



		<p>(iii) 1/3rd Directors to retire by rotation- At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.</p> <p>(iv) Retirement, based on term of appointment- The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.</p>						
4.	Appointment by Board of Directors	<p>The board of directors can appoint Directors in certain circumstances-</p> <table><tr><td>(a) Additional Directors [Sec. 161(1)]</td><td>Such additional Directors can hold office up to the date of the next Annual General Meeting of the company.</td></tr><tr><td>(b) Casual Vacancy (Section 161(4) of Companies Act, 2013)</td><td>The person appointed will hold office not until the next annual general meeting but for the entire period for which the person whose place he was appointed would have held office.</td></tr><tr><td>(c) Alternate Director [Sec.161(2)]</td><td>He can not hold office for a period longer than that permissible to the original director in whose place he has been appointed. He must vacate office on the return of the original director.</td></tr></table>	(a) Additional Directors [Sec. 161(1)]	Such additional Directors can hold office up to the date of the next Annual General Meeting of the company.	(b) Casual Vacancy (Section 161(4) of Companies Act, 2013)	The person appointed will hold office not until the next annual general meeting but for the entire period for which the person whose place he was appointed would have held office.	(c) Alternate Director [Sec.161(2)]	He can not hold office for a period longer than that permissible to the original director in whose place he has been appointed. He must vacate office on the return of the original director.
(a) Additional Directors [Sec. 161(1)]	Such additional Directors can hold office up to the date of the next Annual General Meeting of the company.							
(b) Casual Vacancy (Section 161(4) of Companies Act, 2013)	The person appointed will hold office not until the next annual general meeting but for the entire period for which the person whose place he was appointed would have held office.							
(c) Alternate Director [Sec.161(2)]	He can not hold office for a period longer than that permissible to the original director in whose place he has been appointed. He must vacate office on the return of the original director.							

5.	Appointment by Third Parties [Sec. 161]	A nominee director can be appointed by third parties like financial institution, foreign collaborators, holding companies, banks or other lenders etc. They can nominate a director to represent their interest on the board.
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— Space to write important points for revision —

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

- (iv) Directors ought not to misuse the trust entrusted on them.

(5 marks) [CSEM - II]

Answer:

1.	Directors as Trustees	Directors of the company are to some extent, trustees for the assets of the company and for the right which are conferred on them by law and conventions.
2.	Why Directors are Treated as Trustees?	A trustee is a person who is vested with the legal ownership of the assets which he administers for the benefit of another or others. Director are regarded as a trustee of the company's property and of the powers that vest in them because they administer those assets and perform duties in the interest of the company and not for their own benefit.
3.	Fiduciary Position with the Company	Directors stands in fiduciary position towards the company in regard to the power conferred on them by the Companies Act, and by the articles of association, and also with regard to the funds of the company, which are under their control.
4.	Conclusion	<i>So, the directors ought not to misuse the trust entrusted on them.</i>

— Space to write important points for revision —

2010 - Dec [3] (b) Enumerate the disqualifications of a director mentioned in Section 164 of Companies Act, 2013 .

(8 marks) [CSEM - II]

Answer:

1.	Dissqualifications of directors [Sec. 164 of Companies Act, 2013]	(a) he is of unsound mind and stands so declared by a competent Tribunal; (b) he is an undischarged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; (d) he has been convicted by the Tribunal and sentenced for at least 6 months of imprisonment for an offence involving morale turpitude and 5 year's have not elapsed since the expiry of his sentence. (e) he has failed to pay any call in respect of shares for 6 months; (f) he has been disqualified by an order of the Tribunal . (g) he has been convicted of the offence dealing with related party transactions under Section 188 of Companies Act, 2013 at any time during the last preceding five years; or (h) he has not got the DIN. (i) he has not qualified with the provision of section 165(1)	
2.	Disqualification by reason of default made by a company	No person who is or has been a director of a company, which has made following defaults, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.	
		(a) Non filling of Financial statement and annual returns	The company has not filed financial statements or annual returns for any continuous period of three financial years; or

		(b) Non payment of deposits, debentures etc	The company has failed to- <ul style="list-style-type: none"> • repay the deposits accepted by it or pay interest thereon; or • redeem any debentures on the due date or pay interest due thereon; or • pay any dividend declared and such failure to pay or redeem continues for one year or more,
3.	Additional grounds of disqualification in case of Private Company	A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2) of Section 164 as stated above. Exceptions: Provided that disqualifications referred to in clauses (d), (e) and (g) of Section 164(1) shall not take effect – <ul style="list-style-type: none"> (i) for thirty days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off. 	

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2011 - June [4] (c) What is meant by the term 'disqualifying company' under the Companies (Disqualification of Directors under Section 164(2) of Companies Act, 2013? State the grounds under which the directors are disqualified under the said rules. **(6 marks) [CSEM - II]**

Answer:

Please refer 2010 - Dec [3] (b) on page no. 584

— Space to write important points for revision —

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

- (v) Director Identification Number (DIN) is not mandatory for directors of foreign company having branch offices in India.

(5 marks) [CSEM - II]

Answer:

Please refer 2008 - Dec [4] (d) on page no. 580

— Space to write important points for revision —

2012 - June [6] (c) State the provisions of the Companies Act, 2013 relating to loans to directors. **(6 marks) [CSEM - II]**

Answer:

Amendment made by Companies (Amendment) Act, 2017

Section 185:

- (1) For **Section 185 of the Principal Act**, the following section shall be substituted, namely:
 "185.(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
 (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
 (b) any firm in which any such director or relative is a partner.
 (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

- (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
- (b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

- (a) any private company of which any such director is a director or member;
 - (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (3) Nothing contained in sub-sections (1) and (2) shall apply to—
- (a) the giving of any loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or
 - (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

- (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
- (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:
Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.
- (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,-
 - (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees,
 - (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
 - (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both."

— Space to write important points for revision —

2012 - June [8] (b) The Board of directors of Zest Ltd. appoints Pavan as a director under Section 161, of Companies Act, 2013 by passing a resolution by circulation. The appointee now seeks your advice about the tenure of his appointment. Advise him. **(4 marks) [CSEM - II]**

2.590

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

Answer:

1.	Appointment and Term of Additional Director [Sec.161(1)]	If articles permits, the company may appoint additional directors. Such additional directors shall hold office only upto the date of next Annual General meeting of the company.
2.	Conditions	If the Annual General meeting is not held or can not be held, the person appointed as additional director shall vacate his office on the last day on which Annual General Meeting should have been held. He cannot continue his office on the ground that the meeting was not called within the prescribed time.

— Space to write important points for revision —

2012 - Dec [3] (a) A person other than retiring director is also eligible for appointment as director. Examine. **(4 marks) [CSEM - II]**

Answer:

1.	Right of persons other than retiring directors to stand for directorship Section 160	A person other than retiring director is also eligible for appointment as director at any general meeting, if he, or some member intending to propose him as director, has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or intention of such other person proposing him for directorship.
2	Conditions	(a) He needs to serve company at its Registered office, 14 days notice for his willingness to be appointed as director or by such other person proposing him to be director.



		<p>(b) Deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded subject to minimum 25% of total valid votes cast in favour.</p> <p>(c) The company shall inform the proposal to members by serving notice of 7 days.</p> <p>Amendment made by Companies (Amendment) Act, 2017</p> <p>Proviso to Section 160(1)-</p> <p>“Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of Section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”</p>
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2013 - June [1] {C} Comment on the following:

(v) Director Identification Number (DIN) is not mandatory for directors of a foreign company having branch offices in India.

(5 marks) [CSEM - II]

Answer:

Please refer 2008 - Dec [4] (d) on page no. 580

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

2015 - June [3A] (Or) (i) In what way does the Companies Act, 2013 and Rules made thereunder regulate the appointment of woman director in a company? Explain.

(4 marks)

2.592

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

Answer:

1.	Appointment of Woman Director	Section 149 (1), read with rule 3 of Companies (Appointment and Qualifications of Directors) Rules 2014, prescribes that following class of companies shall appoint at least one woman director – 1. Every listed company 2. Every other public company having (a) Paid up share capital of 100 crore rupees or more (b) Turnover of 300 crores rupees or more.
2.	Prescribed period, within which woman director is to be appointed	A company, which has been incorporated under the Act and is required to appoint a woman director, shall appoint the woman director with in 6 months from the date of incorporation.
3.	Vacancy of woman director	However, any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

— Space to write important points for revision —

2016 - June [1] Comment on the following:

- (a) It is mandatory for every director of a company to disclose his interest or nature of his concern in other companies in which he is a director.

(5 marks)**Answer:**

1.	Disclosure of interest by Director (Section 184)	Yes, it is mandatory for every director of a company to disclose his interest or nature of his concern in other companies in which he is a director. The Act provides for the disclosure by
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		directors relating his concern or interest in any company or companies or body corporate (including shareholding interest), firms or other association of individuals by giving a notice in writing in form MBP 1 (Rule 9(1)) at the first meeting of board after being appointed as director and at first meeting of board of every financial year, in addition to this, any change required to be disclosed in next board meeting.
2.	Applicability for Disclosure	<p>(a) Every director is required to disclose the nature of his concern or interest at the meeting of board in which the contract or arrangement is discussed and he has not to participate in such meeting.</p> <p>(b) The abovementioned interest may be direct or indirect and relating to some contract or arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with other director holds more than two percent shareholding or is a promoter, manager, Chief Executive Officer of that body corporate or with a firm or other entity in which such director is a partner, owner or member as the case maybe.</p> <p>(c) If a contract or arrangement entered into by the company without disclosure of interest by director or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.</p>

		<p>(d) The contravention of the provisions leads to punishment for a term which may extend to one year or with fine which may extended to one lakh rupees or both.</p> <p>(e) Any contract or arrangement entered into or to be entered into between two companies, where any director of any company holds more than two percent of the paid up capital in other company, the provisions of this section shall not apply.</p> <p>Amended by Companies Act, 2017 shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.</p>
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2016 - Dec [6] (c) Five Board meetings were held in Asha Ltd. during the period from January to June in the calendar year 2016. Rajeev, an additional director, attended none of these meetings. For the first two meetings he sought leave of absence from the Board but did not inform the Board for the remaining three meetings. Examining the provisions of the Companies Act, 2013, decide whether he is disqualified to act as a director. **(4 marks)**

Answer:

Section 167(1)(b)	Section 167(1)(b) states that the office of a director shall be vacated if he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.
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	Mr. Rajeev absented from all the meetings of the Board for 6 months by seeking leave of absence in first two and not seeking leave of absence in last three. It is not that he did not attend all the meetings for a period of 12 months.
Conclusion	Thus, his office does not become vacant and he can continue to be a director on the Board of the Company. Disqualification of Directors is dealt with under section 164 of the Companies Act, 2013 and is different from vacation of the office of directors under Section 167 .

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

2017 - June [6] (a) Mr. Sunil Goyal, a director of XYZ Limited wants to go on foreign trip. He wants to assign his office to the Vice President of the company. Mr. Sunil Goyal seeks your advise whether he can do so. Referring to the provisions of the Companies Act, 2013 advise him in the matter. **(4 marks)**

Answer:
In accordance with the provisions of the **Companies Act, 2013**, as contained in **Section 166(6)**, a director of a company shall not assign his office. Any assignment so made shall be void. Therefore, Mr. Sunil Goyal, the director of the company who wants to go on a foreign trip cannot assign his office to the Vice President. He is advised accordingly not to assign his office.
However, for the purpose of quorum and smooth function of Board, Alternate director may be appointed under the provisions of **Section 161 of Companies Act, 2013**.

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PRACTICAL QUESTIONS

2011 - Dec [5] (a) The managing director of a public limited company applied for purchasing a company's flat. The price of the flat is ₹ 40 lakh. The managing director suggested that he may be allowed to pay ₹ 20 lakh and the balance of ₹ 20 lakh may be recovered from his salary in 40 installments. Accounts department observed that it will tantamount to providing house building advance to the managing director which is not covered by the rules of the company. Being the Company Secretary of the company, you have been asked by the Board of directors to examine and submit a note stating the rules in this regard and action to be taken for considering the request.

(8 marks) [CSEM - II]

Answer:

To,
The Board of Directors
XYZ Company Limited.
Mumbai

Date-

Dear Sir,

Subject – Note regarding Request of The Managing Director for Purchase of A Company Flat.

1. Facts of the case	<ol style="list-style-type: none">1. Mr X, Managing Director has applied for purchasing a company flat. The price of flat is ₹ 40 lakh. The Managing Director has requested that he will pay ₹ 20 lakh as initial payment and the balance of ₹ 20 lakh may be recovered from his remuneration at ₹ 50,000, per month for 40 months.2. The company has no scheme for payment of House building advance to its employees.
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2.	Provisions of Section 185-Loans to Directors	<p>No company shall:</p> <ul style="list-style-type: none">• directly or indirectly,• advance any loan, including any loan represented by a book debt,• to any of its directors or• to any other person in whom the director is interested or• give any guarantee or• provide any security in connection with any loan taken by him or such other person <p>Exceptions: Section 185 will not applicable in following cases-</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <ul style="list-style-type: none">(i) as a part of the conditions of service extended by the company to all its employees; or(ii) pursuant to any scheme approved by the members by a special resolution; or <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.</p> <p>“to any other person in whom director is interested” means-</p> <ul style="list-style-type: none">(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;(b) any firm in which any such director or relative is a partner;(c) any private company of which any such director is a director or member;
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		<p>(d) any body corporate at a general meeting of which not less than twenty five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or</p> <p>(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p>
3.	Case Law Analysis	The Bombay High Court in <i>Fridie Ardeshir Mehta (Dr.) Vs. Union of India</i> , came to the conclusion that the company selling one of its flats to one of its directors on receiving half the price in cash and agreeing to accept the balance in instalments does not amount to giving of loans to the director.
4.	Conclusion	Hence, the view of the observation of Accounts Department is not Correct that such purchasing of company's flat by Managing Director would tantamount to providing house building advance to Managing Director.

As such Board may like to agree with the request of the Managing Director, submitted.

ABC
Company Secretary

— Space to write important points for revision —

2011 - Dec [6] (b) The Chairman and Managing Director of Progressive Ltd. resigned on 6th May, 2009 as such, but the company filed Form No. DIR - 12 with the Registrar of Companies stating the date of resignation as 15th March, 2010. The company issued various cheques to its investors in repayment of their deposits after 6th May, 2009 which were bounced. The



investors filed a complaint against the former chairman and managing director. The articles of association of the company provided that the resignation would be effective from the date it was tendered. Will the chairman and managing director be liable in the instant case?

(4 marks) [CSEM - II]

Answer:

1.	Responsibility of Chairman and MD in the given Case	The Chairman and Managing Director of Progressive Limited could not be held responsible under Section 141 of the Negotiable Instruments Act, 1881 as they had resigned from their directorship on 6 th May, 2009 and the cheques were issued after 6 th May, 2009 which were bounced.
2.	Case Law Analysis	<p><i>Dushyant D. Anjaria Vs. Wall Street Finance Ltd. (2001):</i> <i>In this case, the Bombay High Court has held that the resignation of a Director would be effective from the date it was submitted because the letter brings out clearly his intentions to resign. However, if there was delay on the part of the company in intimating the ROC about the date of the resignation, the resigning Director could not be saddled with responsibility and liability for such delay.</i></p> <p><i>Pandurang Camotim Sancoalcar Vs. Suresh Prabhakar Prabhu</i> Date of filing of Form DIR - 12 is not conclusive as to date of resignation of director-date shown in the letter of resignation is to be used. Articles of association of the company also provided that the resignation would be effective from the date it was tendered.</p>

		<p>Glossop Vs. Glossop (1907) <i>In this case, it was held that the resignation of a director would become effective on and from the date it was tendered and also from the Articles of Association of the Company, it would be clear that resignation of a Director would be effective from the date it was tendered.</i></p>
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2013 - Dec [3] (d) Manish, a director of PQR Ltd., defaulted in filing financial statements and annual return with the Registrar of Companies for a continuous period of three financial years ended 31st March, 2012. Based on the provisions of the Companies Act, 2013, validate the following:

- (i) Whether Manish can continue to be a director of PQR Ltd. when he is also a director in UV Ltd.? Also narrate whether he can be reappointed in PQR Ltd. as well as in UV Ltd.
- (ii) If the defaulting company is a private limited company, what would be your answer? **(4 marks)**

Answer:

1.	Disquali- fication of Director	(a) For appointment	A person shall not be capable of being appointed as a director of a company, if such person is already a director of any company who has not filed the financial statements and annual returns for continuous period of 3 financial years.
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		(b) For appointment in any other public company and reappointment in the same company	Such person shall not be eligible to be appointed as a director of any other public company and for re - appointment in the same company for a period of 5 years from the date on which such public company, in which he is a director, failed to file financial statements and annual returns.
2.	Answer to the queries of the problem given	<p>(i) Manish the director of PQR Ltd. is disqualified to be appointed as a director of UV Ltd. under Section 164(2) of Companies Act, 2013 for a period of 5 years from the date on which the said default has been committed i.e. the last due date for filing the financial statements and the annual returns. Further, Manish is disqualified from being re-appointed in PQR Ltd. for 5 years from the date of default.</p> <p>(ii) No, the answer remains the same. Whether the Defaulting co. private or public Manish can not appoint as director in any public co. (UV Ltd.) and reappoint in the same (Pvt/public) till 5 years. (according to Section 164(2) of Companies Act, 2013).</p>	

— Space to write important points for revision —

2013 - Dec [5] Answer the following citing the relevant provisions of law/case law, if any:

- (b) A foreign national was intended to be appointed to the Board of an MNC in India. He contends that, director identification number (DIN) is not required for him as he is a foreign national. Whether his contention is valid? **(4 marks)**

2.602

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

Answer:

1.	Authenticity of the contention of foreign national	The contention of the foreign national is not valid.
2.	Application for Allotment of DIN, Sec. 153	<ul style="list-style-type: none"> As per Section 153 of the Companies Act, 2013, any individual, who is an existing director of a company or intends to be appointed as a director of a company, is required to file an application to the Central Government for allotment of DIN. It 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 a branch office in India.
3.	Single irrespective of Directorship	Only a single DIN is required for an individual irrespective of directorship and is a unique identification number and valid for the life time of the individual.

— Space to write important points for revision —

2014 - Dec [4] (a) In a public limited company, certain directors who guaranteed the company's debts retired and new directors were appointed in their places and they also signed the guarantee bonds. There was no agreement to show that the earlier guarantee had ceased to be operative. The bank who is the beneficiary, exercised its option and demanded the repayment. The retired directors contended that they have already retired and they are not liable to the bank on the strength of bond. Is the contention valid? Decide the case with regard to the provisions of the Companies Act, 2013. **(4 marks)**



Answer:

In the case of ***Bank of Baroda v. Official Liquidator (1992) 73 Com. Cases 688 (MP)***. It was held that all the directors including the retired directors were liable jointly and severally under the guarantee and hence the contention of the Bank is correct. They have to make good the guarantee amount under the bond to the bank.

— Space to write important points for revision —

2015 - Dec [5] (a) In Bright Ltd., vacancy of a director is caused by the death of Mohan, a director of the company, after three months of his joining the company as director. The Board of the company, therefore, appointed Sumit in his place but did not seek approval of the company in general meeting. Referring to the provisions of the Companies Act, 2013, examine the validity of Sumit's appointment. **(4 marks)**

(b) Johnson, a director in Disha Ltd. proceeds on leave for 8 months to France for personal reasons. Board of Directors at a meeting appoints Peter for a period of two months, as an alternate director. Articles of association of the company do not confer upon the Board of Directors any such power to appoint anyone as alternate director. Referring to the provisions of the Companies Act, 2013, examine the validity of the above appointment. What shall be your answer in case the Board appoints Peter for the entire period of Johnson's leave? **(4 marks)**

Answer:

(a)

1.	Appointment of Directors in causal vacancy- Section 161 (4)	<ul style="list-style-type: none">• 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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2.	Conclusion	In the given case , Mr. Sumit is appointed against the casual vacancy caused by Mohan's demise, Sumit's appointment is valid and shall continue till Mohan's tenure expires.
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(b)

1.	Analysis of the problem	<p>(i) Validity of appointment of Peter as alternate director: In this case, the appointment of an alternate director is in violation of the provisions of the Companies Act, 2013 because Articles do not authorize the Board to appoint alternate Director nor is the appointment made in general meeting.</p> <p>(ii) What, if, Peter is appointed for the entire period of Johnson's leave: The answer would be the same even if Peter is appointed for the entire period of Johnson's leave.</p>
2.	Conditions of Appointment of Alternate Director, Sec.161 (2) of C.A.2013	<p>Following are some relevant conditions which must be satisfied in case of appointment of alternate director. According to Section 161(2) of the Act:</p> <ol style="list-style-type: none"> 1. The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director. 2. The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

— Space to write important points for revision —



2016 - June [3] (d) Paras, a director of Spike (Pvt.) Ltd. resigns from the office of director. He has forwarded a copy of resignation to the company and the Registrar of Companies (ROC) in time. The company, however, has not filed relevant form to the ROC. Explaining the provisions of the Companies Act, 2013 in this regard, decide the status of Paras. **(4 marks)**

Answer:

1.	Section 168 of the Companies Act, 2013 read with Rule 15 and 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014	<ul style="list-style-type: none">• A director may resign from his office by giving notice in writing.• The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website.• The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR - 11 within 30 days from the date of resignation.• The notice shall become effective from the date on which the notice is received by the company or the date, if any specified by the director in the notice, whichever is later.• In case of failure of the company to intimate the Registrar, as the director has already informed the registrar of his resignation within time, the document would get registered in the records of the registrar.
2.	Conclusion	In the present case Resignation of Mr. Paras shall remain valid and shall be recorded by the Registrar.

— Space to write important points for revision —

2016 - June [6] (b) Krugen Holdings Ltd. promoted Ms. Bhavna and designated her as the Director (Administration). Examine the validity of such a designation under the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

1.	Provisions	<p>a. A special director or an executive director is a full-time employee of a company and is given this designation in appreciation of his merit and his usefulness to the company.</p> <p>b. Such directors may not be the members of the Board and as such they cannot be called directors within the meaning of the provisions of the Companies Act.</p> <p>c. However, the Department of Company Affairs (now MCA) has, vide Circular No.2/1982 (1/1/82-CL-V;23/44/79-CL-II) dated 20th January, 1993 (ascertained by revised Circular No.11/1990)(3/5/89-CL-V) dated 29th May, 1990, advised companies to desist from giving designations as 'Special Director', 'Director Administration', etc.</p> <p>d. To their executives, who are not members of the Board, as such designations give an impression to the public at large and those dealing with the companies and the executives that they are full-fledged directors entitled to act as such on behalf of the company.</p>
2.	Conclusion	Based on these circulars Krugen Holdings Ltd. is advised not to use the designation 'Director (Administration)' for its executive Ms. Bhavana.

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2016 - Dec [2A] (Or) (iv) Divine Industries (Pvt.) Ltd. has a turnover of ₹ 350 crore during the financial year 2014-15. The bankers of the company have advised the company to compulsorily appoint a women director in the company as required under the Companies Act, 2013. Referring to the provisions of the Act, examine the validity of the banker's advice. What would be your answer in case the company in question is a public limited company? **(4 marks)**

Answer:

1.	Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014	As per Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 , prescribes the following class of companies shall appoint at least one woman director: (i) every listed company; (ii) every other public company having :- (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more. Accordingly a private limited company [Divine Industries (Pvt.) Ltd.] is not required to appoint a woman director under Companies Act, 2013 . The advice of the bankers is not tenable in the given circumstance.
2.	Conclusion	In case the company is a public limited company then as per the aforesaid provisions the Company having its turnover ₹ 300 Crore or more is required to appoint a woman director. Hence in that case the banker's advice would stand valid.

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2.608

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

2017 - June [3A] (Or) (i) Newly incorporated Abhay Limited has not mentioned names of first directors of the company in the Articles of Association. Referring to the provisions of the Companies Act, 2013, advise the Board of Directors regarding the appointment of first directors of the company. What would be your answer in case the company is a One Person Company? Also state whether provisions of the Act are applicable to a Private Limited Company. **(4 marks)**

Answer:

First directors of the companies are generally named in the articles of the company. Regulation 60 of Table F provides that the number of directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

In case of a One Person Company, an individual being a member shall be duly deemed to be the company's first director until the director (s) are duly appointed by the members in accordance with the provisions of **Section 152 of the Companies Act, 2013.**

Section 152(1) of the Act is applicable to all companies, whether public or private.

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2017 - June [6] (c) Mr. Solid, a young professional of 29 years, has stayed in India for 150 days in the previous financial year. He does not hold any shares in Happy Retails Limited, which is a quoted (listed) company. Small shareholders have decided amongst themselves that he is proposed to be appointed as small shareholders director who shall not be liable to retire by rotation and his tenure shall be for five years from the date of joining the office of director. Examining the provisions of the Companies Act, 2013, state whether Mr. Solid can be so appointed as small shareholders' director.

(4 marks)

Answer:

Rule (7) of the Companies (Appointment and Qualification of Directors) Rules, 2014 contain provisions for appointment and qualification of small shareholder' directors. Sub-rule (2) allows a person who is not a shareholder to become shareholder's directors. Pursuant to sub-rule (5), the appointment of small shareholder's director shall be subject to the provisions of Section 152 except that-

- (a) such director shall not be liable to retire by rotation,
- (b) such director's tenure as small shareholders' director shall not exceed for a period of 3 consecutive years and,
- (c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

Thus, in accordance with **sub-rule(2) of Rule 7**, Mr. Solid who does not hold any shares in Happy Retails Limited can be proposed to be appointed as a small shareholder director. He shall not be liable to retire by rotation but he cannot be appointed for 5 years. Mr. Solid can be appointed as a small shareholders' director only for 3 years.

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2017 - Dec [4] (b) The Board of Directors of Goodwill (India) Ltd. wish to appoint an alternate director on the Company's Board in the absence of Mr. Prince, a director, who proceeded on leave. Referring to the provisions of the Companies Act, 2013, state the conditions to be satisfied before Board appoints such a director. What shall be the tenure of such alternate director in case Mr. Prince incurs a disqualification and ceases to be a director?

(4 marks)

Answer:

Section 161(2) of the Act empowers the Board, if so authorized by its articles or by a resolution passed by the company in general meeting, to appoint a director (termed as 'alternate director') to act in the absence of a original director during his absence for a period of not less than three months from India.

The provisions applicable to an alternate director are as follows.

Applicability:

Section 161(2) of the Act applies to all companies, whether public or private.

Conditions for appointment of an alternate director:

- (a) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of the alternate director.
- (b) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (c) The person to be appointed as the Alternate Director shall be the person other than the person holding any Alternate directorship for any other Director in the company.
- (d) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria of Independence as per Section 149(6) of the Act.

Terms of office of an alternate director:

- (a) **Not exceeding the term permissible to original director:** An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed. If the original director ceases to be a director by reason of death or vacation of office under Section 167, the alternate director shall immediately cease to hold his office.
- (b) **On the return of original director:** The alternate director shall vacate his office when the original director in whose place he has been appointed returns to India.

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2018 - June [3A] (Or) (iii) R Systems Ltd. is holding 40% of paid-up share capital of ATC Aviation Pvt. Ltd. R Systems appointed representative director in ATC Aviation Pvt. Ltd. to safeguard its interest. Board of Directors of R Systems Ltd. wishes to know whether the director appointed by them shall be treated as nominee director. Advise the Board. **(4 marks)**

Answer:

Explanation to Section 149 of the Companies Act, 2013 provides that a "Nominee Director" means a director

- (i) nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or

- (ii) appointed by any Government, or
- (iii) any other person to represent its interests.

Thus, Director appointed by R Systems Ltd. in ATC Aviation Pvt. Ltd. shall be treated as "Nominee Director".

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2018 - Dec [4] (a) Anil, a shareholder holding 9% equity shares of the company, who is not holding any directorship wants to stand for directorship in Pritam Ltd. in its next annual general meeting. State the procedure for appointment of Anil as per the provisions of the Companies Act, 2013.

(5 marks)

Answer:

In the given case, Mr. Anil not a retiring director in the company is desirous of standing for directorship of the Pritam Ltd., in pursuance of Section 160 of the Companies Act, 2013 the following procedure needs to be followed:

1. The proposed director or some member intending to propose him as a director, has, not less than fourteen days before the general meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution.
2. The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office:
 - (a) By serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

- (b) By placing notice of such candidature or intention on the website of the company, if any; or
 - (c) Publishing the same in vernacular newspaper seven days before the meeting.
3. The candidate may obtain Director Identification Number (DIN) and give his consent in DIR-2.
4. If the candidate is elected the company shall file DIR-12.

— Space to write important points for revision —

2018 - Dec [5] (e) Fashion Ltd. holds a general meeting for passing a special resolution regarding appointment of Shyamal aged 72 years as Managing Director of the company. Out of the 50 members present in the meeting 25 voted in favour, 15 against and 10 members did not cast their vote. Can company appoint Shyamal as Managing Director of the company? Discuss.

(4 marks)

Answer:

Under section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years. Further appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

In case where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

A person who has attained the age of seventy may be appointed as the managing director of the company after passing special resolution. **In the present case** the special resolution was not passed.

Mr. Shyamal may be appointed as the Managing Director since the votes cast in favour exceed the vote cast against the resolution and Central Government approval may be obtained by the Board of Directors of the Company to appoint him as managing director. If the Central Government is satisfied the approval may be granted.

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2019 - June [4] (a) "A" Ltd., a public company wants to appoint Alternate Directors. Examine the validity of acts of the company with reference to provisions of Companies Act, 2013 in following cases:

- (i) 'D' a director was absent for a period of two and half months. It is proposed to appoint an alternate director.
- (ii) 'E' a director was absent for 4 months. It is proposed to appoint 'F' as an alternate director in place of 'E'. 'F' is already acting as an alternate director in "A" Ltd. for a director 'G' who was absent for 5 months.
- (iii) Can the said appointment, if permitted, be passed by circular resolution? **(1 + 2 + 2 = 5 marks)**

Answer:

- (i) **Section 161(2) of the Companies Act 2013** empowers the Board, if so authorized by its articles or by a resolution passed by the company in general meeting, to appoint a director (termed as 'alternate director') to act in the absence of a original director during his absence for a period of not less than three months from India. Since as D is absent only for two and half months. Alternate director in place of D cannot be appointed.
- (ii) **Section 161(2) of the Companies Act, 2013** states that in the conditions for appointment of an Alternate Director, the person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company or holding directorship in the same company. Therefore since F is acting as an alternate director for another director i.e. "G", he cannot be appointed again as alternate director for E in the same company.

2.614

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- (iii) There is no specific provision in the Act which provides that the appointment of an Alternate Director shall be made at the meeting of the Board. In the absence of any such prohibition, an alternate director can be appointed by passing a resolution by circulation. Therefore in the given illustration, if permitted the alternate Director can be appointed by circular resolution.

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2019 - June [5] (c) 'T' Ltd. a listed company has ₹ 20 crore paid up share capital and has nine directors on its Board. Advise T Ltd. on the following matters:

- (i) The number of independent directors it should appoint on its board.
- (ii) How many independent directors should be appointed by T Ltd. in case it is an "unlisted public company"?
- (iii) Can T Ltd. appoint an independent director for second consecutive term of 6 years whose first term, as independent director in T Ltd. was for 4 years?
- (iv) T Ltd. wants to appoint another independent director for further period of 2 years. He has already completed 2 consecutive tenures of 4 years each as an independent director in T Ltd.?

(4 marks)

Answer:

- (i) As per **Section 149(4) of the Companies Act 2013**, every listed public company is mandatorily required to have at least one-third of the total number of directors as independent directors. T Ltd should appoint 1/3 of its total Directors as an Independent Director and accordingly has to appoint 3 independent directors.
- (ii) As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 unlisted public companies having paid up share capital of 10 crore rupees or more shall have at least two independent. Hence, Two independent directors have to be appointed by T Ltd as it is an unlisted company and its paid up share capital is more than ₹ 10 crores.

- (iii) **Section 149(10) of the Companies Act, 2013** states that subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. It has been clarified that as such while appointment of an Independent Director for a term of less than 5 years would be permissible, appointment for any term (whether for 5 years or less) is to be treated as a one term under **Section 149(10) of the Act**. Therefore T Ltd cannot appoint an Independent Director for term of a six years in the second consecutive term.
- (iv) **Section 149(11) of the Act**, no person can hold office of Independent Director(ID) for more than two consecutive term's such a person shall have to demit office after two consecutive terms, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. It is clarified by the Ministry that appointment for any term (whether 5 years or less) is to be treated as one term under Section 149(10) of the Companies Act, 2013. Further, under Section 149(11) of the Companies Act,2013 no person can hold office of independent director for more than two consecutive term's such a person shall have to demit office after two consecutive terms, he shall be eligible for appointment only after the expiry of the requisite cooling -off period of 3 years. Therefore T Ltd cannot appoint an independent Director who has already completed two consecutive terms for 4 years for another period of two years.

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2019 - June [5A] (Or) (ii) 'X' was appointed as an Additional director of Precious Ltd. w.e.f. 21st November, 2018 in a casual vacancy caused by the unexpected death of "P" by way of a circular resolution passed by the Board of directors. With reference to the provisions of the Companies Act, 2013 advise the company on the validity of the appointment of 'X' and his continuation as Additional director. **(4 marks)**

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Answer:

Section 161(4) of the Companies Act, 2013 states that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Section 161 does not authorize the Board to appoint an additional director to fill the casual vacancy

- If appointment of X is made as an additional director, then, such appointment cannot amount to filling a casual vacancy.
- If X is appointed to fill a casual vacancy, then he shall not be an additional director.

It is thus clear that the appointment of X as an additional director to fill the casual vacancy is not valid. However, X can be treated as additional director and his office as additional director will be valid upto the date of ensuing AGM. In this regard, the text of the resolution dealing with casual vacancy will be void but will be valid to the extent of additional director.

Further X has been appointed to fill the casual vacancy by passing a circular resolution. Since the appointment of a director filling a casual vacancy requires passing of resolution in a board meeting, the appointment of X is in contravention of Section 161, and is therefore, invalid.

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2019 - Dec [4] (a) Rajesh Gawda is a director of XYZ Pvt. Ltd. having a paid up share capital of ₹11 crore. The company has granted a loan of ₹2 crore to Rajesh Gawda. The company has a borrowing of ₹15 crore from HDFC Bank. The company secretary informs the company that the loan to the director is in violation of the provisions of the Companies Act, 2013. Justify the claim of the company secretary. **(5 marks)**

2019 - Dec [5A] (Or) (i) Destinations Ltd. is a listed company with paid-up share capital of ₹40 crore, turnover ₹200 crore but having a loss of ₹10 crore for the year ended 31 March, 2018. The woman director in the Board of the company resigned on 1 October, 2018. The last Board meeting was held on 25th September, 2018. The Board is likely to meet next on 15th January, 2019. Lalita, aged 30 years, has conveyed her interest to be associated with the company as a woman director. Discuss if any woman director is required to fill the vacancy and if so, when the appointment should be made as per the provisions of the Companies Act, 2013 ? **(4 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short note on resignation of Directors.

Answer:

According to Section 168 –

1. A director may resign from its office by giving a notice with the reasons of resignation in writing to the company.
2. The Board shall on receipt of such a notice from a director shall take note of the same.
3. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the registrar in Form DIR-12 and post the information on its website if any as provided in **Rule 15 of the companies (Appointment and Qualification of Directors) Rules, 2014.**
4. The board shall place the facts of such resignation by the director in the Report of Directors laid in immediately following general meeting by the company.

5. The Director shall within 30 days from his resignation, forward to the registrar a copy of his resignation along with reasons for resignation with reasons provided therein in Form DIR-11 along with the fee provided. In case of Specified IFSC public and private company, a director may file Form DIR-11 to the Registrar.
6. The resignation shall be effective from the date on which the notice is received by the company or the date specified by the Director in the notice whichever is later.
7. When all the Directors resign at the same time under section 167, in such case the required number of directors are to be appointed by the promoter or, the Central Government. The Directors so appointed shall hold office till the Directors are appointed by the company in general meeting.

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DESCRIPTIVE QUESTIONS

Q2. Describe the procedure for Appointment of directors to be the elected by small shareholders.

Answer:

1. A listed company having a paid-up capital of five crore rupees or more and having one thousand or more small shareholders (holding shares of nominal value of ₹ 20,000 or less may have a director elected by such small shareholders.
2. Small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

If the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

3. The notice shall be accompanied by statement of proposed director stating his DIN, that he is not disqualified and his consent to act as director of the company.
4. Such director shall be considered as an independent director subject to being eligible and giving a declaration of his independence in accordance with sub-section (6) and (7) of Section 149 of the Act.
5. The small shareholder director shall be elected through postal ballot.
6. Ensure that the proposed director shall not hold the position of small shareholder director in more than 2 companies at the sametime. Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.
7. Such director shall not be retire by rotation and shall have tenure of continuous three years.
8. After completion of tenure small shareholders director shall not be eligible for reappoint.
9. When small shareholders directors cease to be a small shareholder, he cease to be a small shareholders director.
10. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.
11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.
12. For the purpose of filing Form DIR – 12, the following attachments are required:
 - (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director, in Form DIR-2;
 - (d) Interest in other entities;

13. In case of listed company, the particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
14. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under sections 170 and 189
15. After appointment the director concerned has to inform other companies in which he is director about his appointment

— Space to write important points for revision —

Q3. How can the directors be removed from the office before the expiry of their term?

Answer:

The following procedure is required to be adopted for removal of a director:

1. A special notice from a member of the company proposing an ordinary resolution for removing the director is necessary.
2. Send forthwith a copy of the special notice to the director proposed to be removed.
3. Decide to call a general meeting through the Board resolution.
4. Issue notice of the general meeting in writing at least twenty-one clear days before the date of the meeting informing about the special notice and proposing the ordinary resolution for removal.
5. In the notice of the meeting, state the facts of the representation made by the director concerned and also send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after the receipt of the representations by the company).
6. If the representation is received too late and it could not be sent to the members, the director concerned may require that the representation shall be read out at the meeting. The director concerned has also the right of being heard at the meeting.



7. However, the National Company Law Tribunal on an application of the company or any other person who claims to be aggrieved, on having satisfied, may dispense with the procedure of sending a copy of representation and reading thereof at the meeting if it is being used to secure needless publicity for defamatory matter.
8. In case of listed company, send notice of the general meeting to the stock exchange(s) within 24 hours of the occurrence of the event where the company is listed [Refer Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
9. Hold the general meeting and pass the proposed resolution by ordinary resolution.
10. In case of listed company, forward a copy of the proceedings of the meeting within 24 hours of the occurrence of the event to the stock exchange(s) where the company is listed.
11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.
12. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the removal after paying the requisite fee electronically.
For the purpose of filing Form DIR – 12, the following attachments are required:
 - (a) Notice of resignation;
 - (b) Evidence of Cessation;
 - (c) Interest in other entities;
13. The particulars of the director and other aspects of the director have accordingly be modified in the registers maintained under sections 170 and 189.
14. Give a general public notice in newspaper regarding removal of the director if it is so warranted for the protection of the company and benefit of the general public.

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Q4. Under what circumstances is a director deemed to have vacated the office of directorship.

Answer:

According to **Section 167 of the Companies Act, 2013**, the office of a director shall become vacant in case –

- (a) he incurs any of the disqualifications specified in Section 164;
- (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;
- (e) he becomes disqualified by an order of a court or the Tribunal;
- (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months. Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-
 - (i) for thirty days from the date of conviction or order of disqualification;
 - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of;
- (g) he is removed in pursuance of the provisions of this Act;
- (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
- (i) has not complied with the Provisions of Section 165(1)

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Q5. Enumerate the rights and duties of directors.

Answer:

1. Duty to act as per the articles of the company

The director of a company shall act in accordance with the articles of the company.

2. Duty to act in good faith

A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

3. Duty to exercise due care

A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

4. Duty to avoid conflict of interest

A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

5. Duty not to make any undue gain

A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

6. Duty not to assign his office

A director of a company shall not assign his office and any assignment so made shall be void.

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Repeatedly Asked Questions		
No.	Question	Frequency
1	Director Identification Number (DIN) is not mandatory for directors of foreign company having branch offices in India. 08 - Dec [4] (d), 11 - Dec [1] (a) (v), 13 - June [1] (v)	3 Times
2	What is meant by the term 'disqualifying company' under the Companies (Disqualification of Directors under Section 164(2) of Companies Act, 2013? State the grounds under which the directors are disqualified under the said rules. 10 - Dec [3] (b), 11 - June [4] (c)	2 Times

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KEY MANAGEMENT PERSONNEL

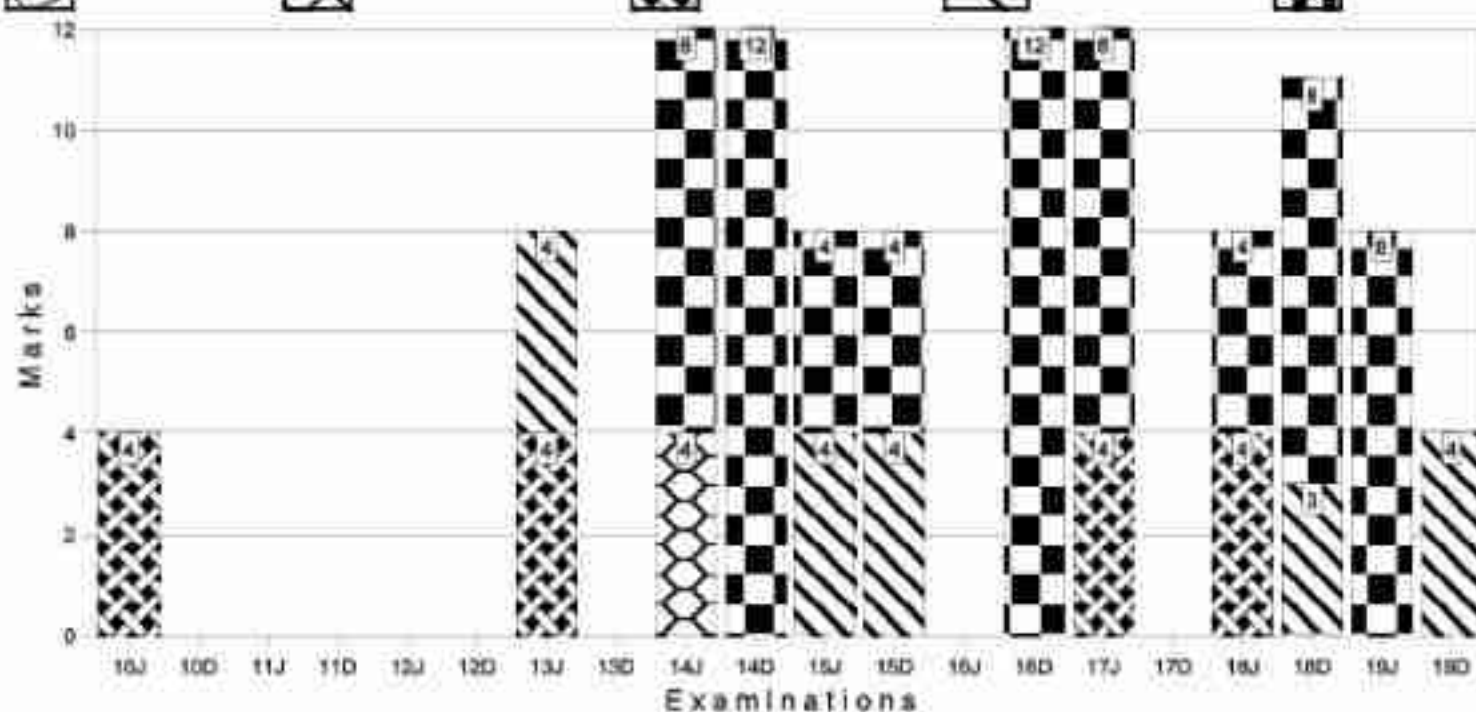
THIS CHAPTER INCLUDES

- | | |
|---|---|
| <ul style="list-style-type: none"> • Key Managerial Personnel (KMP)- Introduction • Appointment of KMP • Appointment of MD, WTD or Manager • Officer who is in default • Company secretary defined as KMP • Appointment of a company secretary • Role of company secretary | <ul style="list-style-type: none"> • Functions of a company secretary • Statutory duties and liabilities of a company secretary • Remuneration of managerial personnel • Compensation for loss of office of managing or whole time director |
|---|---|

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

Key Managerial Personnel

- Under **section 2(51)** a Key Managerial Personnel is define as the Chief Executive Officer or Managing Director or the manager or, a Company Secretary or the whole time director and the Chief Financial Officer in relation to a company.

Amendment made by Companies (Amendment) Act, 2017

Revised Section 2(51)-

"Key managerial personnel" in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed;"
- Every listed Company and every other public company having a paid up share capital of ₹ 10 crore or more is compulsorily required to have whole time key managerial personnel.
- The whole time key managerial personnel is to be appointed by the Board and shall not hold office in more than one company however he is permitted to hold such other office with the permission of Board of the company.

Penalty for not appointing Key Managerial Personnel when Mandatory

Every director or the key managerial personnel who is in default shall be punishable with a fine which may extend to ₹ 50,000 and a further fine which may be extended to ₹ 1,000 for every day during which the default continues.



As per Companies (Amendment) Act, 2019

Section 203 of Companies Act, 2013 make provisions for mandatory appointment of certain Key Managerial personnel like MD or CEO, Company Secretary and CFO.

If any company makes any default in complying with the provisions of Section 203, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees - **Section 203(5) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

Till 2.11.2018, the section provided for fine which could be imposed only by Court. Now, penalty can be imposed by RoC or RD who is authorized for this purpose.

Even earlier, the offense was compoundable. However, procedure of compounding had to be complied with. Now, directly penalty can be imposed after issuing Show Cause Notice.

Section 203

The Company Secretary has been covered under the same section of KMP i.e. Section 203.

- Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014, Appointment of Company Secretaries in companies not covered under Rule 8. A company other than a company covered under Rule 8 which has a paid up share capital of ₹ 5 crore or more shall have a whole the company secretary.

Company Secretary

Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in **clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980** who is appointed by a company to perform the functions of a company secretary under this Act.

2.628	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<p>According to clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a company secretary means a person who is a member of the Institute of Company Secretaries of India.</p> <p>Therefore, 'Company Secretary' means a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the functions of a company secretary. The functions of company secretary have been detailed in Section 205 of the Act.</p>		
Statutory Duties and Liabilities of a Company Secretary		
<ol style="list-style-type: none"> 1. Declaration regarding compliance with requirement of registration 2. Authentication of documents, proceedings and contracts 3. Signing share certificate 4. Signing annual return 5. Signing of financial statements 6. Appear before NCLT 7. Secretary as Compliance Officer of listed company 8. Demat shares 9. Additional duties 10. Nodal Officer 		
Functions of Company Secretary		
<p>According to Section 205 the functions of the company secretary shall include,-</p> <ol style="list-style-type: none"> (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company; (b) to ensure that the company complies with the applicable secretarial standards; (c) to discharge such other duties as may be prescribed. 		



Officer in Default

As per Section 2(60), “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

Remuneration to Managerial Personnel

1. Overall managerial remuneration

Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with Section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

2. Remuneration to Managing Director/whole time Director/Manager

The remuneration payable to any one managing director or whole-time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors.

3. Remuneration to other directors

Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

- 1% of the net profits of the company, if there is a managing or whole-time director or manager;
- 3% of the net profits in any other case.

4. Remuneration by a company having no profit or inadequate profit

If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

Managerial Remuneration under Schedule V (Part II)**Section I :** Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with **Section 197**.

Section II: Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate it may without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:

(A)

Where the effective capital is	Limit of yearly re-muneration payable shall not exceed (Rupees)
(i) Negative or less than 5 Crore	60 Lakhs
(ii) 5 Crore and above but less than 100 Crore	84 Lakhs



(iii) 100 Crore and above but less than 250 Crore	120 Lakhs
(iv) 250 Crore and above	120 Lakhs plus 0.01% of the effective capital in excess of ₹ 250 Crore

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation-

It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company.

Amendment made by Companies (Amendment) Act, 2017

Revised First Proviso to Section 197(1)-

“Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:”

Revised Second Proviso to Section 197(1)-

"Provided further that, except with the approval of the company in general meeting by a special resolution,-

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - (A) one per cent. of the net profits of the company, if there is a managing or whole- time director or manager;
 - (B) three per cent. of the net profits in any other case.

Third Proviso to Section 197(1)-

"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non -convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

Compensation For Loss of Office of Managing or Whole- Time Director or Manager (Section 202)

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:

- (a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;



- (b) where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;
- (c) where the office of the director is vacated due to disqualification;
- (d) where the company is being wound up due to the negligence or default of the director;
- (e) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Steps for the Appointment of Whole-time Director

S. No.	Appointment of Whole-time Director as per Schedule V	Appointment of Whole-time Director with the prior approval of Central Government
1	Convene a Board Meeting to appoint to Whole-time Director of the Company.	Convene a board Meeting to appoint Whole-time Director of the Company.
2	Fix date, time and place of the General Meeting in the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the company.	Fix date, time and place of the General Meeting in the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the Company.
3	Convene Extra-ordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the company.	Convene Extra-ordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the company.
4	—	Application is made in Form No. MR.2, within 90 days of appointment FOR CG approval.
5	File e-form DIR - 12 within 30 days from the date of general meeting.	File e-form DIR-12 within 30 days from the date of general meeting for whole-time Director of the company.

2.634	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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6	File e-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time Director.	File e-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time Director.
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List of Important Forms

Form No.	Form Type	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
MR. 1	e-Form	Return of appointment of key managerial personnel	196,197 and sch. V	3
MR. 2	e-Form	Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors	196, 197,200, 201 (1), 203 (1) and Sch V	7
MR. 3	Physical Form	Secretarial Audit Report	204 (1)	9

SHORT NOTES

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

(iv) Managerial remuneration

(4 marks) [CSEM - II]



Answer:

1.	Meaning of Managerial Personnel, Sec. 197 of Company Act, 2013	According to Section 197 of the Companies Act, 2013 , the term managerial personnel includes managing director, manager and whole-time director of a company, enjoying substantial powers.
2.	Meaning of Managerial Remuneration	Managerial remuneration is a remuneration paid to the Directors including: (a) Managing director; (b) Whole time director; (c) Managers of a company.
3.	Overall limit to Managerial Remuneration, Sec. 197 of Company Act, 2013	<ul style="list-style-type: none">• According to Section 197, in the case of public company or a private company which is subsidiary of public company total managerial remuneration payable to directors, managing director or manager in respect of any financial year should not exceed 11% of the net profits of that year.• Net profit for the purposes of determining directors remuneration shall be computed in the manner laid down in Section 198 of the Companies Act, 2013 except that remuneration to directors shall not be deducted from the gross profit but income tax paid or payable should be deducted.• Further the Company in general meeting may, with the approval of Central Government authorise the payment of remuneration exceeding 11% of net profits of the company subject to provision of Schedule V.

4.	Ceiling of Managerial Remuneration	A director who is either in the whole time employment of the company or a managing director may be paid remuneration either- (a) By way of monthly payment, or (b) At a specified percentage of the net profit of the company; or (c) Partly by one way and partly by the other.
		But such remuneration shall not exceed 5% of the annual net profits. For one such director, and if there is more than one such director, 10% for all of them together. [Section 309 (3)].

Note:**Amendment made by Companies (Amendment) Act, 2017:****Revised First Proviso to Section 197(1)-**

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:"

Revised Second Proviso to Section 197(1)-

"Provided further that, except with the approval of the company in general meeting by a special resolution,—

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - (A) one per cent. of the net profits of the company, if there is a managing or whole- time director or manager;
 - (B) three per cent. of the net profits in any other case.

Third Proviso to Section 197(1)-

"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non -convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."

Important:

As per Companies (Amendment) Act, 2019.

Penalty for contravention of Section 197 in respect of managerial remuneration.

Section 197 makes provisions in respect of managerial remuneration.

If any person makes any default in complying with the provisions of **Section 197**, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees - **Section 197(15) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

Till 2.11.2018, the section provided for fine which could be imposed only by Court. Now, penalty can be imposed by RoC or RD who is authorized for this purpose.

Even earlier, the offense was compoundable. However, procedure of compounding had to be complied with. Now, directly penalty can be imposed after issuing Show Cause Notice.

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

- (c) Statutory duties of a Company Secretary under the Companies Act, 2013. **(4 marks)**

Answer:

1.	Duties of Company Secretary Sec. 205 (1) (c) read with Rule 10 of Companies Appointment and Remuneration of Managerial Personnel Rules, 2014	The company secretary has following duties as per Section 205(1) and Rule 10	
		a. Guidance to directors	to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
		b. Facilitate the convening of meeting	to facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings
		c. Obtaining approvals	to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act
		d. Representation	to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
		e. Assisting the board	to assist the Board in the conduct of the affairs of the company;
		f. Advising board for good corporate governance	to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and



		g. Other duties	to discharge such other duties as may be assigned by the Board from time to time;
		h. Other duties as prescribed under the act and rules	such other duties as have been prescribed under the Act and Rules.
2.	Duties and functions of BOD, chair-person etc.	Section 205(2) provides that the provisions contained in Section 204 and Section 205 shall not affect the duties and functions of the Board of Directors, Chairperson of the company, managing director or whole- time director under this Act, or any other law for the time being in force.	

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DISTINGUISH BETWEEN

2010 - June [6] Distinguish between the following:

(iv) 'Whole-time chairman' and 'part-time chairman'. **(4 marks) [CSEM - II]**

Answer:

Distinction between whole-time Chairman and part-time Chairman which are chaired by managing directors who are known as Chairman-cum-managing director. We have also on Board, are chaired by directors who are not whole time directors. A Chairman-cum-managing director is some times called a whole-time chairman.

Whereas a Chairman, who is not a whole time director of the company, is called part time Chairman.

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2013 - June [4] Distinguish between the following:

(ii) 'Managing director' and 'whole-time director'. (4 marks) [CSEM - II]

Answer:

1.	Whole Time Director	A Whole time director has not been defined in the Act. He may be defined as a director who devotes all his time and attention in carrying on such of the affairs of the company, as may be assigned to him by the Board of Directors and thereof, he is virtually a Managing Director though not so designated. He is also known as whole time director of company. (Section 2 (94) of Companies Act, 2013)
2.	Managing Director	A Managing Director as a director who by virtue of an agreement with the company or a resolution passed by the company in general meeting or by its Board of Directors, or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him. [Section 2 (54) of Companies Act, 2013] Both differ as under:
Basis		
	Managing Director	Whole time Director
1. Powers	A Managing Director is entrusted with substantial powers of management	Where as a whole-time director is just an ordinary employee of the company having no discretionary powers to take decisions on policy matters regarding pricing of products, buying and selling policy etc.
2. No. of Companies	A Managing Director can be a managing director of more than one company.	But a whole-time director is a full-time employee and he cannot hold office at a time in more than one company.



3. Appointment with manager	A Managing Director and a manager cannot be appointed simultaneously in any company.	Where as a whole-time director can be appointed in a company having a manager.
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2017 - June [2] Distinguish between the following:

(b) 'Key-managerial personnel' and 'Managing Director'. (4 marks)

Answer:

'Key-managerial personnel' and 'Managing Director'

Key-Managerial Personnel	Managing Director
<p>As per Section 2(51) of the Companies Act, 2013, "key managerial personnel", in relation to a company, means-</p> <ul style="list-style-type: none">(i) the Chief Executive Officer or the managing director or the manager;(ii) the Company Secretary;(iii) the whole-time director;(iv) the Chief Financial Officer; and(v) such other officer as may be prescribed. <p>Amendment made by Companies (Amendment) Act, 2017</p> <p>Revised Section 2(51)-</p> <p>"Key managerial personnel" in relation to a company, means—</p> <ul style="list-style-type: none">(i) the Chief Executive Officer or the managing director or the manager;	<p>According to Section 2(54) of the Companies Act, 2013, "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.</p> <p>A Managing Director (MD) can be KMP but it is not mandatory that a KMP shall be MD.</p> <p>The Managing Director must have substantial power of management.</p>



2.642	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)
<p>(ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"</p> <p>'Key managerial personnel' (KMP) is a broader term and it includes managing director and other specified officers of a company. For being designated as KMP vesting of substantial power is not necessary. For example, a CFO or a Company Secretary may or may not have substantial power of management; still they may be designated as KMP.</p>	

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2018 - June [2] Distinguish between the following:
(b) Chief Executive Officer and Managing Director. **(4 marks)**
Answer:
Section 2(18) of the Companies Act, 2013, has defined "Chief Executive Officer" so as to mean an officer of a company, who has been designated as such by it.



Section 2(54) of the Companies Act, 2013, "Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

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DESCRIPTIVE QUESTIONS

2009 - June [8] (a) A managing director of a company stood as surety for the repayment of loan taken by it for which he was paid guarantee commission. Does this commission amount to managerial remuneration ? Support your answer with decided case law, if any.

(5 marks) [CSEM - II]

(b) A whole-time director of a company made an invention during the course of his employment with the company. He patented the invention in his own name and appropriated the benefits to himself. Can he do so ? Cite case law, if any.

(5 marks) [CSEM - II]

Answer:

(a)

1.	Concerned case law	[Suessen Textile Bearings Ltd. V Union of India [1984] 55 com. case 492 (Delhi)].
2.	Provisions of Sec. 197 of C.A. 2013	<ul style="list-style-type: none">• According to Section 197 of the Companies Act, 2013 Guarantee Commission paid to directors for giving guarantee against loans on credit facilities availed by the company from financial institutions is not a remuneration for any professional services.• The director giving surety does not render any clerical, technical or administrative services to the company.

		<ul style="list-style-type: none"> The commission which he gets is for the risk undertaken which is his personal liability and it has nothing to do with his directorship.
3.	Conclusion	Hence, in view of the above case law, the managerial remuneration will not amount to the guarantee commission paid to a Managing Director of a company.

(b)

1.	Liability	Taking the advantage of their position as directors, they are liable to the company for all personal profits or gain made by them.
2.	Case Law Analysis	During the invention made in the course of the employment with the company, a director was held liable when a director patented and exploited in his own name [<i>Cranleigh Precision Engineering Ltd. V Bryant (1954) AIIER 289</i>]
3.	Conclusion	Thus, the whole time director can get the invention patented in his own name and appropriate the benefits to himself but he is liable to the company for all the personal gains he made with the help of the patented invention.

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2013 - June [8] (c) Kapil is branch head of a limited company. The company proposes to elevate Kapil to the Board. Enumerate the steps involved in such a proposal. **(4 marks) [CSEM - II]**

Answer:

1.	Approval of Central Government	<ul style="list-style-type: none"> Kapil, the branch head is apparently a whole-time employee of the company. When the company proposes to appoint him as a director, he will be in the position of a whole
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		<p>time director of the company and the appointment would require the approval of the Central Government under Section 196 of the Companies Act, 2013 if it is not in accordance with Schedule V to the Act.</p> <ul style="list-style-type: none">• In that case, an application seeking approval to the appointment of whole-time director shall be made to the Central Government in e-Form No. MR - 2.
2.	When Approval of CG is not required?	<ul style="list-style-type: none">• However, approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule V and a return in e- Form No. MR- 1 is filed with Registrar within 60 days from the date of such appointment.

Steps for the Appointment of Whole- time Director

S. No.	Appointment of Whole-time Director as per Schedule V	Appointment of Whole-time Director with the prior approval of Central Government
1	Convene a Board Meeting to appoint to Whole-time Director of the Company.	Convene a board Meeting to appoint Whole-time Director of the Company.
2	Fix date, time and place of the General Meeting in the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the company.	Fix date, time and place of the General Meeting in the General Meeting in order to take the approval of the shareholders to appoint "Whole-time Director" of the Company.
3	Convene Extra-ordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the company.	Convene Extra-ordinary General Meeting of the Company and take shareholders approval for the appointment of Whole-time Director of the company.

2.646	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
4	Not Applicable	Application is made in Form No. MR.2, within 90 days of appointment FOR CG approval.
5	File e-form DIR - 12 within 30 days from the date of general meeting.	File e-form DIR-12 within 30 days from the date of general meeting for whole-time Director of the company.
6	File e-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time Director.	File e-form MR -1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time Director.

— Space to write important points for revision —

2015 - June [3] (d) Explain the meaning of the term 'key managerial personnel' in relation to a company as introduced by the Companies Act, 2013 and also state the manner in which they are appointed. **(4 marks)**

Answer:

1. Appointment of Key Managerial Personnel	E n a c t i n g provisions - Section 203 of Companies Act, 2013 read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	Section 203 of the Companies Act, 2013 read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel: (i) Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director;
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		(ii) Company Secretary; and (iii) Chief Financial Officer.
2. Appointment of Company Secretary in companies not covered under Rule 8	Rule 8 A	A company other than a company covered under rule 8 which has a paid-up share capital of five crore rupees or more shall have a whole-time company secretary.
3. Appointment through board re-resolution	Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.	
4. Holding of office	A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold such other directorship with the permission of the Board.	
5. Vacancy of whole time key managerial personnel	If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.	

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2015 - Dec [6] (b) Who are key managerial personnels (KMPs)? State the manner in which they can be appointed in a company. **(4 marks)**

Answer:

Please refer 2015 - June [3] (d) on page no. 646

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2.648

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

2018 - Dec [2] (c) If a company has appointed a Company Secretary then his signature is mandatory on the share certificate issued by the company. Analyse with reference to the provisions of the Companies Act, 2013.

(3 marks)

Answer:

Under **Section 46(3) of the Companies Act, 2013** a share certificate, issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, is the *prima facie* evidence of the title of the person to such shares.

Therefore, where the company has appointed a Company secretary then his signature is compulsory on the share certificate issued by the company.

— Space to write important points for revision —

2019 - Dec [5] (a) Jackson is a prospective candidate for the post of Managing Director of Tirubuvani Sugars Ltd. Unfortunately, his proposed appointment could not satisfy the conditions of Schedule V of the Companies Act, 2013. Discuss if any other option is available with the company to appoint him as the Managing Director of the company.

(4 marks)

PRACTICAL QUESTIONS

2014 - June [4] (a) Pawan, the Managing Director of ABC Ltd., resigned on 10th May, 2012. The company has filed e-form No. DIR-12 with the Registrar of Companies mentioning the date of resignation as 5th July, 2013. The company issued various cheques to its investors in repayment of the deposits after 10th May, 2012 and the said cheques were dishonoured. The investors filed complaints against the company and Pawan, the former Managing Director of the company. Discuss and advise whether Pawan shall be liable or not.

(8 marks)



Answer:

1.	MD of ABC Ltd. could not be held responsible	The Managing Director of ABC Limited could not be held responsible under Section 141 of the Negotiable Instruments Act, 1881 as he had resigned from his directorship on 10 th May, 2012 and the cheques issued after 10 th May, 2012 which were bounced.
2.	Effective date of resignation. <i>Dushyant D. Anjaria Vs. Wall Street Finance Ltd. (2001) comp. Cas. 655 (Bom)</i>	In this case, the Bombay High Court had held that the resignation of a Director would be effective from the date it was submitted because the letter brings out clearly his intention to resign. However, if there was delay on the part of the company in intimating the ROC about the date of the resignation, the resigning Director could not be saddled with responsibility and liability for such delay.
3.	Date of DIR 12 is not conclusive. (Pandurang ... CLA 265)	Date of filing of Form DIR - 12 is not conclusive as to the date of resignation of director shown in the letter of resignation is to be considered. (Pandurang Camotim Sancoaltar Vs. Suresh Prabhakar Prabhu 48 SCL 437, 53 CLA 265.)
4.	Provisions of Articles	Articles of association of the company also provided that the resignation would be effective from the date it was tendered.
5.	Resignation to be effective on tendering date. (Glossop Vs.. 370)	It was held that the resignation of a director would become effective on and from the date it was tendered and from the Articles of Association of the Company, it would be clear that resignation of a Director would be effective from the date it was tendered.

— Space to write important points for revision —

2.650

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

2014 - Dec [5] (a) In a limited company, the Managing Director terminated an employee on the charge of various misconducts. The aggrieved employee filed a writ petition before the High Court challenging the dismissal contending that the Managing Director had no power to do so and the proper authority was the Board of Directors. During the pendency of writ, the Board of Directors passed a resolution ratifying the action of the Managing Director. The High Court while setting aside the Managing Director's dismissal order, allowed the writ petition. Managing Director appealed to the Supreme Court. Decide the case having regard to the judicial pronouncements in the matter. (8 marks)

Answer:

1.	Case Law Analysis	<i>Maharashtra State Mining Corporation v. Sunil (2006) 5 SCC 96.</i>
		<p>Managing Director terminated the services of an employee for various misconducts. The respondent filed a writ petition before High Court, on the ground that the MD had no authority to do so. The High Court, however, while setting aside the impugned order, allowed respondent's writ petition. Appellant appealed to the Supreme Court.</p> <p>According to the Supreme Court, the High Court was right when it held that an act by an incompetent authority was invalid. But it was entirely wrong in holding such an invalid act cannot be subsequently rectified by ratification by the competent authority. It means making valid an act already done.</p> <p>Since the order of managing director was admittedly ratified by the Board of Directors and the Board had the power to terminate the services of the respondent, such ratification order related back to the date of the order and validated it.</p> <p>Therefore the dismissal order was upheld.</p>



2.	Conclusion	The termination order against the employee on the charge of various misconducts is also considered valid.
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2014 - Dec [6] (a) Heal Ltd. owns a chain of hospitals in Mumbai. Dr. Aman, a practicing surgeon, has been appointed by the company as its non-executive ordinary director and wants to pay him fees on case-to-case basis for surgeries performed by him on patients at hospital. Advise the company, whether payment of such fees to him would amount to payment of managerial remuneration to a director under the Companies Act, 2013.

(4 marks)

Answer:

1.	Remuneration for professional services not to be part of managerial remuneration	Under the proviso to Section 197 of the Companies Act, 2013 the remuneration paid to a director for the services rendered by them shall not be part of managerial remuneration if the services rendered are of professional nature and in the opinion of the Nomination and Remuneration Committee, if the company is covered under Ssection 178 (1) of the Act, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.
2.	Conclusion	The company is accordingly advised to obtain opinion of the Nomination and Remuneration Committee, or the Board of Directors, as the case may be that <i>Dr. Aman, who is a qualified Surgeon possesses the requisite qualification to practice the profession of surgery.</i>

— Space to write important points for revision —

2.652

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

2015 - June [2A] (Or) (iv) Alok, the Managing Director of Yellow Ltd., borrowed a large sum of money and misappropriated the same. Later, when the lender demanded his money, the company refused to repay, contending that the money borrowed by Managing Director was misappropriated by him and the company is not liable for repayment. Decide, giving reasons, whether the lender would succeed in recovering the money from the company. **(4 marks)**

Answer:

1.	Analysis of the problem in the light of decided case law	In <i>V. K. R. S. T Firm V. Oriental Investment Trust Ltd., AIR 1944 Mad 532</i> 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 unauthorised activities provided the lender had no knowledge of the intended misuse.
2.	Conclusion	In the given case. Yes, the lender will succeed in this case and recover the money from the company.

— Space to write important points for revision —

2015 - Dec [6] (c) Ms. Jyoti is the Managing Director of Wise (India) Ltd., incorporated under the Companies Act, 2013. Board of Directors of the company presents the following financial data extracted from the company's financial statements as at 31st March, 2015:

Particulars		₹(In crore)
Authorised equity share capital	..	60
Paid-up equity share capital	..	10
Debenture redemption reserve	..	10
Securities premium account	..	20
Profit and loss (loss)	..	(10)
Revaluation reserve	..	20

Due to losses in the financial year 2014-15, the company is not in a position to pay any remuneration to Ms. Jyoti, Managing Director of the company. As per the agreement of service between Ms. Jyoti and the company, in case of losses or inadequacy of profits in any financial year, she is to be paid remuneration on the basis of 'effective capital' of the company.

Based on the provisions of the Companies Act, 2013, decide the maximum remuneration payable to Ms. Jyoti for the financial year 2014-15 without the approval of the Central Government. **(4 marks)**

Answer:

"Effective Capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Computation of effective capital for managerial remuneration:

Particulars	₹ in Crores
Paid-up capital	10
Debenture redemption reserve (not specifically excluded by definition of 'effective capital')	10
Securities premium account	20
Profit and loss account	(10)
Revaluation reserve (specifically excluded by definition of 'effective capital')	-
Effective Capital	30

Remuneration payable by companies having no profit or inadequate profit without Central Government approval **[Section II of the Part II of the Schedule V]**: Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits given below:

Remuneration based on effective capital:

Where the effective capital is	Limit of yearly remuneration payable shall not exceed ₹
Negative or less than 5 Crores	60 Lakhs
5 Crores and above but less than 100 Crores	84 Lakhs
100 Crores and above but less than 250 Crores	120 Lakhs
250 Crores and above	120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores

The above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

If a period less than one year, the limits shall be pro-rated.

Considering the above provisions, Ms. Jyoti, Managing Director of Wise (India) Ltd. can be remunerated in following ways without approval of Central Government:

- As company's effective capital' is between "₹ 5 Crores to 100 Crores"; Ms. Jyoti can be paid annual remuneration of ₹ 84 Lakhs i.e. monthly ₹ 7 Lakhs.
- If company pass special resolution, remuneration can be doubled i.e. ₹1 Crore 68 lakhs annum i.e. ₹ 14.00 Lakhs per month can be paid.

Amendment made by Companies (Amendment) Act, 2017

Revised First Proviso to Section 197(1)-

"Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:"

Revised Second Proviso to Section 197(1)-

“Provided further that, except with the approval of the company in general meeting by a special resolution,—

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - (A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
 - (B) three per cent. of the net profits in any other case.

Third Proviso to Section 197(1)-

“Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.”

Important:

As per **Companies (Amendment) Act 2019**.

Penalty for contravention of Section 197 in respect of managerial remuneration

Section 197 makes provisions in respect of managerial remuneration.

If any person makes any default in complying with the provisions of **Section 197**, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees - **Section 197(15) of Companies Act, 2013** amended vide the Companies (Amendment) Act, 2019.

Till 2.11.2018, the section provided for fine which could be imposed only by Court. Now, penalty can be imposed by RoC or RD who is authorized for this purpose.

2.656

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

Even earlier, the offense was compoundable. However, procedure of compounding had to be complied with. Now, directly penalty can be imposed after issuing Show Cause Notice.

— Space to write important points for revision —

2016 - Dec [2A] (Or) (i) It has been found that Mrs. Shweta director of a company, has drawn remuneration in excess of the prescribed limits. The Chief Financial Officer of the company has sought your advice in the matter. As the Secretary of the company, advise the Chief Financial Officer, the course of action that may be taken in this regard. **(4 marks)**

Answer:

1.	Provisions of Section 197(9) of Companies Act, 2013	According to Section 197(9) , if any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. Further as per sub section 10 of Section 197 , the company shall not waive the recovery of any sum refundable to it under sub-section 9 , unless the same is permitted by the Central Government.
2.	Conclusion	As a Secretary of the Company it is recommended that Mrs. Shweta should refund such excess sum to the company and until such sum is refunded, she shall hold the same in trust for the company.

— Space to write important points for revision —

2016 - Dec [3A] (Or) (ii) Out of 9 directors in Rooftop Ltd., 5 are Indian nationals, 3 are foreign residents and one is a person of Indian origin. The articles of the company stipulate that quorum for a Board meeting shall be 5 directors of which at least one director shall be a foreign resident. Referring to the provisions of the Companies Act, 2013, examine the validity of the above provision in the articles. **(4 marks)**



- (iii) Board of directors of KM Ltd. proposes to transfer 11.33% of the net profits of the company for the financial year 2015-16 to general reserves. Examining the provisions of the Companies Act, 2013, advise the Board whether it can go ahead with its proposal.

(4 marks)

Answer:

(ii)

1	Section 174	Section 174 states that quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher. Any fraction of a number shall be rounded off as one. Further according to Secretarial Standard on Board Meeting (SS-1), where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.
2	Conclusion	Hence, in the given case of Rooftop Ltd, the quorum as given in the Articles of the Company stands valid.

(iii)

1	A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.
2	Hence, Board of Directors of KM Ltd. may transfer 11.33% of the net profit to general reserves.

— Space to write important points for revision —

2017 - June [2A] (Or) (iii) Mr. Atul Rastogi, the Managing Director of ABC Limited has resigned from the Managing Directorship of the company. He, however, wants to continue as a director in the company. Referring to the provisions of the Companies Act, 2013, state whether Mr. Atul can continue as a director in the company.

(4 marks)

2.658

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

Answer:

Yes. According to the provisions of the **Companies Act, 2013**, Mr. Atul Rastogi can continue as a director of the company in the given case.

In **G. Subba Rao. v. Rasmi Die-Casting Ltd. [1998] 93 Com. Cases 797**, the Andhra Pradesh High Court held that from the definition of 'managing director' as per **Section 2 (26) [Corresponds to Section 2(54) of the Companies Act, 2013]**, it is clear that the managing director has to act under the superintendence, control and direction of the Board of directors. Moreover, powers of routine administrative nature like the power to affix common seal, to draw and endorse any negotiable instrument do not fall within the substantial powers conferred upon the managing director. What is to be seen is whether the managing director making any representation for and on behalf of a company had in fact, 'actual authority' either in terms of the provisions of the constitution of that company or by virtue of the delegation by the Board of directors.

A managing director must hold and continue to hold the office of director. A managing director is first a director and then a managing director with certain additional powers [**Shanta Shamsher Jung Bahadur v. Kamani Brothers P. Ltd. (1959) 29 Com Cases 501 (Bom.)**]. A managing director is an ordinary director entrusted with special powers. If a company wants to appoint a person as managing director, who is not a director of the company, he has first to be appointed as an additional director in accordance with the provisions of **Section 161 of the Companies Act, 2013** of the Act.

— Space to write important points for revision —

2017 - June [6] (b) Mrs. Beautiful, aged 40 years, is the Managing Director of Beauty Care Products Limited. She has received contribution to superannuation fund and leave encashment during her tenure with the company during the financial year ending 31st March, 2017. The Manager (Accounts) of the company is not very confident, if these perquisites are to be included in the computation of ceiling on remuneration specified in the Companies Act, 2013. Referring to the provisions of the Act, advise the Manager (Accounts). **(4 marks)**

Answer:

The matter given in the question needs to be solved in the light of the provisions as contained in **Section IV of Part II to Schedule V of the Companies Act, 2013**. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in **Section II and III**:

- (a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the **Income-Tax Act, 1961**;
- (b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) encashment of leave at the end of the tenure.

Therefore, applying the provisions as stated above, contribution to superannuation fund received by Mrs. Beautiful, Managing Director shall not be included in the computation of managerial remuneration ceiling. But she has received leave encashment during the tenure of her service and not at the end of her tenure and thus it should be included in the calculation of ceiling of managerial remuneration under the provisions of the Companies Act, 2013.

The Manager (Accounts) is accordingly advised.

— Space to write important points for revision —

2018 - June [3A] (Or) (iv) Sand Ltd. wants to appoint River as Managing Director of the company for a period of three years with effect from 1st August, 2018. River has given a written statement to the company that he has paid rupees one thousand to the prescribed authorities for a conviction of an offence under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on 30th June, 2018. State whether River can be appointed as Managing Director of the company under the Companies Act, 2013. **(4 marks)**

2.660

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

Answer:

According to Schedule V of the Companies Act, 2013, no person shall be eligible for appointment as a managing or whole-time director or a manager of a company, if he has been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

In the present case Mr. River has only paid fine of ₹ 1,000 to the prescribed authorities for a conviction of an offence under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Since it is only conviction and he was not detained, he can be appointed as Managing Director of the company.

— Space to write important points for revision —

2018 - Dec [5A] (Or) (ii) On 4th September, 2018 Varun was appointed as Managing Director of Astha Ltd. by the Board of directors subject to the approval of the members at the next general meeting. On 10th September, 2018 Varun in the capacity of managing director executed an agreement with Shabeer to purchase some machines. On 3rd October, 2018 members in the general meeting did not approve the appointment of Varun. Later on company refuses to accept delivery of machines from Shabeer on the ground that agreement was executed by Varun whose appointment is not approved by the members. Is refusal of company valid on the said ground? Examine.

(4 marks)

Answer:

According to Section 196(5) of Companies Act, 2013 where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

In accordance with above express provision **in the given case** the contention of refusing to accept delivery of goods on the grounds that the appointment of managing director was not approved at the general meeting and agreement was signed prior to general meeting and after appointment by the Board does not stand valid.

— Space to write important points for revision —

2018 - Dec [5A] (Or) (iii) SRM Ltd. has paid ₹ 15 lakh as an insurance premium on behalf of its Company Secretary and Managing Director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company. Can the company pay such insurance premium? Discuss referring to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Under section 197(13) of Companies Act, 2013, where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

Further it has been provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. In accordance with above express provision **in the given case** the company can pay the insurance premium of ₹ 15.00 lakhs for company secretary and managing director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, and such shall not be treated as remuneration.

— Space to write important points for revision —

2019 - June [5] (e) 'S' is a member of Institute of a Company Secretaries of India. He has defaulted in payment of annual subscription and his name is removed from the Register of Members by ICSI on 31st December, 2018.

- (i) Can he be appointed as "Company Secretary" by 'M' Ltd. with a paid up share capital of ₹ 10 crore on 1st January, 2019?
- (ii) If M Ltd. has paid up share capital of ₹ 2 crore and it has appointed 'S' as a company secretary on part time basis, is it valid? **(4 marks)**

2.662

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

Answer:

Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub Section (1) of Section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

According to clause (c) of Sub-section (1) of section 2 of the Company Secretaries Act, 1980, a company secretary means a person who is a member of the Institute of Company Secretaries of India.

Therefore, 'Company Secretary means a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the function of a company secretary. The functions of company secretary have been detailed in **Section 205 of the Companies Act, 2013**.

- (i) No, S cannot be appointed as a company secretary as his name is removed from the register of members by ICSI on 31.12.2018 itself.
- (ii) There is no mandatory requirement to appoint company secretary for a company having paid up share capital of less than five crore rupees. No, S cannot be appointed as a company secretary of M Ltd. even if the paid up capital of the company is ₹ 2 crores as his name is removed from the register of members by ICSI. Therefore, appointment of S as Company Secretary is not valid.

— Space to write important points for revision —

2019 - June [5A] (Or) (i) ABC Corporation Ltd. has no managerial person acting in professional capacity. During the current financial year the company sustained a loss. How can the company remunerate their non-professional managerial personnel in such a situation? **(4 marks)**

Answer:

The ABC Corporation Ltd. can remunerate their non-professional managerial personnel according to the following provisions of **Section 197 of the Companies Act, 2013** read with Schedule V of the Act, which provides as under:



- (a) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay by way of remuneration any sum exclusive of sitting fees to its directors including any managing or whole-time director or manager except in accordance with the provisions of Schedule V.
- (b) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in Company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that schedule.

In case a company has inadequate profits/no profits in any financial year, no amount shall be payable by way of remuneration except if these provisions are followed:

Where the effective capital is	Limit of Yearly remuneration payable shall not exceed
Negative or less than ₹ 5 crore	₹ 60 lakhs
₹ 5 crores or above but less than ₹ 100 crores	₹ 84 lakhs
₹ 100 crore and above but less than ₹ 50 crore	₹ 120 lakhs
₹ 250 crores and above	₹ 120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crore

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

— Space to write important points for revision —

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

Q1. Describe the compensation for loss of office of managing or Whole Time Director or Manager.

Answer:

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:

- (a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;
- (b) where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;
- (c) where the office of the director is vacated due to disqualification;
- (d) where the company is being wound up due to the negligence or default of the director;
- (e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
- (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

— Space to write important points for revision —

Q2. Enumerate the statutory duties and liabilities of a company secretary.

Answer:

1. Declaration regarding compliance with requirement of registration:

In terms of **Section 7(1)(b) of the Companies Act, 2013**, a company gets incorporated by submitting memorandum and articles duly signed along with a declaration in a prescribed form that all requirements of Act and rules have been complied with in respect of registration of company. Such declaration in prescribed form can be signed by an Advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company.

2. Authentication of documents, proceedings and contracts:

Authentication is more than simply attestation. Authentication is attestation made by proper officer by which he certifies that a record is in due form of law and that the person who certifies is the officer appointed to do so. A document or proceeding requiring authentication by a company or contract made by or on behalf of a company may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf.

3. Signing share certificate:

Share certificates of the company should be signed by two directors (out of which one should be Managing Director or whole time director, if appointed) and Secretary or other person authorized by Board.

4. Signing annual return:

Annual return to be filed with Registrar of Companies has to be signed by a director and Company Secretary. If Company does not have Company Secretary, the return can be signed by company secretary in practice.

5. Signing of financial statements:

The financial statement, including consolidated financial statement is to be 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.

6. Appear before NCLT:

A Company Secretary can appear before National Company Law Tribunal (NCLT) on behalf of the company. [Section 432]

7. Secretary as Compliance Officer of listed company:

As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as 'Compliance Officer', who will be responsible for the following –

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.

8. Demat shares

Secretary has to coordinate between depository and stock exchange in case of demat shares.

9. Additional duties

In addition to statutory duties of company secretary, he is often entrusted with additional duties like looking after legal matters, personnel matters, finance and sometime even general administration.

10. Nodal Officer

Company secretary has to perform duty of nodal officer under IEPF Rules. He shall verify all applications filed to reclaim shares from IEPF.

Liabilities of Company Secretary

Company Secretary has been defined as 'Officer in default' along with Managing Director, Manager and Wholetime Director etc. Thus, he can be punished in respect of offences under Companies Act. He may be held liable as Key Managerial Personnel also under various provisions of the Act.

—— Space to write important points for revision ——

Q3. Enumerate the role and responsibilities of company secretary.

Answer:

A company secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act, 2013 and various other corporate, taxation, industrial and economic laws applicable to companies in general.

Under the Companies Act, the role of a secretary is three-fold, viz., as a statutory officer, as a co-ordinator and as an administrative officer if so authorized. Similarly, the responsibility of company secretaries extends not only to a company, but also to its shareholders, depositors, creditors, employees, consumers, society and government.

The role of a company secretary may conveniently be studied from three different angles:

- (a) as a statutory officer,
- (b) as a co-ordinator,
- (c) as an administrative officer.

(a) Statutory Officer:

The company secretary is an officer responsible for compliance with numerous legal requirements under different Acts including the Companies Act, 2013 as applicable to companies. The responsibilities of company secretary has also increased as he has been included in the definition of Key Managerial Personnel as defined in **Section 2(51) of the Act**, who are also liable to punishment by way of imprisonment, fine or otherwise for violation of the provisions of the Companies Act which hold the "officers in default" under Section 2(60).

(b) Co-ordinator:

On dealing with the Board functions, Peter Ferdinand Drucker say - "But there are real functions which only a Board of directors can discharge". The Board cannot function without proper coordination amongst various department of the company and communication of their proposals and project which deserve consideration of the board.

2.668



Scanner CSEP M-I Paper 2 (2017 Syllabus)

This is evidenced by the various conditions imposed in the loan agreements entered into between the financial institutions and the assisted companies. Company managements look to the company secretary for implementation of the conditions in the loan agreements. The financial institutions stipulate that in the case of companies assisted by them financially, compliance certificate as per their format duly certified by the company secretary should be furnished periodically at the Board meetings.

Furnishing of the certificate requires skill of coordination between the company secretary and the functional heads and the factory manager.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Who are key managerial personnels (KMPs)? State the manner in which they can be appointed in a company. 15 - June [3] (d), 15 - Dec [6] (b)	2 Times

18





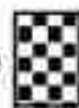
MEETING OF BOARD AND ITS COMMITTEE

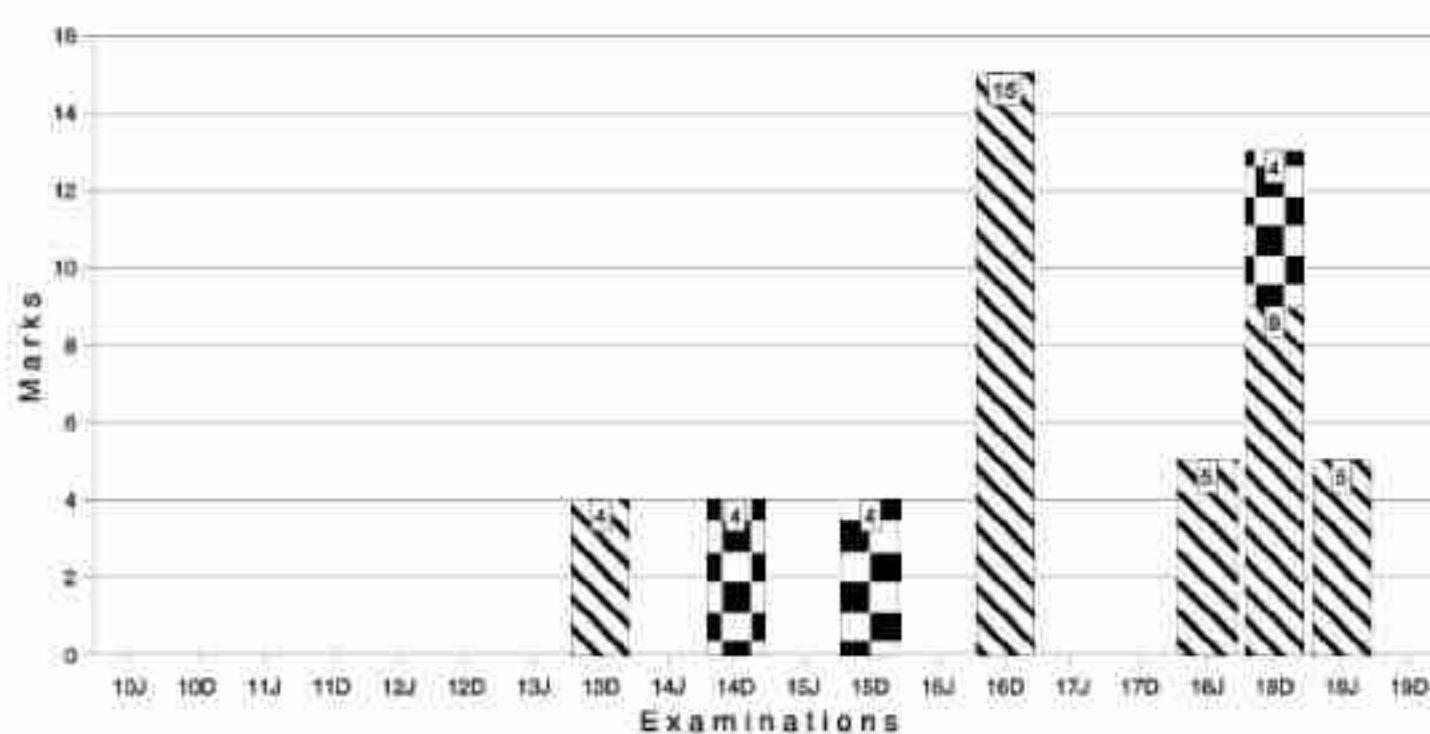
THIS CHAPTER INCLUDES

- | | |
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| <ul style="list-style-type: none"> • Frequency of the meetings of the Board • Preparation of notices for meetings of Board/committees of Board • Agenda of Board/Committees Meetings • Convening a Meeting | <ul style="list-style-type: none"> • Quorum for Board Meetings • Attendance Registers • Passing of Resolution by Circulation • Duties of Company Secretary |
|--|--|

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**Frequency of the Meetings of the Board [Section 173 (1)]**

The Act provides that the first Board meeting should be held within thirty days of the date of incorporation.

Thereafter there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings

Further in this context Secretarial Standard on Board Meetings (SS-1) issued by ICSI clarifies that the Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four meetings are held in each calendar year.

In case of One Person Company (OPC), small company, dormant company and private company which is start-up, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days. However, this provision would not apply to a one person company in which there is only one director on its Board.

Preparation of Notices for meetings of Board

The Act requires that not less than seven days' notice in writing shall be given to every director at the registered address (whether in India or outside India) as available with the company, unless the Articles prescribe a longer period. Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.



Agenda of Board/Committees Meetings

The Act does not prescribe such requirement to circulate Agenda etc. However Good governance envisage such requirement. Secretarial Standard on Board Meetings provide exhaustively on the Agenda management.

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

Quorum for Board Meetings [Section 173 (2)]

One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting. For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted, unless he is to be excluded for any item of business under any provisions of the Act or the rules - Section 174(1)

Section 174 is not applicable to One Person Company in which there is only one director.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

Chairman of the meeting of the Board/ Committee

The Chairman of the Company shall be the chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the chairman of the Board. In case of committee meeting, a member of the committee appointed by the Board or elected by the Committee as chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the meetings of the committee. If no Chairman has been so elected or if the elected chairman is unable to attend the meeting, the Committee shall elect one of its members present to chair and conduct the meeting of the committee, unless otherwise provided in the articles.

2.672	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
Passing of Resolution by Circulation		
<p>A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to all the directors or members of committee at their address registered with the company in India by hand or by speed post or by courier or through electronic means which may include e-mail or fax.</p> <p>The said resolution must be passed by majority of directors or members entitled to vote.</p> <p>If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.</p>		
Minutes		
<p>Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned.</p>		
Meeting of Board		
<ul style="list-style-type: none"> • In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board Meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board Meetings. • In case of One Person Company (OPC), small company and dormant company, at least one Board Meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days. 		



Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of accounts; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Quorum for Board Meeting

- One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.
- For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.
- If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

DESCRIPTIVE QUESTIONS

2013 - Dec [3A] (Or) (i) The Board of directors of a company met thrice in the year 2012 and the fourth meeting was not held for want of quorum. As a Company Secretary, examine the provisions of the Companies Act, 2013 and decide with reasons whether the company has complied with the requirement of minimum number of meetings to be held in a calendar year or violated the requirement thereof? **(4 marks)**

2.674

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

Answer:

Meetings of Board of Directors and QUORUM	Section 173 of the Companies Act, 2013 deals with Meetings of the Board and Section 174 deals with quorum.	
	1. First Board Meeting	The Act provides that the first Board meeting should be held within thirty days of the date of incorporation.
	2. Minimum Board Meetings and Time Lag	In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.
	3. In case of OPC, Small Company and Dormant Company	In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.
Conclusion	In the above case , as a Company Secretary I would like to comment that the Company has not complied with the requirement of minimum number of Board Meetings (four) to be held in a year as the Company has conducted only 3 (three) Board Meetings in the year 2012 and the fourth Board Meeting could not be held for the want of quorum. So, in the year 2012 the Company has violated the provisions of Section 173 of the Companies Act, 2013 .	

— Space to write important points for revision —



2016 - Dec [1] Comment on the following:

- (a) A director insists that his note of dissent be recorded in the minutes of the Board meeting which he attended and did not agree to some of the points of the agenda.
- (b) A member of a company has statutory right to appoint proxy for attending the general meeting of the company. Similarly, a director can also appoint his proxy for attending the meetings of Board of directors of the company.
- (d) A meeting of the Board of directors was scheduled to take place at the factory premises of a company and not at the registered office. At the scheduled date and time, the required quorum was not present. The Chairman of the meeting announced that the meeting is dissolved.

(5 marks each)

Answer:

(a)

1.	Section 118(4) of Companies Act, 2013	As per Section 118(4) of Companies Act, 2013 in case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain: (a) the names of the directors present at the meeting; and (b) in the case of each resolution passed at the meeting, the names of the directors if any, dissenting from, or not concurring with the resolution. The Secretarial Standards on Meetings of Board of Directors (SS-1) also insist on inclusion of the same in the minutes. It provides that the fact of the dissent and the name of the Director who dissented from the Resolution should be recorded.
2.	Conclusion	Therefore, the Director who attended the Board meeting and did not agree on certain points can insist that his dissent be recorded in the minutes.

(b)

1.	Section 105	Section 105 provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. Since it is an exclusive right provided only in case of meeting of shareholders and hence do not apply to Board meeting.
2.	Conclusion	Therefore, Directors are not entitled to appoint proxy for attending Board meeting in their behalf.

(d)

1.	Section 174 of the Companies Act, 2013	As per Section 174 of the Companies Act, 2013 the meeting of the Board of Directors shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.
2.	Conclusion	Hence, the decision of Chairman to dissolve the meeting is invalid. The meeting shall be held at same place i.e. factory premises and at same time in the next week provided it is not a national holiday.

— Space to write important points for revision —

2018 - June [1] Comment on the following:

(d) Secretarial Standard does not empower Company Secretary of a company to call a meeting of Board of Directors on its own. **(5 marks)**

Answer:

Secretarial Standard does not empower Company Secretary of a company to call a meeting of Board of Directors on its own.



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

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

2018 - Dec [4] (b) Articles of Reality Ltd. provides that directors participating through audio-visual means in its Board meetings shall always be counted for quorum. Examine the validity of this provision with reference to the Companies Act, 2013. **(5 marks)**

Answer:

Under Section 173 of Companies Act, 2013, read with Rules 3 and 4 of Companies (Meetings of Board and its powers) Rules, 2014, a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under Rule 4.

As per Rule 4 the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.

- (i) The approval of the Annual Financial Statements;
- (ii) The approval of the Board's report;
- (iii) The approval of the prospectus;
- (iv) The Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub section (1) of Section 134 of Companies Act, 2013; and
- (v) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that in case where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.

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

2.678

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

2018 - Dec [5] (d) A Board meeting of a listed public company was called at shorter notice to transact an urgent business. None of the Independent directors could attend the meeting. Examine the validity of resolution(s) passed at the meeting referring to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

Accordingly to Section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Accordingly, all decisions taken at the meeting needs to be circulated to all the directors and shall be final only on ratification of atleast one independent director.

— Space to write important points for revision —

2019 - June [4] (b) Prepare an Agenda items for a Board Meeting with a minimum of any eight items to be discussed. **(5 marks)**

Answer:

Agenda Items for meeting of the Board of Director of the Company Scheduled to be held on (day), (Date) at (Venue)) at (Time) (meeting No.) 2019-20 — (Any 8 items)

Item	Particulars
1.	To grant leave of absence, if any
2.	Appointment of Chairman of the Meeting
3.	To confirm minutes of last Board/ Committee Meeting held in financial year 2018-19.
4.	To take note of Disclosure of Interest by Directors pursuant to Section 184 (1)



[Chapter ➡ 18] Meeting of Board and its Committee ■ 2.679

5.	To take note of Declaration given by Independent Director to meets the criteria of Independence under Section149(7) of Companies Act, 2013
6.	To consider and approve CSR policy (Name of the Policy)
7.	To consider and approve appointment of the Company Secretary
8.	To take note of Statement containing investor complaint under regulation 13(3) of SEBI (LODR) Regulations, 2015.
9.	Noting of Compliance Report on corporate governance under regulation 27(2) of SEBI (LODR) Regulations, 2015.
10.	Appointment Secretarial Auditor of the Company for the financial year 2019-20.
11.	Appointment Internal Auditor of the Company for the financial year 2019-20.
12.	To approve & consider Audited Financial Statements for the year ended 2018-19.
13.	To take note of Statutory Auditors Report on the Financial Statements of the Company for the year ended 2018-19.
14.	To take note any other item(s).

— Space to write important points for revision —

PRACTICAL QUESTIONS

2014 - Dec [2A] (Or) (ii) A housing company has sold a flat to its Managing Director by accepting 50% in cash and balance in installments. Decide whether this transaction attracts the provisions pertaining to loan to directors under section 185. If so, validate the transaction. **(4 marks)**

Answer:

Amendment made by Companies (Amendment) Act, 2017

1.	Section 185	<p>(1) For Section 185 of the principal Act, the following section shall be substituted, namely:</p> <p>"185.(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—</p> <p>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</p> <p>(b) any firm in which any such director or relative is a partner.</p> <p>(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—</p> <p>(a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and</p> <p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p>Explanation: For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p>
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		<ul style="list-style-type: none">(a) any private company of which any such director is a director or member;(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. <p>(3) Nothing contained in sub-Sections (1) and (2) shall apply to-</p> <ul style="list-style-type: none">(a) the giving of any loan to a managing or whole-time director-<ul style="list-style-type: none">(i) as a part of the conditions of service extended by the company to all its employees; or(ii) pursuant to any scheme approved by the members by a special resolution; or(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
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2.682	Scanner CSEP M-I Paper 2 (2017 Syllabus)
	<p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.</p> <p>(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,-</p> <p>(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees,</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and</p> <p>(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both."</p>
2.	<p>Case Law Analysis</p> <p>The facts of this case is similar to a decided case law in Bombay High Court in Eredie Ardesher Mehta (Dr.) Vs. Union of India (1991) 70 Comp. Case 210 (1991) 1 Comp. It was held that the company selling one of its flats to one of its directors on receiving half the price in cash and agreeing to accept the balance in instalments does not amount to giving loan.</p>

2015 - Dec [2A] (Or) (ii) As the Company Secretary of Joy Ltd., what steps would you take in case the scheduled Board Meeting could not complete the agenda slated thereat. The items of business left untransacted are of extreme importance for the company's growth and the same cannot be deferred until the next Board meeting because of urgency. Advise the Board about the steps to be taken to get the untransacted items passed.

(4 marks)

Answer:

1.	Untransacted Items to be passed by circulation	Resolution may be passed in respect of Board approvals in one of the two ways, either at the Board Meeting or by circulation. The items which could not be transacted and decided at the board meeting, if cannot be deferred till the next board meeting may be passed by circulation provided they do not include such items as are required to be passed only at the meeting of directors under Section 179(3) of the Companies Act, 2013.
2.	Procedure as per Section 175 and Point no 6 of Secretarial Standards	<p>In order to get the un transacted item pass the Board may consider the following procedure as laid down in Section 175 and Point no. 6 of Secretarial Standards on Board Meetings.</p> <ol style="list-style-type: none">1. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India by post, hand delivery or through electronic means which may include e-mail or fax.2. The said resolution must be passed by majority of directors or members entitled to vote.3. If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.



2.684	■ Scanner CSEP M-I Paper 2 (2017 Syllabus)		
	<table border="1"><tr><td data-bbox="375 1247 640 2552"></td><td data-bbox="640 1247 1405 2552"><ol style="list-style-type: none">4. Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any of any Director in the Proposal, which the Director had earlier disclosed and the draft of the Resolution proposed.5. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.6. Each Resolution shall be separately explained. The decision of the Directors shall be sought for each Resolution separately.7. Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.8. The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.9. The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.</td></tr></table>		<ol style="list-style-type: none">4. Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any of any Director in the Proposal, which the Director had earlier disclosed and the draft of the Resolution proposed.5. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.6. Each Resolution shall be separately explained. The decision of the Directors shall be sought for each Resolution separately.7. Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.8. The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.9. The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.
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———— Space to write important points for revision ————

2018 - Dec [5A] (Or) (iv) Director, Ravi, was appointed on 1st July, 2018. On 2nd July, 2018 he wrote to Managing Director of the company to inspect the minutes of the board meeting held on 1st August, 2017. The Managing Director refused as he was not a director at that time. Ravi attended a meeting held on 1st September, 2018 and resigned on 3rd October, 2018. On 4th October, 2018 he wrote to the Managing Director to send him a copy of the signed minutes of the meeting held on 1st September, 2018. Again, the Managing Director refused. Are the actions of Managing Director valid under Companies Act, 2013/Secretarial Standards? Comment. **(4 marks)**

Answer:

According Para 7.7.1. of Secretarial Standard on Board Meeting a Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship. Further, Para 7.7.2 provides that a Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

Therefore, the actions of managing director are not valid. Claim of Mr. Ravi for inspecting the Minutes of a Meeting held before the period of his Directorship and for receiving a copy of the signed Minutes of a Meeting held during the period of his Directorship is valid.

— Space to write important points for revision —

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short notes on Passing of Resolution by circulation.

Answer:

Passing of Resolution by Circulation:

A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to all the directors or members of committee at their address registered with the company in India by hand or by speed post or by courier or through electronic means which may include e-mail or fax.

2.686



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The said resolution must be passed by majority of directors or members entitled to vote.

If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.

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



19






GENERAL MEETINGS

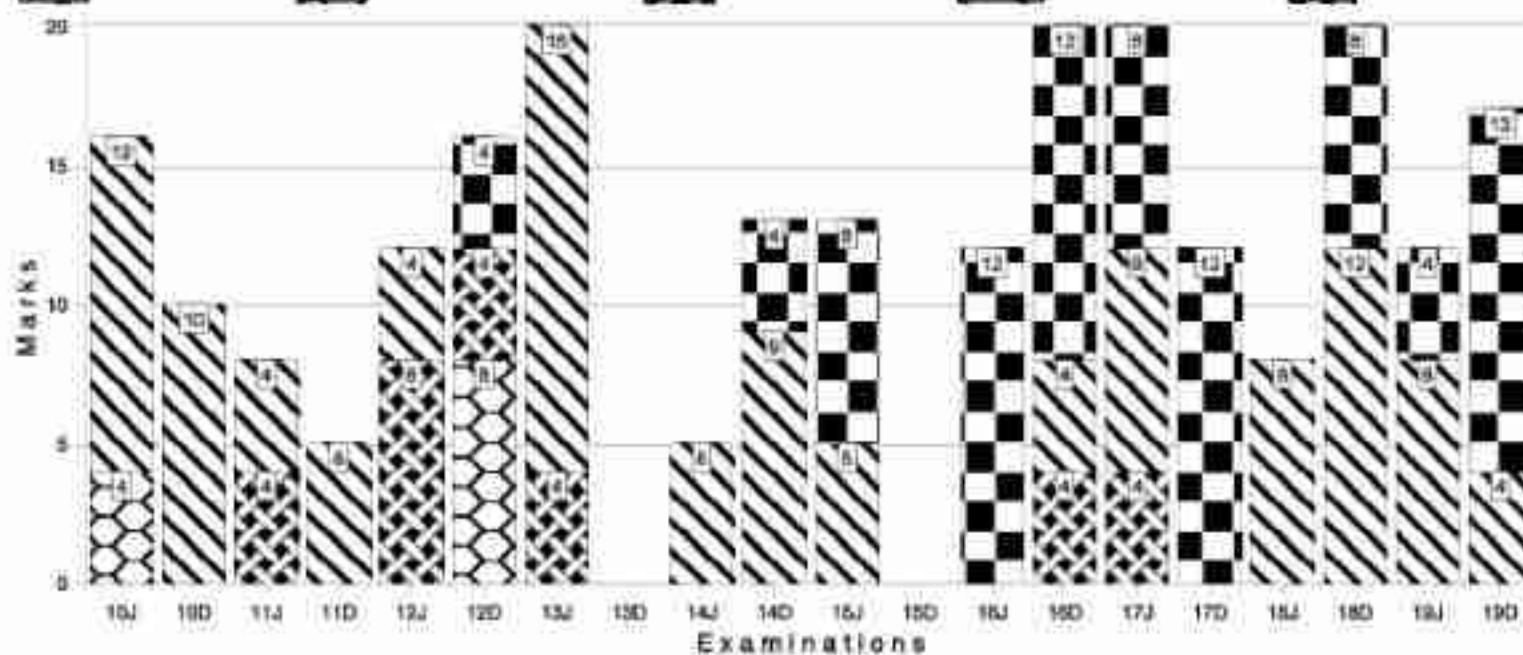
THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none">• Introduction• Meaning of a Meeting• Kinds of Company Meetings• Requisites of Valid Meeting (General Meeting)• Quorum• Proxy• Voting at General Meeting• Chairman• Motion | <ul style="list-style-type: none">• Methods of ascertaining sense of the Meeting Resolutions• Registration of Resolutions and Agreements• Passing of resolutions by Postal Ballot/e-Voting• Adjournment• Minutes of proceedings of Meetings• Report on Annual General Meeting. |
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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**Annual general meeting**

An annual general meeting is required to be held every year by every company whether public or private, limited by shares or by guarantee, with or without share capital or unlimited company.

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

Extra-Ordinary General Meeting

All general meetings other than annual general meeting are called extra-ordinary general meetings (EGM). According to SS-2 items of business other than ordinary business may be considered at an EGM or by means of a postal ballot, if thought fit by the Board. This means that all the transactions dealt upon in an EGM shall be special business.

1. By the Board *Suo motu*
2. By Board on requisition of members
3. By requisitionists
4. By Tribunal

Class meetings

Class meetings are those meetings which are held by holders of a particular class of shares e.g. preference shares.

Motion

A motion becomes a resolution only after the requisite majority of members have adopted it.



Methods voting
Various methods which may be adopted for taking votes on a motion properly placed before a meeting are by show of hands, by poll, by postal ballot and by electronic voting.
Kinds of resolutions
There are four kinds of resolutions under the Act (a) Ordinary Resolution (b) Special Resolution (c) Resolution requiring special notice (d) Board Resolution.
Notice of Meeting
A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed. In case of Section 8 company, 14 days' clear notice is required instead of 21 days. 'Clear days' means days exclusive of the day of the notice of service and of the day on which the meeting is held.
Contents of Notice
<ul style="list-style-type: none">• Place of meeting• Day of meeting• Time of meeting• Agenda• Proxy clause with reasonable prominence
Notice through Electronic Mode Rule 18 of Companies (Management and Administration) Rules, 2014
A company may give notice through electronic mode. Electronic mode' means any communication sent by a company through its authorized and secured computer programme:



2.690	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
<ul style="list-style-type: none">• The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company.• E-mail shall state the name of the company, notice of the type of meeting and the date on which meeting is scheduled.• If notice is sent in the form of an attachment to e-mail, such attachment shall be in the Portable Document Format (PDF).• There shall be no difference in the text of the physical version of the notice and electronic version except in respect of mode of dispatch of notice.• If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, company shall not be in default for not delivering notice via e-mail.• Company may send e-mail through in-house facility or authorize any third party agency providing bulk e-mail facility.		
Persons entitled to receive Notice		
<p>In terms of Section 101(3), notice of every meeting of the company must be given to:</p> <ul style="list-style-type: none">(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;(b) the auditor or auditors of the company; and(c) every director of the company. <p>A private company, which is not, a subsidiary of a public company may prescribe, by its Articles, persons to whom the notice should be given.</p>		
Quorum		
<p>In case of public company the quorum shall depend on number of members as on the date of meeting:</p> <ul style="list-style-type: none">➤ If members not more than 1000- quorum shall be 5.➤ If members more than 1000 but less than 5000- quorum shall be 15.➤ If members more than 5000- quorum shall be 30<ul style="list-style-type: none">• In case of private company 2 members personally present shall be the quorum of the meeting.		



Adjourned Meetings

Notice of an adjourned meeting- Where the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day, not being a National Holiday, or at such other time and place as the Board may determine, there the company shall give at least 3 days notice to the members either individually or by publishing an advertisement in 2 newspapers (one in English and one in vernacular language).

No quorum in an adjourned meeting- If at the adjourned meeting also, a quorum is not present within half- an-hour from the time appointed for holding meeting, the members present, being not less than two in numbers, will constitute the quorum.

If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained here in above relating to Notice.

Chairman of Meetings

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies

A person who is appointed by a member to attend and vote at a meeting in the absence of the member at the meeting is termed as proxy. Thus proxy is an agent of the member appointing him. The term 'proxy' is also used to refer to the instrument by which a person is appointed as proxy. Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf.

Demand for Poll

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):

- (a) in the case a company having a share capital: by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than ₹ 5,00,000/- or such higher amount as may be prescribed, has been paid-up; and
- (b) in the case of any other company: by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

The Chairman shall get the validity of the demand verified.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

Postal Ballot

As per **Section 2(65)** "postal ballot" means voting by post or through any electronic mode.

Following items of business shall be transacted only by means of voting through a postal ballot:

- (a) Alteration of the objects clause of the memorandum
- (b) Alteration of articles of association
- (c) Change in place of registered office outside the local limits of any city, town or village
- (d) Change in objects for which a company has raised money from public through prospectus
- (e) Issue of shares with differential rights as to voting or dividend
- (f) Variation in the rights attached to a class of shares or debentures
- (g) Buy-back of shares by a company
- (h) Election of a director
- (i) Sale of the whole or substantially the whole of an undertaking of a company.

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

Any item of business required to be transacted by means of postal ballot (as stated above), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under Section 108, in the manner provided in that section.

Circulation of Members' Resolution

As per Section 111, a company shall, on requisition in writing of certain number of members, give notice to members of any proposed resolution intended to be moved in the meeting or circulate any statement with respect to matters referred in proposed resolution. The company shall be bound to give notice of resolution only if the requisition is deposited not less than six weeks before the meeting. In case of other requisition not less than 2 weeks before the meeting.

Minutes

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned.

SHORT NOTES

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

- (iv) Passing of resolution by postal ballot

(4 marks) [CSEM - II]

Answer:

Provisions for passing the resolution by postal ballot [Section 110 of Companies Act, 2013]		
1.	Class of companies that may pass resolution by Postal Ballot.	Notwithstanding anything contained in the foregoing provisions of this Act, any company except One Person Company and other companies having upto 200 members may and in the case of resolutions relating to such business as the Central Government may, by notification declare to be conducted only by postal ballot, shall get any resolution passed by means of postal ballot.
2.	Notice to shareholders with draft resolution	Where a company decides to pass any resolution by resorting to postal ballot, it shall send notice to all the shareholders, along with the draft resolution explaining the reasons thereof, and requesting them to send their assent or dissent in writing on a postal ballot with in a period of 30 days from the date of posting of the letter.
3.	Resolution passed by postal are deemed to be duly passed at GM	Where a resolution is assented to by requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Note:

Meaning of Requisite Majority: Requisite majority with regard to special resolution means votes cast in favor of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favor is more than the votes cast against.

—— Space to write important points for revision ——



2012 - Dec [7] Write a note on the following:

- (ii) Voting by show of hands (4 marks) [CSEM - II]
(iii) Class meetings (4 marks) [CSEM - II]

Answer:

(ii)

Voting by show of hands : Sec. 107 of Companies Act, 2013		
1.	Motion to be decided by show of hands first	The said provides that at any general meeting, a motion put to the vote are firstly decided by show of hands. In this process, the record regarding the number of votes is done by counting of hands.
2.	Declaration by chairman	A declaration by the chairman that a resolution has been carried on the show of hands by a particular majority or lost and an entry to that effect in the minute book of the company shall be evidence of the fact.

(iii)

Class Meeting		
1.	Companies that are required to convene class meetings	If a company has more than one class of shareholders or where the capital of the company is being divided, into different classes of shares such as equity and preference shareholders, it is must for those companies to call a separate meeting of each type of shareholders.
2.	Purpose of holding class meetings	The meeting may be held for securing the consent of a specific class of shareholders for alteration of their rights and privileges. The articles of the company generally provide for holding of such meetings.

— Space to write important points for revision —

DISTINGUISH BETWEEN

2009 - Dec [3] Distinguish between the following :

(iv) 'Motion' and 'resolution'.

(4 marks) [CSEM - II]

Answer:

Motion	The question which generally comes for consideration at the general meeting of a company are presented in the form of proposals called motions. Motion may be proposed by the chairman of the meeting or by any other member of the company. The business of a meeting is transacted through motions or definite proposals and no discussion can take place unless there is a definite proposal or subject for discussion before the meeting. A motion should be in writing and signed by the mover and put to the vote at the meeting by the chairman.
Resolution	A resolution is the formal expression of the decision of a meeting when a motion has been duly voted upon and passed by the requisite majority, with or without amendment it is called a resolution. A resolution once adopted and recorded in the minutes becomes the official decision of the meeting.

— Space to write important points for revision —

2011 - June [3] Distinguish between the following :

(iv) 'Motion and 'resolution'.

(4 marks) [CSEM - II]

Answer:

Please refer 2009 - Dec [3] (iv) on page no. 696

— Space to write important points for revision —

2012 - June [7] Distinguish between the following:

- (iii) 'Motion' and 'resolution'.
- (v) 'Special resolution' and 'resolution requiring special notice'.

(4 marks each) [CSEM - II]

Answer:

(iii) *Please refer 2009 - Dec [3] (iv) on page no. 696*

(v)

Special Resolution (Sec. 114 of Companies Act, 2013)		
1.	Situation when a resolution will be Special Resolution	<ul style="list-style-type: none"> (i) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting and the notice has been given to the members in accordance with the provisions of this Act, and. (ii) The votes cast in favour of the resolution by members entitled to vote are not less than three times the number of votes cast against the resolution by members so entitled to vote.
Resolutions requiring special notice (Sec. 115 of Companies Act, 2013)		
1.	Provisions	Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding ₹ 5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.



2.	Matters in respect of which Special Notice is required	<p>(a) A resolution for appointment of a person as auditor at the annual general meeting other than the retiring auditor for providing expressly that the retiring auditor shall not be re-appointed [Section 140(4)];</p> <p>(b) A resolution for removing a director before the expiry of the period of his office and appointing someone in the place of the director so removed [Section 169(2)].</p>	
3.	Procedure for Special Notice	<p>(A) Signing of special notice</p> <p>A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not more than five lakh rupees has been paid up on the date of the notice.</p> <p>(B) Sending of notice to the company</p> <p>Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.</p> <p>(C) On receipt of notice by the company</p> <p>The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days</p>	



			before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.
		(D) Publication of Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

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2012 - Dec [5] Distinguish between the following:
(i) 'Postponement of meeting' and 'adjournment of meeting'.
(4 marks) [CSEM - II]

Answer:
Adjournment of meeting and Postponement of meeting:

1.	Adjournment of Meeting	Adjournment refers to suspension of a meeting after it has been duly commenced to be resumed at a later time or date. The time or date of resumption may be
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		fixed up in the same meeting or it may be left to be decided later on. A meeting is deemed to be adjourned sine die if it is adjourned without specifying the date and the time of its resumption.
2.	Postponement of Meeting	Postponement of a meeting is to put off or defer the holding of a meeting before the date originally fixed for the meeting has arrived. There is no general principle relating to Postponement having universal application and wide acceptance. Doubts have been expressed as to whether a duly convened meeting can be properly postponed.

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2013 - June [4] Distinguish between the following:

(v) 'Ordinary resolution' and 'special resolution'. **(4 marks) [CSEM - II]**

Answer:

	Kinds of resolutions	Resolutions under present companies Act, 2013 are of three kinds : (i) Ordinary (ii) Special (iii) Resolution requiring special notice
i.	Ordinary resolution, Sec. 114 of Companies Act, 2013	A resolution passed at a general meeting of a company by a simple majority of members entitled to vote and also voting in person or by proxy (where proxies are allowed) is called an ordinary resolution.
ii.	Special resolution	A special resolution is one passed at a general meeting of a company when : (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting and the notice has been given to the members in accordance with the provisions of this Act, and



		(b) The votes cast in favour of the resolution by members entitled to vote and voting are not less than three times the number of votes cast against the resolution by members so entitled to vote.
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2016 - Dec [2] Distinguish between the following:

(a) 'Annual general meeting' and 'extraordinary general meeting'.

(4 marks)

Answer:

S. No.	Annual General Meeting	Extraordinary General Meeting
1.	Annual General Meeting (AGM) is to be convened pursuant to Section 96 of Companies Act, 2013 and once in every calendar year.	All the meetings of shareholders except annual general meeting are called Extra Ordinary General Meeting (EGM).
2.	Both ordinary business and special business can be transacted at the annual general meeting.	All the business other than ordinary business can be transacted at the extra ordinary general meeting.
3.	In case of AGM, on the close of the financial year, the Board of directors convene the AGM by sending notice etc.	EGM is convened whenever it is necessary. As per Section 100 of Companies Act, 2013 , shareholders may requisition the convening of EGM. Board may call the EGM on the requisition of requisite number of share-holders. If Board of Directors do not call the meeting, the requisitionists themselves may call the meeting.

— Space to write important points for revision —

2.702

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

2017 - June [2] Distinguish between the following:

(a) 'e-voting' and 'Voting by show of hands'.

(4 marks)

Answer:

e-voting' and 'voting by show of hands'

Votes before the general meeting can be cast either by 'e-voting' method or by showing hands.

e-voting	Voting by show of hands
Governed by the provision of Section 108.	Governed by the provisions of Section 107.
Provisions applicable to every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members.	Applicable to all companies at their general meetings, wherein resolution is put to the vote unless a poll is demanded under section 109 or the voting is carried out electronically.
The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.	The facility of voting by show of hands is available at the time of the meeting.
During the period, when facility for e-voting is provided, the members of the company holding the shares in either physical form or in demat form, as on the cut-off date, may opt for remote e-voting.	In general meeting, members who have not voted in e-voting mode can cast their votes by raising their hands.
Number of votes of a member is equal to the number of shares held.	Only one vote is counted for each shown hand.

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DESCRIPTIVE QUESTIONS

2008 - Dec [6] (b) What is 'class meeting'? What are the purposes, provisions and procedure for holding class meeting?

(8 marks) [CSEM - II]

Answer:

Class Meetings:		
1.	Purpose	Class meetings are generally held for obtaining the consent of a particular class of shareholders for altering their rights and privileges or for the conversion of one class into another.
2.	Variation in the Rights of different classes of shares	The articles generally provide that the rights of different classes of shares can be varied only by resolutions at separate meeting of holders of shares of that class.
3.	Participants of class meetings	Where a separate meeting is required by the articles, only shareholders who hold shares of the class in question should be present at the meeting, though the meeting can waive this requirement if considered appropriate.
Provisions and procedure for class meeting, Regulation 3 of Table F of Schedule I:		
1.	Requisite majority required for variation in rights	If at any time, the share capital is categorized into different classes of shares, the rights attached to any class may, subject to the provisions of Sections 106 and 107 and whether or not the company is being wound up, be varied with the consent in writing of the holders of 3/4 th of the issued shares of that class or with the sanction of special resolution passed at the separate meeting of the holders of the shares of that class.

2.	Quorum	To every such separate meeting the provisions of these regulations relating to general meeting shall mutatis mutandis apply but so that the necessary quorum shall be two persons at least holding or representing by proxy 1/3 rd of the issued shares of the class in question.
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— Space to write important points for revision —

2009 - June [8] (c) Articles of Association of a company reserved the powers for calling the annual general meeting. The managing director of the company, without reference to the Board, called an annual general meeting. Is the annual general meeting validly called ? If not, what should be done to make it valid ? Discuss with reference to case law, if any.

(6 marks) [CSEM - II]

Answer:

1.	Requirement of authority of a Board Resolution	According to the provision in the articles, any general meeting of the company can be called only with the authority of a Board resolution.
2.	Ratification by Board of Directors	If the Managing Director, Manager, Secretary or other officer calls a meeting without the authority of the Board of Directors it will not be effective unless the Board ratifies the convening of the general meeting before it is held.
3.	Conclusion	Hence, In the present case, Managing Director can validly call an annual general meeting without referring to the Board only if the Board ratifies the convening of AGM before the meeting is held.

— Space to write important points for revision —

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

- (iii) "A limited company will have to get certain resolutions passed only through postal ballot instead of transacting the business in the general meeting of the company." Discuss. **(5 marks) [CSEM - II]**

Answer:

1.	Authenticity of the statement	The statements is correct.
2.	Mandate by Companies Act, 2013 for passing resolutions through Postal Ballot only	<p>List of the businesses in which the resolutions shall be passed through Postal Ballot are:</p> <ul style="list-style-type: none"> (a) alteration of the object clause of memorandum. (b) alteration of Articles of Association in relation to insertion of provisions defining private company. (Section 2(68) of Companies Act, 2013) (c) buy-back of own shares by the company. (Section 68(1) of Companies Act, 2013) (d) change in place of registered office outside local limits of any city, town or village (Section 12(5) of Companies Act, 2013). (e) election of a director under Section 151 of Companies Act, 2013. (f) giving loans or extending guarantee or providing security in excess of the limit specified under Section 186(3) of Companies Act, 2013. (g) issue of shares with differential rights at to voting or dividend or otherwise under sub-clause(2) of clause(a) of Section 43.

— Space to write important points for revision —

2010 - June [3] (a) Discuss the requirements for keeping the minutes book of general meetings. **(4 marks) [CSEM - II]**

(b) Discuss briefly the voting rights of a proxy. **(4 marks) [CSEM - II]**

(c) State whether a Board meeting of a company can be held at any place. **(4 marks) [CSEM - II]**

Answer:

(a)

1.	Meaning of "Minutes"	The term 'minutes' may be defined as a written record of the business transacted at a meeting.
2.	Statutory obligation of every company. Section 118	The said section imposes a statutory obligation on every company to keep minutes of the proceedings of every general meeting, every meeting of the Board of Directors, and meeting of every committee of the Board of Directors.
3.	Time period of making entries in books	Entries should be made within thirty days of the conclusion of the meeting in books kept specially for that purpose, hereafter known as the minute Book.
4.	Numbering, dating and signing of pages of minute's book	The pages of the minutes book should be consecutively numbered and each page should be signed or initialed, and the last page of the record of proceeding of each meeting shall be dated and signed.
5.	Who will sign minutes in G. M.	In the case of general meeting, the minutes should be signed by the chairman of the meeting or in the event of his death or inability, by a director duly authorised by the board for that purpose.
6.	Place of Keeping of the minute book	The minute book should be kept at the registered office of the company and should be open for inspection by members during business hours without any charge.



(b)

Right of Proxy, Section 105 of Companies Act, 2013		
1.	Voting by Proxy	Sec. 105 provides that unless the articles of a company provide otherwise, a proxy cannot vote except on a poll. However he may demand or join in demanding a poll.
2.	Statutory Obligation of every company Section 118	A proxy cannot speak at a meeting. Hence he can not take part in any discussion.
3.	Relationship with shareholder	The relationship between a shareholder and his proxy is that of a principal and agent, thus the proxy must act according to the wishes of the shareholder and cannot do otherwise.

(c)

Secretarial Standards on Board Meeting (SS - 1)		
1.	Time, place, day of meeting	A meeting may be convened at any time and place, on any day, excluding a national holiday. Notice of the meeting, wherein the facility of participation through electronic mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the meeting and it shall be the place where all the recordings of the proceedings at the meeting would be made.
2.	Conclusion	Thus, we can say that as per SS-1, Board meetings can be held at any place.

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

2.708

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

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

- (i) It is not necessary to have the minutes of the meeting confirmed in the next meeting.
- (ii) Postal ballot mechanism improves shareholders' participation in corporate decision-making. **(5 marks each) [CSEM - II]**

Answer:(i)

Provisions of Sec. 118 of Companies Act, 2013		
1.	Every company to keep records of all the proceedings	The section provides that every company is required to keep a record of all proceedings of : (a) every general meeting; (b) every meeting of Board of Directors; and (c) every committee of the Board.
2.	Dating and signing of pages of minute book	Each page of every minute book shall be signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed:
		<ul style="list-style-type: none"> (i) In case of minutes of proceeding of a meeting of the Board or a Committee thereof, by the chairman of the said meeting or the Chairman of the next succeeding meeting. (ii) In case of general meeting by the chairman of the same meeting within a period of 30 days of the meeting or in the event of death or inability of the chairman, by the directors duly authorised by the Board for the purpose.

(ii) **Please refer 2010 - June [8] (iv) on page no. 693**

— Space to write important points for revision —

2011 - June [6] (b) "A new business cannot be dealt within an adjourned meeting without permission of the chair." Do you agree with the statement? Give reasons. **(4 marks) [CSEM - II]**



Answer:

1.	Business transactions at adjourned meeting	<ul style="list-style-type: none">• No, business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.• In the eye's of law an adjourned meeting is a continuation of the original meeting only and the business not finished at the original meeting can only be transacted at the adjourned meeting.
2.	Fresh business to be transacted with proper notice	<ul style="list-style-type: none">• A fresh business can be dealt only when proper notice for a new proposal is given.

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

- (iii) Board meetings of the company to be held at the registered office of the company during the working hours on a day that is not a national holiday.

(5 marks) [CSEM - II]

Answer:

Secretarial Standards on Board Meeting (SS-1)		
1.	Time, place, day of meeting	A meeting may be convened at any time and place, on any day, excluding a national holiday. Notice of the meeting, wherein the facility of participation through electronic mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the meeting and it shall be the place where all the recordings of the proceedings at the meeting would be made.
2.	Conclusion	Thus, we can say that as per SS-1, Board meetings can be held at any place.

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

2.710

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

2012 - June [8] (c) Yash, a member of Omar Ltd., appoints Jolly to attend a general meeting of the company. At the meeting, voting takes place by show of hands. However, Jolly does not know whether he (as a proxy) can vote by show of hands at the meeting. Advise. **(4 marks) [CSEM - II]**

Answer:

Right of Proxy, Section 105 of Companies Act, 2013		
1.	Voting by Proxy	Sec. 105 provides that unless the articles of a company provides otherwise, a proxy cannot vote except an a poll.
2.	No discussion allowed to Proxy	A proxy cannot speak at a meeting. Hence, he cannot take part in any discussion.
3.	Counting of Proxy in show of hands	In a voting on a show of hands, proxies cannot be counted unless Articles make express provision.
4.	Conclusion	In view of above case, Jolly as a proxy can vote by show of hands at the meeting if articles of the company provide for the same.

— Space to write important points for revision —

2013 - June [3] (b) Enumerate different types of meetings under the **Companies Act, 2013**. **(4 marks) [CSEM - II]**

(c) What do you understand by the expression 'resolution by circulation'? List out four matters which cannot be passed by the directors by resolution by circulation. **(4 marks) [CSEM - II]**

Answer:

(b)

1.	Different types of Meetings under Companies Act, 2013	Different types of Meetings under the Companies Act, 2013 are as under; (i) Annual General Meeting (ii) Extraordinary General Meeting (iii) Class Meeting
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		(iv) Board Meeting (v) Meeting of Board Committee (vi) Meeting of debentureholder (vii) Meeting of Creditors (viii) Meeting of contributory in winding up
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(c)

Passing of Resolution by Circulation		
1.	Mode of circulation of draft resolution to directors etc.	A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include e-mail or fax.
2.	Requisite majority	The said resolution must be passed by majority of directors or members entitled to vote.
3.	When a resolution must be passed at meeting?	If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.
4.	Noting of resolution passed through circulation	The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.
5.	Matters that can be passed by circulation by Board	Some of the matters which cannot be passed by the Board by circulation are: (i) to fill a casual vacancy occurred in the Board; (ii) to make calls on shareholders in respect of money unpaid on shares;

		(iii) to issue debentures; (iv) to make any political contribution; (v) to make declaration of solvency; (vi) to invest the funds of the company.
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2013 - June [7] (a) The required quorum is not present within thirty minutes of the scheduled time for holding of annual general meeting. Advise with the help of relevant provisions of the Companies Act, 2013.

(4 marks) [CSEM - II]

Answer:

1.	Quorum for General meetings Sec. 103 of Companies Act, 2013	(1) Unless the articles of the company provide for a larger number, –	
2.	Situation (for public companies): if the number of members as on the date of meeting	in case of a public company	in the case of a private company
	A. is not more than 1000	(i) 5 members personally present	Two members personally present, shall be the quorum for a meeting of the company in every situation.
	B. is more than 1000 but up to 5000;	(ii) 15 members personally present	



[Chapter ➡ 19] General Meetings ■ 2.713			
	C. exceeds five thousand;	(iii) 30 members personally present if the number of members as on the date of the meeting	
3.	Absence of Quorum	If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company— (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or (b) the meeting, if called by requisitionists under Section 100, shall stand cancelled:	
4.	Adjourned of Quorum	In case of Adjourned meeting of a change of day, time or place meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.	
5.	In case, quorum is not present in adjourned meeting also	If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.	

6.	Conclusion	In the instant case , as the quorum is not present within 10 minutes of the scheduled time of holding the annual general meeting, the legal position is that the people present will have to wait for another 20 minutes to ascertain whether requisite quorum is present or not, before, any decision regarding the conduct of the meeting can be taken.
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2013 - June [8] (b) Yogesh, the Company Secretary of Bigleap Ltd. convened a general meeting of the company after discussing the matter with some of the directors even though there was no express approval of the Board for convening such a meeting. Discuss the validity of such a meeting.

(4 marks) [CSEM - II]

Answer:

1.	Can a Company Secretary call a meeting?	A Company Secretary cannot call meetings of members.
2.	When an act of a Company Secretary will not be considered as the act of directors	An act done by the secretary after mentioning the matter to some of the directors, but without any express approval of the directors and without a board meeting being held to consider the question will not be considered the act of directors.
3.	Calling on GM only through Board resolution	Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution.



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4.	Requirement of ratification by Board	If the secretary calls a meeting without the authority of the Board of Directors it will not be effective unless the Board ratifies the convening before the meeting is held [<i>Haycraft Gold Reduction & Mining Co., Re. (1900)2Ch.230</i>].
5.	Conclusion	Notice of a general meeting given by secretary without the sanction of the directors or proper authority is invalid [<i>State of Wyoming Syndicate, Re.(1901)2 Ch.431</i>].

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2014 - June [1] Comment on the following

- (a) Every annual general meeting of the company must be held in each calendar year. (5 marks)

Answer:

Provisions of Sec. 96 of Companies Act, 2013 regarding AGM	
Key Provisions regarding holding AGM	<ol style="list-style-type: none">1. Every company, other than a one person company, is required to hold an annual general meeting.2. Annual general meeting should be held once every year.3. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.4. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.5. The gap between two annual general meetings should not exceed 15 months.



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Extension of validity period of AGM	<ol style="list-style-type: none">1. In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months.2. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.
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2014 - Dec [1] Comment with reason on the following:

(d) Minutes of the company can be maintained in loose leaf form.

(5 marks)

Answer:

1.	Minutes in loose leaf permitted on complying procedural requirement	<ul style="list-style-type: none">• Minutes may be maintained in the loose leaf form provided all other procedural requirements are complied with and all possible safeguards against manipulation or interpolation of the minutes are ensured.• The loose leaves can be got bound at reasonable interval say, six months.
2.	Requirement of Chairman's signature	<ul style="list-style-type: none">• Entering the minutes, in the bound minutes book by a chemical process, which does not amount to attachment to any book by pasting or otherwise is permissible provided on the mechanical impression of the minutes, the original signatures of the Chairman are given on each page.



3.	Case Law Study	[Mahrani Yogeshwari Kumari V. Lake Shore Place Hotel [1996] 21 CLA 107] <ul style="list-style-type: none">• Section 118 of Companies Act, 2013 does not provide that minutes should be written up to the last page of minutes book.• Thus, where after recording the minutes of a condolence meeting of the Board on the death of one of the directors, a new minute book was started, it was held that, in the absence of allegation that the minutes were not written faithfully or in time, it could not be contended that minutes book could not be relied upon to decide allegation of oppression levelled against director [Mahrani Yogeshwari Kumari v. Lake Shore Place Hotel [1996] 21 CLA 107 (Raj.)].
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2014 - Dec [4] (d) Agile Ltd. called its annual general meeting on 28th September, 2013. The notice of the meeting was posted on 6th September, 2013. With reference to the provisions of the Companies Act, 2013, examine whether the notice given by the company was valid. **(4 marks)**

Answer:

1.	Analysis of Sec. 101 of Companies Act, 2013	Section 101 of the Companies Act, 2013 , provides for a clear 21 days' notice in writing or through electronic mode for a general meeting. Further while calculating 21 days, the following days are excluded: <ul style="list-style-type: none">(i) Day of the meeting.(ii) Day of despatch of notice.(iii) 48 hrs. for service of notice. After deducting the above days, notice given by the company comes to 19 days. Thus the notice is invalid.
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2.	Meeting may be called on Shorter Notice	However as per proviso of the Section 101 (1) a general meeting may be called by giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five percent of the members entitled to vote at such meeting.
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2015 - June [1] Comment on the following :

- (d) The gap between two annual general meetings can never exceed 15 months. **(5 marks)**

Answer:

1.	Authenticity of the statement	This statement is correct, the gap between two Annual General Meetings should not exceed 15 months.
2.	Key Provisions regarding holding AGM	<ol style="list-style-type: none"> 1. Every company, other than a one person company, is required to hold an annual general meeting. 2. Annual General Meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. 3. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. 4. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year. 5. The gap between two annual general meetings should not exceed 15 months.



3.	Extension of validity period of AGM	<ol style="list-style-type: none">1. In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months.2. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.
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2016 - Dec [6] (a) Mrs. Rukmini is the statutory auditor of Energies Ltd. Free reserves of the company are four times more than the paid-up share capital. The company has Rohit, as secretarial auditor. There is a cost auditor, Amit, and an internal auditor, Sunil. Examining the provisions of the Companies Act, 2013 read with the secretarial standards, advise the company as to who is/are required to be present at the forthcoming annual general meeting of the company. **(4 marks)**

Answer:

1	Provisional of the Companies Act, 2013 and SS2	The Auditors and Secretarial Auditors as referred to in SS-2 unless exempted by the company, shall, either by themselves or through their authorised representative, attend the General meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors and Secretarial Auditor. The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor. The Chairman may invite the Secretarial Auditor or his authorised representative to attend any other General Meeting, if he considers it necessary.
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2	Analysis of the given Problem	There is no requirement for presence of cost auditor and internal auditor in the annual general meeting of the Company. The information of free reserves being four times that of paid up share capital is not relevant. Hence, Mrs. Rukmini, Statutory Auditor and Mr. Rohit, Secretarial Auditor are required to be present in the annual general meeting of Energies Ltd.
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2017 - June [5] (b) Board of Directors of Day Night Prakashani Limited decide to shift its registered office of the company from Mumbai to National Capital Region (NCR). The Board has approved the change. The Board has to seek the approval of the members of the company for going ahead with the legal formalities as required under the Companies Act, 2013, for which the extra-ordinary general meeting of the members is scheduled to be held on 17th June, 2017. In this connection you are required to draft notice of the EGM for shifting of office outside the state and give explanatory statement in this regard. **(8 marks)**

Answer:

DAY NIGHT PRAKASHANI LIMITED

CIN: _____

REG. OFFICE: _____

EMAIL ID: _____

Notice

Notice is hereby given that the Extra ordinary General Meeting of the Member of M/s. Day Night Prakashani Limited will be held on Thursday, the 08 day of June, 2017 at 11:00 a.m. at the registered office of the company:

SPECIAL BUSINESS:

Item I: To consider and if thought fit, with or without modification, the following resolution as special Resolution:

“RESOLVED THAT pursuant to provision of **Section 12 and Section 13(7), of the Companies Act, 2013**, read with Companies (Incorporation) Rules,

2014 and other applicable provision, if any, the consent of the members be and is hereby accorded to make an application to the Central Government for shifting of registered office of the company from Mumbai to National Capital Region (NCR).

RESOLVED FURTHER THAT, Board of the Directors of the company, be and is hereby authorised to execute, sign, issue such papers which are necessary to bring the above mentioned resolution in force.

By and on behalf of BOD
for DAY NIGHT PRAKASHANI LTD.

Date: 10.05.2017
Place Mumbai

Director
(DIN: _____)

Notes: (forming part)

- (1) The members entitled to attend the meeting is entitled to appoint a proxy and vote instead of himself.
- (2) Explanatory statement pursuant to **Section 102(1) of the Companies Act, 2013**, in respect of Special Business is annexed hereto.

Explanatory Statement

(Pursuant to Section 102(1) of the Companies (Act, 2013)

Your board at their meeting held on 10.05.2017 has decided to shift the registered office of the company from the State of Maharashtra to the State of Uttar Pradesh, for which the approval of shareholders and Central Government is required. At present the registered office of the company is situated at Mumbai, and the current location is not advantageous for the business purpose of the company so the Board decided to shift it to the State of Uttar Pradesh where their corporate office is also situated.

None, of the directors of the company are interested in the above mentioned resolution.

By and on behalf of BOD
for DAY NIGHT PRAKASHANI LTD.

Date: 10.05.2017
Place: Mumbai

DIRECTOR
DIN: _____

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2018 - June [5] (b) In the 25th Annual General Meeting (AGM) of Lazy Ltd. some shareholders demanded that a poll be taken in respect of one of the resolution proposed in the notice of AGM on which voting was yet to be taken on a show of hands. Prepare the announcement to be made by the Chairman of the meeting in connection with the poll. **(8 marks)**

Answer:

Announcement by the Chairman of the Meeting in Connection with a Poll:

1. Immediately after a Poll is demanded:

"I request you to make your demand on the Poll Demand Sheet so that the same can be verified to ascertain the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association of the Company."

2. After verification of the demand and if the demand is found to be validly made:

"I now order that the Poll on the Resolution in respect of Item No. of the Notice, on the subject of be taken and I appoint Mr. and Mr. as the Scrutinisers.

The Poll will commence half an hour after the transaction of all the items on the Agenda for the Meeting. The Poll will be held in a part of this Hall and will continue for half an hour or till all the Members or their valid Proxies or Authorised Representatives present and willing to cast their votes, have cast their votes, whichever is earlier.

I authorise the Scrutinisers to issue the Poll papers to Members/Proxies/Authorised Representatives and to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof, after ensuring that all the Members/Proxies/Authorised Representatives present have been provided the opportunity to vote. In terms of the provisions of the Articles of Association of the Company, a Member who is in arrears of moneys payables on the shares allotted to him is not entitled to vote. The Scrutinisers can take the assistance as may be required of the officers or employees of the Company in the conduct of the poll. I request you all to extend your Co-operation in the conduct of the poll.



The details of the result of the poll would be displayed on the notice board at the Registered Office of the Company not later than 11.00 a.m. on It would also be put up on the website of the Company under the head"

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2018 - Dec [5] (b) In Pallavi Chemicals Ltd. resolution for issue of bonus shares in the general meeting was put to remote e-voting and requisite majority has approved but quorum is not present at the general meeting. What would be the implications? **(4 marks)**

Answer:

The general meeting can only be held valid if the quorum is present at the meeting. The resolution that was put to remote e-voting and has obtained majority votes shall be taken up at adjourned meeting. Meeting without requisite quorum is invalid.

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2018 - Dec [5A] (Or) (i) In a general meeting, a motion was put for removal of small shareholders' director. A small shareholder contended that only small shareholders are entitled to vote on this motion as it is related to removal of small shareholders' director and motion should be passed as special resolution. Is the argument valid? Analyse with reference to the provisions of the Companies Act, 2013. **(4 marks)**

Answer:

A small shareholder director can be removed by in pursuance to **Section 169 of Companies Act, 2013** by passing an ordinary resolution in a general meeting. All the shareholders are eligible to vote irrespective of small shareholder or otherwise. The argument hence is not valid.

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2018 - Dec [5A] (Or) (v) On 5th January, 2018 in a general meeting a motion for removal of a director was put to vote. The Chairman declared the motion passed as ordinary resolution by show of hands. In the next general meeting held on 28th September, 2018, a member questioned the validity of the said

2.724

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resolution which was declared as passed by the Chairman alleging that majority votes were against the motion and asked the Chairman to disclose number of votes cast in favour of and against the said resolution. Referring to the provisions of the Companies Act, 2013 discuss if the demand of member is tenable. (4 marks)

Answer:

Under section 107 of Companies Act, 2013, provides that any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Therefore, the demand of members is not tenable.

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2019 - June [5] (a) Pluto Ltd. was incorporated on 10th June, 2013 in Delhi and is engaged in the business of providing specialized catering services for corporate events. The Board of directors proposed to venture into event management services, which requires the alteration of the object clause of the Memorandum of Association of the company. Draft the necessary resolution assuming relevant data. (4 marks)

Answer:

Shareholder's Resolution to be passed in the General Meeting of Pluto Ltd for Alteration of Object Clause in MOA:

Resolved That pursuant to the provisions of Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and the Rules made there under, as amended from time to time, and subject to the consent of the members in General meeting and subject to the approval of the Registrar of Companies ("ROC") and/or of any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the company, be and is hereby altered by inserting the following sub clause under Part- A of Clause III, after the existing sub-clause 2 and the remaining sub-clauses be re-numbered accordingly:



"To conduct the business, in and outside India, of event management service on variety of areas including corporate events (product launches, press conferences, corporate meetings and conferences), marketing programs (road shows, grand opening events), and special corporate hospitality events like concerts, award ceremonies, film premiers, launch/release parties, fashion shows, commercial events, private and personal events such as weddings, birthday celebrations and such other events of like nature."

"Resolver Further that any director of the company, be and is hereby severally authorized to file, sign, verify and execute all such e-forms, or documents, as may be required and do all such acts, deeds, matters and things as may be necessary and incidental for giving effect to this resolution.

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2019 - June [5A] (Or) (iv) As a company secretary referring to the provisions of Companies Act, 2013 examine the validity of following propositions:

- (a) A company wishes to call its annual general meeting on a working day at 6.30 p.m.
- (b) Due to the availability of chairman, the AGM of the company can be held only on 15th August, 2018. All members are ready to give consent in writing in advance for the same.
- (c) Due to technical problem, company wants to hold its AGM at a city other than a city at which registered office of the company is situated.

(1 + 2 + 1 = 4 marks)

Answer:

According to **Section 96(2) of the Companies Act 2013**, every annual general meeting can be called during business hours, that is, between 9.00a.m. to 6.00p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government is empowered to exempt any company from these provisions. subject to such conditions as it may impose.

Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In case of Government Company, the Central Government may approve such other place for holding AGM, if the place is other than the registered office.

In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the Board having regard to the directions if any, given in this regard by such company in the general meeting.

In view of the above provisions of the Companies Act, 2013:

- (a) Annual General Meeting can be held only between 9:00 a.m. to 6:00 p.m, unless exempted by the Central Government.
- (b) AGM cannot be held on a National Holiday, unless exempted by the Central Government, even though the company has consent in writing in advance to conduct AGM on 15th August, 2018.
- (c) AGM can be held only at the city of registered office, unless exempted. As per the proviso to Section 96(2), in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

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2019 - Dec [5] (b) A newly joined trainee of the secretarial department would like to know details of information to be entered in respect of resolution passed through postal ballot by the company. Advise him. **(4 marks)**

PRACTICAL QUESTIONS

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

- (iv) A resolution was passed by the shareholders in an annual general meeting approving final dividend @ 20% for the financial year 2007-08 and one month later the Board of directors decided to pay further dividend @ 5% for the financial year 2007-08.

(5 marks) [CSEM - II]



Answer:

1.	Company cannot declare further dividend for the same F. YR.	According to the provisions of the Companies Act, 2013 , the company can declare dividend only once in a year when the dividend is declared the company cannot declare further dividend for the same year.
2.	Analysis of the given problem	As in the given case , the resolution was passed in Annual General Meeting approving of final dividend of 20% for the financial year 2007-08 and thereafter the Board of Directors decided to pay further dividend of 5% for the financial year 2007-08 which he cannot declare according to the provisions of Companies Act.

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2012 - Dec [8] (a) Star Gen Ltd. held a meeting of its Board of directors on 31st October, 2010 at its registered office. Though the company has 12 directors on its Board, only 5 directors were present at the commencement of the meeting. Thereafter, even while the meeting was in progress, 2 more directors left the meeting and the remaining directors carried on the proceedings of the meeting. Discuss the validity of decisions, if any, taken by the remaining 3 directors. **(4 marks) [CSEM - II]**

Answer:

1.	Quorum of the meeting	One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.
2.	What, if the numbers of directors is reduced below the quorum due to resignation etc.	If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.



2.728	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
3.	Participation through video conferencing or other audio visual means	For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted. Amendment made by Companies (Amendment) Act, 2017 Second Proviso to Section 173(2)- "Provided further that where there is quorum in a meeting through physical presence of directors, any other director -may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
4.	Quorum in case of interested directors	If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.
5.	Adjournment of meeting due to want of quorum	The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.
6.	Conclusion	Therefore, in the given case during the proceeding of the meeting, the prescribed quorum was not present. Hence, the business transacted is void.

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2014 - Dec [4] (c) Pioneers Ltd. convened a Board meeting on 1st September, 2013. During the course of meeting, the date of next annual general meeting was discussed but no decision was taken. However, the Company Secretary issued the notice for annual general meeting without any specific authorisation from the Board of directors. Decide the validity of notice of annual general meeting. **(4 marks)**

Answer:

1.	Who can call AGM	The Annual General Meeting of a company can be called by a proper authority. Obviously, the only authority is the Board of Directors.
2.	Board resolution	It may be called by passing necessary resolution in the Board Meeting or by circulation.
3.	Authority of Company Secretary to call AGM	Company Secretary has <i>prima facie</i> no authority to convene a meeting unless directed by the Board or to take any policy decision.
4.	Directors may delegate the power to call AGM to Company Secretary	However, if the Articles empower the directors to delegate any of their powers to any of the agents they choose, they may delegate such powers to the Secretary and if power to fix the date of the annual general meeting is delegated to the Company Secretary and such power is exercised with the consent of all the directors, the act of the Company Secretary would be valid.

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2015 - June [4] (c) PQR Ltd. is an unlisted company and has 400 shareholders in all. The shareholders of the company propose voting by electronic mode. Chairman of the company rejected the shareholders' proposal. Explaining the provisions of the **Companies Act, 2013**, examine the validity of rejection of the shareholders' proposal by the chairman. **(4 marks)**

2.730



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Answer:

1.	Companies which are required to provide e-Voting facility to its members	Sec. 108 of Companies Act, 2013 read with rule 20 of Companies (Management and Administration) Rules, 2014 – <ul style="list-style-type: none">• Every listed company or• A company having 1000 or more shareholders. May provide to its members facility to exercise their right to vote at general meetings by electronic means.
2.	Resolution by electronic voting system	A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system.
3.	Analysis of the given problem	Applying, the above provisions in the given case , it can be concluded that since the company is having only 400 shareholders i.e. less than the required number of shareholders, it is not mandatory to hold electronic voting. Moreover, the company is an unlisted company therefore, electronic voting is not mandatory for unlisted company.
4.	Company may compound the offences u/s 441, in the given problem	Therefore, Chairperson's rejection of the shareholders' proposal to allow electronic voting is valid.

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2015 - June [5] (c) DEF Ltd., a company listed at Bombay Stock Exchange, failed to file its report on the annual general meeting for the financial year ended 31st March, 2013 with the Registrar of Companies, Mumbai. The company further abstained from filing the said report for another two years, viz. financial years ended 31st March, 2014 and 2015 respectively. Examining the provisions of the Companies Act, 2013, state whether the default committed by the company amounts to an offence. If so, to what extent it is possible to get the offence(s) compounded? **(4 marks)**

Answer:

1.	Provisions of Sec. 121 of Companies Act, 2013	Every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.
2.	Filing of copy of report with ROC	The company is required to file with the Registrar a copy of the report within thirty days of the conclusion of the annual general meeting with the prescribed fees or with such additional fees within a period of 270 days from the date by which it should have been filed in accordance with Section 403 of the said Act.
3.	Punishment on non-compliance	If the company fails to file the report before the expiry of the period specified under Section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
4.	Company may compound the offences	Accordingly company has made default for the financial years ending 31 st March, 2014 and 2015 only, in compliance of above provisions. The company may submit application with Regional

2.732	■	Scanner CSEP M-I Paper 2 (2017 Syllabus)
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	u/s 441, in the given problem	Director or any officer authorised by the Central Government for compounding of the offence Any offence punishable with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed ₹ five lakhs may be compounded by the Regional Director or any officer authorised by the Central Government under Section 441 .
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2016 - June [4] (b) Bright Products Ltd. wishes to sell one of its undertakings for which it decides to call an extra-ordinary general meeting (EGM) and to pass a resolution thereat. State the material facts to be set out in the explanatory statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting. **(4 marks)**

Answer:

1	Provision of Section 102(1) of Companies Act, 2013	<p>Following are the material facts to be set out in the explanatory statement to be annexed to the Notice of EGM of Bright Products Ltd. as per Section 102(1) of Companies Act, 2013:</p> <p>(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of:</p> <p>(i) every director and the manager, if any;</p> <p>(ii) every other key managerial personnel; and</p> <p>(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);</p> <p>(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.</p>
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[Chapter ➡ 19] General Meetings ■ 2.733		
2	Special Business	Further, where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement.

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2016 - June [5] (b) Board of directors of Desire Ltd. decides to go for creditors' winding-up of the company. For this purpose the Board decides to call an extra-ordinary general meeting on 30th June, 2016. Draft a notice alongwith explanatory statement for convening the meeting. Assume facts. **(8 marks)**

Answer:

1.	Notice of Extraordinary General Meeting	<p>Notice is hereby given that an Extraordinary General Meeting of the members of Desire Ltd. will be held on 30th June, 2016 at 11 : 00 a.m. at the registered office of the company to transact the following special business:</p> <p>To consider, and if thought fit, to pass, with or without, modification the following resolution as special resolution:</p> <p>“Resolved that pursuant to Section 306 of Companies Act, 2013 the company be wound up voluntarily by the creditors.</p> <p>Resolved further that Mr. ___ be and is hereby appointed as a liquidator of the company at a remuneration of 2% of the amount credited to the realization account and 1% of the amount debited</p>
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2016 - Dec [2A] (Or) (ii) There are seven shareholders in a private limited company having registered office in Chennai. Six shareholders are French nationals and belong to the same family holding an aggregate of 95% voting rights. These shareholders are unable to come down to Chennai and wish to hold the company's annual general meeting in Paris. Advise whether the meeting can be held in Paris. **(4 marks)**

Answer:

1.	Provision of Section 96 of Companies Act, 2013	Calling of Annual General Meeting (AGM) of a company is governed by the provisions contained in Section 96 of the Companies Act, 2013 . Accordingly, AGM can be called during business hours, that is, between 9 A.M. and 6 P. M. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. Further it is provided that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
2.	Conclusion	Therefore, in the above case the AGM of the Company shall be held in Chennai where the registered office of the Company is situated however the meeting may be held in Paris subject to exemption granted from the Central Government.

— Space to write important points for revision —

2016 - Dec [3] (c) At the annual general meeting of Soya Ltd., a matter was to be transacted by passing a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. Referring to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration. **(4 marks)**

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Answer:

1	Provisions of Section 114(2)(c) of Companies Act, 2013	According to Section 114(2)(c) in case of passing a special resolution, the votes cast in favour of the resolution, whether on a show of hands or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.
2	Conclusion	In the given case of Soya Ltd. the votes casted in favour of special resolution is 20 in number, being more than 3 times of the number of votes cast against i.e., if other conditions of Section 114 are satisfied, the decision of the chairman is in order.

— Space to write important points for revision —

2016 - Dec [4] (a) Ria Technologies Ltd. was incorporated 10 years back. The Board of directors now wants to change its name to Ria Systems Ltd. Draft a notice and the explanatory statement for calling an extraordinary general meeting of the company for change of its name, assuming relevant data. **(4 marks)**

Answer:

NOTICE

Notice is hereby given to the members of the Company that the Extra Ordinary General Meeting of **RIA TECHNOLOGIES LIMITED** will be held on Friday the _____ day of _____ at 11:00 A.M. at its registered office

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

"RESOLVED THAT pursuant to the provision of **Section 21** and all other applicable provisions, if any, of the **Companies Act, 2013** and the Cos. (Incorporation) **Rules, 2014** name of the company be hereby changed from

RIA TECHNOLOGIES LIMITED to **RIA SYSTEMS LIMITED** and accordingly the name “**RIA TECHNOLOGIES LIMITED**” wherever it appears in the Memorandum and Article of Association of the Company be substituted by the name “**RIA SYSTEMS LIMITED**” in due course.

Date: _____

By the Order of the Board

Place: _____

RIA TECHNOLOGIES LIMITED

Director

NOTES (forming part of the Notice):

- A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF AND SUCH PROXY NEED NOT BE A MEMBER OF THE COMPANY.
- The instrument(s) appointing the proxy, if any, shall be delivered at the Registered Office of the Company, not less than 48 hours before the commencement of the meeting and in default, the instrument of proxy shall be treated as invalid. Proxy shall have no right to speak at the meeting.
- All Statutory Records including Register of Members are open for inspection at the Registered Office of the Company during office hours on all working days except Saturday between 10.00 A.M. and 1.00 P.M. up to the date of Extra Ordinary General Meeting.
- Compliance with **Section 101(1)** of the said Act for seeking consent of the shareholders for convening EGM at a shorter notice is annexed herewith this notice calling EGM. Members are requested to kindly fill up and submit the same at the Regd. Office of the company by *****.

ANNEXURE TO NOTICE :

EXPLANATORY STATEMENT pursuant to **Section 102(1) of the Companies Act, 2013.**

Item No. 1:

As per the desire of Board it's been proposed to change the name of the company in order to revamp the company's business and support the new venture. The new name proposed is “**RIA SYSTEMS LIMITED**”. Your

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Directors trust that this change of name will have the members support and approval. The Registrar of Companies has confirmed that the new name is available for registration **under Section 13 of the Companies Act, 2013** read with Cos. (Incorporation) **Rules, 2014** vide their Name Availability letter dated _____, and subject to the resolution being passed; an application will be made to the Central Government for approval to the change of name **under Section 13(2)** of the Act. If the change of name is approved, share certificates already issued will not be called in only for the purpose of exchange into certificates bearing the new name, but will be so exchanged as and when the existing certificates come into the possession of the Company and in the meantime the existing certificates will continue to be accepted for all purposes, as indicating entitlement to shares of the Company. The Board recommends the adoption of the resolution. None of the directors of the Company or their relatives, Associate company(s) are concerned or interested in the Resolution.

By the Order of the Board
RIA TECHNOLOGIES LIMITED
Director

2017 - June [2A] (Or) (iv) Innovative Energies Limited has 2,505 members as on the date of the company's extraordinary general meeting. The Executive Director, Mr. Avinash has asked you, the Secretary of the Company, what is the required quorum for the meeting. Referring to the provisions of the Companies Act, 2013, inform the Executive Director, Mr. Avinash, the quorum that must be present for holding the Extra-Ordinary General Meeting of the company. State whether the required quorum must be present throughout the meeting. **(4 marks)**

Answer:

As per **Section 103** Unless the articles of the company provide for a larger number,–

(a) in case of a public company:

- (i) five members personally present if the number of members as on the date of meeting is not more than one thousand;



- (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

In the given case, Innovative Energies Limited has 2,505 members as on date of its extra-ordinary general meeting. Hence, the required number of quorum, if the articles do not provide for a larger number, will be 15 members personally present. The Company Secretary shall inform the Executive Director, Mr. Avinash accordingly.

Also, the required quorum must be present throughout the meeting.

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2017 - June [4] (b) Shaky Commodities Private Limited could not hold its 10th annual general meeting for the year 2016 by 30th September, 2016. The company sought extension of time for holding the AGM from the Registrar of Companies but failed to hold the meeting within the extended time too. Instead, it held the meeting on 31st March, 2017 and passed resolutions thereat. Certain shareholders have challenged the validity of these resolutions. Referring to the provisions of the Companies Act, 2013, examine whether the contention of the shareholders shall be tenable. **(4 marks)**

Answer:

According to Section 99 of the Companies Act, 2013, if any default is made in holding a meeting of the company in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Further, any member of the company in such a case may make an application to the Tribunal to call or direct the calling of an ASM of the company and give such ancillary or consequential directions as the Tribunal thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(Section 97)

In Turned Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd. ILR (1972), Cal., the Court held that a meeting (AGM) held beyond the time cannot be said to be void or illegal, if the Central Government (Tribunal) does not extend the date of holding AGM **u/s 167 (Section 97)**.

Therefore, the resolution passed at the meeting held on 31st March, 2017 is valid and enforceable. The directors shall, however, be liable to penalties in accordance with the provisions of **Section 99**, as stated above. Contention of the shareholders shall not be tenable.

—— Space to write important points for revision ——

2017 - Dec [2A] (Or) (ii) A company has 120 members. It sends notice of general meeting to all of them. 20 members did not attend the meeting. Out of remaining 100 members who were present, 20 members abstained from voting. Advise the company, how many members should vote in favour of a resolution, if it has to be passed as a special resolution? **(4 marks)**

Answer:

Section 114(2) relates to passing of special resolution. For passing of special resolution, the requirement is that the votes cast in favour of the resolution are atleast 3 times the votes cast against, if any. Here, 100 members are present. Out of which 20 members have abstained from voting, 80 members voted. $\frac{3}{4}$ th of 80 is 60. Hence, 60 members should vote in favour of a resolution; if it is to be passed as a special resolution which is 3 times the number of votes cast against the resolution.

—— Space to write important points for revision ——

2017 - Dec [3] (a) The minutes of 24th Annual General Meeting of Poly Bank Ltd. are to be signed by the chairman. However, the chairman of Poly Bank Ltd. met with an accident 2 days after the AGM was held. Minutes of AGM are, therefore, pending for signatures. Advise the company secretary of Poly Bank Ltd. about the procedure for signing of minutes in such a case as if the chairman has become permanently incapable of signing. Will your answer be different if chairman suffers only minor injury and gets back to his office in one week? **(4 marks)**



Answer:

As per Section 118 read with Rule 25 of the Companies (Management and Administration) Rules, 2014 and Secretarial Standard on General Meetings, every company shall cause minutes of the proceedings of every general meeting to be prepared and signed as may be prescribed under the provisions of law. Minutes shall be recorded in books maintained for that purpose. The pages of the Minutes Books shall be consecutively numbered. This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. Such minutes shall be kept within thirty days of the conclusion of every such meeting. Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a director duly authorised by the Board for the purpose.

Therefore, in this case, convene a Board meeting and authorize one of the remaining directors to sign the minutes of AGM.

Where Chairman is suffered with minor injury and get back to office in one week, the Chairman should sign the minutes.

— Space to write important points for revision —

2017 - Dec [3A] (Or) (iii) Robert, a member of MLM Ltd. submitted his proxy to the company before the scheduled time of the Annual General Meeting. The Articles of the company provided that proxy can be submitted to the company 70 hours before the scheduled time of the meeting. The chairman of the company rejects the proxy on the ground that it is in violation of the Articles. Referring to the provisions of the Companies Act, examine the validity of the chairman's decision to reject the proxy. **(4 marks)**

Answer:

In accordance with the provisions of the Companies Act, 2013, as contained in **Section 105(4)**, any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other

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person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

Therefore, a Chairman's decision to reject the proxy is not valid and contention of the member shall prevail. Provision in the Articles for a longer period than 48 hours is void.

— Space to write important points for revision —

2018 - Dec [5] (a) Kirti Ltd. has total paid-up share capital of ₹ 23 crore and its annual general meeting is scheduled on 27th December, 2018. Ritik is holding paid-up share capital having nominal value of ₹ 3 crore and Sonu is holding paid-up share capital having nominal value of ₹ 2.4 crore. On 24th December, 2018 both Ritik and Sonu wanted to issue proxy in favour of Rohit to attend meeting on their behalf. Rohit is not a member of any company. Decide under the provisions of the Companies Act, 2013 whether both Ritik and Sonu can appoint Rohit as their proxy. **(4 marks)**

Answer:

Section 105 of the Companies Act, 2013, provides that a member, who is entitled to attend and vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. Proxy need not be a Member. A Proxy can Act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not Act as a Proxy for another person or shareholder.

Ritik holding **in the above case** is 13.0% and Sonu is 10.4%, since the holding of both severally exceeds 10% of total share capital of the company same person cannot be appointed as Proxy for both Ritik and Sonu, he can be appointed as proxy for either of the two.

— Space to write important points for revision —



2018 - Dec [5] (c) Assume yourself as Company Secretary in practice and secretarial auditor of Rama Ltd. which is having its annual general meeting scheduled on 17th August, 2018 at its registered office in Mumbai. On 16th August, 2018 you have a business meeting fixed at Kochi and return flight to Mumbai in the evening of 16th August, 2018. But due to bad weather conditions all flights departing from Kochi are declared cancelled. Discuss the alternatives available to you with regard to the annual general meeting of Rama Ltd. **(4 marks)**

Answer:

Under section 146 of the Companies Act, 2013 the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

In the given case, provision of Section 146 is applicable and authorized representative may be sent to attend the general meeting of the company.

—— Space to write important points for revision ——

2019 - June [5A] (Or) (v) Prism Ltd.. which has 50 preference shareholders called a preference shareholders meeting for amending the terms of these shares. 'A' was the only preference shareholder who attended the meeting. He, however held the proxies from all other preference shareholders. He took the chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Examine the validity of the meeting and the resolution passed. **(4 marks)**

Answer:

Under Section 103 (1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, five members personally present shall be the quorum for a meeting of the company, if the number of members as on the date of meeting is not more than one thousand.

The case given in the question corresponds to the decision in *Sharp vs. Dawes* wherein it was held that "the word meeting prima facie means coming together of more than one person." In this given case, only one shareholder was present and it was held that the meeting was not validly held.

Further in *East Vs. Bennet Brothers Ltd.* (1911) it has been held that in case of a meeting of a particular class of members if all the shares of that particular class are held by one person, then that one person shall form the quorum.

In the given case, therefore, the applicable quorum will be 5 members and since all the shares are not held by one person but there are 50 members, no quorum is therefore present. The meeting and the resolution passed there shall not be valid. Proxy shall not be counted for quorum.

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2019 - Dec [4] (b) Last Annual General Meeting (AGM) of one of the top 100 listed companies was held on 25th May, 2018 pertaining to the FY 2017.18. The Board of directors of the company is planning to hold this year's AGM at a possible later date due to technical issues in finalisation of accounts. Give your suggestions about the date before which the AGM should be held in reference to relevant provisions of the Companies Act, 2013.

(5 marks)

2019 - Dec [5] (c) 'A', a shareholder, appointed 'X' as his proxy for the general meeting of a company. The proxy forms were lodged 50 hours before the meeting. The Chairman of the meeting refused to accept the proxy stating that the proxies should be lodged at least 70 hours before the beginning of the meeting as per articles of the company. However, despite Chairman's refusal proxy participated in the meeting. Meanwhile 'A' also rushed to attend the meeting and both 'A' and 'X' voted on a particular resolution of the meeting. On the basis of above facts, answer the following:

- (i) Can 'X' compel the Chairman to admit the proxy ?
- (ii) Since both 'A' and 'X' voted, the Chairman invalidated both the votes. Discuss whether the Chairman acted as per the provisions of the Companies Act, 2013.

(2 x 2= 4 marks)



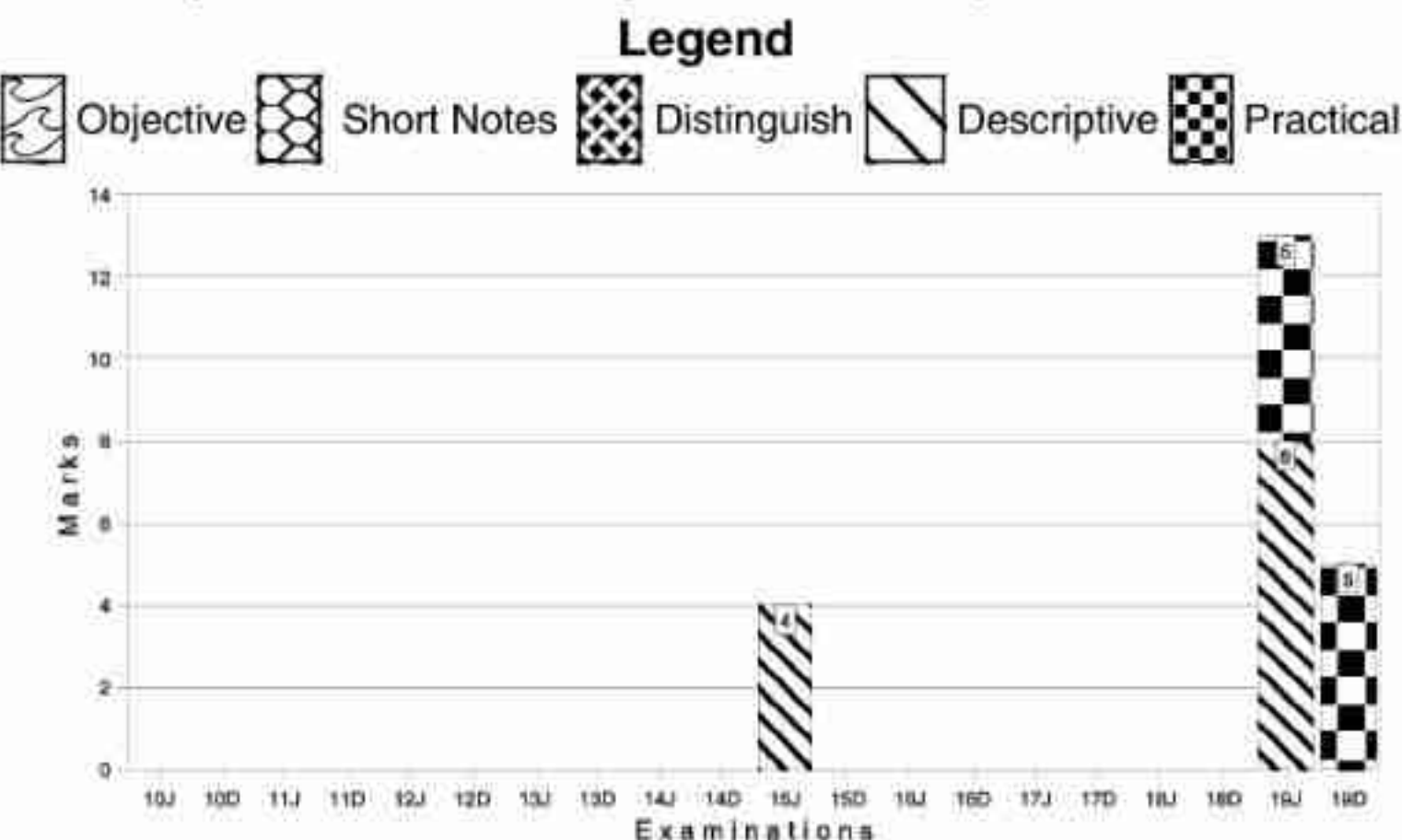
2019 - Dec [5A] (Or) (iii) A group of shareholders holding 13% of the total paid-up share capital of Lala Investments Ltd. requested the Board of directors of the company to convene the Extraordinary General Meeting (EGM) by their letter dated 5th October, 2019, to discuss the matters set out in their requisition to the company. The Board of directors did not act on their request until end of October 2019. As a practicing Company Secretary what would you suggest as to the further course of action and the procedure to be followed in this regard ? **(4 marks)**

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between on 'Motion' and 'resolution'. 09 - Dec [3] (iv), 11 - June [3] (iv), 12 - June [7] (iii)	3 Times



<div>20</div> <div>VIRTUAL MEETINGS</div>	
THIS CHAPTER INCLUDES	
<ul style="list-style-type: none">Virtual Meeting - MeaningVirtual Board Meeting	<ul style="list-style-type: none">Procedure of Board meeting through video or audio conferencing

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



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



CHAPTER AT A GLANCE

Virtual Meeting - Definition

A meeting held totally by means of either Video conferencing or other audio-visual means is known as Virtual Meeting. A virtual meeting is when people around the world, regardless of their location, use video, audio, and text to link up online. Virtual meetings allow people to share information and data in real-time without being physically located together. In virtual meeting there is no physical presence of participants and there is no designated venue for the purpose of meetings. Participants located at different places participate in the meeting either by teleconference or video conference or combination of them at predetermined time.

Basic Requirements for Virtual Meeting

- Meeting rooms
- Software, which can be either purchased or can be provided by vendor for a fee on yearly rental basis.
- Hardware equipment like Monitor or LED screen, Web cams.
- High quality mike system.
- Projectors.
- Document scanners.
- Leased Lines.
- High speed wireless internet.
- Recording and Storage Equipment for recording the proceeding and Proper storage for future reference as many be required under law.
- Have trial run before the meeting to ensure all the systems are working properly.
- Ensure that the proper arrangements are made in the Meeting room.

Virtual Board Meetings

Present day Directors' who are professional have busy schedules which makes it difficult for them to attend board meetings of the companies in which they are directors especially for those who are living and working in different cities and countries.

Teleconferencing, videoconferencing, and meeting online benefit boards and directors to enable them to attend the meetings from any location.

Virtual meetings help the directors to participate in meetings wherever they are despite their busy schedule and make valuable contributions by their participation.

Electronic Mode

"Electronic Mode" in relation to Meetings means Meetings through video conferencing or other audio-visual means. "Video conferencing or other audiovisual means" means audio visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

Secured Computer System

"Secured Computer System" means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

The attendance registers

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by



any other Director present at the Meeting, if so authorized by the Chairman and the fact of such participation is also recorded in the Minutes.

Venue of the meeting

With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Virtual AGM/EGMs

Section-108 of the Companies Act, 2013 provides for Voting through electronic means. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means
General meetings, particularly when large numbers of shareholders are involved, can be very expensive and are not considered to be a cost-effective.

Advantages of Virtual AGM/EGMs

- Increase shareholder participation in meetings,
- Save time on travel and cost because of remote voting.
- Encourages more participation by investors across the world.
- Provides greater accessibility to shareholders who cannot be physically present due to distance.
- Enables institutional investors to attend more than one meeting in a day and protect shareholders interest.
- Reduce the cost of holding and conducting shareholder meeting, including the costs of the venue, stationary, transport and refreshments.
- Save time of the Company's personal.

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Difficulties in holding Virtual Meetings of Members

- Security of the systems used.
- Streaming with quality without interruption.
- Providing with secure login and shareholder authentication for attendance, with ease of access for shareholders, and remote voting.
- Combined registration, voting and reporting software.
- Customized instant results screen and detailed audit reporting.
- Data Security of Logins and Passwords.
- Allowing the shareholders, the choice of device.
- the technology used must give all shareholders a reasonable opportunity to participate
- the technology must be secure and must provide reasonable measures for verifying/validating those allowed to attend and vote at the meeting
- The company must provide a digital record of the meeting.

DESCRIPTIVE QUESTIONS

2015 - June [3A] (Or) (iii) The Board of directors of Vedic Ltd. desirous of transacting certain matters through video conferencing, seek your advice on the matters which cannot be dealt with through video conferencing. Advise the Board. **(4 marks)**

Answer:

Matters not to be dealt with in a meeting through video conferencing or other audio visual means.

Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (a) the approval of the annual financial statements;
- (b) the approval of the Board's report;
- (c) the approval of the prospectus;



	(d) the Audit Committee Meetings for consideration of accounts; and (e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
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— Space to write important points for revision —

2019 - June [5] (d) Referring to the provision of Companies Act, 2013 advise the directors of a company in the following matters:

- (i) The company wishes to obtain approval of the financial statement in a meeting held through video conferencing.
- (ii) Due to urgency, the company wants to get its prospectus approved in a meeting held through video conferencing. **(4 marks)**

Answer:

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the following matters, which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-Section (1) of Section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Accordingly, the company cannot obtain approval of the financial statements from directors in a meeting held through video conferencing (ii) the company cannot get its prospectus approved in a meeting held through video conferencing.

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2019 - June [5A] (Or) (iii) Enumerate the difficulties encountered in holding virtual meeting of Members: **(4 marks)**

Answer:

Following are the main difficulties encountered in holding virtual meetings of members:

- Security of the systems used.
- Streaming with quality without interruption.
- Providing with secure login and shareholder authentication for attendance with ease of access for shareholders and remote voting.
- Combined registration, voting and reporting software.
- Customized instant results screen and detailed audit reporting.
- Data security of logins and Passwords.
- Allowing the shareholders, the choice of device.
- The technology used must give all shareholders a reasonable Opportunity to participate.
- The technology must be secure and must provide reasonable measures for verifying/ validating those allowed to attend and vote at the meeting.
- The Company must provide a digital record of the meeting.

— Space to write important points for revision —

PRACTICAL QUESTIONS

2019 - June [4] (d) Jolly Retails Ltd. issued a notice for the meeting of its Board of directors scheduled for on 5th June 2019 at its corporate office. One of the directors intimated that he would be participating in the meeting through video conferencing. The Secretary contended that the meeting cannot be participated through video conferencing and that the concerned director cannot insist that the company should provide video conferencing facilities for attending the board meeting. Is the contention of the Secretary tenable as per the provisions of the Companies Act, 2013? Discuss with relevant case laws if any. **(5 marks)**



Answer:

Section 173(2) of the Companies Act, 2013 states the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

The second proviso of section Sub Section 2 of Section 173 states that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso. (Inserted by the Companies (Amendment) Act, 2017, w.e.f 7-5-2018).

Rule 4 of the Companies (Meeting of Board and its Powers) Rules 2014, which states the matter not to be dealt with in a meeting through video conferencing or other audio visual means has been amended by the Companies (Amendment) Act, 2017, by the inclusion of the proviso that where there is a quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means (inserted w.e.f. 7-5-2018). One of the matters specified in this rule is the approval of the prospectus.

In this case of *Achintya Kumar Barua vs. Ranjit Barthkur* ([2018] 91 taxmann. com 123 (NCL-AT)) the NCLAT has held that, even one of the director so desires, a company is bound to provide facilities to directors to participate in board meetings by video conferencing.

With the above amendment and the Tribunal decision, Jolly Retail Ltd. is bound to provide the necessary video conferencing facilities to the director.

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2019 - Dec [4] (d) JKJ Ltd. has 10 directors on its Board. A Board meeting was convened on 19-10-2019 in which two of the directors participated in-person and one director through video conferencing. Two directors were interested in the agenda and hence, did not participate in the meeting. The auditor claimed that the quorum was not present for the meeting to be valid. Do you agree with the auditor? Justify your answer in reference to provisions of the Companies Act, 2013. **(5 marks)**

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

Q1. Write short note on Virtual Board Meeting.

Answer:

- Present day Directors' who are professional have busy schedules which makes it difficult for them to attend board meetings of the companies in which they are directors especially for those who are living and working in different cities and countries.
- Teleconferencing, videoconferencing, and meeting online benefit boards and directors to enable them to attend the meetings from any location.
- Virtual meetings help the directors to participate in meetings where ever they are despite their busy schedule and make valuable contributions by their participation.
- Virtual attendance can also make board participation more attractive and appealing especially for independent directors as they are not be expected attend every meeting in person and it is not practically possible as they sit on many boards of company which are located in different cities countries and due to statutory requirements most the board meetings of the companies especially listed entities are held around the same time making it more difficult for the Independent professional directors to be physically present and participate in the meetings.
- By holding virtual meetings, Boards with members around the country and globe will benefit from wider participation and it would be very convenient for the directors to attend through virtual media from their respective location and also it helps from reduced travel and reimbursement of costs

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DESCRIPTIVE QUESTIONS

Q2. What do you understand by the concept of Virtual Annual General Meeting? Discuss its benefits of such meeting.

Answer:

Section-108 of the Companies Act, 2013 provides for Voting through electronic means. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means General meetings, particularly when large numbers of shareholders are involved, can be very expensive and are not considered to be a cost-effective.

Advantages of Virtual AGM/EGMs

- Increase shareholder participation in meetings,
- Save time on travel and cost because of remote voting.
- Encourages more participation by investors across the world.
- Provides greater accessibility to shareholders who cannot be physically present due to distance.
- Enables institutional investors to attend more than one meeting in a day and protect shareholders interest.
- Reduce the cost of holding and conducting shareholder meeting, including the costs of the venue, stationary, transport and refreshments.
- Saves time of the Company's personal.

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

Q3. ABC Ltd. Wants to hold meeting through electronic mode. As a company secretary detail the procedure to the Board.

Answer:

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for the requirements and procedures, in addition to the procedures required for Board meetings in person, for convening and conducting Board meetings through video conferencing or other audio visual means:

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care, the same has been discussed above.
3. (a) The notices of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
(c) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the Chairman or the company secretary of the company.
(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.
(f) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.
4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely :
 - (a) name;
 - (b) the location from where he is participating;
 - (c) that he can completely and clearly see, hear and communicate with the other participants;
 - (d) that he has received the agenda and all the relevant material for the meeting; and
 - (e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.



5. (a) After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairman and confirm that the required quorum is complete.
Explanation: It is clarified that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the Rules.
- (b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.
6. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
7. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
8. (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or company secretary shall request for a repeat or reiteration by the director.
9. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

10. From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
11. (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, dissented from the decision taken by majority
(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
12. (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

— Space to write important points for revision —

Q4. Describe the requirements for Virtual Meeting.

Answer:

- Meeting rooms
- Software, which can be either purchased or can be provided by vendor for a fee on yearly rental basis.
- Hardware equipment like Monitor or LED screen, Webcams.
- High quality mike system.
- Projectors.




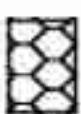


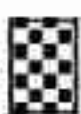
- Document scanners.
 - Leased Lines.
 - High speed wireless internet.
 - Recording and Storage Equipment for recording the proceeding and Proper storage for future reference as many be required under law.
 - Have trial run before the meeting to ensure all the systems are working properly.
 - Ensure that the proper arrangements are made in the Meeting room.
- Space to write important points for revision ——

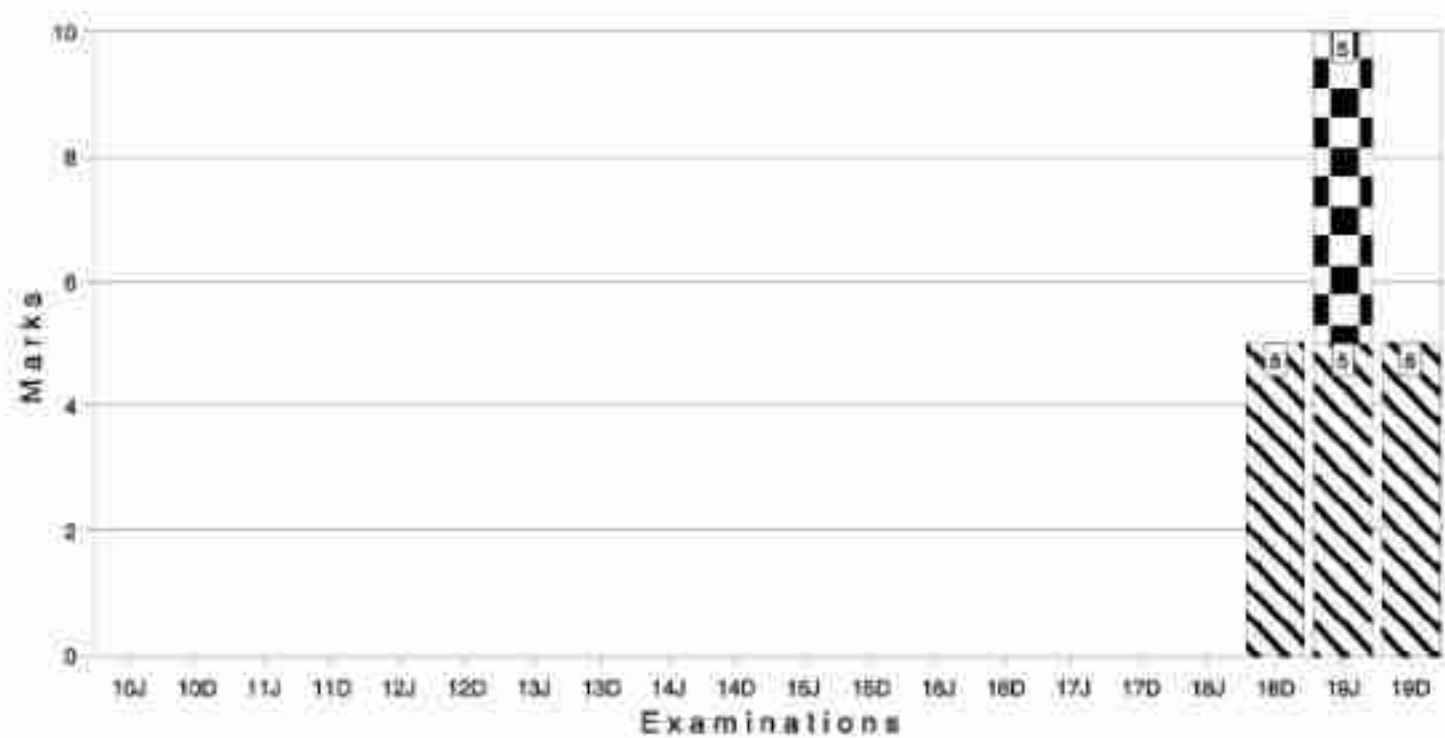


<div>21</div> <div>LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES</div>	
THIS CHAPTER INCLUDES	
<ul style="list-style-type: none">Associate and fellow company secretariesDisciplinary mechanismDisciplinary directorateBoard of discipline	<ul style="list-style-type: none">Disciplinary committeeAppeal to authorityProvisions relating to misconduct under the company Secretaries Act,1980

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

Associates and Fellows Company Secretaries

The members of the Institute shall be divided into two classes designated respectively as Associates and Fellows.

Any person whose name is entered in the Register of members maintained by Institute of Company Secretaries of India shall be deemed to have become an Associate and as long as his name remains so entered, shall be entitled to use the letters "A.C.S." after his name to indicate that he is an Associate.

A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of fees, be entered in the Register as a Fellow.

Register of Members

The Council shall maintain in the prescribed manner a Register of the members of the Institute. The Register shall include the following particulars about every member of the Institute, namely:

- (a) his full name, date of birth, domicile, residential and professional addresses;
- (b) the date on which his name is entered in the Register;
- (c) his qualifications;
- (d) whether he holds a certificate of practice; and
- (e) any other particulars which may be prescribed.



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Disciplinary Directorate

Section 21 of the Act provides for the establishment of a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct. The Disciplinary Directorate shall follow such procedure as may be specified to make investigations under the Act.

Disciplinary Committee

According to Section 21B a Disciplinary Committee shall be constituted by the Council. The Disciplinary Committee shall consist of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

The Council may constitute more Disciplinary Committees as and when it considers necessary. The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

Appeal to Authority

Under Section 22A of the Act the Appellate Authority constituted under sub-section (1) of Section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act, subject to certain modifications.

Accordingly, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in Section 21A and Section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:



The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

Certain Provisions Relating to Misconduct under the Company Secretaries Act, 1980

- (a) Professional misconduct in relation to Company Secretaries in Practice. (Part I of the First Schedule)
- (b) Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule)
- (c) Professional misconduct in relation to members of the Institute generally. (Part III of the First Schedule)
- (d) Other misconduct in relation to members of the Institute generally (Part IV of the First Schedule)
- (e) Professional misconduct in relation to Company Secretaries in practice requiring action by disciplinary committee (Part I of the Second Schedule)
- (f) Professional misconduct in relation to members of the Institute generally, requiring action by disciplinary committee (Part II of the Second Schedule).
- (g) Other misconduct in relation to members of the Institute generally (Part III of the Second Schedule)

Complaints and Enquiries Relating To Professional or Other Misconduct of Members

1. any complaint received against a member of the Institute under Section 21 shall be investigated, and any enquiry relating to misconduct of such member shall be held, by the Disciplinary Committee.
2. A complaint under Section 21 shall be made to the Council in the appropriate form, duly verified as required therein.

3. Every complaint shall contain the following particulars, namely-
 - (a) the acts or omissions which, if proved, would render the member complained against guilty of any professional or other misconduct;
 - (b) the oral and/or documentary evidence relied upon in support of the allegations made in the complaint.
4. Every complaint other than a complaint made by or on behalf of the Central or any State Government, shall be accompanied by a deposit of rupees fifty which shall be forfeited, if the Council, after considering the complaint, comes to the conclusion that no prima facie case is made out and, moreover, that the complaint is either frivolous or has been made with *mala fide* intention.

DESCRIPTIVE QUESTIONS

2018 - Dec [6] (b) Rakesh, practising Company Secretary, has accepted the position of Secretarial Auditor previously held by another Company Secretary in practice by communicating through SMS. He also used designation 'Company Law Consultant' in his visiting cards. Examine with reference to the relevant provisions of Company Secretaries Act, 1980 and/or Companies Act, 2013 whether these are in order. **(5 marks)**

Answer:

Clause 8 of Part I of First 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 accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing.

The primary requirement under this clause is of prior communication with the previous incumbent. The is intended for reasons of professional courtesy.

It would be necessary that the communication, in order to be effective, shall be by a registered letter or by hand with an acknowledgment so that there is positive evidence of the communication having been complete. With the advent of use of the technology, communication by any electronic

medium viz., SMS, WhatsApp and such other Messenger apps is permitted, provided the sender (the PCS taking up the assignment) is able to establish that the message is delivered to the recipient before he or she takes up the assignment.

Therefore, Rakesh is not guilty of professional misconduct in this case.

Clause 8 of Part I of First 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 uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letter-heads or signboards, unless it is a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

Designations like Company Law Consultant, Income Tax Consultant, Corporate Adviser, Investment Adviser, Management Consultant etc. are prohibited.

Therefore, Rakesh is guilty of professional misconduct in this case.

— Space to write important points for revision —

2019 - June [6] (b) How would you substantiate the view that the members of the Institute of Company Secretaries of India (ICSI) are subject to disciplinary mechanism? **(5 marks)**

Answer:

The members of the Institute of Company Secretaries of India are subject to disciplinary mechanism under First and Second Schedule of the Company Secretaries Act as amended from time to time.

Where a member is guilty of any professional or other misconduct mentioned in the First Schedule, the matter shall be placed before the Board of Discipline.

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Where a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, the matter shall be placed before the Disciplinary Committee.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely;

- (a) reprimand the member;
- (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

— Space to write important points for revision —

2019 - Dec [6] (a) CS Rohan, a company secretary in practice availed loan against his personal investments from a bank. He issued two cheques towards repayment of the said loan as per terms of sanction of loan. Both the cheques were returned by the bank with remarks 'returned due to insufficient funds'. Comment on the facts given with reference to provisions of the Company Secretaries Act, 1980. **(5 marks)**

PRACTICAL QUESTIONS

2019 - June [6] (a) Ragini, a practicing company secretary expressed her opinion on a report given to a business firm called "Quick March Consultants". Ragini has an interest in the same to be extent of 12% of shares in the firm. Is she guilty of professional misconduct? **(5 marks)**

Answer:

Clause 4 of Part I of the Second Schedule to the Companies Secretaries Act, 1980 deals with professional misconduct in relation to Company Secretaries in Practice. A company secretary in practice shall be deemed to be guilty of professional misconduct, if he —

"Expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest;"

This clause ensures that a professional has to be independent, while expressing any opinion. He should not have any substantial interest in the business enterprise to which the report or statement pertains. That would create a conflict with his duty. Expressing opinion or giving report with appropriate disclosure about his interest in the report was permitted earlier. However under the new clause there is a total ban on expressing opinion or giving any report about any business enterprise in which he, his firm or a partner in his firm has a substantial interest. "Substantial Interest used in this clause is not limited to financial interest only.

In this connection it may be stated that the Council of the ICSI pursuant to Regulation 168 of the Company Secretaries Regulations, 1982 passed a resolution in which 'Substantial Interest' has been defined to mean an interest to the extent of 25%. The same guideline is relevant under the above clause also.

Based on the above regulation, Ragini who holds only 12% of shares in the business firm Quick March Consultants would not be guilty of Professional mis-conduct.

— Space to write important points for revision —

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TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q1. Write short notes on :

- (a) Board of Discipline
- (b) Fellow member
- (c) Appellate authority

Answer:

(a) Board of Discipline: The Board of Discipline shall be constituted by the Council of the Institute under **Section 21A of the Companies Act, 1980**. The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

- (b) **Fellow member:** Any person whose name is entered in the Register of members maintained by Institute of Company Secretaries of India shall be deemed to have become an Associate and as long as his name remains so entered, shall be entitled to use the letters "A.C.S." after his name to indicate that he is an Associate.

A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of fees, be entered in the Register as a Fellow.

- (c) **Appellate authority:** Under section 22A of the Act the Appellate Authority constituted under **sub-Section (1) of Section 22A of the Chartered Accountants Act, 1949**, shall be deemed to be the Appellate Authority for the purposes of this Act, subject to certain modifications. Accordingly, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in **Section 21A and 21B**, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under **sub-section (3) of Section 21A and sub-Section (3) of Section 21B** and may -

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- (a) confirm, modify or set aside the order;
 - (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
 - (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
 - (d) pass such other order as the Authority thinks fit:
- Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

— Space to write important points for revision —

DESCRIPTIVE QUESTIONS

Q2. What is the Disciplinary Mechanism in case of misconduct of clause 5 of Part I of First Schedule of Company Secretaries Act, 1980?

Answer:

1. Disciplinary Directorate:

Section 21 of the Act provides for the establishment of a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct. The Disciplinary Directorate shall follow such procedure as may be specified to make investigations under the Act. Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, the matter shall be placed before the Board of Discipline.

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, the matter shall be placed the Disciplinary Committee.

2. Board of Discipline:

The Board of Discipline shall be constituted by the Council of the Institute under **Section 21A of the Companies Act, 1980**. The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

3. Disciplinary Committee:

According to Section 21B a Disciplinary Committee shall be constituted by the Council. The Disciplinary Committee shall consist of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

The Council may constitute more Disciplinary Committees as and when it considers necessary. The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

4. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court:

Section 21C provides that for the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

5. Appeal to Authority:

Under Section 22A of the Act the Appellate Authority constituted under **sub-section (1) of Section 22A of the Chartered Accountants Act, 1949**, shall be deemed to be the Appellate Authority for the purposes of this Act, subject to certain modifications.

Accordingly, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in Section 21A and 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.



The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under **sub-section (3) of Section 21A and sub-Section (3) of Section 21B** and may -

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.




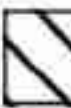

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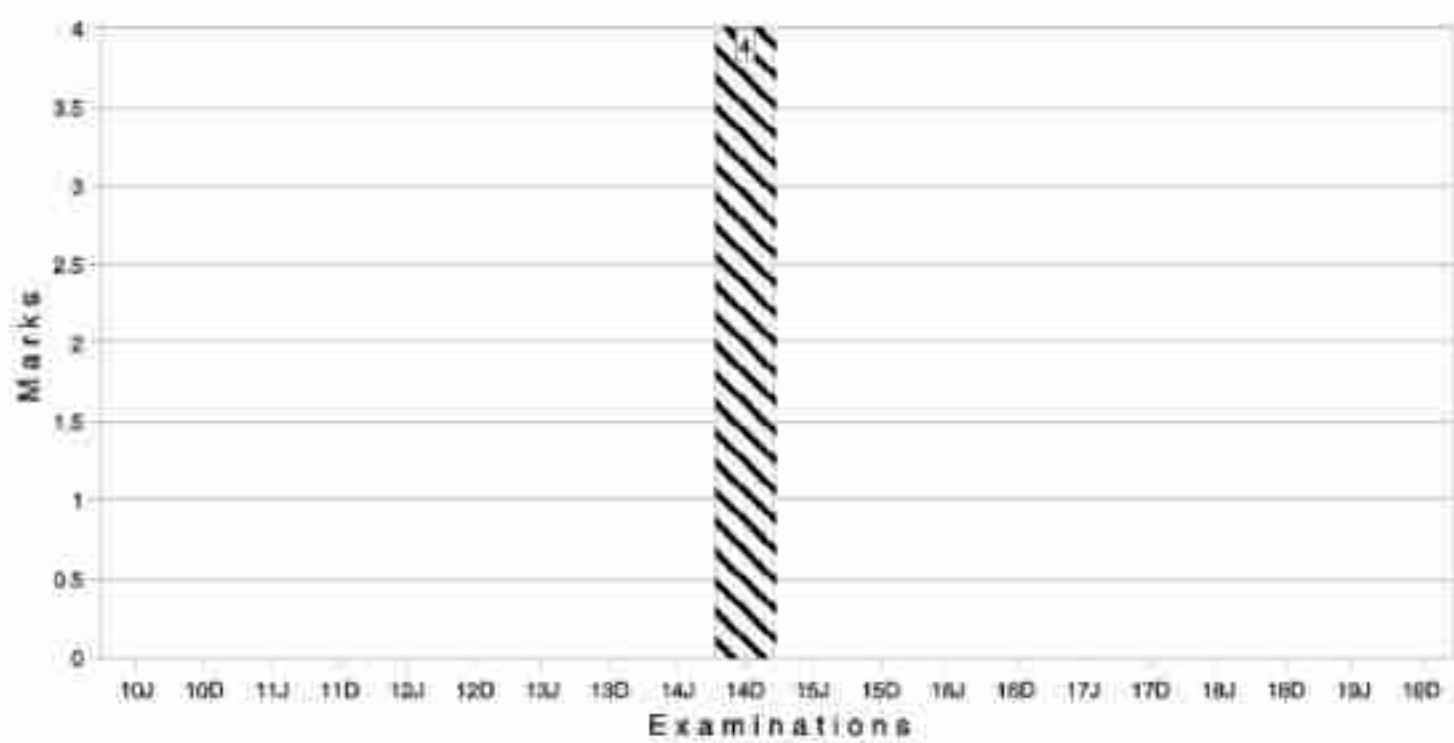


<div>22</div> <div>SECRETARIAL STANDARDS BOARD</div>	
THIS CHAPTER INCLUDES	
<ul style="list-style-type: none">Function of SSB of ICSINeed and Scope of Secretarial Standards	<ul style="list-style-type: none">Process of making of Secretarial Standards

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

Secretarial Standards Board

SSB was constituted in the year 2000. The formulation of SSB is a unique and pioneering step by the Institute of Company Secretaries of India (ICSI) since there was no such Board or body throughout the world. The purpose of constituting this Board was for long-term benefits for the growth and enhanced visibility of the profession and setting up international benchmarks.
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Functions of the Secretarial Standards Board

The main functions of SSB are:

- | |
|--|
| <ul style="list-style-type: none">(i) Formulating Secretarial Standards;(ii) Clarifying issues arising out of the Secretarial Standards;(iii) Issuing Guidance Notes; and(iv) Reviewing and updating the Secretarial Standards/ Guidance Notes at periodic intervals. |
|--|

Need of Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.
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SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment, practical applicability and the best secretarial practices prevalent.

Secretarial Standards are developed in a transparent manner after extensive deliberations, analysis, research and after considering the views of corporates, regulators and the public at large.
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Scope of Secretarial Standards

Secretarial Standards do not seek to substitute or supplant any existing laws or rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards are issued in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Process of making Secretarial Standards

- (i) SSB, in consultation with the Council, determine the areas in which Secretarial Standards need to be formulated and the priority thereof.
- (ii) In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.
- (iii) The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.
- (iv) On the basis of suggestions received on the preliminary draft, an Exposure Draft of proposed Secretarial Standard will be prepared and published in the "Chartered Secretary", the journal of ICSI, and placed on the Website of ICSI for inviting suggestions/comments from public at large.
The exposure draft will also be circulated to:
 - (a) All Council Members
 - (b) Regional Council/Chapters
 - (c) Professional Bodies (ICAI/ICoAI).
 - (d) Chambers of Commerce/Industry Associations
 - (e) MCA/SEBI/RBI and such other bodies/organisations as may be decided by SSB
 - (f) All members of the Institute through bulk e-mail/website link etc.
- (v) after taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.



- (vi) The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

DESCRIPTIVE QUESTIONS

2014 - Dec [6] (b) Introduction of Secretarial Standards by the Institute of Company Secretaries of India (ICSI) is a unique and pioneering effort towards attainment of good Corporate Governance. Do you agree? Explain briefly. **(4 marks)**

Answer:

1.	Issued for the first time in any Country – A unique and Pioneering Effort	The formulation of Secretarial Standards by the 'Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) is a unique and pioneering step towards standardisation of diverse secretarial practices prevalent in the corporate sector.
2.	Need to promote uniformity and Consistency	Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.
3.	Functions of Secretarial Standards Board	The Secretarial Standards Board formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent. Secretarial Standards are developed: <ul style="list-style-type: none">• in a transparent manner;• after extensive deliberations, analysis, research; and• after taking views of corporates, regulators and the public at large.

4.	Members of SSB	SSB was constituted in the year 2000. The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of regulatory authorities such as the Ministry of Corporate Affairs, the Securities and Exchange Board of India, the Department of Economic Affairs, Reserve Bank of India, Department of Public Enterprises, Chamber of Commerce and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India. The ICSI-CCGRT (Centre for Corporate Governance Research and Training) provides technical support to SSB.
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— Space to write important points for revision —

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION
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DESCRIPTIVE QUESTIONS

Q1. What is the process of formulating Secretarial Standards?

Answer:

The following procedure is adopted for formulating and issuing Secretarial Standards:

- (i) SSB, in consultation with the Council, determine the areas in which Secretarial Standards need to be formulated and the priority thereof.
- (ii) In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.

- (iii) The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.
- (iv) The preliminary draft will then be circulated to the members of the Central Council, as well as to Regional Councils/ Chapters of ICSI, various professional bodies, Industry Association/Chambers of Commerce, regulatory authorities such as the Ministry of Corporate Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.
- (v) On the basis of suggestions received on the preliminary draft, an Exposure Draft of proposed Secretarial Standard will be prepared and published in the "Chartered Secretary", the journal of ICSI, and placed on the Website of ICSI for inviting suggestions/comments from public at large.
The exposure draft will also be circulated to:
 - (a) All Council Members
 - (b) Regional Council/Chapters
 - (c) Professional Bodies (ICAI/ICoAI).
 - (d) Chambers of Commerce/Industry Associations
 - (e) MCA/SEBI/RBI and such other bodies/organisations as may be decided by SSB
 - (f) All members of the Institute through bulk e-mail/website link etc.
- (vi) After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
- (vii) The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Section 118 (10) of Companies Act, 2013 provide that the every company shall observe secretarial standards with respect to general and board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government.

Hence ICSI has so far issued the following Standards:

- Secretarial Standards on Meetings of Board of Directors(SS-1)
- Secretarial Standards on General Meetings(SS-2)
- Secretarial Standard on Dividend (SS-3)(adoption of the same is voluntary)

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Q2. What are the Functions of Secretarial Standards Board?

Answer:

The main functions of SSB are:

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

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Q3. What is the need and scope of Secretarial Standard?

Answer:

Need of Secretarial Standards:

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

SSB formulates Secretarial Standards taking into consideration the applicable laws, business environment, practical applicability and the best secretarial practices prevalent.

Secretarial Standards are developed in a transparent manner after extensive deliberations, analysis, research and after considering the views of corporates, regulators and the public at large.



Scope of Secretarial Standards:

Secretarial Standards do not seek to substitute or supplant any existing laws or rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

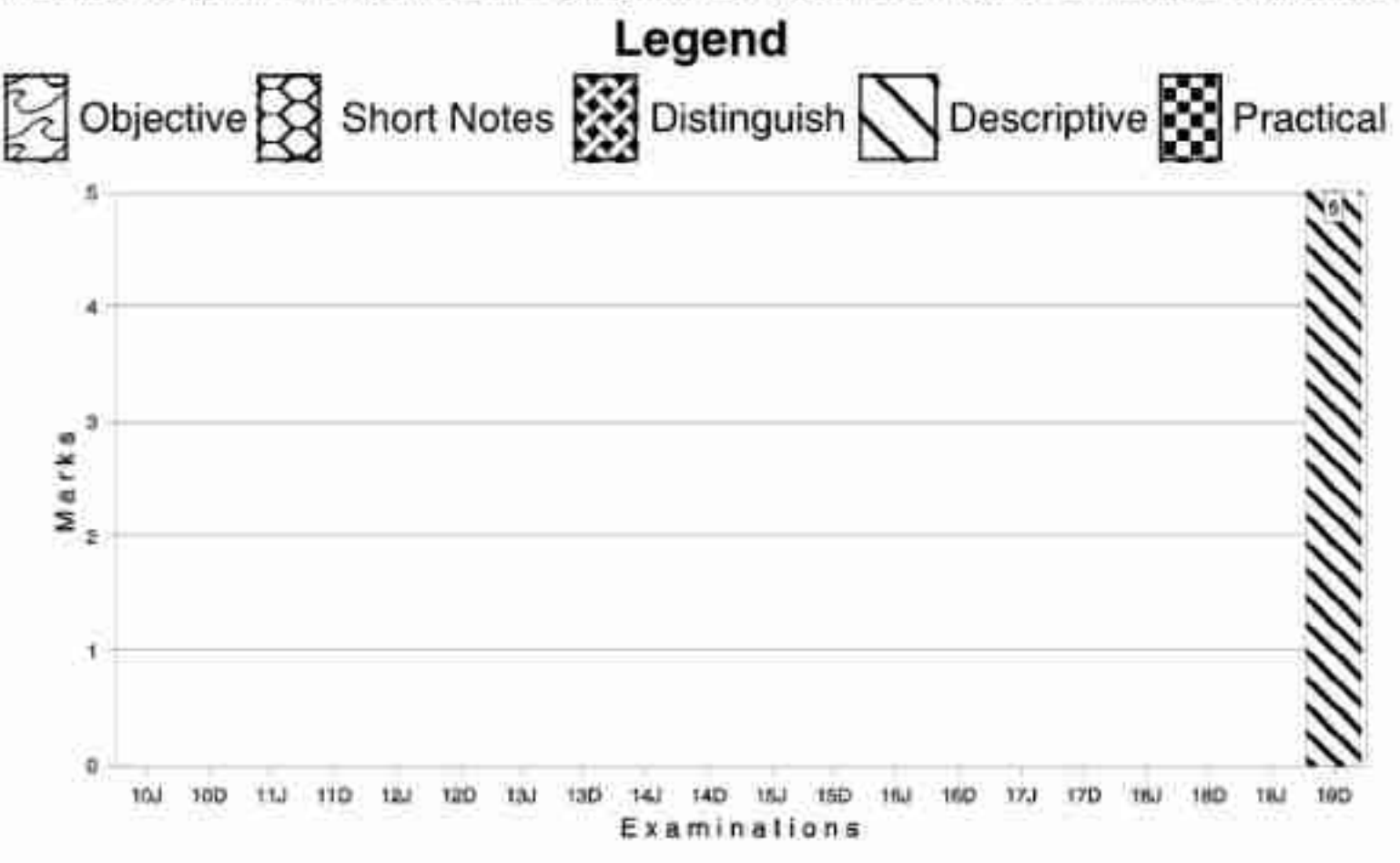
Secretarial Standards are issued in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

—— Space to write important points for revision ——



23		<i>MEGA FIRMS</i>	
THIS CHAPTER INCLUDES			
<ul style="list-style-type: none">• Adoption of Mode of Practice• Applicable Rules, Regulations and Guidelines for PCS or Firm of PCS• What is Multidisciplinary/ Mega firm?• Pre-requisites of Mega Firm		<ul style="list-style-type: none">• Benefits of Mega Firm• Risks of Mega Firm• Process of Constitution• Management of Firms• Revenue Sharing Models	

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



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