

CA Inter Law Suggested Answers

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Part II - Descriptive Answers

Answer to Question 1(a)

Procedure for Subscription to the Memorandum and Articles of Association

As per the Companies Act, 2013, the memorandum and articles of association must be signed by each subscriber, who must agree to take at least one share. They must add their name, address, description, and occupation in the presence of at least one witness who will attest the signature. The procedure for the diverse group of subscribers in this case is as follows:

- **Amrish (Individual):** Amrish must sign the memorandum and articles of association, adding his name, address, description, and occupation. This must be done in the presence of at least one witness who will attest his signature.
- **Robert and Eliza (Foreign Nationals):** For foreign nationals, the subscription process has specific requirements.
 - Their signatures must be attested by a notary public in their country of citizenship or by an officer of the Indian consulate.¹
 - Their personal details, including address and occupation, must be provided.²
 - Robert's presence in India on a valid Business Visa simplifies the process as his signature can be attested in India.³
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- **Goma Devi (Illiterate Person):** An illiterate person can subscribe to the memorandum by affixing their thumb impression.⁴
 - The witness must read and explain the contents of the memorandum and articles to the subscriber.
 - The witness must also write the illiterate subscriber's name, address, and description and state that the contents were explained and the subscriber appeared to have understood them before affixing their thumb impression.
- **Goodwork Technologies LLP (Body Corporate):** A Limited Liability Partnership is a body corporate and can become a subscriber to the memorandum.⁵
 - The subscription should be made by a designated partner or an authorized representative acting under the authority of a resolution of the partners.
 - The signature must be affixed in the presence of a witness, and the LLP's seal (if any) may also be affixed.

- **Mohit Electronics Private Ltd. (Body Corporate):** A private limited company can also be a subscriber.⁶
 - The subscription must be made by a director or an authorized officer, acting under the authority of a board resolution.
 - The signature must be affixed in the presence of a witness.

Answer to Question 1(b)

(i) Procedure to Fill a Casual Vacancy of a Statutory Auditor:

Under Section 139(8) of the Companies Act, 2013, a casual vacancy in the office of an auditor can be filled by the Board of Directors within 30 days.⁷ However, if the vacancy is caused by the resignation of an auditor, the appointment by the Board must also be approved by the company at a general meeting convened within three months of the Board's recommendation. The auditor so appointed shall hold office until the conclusion of the next annual general meeting.⁸⁸⁸

In this case, since the vacancy was caused by the death of Sangeeta, the Board of Directors correctly filled the vacancy by appointing Keshav.⁹

(ii) Validity of Keshav's Contention:

Keshav's contention that he can continue as the Statutory Auditor until the conclusion of the next 6th Annual General Meeting is **not justified**.¹⁰ An auditor appointed to fill a casual vacancy holds office only until the conclusion of the *next* annual general meeting.¹¹ Therefore, Keshav's term expires at the AGM scheduled for 28th August 2024. The company is well within its rights to appoint Aashish as the new auditor at this AGM.¹²

(iii) If the Vacancy Was Caused by Resignation:

If the casual vacancy was caused by Sangeeta's resignation, the procedure would be different.¹³ The Board of Directors could still appoint an auditor within 30 days. However, this appointment would need to be approved by the shareholders at a general meeting held within three months of the Board's appointment. The auditor appointed would then hold office until the conclusion of the next AGM.

Answer to Question 1(c)

Examination of Transactions under FEMA, 1999

Under the Foreign Exchange Management Act (FEMA), 1999, a 'person resident in India' is restricted from holding, owning, possessing, or transferring foreign exchange, foreign security, or any immovable property situated outside India, except as provided in the Act.

Upon his permanent return to India on 24th November 2024, Mr. V becomes a 'person resident in India'. The funds he inherited from his wife and holds in his US bank account are foreign exchange.

However, FEMA provides general permission to a person resident in India to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India, or was inherited from a person who was resident outside India.

- **Inherited Money:** The money Mr. V inherited from his wife, who was also resident outside India, can be held by him in his US bank account.
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- **Insurance Premium Payment:** The payment of the life insurance premium from his US bank account for a policy taken when he was a non-resident is a permissible transaction.¹⁷ He is permitted to make payments out of funds held abroad for obligations incurred when he was a non-resident.
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Therefore, Mr. V is **permitted** to carry out both transactions under the provisions of FEMA, 1999.

Answer to Question 2(a)

Determination of 'Deposit' under the Companies Act, 2013

As per the Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include certain specified amounts.

(i) IQ Books Limited: The amount of ₹50 crores received as share application money is not considered a deposit.¹⁸ However, this exemption is valid only if the securities are allotted within 60 days of receipt of the application money. Since the company refunded the amount on 20th February 2025, which is more than 60 days from 8th December 2024, the amount will be treated as a deposit.

(ii) Precious Jewellers Limited:

- The amounts of ₹10 crores brought in by Suraj and ₹15 crores by Raj, who are promoters, against the stipulation of the lending bank, are not considered deposits.
191919 This is because the funds are provided by the promoters in pursuance of a stipulation imposed by the lending institution.
- However, the ₹15 crores brought in by Mr. K, the father of a promoter (Tejas), is considered a **deposit**. The exemption applies only to funds from promoters, not their relatives.

(iii) Pretty Cosmetics Limited: The issuance of non-convertible debentures that are listed on a recognized stock exchange is **not considered a deposit**. This is a specific exclusion under the deposit rules, provided they are issued in accordance with SEBI regulations. The creation of a charge is a requirement for secured debentures but does not alter its status as a non-deposit item.

Answer to Question 2(b)

Rescission of Contract due to Misstatements in Prospectus

Under the Companies Act, 2013, a contract to subscribe for securities can be rescinded if it was induced by a misstatement (a false or misleading statement) in the prospectus.

- **Mr. C's Right to Rescind:** Mr. C subscribed to the shares based on the prospectus which contained misstatements: that Mr. T was a director and that funds would be used for community service.²³ These are material misstatements. Therefore, Mr. C has the right to rescind the contract and claim his money back from the company. He must do so within a reasonable time and before the company goes into liquidation.
- **Mr. D's Right to Rescind:** Mr. D, who purchased the shares from Mr. C in the secondary market, **cannot rescind the contract** with the company.²⁴ The right to rescind is available only to the original allottee who subscribed for the shares based on the prospectus. The prospectus is intended for the primary market issuance, not for subsequent sales.

Answer to Question 2(c)

Simultaneous Appointment as CFO in Holding and Subsidiary Companies

As per Section 203 of the Companies Act, 2013, a whole-time key managerial personnel (which includes a CFO) shall not hold office in more than one company, except in its subsidiary company at the same time.²⁵

The question is whether "subsidiary company" in the singular also includes the plural "subsidiary companies". The General Clauses Act, 1897, provides a rule of interpretation that words in the singular shall include the plural, and vice-versa, unless there is anything repugnant in the subject or context.²⁶

Applying this principle, the term "subsidiary company" in Section 203 can be interpreted to mean "subsidiary companies". Therefore, Purva can be designated as the CFO in both subsidiary companies, ACL and SBL, in addition to being the CFO of the holding company, PBL.²⁷ There is nothing in the context of Section 203 that would suggest a contrary interpretation.

Answer to Question 3(a)

(i) Disclosure on the Face of the Prospectus:

The prospectus must prominently feature a statement that a copy has been delivered to the Registrar for registration and that the Registrar has not reviewed or approved the document. It should also specify the documents attached to the copy delivered to the Registrar.²⁸

(ii) Conditions for an Expert's Statement:

If a prospectus includes a statement made by an expert, the following conditions must be met:

- The expert must be a person who is not engaged or interested in the formation, promotion, or management of the company.
- The expert must have given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration.
- A statement that the expert has given and not withdrawn his consent must be included in the prospectus.²⁹

(iii) Date of Publication of Prospectus:

The prospectus must be dated. The date mentioned on the prospectus shall be taken as the date of its publication. ³⁰

Answer to Question 3(b)

Validity of the Company's Claim Regarding Registration of Charge

The company's claim is **not valid**. ³¹

Section 77 of the Companies Act, 2013, mandates that every company creating a charge on its property or assets, or any of its undertakings, whether tangible or otherwise, and situated either in or outside India, shall register the particulars of the charge with the Registrar. ³²

- **Property Outside India:** The law explicitly covers property situated outside India. Therefore, the fact that the manufacturing unit and the stock are in Germany does not exempt the company from this requirement. ³³
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- **Intangible Assets:** The phrase "whether tangible or otherwise" clearly indicates that intangible assets like patents are also covered. ³⁴³⁴³⁴³⁴ The company was therefore required to register the charge created on its patent rights.
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The Registrar's notice is justified, and the company must register the charge on the patent rights.

OR

Floating Charge and its Crystallization

A **floating charge** is a type of security interest over a fund of changing assets of a company. It is a charge on a class of assets, present and future, which in the ordinary course of the company's business is changing from time to time and which leaves the company free to deal with the property as it sees fit until the charge "crystallizes".

A floating charge converts into a **fixed charge** (a process called crystallization) upon the happening of certain events, which typically include:

1. The company goes into liquidation.
2. The company ceases to carry on its business.

3. A receiver is appointed by the court or the debenture holders.
4. There is a default in payment of the principal or interest, and the debenture holders take steps to enforce their security.

Once crystallized, the charge attaches to the specific assets of the company in the relevant class at that time, and the company can no longer deal with those assets freely.

Answer to Question 3(c)

Concept of 'Noscitur A Sociis'

'Noscitur a Sociis' is a Latin legal maxim that means "it is known by its associates."³⁵ It is a rule of statutory interpretation which suggests that the meaning of an unclear or ambiguous word should be determined by considering the words with which it is associated in the context.

³⁶ The meaning of a word is judged by the company it keeps.

For example, if a statute refers to "cars, motorcycles, and other vehicles," the term "vehicles" would likely be interpreted to include other forms of road transport like trucks and buses, but probably not airplanes or ships, because of the associated words "cars" and "motorcycles."

Answer to Question 4(a)

(i) Audit Trail and Edit Log Requirements:

Under the Companies (Accounts) Rules, 2014, for financial years commencing on or after April 1, 2023, every company that uses an accounting software for maintaining its books of account must use software which has a feature of recording an **audit trail** of every transaction.³⁷

- **Audit Trail:** This feature must create an edit log of each change made in the books of account along with the date when such changes were made and ensure that the audit trail cannot be disabled.³⁸
- **XYZ Ltd.'s Non-Compliance:** The company has violated these provisions because:
 - Some journal entries were altered without creating edit logs.³⁹
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 - The audit trail feature was disabled for certain modules.⁴⁰
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The company must immediately ensure its accounting software is compliant and that the audit trail feature is enabled for all transactions and cannot be disabled.

(ii) Back-up of Books of Accounts:

The company must maintain a back-up of the books of account and other relevant books and papers. This back-up must be maintained on servers physically located in India on a periodic basis.⁴¹

Answer to Question 4(b)

(i) Use of Deceased Partner's Share to Repay Debts:

As per the Limited Liability Partnership Act, 2008, a person ceases to be a partner upon death.

⁴² The estate of the deceased partner is liable for any debts of the LLP incurred *while* he was a partner. However, after his death, his estate is not liable for any act of the LLP.⁴³ The firm used Mr. K's share to repay debts, which would be permissible for debts incurred before his demise but not for losses incurred after his death.⁴⁴ The share of the former partner is payable to his legal heirs.

(ii) Right of Transferee to Participate in Business:

A partner may transfer their right to share in the profits and losses of the LLP.⁴⁵ However, the transferee (M in this case) does not automatically become a partner and does not acquire any right to participate in the management or conduct of the business of the LLP.⁴⁶ Therefore, the remaining partners of Sun Roofings LLP are justified in forbidding M from taking an active part in the business.⁴⁷

Answer to Question 4(c)

Effect of Illustrations in Statutes

Illustrations appended to a section are a part of the statute and are considered to be of relevance and value in construing the text of the section.⁴⁸ They are intended to show how the provision of the law is to be applied in practice.

However, an illustration **cannot modify the language of the section** or curtail or expand its scope.⁴⁹ If there is a conflict between the main provision of a section and an illustration, the main provision will prevail. The illustration only helps to explain the section's meaning and intent.

Example: Section 114 of the Indian Evidence Act, 1872, allows courts to presume the existence of certain facts. An illustration under this section states that the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen. This illustration does not create a new law but explains a specific application of the general principle laid down in the section.

Answer to Question 5(a)

Functions and Duties of the National Financial Reporting Authority (NFRA)

The functions and duties of the NFRA under Section 132 of the Companies Act, 2013 include:

1. **Recommendations:** Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or a class of companies or their auditors.
2. **Monitoring and Enforcement:** Monitor and enforce compliance with accounting standards and auditing standards.
3. **Quality of Service:** Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement.
4. **Investigations:** Where professional or other misconduct is proved, it has the power to impose penalties and debar members or firms from practice.
5. **Other Functions:** Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.
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Answer to Question 5(b)

Distinction between LLP and Limited Liability Company

Five key distinctions are:

Feature	Limited Liability Partnership (LLP)	Limited Liability Company
Regulating Act	The Limited Liability Partnership Act, 2008	The Companies Act, 2013
Formation	Formed by an agreement between partners.	Formed by registration under the Companies Act.

Internal Governance	Determined by the LLP agreement.	Governed by the Articles of Association and the Companies Act.
Number of Members	Minimum 2 partners; no maximum limit.	Private Co: Min 2, Max 200. Public Co: Min 7, no maximum.
Management	Managed by the partners themselves.	Management is delegated to a Board of Directors.

51

Answer to Question 5(c)

Validity of the Builder's Claim

The claim of the builders is **not valid**.⁵²

According to Section 18 of the General Clauses Act, 1897, where any Act of Parliament or Regulation confers a power or imposes a duty on the holder of an office, then that power may be exercised, or the duty performed by the holder for the time being of that office.⁵³

This means that the powers and duties are attached to the office, not the individual holding it.

Mr. S issued the demolition order in his official capacity as Assistant Commissioner.⁵⁴ When

he left the office, the power to enforce that order passed to his successor, Mr. G.⁵⁵ Therefore, Mr. G, as the current Assistant Commissioner, is fully authorized to initiate the demolition process based on the order issued by his predecessor. The order remains valid and enforceable.

Answer to Question 6(a)

Legal and Procedural Steps for Satisfaction of Charge

DNC Hydro Limited failed to file Form CHG-4 for satisfaction of charge within the prescribed 30 days.⁵⁶ To remove the old charge from the ROC records, the company should follow these steps:

1. **Application for Condonation of Delay:** Since the 30-day period has expired, the company cannot file Form CHG-4 directly. As per Section 83 of the Companies Act, 2013, the Registrar may, on evidence being given to his satisfaction with respect to any registered charge that the debt for which the charge was given has been paid or satisfied in whole or in part, enter a memorandum of satisfaction in the register of charges.
2. **File Form CHG-8:** The company should file an application with the Central Government (power delegated to the Regional Director) for condonation of delay in filing the satisfaction of charge. This is done by filing e-form CHG-8.
3. **Supporting Documents:** The application must be supported by:
 - A declaration from a director stating that the delay was not willful and did not prejudice any creditors or shareholders.
 - A copy of the No Dues Certificate from SPM Bank. ⁵⁷
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4. **Order of Condonation:** Once the Regional Director is satisfied, an order condoning the delay will be passed.
5. **Filing with ROC:** A copy of the order must then be filed with the Registrar of Companies (ROC).
6. **Filing Form CHG-4:** After obtaining the condonation order, the company can file Form CHG-4 with the ROC, along with the standard filing fee and the additional fee for the delay.
7. **ROC Action:** The ROC will then register the satisfaction of the charge, and the charge will be removed from its records, clearing the way for the new loan from RTS Bank. ⁵⁸

Answer to Question 6(b)

Compliance for ABC Inc. under Chapter XXII of the Companies Act, 2013

Chapter XXII of the Companies Act, 2013 applies to "foreign companies". A foreign company is defined under Section 2(42) as any company or body corporate incorporated outside India which:

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.⁵⁹

Let's analyze ABC Inc.'s situation:

- **Incorporated Outside India:** ABC Inc. is based in the USA.

- **Place of Business in India:** ABC Inc. does not have a physical office in India. However, it uses PQR Private Limited as its agent to provide support for software installation and after-sale services to Indian customers.⁶¹ This constitutes having a place of business through an agent.
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- **Business Activity in India:** ABC Inc. sells its software to Indian clients, which is a business activity in India.⁶²
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- **Electronic Mode:** The definition of "electronic mode" includes service-related activities. By selling software and providing support through an Indian entity, ABC Inc. is conducting business through electronic mode.

The fact that PQR Private Limited holds 50% of the shares in ABC Inc. is not directly relevant to determining if ABC Inc. is a foreign company, but it strengthens the link between the two entities.

Conclusion: ABC Inc. meets the definition of a foreign company under the Companies Act, 2013. Therefore, it **is required to comply** with the provisions of Chapter XXII, which include requirements for registration with the ROC, preparing and filing financial statements, and other related compliances.

Answer to Question 6(c)

Definitions under FEMA, 1999

Foreign Exchange:

As per Section 2(n) of the Foreign Exchange Management Act, 1999, "foreign exchange" means foreign currency and includes:

- (i) deposits, credits, and balances payable in any foreign currency;
- (ii) drafts, traveller's cheques, letters of credit or bills of exchange expressed or drawn in Indian currency but payable in any foreign currency;
- (iii) drafts, traveller's cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Foreign Security:

As per Section 2(o) of the Foreign Exchange Management Act, 1999, "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign

currency, but where redemption or any form of return such as interest or dividend⁶⁴ is payable in Indian currency.