

EXECUTIVE PROGRAMME

JUNE 2009

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **SIX** questions including Question No. 1 which is **COMPULSORY**.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Comment on any four of the following :

- (i) *An unlimited company is a company not having any limit on the liability of its members.*
- (ii) *A company can mortgage or charge any part of its 'reserve capital'.*
- (iii) *There is no statutory requirement that a director must hold qualification shares in the company in which he is a director.*
- (iv) *Statutory meeting can be held at any time and place as suited to the company.*
- (v) *Provisions of section 58A are not applicable to guarantee companies and section 25 companies (i.e., associations not for profit). (5 marks each)*

Answer 1(i)

The statement is correct. As per Section 12(2)(c) of the Companies Act, 1956, an "unlimited company" is a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets. However, 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.

An unlimited company may or may not have share capital. The articles of association of an unlimited company must state the number of members with which the company is to be registered and if the company has share capital, the amount of share capital with which the company is to be registered [Section 27(1)].

Answer 1(ii)

The statement is not correct. A company may charge its uncalled capital if its articles or memorandum may give an express power to charge uncalled capital, or the power may be so wide that it can be inferred by implication. For example, in *Newton v. Debentureholders of Anglo Australian Investment Co.* (1895) AC 224, the memorandum authorized the company to borrow "upon any security of the company" it was held that the power was wide enough to include a charge on uncalled capital.

However, a company cannot mortgage or charge any part of its “reserve capital”. Reserve capital is that part of the uncalled capital of a company which the limited company has decided by special resolution in terms of Section 99 of the Companies Act, 1956, not to call except in the event and for the purpose of the company being wound up. (Section 98 and 99 of the Companies Act, 1956).

Answer 1(iii)

The statement is correct. There is no statutory requirement that a director must hold qualification shares in the company in which he is a director. Thus, a person may be a director in a company without being its member unless the articles provide otherwise. However, the articles usually provide for a share qualification. The modern view is that holding a nominal share qualification does not make a director more responsible. If the articles of a company provide for share qualification, section 270 lays down that –

- (a) Each director must obtain his qualification shares within two months after his appointment as a director.
- (b) Any provision in the articles shall be void in so far as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than 2 months after his appointment as such.
- (c) The nominal value of the qualification shares shall not exceed Rs.5,000 or the nominal value of one share where it exceeds Rs. 5,000.
- (d) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant should not be deemed to be the holder of the shares specified in the warrant. It was also held in the case of *Spencer v. Kennedy* (1926) ch 125 that a person cannot be said to be qualified in respect of qualification shares until he is registered as holder of the shares.

Answer 1(iv)

The statement is correct. According to Section 165(1) of the Companies Act, 1956:

“Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called “the statutory meeting.”

Section 165(10) provides that the provisions of Section 165 are not applicable to a private company. It therefore follows that statutory meetings are required to be convened only by a public company limited by shares or limited by guarantee and having a share capital. Thus such meetings are not required to be held by a company limited by guarantee and not having a share capital or by a private company.

So, section 165 of the Companies Act, 1956 does not specify time and place for holding a statutory meeting. Hence, it can be assumed that a statutory meeting can be held at any time and place as suited to the company.

Answer 1(v)

The statement is not correct. The provisions of section 58A and 58B of the Companies Act and Companies (Acceptance of Deposits) Rules are also applicable to

companies limited by guarantee and associations not for profit viz., section 25 companies, having share capital and formed for promoting commerce, art, science, religion, charity etc. However, guarantee companies which have no share capital have to comply with the requirements of the provisions of these sections and rules to the extent applicable.

Question 2

(a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*

- (i) *Without the consent of the general meeting, the Board of directors can borrow money subject to a maximum of _____.*
 - (ii) *A _____ though entitled to attend a general meeting and vote on a poll, but cannot participate in the discussion.*
 - (iii) *Besides making investment and loans, a company can also provide _____ and security to another company.*
 - (iv) *A sole buying agent who holds a substantial interest in excess of 5% of the paid up share capital of the company or Rs. _____ whichever is the lesser, can be appointed only with the prior approval of the Central Government.*
 - (v) *A promoter can earn profit out of sale of his own property to the company by making _____, otherwise he has to account for the profits to the company.*
 - (vi) *An issue of debentures by a listed public company needs to maintain post-issue debt equity ratio of 2:1 as per _____.*
 - (vii) *Allotment of shares in a public issue without receiving minimum subscription amounts to _____.*
 - (viii) *A member cannot ask for inspection of minutes of _____.*
- (1 mark each)

(b) *Choose the most appropriate answer from the given options in respect of the following :*

- (i) *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.*
- (ii) *A private company need not hold —*
 - (a) *Extra-ordinary general meeting*
 - (b) *Statutory meeting*
 - (c) *Annual general meeting*
 - (d) *Board meeting.*
- (iii) *As per section 252(2), a private company cannot have less than —*
 - (a) *3 Directors*

- (b) 2 Directors
 - (c) 5 Directors
 - (d) 7 Directors.
- (iv) Who cannot become a member of a company —
 - (a) Company as a member of another company
 - (b) Foreigner
 - (c) Trade union
 - (d) Partnership firm.
- (v) 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.
- (vi) 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.
- (vii) 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.
- (viii) 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.

(1 mark each)

Answer 2(a)

- (i) 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 capital and free reserves** .

- (ii) A **proxy** though entitled to attend a general meeting and vote on a poll, but cannot participate in the discussion.
- (iii) Besides making investment and loans, a company can also provide **guarantee** and security to another company.
- (iv) A sole buying agent who holds a substantial beneficial interest in excess of 5% of the paid up share capital of the company or Rs. **5,00,000** whichever is the lesser, can be appointed only with the prior approval of the Central Government.
- (v) 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.
- (vi) An issue of debentures by a listed public company needs to maintain post-issue debt equity ratio of 2:1 as per **SEBI Guidelines** .
- (vii) Allotment of shares in a public issue without receiving minimum subscription amounts to **irregular allotment** .
- (viii) A member cannot ask for inspection of minutes of **Meetings of Board of Directors**.

Answer 2(b)(i)

- (a) A voluntary association for profit

Answer 2(b)(ii)

- (b) Statutory meeting

Answer 2(b)(iii)

- (b) 2 Directors

Answer 2(b)(iv)

- (d) Partnership firm

Answer 2(b)(v)

- (a) 30 days

Answer 2(b)(vi)

- (c) Regional director

Answer 2(b)(vii)

- (c) Central Government

Answer 2(b)(viii)

- (d) 3

Question 3

- (a) *In what manner 'membership' in a company can be sought ?* (8 marks)
- (b) *What are the modes in which a director of a company can be appointed ?* (8 marks)

Answer 3(a)**Seeking of membership in a company**

As per section 41 of the Companies Act, 1956, in the following manner, a membership in a company is obtained:

- (i) By subscribing to the Memorandum of Association of a company at the time of incorporation of the company.
- (ii) By transfer – a person can get shares transferred in his name and cause his name to be entered in the register of members maintained by the company.
- (iii) By transmission – on a death of a member or insolvency his shares could be inherited by succession or will.
- (iv) By an application in writing – under an invitation in public issue or otherwise, a person can make application for allotment of shares (by making an offer to the company) and company accepting in the form of allotment.
- (v) Allotment by estoppel – If a person allows his name to be entered in the Register of Members of a company, then he is estopped from denying his membership.
- (vi) As a beneficial owner – under dematerialized form every person holding equity share capital of company and whose name appears in the record of depository, he shall be deemed to be member.

Answer 3(b)**Appointment of directors**

Following are the ways by which a person can be appointed as a director:

- (i) *By subscription to the memorandum* – at the time of incorporation the person who subscribes to the memorandum becomes automatically a director unless Articles of Association mention names of First Directors. He shall hold office until the conclusion of the First Annual General Meeting (Section 254 of the Companies Act, 1956).
- (ii) *By members at General Meeting* – It is the prerogative of the members to appoint a person as a director at a general meeting. Provisions in this regard are contained in section 255, 256, 257 and 265 of the Companies Act, 1956.
- (iii) *By Board of Director* – the Board of Directors can appoint Directors in certain circumstances –
 - As an additional director under section 260 – such additional director shall hold office only upto date of the next annual general meeting of the company.
 - To fill up casual vacancy under section 262 – such person shall hold office only upto the date upto which the director in whose place he is appointed would have held the office if it had not been vacated the office.
 - As an alternate director under section 313 – An alternate director shall not hold office as such for a period longer than that permissible to the original

director in whose place he has been appointed and shall vacate office if and when the original director returns to the state in which Board meetings are ordinarily held.

- (iv) *By Third Party duly authorized* – a nominee director can be appointed by third parties like banks, financial institution or other lenders etc. They can nominate a director to represent their interest on the Board.
- (v) *By Central Government* – Section 408 of the Act, vests overriding powers in Central Government to nominate directors. Sub-section (1) of this section provides that the Central Government may appoint such number of persons as directors as the Company Law Board may, by order in writing specify. Moreover, the appointment shall be made, if the Company Law Board, on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied after such inquiry that it is necessary to make such an appointment of directors.
- (vi) *By small shareholders* – The Companies (Amendment) Act, 2000 has empowered small share holders in a company to send their representative as a director on the Board. The small holder means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company. The preconditions for such representative as provided in section 252(1) of the Companies Act, 1956 are –
 - (a) The paid-up capital of the company must be Rs.5 crore or more and
 - (b) No. of small shareholders is 1000 or above.

Question 4

Write short notes on any four of the following :

- (i) *Doctrine of ultra vires.*
- (ii) *Doctrine of constructive notice*
- (iii) *Red-herring prospectus*
- (iv) *Managerial remuneration*
- (v) *Interim dividend.*

(4 marks each)

Answer 4(i)

Doctrine of ultra vires

“Ultra Vires” means beyond the powers of. The word ‘ultra’ means beyond and the word ‘vires’ means the powers. In the case of a company whatever is not stated in the memorandum as the objects or powers, is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. Also, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the

directors may be ratified by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee*, (1982) 52 Comp. Cas. 293 (Cal.)].

The rule is meant to protect shareholders and the creditors of the company. But if the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. Or, if it is ultra vires the articles of association, the company can alter its articles in the proper way.

Answer 4(ii)

Doctrine of constructive notice

When a company is incorporated, its Memorandum and Articles of Association are filed with the Registrar of Companies. These documents are known as public documents. Any person who wants to deal with the company is expected to know about the same. The doctrine of constructive notice implies that any person dealing with the company has not only gone through the Memorandum and Articles of Association but also has understood them. [*Griffith v. Paget* (1877) Ch.D 517]. Thus, this doctrine operates in favour of a company. It is a responsibility cast upon the public to have knowledge about these documents and it can not be a defence available to outsiders that he had no knowledge about the same. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. Nevertheless they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.

Answer 4(iii)

Red-herring prospectus

As per the explanation to sub-section (4) of section 60B of the Companies Act, 1956, "Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. The red-herring prospectus carries same obligations as are applicable in the case of prospectus. Every variation between the information memorandum and the red-herring prospectus shall be highlighted by the issuer company and shall be individually intimated to the persons invited to subscribe to the securities.

Section 60B(7) provides that the applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

The company or underwriters or bankers shall not encash subscription moneys or post-dated cheques or stock-invest received in advance, before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of the subscription paid.

Once the offer of securities is closed, a final prospectus indicating quantum and price of securities offered shall be filed with ROC and SEBI.

Answer 4(iv)

Managerial remuneration

To remunerate means to pay, re-compensate, or reward for work, etc. The term managerial remuneration has not been defined in the Companies Act, 1956 (Act). The remuneration paid to directors is subject to the provisions of Section 198, 309 and Schedule XIII of the Companies Act, 1956.

Managerial remuneration may take the form of monthly payments, say, salary or a specified percentage of net profits or a commission and/or by way of a fee for each meeting of the Board (called sitting fee) Besides, as per Explanation to Section 198(4) of the Act, the expression 'remuneration' shall also include:

- (a) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of its directors or manager;
- (b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;
- (c) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and
- (d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for any of the persons aforesaid or his spouse or child.

Section 198(1) lays down 11% of the net profits as the overall ceiling on the total managerial remuneration payable by a public company or a private company, which is a subsidiary of a public company, to its directors (which means all directors including managing and whole-time directors) and manager.

Answer 4 (v)

Interim dividend

A part of profits may be distributed before the annual accounts are finally prepared, audited and passed. Such dividends are called interim dividend. The interim dividend is thus a dividend paid between two annual general meetings of the company. Sub-section (1A) of section 205 of the Companies Act, 1956 empowers the Board of Directors of a company to declare interim dividend. Regulation 86 of Table A of Schedule I to the Companies Act provides:

"The Board may from time to time pay to the members such interim dividend as appear to it to be justified by the profits of the company."

Till the passing of the Companies (Amendment) Act, 2000, there was no provision in the Companies Act (except Reg. 86 of Table A) relating to interim dividend. The Companies (Amendment) Act, 2000 has introduced sub-section (14A) in section 2 whereby

'interim dividend' is now part of 'dividend' and accordingly all provisions of the Companies Act relating to 'dividends' have become applicable to 'interim dividend' also.

Question 5

- (a) *What is 'floating charge' ? When does it crystallise ? What is effect of crystallisation of a floating charge ?* (8 marks)
- (b) *What are the salient features of limited liability partnership (LLP) ?* (8 marks)

Answer 5(a)

A floating charge as a type of security is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a changing nature e.g. stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.

Crystallization of floating charge : A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets having a floating charge till the happening of some event which determines this right. A floating charge crystallizes and the security becomes fixed in the following cases:

- (a) When the company goes into liquidation.
- (b) When the company ceases to carry on the business.
- (c) When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged.
- (d) On the happening of the events specified in the deed of charge.

Effect of crystallization of a floating charge : On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge or other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding up gets priority over the claims of the bankers, lenders or debenture holders having floating charge. Where a receiver is appointed on behalf of the holders of any debentures or possession is taken by or on behalf of those debenture holders of any property subject to charge then payment made in respect of such debt shall, be recouped, as far as may be out of the assets available for payment of unsecured creditors (section 123).

Answer 5(b)

The salient features of the Limited Liability Partnership are as follows:

- (1) The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to earn profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession.
- (2) The mutual rights and duties of partners of an LLP interse and those of the LLP

and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the legislation. There would be flexibility to devise the agreement as per their choice. In the absence of any such agreement the mutual rights or duties shall be governed by the provisions of the legislation.

- (3) The LLP will be a legal entity, liable to the full extent of its assets with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible or intangible in nature. No partner would be liable on account of the independent or unauthorized acts of other partners or their misconduct.
- (4) Every LLP shall have at least two partners or shall also have at least two individuals as designated partners of whom at least one shall be resident in India. The duties and obligations of designated partners shall be as provided in the law.
- (5) The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subjected to any class of LLPs being exempted from this requirement by the Central Government.
- (6) The Central Government shall have powers to investigate the affairs of an LLP, if required by appointment of competent inspector for the purpose.
- (7) The Indian Partnership Act, 1932 shall not be applicable to LLPs. Other entities may convert themselves to LLP in accordance with the provisions of the legislation.
- (8) The Central Government has framed rules for carrying out the provisions of the proposed legislation.

Question 6

- (a) *State, giving reasons in brief, whether the following statements are correct or incorrect :*
 - (i) *Auditor of a government company is appointed or re-appointed by the Central Government on the advice of Comptroller and Auditor General of India (CAG).*
 - (ii) *Joint-holders of shares in a public company are not a single member.*
 - (iii) *In case of forged, illegal or void ab-initio transactions, the doctrine of 'indoor management' protects an outsider.*
 - (iv) *DIN is a unique identification number and once obtained is valid for life time of a director.* (2 marks each)
- (b) *List out the various registers required to be maintained statutorily under the Companies Act, 1956.* (8 marks)

Answer 6(a)(i)

The statement is not correct. Section 619(2) of the Companies Act, 1956 provides that the auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor General of India (C&AG).

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

Answer 6(a)(ii)

The statement is 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 the maximum number of members i.e. fifty in a private company and for determining quorum at general meetings and for the purpose of determining members required for making applications under Sections 397 and 398 of the Companies Act, 1956 etc.

Answer 6(a)(iii)

The statement is not correct. 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 does 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 personator acquires no rights at all.

Answer 6(a)(iv)

The statement is correct. DIN is a unique identification number and once obtained is valid for life time of a director.

All existing directors and any person intending to be appointed as a director are required to obtain the Director Identification Number (DIN). DIN is also mandatory for directors of Indian Companies who are not citizens of India. However, DIN is not mandatory for directors of foreign company having branch offices in India. Only a single DIN is required for an Individual irrespective of number of directorships held by him.

Answer 6(b)

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers –

1. Register of investments in securities not held in company's name.[Section 49(7)]
2. Register of deposits. [Section 58A and the Companies (Acceptance of Deposits) Rules, 1975 and the RBI Non Banking Financial Companies Directions]
3. Register of securities bought back. (Section 77A)
4. Register of charges. (Section 143)
5. Register and index of members. [Sections 150, 151 and the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001]
6. Register and index of debenture holders. (Section 152)
7. Register and index of beneficial owners. (Section 152A)
8. Foreign register of members and debenture holders and their duplicates. [Section 157(1) and 158(4)]

9. Copies of Annual Return (Section 163)
10. Books containing minutes of meetings of general, Board and committees of Directors. [Section 193(1)]
11. Register of Postal Ballot [the Companies (Passing of the resolutions by postal ballot) Rules, 2001]
12. Books of accounts. [Section 209(1)(a) to (c)]
13. Cost account records for Companies engaged in industries so specified by Central Government [Section 209(1)(d)]
14. Register of contracts with companies/firms in which directors are interested. [Section 301(5)]
15. Register of Directors/Managing Directors/Managers/Whole-time Directors/Secretary. (Section 303)
16. Register of directors' shareholdings. (Section 307)
17. Register of loans or investments made, guarantees given and security provided to other body corporate. (Section 372A)
18. Register of Renewed and Duplicate Share Certificates. [Rule 7 of the Companies (Issue of Share Certificate) Rules, 1960]
19. Register of records and documents destroyed [Section 163 and the Companies (Preservation and Disposal of Records) Rules, 1966]
20. Register of sweat equity shares [Section 79A and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003]
21. Dividend Register

Question 7

- (a) *Briefly explain the various modes of winding-up of a company.* (8 marks)
- (b) *Briefly explain the following terms used under e-filing —*
 - (i) *Pre-fill*
 - (ii) *Attachment*
 - (iii) *Check form*
 - (iv) *Pre-scrutiny.* (2 marks each)

Answer 7(a)

A company registered under the Companies Act, 1956 may be wound up in any of the following modes:

1. By the Court i.e. compulsory winding up;
2. Voluntary winding up, which may be either:
 - (a) Members' voluntary winding up; or
 - (b) Creditor's voluntary winding up;
3. Winding up subject to the supervision of the Court.

Winding up by the Court or compulsory winding up is initiated by an application by way of petition to the appropriate Court for a winding up order.

In a member's voluntary winding up, when the company is solvent and is able to pay its liabilities in full, it need not consult the creditors or call their meeting. Its directors, or where they are more than two, the majority of its directors may, at a meeting of the Board, make a declaration of solvency verified by an affidavit stating that they have made full enquiry into the affairs of the company and that having done so they have formed an opinion that the company has no debts or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

Where a declaration of solvency of the company is not made and delivered to the Registrar in a voluntary winding up, it is a case of creditor's voluntary winding up.

When a company has by special or ordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court and with such liberty for creditors, contributories or others to apply to the Court and generally on such terms and conditions, as the Court thinks just (Section 522 of the Companies Act, 1956).

Answer 7(b)(i)

Pre-fill

Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same. For example, by entering the CIN of the company, the name and registered office address of the company shall automatically be pre-filled by the system without any fresh entry.

Answer 7(b)(ii)

Attachment

An attachment refers to a document that is sent as an enclosure with an e-Form by means of an attached file. The objective of the attachment is to provide details relevant to the e-Form for processing. While some attachments are optional some are mandatory in nature.

The attachments to an e-Form has to in Adobe PDF format only. My MCA portal does not accept big attachment and the user is advised to keep the attachment size to minimum.

If the size of e-Form including attachment is more than the prescribed limit then the attachment may be filed through an addendum. In such cases, the details may be submitted in a floppy or compact disc at the ROC office.

Answer 7(b)(iii)

Check Form

By clicking "Check Form", the user will be in a position to find out whether the mandatory fields in an e-Form are duly filled-in. For example, if the user enters alphabets in "Date of Appointment of Director" field, he/she will be asked to correct that.

Answer 7(b)(iv)**Pre-Scrutiny**

Pre-scrutiny is a functionality that is used for checking whether certain core aspects are properly filled in the e-Form. The user has to make the necessary attachments in PDF format before submitting the e-Form for pre-scrutiny.

Question 8

- (a) *A managing director of a company stood as surety for the repayment of loan taken by it for which he was paid guarantee commission. Does this commission amount to managerial remuneration ? Support your answer with decided case law, if any. (5 marks)*
- (b) *A whole-time director of a company made an invention during the course of his employment with the company. He patented the invention in his own name and appropriated the benefits to himself. Can he do so ? Cite case law, if any. (5 marks)*
- (c) *Articles of association of a company reserved the powers for calling the annual general meeting. The managing director of the company, without reference to the Board, called an annual general meeting. Is the annual general meeting validly called ? If not, what should be done to make it valid ? Discuss with reference to case law, if any. (6 marks)*

Answer 8(a)

Guarantee commission paid to directors for giving surety against loans on credit facilities availed by the company from financial institutions is not a remuneration for any professional services within the meaning of section 309 of the Companies Act, 1956. The director giving guarantee does not render any clerical, technical or administrative services to the company. He gets the commission for the risk undertaken which is his personal liability and nothing to do with his directorship. [*Suessen Textile Bearings Ltd. v. Union of India* [1984] 55 Co mp. Cas 492 (Delhi)].

Therefore, in view of the above case law, guarantee commission paid to managing director of a company will not amount to managerial remuneration.

Answer 8(b)

The directors are liable to the company for all personal profits or gain made by them taking advantage of their position as directors.

A director was held liable when a director patented and exploited in his own name an invention made during the course of his employment with the company [*Cranleigh Precision Engineering Ltd. v. Bryan*, (1964) All ER 289].

Therefore, the whole time director can get the invention patented in his own name and appropriate the benefits to him but he is liable to the company for all the personal gains he made with the help of the patented invention.

Answer 8(c)

Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution. If the managing director, manager,

secretary or other officer calls a meeting without the authority of the Board of directors it will not be effectual unless the Board ratifies the convening of the general meeting before it is held. [*Re. Haycraft Gold Reduction and Mining Co.*, (1900) 2 Ch 230]. Also refer *British Asbestos Co. Ltd. v. Boyd*. (1903) 2 Ch 439.

Therefore, in the present case, managing director can validly call an annual general meeting (AGM) without referring to the Board only if the Board ratifies the convening of AGM before the meeting is held.
