

**Question no. 1 is compulsory.**

**Candidates are required to answer any five questions from the remaining six questions.**

**Question 1(a)**

**Explain the law laid down under the Companies Act, 2013 in respect of filing of annual financial statements with Registrar of companies. In the following two situations who is liable for the default.**

- i. Where financial statements of the company are filed with the ROC after 10 months from its due date;**
- ii. Where financial statements are not at all filed by the company with the ROC? (4 Marks)**

**Answer 1(a)**

As per Section 137 of Companies Act, 2013 every company is required to file financial statements with Registrar within 30 days from the date of Annual General Meeting. If financial statements are not filed within 30 days, filing may be done within 300 days with additional filing fees. If company fails to file even within 300 days with additional fees, following penal consequences take place:

- ◆ Company is punishable with fine of Rs. 1000 per day for every day during which the default continues, but shall not be more than Rs. 10 lacs; and
- ◆ Managing Director or Chief Financial Officer is punishable with imprisonment, which may extend to 6 months or with fine of not less than Rs. 1 lac but which extend to Rs. 5 lacs.

If the company has neither Managing Director nor Chief Financial Officer, all directors are responsible.

**Question 1(b)**

**A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 10 A.M. on 1st July 2015 and the ROC entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize the books of the company. (4 Marks)**

**Answer 1(b)**

Registrar cannot seize the books of company without permission of Special Court. Refer answer of question no. 2 of Chapter no. 3 – Inspection and Investigation of book Corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann

**Question 1(c)**

**Indian Software Ltd. seeks to export software to its client in Indonesia. In this regard-**

- i. Explain the procedure to be adopted for export of software under the Foreign Exchange Management Act, 1999 and state the period within which value is to be realised.**
- ii. Explain the position in case of delay in receipt of payment from its client. (4 Marks)**

**Answer 1(c)**

(i) Every exporter is required to submit declaration within 21 days of export. Export declaration should be submitted in either form EDF or form SOFTEX. Declaration should be supported by evidence regarding particulars about material. It should disclose amount representing the full export value of the goods or services. IEC Number (importer-exporter code number) is indicated on all copies of the declaration forms submitted by the exporter to the specified authority. Export proceeds should be realised and repatriated to India within 9 months from date of export. On realization of the export proceeds, the authorised dealer shall, after due certification, submit the duplicate of the form EDF or SOFTEX form to RBI.

(ii) If there is delay of more than 9 months in receipt of export value, exporter should make an application before expiry of realisation period to RBI or Authorised Dealer. RBI or Authorised Dealer may allow extension in time limit for receipt of export value for sufficient reason.

For details theory, refer paragraph no. 14 of Chapter no. 3 – FEMA of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann

**Expert Comment**

Most of students who were not updated wrote period of 12 months. In fact RBI vide circular has reduced time from 12 months to 9 months for export proceed realisation. Majority of students who read old book and handbook were not in position to answer correctly.

**Question 1(d)**

**Explain the functioning of the two types of Front Office (FO) in accessing MCA 21 portal of the Ministry of Corporate Affairs. Also, state the nature of services, which can be availed of by its user on the MCA 21 portal. (4 Marks)**

**Answer 1(d)**

The front office represents the interface of the corporate and public user with the MCA 21 system. It includes:

- ◆ Virtual front office (VFO)
- ◆ Physical front office (PFO)

The VFO is what the citizen has in front while accessing the MCA 21 portal. The PFO will be a replacement to the existing ROC counters. The PFO will also accept paper documents. However, customer service agents at PFO will convert these into electronic documents. In addition, the authorised person(s) will have to sign these documents digitally. Consequently, the authorised signatories for a given document will need to appear in person at the PFO for digitally signing the document.

Following services are available to various users on MCA portal:

- ◆ E-filing of documents
- ◆ View and inspection of filed documents
- ◆ Request and obtain certified copies of document
- ◆ Registering investor complaints
- ◆ Tracking transaction status

- ◆ Find CIN
- ◆ Fee calculator
- ◆ Checking company name
- ◆ View transaction details
- ◆ Certified filing centres
- ◆ Downloading pre-requisite software for e-filing

**Question 1(e)**

XYZ, a recognized stock exchange fails to comply with certain directions issued by the Securities and Exchange Board of India and the adjudicating officer initiated proceedings for the purpose of imposing penalty. The stock exchange seeks your advice whether it is possible to go for settlement of the proceedings. Advise explaining the relevant provisions of the Securities Contracts (Regulation) Act, 1956? (4 Marks)

**Answer 1(e)**

Yes. It is possible for XYZ Ltd. stock exchange to go for settlement of the proceedings.- Section 23JA.

For details theory, refer paragraph no. 27 of Chapter no. 14 – Securities Contract (Regulation) Act, 1956 of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann

**Expert Comment**

Again, ICAI has asked something which is based on amendment. A provision was amended last year. Most of students who were not updated about it. Stay updated.

**Question 2(a) (i)**

XYZ Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:

- i. Extent of promoters contribution;
- ii. Lock in period of securities held by promoters;
- iii. Lock in period of securities held by persons other than promoters;
- iv. Lock in period of securities allotted to employees of the company under Employee stock option.

(4 Marks)

**Answer 2(a) (i)**

Refer paragraphs no. 24-25 of Chapter no. 15 – SEBI Act, 1992 of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 2(a) (ii)**

Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures, which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry. (4 Marks)

**Answer 2(a) (ii)**

Refer provisions of Section 11(4) from paragraph no. 3 of Chapter no. 15 – SEBI Act, 1992 of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 2(b)**

On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of shareholders and public interest. Referring to the provisions of the **Companies Act, 2013** state the restrictions, if any, on the number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government. (4 Marks)

**Answer 2(b)**

Refer answer of question no. 22 of Chapter no. 9 – Oppression & Mismanagement of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Expert Comment**

Design of question creates conflict. Instead of reference of Companies Act, 2013, it should have been Companies Act, 1956. Because, if we refer first two lines of question, it suggest reference from Companies Act, 1956. Still, under section 408 of Companies Act, 1956, CG has power to nominate director on board of company on order passed by CLB. While Companies Act, 2013 under section 161 does not contain provision to appoint nominee director by central government on order of CLB. Under section 161, nominee director can be appointed pursuant to government holding.

**Question 2(c)**

What are the conditions to be fulfilled for calling meetings at shorter notice than as prescribed by Companies Act, 2013? One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him. (4 Marks)

**Answer 2(c)**

As per Section 173 of Companies Act, 2013 a meeting of Board may be called at shorter notice provided that at least one independent director, if any, shall be present at meeting. Notice for Board meeting should be given either by hand delivery or by post or by electronic means. It means sending notice by e-mail is ordinary mode of sending notice under Act. Objection of director is not valid.

**Question 3(a) (i)**

A scheme of amalgamation was approved by overwhelming majority of members of both the merging companies at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of members of one of the merging companies. The exchange ratio was fixed by a reputed firm of Chartered Accountants. Examine with reference to the decided case law under the Companies Act, 1956 whether the dissenting shareholders will succeed. Would your answer be different if the exchange ratio was objected to by the Central Government? (4 Marks)

**Answer 3(a) (i)**

Refer answer to question no. 8 of Chapter no. 10 – Compromise, Arrangement & Amalgamation of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Expert Comment**

Question is repeated from old (past) question. It shows that either ICAI does not have person who can design new question or ordinary person sets paper. AICPA of USA has rule of not repeating same question for next 20 years.

**Question 3(a) (ii)**

**State the circumstances in which a director of a company is required under the Companies Act, 2013 to disclose his interest in a contract or arrangement to be entered into by the company. Examine whether the validity of the contract is affected by nondisclosure of interest by the director. (4 Marks)**

**Answer 3(b)**

Yes. Contract is voidable by Board. Refer paragraph no. 2 of Chapter no. 7 – Related party transactions & Disclosure of interest of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 3(a) (ii)**

**The Articles of Association of Coimbatore Milk Producers Limited restricts the membership to producers. You are required to answer the following questions explaining the relevant provisions of the Companies Act, 1956.**

**(i) Mr. Gopal, one of the members proposes to transfer part of his shares. State the steps to be taken by Mr. Gopal to give effect to the proposed transfer.**

**(ii) Mr. Ramu, one of the members, nominated his son, Mr. Krishnan to be entitled to his shares in the event of his death. Mr. Ramu died. State the action that can be taken by the producer company in case Mr. Krishnan is not a producer. (4 Marks)**

**Answer 3(b)**

**(i) Refer answer to question no. 7 of Chapter no. 13 – Producer Company of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.**

**(ii) If the nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.**

**Question 3(c)**

**(i) Shyam & Co. is engaged in the manufacture of cement. It sold the goods initially below the cost price for a year and slowly, its other competitors went out of the market. Thereafter, the enterprise changed its strategy and sold the goods above its cost price and made substantial profits. Examine the action, if any, which may lie against this enterprise under the Competition Act, 2002.**

**(ii) What do you mean by anti-competitive agreements, viz, tie-in arrangement and resale price maintenance? (4 Marks)**

**Answer 3(c)**

(i) Section 4 of Competition Act, 2002 prohibits abuse of dominant position by any person. There shall be abuse of dominant position, if enterprise directly or indirectly, imposes unfair or discriminatory:

- ◆ Conditions in purchase or sale of goods or services; or
- ◆ Price in purchase or sale (including predatory prices) of goods or service

‘Predatory price’ means the sale of goods below than the cost to reduce competition or eliminate the competitors.

In the given case, Shyam & Co. has sold goods below than market price to reduce competition. It has abused its dominant position. Action can be taken for abuse of its dominant position.

(ii) Refer paragraph no. 4 of Chapter no. 17 – Competition Act, 2002 of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

#### **Question 4(a)**

(i) R Ltd. wants to constitute an Audit Committee. Draft a board Resolution covering the following matters [compliance with Companies Act, 2013 to be ensured].

1. Member of the Audit Committee
2. Chairman of the Audit Committee
3. Any 2 functions of the said Committee

(ii) What would be the minimum likely turnover or capital of this company?

(iii) What is the role of the Audit Committee vis a vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144?

**(8 Marks)**

#### **Answer 4(a)**

(i) Refer answer of question no. 12 of Chapter no. 1 – Accounts and Audit of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

(ii) Refer paragraph no. 32 of Chapter no. 1 – Accounts and Audit of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

(iii) Refer paragraph no. 33 of Chapter no. 1 – Accounts and Audit of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

#### **Question 4(b)**

XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31<sup>st</sup> March 2015 and a turnover of one hundred fifty crore rupees during the year ended 31<sup>st</sup> March 2015. The total number of directors is thirteen. Referring to the provisions of the Companies Act, 2013 answer the following:

(i) State the minimum number of independent directors that the company should appoint.

(ii) How many independent directors are to be appointed in case XYZ Limited is a listed company? **(4 Marks)**

#### **Answer 4(b)**

(i) Unlisted company, which has turnover exceed than Rs. 100 crore, should appoint at least two independent directors.

(ii) If XYZ Limited is listed company; it shall have at least  $\frac{1}{3}$ <sup>rd</sup> of the total number of directors as independent directors. ( $\frac{1}{3}$ <sup>rd</sup> of 13 are 4.33. It is rounded off to 5)

**Question 4(c)**

The Insurance Act, 1938 requires to establish Tariff Advisory Committee (TAC). In this regard, specify -

(i) Object and purpose of TAC;

(ii) Constitution of its members and Chairperson.

(4 Marks)

**Answer 4(c)**

The provisions relating to Tariff Advisory Committee (TAC) is omitted vide Insurance Laws (Amendment) Act, 2015.

**Expert Comment**

Insurance amendment Act, 2015 is notified by ICAI that it will be applicable for May 2016 examination. In fact, amendment has taken place and become effective from 26-12-2014. Vide this amendment Act; provisions relating to Tariff Advisory Committee are omitted. It means, this question is asked beyond your course curriculum. You should point out it to ICAI. I am not able to understand who set question paper. How expert person so appointed is not aware about amendment taken place before one year from date of examination. Is this time paper of Corporate law set by not relevant person??

**Question 5(a)**

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of Rs. 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

(8 Marks)

**Answer 5(a)**

(i) As per Section 197, if company has one Managing Director or Whole Time Director, or manager remuneration payable shall not exceed 5% of net profit. Accordingly, proposal to pay commission of 5% of net profits to Mr. Kamal is in order.

(ii) A director who is neither in the whole time employment of the company nor a managing director may be paid remuneration subject to the following:

- ◆ 1% of the net profits of the company, if the company has a managing, or a whole time director or a manager.
- ◆ 3% of the net profits of the company in any other case.

However, the company in general meeting may, with the approval of the Central Government authorise payment of such remuneration at a rate exceeding 1% or, as the case may be, 3% of its net profits. In the given case, proposal to pay 2% of the net profits as remuneration to all directors require consent of members and approval of Central Government.

(iii) The company can pay additional remuneration to Mr. Bhatt, a director for rendering professional services as software engineer, if:

- ◆ Services rendered are professional in nature; and
- ◆ In the opinion of Nomination & Remuneration Committee (if any) or the Board, director possesses requisite qualification for the practice of the profession.

**Question 5(b)**

(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital & MN Limited. A government company also holds 20% paid-up share capital in MN Limited.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company. Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company. (4 Marks)

**Answer 5(b)**

(i) As per Section 2(45), Government Company means in which not less than 51% of the paid up share capital is held by:

- ◆ The Central Government; or
- ◆ The State Government; or
- ◆ Jointly by Central Government and any State Government

In the given case, the Central Government and Government of Maharashtra hold 40% of the paid up share capital in MN Ltd. MN Ltd is not Government Company.

(ii) Subsidiary of Government Company is also Government Company. Accordingly, PQ Ltd. is Government Company.

**Question 5(c)**

Apex Limit failed to repay the amount borrowed from the banker, ACE Bank Limited which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and explain the effect of such takeover on certain rights of the shareholders of the company.

(4 Marks)

**Answer 5(c)**

On publication of notice of takeover by secured creditor, director of company vacate office. All contracts made between company and director or managing director terminate and director or managing director cannot claim any compensation for loss of office. Refer paragraph no. 10 of Chapter no. 21 – Securitisation Act of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 6(a)**

AVM Producer Company Ltd. seeks your advise on the following aspects of the working of a Producer company under the Companies Act, 1956

- (i) Criteria for appointment of Secretary as also the legal position, if its financial position is unsatisfactory.
- (ii) Can the Board of Directors of the company direct its member to surrender his shares to the company, if so, under what circumstances?
- (iii) Provisions relating to donation to any institution, as also to a political party.
- (iv) Provisions relating to investment of general reserves, as also investment in the shares of a company, other than a producer company. **(8 Marks)**

**Answer 6(a)**

- (i) Refer paragraph no. 25 of Chapter no. 13 – Producer Company of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.
- (ii) Refer paragraph no. 30 of Chapter no. 13 – Producer Company of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.
- (iii) Refer paragraph no. 34 of Chapter no. 13 – Producer Company of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.
- (iv) Refer paragraph no. 36 & 38 of Chapter no. 13 – Producer Company of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 6(b)**

A company has financial distress. They pledged certain immovable properties with a nationalized bank in the belief that their loan limits would be increased. However, within 3 months, some creditors filed a petition for winding up. The management was accused of fraudulent preference.

- (i) In the above context discuss fraudulent preference.
- (ii) Would your answer be different if the charge was created in favour of an NBFC? **(4 Marks)**

**Answer 6(b)**

- (i) Refer answer of question no. 33 of Chapter no. 12 – Winding up of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.
- (ii) The answer would be the same if the charge was created in favour of an NBFC.

**Expert Comment**

Answer of (ii) would be different, if charge created was floating charge. Students need to make assumption. For floating charge, Section 534 and Section 530 would be applicable.

**Question 6(c)**

The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002. **(4 Marks)**

**Answer 6(c)**

Refer paragraph no. 9 of Chapter no. 22 – Prevention of Money Laundering Act, 2002 of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**Question 7 Answer any four of the following: (4 Marks for each question)**

**(a) DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:**

**(i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.**

**(ii) Is it possible to appoint a person, who does not hold any share in the company, as small shareholders' director?**

**(iii) What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also, state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.**

**Answer 7(a)**

(i) 'Small shareholder' means a shareholder holding shares of nominal value of Rs. 20,000 or less in public company. Listed company is required to appoint small shareholders director if at least 1000 small shareholders or 1/10th of shareholders, whichever is less, serves proper notice.

(ii) Person who does not hold any share in company can be appointed as small shareholders director.

(iii) Small shareholders director is appointed for maximum tenure of 3 years and he is not eligible to be re-appointment. On completion of his tenure of 3 years, small shareholders director cannot be appointed or associated in any other capacity with company for next 3 years.

**(b) Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013. Also, state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable.**

**Answer 7(b)**

As per Section 439 of Companies Act, 2013 the cognisance of case can be taken by Court against any company or its officer only on complaint filed by Registrar, shareholder of company or person authorised by Central Government.

All offences under the Companies Act, 2013 except offences specified under Section 212(6) are non-cognizable. Section 212(6) of Companies Act, 2013 relates to serious fraud.

**(c) Explain the provisions of the Companies Act, 1956 relating to preparation and filing of Statement of Affairs (SA) in case of winding of a company by the Court, with regard to the following Aspects:**

**(i) Who is required to prepare and file SA and whether cost and expenses incurred in preparing SA are recoverable?**

**(ii) Contents of SA and the period within which the same is required to be submitted and to whom? In addition, state about delay in filing SA and up to what period the same is allowed.**

**Answer 7(c)**

Refer paragraph no. 15 of Chapter no. 12 – Winding up of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**(d) How will you interpret the definitions in a statute, if the following words are used in a statute?**

**(i) Means, (ii) Includes**

**Give one illustration for each of the above from statutes you are familiar with.**

**Answer 7(d)**

Refer paragraph no. 15 of Chapter no. 18 – Interpretation of Statutes of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.

**(e) Galilio Ltd. is a foreign company in Germany and it established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached along with the financial statements by the foreign company.**

**Answer 7(e)**

Refer paragraph no. 5 of Chapter no. 11 – Foreign Company, Government Company, Power, Punishment & Misc. provisions of book corporate & Allied Laws – 3<sup>rd</sup> edition published by Taxmann.