CS EXECUTIVE PROGRAM-MODULE II
COMPANY LAW – PAPER
OBJECTIVE COMPILATION

State giving reasons in brief, whether the following statements are correct or incorrect:

Q1) Auditor of a government company is appointed or re-appointed by the Central Government on the advice of Comptroller and Auditor General of India (C & AG).

A1) **Incorrect.** According to sec-619(2) of the companies Act, 1956, the auditor of a Government Company shall be appointed or re-appointed by the Comptroller and Auditor General of India.

Earlier, such auditors were appointed or re-appointed by the Central Government on the advice of Comptroller and Auditor General of India.

Q2) Joint- holders of shares in a public company are not a single member.

A2) **Correct.** Joint holders of shares in a public company are not a single member. Each of the Joint holders of shares is a member of the company but joint holders are counted as one member for the purpose of determining maximum number of member i.e., 50 in a private company and for determining quorum at general meetings and for the purpose of determining members required for making applications under section 397 and 398 of the Companies Act, 1956 etc.

Q3) DIN is a unique identification number and once obtained is valid for life of a director.

A3) **Correct.** DIN (Director Identification Number) is a unique identification number and if it is obtained once it is valid for life time of a director.

All the existing directors and any person intending to be appointed as a director are required to obtain the DIN. DIN is also compulsory for directors of Indian companies who are not citizen of India. However, DIN is not essential for directors of foreign company having branch offices in India. Only a single DIN is required for an individual irrespective of number of directorship held by him.

Q4) In case of forged, illegal or void ab-initio transactions, the doctrine of 'indoor management' protects an outsider.

A4) **Incorrect**. The doctrine of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab- initio. It does not protect an outsider. Because in the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction and the question of his consent being free or otherwise dose not arise. Consequently, it is not that the title of the person is defective but there is no title at all. Therefore, howsoever clever the forgery might have been the outsider acquires no rights at all.

Q5) A public limited company can commence business immediately on incorporation.

A5) **Incorrect.** A public company, after incorporation, must obtain a certificate to commence business from the Registrar before it can commence business or exercise its borrowing powers. In order to obtain this certificate, the company must comply with section 149 of the Companies Act. If the company has issued a prospectus then Section 149(1) applies and if it has not issued a prospectus, Section 149(2) applies.

"Commence any business" does not mean merely the business for which the company was started, but it also includes the power to borrow and make any transaction including sale, and purchase of property, etc. [Kishangarh Electric Supply Co. Ltd. v. United State of Rajasthan, AIR 1960 Raj. 49].

Q6) Hire- purchase and leasing transactions lead to 'borrowing'.

A6) **Incorrect.** Borrowing implies receipt of money. In hire purchase and leasing transactions, asset are taken for use and the owner is compensated for the use of the asset by paying cash. Hire purchase and leasing transactions are not covered by Clause (d) of Section 293(1) of the Companies Act, 1956 which deals with borrowing, as they do not amount to borrowing.

Q7) Share certificate is an official publication.

A7) **Incorrect.** Share certificate is not an official publication under section 147(1)(c) of the Companies Act, 1956. Under Section 82, shares are movable property transferable in the manner provided in the articles of company. The share certificates are certificate of title and are moveable property but are not official publication in the nature of prospectus, balance sheet, advertisement etc.

Q8) The place from which a representative of a foreign company in India conducts meetings of shareholders or even directors, and procures orders from customers is a 'place of business' of the foreign company.

A8) **Incorrect.** It was in the case of [PJ Johnson v. Astrofiel Armadom (1989) 3 Comp LJ 1] that mere presence of a representative of a foreign company is not sufficient if his only authority is to elicit orders from customers and therefore, it was not a "place of business".

Q9) Modification of charge in the event of change in law requires registration.

A9) **Correct.** So long as the terms or conditions or the extent of operation of any charge is modified for whatever reason, the provisions of section 135 would become applicable. Therefore, even in case of modification of charges without any mutual agreement between the parties thereto, namely, as a result of a change in law, the provisions of section 135 are attracted. (Letter: No.8/42 (135)/66-CL-V dated 25.11.1966).

Q10) Raja, a director of Empire Ltd., resigned his directorship. He is liable to file Form No. 32 with the Registrar of Companies.

A10) **Incorrect.** The director is not liable but the Company Secretary of the Company, as one of the officers in default is liable to file form No. 32 and give notice to ROC. [Soumil Dilip Mehta v. state of Maharashtra (2003) 113 Comp. Cas. 443 (Guj)]

Q11) The property of a company is not the property of the individual members.

A11) **Correct.** A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. the company is the legal person in which all its property is vested, and by which it is controlled, managed and disposed of. Their lordships of the Madras High Court in R.F. Perumal v. H. John Deavin, A.I.R. 1960 Mad. 43 held that "no member can claim himself to be the owner of the company's property during its existence or in its winding-up".

Q12) The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only.

A12) **Correct.** As separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the separate legal entity, the individuals will not be allowed to take shelter behind the corporate personality. The court breakthrough the corporate shell and applies the principal of what is known as "Lifting or Piercing through the corporate veil".

Q13) Every company shall have the words "Limited", if the company is registered with a limited liability.

A13) **Correct.** Every company shall have the words 'Limited', if the company is registered with a limited liability. Moreover, if a company is registered with a limited liability, the words 'Private Limited' must be added at the end of its name by a private limited company. On the other hand, the words 'Limited' must be added at the end of its name by a public limited company. However, section 25 company is an exception in this regard.

Q14) The members of an unlimited company are liable directly to the creditors of the company.

A14) **Incorrect.** The members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

Q15) Foreign Company has opened an office for operating bank accounts in India. Hence it is supposed to 'carry on business' in India.

A15) **Incorrect.** Following activities are held as not constituting 'carrying on business':
1. Carrying on small transactions.
2. Conducting meetings of shareholders & directors.
3. Operating bank account.
4. Transfer of shares or other securities.
5. Operating through independent contractors.
6. Procuring orders.
7. Creating or Financing debt.
8. Securing or collecting debts or enforcing claims to property of any kind.

Q16) Where the outsider has knowledge of irregularity, the doctrine of indoor management protects the outsider.

A16) **Incorrect.** The doctrine of indoor management does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, can not seek protection under the rule of indoor management. In the case of Howard v. Patent Ivory Co., the articles of a company empowered the directors to borrow upto 1000 pounds only. They could, however, exceed the limit of 1000 pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3500 pounds from one of the directors who took debentures. The company refused to pay the amount. Held, the debentures were good to the extent of 1000 pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

Q17) Company form of business organization is not a popular form of business organization.

A17) **Incorrect.** Due to following advantages company form of organization is popular:
1. Corporate personality: A company is a distinct legal or juristic person independent of its members.
2. Limited liability: The Companies Act provides that in the event of the company being wound-up, the members shall have liability to contribute to the assets of the company in accordance with the Act [Section 34(2)].
3. Perpetual succession: Not withstanding any change in its members, the company will be the same entity with the same privileges and immunities, estate and possessions.
4. Transferability of shares: Section 82 of the Companies Act provides that the shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.
5. Separate property: A company as a legal entity is capable of owning its funds and other assets. [Gramophone & Typewriter Co. v. Stanley, (1906) 2 K.B. 856 at p. 869.]
6. Capacity to sue: As a juristic legal person, a company can sue in its name and be sued by others.
7. Flexibility & autonomy: The Company has an autonomy and independence to form its own policies and implement them, subject to the general principles of law, equity and good conscience and in accordance with the provisions contained in the Companies Act, Memorandum and Articles of Association.

Q18) Stock exchange registered under the Companies Act, 1956 can carry a provision in their articles of association empowering directors to expel any member of the company under any of the given conditions.

A18) **Correct.** The Department of Company Affairs (now Ministry of Corporate Affairs) has clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is ultra vires the company.

Also, in the light of proviso to Section 29, if there is a provision in the articles empowering the Directors of the company to expel any member of the company under any of the given conditions, then such a provision shall be totally inconsistent with the provisions of Section 29 of the Act.

But the stock exchanges, registered under the provisions of the Companies Act, can carry such a provision in its Articles, because the Companies Act is a general law whereas the Securities Contracts Regulation (SCR) Act is a special law. The regulation of stock exchanges is done by SCR Act and SEBI Act and not by Companies Act. Hence, the Articles of Stock Exchange may provide for additional matters as per

SCR Act, which may not be possible for inclusion in the Articles of a company as per the provisions of the Companies Act. [Madras Stock Exchange Ltd. v. S.S.R. Rajkumar (2003) 116 Comp. Cas. 214 (Mad.)].

Another relevant case law is Naresh Chandra Sangal v. Calcutta Stock Exchange Association Ltd. (1970) RD-SC 202.

Q19) Registrar of Companies has power to condone the delay beyond 30 days of the date of satisfaction of charge and allow filing of satisfaction of charge.

A19) **Incorrect.** Section 138 of the Companies Act, 1956 requires that a company has to file satisfaction of charge within 30 days of the full payment or satisfaction of the charge with the Registrar of Companies. But Registrar does not have power to extend this time limit lies with Company Law Board under Section 141 of the Act.

Accordingly, where the Company Law Board is satisfied that omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company, it may on the application of the company or any other person interested and on such terms and conditions as seem just and expedient to it, direct that the time for giving of intimation of payment or satisfaction shall be extended.

Q20) A company can mortgage or charge any part of its 'Reserve Capital'.

A20) **Incorrect.** A company may charge its uncalled capital if its memorandum or articles of association may give an express power to charge uncalled capital.

However, a company cannot mortgage or charge any part of its 'Reserve Capital'. Reserve capital is that part of uncalled share capital which shall not be capable of being called up except in the event and for the purpose of the company being wound up (Sec. 99)

Fill in the Blanks:

1) **Common seal** acts as the official signature of a company.
2) A private company, which is subsidiary of a company not being a private company, is a **public company**.
3) **The Emblems and names (Prevention of improper Use) Act, 1950** is an Act enacted to prevent the improper use of certain emblems and names for professional and commercial purposes in India.
4) The issue of ESPOs of ESOS shall be subject to approval of shareholders through a **special resolution**.
5) When a company makes buy-back of shares or securities the buy-back operations shall be completed within **12 months**.
6) Working capital of a company may be defined as the excess of current and liquid assets over **current liabilities**.
7) The register and index of debentures holders of a company should be preserved for **15 years** till after the redemption of the debentures.
8) The directors appointed under the principle of proportional representation shall hold office for a period of **three years**.
9) Partnership is a form of **unincorporated** company.
10) The shares in a company are **movable** property.
11) A company cannot go beyond and exercise powers more than what is stated in **memorandum of** association.
12) Directors are **trustees** of the monies of the company but not of the debts due to the company.
13) Statutory auditor is appointed by shareholders at every **Annual General Meeting**.
14) Every company must have a registered office within **30** days of its incorporation or from the day it begins to carry on business.
15) Balance of unclaimed dividend has to be transferred to **Investor Education and Protection Fund** after seven years.
16) Additional director is appointed by **Board of directors**.
17) For calling a general meeting of shareholders, a notice of **not less than 21 days** is required.
18) Due diligence certificate is required to be issued by **merchant bankers** at the time of public issue of shares.
19) Without the consent of the general meeting, the Board of directors can borrow money subject to a maximum of **The aggregate of company's paid-up share and free reserve**.
20) A **proxy** though entitled to attend a general meeting and vote on a poll, but cannot participate in the discussion.
21) Besides making investments and loans, a company can also provide **guarantee** and security to another company.
22) A sole buying agent who holds a beneficial interest of 5% or **Rs. 5,00,000/-** or more in the shares in a company can be appointed only by passing a special resolution and prior approval of the Central Government.
23) A promoter can earn profit out of sale of his own property to the company by making **disclosure** otherwise he has to account for the profits to the company.
24) An issue of debentures by listed public company needs to maintain post-issue debt equity ratio of 2:1 as per **SEBI Guidelines**.
25) Allotment of shares in a public issue without receiving minimum subscription amounts to **Irregular allotment**.
26) A member can not ask for inspection of minutes of **Meeting of Board of Directors**.
27) An incorporated company has **perpetual** succession.
28) The statutory report shall be forwarded to every member of the company at least **21** days before the day on which the meeting is to be held.
29) The maximum amount of fine under section 193 for not recording the minutes of the Board of directors and general meetings is **Rs. 500**.
30) An explanatory statement must be annexed to the notice for the general meeting according to section 173 for consideration of **Special** business at a general meeting.
31) A dividend once declared can not be revoked except with the consent of the **Shareholders**.
32) In terms of Clause 47 of the listing agreement, Compliance Officer shall **the Company Secretary** of the company.

Choose the most appropriate answer from the given options in respect of the following:-

Q1) Promoter is a person who is:
(a) Elected as director
(b) Appointed as chairman
(c) Appointed as managing director
(d) Engaged in promoting a company
A) (d) Engaged in promoting a company

Q2) Minimum number of directors which every public limited company should have is:
(a) 5
(b) 10
(c) 3
(d) 7
A) (c) 3

Q3) Maximum number of Companies in which an individual can become director is:
(a) 20
(b) 50
(c) 15
(d) 5
A) (c) 15

Q4) Maximum value of shares an investor must hold to become a 'small shareholder' is:
(a) Rs. 10,000
(b) Rs. 5,000
(c) Rs. 25,000
(d) Rs. 20,000
A) (d) Rs. 20,000

Q5) Percentage of deposits maturing in a year that is to be placed in a bank account is:
(a) 20%
(b) 15%
(c) 30%
(d) 5%
A) (b) 15%

Q6) A private limited company can commence its business after obtaining:
(a) Certificate of commencement of business
(b) Certificate of incorporation
(c) Approval from Central Government
(d) Approval from Registrar of companies.
A) (b) Certificate of incorporation

Q7) A company is:
(a) A voluntary association for profit
(b) A compulsory association for profit
(c) A statutory association for profit
(d) None of the above.
A) (a) A voluntary association for profit

Q8) A private company need not hold:
(a) Extra-ordinary general meeting
(b) Statutory meeting
(c) Annual general meeting
(d) Board meeting.
A) (b) Statutory meeting

Q9) As per section 252 (2), a private company cannot have less than:
(a) 3 directors
(b) 2 directors
(c) 5 directors
(d) 7 directors
A) (b) 2 directors

Q10) Who cannot become a member of a company:
(a) Company as a member of another company
(b) Foreigner
(c) Trade union
(d) Partnership firm
A) (d) Partnership firm

Q) Section 125 requires a company to file prescribed particulars of charge after the date of creation of a charge with the Registrar of companies within:
(a) 30 days
(b) 60 days
(c) 90 days
(d) None of the above.
A) (a) 30 days

Q11) Change of registered office of a company from one city to another city in the same state but falling under the jurisdiction of two Registrars of companies is required to be approved by the :
(a) Central Government
(b) Registrar of companies
(c) Regional director
(d) Company Law Board.
A) (c) Regional director

Q12) A public company can be converted into a private company only after the approval of the:
(a) High Court
(b) State Government
(c) Central Government
(d) Company Law Board.
A) (c) Central Government

Q13) As per the companies Act, 1956, the types of resolutions to be passed by the shareholders are:
(a) 5
(b) 4
(c) 2
(d) 3.
A) (d) 3

Q14) The number of debenture holders in a private company should not exceed :
(a) Fifty
(b) Twenty
(c) One hundred
(d) No such limit
A) (d) No such limit

Q15) Which of the following is not an advantage/privilege enjoyed by a private company over a public company:
(a) Business can be commenced immediately on incorporation
(b) No need to have more than two directors
(c) The number of members is limited to fifty.
(d) There is no restriction on remuneration payable to directors.
A) (c) The number of members is limited to fifty.

Q16) In a government company, the government shareholding must not be less than:
(a) 25% of the paid-up share capital
(b) 50% of the paid-up share capital
(c) 51% of the paid-up share capital
(d) 100% of the paid-up share capital
A) (c) 51% of the paid-up share capital

Q17) Which of the following is not a characteristic of a statutory corporation in India:
(a) It is owned by the state
(b) Its employees are civil servants and are governed by government regulations in respect of conditions of service
(c) It is created by a special law of the parliament or state legislature
(d) It is a body corporate and therefore it can sue and be sued
A) (b) Its employees are civil servants and are governed by government regulations in respect of conditions of service

Q18) Under section 146, every registered company should have a registered office:
(a) From the date on which it begins to carry on business
(b) From the date on which it obtains certificate of incorporation
(c) From the 30^{th} day after the date of its incorporation
(d) From the date on which it begins to carry on business or From the 30^{th} day after the date of its incorporation, whichever is earlier
A) (d)From the date on which it begins to carry on business or From the 30^{th} day after the date of its incorporation, whichever is earlier

Q19) The quantum of registration fees payable by companies to be incorporated in India depends on:
(a) The issued capital of the company
(b) The nominal capital of the company
(c) The paid-up capital of the company
(d) The called-up capital of the company
A) (b) The nominal capital of the company

Q20) When bonus shares are allotted to members, they are required to pay :
(a) The market price of the shares
(b) The book value of the shares
(c) The face value of the shares
(d) None of the above
A) (d) None of the above

Q21) Forfeited shares can be re-issued by a company by way of passing:
(a) An ordinary resolution at the general meeting
(b) A special resolution at the general meeting
(c) A board resolution
(d) None of the above
A) (c) A board resolution

Q22) Sweat equity shares issued to employees or directors of a company shall be locked-in for a period of:
(a) Three years from the date of allotment
(b) Two years from the date of allotment
(c) Five years from the date of allotment
(d) Twelve months from the date of allotment
A) (a) Three years from the date of allotment

Q23) The companies which need not have their own articles of association are:
(a) Unlimited companies
(b) Companies limited by guarantee
(c) Private companies limited by shares
(d) Public companies limited by shares
A) (d) Public companies limited by shares

Q24) According to the SEBI guidelines, the issue of bonus shares should be made within a period of:

(a) Three months from the date of approval of the Board of directors
(b) Six months from the date of approval of the Board of directors
(c) Twelve months from the date of approval of the Board of directors
(d) Thirty days from the date of approval of the Board of directors

A) (b) Six months from the date of approval of the Board of directors

Q25) Out of the following statements, which one is incorrect as regard to the Director Identification Number (DIN):

(a) DIN is a unique identification number and once obtained is valid throughout the lifetime of a director
(b) DIN is mandatory for all directors of Indian companies whether they are citizens of India or not
(c) DIN is mandatory for all directors of foreign company having branch offices in India
(d) A single DIN is required for an individual irrespective of number of Directorship held by him.

A) (c) DIN is mandatory for all directors of foreign company having branch offices in India