador/Diplomatic.

In this manner, the Foreign Director can obtain the DSC from C.A. on the successful verification of the Application along with the documents and information.

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

**2017 - June [4]** (b) CIN, issued by MCA, the unique identifier, provides the key profile of companies – Explain. **(4 marks)**

**Answer:**

Every company incorporated on or after Nov 1, 2000 is allotted a 21 digit Corporate Identity Number (CIN) by the ROC, which indicates the listing status, economic activity (industry), State, Year of incorporation, ownership

and sequential number assigned by the ROC. This number is to be quoted in all e-forms and once the number is typed, MCA site automatically pre-fills the essential particulars.

**CIN is structured as under to indicate the profile of the company:**

1<sup>st</sup> digit            Listing Status

Next 5 digits: Economic activity (industry to which the company belongs)

Next 2 digits: State in which Company is registered

Next 4 digits: Year of incorporation

Next 3 digits: Ownership

Next 6 digits: Sequential number assigned by the ROC (Registration Number)

CIN can also be searched in MCA site based on ROC registration number, existing company name or old name, if any. Keeping in view the said specifications, CIN can be considered the unique identifier.

— Space to write important points for revision —

**2018 - Dec [2]** (e) Filing of financial statements in XBRL mode and by using XBRL taxonomy is mandatory to certain companies. Discuss, referring to the provisions of the Companies Act, 2013. **(3 marks)**

**Answer:**

As per Rule 3 of the Companies (Filing of Documents and Forms in Extensive Business Reporting Language) Rules, 2018 mandates the following select class of companies mentioned below to file financial statements in XBRL (eXtensible Business Reporting Language) mode and by using the XBRL taxonomy:

- (i) All companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) All companies having paid-up capital of Rupees five crore and above; or
- (iii) All companies having turnover of Rupees one hundred crore and above; or
- (iv) All companies who were required to file their financial statements for F.Y. 2010-11, using XBRL mode.

2.530

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

But, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders.

— Space to write important points for revision —

**2018 - Dec [6]** (a) Shalini, practicing Company Secretary, has disclosed information acquired in the course of her professional engagement to a person other than the client, without the consent of such client. Can she do so? Can she retain the digital signature of her client for uploading e-forms on MCA portal? **(5 marks)**

**Answer:**

Clause 1 of Part I of Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force. This clause indicates the position of trust and confidence reposed by the client in a Company Secretary in practice. Therefore, Shalini is guilty under the above mentioned clause.

It is suggested that Shalini may retain digital signature of client after obtaining a formal letter signed by his client authorising PCS to make use of his Digital signature.

— Space to write important points for revision —

**2019 - June [2A] (Or)** (iii) Who are all the persons required to obtain Digital Signature Certificates? **(3 marks)**

**Answer:**

The e-forms are required to be authenticated by the authorized signatories using Digital Signature Certificate (DSC) as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain



a Digital Signature Certificate. For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

All companies (Public Company, Private Company, Company not having share capital, Company limited by share or guarantee, Unlimited Company) must comply with this requirement of registration of DSC by the director, manager and secretary. Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal). The process of registration of DSC is same as applicable to others.

— Space to write important points for revision —

## PRACTICAL QUESTIONS

**2016 - June [3]** (a) Prudent General Insurance Company Ltd. is engaged in the general insurance business. The company is not listed in any stock exchange in India but is a subsidiary of Reliable General Insurance Company Ltd., listed at Bombay Stock Exchange. The turnover of Prudent General Insurance Company Ltd. is ₹ 330 crore. Examining the provisions of the **Companies Act, 2013**, state whether the company is required to file XBRL enabled balance sheet. **(4 marks)**



Answer:

1	<b>XBRL Filing</b>	<p>The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy:</p> <ul style="list-style-type: none"> <li>(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or</li> <li>(ii) all companies having paid-up share capital of Rupees five crore and above; or</li> <li>(iii) all companies having turnover of Rupees one hundred crore and above; or</li> <li>(iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.</li> </ul> <p>However, banking companies, insurance companies, power companies and Non-Banking Financial Companies (NBFCs) are exempted from XBRL filing till further orders.</p>
2	<b>Conclusion</b>	<p><i>In present case Prudent General Insurance Company Ltd. is engaged in general insurance business, thus XBRL filing is not applicable to the company.</i></p>

— Space to write important points for revision —

**2016 - June [4]** (a) In relation to filing of financial statements of a company in XBRL mode and by using the XBRL taxonomy, decide whether the following companies are required to file the financial statements in the said mode:

- (i) Grand Ltd., the subsidiary company of Tiny Ltd. which is listed at Kolkata Stock Exchange.
- (ii) Prime Ltd., a company which has paid-up share capital of ₹ 100 crore.
- (iii) Crafty Ltd., a company which has a turnover of ₹ 400 crore.
- (iv) Comfort Ltd., a non-banking financial company. **(4 marks)**

**Answer:**

**XBRL Filing:** The Ministry of Corporate Affairs has mandated the following select class of companies mentioned below to file financial statements in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy:

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid-up share capital of rupees five crore and above; or
- (iii) all companies having turnover of rupees one hundred crore and above; or
- (iv) all companies who were required to file their financial statements for F.Y. **2010-11**, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies are exempted from XBRL filing till further orders.

- (i) Yes, Company is required to file financial statements through XBRL mode.
- (ii) Yes, Company is required to file financial statements through XBRL mode.
- (iii) Since in this case the turnover is more than ₹ **100** crore, the company is required to file the financial statements through XBRL mode.
- (iv) This company is exempted from filing the financial statements through XBRL mode.

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

Repeatedly Asked Questions		
No.	Question	Frequency
1	What is the general structure of e-filing process under MCA-21? 11 - June [5] (b), 13 - June [5] (d)	2 Times
2	Write a note on the Digital signature , 08 - Dec [7] (a) (ii), 11 - Dec [3] (iii)	2 Times

2.534	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
3	Mention the classes of companies which are mandated by the Ministry of Corporate Affairs to file their financial statements in extensible Business Reporting Language (XBRL) mode with its key benefits. State exceptions, if any. 15 - June [3A] (or) (iv), 15 - Dec [2A] (iv)	2 Times
4	When a Director Identification Number (DIN) application is rejected by the Ministry of Corporate Affairs portal, does the applicant necessarily need to apply for a fresh DIN? Discuss. 11 - Dec [7] (b), 13 - June [4] (b)	2 Times

# 14




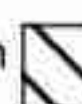

## GLOBAL DEVELOPMENTS

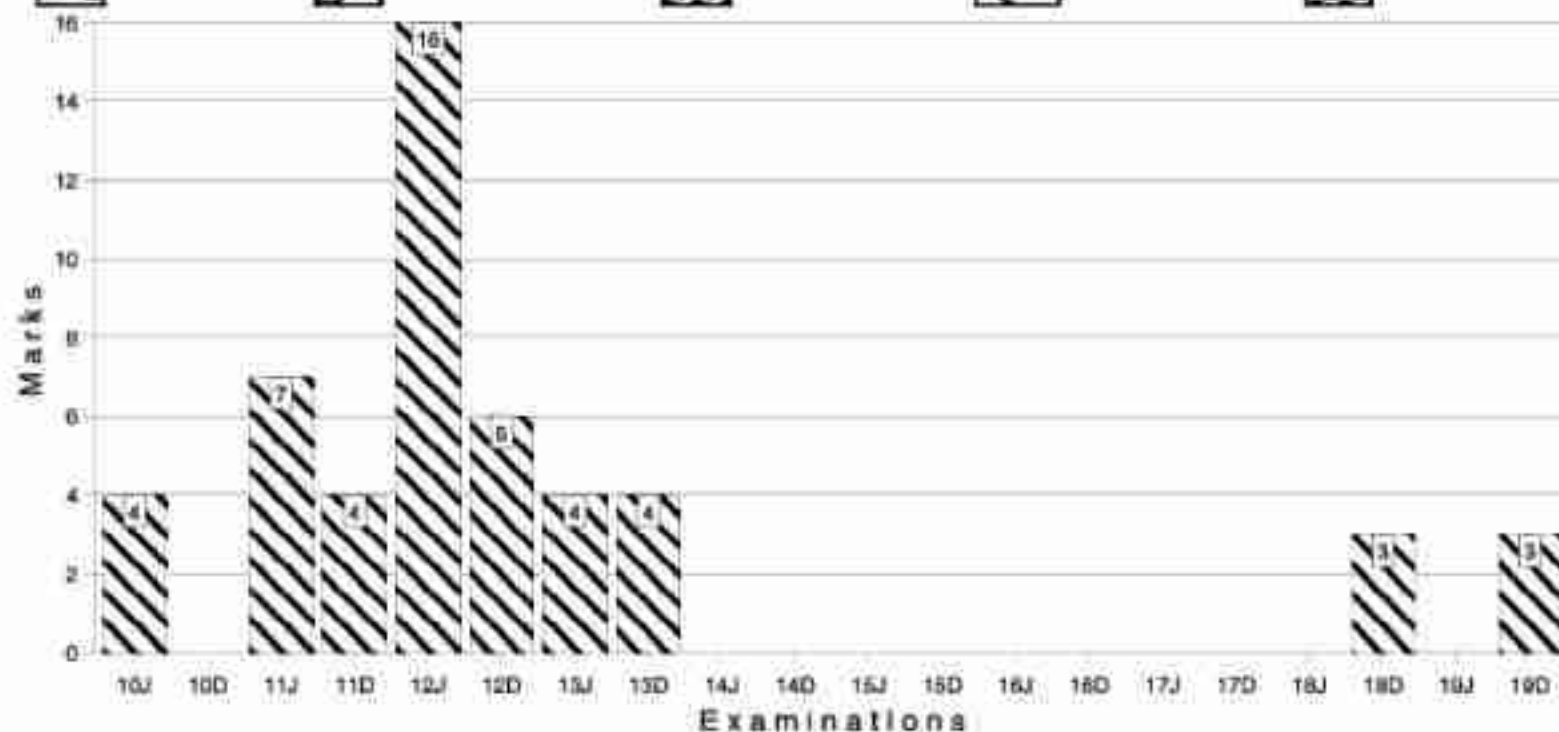
### THIS CHAPTER INCLUDES

- Modernization of Company Law for Global Competitiveness
- Distinguishing features of Company Law in various countries.
  - (a) United Kingdom
  - (b) United States of America
  - (c) Australia
  - (d) Canada
  - (e) Hong Kong
  - (f) Singapore

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

#### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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Question upto Dec - 2008 are from CS Inter Gr. II Old Course and from June - 2009 onwards are from CS Professional Programme New Course.



**CHAPTER AT A GLANCE****Modernisation of Company Law for Global Competitiveness**

It is increasingly being recognized that the framework for regulation of corporate entities must facilitate companies to operate in a national and global context, encourage good corporate governance and enable protection of interests of investors, employees, creditors as well as boost economy as a whole. In the competitive and technology driven business environment, while corporates require greater autonomy of operation and opportunity for self-regulation with optimum compliance costs, there also is a need to bring about transparency through better disclosures and greater responsibility on the part of corporates and managements for improved compliance.

**Core Company Law**

In recognition of the fact that the primary purpose of any law is to facilitate the public and bearing in mind the current international style of legal drafting, an ideal law for the corporate sector should be clear, concise and comprehensible. It is desirable that the law is a "core company law" i.e. regulating the "entity" (irrespective of its corporate structure and size) rather than its "activity" and providing the basic principles governing all aspects of the operation of corporate entities within a single, comprehensive framework.

**Modernizing and Harmonizing**

It is in this context that countries across the world are modernizing and harmonizing their company law with global standards.



List of Important Forms (Companies Act, 2013)

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
GNL- 1	e-Form	Form for filing an application with Registrar of Companies	—	12(2)
GNL-2	e-Form	Form for submission of documents with the Registrar	—	12(2)

DESCRIPTIVE QUESTIONS

**2009 - Dec [7]** (c) Discuss director's remuneration report in the light of Companies Act, 2006 of the United Kingdom. **(4 marks)**

**Answer :**

Duty to prepare director's remuneration report under UK **Companies Act, 2006 (Section 420 and 422)**

The directors of a quoted company shall for each financial year prepare a director's remuneration report which shall contain the information specified in the Schedule to Act and comply with any requirement of that Schedule as to how the information is to be set out in the report. The director's remuneration report shall be approved by the Board of Directors and signed on behalf of the Board by a director or the secretary of the company. Every copy of said report which is laid before the company in General Meeting or which otherwise circulated, published or issued, shall state the name of the person who signed it on behalf of the Board. The copy of the directors remuneration report which is delivered to the registrar shall be signed on behalf of the Board by a director or the secretary of the company.

— Space to write important points for revision —

**2010 - June [7]** (c) State the requirement for audit of the financial accounting statements under the UK Companies Act, 2006. **(4 marks)**

2.538

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**Answer :**

Requirement for audited accounts (**Section 475 of the UK Companies Act, 2006**)

A company's financial statements for a financial year must be audited in accordance with this part unless the company-

- (a) is exempt from audit under **Section 477 (small companies)** or **Section 480** (dormant companies), or
- (b) is exempt from the requirements of this Part under **Section 482** (nonprofit making companies subject to public sector audit)

A company is not entitled to any such exemption unless its balance sheet contains a statement by the directors to that effect.

A company is not entitled to exemption under any of the provisions mentioned in **sub-Section (1)** (a) unless its balance sheet contains a statement by the directors to the effect that -

- (a) the members have not required the company to obtain an audit of its accounts for the year in question in accordance with **Section 476**, and
- (b) the directors acknowledge their responsibilities for complying with the requirements of this Act with respect to accounting records and the preparation of accounts.

— Space to write important points for revision —

**2011 - June [3]** (c) During a period of about past one and a half decades, a number of countries in the world have engaged themselves in modernising their respective company laws. Can you identify the motivating factors underlying this effort ? Mention Indian scene in particular. **(4 marks)**

**Answer :**

A various no. of countries such as India, Australia, Canada, Hong Kong and U.K. have initiated comprehensive effort to modernise their respective company laws. The need to become more-

- (a) More Competitive
- (b) Simple to understand
- (c) Interpret to facilitate greater compliance
- (d) Economic to operate



- (e) Attractive as a worth while investment destination to accelerate economic growth
- (f) Corporate Social responsibility and
- (g) Better regulation and greater transparency in corporate governance.

In India, the process has started to evolve the modern, transparent, investor friendly, well governed company law i.e. company bill 2009. Modernization of corporate regulation governing setting up and running of enterprises, governance and accountability to the investors and other stake holders. By putting in place, a best legal frame work would enable the Indian Corporate Sector to operate in an environment of best international practices in a global competitive market.

— Space to write important points for revision —

**2011 - June [7]** (d) Account for the significance of Hong Kong as a vibrant business centre, having some special advantage. Name the law that governs companies in Hong Kong. **(3 marks)**

**Answer :**

Hong Kong is an international city with advanced information, and the free harbour for trading in the world. It is a wonderful business situations for entrepreneurs and business men. The advantage for setting up Hong Kong company are as follows.

- (i) **Free to Choose the Name of the Company:**  
The Hong Kong government allows to choose the name of the company to include the words such as international, chamber of commerce, united group, foundation, association for promotion ; etc.
- (ii) **Little Restriction of the Business Areas:**  
Jewellery, treasury, shipment, transportation, import and export, house estate, website, research institution and other hi-tech industry. All these can be business.
- (iii) **Great Development in Low Taxation Environment:**  
The taxation in Hong Kong is very low.



(iv) **Easy to get International Credit**

Hong Kong is the economic and financial center in Asia, every street of which has banks. Credit is the basis to develop International business and is easily available.

- (v) **Doing Best to Get the Inhabitant Right in Hong Kong:** If your enterprises have done contributions to Hong Kong. You can apply to the people's inbound affairs office of the Hong Kong to arrange the advice for doing business. If people have inhabited in Hong Kong for 7 years, they can get the eternal inhabitation right in Hong Kong.

—— Space to write important points for revision ——

**2011 - Dec [6]** (c) State the requirements under the UK Companies Act, 2006 for audited accounts and the duties of an auditor. **(4 marks)**

**Answer :**

***Please refer 2010 - June [7] (c) on page no. 537***

—— Space to write important points for revision ——

**2012 - June [7]** (a) Mention the provisions of the Singapore Companies Act relating to formation of companies. **(8 marks)**

- (b) "The provisions of the Hong Kong Companies Ordinance relating to formation of an incorporated company are broadly similar to the provisions of the Companies Act, 2013". Comment. **(8 marks)**

**Answer :**

- (a) Formation of Companies under the provisions of Singapore Companies Act. Any person may, whether alone or together with another person, by subscribing his name or their names to a memorandum and complying with the requirements as to registration form an incorporated company. A company may be :

- (a) a company limited by share
- (b) a company limited by guarantee on unlimited company.

**Provisions :**

A company must have at least one members - the first consideration is to decide on the right business entity that will meet the business needs.

The most common three business entities available in Singapore are :

- (a) Sole proprietorship
- (b) Limited Liability Partnership
- (c) Private Limited Company.

**(a) Sole Proprietorship:** The following requirements are given below:

- (i) Minimum one owner
- (ii) A Singapore registered office-address.
- (iii) For foreign individual and companies only : one manager who must be a Singapore resident.

Following documents are needed for registration of a sole proprietorship

- (i) Proposed sole proprietorship name
- (ii) Copies of NRIC
- (iii) Brief description of business activities
- (iv) Registered office address for the sole proprietorship.

**(b) Limited Liability Partnership:** A LLP gives owner the flexibility of operating as a partnership while having a separate legal entity like a private limited company. Singapore citizens, residents, and employment pass holders can register a LLP.

**(c) Private Limited Company:** The private limited company is the most popular business entity in Singapore. It has a separate legal entity from its shareholders and directors, who have limited liability for the debt and losses of the company. It usually has the words Pvt. Ltd. as parts of its name.

**Answer:**

- (b)** The statements that the provisions of Hong Kong Companies ordinance relating to formation of an incorporated company are broadly similar to the provisions of the **Companies Act, 2013**, appears to be correct for the following reasons.

2.542

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

Similarities are given below :

	Hong Kong	India
1	A company may be formed by one person or more than one person by subscribing their names to the memorandum of association	In India, the process is the same
2	The different types of company can be formed are : a. Company Ltd. by share b. Company Ltd. by guarantee c. Unlimited Company	Under the Companies Act, 2013 same types of company can be incorporated
3	A companies which is being incorporated in Hong Kong need to deliver to the Registrar the MOA/AOA of company.	In India the process is the same.
4	Once MOA/AOA are registered by a company in Hong Kong. The Registrar shall certify in his hand that the company has been incorporated.	In India, the process is the same applicable.

— Space to write important points for revision —

**2012 - Dec [7]** (a) State the broad requirements of the Companies Act, 2006 of United Kingdom as regards 'Directors' Remuneration Report'. **(6 marks)**

**Answer:**

***Please refer 2009 - Dec [7] (c) on page no. 537***

— Space to write important points for revision —

**2013 - June [7]** (a) Explain the salient features of the Australian Corporations Act, 2001 relating to appointment of auditors. **(4 marks)**



**Answer:**

The following may be appointed as auditor of a company for the purposes of the Australian **Corporations Act, 2001**: (a) an individual; (b) a firm; (c) a company.

1. In case of Proprietary company, the directors may appoint an auditor for the company.
2. The company may have more than one auditor. The appointment of a firm as auditor of a company is taken to be an appointment of all persons who, at the date of the appointment, are (a) members of the firm; and (b) registered company auditors. This is so whether or not those persons are resident in Australia.
3. The directors of a public company must appoint an auditor of the company within one month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.
4. A public company must appoint an auditor of the company at its first AGM and appoint an auditor of the company to fill any vacancy in the office of auditor at each subsequent AGM.

— Space to write important points for revision —

**2013 - Dec [6]** (d) What are the special features of the Corporations Act, 2001 of Australia, which are distinct and different from the provisions of the Companies Act, 2013 in India. **(4 marks)**

**Answer :**

**Corporations Act, 2001** and the **Corporate Regulations, 2001** framed under the **Corporations Act, 2001** govern the functioning of the companies in Australia. Following are the special and distinct features of the corporate laws in Australia as compared to the **Indian Companies Act, 2013**:

1. The Australian Corporations Act imposes duties on directors and officers of incorporated bodies. Breach of statutory duties draws penalties under the Act which range up to \$ **2,20,000**. Defaulting Officers or directors may also be required to pay compensation or to account for profits. In some cases, directors may also be disqualified from office.



2. It distinguishes proprietary company and public company. A public company must have at least 3 directors out of whom at least 2 directors must ordinarily reside in Australia.
3. Australian Securities and Investment Commission (ASIC) controls and regulates the affairs of companies. A person who is not disqualified from managing corporations may only be appointed as director of a company if the appointment is made with permission granted by Australian Securities and Investments Commission under the leave granted by the Tribunal.
4. A person who is the only director and only shareholder of a proprietary company can exercise all the powers of the company.
5. A company secretary's obligations may continue even after the company has been deregistered.
6. The company secretary must notify ASIC about changes:-
  - (i) to the identities, names and addresses of the company's directors and company secretaries; and
  - (ii) to the register of members; and
  - (iii) to any ultimate holding company;

— Space to write important points for revision —

**2018 - Dec [2]** (d) The concept of treasury shares in United Kingdom is same as buy-back of shares in India. Examine. **(3 marks)**

**Answer:**

**Section 124 read with Chapter 6 of U.K Companies Act, 2006** deals with treasury shares. Treasury shares are purchased by the company out of the distributable profits of the company and the company is allowed to hold such shares. The aggregate nominal value of shares held as treasury shares must not exceed 10 percent of nominal value of issued share capital.

In India, the Section 68 of Companies Act, 2013, provides that the buy back of its own shares but does not allow a company to hold shares. Bought back shares are to be cancelled within seven days, thus in India, bought back shares cannot be held as treasury stock. In India buy back of shares cannot exceed 25% of total paid up capital in any financial year.

— Space to write important points for revision —



2019 - Dec [2] (d) What types of companies can be formed in Singapore as per the Singapore Companies Act? (3 marks)

Repeatedly Asked Questions		
No.	Question	Frequency
1	State the broad requirements of the Companies Act, 2006 of United Kingdom as regards 'Directors' Remuneration Report'. 09 - Dec [7] (c), 12 - Dec [7] (a)	2 Times
2	State the requirements under the UK Companies Act, 2006 for audited accounts and the duties of an auditor. 10 - June [7] (c), 11- Dec [6] (c)	2 Times

# 15






## BOARD CONSTITUTION AND ITS POWERS

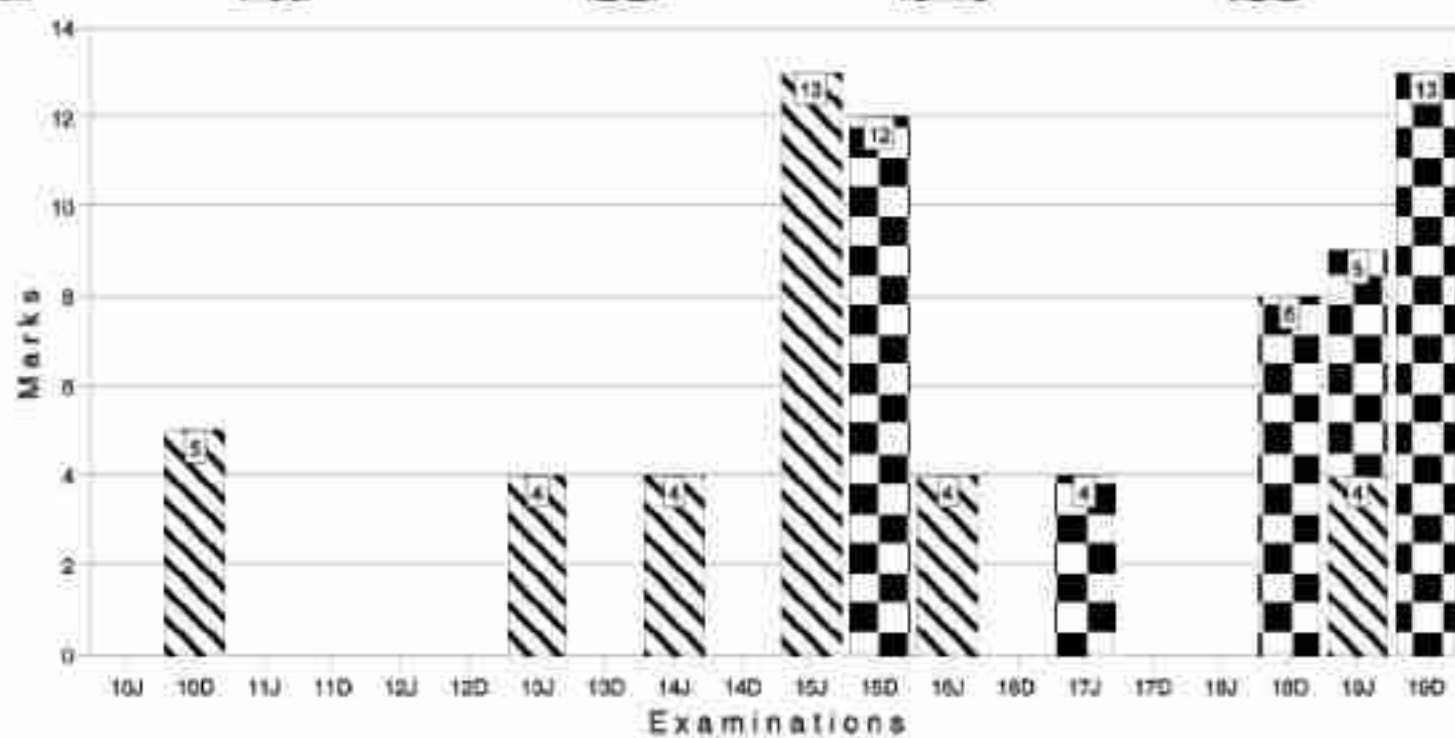
### THIS CHAPTER INCLUDES

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Board composition</li> <li>• Restriction and Power of Board</li> <li>• Board Committee</li> <li>• Audit Committee</li> <li>• Nomination and Remuneration Committee</li> </ul> | <ul style="list-style-type: none"> <li>• Stakeholder Relationship Committee</li> <li>• Risk Management Committee</li> <li>• Corporate Social Responsibility Committee</li> <li>• Other Board Committee.</li> </ul> |
|--|--|

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

### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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## CHAPTER AT A GLANCE

### Board of Director

**Section 2(10) of the Companies Act, 2013** defines that “Board of Directors” or “Board”, in relation to a company, means the elective body of the directors of the company.

The term ‘Board of Directors’ means a body duly constituted to direct, control and supervise the affairs of a company.

### Maximum and Minimum number of Directors in a Company

**Section 149(1) of the Companies Act, 2013** requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors without any specific compliance. A company may appoint more than fifteen directors after passing a special resolution in general meeting.

The restriction of maximum number of directors shall not apply to Section 8 companies.

### Number of Directorship (Section 165)

Maximum number of directorships, including any alternate directorship, a person can hold is 20. Same time, a person cannot be a director of more than 10 public companies. For the purpose of counting such directorship in public company, directorship in private companies that are either holding or subsidiary of a public company shall be included. Alternate directorship shall also be included while calculating the directorship of 20 companies. Section 8 company will not be counted for the purpose of maximum number of Directorship. Further the members of a company may restrict abovementioned limit by passing a special resolution for its own directors.



**Power of Board**

1. to make calls on shareholders in respect of money unpaid on their shares;
2. to authorise buy-back of securities under section 68;
3. to issue securities, including debentures, whether in or outside India;
4. to borrow monies;
5. to invest the funds of the company;
6. to grant loans or give guarantee or provide security in respect of loans;
7. to approve financial statement and the Board's report;
8. to diversify the business of the company;
9. to approve amalgamation, merger or reconstruction;
10. to take over a company or acquire a controlling or substantial stake in another company;
11. to make political contributions;
12. to appoint or remove key managerial personnel (KMP);
13. to appoint internal auditors and secretarial auditor;

**Contributions to Charitable Funds and Political Parties**

The power of making contribution to '*bona fide*' charitable and other funds is available to the board subject to certain limits.

Further, the prior permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding previous years.

**Prohibitions and Restrictions Regarding Political Contributions**

The non-government company or the company which has been in existence less than three financial years may contribute any amount directly or indirectly to any political party.

Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.

**Audit Committee**

Every Listed Public Company and (i) all public companies with a paid up capital of ten crore rupees or more; (ii) all public companies having turnover of one hundred crore rupees or more; (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more shall form Audit Committee comprised of minimum 3 directors with majority of the Independent Directors and majority of members of committee shall be person with ability to read and understand financial statement.

**Nomination and Remuneration Committee**

Every listed company and (i) all public companies with a paid up capital of ten crore rupees or more; (ii) all public companies having turnover of one hundred crore rupees or more; (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors, 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 directors.

**The Stake-holders Relationship Committee**

**Section 178(5) of the Companies Act, 2013** provides for constitution of the stakeholders relationship committee.

The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

**Risk Management Committee under SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015**

2.550	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<p>As per <b>Regulations 21 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015</b>, the board of directors of the top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year shall constitute a Risk Management Committee. The board of directors shall constitute a Risk Management Committee, the majority of members of Risk Management Committee shall consist of members of the board of directors. The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.</p>		
<b>Corporate Social Responsibility Committee</b>		
<p>The Section applies to the following classes of companies during any financial year:</p> <ul style="list-style-type: none"> <li>(i) Companies having Net Worth of ₹ 500 crores or more;</li> <li>(ii) Companies having turnover of ₹ 1,000 crores or more;</li> <li>(iii) Companies having Net Profit of ₹ 5 crores or more.</li> </ul>		
<b>Other Board Committees</b>		
<p>In addition to the Committees of the Board mandated by the Companies Act, 2013 viz, Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and the CSR Committee, Board of Directors may also constitute other Committees to oversee a specific objective or project. The nomenclature, composition and role of such Committees will vary, depending upon the specific objectives of the company.</p> <p>A few examples of such Committees prevalent in the corporate sector in India and abroad are given below:</p> <ol style="list-style-type: none"> <li>1. Corporate Governance Committee</li> <li>2. Science, Technology and Sustainability Committee</li> <li>3. Regulatory, Compliance and Government Affairs Committee</li> <li>4. Investment Committee</li> <li>5. Ethics Committee.</li> </ol>		





**Note:**

*Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.*

## DESCRIPTIVE QUESTIONS

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**2010 - Dec [5]** (b) "The power to borrow includes the power to give security". Comment. **(5 marks) [CSEM - II]**

**Answer:**

1.	<b>Powers of Board of Directors- Sec.179 of Companies Act, 2013</b>	<ul style="list-style-type: none"><li>• This section empowers the Board of Directors to exercise its power in all areas, except where it is specifically mentioned in the Companies Act or in the MOA or AOA that the powers shall be exercised at a general meeting by the shareholders.</li><li>• As per sub-Section (3)(d), the powers of Board includes power to borrow Money.</li></ul>
2.	<b>Restriction on Powers of Board of Directors</b>	<ul style="list-style-type: none"><li>• In case the company wants to borrow money, where the money to be borrowed, together with the money already borrowed by the company, will exceed aggregate of its paid up share capital and free reserves, apart from the temporary loans obtained from the company's banks in the ordinary course of business, consent of members by passing special resolution in general meeting will be required.</li></ul>



3.	<b>Does Power to borrow Include Power to Give Security</b>	The power to borrow whether express or implied includes the power to charge the assets of the company by way of security to the lender. Hence, The given statement is correct that the 'power to borrow includes the power to give security'.
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**2013 - June [5]** (c) Can the Board of directors of a company delegate any of its powers to others? Discuss. **(4 marks) [CSEM - II]**

**Answer:**

1.	<b>Powers of Board Section 179</b>	<b>Section 179</b> of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.
2.	<b>Powers that can be excised with Board Resolution only. [Section 179(3) read with Rule 8 of Companies Meetings of Board and its Powers Rules 2014</b>	The following powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely: (a) to make calls on shareholders in respect of money unpaid on their shares; (b) to authorise buy-back of securities under Section 68; (c) to issue securities, including debentures, whether in or outside India; (d) to borrow monies; (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans; (g) to approve financial statement and the Board's report; (h) to diversify the business of the company;

		<ul style="list-style-type: none"><li>(i) to approve amalgamation, merger or reconstruction;</li><li>(j) to take over a company or acquire a controlling or substantial stake in another company;</li><li>(k) to make political contributions;</li><li>(l) to appoint or remove key managerial personnel (KMP);</li><li>(m) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;</li><li>(n) to appoint internal auditors and secretarial auditor;</li><li>(o) to take note of the disclosure of director 's interest and shareholding;</li><li>(p) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid-up share capital and free reserves of the investee company;</li><li>(q) to invite or accept or renew public deposits and related matters;</li><li>(r) to review or change the terms and conditions of public deposit;</li><li>(s) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.</li><li>(t) To appoint internal auditors and secretarial auditor.</li></ul>
2.	<b>Delegation of Powers to Directors, MD, Manager etc.</b>	<p>Board may, by a resolution passed at a meeting, delegate</p> <ul style="list-style-type: none"><li>• to any committee of directors,</li><li>• the managing director,</li><li>• the manager or</li></ul>

2.554	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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	<ul style="list-style-type: none"> <li>any other principal officer of the company or</li> <li>in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.</li> </ul>
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**2014 - June [3A] (Or)** (iv) Explain the prohibitions and restrictions regarding political contributions by a company. **(4 marks)**

**Answer:**

1.	<b>Eligible Companies for Political Contribution</b>	The non-government company or the company which has been in existence less than three financial years may contribute any amount directly or indirectly to any political party.
2.	<b>Limit of Contribution</b>	Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years. <b>Note:</b> <b><i>Section 154 of the Finance Act, 2017 amends Section 182 of the Companies Act, 2013. As per the amendment, the limit on the maximum amount that can be contributed by a company to a political party has been removed.</i></b>
3.	<b>Board resolution</b>	The contribution must be authorised by board in its meeting by resolution and such resolution deemed to be the justification in law for such contribution.
4.	<b>Direct/Indirect Donation</b>	The donation may be made directly or indirectly.



5.	<b>Expenditure Deemed to be Political Contribution</b>	<ul style="list-style-type: none"><li>• The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose.</li><li>• If the expenditure incurred on advertisement in any publication souvenir, brochure, tract, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.</li></ul>
6.	<b>Disclosure</b>	The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year and the particular of total amount contributed and the name of political party to whom the contribution so made.

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**2015 - June [1]** Comment on the following :

- (b) Powers of the directors of a company are co-extensive with those of the company. **(5 marks)**

**Answer:**

1.	<b>Powers of Board of Directors Sec.179(1) of Companies Act, 2013</b>	<p>The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do subject to below mentioned two conditions-</p> <p><b>Condition 1</b> in exercising such power or doing such act or thing, the Board shall be subject to the</p> <ul style="list-style-type: none"><li>• provisions contained in that behalf in this Act, or</li><li>• in the memorandum or articles, or</li></ul>
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2.556 ■ Scanner CSEP M-I Paper 2 (2017 Syllabus)	
	<ul style="list-style-type: none"><li>• in any regulations not inconsistent therewith and duly made thereunder,</li><li>• including regulations made by the company in general meeting</li></ul> <p><b>Condition 2</b> Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting. Hence the Directors shall exercise their powers bonafide and in the interest of the company.</p>
2.	<p><b>Members cannot Supersede the Directors's Powers</b></p> <p>The Directors shall exercise their powers bona fide and in interest of the company. The directors while exercising their powers do not act as agents for the majority or even all the members and so the members cannot by resolution passed by a majority or even unanimously supersede the director's powers or instruct them how they shall exercise their powers.</p>
3.	<p><b>Separate power of Members and directors</b></p> <p>A company is an entity distinct from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. The powers of management are vested in the directors. They and they alone can exercise these powers.</p>
4.	<p><b>Conclusion</b></p> <p>Therefore, from the provisions of <b>Section 179</b> and the exposition of the law stated above, it is clear that subject to the restrictions contained in the Act, Memorandum and Articles, the powers of directors are co-extensive with those of the company itself.</p>

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**2015 - June [3]** (c) In what way does the Companies Act, 2013 regulate the payment made by companies towards contribution to political parties for political purposes? Explain. **(4 marks)**

**Answer:**

*Please refer 2014 - June [3A] (Or) (iv) on page no. 554*

— Space to write important points for revision —

**2015 - June [5]** (a) Explain the provisions of the **Companies Act, 2013** relating to the constitution of an audit committee. What role does the audit committee play in the management of a company? **(4 marks)**

**Answer:**

Audit Committee Sec.177 of Companies Act, 2013		
1.	<b>Companies, required to have Audit Committees</b>	<p>The requirement of constitution of Audit Committee has been limited to:</p> <p>(a) Every listed Public Companies; or</p> <p>(b) The following class of companies –</p> <ul style="list-style-type: none"> <li>(i) all public companies with a paid up capital of ten crore rupees or more;</li> <li>(ii) all public companies having turnover of one hundred crore rupees or more;</li> <li>(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.</li> </ul> <p><b>Note:</b></p> <p><b>Amended by Companies Act, 2017:</b> In Section 177 of the Companies Act, 2013, in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted;</p>

2.558	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)	
2.	<b>Composition of Directors</b>	The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.
3.	<b>Transition Period</b>	A transition period of one year from the date on which the new Act comes into effect has been provided to enable companies to reconstitute the Audit Committee.
4.	<b>Role of Audit Committee Section 177 (4)</b>	<p>Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board.</p> <p>Terms of reference as prescribed by the board shall inter alia, include, –</p> <p>(a) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;  <i>(In case of Government Companies, in Clause (1) of sub-section (4) of Section 177, for the words "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted – Exemption Notification dated 05-06-2015)</i></p> <p>(b) review and monitor the auditor's independence and performance, and effectiveness of audit process;</p> <p>(c) examination of the financial statements and the auditors' report thereon;</p> <p>(d) approval or any subsequent modification of transactions of the company with related parties;</p>



	<p>The Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed under rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014.</p> <p>Further in case of transaction, other than transactions referred to in Section 188 (Related Party Transactions), and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.</p> <p>In case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:</p> <p>The provisions of this clause shall not apply to a transaction, other than a transaction referred to in Section 188, between a holding company and its wholly owned subsidiary company.</p> <p>(e) scrutiny of inter-corporate loans and investments;</p> <p>(f) valuation of undertakings or assets of the company, wherever it is necessary;</p>
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2.560	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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		(g) evaluation of internal financial controls and risk management systems; (h) monitoring the end use of funds raised through public offers and related matters.
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**2016 - June [6]** (a) Explaining the provisions of the Companies Act, 2013, state the duties of Nomination and Remuneration Committee. **(4 marks)**

**Answer:**

1.	<b>Nomination and Remuneration Committee</b>	<b>Applicability :</b> The Board of Directors of every listed company and (i) all public companies with a paid up capital of ten crore rupees or more; (ii) all public companies having turnover of one hundred crore rupees or more; (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.
2.	<b>Composition</b>	The committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors, as may be prescribed shall constitute the Nomination and Remuneration Committee .
3.	<b>Duties of the Nomination and Remuneration Committee</b>	The duties of the Nomination and Remuneration Committee have now been specified. They include: (a) identifying persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down; (b) recommend to the Board their appointment and removal; (c) carry out evaluation of every Director's performance;



		(d) formulate the criteria for determining qualifications, positive attributes and independence of a Director and (e) recommend to the Board a policy, relating to the remuneration for the Directors, KMP and other employees.
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**2019 - June [5]** (b) State the situations under which a company is required to constitute the Audit Committee? **(4 marks)**

**Answer:**

**Section 177(1) of the Companies Act, 2013** read with Rule 6 of the Companies (Meeting of the Board and its Powers) Rules, 2014, provides that the Board of directors of the following companies are required to constitute an Audit Committee of the Board -

- (i) Every listed public companies;
- (ii) All public companies with a paid up share capital of 10 crore rupees or more;
- (iii) All public companies having turnover of 100 crore rupees or more;
- (iv) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

The paid up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purpose.

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## PRACTICAL QUESTIONS

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**2015 - Dec [3]** (b) Net profits of PQR Ltd. during the following years as disclosed in the statement of profit and loss are as under :

2.562

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

Financial year ended	Net profits (₹ in crore)
31 <sup>st</sup> March, 2013	10
31 <sup>st</sup> March, 2014	12
31 <sup>st</sup> March, 2015	08

The Board of Directors of the company at its meeting decides to contribute to a charitable organisation, for charitable purposes, a sum of ₹ 3 crore out of the net profits of the financial year ended 31<sup>st</sup> March, 2015. This contribution has been made by the Board without seeking approval of shareholders in general meeting.

In the light of the provisions of the Companies Act, 2013, examine the validity of the contribution made by the company. What shall be your answer in case the Board decides to contribute ₹ 1 crore only? **(4 marks)**

**Answer:**

1.	<b>Applicability of Section 181 of Companies Act, 2013</b>	(i) <b>Bonafide Charity</b>	Section 181 provides that Board of Directors of the company may contribute to 'bonafide' charitable and other funds.
		(ii) <b>Prior Consent of Members</b>	Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed <b>5% of its average net profits</b> for the three immediately preceding financial years.
2.	<b>Average Net Profit in the Given Case</b>	The average net profit <b>in the given case</b> are ₹ 10 crores.	



3.	<b>Conclusion</b>	Thus, any contribution in excess of ₹ 50 Lacs (5% of average net profits for three immediately preceding financial years) would need members' approval. Board is not empowered to take decisions of contribution in excess of ₹ 50 Lacs. Board's decision is invalid. Further, if the contribution amount was ₹ 1 Crore, then also the company would be required to obtain members' prior approval.
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— Space to write important points for revision —

**2015 - Dec [3A] (Or)** (i) Board of Directors of Divine Ltd. decides to enter into a contract whereby Manish, a director of the company shall acquire certain assets from the company for consideration other than cash, without seeking approval of the company in its general meeting. Certain shareholders of the company object to the said decision of the Board. Referring to the provisions of the Companies Act, 2013, examine the validity of the Board's decision and state whether the contention of the shareholders shall be tenable. **(4 marks)**

**Answer:**

1.	<b>Provisions of Section 192 of Companies Act, 2013</b>	<b>Section 192 of the Companies Act, 2013</b> restricts companies from transacting any non-cash transaction involving directors. It provides that no company can enter into an arrangement by which: (a) director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.
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2.564	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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		However, it is further provided that a company can enter into an arrangement only if the prior approval for such arrangement is accorded by a resolution of the company in general meeting.
2.	<b>Conclusion</b>	Considering the above provisions, <b>in the present case</b> , decision of the Board of Divine Ltd. is not valid. Hence, the contention of shareholders is tenable.

— Space to write important points for revision —

**2015 - Dec [5]** (c) Examining the provisions of the Companies Act, 2013, relating to the constitution of a 'Nomination and Remuneration Committee' and 'Stakeholders Relationship Committee', answer the following:

- (i) Is it mandatory for a listed company to constitute such committees? Also state whether it is mandatory for a non-listed public company having paid-up share capital of ₹ 5 crore to constitute such committees?
- (ii) What shall be the composition of the committees in case the company is required to constitute such committees? **(4 marks)**

**Answer:**

1.	<b>Provisions of Sec. 178 read with Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014</b>	<b>(i) Which types of Companies are required to Have the said Committee</b>	(i) Yes, it is mandatory for a listed company to constitute such committees. The Board of Directors of following companies shall constitute Nomination and Remuneration Committee of the Board: (a) Every listed Companies; or (b) The following class of companies: (i) all public companies with a paid-up capital of ten crore rupees or more;
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			<p>(ii) all public companies having turnover of one hundred crore rupees or more;</p> <p>(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.</p>
		<b>(ii) Composition of committees</b>	The Nomination remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.
			<b>Stakeholders Relation Ship company</b> In case a company consists more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year, the company is required to constitute a Stakeholders relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board

2.566

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

**2017 - June [3A] (Or)** (iii) Charjee Biotech Private Limited is a two year old company. The Board of Directors of the company wants to contribute 2.8% of its average net profits of the last years to the Prime Minister's National Relief Fund. Referring to the provisions of the Companies Act, 2013, advise the board. **(4 marks)**

**Answer:**

**Section 181 of the Companies Act, 2013** states that the Board of Directors of a company may contribute to *bona fide* charitable and other funds, provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent of its average net profits for the three immediately preceding financial years.

**In the given case**, Charjee Biotech Private Limited wants to contribute 2.8% of its net profits of the last two years, as it has been in existence for the last two years only.

Prime Minister's National Relief Fund is a *bona fide* charitable fund. As the rate of contribution does not exceed 5% of the average net profits, prior permission of members in general meeting is not required. A resolution passed by the Board of Directors shall suffice for making the said contribution.

— Space to write important points for revision —

**2018 - Dec [2A] (Or)** (v) The Board of directors of Wood Ltd. are authorised to borrow money upto ₹ 2 crore. The Board of directors got sanctioned a loan of ₹ 30 lakh from a Bank for payment of debt liabilities of the company. But the Board of directors used this amount towards payment of their travelling and tour expenses. Will Wood Ltd. be held liable for prepayment of the loan? Discuss. **(3 marks)**

**Answer:**

In a clear case of *V.K.R.S.T Firm v. Oriental Investment Trust Ltd.* under the authority of the company, its managing director borrowed large sums of money and misappropriated it. The company was held liable stating that where the borrowing is within the powers of the company, the lender will not be prejudiced simply because its officer have applied the loan to unauthorized activities provided the lender had no knowledge of the intended misuse.





Applying the principles of the above decided case **in the above case** Wood Ltd. will be held liable for repayment of the loan of ₹ 30 lakhs which well within the sanctioned limits of the company.

— Space to write important points for revision —

**2018 - Dec [3]** (c) The Board of directors of XYZ Ltd. wants to delegate all or any of their powers to any of the directors of the company or any person even not in the employment of the company for transfer of securities. Referring to the provisions of the Companies Act, 2013 advise in the matter.  
**(5 marks)**

**Answer:**

There is no restriction on delegation of powers of the Board of Directors of the company except as provided in first proviso to Section 179(3) of Companies Act, 2013.

It provides that The Board may delegate power to borrow money, to invest the fund of the company and to grant loan or give guarantee or provide security in respect of loans, by way of resolution to any committee of directors, the managing director, manager or any other principal officer, or principal officer of a branch of the company.

Apart from this the Board of Directors may delegate all or any of its powers to any person including a person not in employment of the company if the Articles of Association so provides.

**Appropriately, in the given case** the Board of Directors of XYZ Ltd. may delegate the powers relating to transfer of securities only when the Articles of Association allows delegation of the powers to any of the directors of the company or any person not in employment of the company.

— Space to write important points for revision —

**2019 - June [4]** (c) DEF Ltd. has made profit for last 3 consecutive financial years as under:

Year	₹ in Crore
2017–18	100
2016–17	150
2015–16	200



2.568

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

Considering the provisions of Companies Act 2013, state whether:

- (i) DEF Ltd. can contribute ₹ 33.75 crore directly to a political party by a bearer cheque?
- (ii) What is the limit on the maximum amount that can be contributed by a company to a political party?
- (iii) Would your answer be different, if DEF Ltd. is a "Government Company" and donation is given by an "account payee cheque"?

(1 + 2 + 2 = 5 marks)

**Answer:**

- (i) According to **Section 182 of the Companies Act, 2013**, a company, other than a government company and a company which has been in existence for less than three financial years, may contribute any amount directly to any political party, on obtaining approval from the Board of Directors in their meeting. Further the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account. Therefore as per above provision DEF Limited cannot contribute ₹33.75 Crore directly to a political party through a bearer cheque.
- (ii) As per **Section 182 of the Companies Act, 2013**, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party. Hence DEF Ltd can contribute any amount to a Political Party.
- (iii) According to **Section 182 of the Companies Act, 2013** Government Company are not allowed to make contribution to the political party. Considering DEF Limited as a Government Company, it cannot make any contribution to a political party even by way of an account payee cheque.

— Space to write important points for revision —

**2019 - Dec [4]** (c) Moon Oil Exploration Ltd. (MOEL) was incorporated on 1<sup>st</sup> June 2007 and the company made a considerable amount of profit in the past years:

Financial Year	Net Profit ₹
2016-17	25 Crore
2017-18	10 Crore
2018-19	12 Crore

- (i) In the current financial year 2019-20, the company wants to contribute to a political party. How much can it contribute?
- (ii) If MOEL had contributed to political parties earlier to the year 2017, how much could it have contributed at the maximum during those years?
- (iii) The Chairman of MOEL directed its account manager to pay a political party's office an amount of ₹50 Lakh by cheque as part payment to the party, can he do so?
- (iv) The Board of directors authorised a payment to the National Defence Fund too but wanted to not show it in profit and loss account. Is it possible to do so?
- (v) A sum of ₹2 lakh was spent by MOEL on an advertisement in a tract published by a political party? How it is to be treated in the accounts of the company?

(1 × 5 = 5 marks)

**2019 - Dec [5A] (Or)** (ii) Warner Ltd. is an Indian company with a net profit of ₹4, 7, 6 and 7 crores respectively in the last four years. Net profit for each of last four years included a dividend of ₹1 crore received from WB Ltd. which is an Indian company. Discuss whether Warner Ltd. is required to spend on CSR activities ? If yes, how much it should spend ? If no, state the reasons for it.

(4 marks)

**2019 - Dec [5] (Or)** (a) (v) RPK Ltd. is an unlisted company having ₹9 crore as paid up capital and ₹ 52 crore as long term loan. The directors of the company would like to know from you the answers for the following questions:

2.570

■ Scanner CSEP M-I Paper 2 (2017 Syllabus)

- (1) Would the company be liable to constitute an audit committee?
- (2) If the company is listed after a fresh issue of shares to the tune of ₹50 crore, in such a situation, would the company be liable to constitute Audit Committee?
- (3) What is the quorum for meetings and number of meetings to be held in a year by the audit committee? **(1+1+2=4 marks)**

**TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION**

### DESCRIPTIVE QUESTIONS

**Q1.** Explain the provisions relating to constitution of Nomination and Remuneration Committee?

**Answer:**

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters within its scope of responsibility that relate to the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes. The responsibilities of the Nomination and Remuneration Committee are defined in Nomination and remuneration policy or terms of reference of the Nomination and Remuneration document.

The Board of directors of following companies shall constitute Nomination and Remuneration Committee of the Board:

- (a) Every listed Public Companies; or
- (b) The following class of companies –
  - (i) all public companies with a paid up capital of ten crore rupees or more;
  - (ii) all public companies having turnover of one hundred crore rupees or more;
  - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.



The following classes of unlisted public company shall not be covered for above purpose:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

The committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.

The chairperson of the company may be appointed as member, but shall not chair such committee.

Additionally, for listed **Companies, SEBI (LODR) Reg, 2015** provides that the nomination and remuneration committee shall comprise of at least three directors. All directors of the committee shall be non-executive directors; and at least fifty percent of the directors shall be independent directors.

The Chairperson of the nomination and remuneration committee shall be an independent director. The chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.

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**Q2.** Explain the provisions relating to constitution of Stakeholders and Relationship Committee?

**Answer:**

**Stakeholders Relationship Committee**

Section 178(5) of the Companies Act, 2013 provides for constitution of the stakeholders relationship committee.

The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.



The stakeholders relationship committee shall consider and resolve the grievances of security holders of the company. The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

**Comparison table of Stakeholders and Relationship Committee under Companies act 2013 and SEBI (LODR) Regulations, 2015**

	<b>Regulation 20</b>
<b>SEBI (LODR) Regu SEBI (LODR) Regulations, 2015</b>	<ol style="list-style-type: none"> <li>1. The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.</li> <li>2. The chairperson of this committee shall be a non-executive director.</li> <li>3. The board of directors shall decide other members of this committee.</li> <li>4. The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II</li> </ol>
	<b>Section 178</b>
<b>Companies Act, 2013</b>	<ol style="list-style-type: none"> <li>5. The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.</li> <li>6. The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company</li> </ol>



<b>Comments</b>	<p>The Regulations specifically prescribe role of the committee in Schedule II, Part D of the Regulations, that the Committee will also resolve the compliant related to transfer of Shares, non receipt of Annual report and non receipt of declared dividends.</p> <p>Further a listed entity even if having less than 1000 debenture holders/security holders is required to constitute a stakeholder relationship committee, though for such a company, if it were not listed then it is not required under Companies Act, 2013.</p>
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# 16






## DIRECTORS

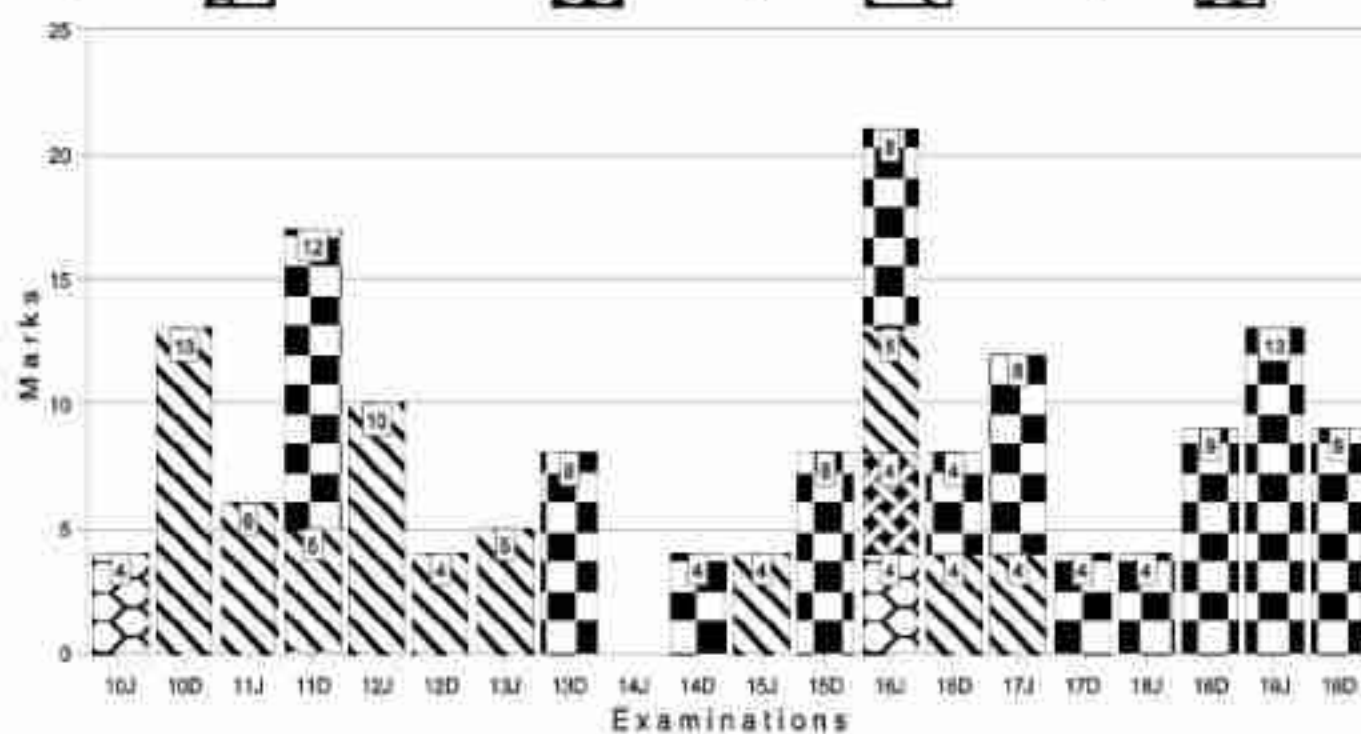
### THIS CHAPTER INCLUDES

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Procedure for Obtaining DIN</li> <li>• Types of Directors</li> <li>• Procedure of Appointment of Each Kind of Director</li> <li>• Disqualifications</li> <li>• Vacation of office</li> </ul> | <ul style="list-style-type: none"> <li>• Retirement</li> <li>• Removal of Directors</li> <li>• Duties of Directors</li> <li>• Rights of Directors</li> <li>• Loans to Directors</li> <li>• Disclosure of Interest</li> </ul> |
|---|--|

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

### Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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<b>CHAPTER AT A GLANCE</b>
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<b>No. of Directors</b>
Every public company shall have at least 3 directors and every private company shall have at least 2 directors and every one person company shall have at least 1 director under <b>Section 149</b> .
<b>Legal Position of Director</b>
Directors are trustees for the company i.e. the directors are persons selected to manage the affairs of the company for the benefit of the shareholders.
<b>Maximum Number of Director</b>
Maximum Number of Director is 15, which can be increased by passing a special Resolution.
<b>Woman Director</b>
Certain prescribed class or classes of companies is required to have at least one woman director. This is a mandatory provision.
<b>Residence of Director</b>
Every company including one person company shall have at least one director who stays in India for a period of not less than 182 days during the financial year .
<b>Number of Directorship</b>
Maximum limit on total number of directorship has been fixed at 20 companies and maximum number of public companies in which a person can be appointed as a director shall be 10.



<b>Removal of Director</b>
A director may be removed from the office by giving a special notice.

**List of Important Forms**

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DIR-1	Physical Form	Application for inclusion of name in the data bank of independent Directors	150	6(4)
DIR-2	Physical Form	Consent to act as it director of a company	152(5)	8
DIR-3	Physical Form	Applicant for allotment of Director Identification Number	153	Rule 10 of Limited Liability Partnership Rules, 2009
DIR-4	Physical Form	Verification of applicant for applicant for DIN	153	9(3)(a)(iv)
DIR-5	Physical Form	Application for surrender of Director Identification Number	153	11(f)
DIR-6	Physical Form	Intimation of change in particulars of Director to be given to the Central Government	—	12(1)
DIR-7	Physical Form	Verification of applicant for change in DIN particulars	—	12(1)(i)
DIR-8	Physical Form	Intimation by Director	164(2)	14(1)
DIR-9	Physical Form	Report by the company to Registrar	164(2)	14(2)



[Chapter ➡ 16] Directors ■				2.577
DIR-10	Physical Form	Form of Applicant for Removal of Disqualification of Directors	164(2)	14(5)
DIR-11	e-Form	Notice of resignation of a Director to the Registrar	168(1)	16
DIR-12	e-Form	Particulars of appointment of directors and the key managerial personnel and the changes among them	7(1)(c), 168,170 (2)	17

## SHORT NOTES

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**2010 - June [8]** Write a note on the following:

(iii) Alternate directors

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

**Answer:**

1.	<b>Conditions for Appointment of Alternate Director</b>	<p>The person to be appointed as the alternate director shall be the person other than person holding any alternate directorship for any other director in the company. The Board of Directors may appoint an alternate director if authorized.</p> <p>(i) By the articles or</p> <p>(ii) <b>By a resolution of the company at general meeting</b> : An alternate director acts in the place of a director who is absent for more than three months from India. He cannot hold office for a period longer than permissible to the original director, in whose place he has been appointed. He must vacate office on the return of the original director.</p>
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2.	<b>Alternate Director for Independent Director</b>	An alternate director appointed for Independent Director must be qualified to be appointed as Independent director.
3.	<b>Automatic Re-appointment not Permitted</b>	If the term of the office of the original director is determined, in whose place he has been appointed, before he returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original and not to the alternate director.

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

(iii) Resident director

**(4 marks)**

**Answer:**

1.	<b>Meaning of Residence of a Director in India</b>	<b>Section 149 (3)</b> of the Act has provided for residence of a director in India as a compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days during the financial year.
2.	<b>Ministry of Corporate Affairs vide its circular dated June 26, 2014 has made the following clarification with respect to resident Director</b>	<ul style="list-style-type: none"> <li>➤ <b>Section 149(3) of the Companies Act, 2013 (Act)</b> requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. Government has received requests from stakeholders for clarification with regard to applicability of these provisions in the current calendar/financial year.</li> <li>➤ The matter has been examined. It is clarified that the, residency requirement' would be reckoned from the date of commencement of</li> </ul>



		<p><b>Section 14</b> of the Act i.e. 1<sup>st</sup> April, 2014, The first, previous calendar year, for compliance with these provisions would, therefore, be Calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 i.e. 1<sup>st</sup> April to 31<sup>st</sup> December.</p> <p>Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India. During Calendar year 2014, shall exceed 136 days.</p> <p>➤ Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.</p>
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## DISTINGUISH BETWEEN

**2016 - June [2]** Distinguish between the following:

- (a) 'Appointment of directors by nomination' and 'appointment of directors against casual vacancy'. **(4 marks)**



2.580

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Answer:

1.	<b>Appointment of Directors by Nomination Section 163 (3)</b>	This new sub-Section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.
2.	<b>Appointment of Directors In Causal Vacancy- Section 161(4)</b>	If any vacancy is caused by death or resignation of a director appointed by the shareholders in General Meeting, before expiry of his term, the Board of Directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

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## DESCRIPTIVE QUESTIONS

2008 - Dec [4] (d) Is it mandatory for all the directors to obtain DIN? Discuss.  
(4 marks) [CSEM - II]

Answer:

<b>Provisions related to DIN</b>	<ul style="list-style-type: none"><li>• Director Identification number is essential for all existing and any person intending to be appointed as a director.</li><li>• DIN is mandatory for the directors of Indian company who are not citizen of India where as there is no mandatory provision for directors of foreign company having branch office in India.</li></ul>
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	<ul style="list-style-type: none"><li>• DIN has a unique property that is once allotted to the director is valid for the life time of the director.</li></ul> <p><b>Amendment made by Companies (Amendment) Act, 2017</b> <b>Proviso to Section 153-</b> “Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.”</p>
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———— Space to write important points for revision ————

**2009 - June [3]** (b) What are the modes in which a director of a company can be appointed? **(8 marks) [CSEM - II]**

**Answer:**

<b>Provisions regarding Appointment of Directors under Sec. 152 of Companies Act 2013</b>		
<b>1.</b>	<b>First Directors</b>	The first directors are usually named in the articles. The articles may also provide that both number and the name of the first directors shall be determined in writing by the subscribers to the memorandum or a majority of them, Where the company has no articles or the articles are silent regarding the appointment of directors, the subscribers to the memorandum who are individuals shall be deemed to be first directors of the company until the directors are duly appointed.
<b>2.</b>	<b>General Provisions</b>	<b>(i) Appointment in General Meeting:</b> Except as provided in the Act, every director shall be appointed by the company in general meeting.

		<p>(ii) <b>DIN:</b> Director Identification Number is compulsory for appointment of director of a company.</p> <p><b>Companies Amendment Act, 2017</b> provides that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.</p> <p>(iii) <b>Declaration:</b> Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.</p> <p>(iv) <b>Consent:</b> A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.</p>
3.	<b>Retirement By Rotation</b>	<p>(i) <b>2/3<sup>rd</sup> Directors, liable to retirement:</b> Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company or a private company, which is subsidiary of a public company, shall be liable to retire by rotation.</p> <p>(ii) <b>Independent Directors:</b> Independent directors shall not be included for the computation of total number of directors.</p>