

## PAPER – 2: CORPORATE AND OTHER LAWS

### PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR MAY, 2022 EXAMINATIONS

#### Applicability for May, 2022 examinations

The Study Material (September 2021 edition) is applicable for May, 2022 examinations. This study material is updated for all amendments till 30<sup>th</sup> April, 2021.

Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1<sup>st</sup> May, 2021 to 31<sup>st</sup> October, 2021 are mentioned below:

#### THE COMPANIES ACT, 2013

##### I. Chapter 2: Incorporation of company and matters incidental thereto

##### Amendments related to - Notification S.O. 2904(E) dated 22<sup>nd</sup> July, 2021

The Central Government has amended Section 16 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

##### Amendment:

In **section 16** of the Companies Act, 2013:

- (i) in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted;
- (ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

[Enforcement Date: 1st September, 2021]

For point (i)- Old Law (Pg 2.39)

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the ..... it may direct the company to change its name and the company shall change its name or new name, as the case may be, **within a period of 6 months** from the issue of such direction, after adopting an ordinary resolution for the purpose.

For point (ii)- Old Law (Pg 2.39)

If a company makes default in complying with any direction—

Liabe person	Penalty/punishment
<b>Company</b>	<b>Fine of 1,000 rupees for every day during which the default continues</b>
<b>Every Officer who is in default</b>	<b>Fine varying from 5,000 rupees to 1 lakh rupees.</b>

## **II. Chapter 8: Declaration and Payment of Dividend**

### **Amendments related to - Notification G.S.R. 396(E) dated 9<sup>th</sup> June, 2021**

The Central Government has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021.

#### **Amendment:**

In **rule 3**, in sub-rule (2), after clause (f), the following shall be inserted, namely:-

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;”

Old Law (Pg 8.21)

Clause (fa) is Newly inserted

## **III. Chapter 9: Accounts of companies**

The Ministry of Corporate Affairs have made a clarification with respect to CSR:

### **General Circular No. 09/2021 Dated 5th May, 2021**

1. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

2. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

3. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time.

General Circular 13/2021 dated 30<sup>th</sup> July, 2021

The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

Old Law (Pg 9.47)

The clarifications are newly inserted

## PART – II : QUESTIONS AND ANSWERS

### QUESTIONS

#### DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

1. Perfect Tyres and Rubbers Ltd. is a listed entity engaged in the business of manufacturing of tyres and tubes for Light and Heavy Commercial Vehicles. During the financial year 2019-20, the company has declared interim dividend of 5% on the equity shares in its Board meeting held on 17<sup>th</sup> October, 2019, out of the profits earned during the first quarter of FY 2019-20. Further, the Board of Directors of the company after reviewing results of the fourth quarter of FY 2019-20 again recommended for second Interim Dividend @ 5% on 25<sup>th</sup> April, 2020.

The Board of Directors of the company approved the financial result for the FY 2019-20 in its meeting held on 5<sup>th</sup> August, 2020, and recommended a final dividend of 15% (including the interim dividends paid earlier) in this board meeting. The general meeting of the shareholders was convened on 31<sup>st</sup> August, 2020. The shareholders of the company demanded that since interim dividend @10% (5% + 5%) was declared by the company, so the final dividend should not be less than 20% (including the interim dividends). When the Company Secretary emphasised that final dividend cannot exceed, what the Board of Directors have recommended in their board meeting, some of the shareholders boycotted the meeting and moved out of the meeting hall, in protest of the company's decision. However, the agenda for declaration of the dividend was passed unanimously by rest of the shareholders present in the meeting hall, fulfilling the criteria of requirement of quorum, as per the provisions of the Companies Act, 2013.

After approval of the shareholders, the dividend amount was paid to the shareholders, however dividend to some of the shareholders could not be paid within the prescribed period for variety of reasons. The company transferred the unpaid dividend amount to a separate bank account on 15<sup>th</sup> October, 2020.

The details of the unpaid dividend amount for the previous year's lying in the unpaid dividend account is as under:

S. No.	Dividend pertaining to the FY	Date of declaration of Dividend	Date when the amount was transferred to Unpaid dividend Account	Amount lying in the Unpaid Dividend Account (₹ in lakhs)
1	2019-20	31.08.2020	15.10.2020	92.50
2	2018-19	25.08.2019	28.09.2019	85.14
3	2017-18	20.08.2018	22.09.2018	80.00
4	2016-17	05.09.2017	07.10.2017	75.25
5	2015-16	01.09.2016	04.10.2016	45.15
6	2014-15	07.09.2015	09.10.2015	35.26
7	2013-14	05.05.2014	08.06.2014	15.10
8.	2012-13	06.06.2013	08.07.2013	07.25

Sustram, one of the investors who is holding 1000 shares in physical form, by visiting web-site of the company, came to know that company had declared the dividends in some previous years, but have not been paid to him. This happened due to the fact the company was not having his current address and bank account details. Sustram approached the company, along with all the supporting evidence to his claim and demanded the dividend amount.

The company after being satisfied, paid all the dividend amount pertaining to the FY 2013-14 to FY 2019-20. However, for FY 2012-13, the company informed that since the amount of dividend has been transferred to Investor Education and Protection Fund, it cannot be taken back now. Aggrieved from this, Sustram threatened the company officials to take appropriate legal action.

Based on the above facts, answer the following MCQs:

- 1.1 When the shareholders demanded for increase in the rate of dividend, but since the shareholders cannot increase the rate of dividend what the Board of Directors have recommended, some of them walked out of the meeting hall. What shall be the consequences of it:
  - (a) If, even after boycott, quorum is present, all the time during the course of general meeting and they have approved with majority, the rate recommended by the Board shall be treated as approved.

- (b) Members present at the beginning of the meeting shall remain present all the time during the general meeting, to approve any agenda, else it will be treated as nullified.
  - (c) The approval of the dividend is an ordinary business resolution of the company, so if some of the members have boycotted the meeting, it will have no effect, even if the quorum is not present.
  - (d) The recommendation of the Board of Directors of the company relating to the rate of dividend shall stand withdrawn.
- 1.2 At which date, the unpaid dividend not claimed by the shareholders, shall be transferred to a separate bank account, in the above case:
- (a) On 5<sup>th</sup> August, 2020 (the date of Meeting of Board)
  - (b) On 31<sup>st</sup> August, 2020 (the date of Meeting of Shareholders)
  - (c) On 30<sup>th</sup> September, 2020 (the date, after 30 days from the meeting of shareholders)
  - (d) Latest by 7<sup>th</sup> October, 2020 (within seven days from the date of expiry of 30 days)
- 1.3 The company transferred the amount of unpaid dividend to a separate bank account on 15<sup>th</sup> October, 2020.
- What is the interest liability on the part of the company?
- (a) No liability.
  - (b) Interest @ 10% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
  - (c) Interest @ 12% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
  - (d) Interest @ 15% p.a. on so much of the amount as has not been transferred to the Unpaid Dividend Account.
- 1.4 In the given case, when and how much amount, the company shall transfer the funds to the Investor Education and Protection Fund:
- (a) Four years after 01.09.2016; Rs 45.15 lakh
  - (b) Five years after 07.09.2015; Rs 35.26 lakh
  - (c) Six years after 05.05.2014; ₹ 15.10 lakh
  - (d) Seven years after 08.07.2013; ₹ 07.25 lakh

2. Amber Limited is a manufacturer of glassware. Its paid up share capital is divided into 20,000 shares of ₹ 100 each. The company is maintaining its register of members as per the provisions of the Companies Act, 2013. The company wanted to close its register of members for declaring dividend. It may do so by giving minimum ..... days' notice.
- (a) 7 days
  - (b) 10 days
  - (c) 15 days
  - (d) The register of members cannot be closed.
3. .... interpretation concerns itself with "what the law says" and ..... interpretation, seeks to ascertain "what the law means".
- (a) Grammatical, Logical
  - (b) Legal, usual
  - (c) Usual, legal
  - (d) Logical, grammatical
4. Arvind lends money to Mamta against the security of jewellery deposited by Mamta with Arvind. Arvind gave this jewellery to his friend Vinayak who had a safe locker at his home. Who is the pawnor in the given case?
- (a) Arvind
  - (b) Mamta
  - (c) Vinayak
  - (d) Both Arvind and Vinayak
5. Raman, the original allottee of 2000 equity shares in ABC Limited has transferred the same to Ruchi. The instrument of transfer dated 21<sup>st</sup> August, 2020, duly stamped and signed by Raman was handed over to Ruchi. Advise Ruchi regarding the latest date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.
- (a) 21<sup>st</sup> August, 2020.
  - (b) 20<sup>th</sup> September, 2020
  - (c) 20<sup>th</sup> October, 2020.
  - (d) 19<sup>th</sup> November, 2020

**DIVISION B: DESCRIPTIVE QUESTIONS****PART I: COMPANY LAW****The Companies Act, 2013**

1. Following are some of the securities, issued by different companies related with each other, as follows:-

Company	Securities Issued	Remarks
Kleshrahit Ltd.	Listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations.	Has the power to appoint 2/3 <sup>rd</sup> directors in Indriyadaman Ltd.
Indriyadaman Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	Holding 60% voting power in Sajagta (P) Ltd.
Sajagta (P) Ltd.	Listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations.	The company holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee.

Equity shares issued by the Kleshrahit Ltd. and Indriyadaman Ltd. are not listed in any of the recognized stock exchanges.

In the context of aforesaid facts, answer the following question(s):-

- Whether the aforesaid companies can be considered as listed company(ies)?
  - Explain the relationship between the aforesaid companies?
2. Abhiyogic Ltd. having 1,000 members with paid-up capital of ₹ 1 crore, decided to hold its Annual General Meeting (AGM) on 21<sup>st</sup> August, 2022, and it received a notice on 2<sup>nd</sup> July, 2022, from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, for a resolution to be passed at the AGM for appointing Vedya & Co., as its auditor from F.Y. 2022-23 onwards, instead of its existing auditor, Chepal & Co. which was originally appointed for 5 years term and had completed its 4 years term.

Such a notice for resolution was forthwith send by the company to Chepal & Co. which gave its representation in writing to the company along with a request for its notification to the members of the company, but it was received too late (3 days before the meeting) by the company.



In the context of aforesaid facts, please answer to the following question(s):-

- (a) Whether the said notice was given by adequate number of members within the prescribed time limit to Abhiyogic Ltd.?
  - (b) Whether the company was bound to send to its members such representation made by Chepal & Co. and if it could not have been send, then in such case, what was the responsibility(ies) of the company?
3. Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ₹ 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ₹ 1 crore will be considered as deposit?
4. The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.
5. One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.
- However, such alteration in the articles was opposed by Dhvaj & Co., a partnership firm which is its member that there such alteration was not valid.
- Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhvaj & Co. was valid and whether it can be a member in such company?
6. Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013.
7. Krish Limited created a charge on its assets on 2<sup>nd</sup> February, 2021. However, the company did not register the charge with the Registrar of companies till 15<sup>th</sup> March, 2021.
- (a) What procedure should the company follow to get the charge registered?
  - (b) Suppose the company realises its mistake of not registering the charge on 27<sup>th</sup> May, 2021 (instead of 15<sup>th</sup> March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013.



8. Vishal Limited has paid dividend consistently every year at the rate of 10% on its equity share capital in the last 5 years (2015-2016 to 2019-2020). The company has incurred loss in the current financial year (FY 2020-2021). It still wants to declare dividend for the FY 2020-2021. Whether the company can do so? Explain.

## **PART II: OTHER LAWS**

### **The Indian Contract Act, 1872**

9. 'Surendra' guarantees 'Virendra' for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March, 2021. 'Virendra' supplied goods of ₹ 30,000 on 01.03.2021 and of ₹ 20,000 on 03.03.2021 to 'Jitendra'. On 05.03.2021, 'Surendra' died in a road accident. On 10.03.2021, being ignorant of the death of 'Surendra', 'Virendra' further supplied goods of ₹ 40,000. On default in payment by 'Jitendra' on due date, 'Virendra' sued on legal heirs of 'Surendra' for recovery of ₹ 90,000. Describe, whether legal heirs of 'Surendra' are liable to pay ₹ 90,000 under the provisions of Indian Contract Act 1872.

What would be your answer, if the estate of 'Surendra' is worth of ₹ 45,000 only?

### **The Negotiable Instruments Act, 1881**

10. 'Anjum' drew a cheque for ₹ 20,000 payable to 'Babloo' and delivered it to him. 'Babloo' indorsed the cheque in favour of 'Rehansh' but kept it in his table drawer. Subsequently, 'Babloo' died, and cheque was found by 'Rehansh' in 'Babloo's table drawer. 'Rehansh' filed the suit for the recovery of cheque. Whether 'Rehansh' can recover cheque under the provisions of the Negotiable Instrument Act 1881?

### **The General Clauses Act, 1897**

11. Ayush and Vipul are good friends and pursuing CA course. While doing group studies for the paper of "Corporate and Other Law", they are confused about the provisions of section 3 of the Companies Act 2013. Section 3 provides "A company may be formed for any lawful purpose by....." Both Ayush and Vipul are in difficulty about the meaning of word "may". Whether it should be taken as mandatory or directory?

### **Interpretation of Statutes**

12. When can the Preamble be used as an aid to interpretation of a statute?

**SUGGESTED ANSWERS****ANSWER TO CASE SCENARIO / MULTIPLE CHOICE QUESTIONS**

- 1.1 (a)
- 1.2 (d)
- 1.3 (c)
- 1.4 (d)
- 2. (a)
- 3. (a)
- 4. (b)
- 5. (c)

**ANSWER TO DESCRIPTIVE QUESTIONS**

1. (a) According to section 2(52) of the Companies Act, 2013, listed company means a company which has any of its securities listed on any recognised stock exchange; Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.
- According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:-
- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
    - (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
    - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
    - (iii) both categories of (i) and (ii) above.
  - (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
  - (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Company Name	Analysis and Conclusion
Kleshrahit Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible redeemable preference shares issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(ii) to Rule 2A, as aforesaid, and accordingly, Kleshrahit Ltd. <b>shall not be considered as a listed company.</b>
Indriyadaman Ltd.	Equity shares issued by the company are not listed. However, the company has issued listed non-convertible debt securities issued on private placement basis in terms of relevant SEBI Regulations which falls in the exceptions to the listed company, given as per clause (a)(i) to Rule 2A, as aforesaid, and accordingly, Indriyadaman Ltd. <b>shall not be considered as a listed company.</b>
Sajagta (P) Ltd.	The company has issued listed non-convertible debt securities issued on private placement basis on a recognised Stock Exchange in terms of relevant SEBI Regulations which falls in the exceptions to the listed company given as per clause (b) to Rule 2A, as aforesaid, and accordingly, Sajagta (P) Ltd. <b>shall not be considered as a listed company.</b>

- (b) According to section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

According to section 2(87) of the Companies Act, 2013, subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries; As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding – subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

(i) Relationship between Kleshrahit Ltd. & Indriyadaman Ltd.

It is given that Kleshrahit Ltd. has the power to appoint 2/3<sup>rd</sup> directors in Indriyadaman Ltd. i.e. majority of the directors can be appointed by Kleshrahit Ltd.

Accordingly, as per sub-clause (i) to section 2(87) read with the Explanation given in point (b), it can be understood that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. while the latter is the holding company of Indriyadaman Ltd.

(ii) Relationship between Indriyadaman Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd.

Accordingly, as per sub-clause (ii) to section 2(87), it can be understood that Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd. while the latter is the holding company of Sajagta (P) Ltd. as Indriyadaman Ltd. controls more than one-half of the total voting power of Sajagta (P) Ltd.

(iii) Relationship between Kleshrahit Ltd. & Sajagta (P) Ltd.

It is given that Indriyadaman Ltd. is holding 60% voting power in Sajagta (P) Ltd. and it has been derived that Indriyadaman Ltd. is the subsidiary company of Kleshrahit Ltd. and Sajagta (P) Ltd. is the subsidiary company of Indriyadaman Ltd., respectively.

Accordingly, as per sub-clause (ii) to section 2(87) read with the Explanation given in point (a), that a company shall be deemed to be a subsidiary company of the holding company even if the control is of another subsidiary company of the holding company i.e. subsidiary of subsidiary company will be deemed to be a subsidiary of the holding company.

Hence, it can be understood that Sajagta (P) Ltd. is deemed to be subsidiary company of Kleshrahit Ltd. while the latter would be considered as the holding company of Sajagta (P) Ltd.

(iv) Relationship between Sajagta (P) Ltd. & Pratibodh Ltd.

It is given that Sajagta (P) Ltd. holds 52% equity shares in Pratibodh Ltd. as an investment on behalf of another company in a capacity of a trustee i.e. in a fiduciary capacity.

As per the notification dated 27th December 2013, Ministry (MCA) clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding–subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Accordingly, Sajagta (P) Ltd. & Pratibodh Ltd. do not share any holding–subsidiary relationship as the former holds shares in latter just in a fiduciary capacity on behalf of another company.

2. (a) As per section 140(4) of the Companies Act, 2013, resolution for appointment of an auditor other than the retiring auditor at an Annual General Meeting requires special notice. As per Section 115 of the Companies Act, 2013, read with rule 23 of Companies (Management and Administration) Rules, 2014:-

Where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the 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 the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of 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.

Here, Abhiyogic Ltd. is having 1,000 members with paid-up capital of ₹ 1 crore, and it received a notice from its 60 members holding paid-up capital of ₹ 7 lakhs, in aggregate, on 2<sup>nd</sup> July, 2022 for a resolution to be passed at the AGM to be held on 21<sup>st</sup> August, 2022.

As the members who gave the notice hold more than ₹ 5 lakhs in the paid-up capital of the company, they were eligible to give such notice.

Further, the notice should have been given not earlier than 3 months but at least 14 days before the date of meeting - 21<sup>st</sup> August, 2022, and the notice was given on 2<sup>nd</sup> July, 2022 i.e. within the prescribed time limit.

Thus, it can be said that the said notice was made by adequate number of members within the prescribed time limit to Abhiyogic Ltd.

**(b) As per Section 140(4) of the Companies Act, 2013:** Where notice is given of a resolution appointing as auditor a person other than a retiring auditor and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

- (1) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (2) 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 representation by the company.

However, in the present case, Abhiyogic Ltd. received the representation made by Chepal & Co. too late and accordingly it was not bound to send such representation to its members even though it was requested by Chepal & Co. to do so.

Further, as per Section 140(4) of the Companies Act, 2013, if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting such a copy of representation thereof shall be filed with the Registrar.

Accordingly, Abhiyogic Ltd., apart from giving right to be heard orally to Chepal & Co. shall also made the representation read out at the AGM, if so required by Chepal & Co., and shall also file such representation with the Registrar, respectively.

3. As per sub-clause (ixa) of Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014, any amount raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India, are not considered as deposit.

Hence, ₹ 1 crore raised by Vrinda Limited will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

4. As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.



Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

According to clause (c) of section 26 (1), the prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Accordingly, the Board of Plum Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

5. 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 Central Government (the power has been delegated to Registrar of Companies).

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

Here, one of the matters of articles of Dhimaan 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 Dhewaj & Co. was valid.

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

6. According to section 2(69) of the Companies Act, 2013, Promoter means a person: -
- (a) Who has been named as such in a prospectus or is identified by the company in the annual return; or
  - (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
  - (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.



As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

7. According to section 77(1) of the Companies Act, 2013 it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within 30 days of its creation.

However, under clause (b) of first proviso to section 77 (1) the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee.

- (a) Krish Limited did not register the charge with the Registrar of companies till 15<sup>th</sup> March, 2021. In this case particulars of charge were not filed within the prescribed period of 30 days (i.e. till 4<sup>th</sup> March, 2021).

Taking advantage of clause (b) of first proviso to section 77 (1), Krish Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

- (b) Clause (b) of second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay *ad valorem* fees.

If the company realises its mistake of not registering the charge on 27<sup>th</sup> May, 2021 instead of 15<sup>th</sup> March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3<sup>rd</sup> April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3<sup>rd</sup> April, 2021 after paying the prescribed *ad valorem* fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

8. As per second proviso to Section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, where in any year there is absence of profit or there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves, only in accordance with the procedure laid down.

However, such declaration shall be subject to the following conditions:

- (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year.

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

- (b) The total amount to be drawn from such accumulated profits shall not exceed 10% of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- (c) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
- (d) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Hence, if the company wants to pay dividend in the current financial year, it can do so if all the above conditions have been fulfilled.

9. According to section 131 of Indian Contract Act 1872, in the absence of a contract to contrary, a continuing guarantee is revoked by the death of the surety as to the future transactions. The estate of deceased surety, however, liable for those transactions which had already taken place during the lifetime of deceased. Surety's estate will not be liable for the transactions taken place after the death of surety even if the creditor had no knowledge of surety's death.

In this question, 'Surendra' was surety for the transactions to be done between 'Virendra' & 'Jitendra' during the month of March 2021. 'Virendra' supplied goods of ₹ 30,000, ₹ 20,000 and of ₹ 40,000 on 01.03.2021, 03.03.2021 and 10.03.2021 respectively. 'Surendra' died in a road accident but this was not in the knowledge of 'Virendra'. When 'Jitendra' defaulted in payment, 'Virendra' filed suit against legal heirs of 'Surendra' for recovery of full amount i.e. ₹ 90,000.

On the basis of above, it can be said in case of death of surety ('Surendra'), his legal heirs are liable only for those transactions which were entered before 05.03.2021 i.e. for ₹ 50,000. They are not liable for the transaction done on 10.03.2021 even though Virendra had no knowledge of death of Surendra.

Further, if the worth of the estate of deceased is only ₹ 45,000, the legal heirs are liable for this amount only.

10. According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. [Section 57]

In the given case, cheque was indorsed properly but not delivered to indorsee i.e. 'Rehansh', Therefore, 'Rehansh' is not eligible to claim the payment of cheque.

11. The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling. However, sometimes Word 'may' has a mandatory force if directory force will defeat the object of the Act.

However, sometimes the words "may and shall" can be interpreted interchangeably depending on the intention of the legislator.

Ayush and Vipul, two CA students, are confused with the language of the provisions of section 3 of the Companies Act 2013 that whether the word "may" used in section should be considered as mandatory or directory.

In the given case, it can be said that the word "may" should be taken as mandatory force, because the law will never allow the formation of company with unlawful object.

Here the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory for a company for the compliance of section 3 for its formation.

12. 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.