

**Mock Test Paper - Series I: March, 2025**

**Date of Paper: 10<sup>th</sup> March, 2025**

**Time of Paper: 10 A.M. to 1 P.M.**

**INTERMEDIATE COURSE: GROUP – I**

**PAPER – 2: CORPORATE AND OTHER LAWS**

**ANSWER TO PART – I CASE SCENARIO BASED MCQS**

1. (b)
2. (c)
3. (b)
4. (b)
5. (c)
6. (b)
7. (b)
8. (a)
9. (a)
10. (b)
11. (a)
12. (b)
13. (c)
14. (a)
15. (b)

**ANSWERS OF PART – II DESCRIPTIVE QUESTIONS**

1. (a) According to Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

As per the facts of the question, Apeksha as the earlier nominee is withdrawing her consent of nomination in the OPC of her brother Alok. Now, Alok is intending to appoint her son Shambhu as the nominee in his OPC.

In the light of the provision of the Companies Act, 2013, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Alok cannot appoint his son Shambhu as a nominee to his OPC.

**(b)** According to section 138 read along with Rules of the Companies Act, 2013, every private company having:

(A) turnover of 200 crore rupees or more during the preceding financial year; or

(B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ` 45 crore and turnover of ` 250 crore for the financial year 2023-24.

Since, the company is fulfilling the criteria of turnover (i.e. more than ` 200 crore), hence, it is required to appoint an internal auditor for the financial year 2024-25.

**(c)** According to section 5 of the Foreign Exchange Management Act, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and

3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. New wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in Singapore. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. New cannot withdraw foreign exchange for this purpose.

(ii) In the given situation, it is a current account transaction, where Mr. Manoj is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

2. (a) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, 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.

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.

In the instant case, there were only 12 members personally present on the day (i.e. 2<sup>nd</sup> September 2024) of meeting of ABC Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present. However, as per the provisions of section 103, in the adjourned meeting, the members present shall be considered as quorum.

In the light of provision of law and facts of the case:

(i) The original meeting was validly adjourned, as the required quorum was not present.

(ii) The adjourned AGM was validly conducted as members present shall be considered as quorum.

- (b) According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Registrar of Companies.

Also, a firm may be a member of the company registered under section 8.

Here, one of the matters of articles of PQR Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of ABC & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, ABC & Co. can be its member.

- (c) (i) **“Affidavit” [Section 3(3) of the General Clauses Act, 1897]:** ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

- (ii) **“Good Faith” [Section 3(22) of the General Clauses Act, 1897]:** A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide, whether it is done negligently or not is presumed to have been done in good faith.

3. (a) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees’ stock option will not be considered.

Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities

under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

(i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

(ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

(iii) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.

**(b)** As per the provisions of section 2(16) of the Companies Act, 2013, “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage.

Whenever a company obtains working capital loans from financial institutions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for ` 30 Lakh working capital loan, Lily Private Limited is required to create a charge on it.

Lily Private Limited is not required to create a charge for ` 5 Lakh adhoc overdraft on the personal guarantee of a director. Since charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company.

- (c) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

4. (a) As per section 2(40) of the Companies Act, 2013, **Financial Statement** in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Lovely has to prepare the above financial statements except Cash Flow Statement; since Sriram Private Limited is a start-up private company

- (b) **Registered Office of LLP and Change therein**

As per section 13 of the Limited Liability Partnership Act, 2013,

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

- (2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- (3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

In the given question, the registered office of XYZ LLP is at Mumbai. Further, the question informs that the LLP has shifted their office to Pune.

In the light of the provisions of the Act and the facts of question, the registered office of XYZ LLP will be Mumbai as it is registered with the Registrar. The changed office to Pune cannot be treated as a registered office.

Thus, the service of notice at the Mumbai address is legally valid.

- (c) While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

**When will courts refer to the preamble as an aid to construction?**

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

5. (a) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20(2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

- (b) An auditor appointed under the Companies Act, 2013, shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be.

But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:

1. Accounting and book keeping services;
2. Internal audit;
3. Design and implementation of any financial information system;
4. Actuarial services;
5. Investment advisory services;
6. Investment banking services;
7. Rendering of outsourced financial services;
8. Management services; and
9. Any other kind of services as may be prescribed



- (c) By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Ms. Alka, director in Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Ms. Alka is bound to comply by section 166 of the Companies Act, 2013.

6. (a) According to section 114 of the Companies Act, 2013, a resolution shall be a special resolution when 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.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (15) being not more than 3 times of the votes cast against (6), therefore the decision of the chairman is not in order.

- (b) The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.
- (c) The list of permissible classes of transactions made by persons resident in India is:
- (a) Investment by a person resident in India in foreign securities.

- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Undertake derivative contracts