

## CHAPTER 5

### THE COMPANIES ACT, 2013



#### INTRODUCTION

The Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956

#### APPLICABILITY OF THE COMPANIES ACT, 2013:

The provisions of the Act shall apply to-

- i. Companies incorporated under this Act or under any previous company law.
- ii. Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999)
- iii. Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- iv. Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
- v. Any other company governed by any special Act for

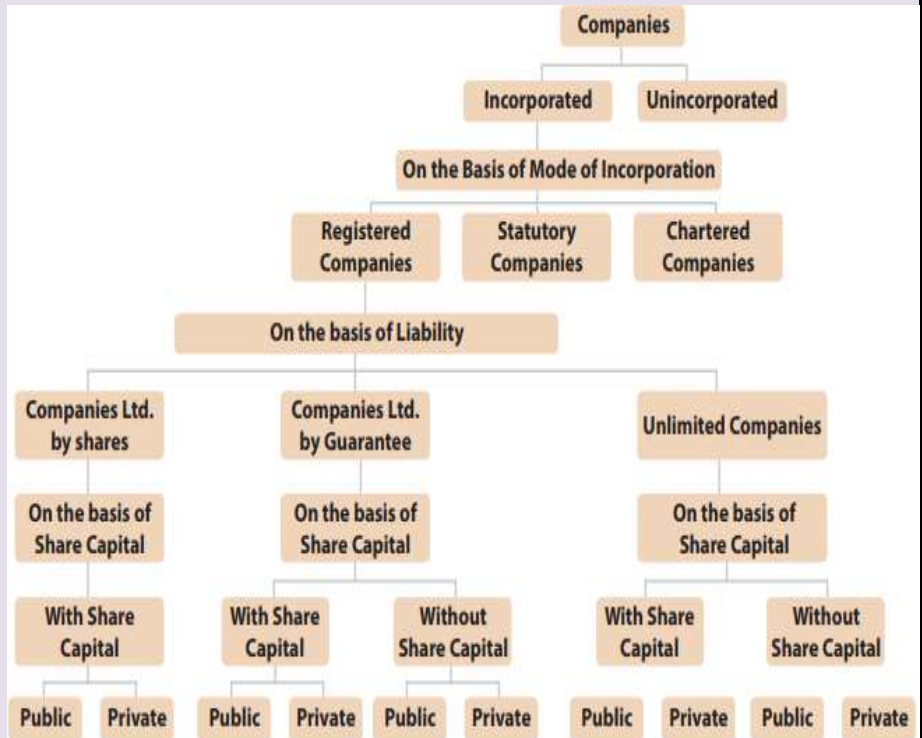
the time being in force.  
 vi. Such body corporate which are incorporated by any Act for time being in force, and as the Central Government may by notification specify in this behalf

**FEATURES OF COMPANY**

**Features of Company**

- Separate legal entity
- Limited liability
- Perpetual succession
- Common seal
- Transferability
- Separate property
- Capacity to sue

**CLASSES OF COMPANIES UNDER THE ACT**



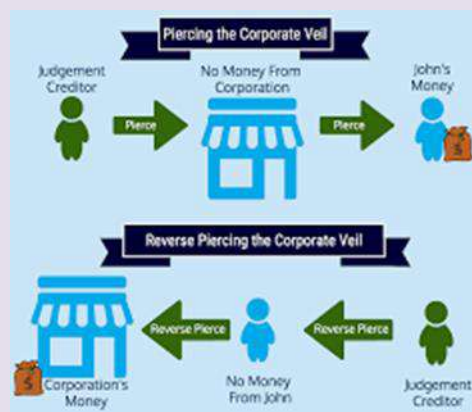
**Corporate veil refers to a legal concept whereby the company is identified separately from the members**

## CORPORATE VEIL

of the company.

The term corporate veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.



The salomon vs. Salomon and co ltd. Laid down the foundation of the concept of corporate veil or independent corporate personality.

## MODE OF REGISTRATION/ INCORPORATION OF COMPANY

**PROMOTERS:** The Companies Act, 2013 defines the term "Promoter" under section 2(69) which means a person—

- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; 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

	<p>accustomed to act.</p> <p><b>FORMATION OF COMPANY:</b> Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company.</p> <p>In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration.</p> <p>In exactly the same way, 2 or more persons can form a private company and one person where company to be formed is one-person company.</p> <p><b>INCORPORATION OF COMPANY:</b> Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.</p> <p><b>EFFECT OF REGISTRATION:</b> Section 9 of the Companies Act, 2013 provides for the effect of registration of a company.</p> <p>According to section 9, from the date of incorporation (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum. Such a registered company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.</p>
<p><b>CLASSIFICATION OF CAPITAL</b></p>	<p>a) Nominal or authorized or registered capital</p> <p>b) Issued capital</p> <p>c) Subscribed capital</p>

	<p><b>d) Called-up capital</b></p> <p><b>e) Paid-up capital</b></p>
<p><b>SHARES</b></p>	<p>Section 2(84) of the Companies Act, 2013 defines the term 'share' which means a share in the share capital of a company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding a share is entitled.</p>

### Memorandum of Association - Clauses



- ✓ Name Clause
- ✓ Registered Office Clause
- ✓ Object Clause
- ✓ Liability Clause
- ✓ Capital Clause

### DOCTRINE OF 'ULTRA VIRES'

#### The words :

- Ultra means beyond
- Vires means the powers
- Ultra Vires means beyond the powers

A company which owes its incorporation to statutory authority cannot effectively do anything beyond the powers expressly or impliedly conferred upon it by the statute or Memorandum of Association.

### Contents in the Articles of Association



- Adoption of preliminary contracts.
- Number and value of shares
- Allotment of shares
- Calls on shares
- Transfer of shares
- Forfeiture, reissue, surrender of shares
- Alteration of share capital
- Share certificates
- Conversion of shares in to stocks
- Meetings and proceedings
- Voting rights , proxies and polls
- Appointment , Remuneration, etc of Directors
- Borrowing powers
- Dividend and Reserves
- Accounts and audit
- Procedure of winding up
- Seal of the company





## DOCTRINE OF INDOOR MANAGEMENT

- It is an exception to Doctrine of Constructive Notice;
- It offers protection to the outsider dealing with the company;
- Doctrine has been applied to make companies liable in case where deals were made by the directors :
  1. Whose appointment was defective;
  2. Who were appointed properly but were yet to be delegated necessary authorities;
  3. Who had not yet been appointed as Director;
  4. Who have been delegated authority in a meeting which had lacked quorum.



### Question 1

**State meaning and features of company.**

**Answer:**

A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.”

Section 2(20) of the Companies Act, 2013 defines the term ‘company’.

“company means a company incorporated under this Act or under any previous company law”.

- Separate Legal Entity
- Perpetual Succession
- Limited Liability
- Artificial Legal Person
- Common seal

### Question 2

**Briefly describe the concept of corporate veil.**

**Answer:**

**Corporate Veil:** Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

The term corporate Veil refers to the concept that members of a company are shielded from liability connected to company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation.

### **Question 3**

**The Articles of association of Godrej Ltd. Contains pre-determined dates for holding the Board Meeting. On 4<sup>th</sup> May of a calendared year, 2014 a BM is to be held (mentioned in AOA), so No, written notice has been given to the director individually. Is the provisions of the sec on 173(3) duly complied with?**

#### **Answer:**

According to the prescribed sec on the companies Act, 2013, every company whether public or private has to deliver the notice-in-writing regarding the date of the upcoming BM at least seven days in advance. To the directors individually through the prescribed mode failing which every offer whose duty is to give notice, under this sec on, shall be liable to a penalty of 25,000 whether the pre-determined dates of holding BM is contained in AOA or not. Even has prescribed that even if pre-determined dates are given for holding Board meeting written notices must be given individually. But as per given case, Godrej Ltd did not deliver notice in writing to the directors of the company regarding the date of the coming BM; Hence the provisions of the sec on 173(3) of the new Companies Act,2013 is not complied with.

### **Question 4**

**Hero Ltd. Called an urgent meeting giving a shorter notice before four days of such meeting to transact urgent business. In that meeting no independent Director was present. Is the provisions of sec 173(3) not complied with?**

#### **Answer:**

According to the prescribed sec on the new companies Act, 2013, a urgent meeting for a urgent meeting for a urgent purpose can be called by giving a shorter notice provided that at least one independent Director (if any) shall be present at the meeting. In absence of Independent Directors from such a meeting of the Board decisions taken at such meeting shall be circulated to all the directors from such a meeting of a Board decisions taken at such meeting shall be circulated to all the directors and shall be final only on ratification on, thereof by at least one Independent Director (if any). In the given case, of Hero

Ltd. As the independent Director is absent from the urgent meeting (on receiving the shorter notice); the provisions of this sec on shall be deemed to have complied if the decisions taken at such meeting are circulated to all the Directors and it is ratified by at least one I.D.

### **Question 5**

**State whether the following statements are correct or incorrect:**

- i. A limited company can become a partner in a partnership firm.**

**Answer:**

**Correct:** As per Sec, 4 of the Indian Partnership Act, 1932, partnership is a relation between persons. A company being an artificial person falls within the definitions of a person capable of contracting. Therefore a company can become a partner in a partnership firm.

### **Question 6**

**Examine whether promoter can be held liable for the payment under the following situations**

- i. When the company has already adopted the contract after incorporation?**
- ii. When the company makes a fresh contract with the suppliers in substitution of pre-incorporation contract?**

**Answer:**

If a contract is made by the promoter on behalf of the company which is not yet incorporated, then they will be personally for the contract because they have entered the contract personally.

Promoters will be made personally liable to pay all the damages for the failure to perform the promised made in the company's name, even through the contract makes clear that only the company shall be answerable for the performance (Scot V. Lord Ebury).

The promoters can be made personally responsible and liable for the contracts because they are the persons who sign the contract (Case Law: Kelner V. Baxler). A company is not in a position to ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, a company cannot by confirmation obtain the benefit of the contract, pretended to have been made on its behalf, before it came into existence, as ratification by the company when formed is legally impossible. The doctrine of ratification is applicable only when an agent contracts for a principal, who is in existence and who is competent enough to contract at the time of contract by the agent.



After the incorporation the company if he desires he can enter into new contact with the other part. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. If the company the pre-incorporated contract, it "will not create a contract between the company and the other parties, even though the option of the contract is made as one of the objects of the company in its Memorandum of Association.

It is therefore better for the promoters acting on behalf of the company to provide in the contract that:

- a) The liability of the promoters will come to an end. If the company makes a fresh contract terms of the pre-incorporation contract.
- b) The parties may rescind the contract, if the company does not make a fresh contract within a limited time period.

### **Question 7**

**Kite Ltd is an unlisted company which has borrowed money from banks and Public financial Institutions amounted to 50 crores in the last date of the audited financial statement. Is IT necessary for kite Ltd. Too establish vigil mechanism in the Audit committee?**

#### **Answer:**

As per Sec on -177 of the companies Act, 2013, every listed companies, which accepts deposits from the public, the companies which have borrowed money from banks and public financial Institutions' in excess of 50 crores (>50) shall establish a vigil mechanism for directors and employees to report genuine concerns in such a manner as may be prescribed. In the light of the above case, it's not necessary for Kite, an unlisted company to establish a vigil mechanism in the Audit committee because the company has borrowed money from banks and P.F.I. not exceeding 50 crores (i.e. exact 50 cr), therefore the said provisions is not attracted.

### **Question 8**

**Explain the concept of "Dormant Company" as envisaged in the company's act 2013.**

#### **Answer:**

As per Sec. 455 of Companies Act, 2013, where company is registered under this Act, for a future common or an inactive company makes an application to the Registrar in Channel as is prescribed under Rule 3 of companies (Miscellaneous) Rules 2014 for obtaining the status of a dormant company. "Significant Accounting transaction" mean any transaction other than:

- Payment of fees by a company to the Registrar;
- Payment made by it to fulfill the requirements of this Act, or any other
- Payment of shares to fulfill the requirement of this Act, and;
- Payment for maintenance of its office and records.

### **Question 9**

**What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee company and a Company having share Capital.**

#### **Answer:**

**Company Limited by guarantee:** Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state their memorandum that the member's liability is limited.

However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time during its winding up.

### **Question 10**

**Write short note on DOCTRINE OF ULTRAVIRES**

#### **Answer:**

**Doctrine of ultra vires:** The meaning of the term ultra vires is simply "beyond (their) powers". The legal phrase "ultravires" is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in

their nature are limited. It is a fundamental rule of company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequences, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the Company.

### **Question 11**

**What is meant by promoter?**

**Answer:**

**PROMOTERS:** The Companies Act, 2013 defines the 'Promoters' under section 2(69) which means a person-

- a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 95; 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 the company is accustomed to act.

### **Question 12**

**Briefly show the concept of one Person Company.**

**Answer:**

Only one person as member.

- ❖ Minimum paid up capital – no limit prescribed.
- ❖ The memorandum of OPC shall indicate the name of the other person, who shall in the event of the subscriber's death or his incapacity to contract, become the member the company.
- ❖ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of Companies at the time of incorporation. Such other person may be given the right to withdraw his consent.
- ❖ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ❖ Any such change in the name of the person shall not be deemed to be an alteration to the memorandum
- ❖ Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days

during the immediately preceding one calendar year)- shall be eligible to incorporate a OPC. Shall be nominee for the sole member of a OPC.

- ❖ No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- ❖ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ❖ Such company cannot be incorporate or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- ❖ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- ❖ OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.
- ❖ If one Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

### **Question 13**

**Define the term 'Small Company' as contained in the Companies Act, 2013.**

**Answer:**

**Small Company:** As per sec. 2(85) of the Companies Act, 2013 small company means a company other than a public company-

- a) Paid up share capital of which does not exceed fifty lakh rupees or a higher prescribed amount
- b) Turnover or which as per its last statement of profit & Loss Account does not exceed two crore rupees or a higher prescribed amount which shall not be more than twenty crore rupees.

### **Question 14**

**Which document is required to be filed with Registrar of Companies at the time of registration of a company under the provisions of the Companies Act, 2013?**

**Answer:**

Documents required to be filed with ROC at the time of Incorporation of company:

As per sec. 7 of Companies Act, 2013,

There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:

- a) **Memorandum and Article:** The Memorandum and Article of the company duly signed by all the subscribers to the memorandum in such manner as prescribed in Rule 13 of Companies (Incorporation) Rules 2014.
- b) **Declaration:** A declaration in the form No. INC. a by an advocate, a Chartered Accountant cost Accountant or Company Secretary in practice, vyho 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, that all the requirement of this Act and the rules made there under in respect of registration and matters precedent or incidental there to have been complied with
- c) **Affidavit:** An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any in the article that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any precious company law during the preceding five years and that all the documents filed with the registrar for Registration of the company contain information that is correct and complete and true to the best of his Knowledge and belief;
- d) **Address for Correspondence:** The address for correspondence till its registered office is established; **Particulars of Subscribers:** The particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed and in the case of a subscriber being a body corporate, such particulars as is prescribed under rule 16 of companies Incorporation Rule 2014.
- e) **Particulars of Persons Mentioned Articles:** The particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identify as is prescribed under Rule 17 of Companies Incorporation Rule 2014.



f) **Particulars of Interest of Persons:** The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firm or bodies corporate along with their consent to act as directors of the company in which company in such form and manner as are prescribed under Rule 17 of Companies Incorporation Rule 2014.

### **Question 15**

**Explain clearly the concept of “perpetual succession” and “ common-seal” in relation to a company incorporate under the Companies Act, 2013/Companies Amendment Act, 2015.**

#### **Answer:**

**Perpetual Succession:** Unlike a natural person a company never dies. It is an entity with a perpetual succession. The life of the company does not depend upon the life of any of its members; it is independent from the lives of its members. Even the death, insolvency, mental disorder or retirement of a member does not affect the corporate existence of the company. It is created by the process of law and can be put to an end only by the process of law. Members may come and member may go but the company will carry on to exist unless it is wound up. The company continuous to exist even if all is members is dead. The leading case on this point is [Meat supplies (Guildford Ltd.)] where all the members of the private company were killed by a bomb but still the company was deemed to survive.

A company is of perpetual succession in the sense that inspite of the change in the membership of the company is persists to exist. It is generally said that members may come and members may go but the company goes on forever, thus a company never dies.

**Common seal:** Since a company has no physical existence, is cannot sign its name on a contract. So it takes the help of seal which is used as a substitute for its signature.

Companies Act, 2013 required common seal to be affixed on certain documents

(Such as BOE, share certificate etc.).

However as per a Companies Amendment Act, 2015, the use of Common Seal has Been made optional. All such documents which required affixing the common seal May now instead be signed by two Directors or one Director and a company Secretary of the Company.

### **Question 16**

**Write a Short note on Private Company.**

**Answer:**

Private Company [Section 2(68)]: "Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,--

- i. Restricts the right to transfer its shares;
- ii. Except in case of one person Company limits the number of its members to two hundred:

**Provided** that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

**Provided further that---**

- A. Persons who are in the employment of the Company; and
- B. Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of member, and
- iii. Prohibits any invitations to the public to subscribe for any securities of the company; private company – significant points
  - No minimum paid-up capital requirement.
  - Minimum number of members – 2 (except if private company is an OPC, where it will be 1).
  - Maximum numbers of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members.
  - Right to transfer shares restricted.
  - Prohibitions on invitation to subscribe to securities of the company.
  - Small company is a private company.
  - OPC can be formed only as a private company.

**Question 17**

**A company is a person separate from its members'. Explain.**

**Answer:**

A company in the eyes of law is regarded as an entity separate and distinct from its members. Any of its members can enter into contracts with company in the same manner as other individual. Further, a shareholder or member of a company cannot be held liable for the acts of the company and not to the shareholders. (Salomon V. Salomon & Co. Ltd.).

This principle of differentiating the legal entity of the company from that of its shareholders may be referred to as 'the veil of incorporation'. The courts in general consider themselves bound by this principle. The effect of this principle is that the members or shareholders of a company cannot be held liable in respect of any liability accruing on the company. A company is expected by law to meet its liabilities and obligations from its own resources and its members cannot be called upon to discharge the same.

However, under certain exceptional circumstances the courts may disregard or pierce the corporate veil of a company and hold persons controlling the affairs of the company liable for the acts of the company. Where the legal entity of a corporate body is misused for fraudulent and dishonest purposes, the individuals concerned will not be allowed to take shelter behind the corporate entity of the company.

The human ingenuity, however, started using this veil of corporate personality blatantly as a cloak for fraud or improper conduct. Thus, it became necessary for the courts to break through or lift the corporate veil or crack law a corporation is distinct entity, yet, in reality it is an association of persons who are in fact the beneficial owners of all the corporate property (Gallagher v. Germania Brewing Co.)

The circumstances or the cases in which the courts have disregarded the corporate personality of the company are:

**Protection of revenue:** (To prevent evasion of taxation) the courts may ignore the corporate entity of a company where it used for tax evasion. (Juggilal v. Commissioner of Income tax, B.F. Guzdar v. Commissioner of Income Tax Bombay).

**Prevention of fraud or improper conduct:** The legal personality of a company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. Professor Gower has rightly observed in this regard that the veil of a corporate body will be lifted 'where the' corporate personality is being blatantly used as a cloak for fraud or improper conduct' thus where a company was incorporated as a device to conceal the identity of the perpetrator of the fraud, the court disregarded the corporate personality (Jones v. Lipman) (Gilford Motor Co. v. Home).

**Determination of character of a company whether it is enemy:** A company may assume an enemy character when persons in defect control of its affairs are residents in an enemy country. In such a case, the court may examine the character of persons in real control of the company and declare the company to be an enemy company. (Daimler Co. Ltd. V. Continental Tyre & Rubber Co. Ltd).

**Where the company is a sham:** The courts also lift the veil or disregard the corporate personality of a company where a company is a mere cloak or sham (hoax). (Gilford Motor Co. Ltd. V. Home).

**Company avoiding legal obligation:** Where the use of an incorporated company if being made to avoid legal obligations, the court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

**Company acting as agent or trustee of the shareholders:** Where a company is acting as agent for its shareholders, will be liable for the acts of the company (F.G. Films Ltd. In re.)

**Avoidance of welfare legislation:** Where the courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. (Workmen of Associated Rubber Industry Ltd. V. Associated Rubber Industry Ltd.)

**Protection Public Policy:** The courts variably lift the corporate veil or a disregard the corporate personality of a company to protect the public policy and prevent transaction contrary to public policy. (Connors v. Ltd.)

**In quasi-Criminal cases:** The courts pierce the corporate veil in quasi-criminal cases in order to look behind the legal person and punish the real persons who have violated the law.

### **Question 18**

**ABC Pvt. Ltd. Is private company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with**

**reasons under the companies Act, 2013 whether existence of the company has also come to the end?****Answer:**

Death of all members of a Private Limited Company, Under the Companies Act, 2013: The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a person of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder (s) or director (s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identify of shareholders to change.

In the present case, ABC Pvt. Ltd. Does not cease to exist even by the death of all its shareholders. The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called "transmission of shares." The company will cease to exist only when it is wound up by a due process of law.

Therefore, even with the death of all members (i.e. 5), ABC (pvt.) Ltd. Does not cease to exist.

**Question 19****Explain clearly the concept of "perpetual-succession" in relation to a company incorporate under the Companies Act, 2013.****Answer:**

Perpetual Succession: Perpetual succession means the continued existence of any entity until the time that it is wound up by following a due process a law. A company is an artificial legal person with a perpetual existence. It never dies nor does its existence depend upon the life of its members. It is not in any manner affected by insolvency, mental disorder or retirement of any of any or all of its members. It is created by a process of law and can be put to an end only by the process of law. Members may come and go but the company will go on forever (until dissolved). It continues to exist even if all its members are dead.

**Question 20**



**Can a non-profit organization be registered as a company under the Companies Act? If so, what procedure does it have to adopt?**

**Answer:**

Registration of a non – profit organisation as a company: According to section 8(1) of the Companies Act 2013, the Registrar of Companies may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science sports, education, research, social welfare religion, charity protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure: An association of persons intending to carry any or all or some of the activities mentioned in section 8

1. As mentioned above has to apply to the Registrar of companies seeking its permission its permission for being set up as a company under the Act. The central government if satisfied on the above may by the issue of a license in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to registered as a limited company under section 8 (1) without the addition of word "Private Limited" as the case may be to its name.

After the issue of the license by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as accompany under section 8(1). Under section 8 (2) a company registered under section 8 (1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This license issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'limited' or 'Private Limited' against the company's name in the Register. But before such revocation the central Government must give the company a written notice of its intention to revoke the license and provide an opportunity to it to be represented and heard in the matter.

**Question 21**

**Mr F and asses, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back of F as**

**a pretended loan. This way, F divided his income into three parts in a big to reduce his tax liability.**

**Decide, for what purpose the three Companies were established/ whether the legal personality of all the three companies may be disregarded.**

**Answer:**

The House of Lords in Salomon Vs Salomon & Co. Ltd. Laid down that a company is a person distinct and separate from its members, and therefore has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a Company is incorporated and formed by certain persons only for the certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over the assessee as pretended loans. The same was upheld in R Sir Dinshaw Maneckji Petit AIR 1927 Bom.371 and juggi lal vs. Commissioner of Income Tax AIR (1969) SC (932).

### **Question 22**

**Under what circumstances company becomes subsidiary of another company under the provisions of the Companies Act, 2013?**

**Answer:**

Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary. Section 2(87) of the Companies Act 2013 lays down the circumstances under which a company

becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:  
 When the holding company controls the compositions of Board of Directors of the subsidiary company or companies, or  
 When the holding company exercises or controls more than one half of the total share capital either on its own or together with one or more of its subsidiary companies, or  
 Where the holding company controls the composition of Board of Directors of the subsidiary company or companies, or  
 Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. Is become a subsidiary of C Ltd.

### **Question 23**

**The paid – up share capital of AVS Private Limited is 10 lacks, consisting of 8 lacs Equity Shares of 10each, fully paid-up and 2 lacs cumulative preference shares of no each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1, 50,000 Equity Shares respectively in AVS Private Limited. -S**

**XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited?**

#### **Answer:**

Holding subsidiary relationship: In terms of section 2(87) of the companies Act 2013, a company will be the subsidiary of a company or companies. In this case XYZ Pvt. Ltd. and BCL Ltd. together hold majority of equity shares in AVS Pvt. Ltd. and both these companies are subsidiaries of TSR Pvt. Ltd. it will have majority stake in the composition of the Board of Directors of AVS Pvt. Ltd. hence, TSR Pvt. Ltd will be treated as the holding company of AVS Pvt. Ltd.

### **Question 24**

**With reference to the provisions of the Companies Act, 2013 explain the circumstances under which a subsidiary company can become a member of its holding company. Examine the position of the following with regard to membership in a company:**

**An Insolvent Partnership Firm.**

#### **Answer:**

In accordance with the provisions of section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares of shares in a

company to its subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

The subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or the subsidiary company holds such shares as a trustee, or the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

Position of the following with regard to membership in a company:

Partnership firm: Section 2(55) of the Companies Act 2013 defines a member as a subscriber to the memorandum of association whose name is entered in the Register of Members following the incorporation of the company, every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company and any person holding shares in a company and whose name is entered as the beneficial owner in the records to the depository.

A partnership firm may therefore hold shares in a company provided its name appears in the register of member of the company however, as a firm is not a legal entity it will be able to hold shares in the individual names of partners as joint shareholders. However, this will not apply to a "Limited Liability Partnership". (Ganesh Das Ram Gopal v. R.G. Cotton Mills Ltd.)

Under section 8(3) of the companies Act 2013, a firm may be a member of a company incorporate under section 8 i.e. a company formed as a charitable or social venture.

**An Insolvent:** An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the official Assignee or Receiver. (Morgan v. Gray) allotment or transfer of shares is by way of security for the purpose of a transaction.

### **Question 25**

**What is the meaning of "Certificate of incorporation" under the provisions of the Companies Act, 2013?**

**Answer:**

Certificate of Incorporation: Under section 7 (2) the Registrar shall on the basis of documents and information filed for the formation of a company, shall register the aforesaid documents and information and issue a certificate that the Company is incorporated in the prescribed form to the effect that the proposed company is incorporated under this Act.

Section 7 (3) further provides that on and from the date of incorporation mentioned in the certificate of incorporation the Registrar shall allot to the company a Corporate Identification Number (CIN) which shall be the distinct identity of the company and which shall also be included in the certificate of incorporation and continues to be so till it is wound up.

**Question 26**

**The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a Certificate of incorporation. The plaintiff contended that**

**(a) conditions of registration were not duly complied with, and  
(b) that there were no seven subscribers to the Memorandum. Will the court uphold his contention?**

**Answer:**

Yes, (being a fundamental right under the Constitution of India to go for legal proceedings) the registration of the company can be challenged but it will not in any way affect or cancel the registration of the company and the Memorandum and Article.

Section 10(1) of the Companies Act, 2013 states that subject to the provisions of the Act, the Memorandum and Articles Shall, when registered, bind the company and the members thereof, to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.

**Question 27**

**X, a chemical manufacturing company distributed 20 lacs (Twenty Lacs) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 2013 decide whether the said distribution of money was "Ultra vires" the company?**



**Answer:**

Distribution of Rupees Twenty Lacs by a company engaged in chemical manufacturing is not 'Ultra vires' since it was conducive to the Continued growth of the company as chemical manufactures (Evans vs. Brunner, Mood & Co. Ltd. 1921). In order for a contract to be ultra vires, it would be essential to refer to its objects clause. Restrictions of the type mentioned in the Question are not an item of the objectives Clause. Hence, the ultra vires does not arise to such a donation.

**Question 28**

**Explain the procedure for change of name of a company, as provided in the Companies Act, 2013.**

**Answer:****Procedure for the Change of name of under the Companies Act, 2013:**

According to Section 13 (1) of the companies Act, 2013, a company may, by special resolution, and after complying with the procedure specified in this section after provisions of its Memorandum.

- The Name Clause in the Memorandum states the name of the company. It can be changed in the following manner:
- Passing of the Special Resolution of members at a duly convened general meeting;
- Hence, in order to convene the general meeting it will be preceded by a Board Meeting
- The change in name must be in accordance with the provisions of section 4(2) and (3). These sub sections prohibit a company from registering with a name similar to an existing company's name or with names listed as undesirable by the Act.
- After the approval of members the approval of the central Government, must also be obtained. The power of central Government in this regard has been delegated to the Registrar of Companies.
- The Approval on the Central Government shall not be necessary when the name change is merely to delete or add the word " Private" before the word "Limited" in the consequent upon conversion of the company from a public to a private company or vice versa;
- The documents are required to be filed with the register the new name in place of the old name of the company and issue a fresh certificate of incorporation in the new name.

- The new name will be effective only on and from the date of issue of the new certificate of incorporation by the Registrar as above.

### **Question 29**

**Miss ABC Ltd. a company registered in the state of West Bengal desires to shifts its registered office to the state of Maharashtra. Explain briefly the steps to be taken to achieve the purpose.**

**Would it make a difference, if the registered office is transferred from the jurisdiction of one Registrar of Companies to the Jurisdiction of another Registrar of Companies Within the same state?**

**Answer:**

#### **Transfer of Registered of a company:**

The change in the address of the registered address of a company requires an alteration to its Memorandum which is covered under section 13 of the Companies Act, 2013.

In order to shift the registered office from the state of West Bengal/ Tamil Nadu to the state of Maharashtra / Coimbatore, M/s ABC Ltd. /VD Company Ltd. has to take the following steps:

- To hold Board Meeting for the purpose of calling general meeting of the members of the company in which the shifting of the registered office from West Bengal/Tamil Nadu to Maharashtra/Coimbatore will have to be approved:
- The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from west Bengal/Tamil Nadu to Maharashtra/ Coimbatore as required by section 13 (1) of the Companies Act 2013.
- Make an application to the Central Government/Regional Directors in such form and manner as may be prescribed, for getting its approval under section 13 (4) of the Companies Act 2013.
- Under Section 13 (7) of the Companies Act 2013, where an alteration of the Memorandum results in the transfer of the registered office of the company from one state per another, a certificate copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar each of the states, within such time and in such manner as may be prescribed, and the registrars shall the registrars shall register the same. The registrar of the state where the registered office is being shifted to shall issue a fresh certificate to incorporation indicating the alteration.

In the present case, it will be the registrars of both West Bengal/ Tamil Nadu to Maharashtra/Coimbatore.

- The change in name will be effective only after the issue of the fresh certificate of incorporation by Registrar of the state where the registered office is being shifted to, Maharashtra in this case.

**Change of registered office from the jurisdiction of one registrar to the other Registrar within the same state:** A change of registered office from the jurisdiction of one registrar to another does not involve an alteration to the Memorandum of a company as the location clause in the Memorandum merely states the name of the state, which is not change by such relocation. Hence, the provisions of section 13 which deals with the alteration of the Memorandum do not apply.

However, according to section 12 (5) of the Companies Act, 2013 except on the special resolution passed by a company, the registered office of the company shall not be changed from one city or town to another within the same state. In case of change of the registered office from the jurisdiction of one registrar to another such change must be confirmed by the Regional Director also, on an application made in the behalf by the company. He shall certify the registration within a period of thirty days from the date of filing of such confirmation. The certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with the change shall take from the date of the certificate. [Section 12(6) & (7)].

### **Question 30**

**State with reason, whether the following statement is correct or incorrect to the companies Act, 2013.**

**Change of Registered office of company from one place to another within a state requires confirmation by the Central Government.**

**Answer:**

**Incorrect:** A change in the location of its registered office by a company from one place to another within the same state does not result in the alteration of its Memorandum and hence the provisions and requirements under section 13 of Companies Act, 2013 will not apply.

However, under section 12 (5) of the Act, the change in registered office from one town to another within the same state must be approved over by a special resolution of the company.

Where a company changes the place of its registered office from the jurisdiction on one registrar to the jurisdiction of another Registrar within the

same state, there such change is too confirmed by the Regional Director on an application made by the company.

Further, presuming that where the Registrar remains the same in the two towns, there it will be not required for the company to additionally seek the confirmation to such change from the Regional Director.

### **Question 31**

**A company was started with the object of building 'A mall with shops'. The building was destroyed by fire and the company wanted to alter the objects clause in the memorandum by substituting the words 'A mall with shops' with words "shops Residential buildings and Warehouses for letting purposes. 'Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the Companies Act, 2013.**

#### **Answer:**

Alteration of objects: Under section 13 (1) of the Companies Act, 2013 the alteration to the Memorandum is permissible now without restriction and only with the approval of members through a special resolution duly registered with the registrar. Hence, the proposed alteration is permissible.

### **Question 32**

**Explain the steps to be taken by a company for starting a business for which there is provision in the objects clause of the Memorandum of Association.**

#### **Answer:**

Section 4 (1) (c) of the Companies Act 2013 clearly provide for the Memorandum to include the objects for which the company is formed. A company is therefore, formed a carryon activities only in line with its objects as defined in the memorandum Any Act outside the objects clause is termed "ultra vires" and is considered void.

Hence, if a company wishes to start a business which is not provided for in its Memorandum, it must first alter its Memorandum to include that business in its objects clause. This is a simple process defined in section 13 after Act. It can be done with the approval of the members by a special resolution and the registration of the same with the Registrar.

### **Question 33**

**RSP Limited, with a limited liability of its members by guarantee of ₹10 lac to each member. The company increase the liability of the member from ₹10 to ₹15 lac by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 2013 decide, whether the members of the company are liable for the increased liability.**

**Answer:**

The limitation of liability is an essential clause in the Memorandum and on registration of the company becomes binding on all present and future members.

The present questions state that the liability of the members has been increased by the company without clarifying the mode. The company can act only through its Board of Directors do not have the authority to alter the clause; hence it means that the alteration was approved by the members at a general meeting. However, section 13 of the Act which deals with the alteration of the Memorandum does not provide for the alteration of its liability clause. Hence the liability of members cannot be altered once the company is formed.

The alteration in the given question is therefore invalid.

**Question 34**

**Explain the doctrine of 'indoor management' in brief.**

**The Secretary of a company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him, A borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'b' will succeed in getting the share registered in his name.**

**Answer:**

The doctrine of Indoor management is laid down in the Royal British Bank vs. Turquand (1956) case in which the directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non-passing of the required resolution. T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with company are entitled to assume that the acts of the directors or the officers of the company

are validity performed, if they are within the scope of their apparent authority.

However, this doctrine is not applicable where the persons dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.

In the instant problem the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to A and thereby to B. The title of the buyer cannot be better than that of the seller (Sale of Goods Act, 1930). Hence, 'B' will not succeed in getting the share registered in his name.

### **Question 35**

**A managing Director of a company borrowed a sum of money by executing a document in which he forged the signature of two other directors who are required to sign as per requirements of articles. Can the company deny liability of creditors?**

#### **Answer:**

In Ruben v. Great Fingal/ Consolidated, it was held that Doctrine of Indoor Management could not be extended to cases of forgery. Transaction effected by forgery is void ab initio. However, in Sri Krishna v. Monda/ Bros. & Co. It was held that a company may be held liable for any fraudulent Acts of its Officers acting under ostensible authority.

Therefore, in the instant case, company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

### **Question 36**

**What is the importance of registered office of a company?**

#### **Answer:**

#### **Importance of registered office:**

Section 12 (1) states that a company shall, on and from the fifteenth day of its incorporation and at every time thereafter, have a registered office capable of receiving and acknowledgement all communications and notices addressed to it.

Section 12 (3) further requires every company to:

- Paint or affix its name and address of its registered office, and keep the same painted and affixed, on the outside of every office or place in which



its Business is carried on, such display must be in a conspicuous position in legible letters in characters and letters of the local language in addition to any other language (if chosen by the company);

- Get its name, address of its registered office and the corporate identity Number and other details, on all its business letters, bill heads, notices and other official publications;

From the above provisions of the Companies Act 2013, the extremely high importance of the registered office of a company can be well understood as it serves as the location where: (a) necessary documents may be served upon, or deposited; (b) Notices, letters, etc. May be issued; (c) inspection may be done, and (d) communications may be made. The domicile and the nationality of a company is determined by the place of its registered office. This is also important for determining the jurisdiction of the Court governing it.

Notice of the situation of the registered office and of every change therein must be sent to the Registrar (otherwise than through a statements to the address of the registered office in the annual report) within 30 days of the date of incorporation and the date of change. This provision is designed to locate the spot where the records of the company could be inspected and where the letters should be addressed and notices served upon the company.

### **Question 37**

**State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013.**

#### **Answer:**

Procedure for shifting the registered office from one state to another state (Section 13, of the Companies Act, 2013):

In order of shift the registered office from one state to another the following procedure will have to be followed:

Hold Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from one state to another will have to be approved:

- The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state or another as required by section 13 (1) of the companies Act 2013.

- Make an application to the Central Government/Regional Directors in such Form and may be prescribed, for getting its approval under section 13 (4) of the Companies Act 2013.
- Under section 13 (7) of the companies Act 2013, where an alteration of the Memorandum results in the transfer to the registered office of the company from one state to another, a certified copy of the order of the central Government approving the alteration shall be filed by the company with registrar of each of the states, within such time and in such manners as may be prescribed, and the company with the registrar the same. The registrar of the state where the registered office is to being shifted to shall issue a fresh certification of incorporation indicating the alteration.
- The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

### **Question 38**

**Explain in brief 'Equity share Capital' and 'Preference Share Capital'.**

#### **Answer:**

As per the section 43 of the Companies Act 2013, the share capital of a company limited by shares shall be two types:

- Equity share capital; and
- Preferential share capital

Further the section provides for two kinds of Equity share Capital as:

- Those with voting rights; or
- Those with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed.

Explanation to section 43 of the companies Act, 2013 defines the " preference share capital" with reference to the share capital of a company as that part of the issued share capital of the company which carries a preferential right with respect to:

- ❖ The payment of dividend, either as a fixed amount or as a fixed percentage and which may be tax free or subject to tax;
- ❖ Repayment in the event of the winding up of the company or repayment of capital.

Under section 47 (1) of the Companies Act, 2013 every member of the company limited by shares, who holds equity shares there in, shall have the

right to vote on every resolution placed before the company and his voting right on a poll shall be proportionate to his share in the paid up equity capital of the company. On the other hand under section 47 (2) of the Act, every member of a company limited by shares who is holding preference shares shall be entitled to vote on only those resolutions placed before the company which affect directly the rights attached to preference shares held by him. Further, in case of any resolutions by a poll on the winding up of the company or for the repayment or reduction of equity or preference share capital, his voting right shall be proportionate to his share in the paid up preference share capital of the Company.

The companies Act 2013 vide section 55 (1) further provides that an company limited by shares shall, after the commencement of this Act, issue any preference shares which are not redeemable. Hence, under the new company law, preference shares must be redeemed.

### **Question 39**

**Who is a promoter in a company law?**

**Answer:**

Corporate promoter: A corporate is a firm or person who does the preliminary work incidental to the formation of a company, including its promotion, incorporation, and solicits people to invest money in the company, usually when it is being formed.

### **Question 40**

**Explain the Term capital. Briefly gives a classification of capital.**

**Answer:**

The term capital has a variety of meaning. It means one thing to economics; another to accountants and still another to businessman and lawyers. In relation to a company limited by shares, the word capital means share-capital i.e., the capital or figure in terms of so many rupees divided into shares of fixed amount. In other words the contributions of persons to the common stock of the company form the capital of the company. The proportion of the capital to which each member is entitled, is his share. A share is not a sum of money; it is rather an interest measured by a sum of money and made up of various rights contained in the contract.

In the domain of Company Law, the term 'capital' is used in the following senses:

Nominal or authorised or registered capital: This form of capital has been defined in section 2(8) of the memorandum of a company to be the maximum amount of the share capital of the company. Thus, it is the sum stated in the memorandum as the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares and upon which it pays the stamp duty. It is usually fixed at the amount, which it is estimated; the company will need, including the working capital and reserve capital. If any

Issued capital: Section 2(50) of the Companies Act, 2013 defines "Issued capital" which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash.

Subscribed capital: Section 2(86) of the companies Act, 2013 defines "subscribed capital" as such part of the capital which is for the time being subscribed by the members of a company.

It is the nominal amount of shares taken up by the public, where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous character. A default in this regard will make the company and every officer who is in default liable to pay penalty extending 10,000 and 5,000 respectively. [Section 60].

Called-up capital: Section 2(15) of the Companies Act, 2013 defines "called-up capital" as such part of the capital which has been called for payment. It is the total amount called up on the shares issued.

Paid-up capital is the total amount paid or credited as paid up on shares issued. It is equal to called up.

### **Question 41**

**Explain Memorandum of Association Document.**

#### **Answer:**

The Memorandum of Association of company is in fact charter; it defines its constitutions and the scope of the powers of the company with which it has

been established under the Act. It is very foundation on which the whole edifice of the company is built.

### **Object of registering a memorandum of association:**

- ✚ It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- ✚ It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
- ✚ A memorandum is a public document under section 399 of the Companies Act, 2013. Consequently every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- ✚ The shareholder must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
- ✚ A company<sup>7</sup> cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in schedule I of the Companies Act, 2013.

Table A is a form for memorandum of association of a company limited by shares.

Table B is a form for memorandu<sup>8</sup>m of association of a company limited by guarantee and not having a share capital.

Table C is a form for memorandum of association of a company limited by guarantee and having a share capital.

Table D is form for memorandum of association of an unlimited company.

Table E is form for memorandum of association an unlimited company and having share capital.

The memorandum and articles of a company must be as closed to model forms, as possible, depending upon the circumstances.

### **Question 42**

**Define Shares. Explain its Significant.**

**Answer:**

**Nature of shares:** Section 2(84) of the companies Act, 2013 defines the term 'share' which means a share in the share capital of company and includes stock. A share thus represents such proportion of the interest of the shareholders as the amount paid up thereon bears to the total capital payable to the company. It is a measure of the interest in the company's assets to which a person holding s share is entitled.

**Share is an interest in the company:** Farewell justice, in Borland Trustees vs. Steel Bors. & Co. Ltd. Observed that "a share is not a sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract including the right to a sum of money of a more of a more or less amount," you should note that the shareholder different from the totality of the shareholders. The rights and obligations attaching to a share are those prescribed by the memorandum and the articles of a company. It must, however, be remembered that a shareholder has not only contractual rights against the company, but also certain rights which accrue to him according to the provisions of the companies Act.

**Shares are a movable property:** According to section 44 of the Companies Act, 2013 the shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

**Shares shall be numbered:** Section 45 provides, every share in a company having a share capital, shall be distinguished by its distinctive number. This implies that every share shall be numbered.

However, this shall not apply to a share held by a person whose name is entered as holder or beneficial interest in such share in the records of a depository.

### **Question 43**

**When a company is registered, it is clothed with a legal personality. Explain.**

**Answer:**

When a Company is registered, it is clothes with a legal personality. It comes to have almost the same rights and power as a human being. Its existence is



distinct and separate from that of its members. A company can own property, have bank account, raise loans, incur liabilities and enter into contracts.

- a) It is at law, a person different altogether from the subscribers to the memorandum of association. Its personality is distinct and separate from the personality of those who compose it.
- b) Even members can contract with company acquire right against it or incur liability to it. For the debts of the company, only its creditors can do it and not its members.

A company is capable of owning enjoying of property in its own name. Although the capital and assets are contributed by the shareholders, the company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property.

#### **Question 44**

**Section 2(49) defines the term 'interested directors' whereas at various sections reference to section 184 is drawn to mean/define interested director. Section 2(49) is wider than section 184 leading to confusion - which definition should be applied?**

#### **Answer:**

Section 2(49) of the Companies Act, 2013 defines interested director as a director who is in any way, whether by himself or through any of his relatives or firm body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement entered into or to be entered into by or on behalf of a company:

Section 184 (2) provides that every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contact or arrangement entered into or to be entered into –

- a) With a body corporate in which such director or such director in association with any other director, holds more than two percent. Shareholding of that body corporate or is a promoter, manager, chief Executive Officer of that person of that body corporate; or
- b) With a firm or other entity in which, such director is a partner, owner or member, as the case may be shall disclose the nature of his concern or interest at the meeting of the Board in which the contract per arrangement is discussed and shall not participate in such meeting.

Wherever the term 'interested director' appears in the Act and the Rules thereon, read sections 2(49) and 184 together.

### **Question 45**

**Whether a private Company having paid – up share capital 45 lakhs and turnover of Rs. 20 crores as per last audited balance sheet will be treated as small company or not?**

#### **Answer:**

It is not a small company section 2(85) define a small company as a company other than a public company, --

- I. Paid –up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- II. Turnover of which as per its last profit or loss account does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than twenty7 crore rupees:

Provided that nothing in this clause shall apply to-

- A. A holding company or a subsidiary company;
- B. A company registered under section 8; or
- C. A company or body corporate governed by any special Act.

This means that a company shall not be small company if it has a paid up share capital of Rs. 50 lakhs or more or if it turnover exceed Rs. 2 crores. Since the turnover of this company is more than Rs. 2 crores i.e. Rs. 20 crores it will not be a small company.

### **Question 46**

**Whether every company is required to alter its articles of Association as per the new format under the companies Act, 2013?**

#### **Answer:**

Sub-section (6) of Section 5 provide that the articles of a company shall be in respective forms specified in tables, F, G, H, I and J in schedule I as may be application to such company.

Sub-section (9) of section 5 provides that nothing in this section shall apply to the articles of a company registered under any previous law unless amended under the Act.

It is not necessary but suggested that whenever a company amends its article, it should ensure that subsequent to the amendment, the AOA is as per the format specified under the companies Act, 2013.

Since certain provisions of corporate Act, 2013 requires clauses in the Articles to carry out operations of any organization, such as for issuance of bonus shares; it is advisable Articles should be altered in line with the new requirements as various provisions themselves require specific clauses to be incorporated in the Articles.

### **Question 47**

**Can a director's dissent be refused to record in the minutes of board meeting?**

#### **Answer:**

In case a director has requirement to recording his or her dissent or particular item or matter then in the with secretarial standard clause 7.2.2 which deals with specific content, the dissent along with the fact and name of directors is to be recorded in the minutes.

You must be worrying that is not it the right of Chairman to include or Exe life the matters to be recorded in minutes. Yes the chairman can exclude the items or matters which are defamatory in nature but he can't refuse to record to record the dissent of director with reason. Please also refer section 149 which says independent and non-executive directors would be responsible for any acts of omission or commission which had occurred with his knowledge. That means by not-recording dissent you are getting them unnecessarily attracted y way of 149(12)

### **Question 48**

**Prospectus is required to be issued when issue is for Ex-employees under Employee stock option scheme. Justify the statement is true or false**

#### **Answer:**

The statement is false. Prospectus is required to be issued when issue is for Employees under Employee stock option scheme

### **Question 49**

**Choose the correct option and justify your answer**

**1. ----- prospectuses were issued in order to test the market before finalizing issue size/price.**

- a) Deemed
- b) Shelf
- c) Red herring
- d) None of the above

**Answer:**

Red Herring prospectus is a prospectus which does not have details of either price or number of shares being offered, or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed.

**Question 50**

**Choose the correct option and justify your answer**

**Pre - incorporation contract is also known as \_**

- a) Provisional
- b) Preliminary
- c) Illegal
- d) Legal

**Answer: (b)**

Contracts which are entered into by promoters with parties to acquire some property or right of and on behalf of a company yet to be formed are called as pre-incorporation contracts' or 'preliminary contracts.'

**Question 51**

**Can pre incorporation contract be ratified?**

**Answer:**

Promoters are generally held personally liable for pre-incorporation contract. If a company does not ratify or adopt a pre-incorporation contract under the specific Relief Act, then the common law principle would be applicable and the promoter will be liable for breach of contract.

**Question 52**

**Can a promoter contract with a company once it is formed?**

**Answer:**

When a promoter enters into a contract on behalf of a corporation to be formed the promoter may be considered personally liable to meet the obligations of the corporation if for some reason the corporation is not formed or does not adopt the contract

## **CASE STUDY:**

### **Question 53**

**What are the rights of preference shareholders if dividends remained unpaid? Would your answer be different if preference shares are non-cumulative?**

**Or**

**ABC Ltd. has not given dividend to its preference shareholders. In this regard state the rights of preference shareholders and non-cumulative preference shareholders on dividend.**

### **Answer:**

Under Section 47(2) of the Act, every member of a company limited by shares who is holding preference shares shall be entitled to vote on only those resolutions placed before the company which affect directly the rights attached to preference shares held by him. Further, in case of any resolution by a poll on the winding up on the company or for the repayment or reduction of equity or preference share capital, his voting right shall be provided that where the dividend in respect of class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

The above provision lays down the rights of preference shareholders who have not been paid dividend for a continuous period of 2 years and this does not change whether the shares are cumulative or noncumulative.

### **Question 54**

**The articles of Association of XYZ Ltd. provides that Board of Directors has authority to issue of authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution provisions of the Companies Act, 2013.**

### **Answer:**

According to the Doctrine of Indoor Management, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the director R.B.B Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In ground that he was entitled to assume

that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

Since, the given Question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

## **DIFFERENCE:**

### **Question 55**

**List out Differences between equity and preferences shares**

**Answer:**

Bases of difference	Preference shares	Equity shares
<b>Rate of dividend</b>	Preference shareholders are paid dividend at a fixed rate	The rate of dividend on equity shares may vary from year to year and depending upon the available of profit.
<b>Arrears of dividend</b>	Holders of cumulative preference shares can get the areas of past dividend	Equity shareholders cannot get the arrears of past dividends
<b>Redeemability</b>	Preference shareholders do not have the right to participate in the management of the company.	Equity shareholders enjoy voting rights
<b>Voting Right</b>	Preference shareholders do not have right to participate in the management of the company.	Equity shareholder enjoy voting rights
<b>Payment of dividend</b>	These shares have a preferential right to receive dividend before any dividend is paid to equity share.	Payment of dividend to equity shares is made only after paying to preference shares.



convertibility

These shares are convertible.

These shares are not convertible.

# PAST EXAMINATION QUESTIONS

## MAY-2018

### Question1

**Ravi Private Limited has borrowed 5 crores from Mudra finance Ltd. this debt is ultra vires to the company. Examine, whether the company is liable to pay this debt? State the remedy if any available to Mudra Finance Ltd.?**

#### **Answer:**

When act is performed, which though legal in itself, is not authorized by the object clause of the memorandum, or by the statute, it is said to be ultra- vires the company, and hence null and void. This is known as "Doctrine of ultra -vires."

The impact of the Doctrine of ultra-vires is that a company can neither be sued on an ultra-vires transaction, nor can due on it. If you enter into a transaction which is ultra-vires the company, you cannot enforce it against the company.

If you have lent money to the company on such a transaction, you cannot recover it from the company. But, if the money has not been expended, then lender may bring an injunction order on the Co. to stop it from parting from it. This is because company does not become owner on it. However, if the money has been used, then lender slips into the shoes of the debtor paid - off and consequently can recover his loan to that extent.

In the given case, the transaction is ultra-vires and hence the company Ravi private Limited is not liable to pay debit. Mudra Finance Ltd. may be injunction order on Ravi Pvt. Ltd. to stop it from parting with the funds.

### Question2

**Define OPC (One person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under section 8 or a private company?**

#### **Answer:**

Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

#### **Rules Regarding its Membership:**

1. Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporation a OPC/shall be nominate for the sole member of a OPC.
2. No minor shall become member or nominee of the OPC or can hold share with

beneficial interest.

3. No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
4. OPC is a private company in nature.
5. OPC cannot be incorporated or converted into company under section 8 of the Act i.e. a non - Profit Company.
6. OPC may be converted to private or public companies in certain cases.
7. Such companies cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

### **2018 - May [6] (c) - (3 marks)**

**State the limitations of the doctrine of indoor management under the Companies Act, 2013**

#### **Answer:**

Doctrine of indoor management also known AS THE CASE OF Royal British Bank vs. Turquand i.e. Turquand rule is an exception to doctrine of constructive notice. The doctrine says that outsider can in no way be asked to be responsible or to enquire into the internal management of the Company. They can safely presume that company must have done all what it was supposed to do as its internal level.

#### **Question3**

**A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31<sup>st</sup> March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company provisions of the Companies Act, 2013 and advise the members accordingly.**

#### **Answer:**

Accordingly to the facts of this case there exists a situations in which certain members of section 8 company have approached a person for seeking relevant and informed advice on the amount of dividend that can be distributed amongst then from the pool of profits made over a financial year by a company registered under section 8.

The first and foremost thing in this case that such members need to be educated about is the definition and objects of a section 8 company which clearly states that " a section 8 company is formed to promote the charitable object of commerce, art, science, sports education, social welfare, religion, charity, protection of environment, etc., and a section 8 intends to apply its profit in - (1) promoting its objects (2) - Prohibiting the payment

of any dividend of its members.

Now when it is clearly evident that a section 8 companies is not statutorily bound to pay dividends to its members unlike a public or private company then automatically the demand of the members for dividend stands invalid and cannot be enforced on the company.

## NOV - 2018

### Question1

**There are cases, where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct from its shareholder or members. Elucidate.**

#### **Answer:**

The cases on the basis of which the principle of corporate personality of a company can be disregarded under the Companies Act, 2013 are:

1. **To determine the character of the company i.e. to find out whether company is an enemy or friend:** In the law relating to trading with the enemy where the list of control is adopted.
2. **To protect revenue tax:** In certain matters concerning the law of taxes duties and stamps particularly where questions of the controlling interest is in issue.
3. **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen.
4. **Formation of subsidiaries as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company and may therefore be deemed to have lost it's individually in favour of its principal. Here the principal will be, held liable for the acts of that company.
5. **Company formed for fraud/improper conduct or defeat law:** where the device of incorporation is adopted for some illegal or improper purpose e.g. to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

### Question2

**Mr. X had purchased some goods from M/s ABC Limited, on credit. A credit period of one month was allowed to Mr. X. Before due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving of money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued to a notice to Mr. X for non-payment of the**

**dues within the stipulated period. Mr. X. Informed the company that he has already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider; he trusted the words of Mr. Z as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free his liability.**

**Answer:**

In this case accordingly to the facts provided it is clearly observable that the situations points towards the applicability of the Doctrine of Indoor Management in relevance to the affairs of the company M/s ABC Limited According to the terms of the Doctrine of Indoor Management if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed. Here in this case if we view the facts from the perspective of applicability of the Doctrine.

## NOV - 2019

**Question 1**

**“The Memorandum of Association is a charter of a company”. Discuss also explain in brief the 4 contents of Memorandum of Association.**

**Answer:**

The Memorandum of Association of company is in fact its charter; it defines its constitutions and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

It defines the scope of the Companies activities and its relations with the outside world. It is the charter of the company. It contains the objects to pursue which the company is formed. It lays down the scope of operations beyond which company cannot go.

**Contents of Memorandum:**

- a) **Name Clause:** The name of the company must end with the words “Limited in case of public co., or “Private limited” in case of private co.
- b) **Registered office clause:** It mentions the state in which the registered office of the company is situated.
- c) **Object clause:** The object for which the company is proposed to be incorporate and any matter considered necessary in furtherance therefore, is stated in this clause.
- d) **Liability Clause:** The Liability of members of the company, whether limited or

unlimited and also states how the liability is limited.

- e) **Capital clause:** It states the amount of authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take. A company not having share capital need not have this clause.
- f) **Association clause:** It states the desire of the subscribers to form into a company. The memorandum shall conclude the association clause. Every subscriber to the memorandum shall take at least one share and shall write against his name, the number of shares taken by him

### Question 2

**Mr. Anil formed a one person Company (OPC) on 16<sup>th</sup> April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31<sup>st</sup> March, 2019 was about Rs. 2.25 Crores. His friend Sunil wanted to invest in his OPC, so they decide into convert it voluntarily into a private limited company. Can Anil do so?**

#### **Answer:**

As per Companies Act, 2013 a OPC cannot voluntarily into any kind of a company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. In the given case Mr. Anil formed OPC on 16<sup>th</sup> April, 2018 and turnover for first financial year ending is about Rs. 2.25 crore. He wants to voluntarily convert it into a private limited company.

Held Mr. Anil can do so as the threshold limit of turnover is crossed, thus the OPC can be converted into Private Limited Company even before expiry of two years from incorporation.

### Question 3

**A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken aback by him as pretended loan. Can A be regarded as separate from the private limited company he formed?**

#### **Answer:**

The facts of the given case are similar to that of "Dinshaw Maneckjee Petit" it was held that the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private

companies were a share and the corporate veil was lifted to decide the real owner of the income thus, A cannot be regarded as separate from the private limited company he formed.

## **DEC - 2020**

### **Question 1**

**(a) ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs. 15 crores and issued Non-Convertible Debentures worth Rs. 40 Crores during the Financial Year 2019-20. After the total paid-up Equity share capital of the company Rs. 100 Crores and Non-Convertible Debentures stands at Rs. 120 Crores.**

**Define the meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?**

### **Answer:**

**Provision:** As per Sec. 2(6) of Company Act 2013 associate company in relation to another company, means a company in which that other company has a significant influence but which is not a subsidiary company of company having such influence and include a joint venture company.

Here word significant influence means control of at least twenty percent of total voting power or control of or participation in business decision under an agreement.

Term Total voting power will mean aggregate of-

- (a) Paid up equity share capital and
- (b) Convertible Preference share capital

**Conclusion:** Applying the above provision, as XYZ Ltd. hold 15 crore equity with voting right in total 100 crore paid up equity of ABC Ltd. which is only 15 percent and holding of non-convertible debenture of Rs. 40 crore is ABC Ltd. will not be counted for purpose of calculating relationship of associate company.

So ABC Ltd. and XYZ Ltd. are not associate company.

**(b) P, Q, R and S are the partners in M/S PQRS & Co. a partnership firm which deals in trading of Washing machines of various brands.**

**Due to the conflict of views between partners, P & Q decide to leave the partnership firm and started competitive business on 31<sup>st</sup> July, 2019, in the name of M/S PQ & Co. Meanwhile, R & S have continued using in the property in the name M/S PQRS & Co. in which P & Q also has a share.**

**Based on the above facts, explain in detail the rights of outgoing partners as**



**per the Indian Partnership Act, 1932 and comment on the following:  
(i) Rights of P & Q to start a competitive business.**

**Answer:**

**(b) (i) Provision:** Rights of outgoing partner to carry competing business under section 36.

An outgoing partner may carry on business competing with that of firm and may advertise such business but subject to contract to contrary, But he may not-

- a) use firm name,
- b) represent himself as carrying on business of firm,
- c) Solicit the customer who were dealing with the firm before he ceased to be partner.

**Conclusion:** So applying above provision P and Q can start a competitive business if there is no contract to contrary following the above restriction.

**(b) What are the significant points of section 8 company which are applicable for other Companies? Briefly explain with reference to provisions of the Companies Act, 2013.**

**Answer:**

**b) Formation of companies with charitable objects etc. (Section 8 company):**

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in promoting its objects and prohibiting the payment of any dividend to its members.

**Examples** of section 8 companies are FICCI, ASSOCHAM, National Sports Club of India, CII etc.

**Section 8 Company- Significant points**

- Formed for the promotion of commerce, art, science, religion, charity, protection environment, sports, etc.
- Requirement of minimum share capital does not apply.
- Uses its profits for the promotion of the objective for which formed.
- Does not declare dividend to members.
- Operates under a special licence from Central Government.
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Licence revoked if conditions contravened.

- On revocation, Central Government may direct it to
  - Converts its status and change its name
  - Wind – up
    - Amalgamate with another company having similar object
- Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
- Requirement of minimum number of directors, independent directors etc. does not apply.
- Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.
- A partnership firm can be a member of Section 8 company.

**(c) Mike Limited company is incorporated in India having Liaison office at Singapore. Explain in detail meaning of foreign company and analysis on whether Mike limited would be called as foreign Company as is established a Liaison office at Singapore as per the provisions of the Companies Act, 2013.**

**Answer:**

**(c) Provision / Meaning of Foreign Company:** According to Section 2(42) of Companies Act, 2013 foreign company means any company or body corporate incorporated outside India which:

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
- (ii) conducts any business activity in India in any other manner.

**Facts of case:** In the given case mike limited incorporated in India having liaison office at Singapore.

**Conclusion:** On the basis of above provision we can conclude since mike limited incorporated in India therefore mike limited would not be called as foreign company under company's act, 2013.

## JAN - 2021

### Question 1

**(b) ABC Limited was registered as a public company. There were 245 members in the company. Their details are as follows:**

<b>Directors and their relatives</b>	<b>190</b>
<b>Employees</b>	<b>15</b>
<b>Ex - employees</b>	<b>20</b>

**9 share were allotted when they were employees  
others**

**20**

**(Including 10 joint holders holding shares jointly in the name of father and son)  
The Board of directors of the company proposes to convert it into a private  
company. Advice whether reduction in the number of members is necessary for  
conversion.**

**Answer:**

Provision: According to the provision of the Indian contract Act, 2013 `To create a private company there must be at least 2 members and maximum 200 members. ``For counting this limit.

- Employee or Ex-employee who are member of the company by virtue of their employee are not to be considered
- Two or more persons who hold shares in a company policy shall be treated as a single member.

Conclusion: By applying above provision to the given case, we can conclude That their requirement for reduction of number of numbers as total members 200 only, (i.e., 190+10)

**Question 2**

**SK Infrastructure Limited has a paid-up share capital divided into 6, 00,000 equity shares of INR 100 each. 2, 00,000 equity shares of the company held by Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.**

**Answer:**

**PROVISION:** According to provision of companies Act, 2013, "Government company means any company in which not less than 51% of the paid-up share capital is held by:

- The central Government, or
- Any State Government(s): or
- Partly by the central Government and partly by one or more state governments,"

**CONCLUSION:** By applying above provision to the given case, we can conclude that SK Infrastructure Ltd is a government company. Since central and state governments are together holding more than 51% of its paid-up capital.

**JULY - 2021**

**Question 1**

**Y incorporate a "One person company (OPC)" making his sister z as nominee Z is leaving India permanently due to her marriage abroad Due to this fact, she is withdrawing her consent of nomination in the said OPC. Taking into considerations the provisions of the companies Act, 2013 answer the question given below:**

- I. Is it mandatory for Z to withdraw her nomination in the said OPC if she is leaving India permanently?**
- II. Can Z continue her nomination in the said OPC if she maintained the status of Resident of India after her marriage?**

**Answer:**

**Provision:** According to the provision of companies Act, 2013 "only a person who is resident in India is allowed to become and continue as a nominee in OPC" A person is said to be resident in India if he stayed in India for a period of not less than 182 days during the immediately preceding financial year

**ANALYSIS & CONCLUSION:**

- I. In this case Z is leaving India permanently due to her marriage abroad as a result of it she will lose her residential status. Therefore, it is mandatory to Z to withdraw her nomination in the said One Person Company.
- II. In this case Z is maintaining her residential status in India even after her marriage. Therefore, Z can continue her nomination in the said One Person Company.

**Question 2**

**Explain the classification of the companies on the basis of control as per the companies Act, 2013.**

**Answer:****CLASSIFICATION OF COMPANIES ON THE BASIS OF CONTROL:****I. HOLDING AND SUBSIDIARY COMPANY:**

- **Holding Company [Sec. 2 (46)]:** A company is a holding company in relation to one or more other companies means a company of which such companies are subsidiary companies.
- **Subsidiary Company or Subsidiary [Sec. 2 (87)]:** In relation to any other company (i.e., to say the holding company) means a company in which the holding company-
  - Control the composition of the Board of Directors, or
  - Exercises or controls more than the total voting power either.

**II. ASSOCIATE COMPANIES:** Associate Company in relation to another company, means a company (other than subsidiary) in which other company has significant influence and includes a joint venture company.

**Question 3**

**What is the main difference between a Guarantee company and a company having share capital?**

**Answer:**

**I. Company Limited by shares [Sec.2(22)]:**

- In this case the liability of members is limited to the extent amount guaranteed by them.
- This liability can be enforced either during the
  - Life time of the company or
  - Winding – up of the company

**II. Company Limited by Guarantee [Sec. 2 (21):**  
**Guarantee company not having share capital**

- In this case the liability of members is limited to the extent if
  - Amount guarantee by them; and
  - Unpaid value of shares held by them

**Guarantee Company having share capital:**

- In this case the liability of members is limited to the extent of
  - Amount guaranteed by them; and
  - Unpaid value of shares held by them
- Member can be demanded to pay call money at any time but he can be asked to guaranteed amount during winding up.

**DEC - 2021**

**Question 1**

**AK Private Limited has borrowed ` 36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is` 30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.**

**Answer:**

This case is governed by the ‘Doctrine of Ultra Vires’. According to this doctrine, any act done or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because, the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot

depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

**(i) Whether AK Private Limited is liable to pay the debt?**

As per the facts given, AK Private Limited borrowed ` 36 crores from BK Finance Limited which is beyond its borrowing power of ` 30 crores.

Hence, contract for borrowing of ` 36 crores, being ultra vires the memorandum of association and thereby ultra vires the company, is void. AK Private Limited is not, therefore, liable to pay the debt.

**(ii) Remedy available to BK Finance Limited:**

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

**Question 2**

**What do you mean by the term Capital? Describe its classification in the domain of Company Law.**

**Answer:**

**(i) Meaning of capital:** The term capital has variety of meanings. But in relation to a company limited by shares, the term 'capital' means 'share capital'. Share capital means capital of the company expressed in terms of rupees divided into shares of fixed amount.

**(ii) Classification of capital:** In the domain of Company Law, the term capital can be classified as follows:

**(a) Nominal or authorised or registered capital:**

This expression means such capital as is authorised by memorandum of a company to be the maximum amount of share capital of the company.

**(b) Issued capital:** It means such capital as the company issues from time to time for subscription.

**(c) Subscribed capital:** As such part of the capital which is for the time being subscribed by the members of a company.

**(d) Called up capital:** As such part of the capital which has been called for payment. It is the total amount called up on the shares issued.

**(e) Paid-up capital:** It is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.



**Question 3**

**BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ` 30 Lakhs (3 Lakhs equity shares of ` 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1, 60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited?**

**Answer:**

Section 2(87) defines “subsidiary company” 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:

For the purposes of this section —

- 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) “layer” in relation to a holding company means its subsidiary or subsidiaries.

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(iii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

**JUNE 22****Question 1**

**The Articles of Association of Aarna Limited empowers its managing agents to borrow loans on behalf of the company. Ms. Anika, the director of the company, borrowed =18 Lakhs in name of the company from Quick Finance Limited, a non-banking finance company. Later on, Aarna Limited refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been**

**actually passed by the company and therefore the company is not liable to pay such loan.**

**Decide whether the contention of Aarna Limited is correct in accordance with the provisions of the Companies Act, 2013? 4 Marks**

**Answer:**

### **Doctrine of Indoor Management**

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

1. Thus, What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Aarna Limited. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Aarna Limited

### **Question 2**

**Explain the 'doctrine of ultra vires under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company?**

**Answer:**

### **Doctrine of Ultra Vires**

The Memorandum, being the constitution of the company sets out the principal objectives, powers, scope and its area of operation, both internal and external. A company, therefore, can do anything within the scope of the powers specified in the Memorandum.

It has also an implied power to do all such things that are fairly incidental to its main objects. If the company does anything which is beyond the powers specified in the

Memorandum it shall be construed as an Ultra Vires act.

### Effects of an Ultra Vires Act

The effects of an ultra vires act can be summed up as follows:

1. An ultra vires act will be wholly void and it will not bind the company; neither the company nor the outsider can enforce the contract.
2. Any member of the company can bring injunction against the company to prevent it from doing any ultra vires act.
3. The directors of the company will be personally liable to make good the funds used for the ultra vires acts.
4. Where a company's money has been used ultra vires to acquire some property, the right of the company over such property is held secure.
5. Since Ultra Vires contracts are treated as invalid from the outset, it cannot become Intra Vires by reason of estoppel or ratification.
6. Ultra Vires borrowing does not create the relationship of debtor and creditor. The only possible remedy in such case is in *rem* and not in *personam*.

### Question 3

**Mr.R is an Indian citizen, and his stay in India during the immediately preceding financial year, is for 130 days. He appoints Mr. S, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Mr. R eligible to be incorporated as a One-Person Company (OPC)? If yes, can he give the name of Mr. S in the memorandum of Association as his nominee? Justify your answers with relevant provisions of the Companies Act, 2013.**

### **Answer:**

Only Indian citizens and resident Indians can form an OPC. If person is resident in India for 120 days or more in a previous year, he is eligible to incorporate an OPC.

If foreigners are resident Indian then they are allowed to incorporate an OPC? No. Rule 3(1) of the Companies (Incorporation) Rules, 2014, states that only a natural person who is an Indian citizen and whether resident in India or otherwise can incorporate an OPC. It means both the conditions must be fulfilled i.e first is Indian citizen and second is resident Indian. For residency criteria, days are lowered from existing 182 days to 120 days.

**Conclusion-** So here in the case of Mr. R and S both stay in India more than 120 days so they are Indians so they are eligible to incorporate the OPC