

PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY, 2015

Applicability of relevant Amendments/Circulars/Notifications/Regulations etc.

(A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

1. The Companies Act, 2013

The Companies Act, 2013: The relevant notified Sections of the Companies Act, 2013 up to 30th September, 2014 will be applicable for May, 2015 Examination and for other legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority cut-off date will be six months.

The Study material (October 2014 edition) of Corporate and Allied Laws relevant for May 2015 examinations contains all relevant amendments/ circulars/ Notifications etc. in the Companies Act, 2013 which were issued by the Ministry of Corporate Affairs (MCA) up to 30th September, 2014. Below are some more amendments/ circulars/ Notifications etc. issued between 1st October, 2014 and 31st October, 2014 which are also applicable for the said examinations:

- (i) The MCA vide Notification No. G.S.R. 722(E) dated 14th October, 2014 has issued *the Companies (Audit and Auditors) Amendment Rules, 2014* and thereby the *Companies (Audit and Auditors) Rules, 2014* are being amended by insertion of Rule 10A. The said Notification is available at http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_03112014.pdf
- (ii) The MCA vide Notification No. G.S.R. 723(E) dated 14th October, 2014 has issued *the Companies (Accounts) Amendment Rules, 2014* and thereby the *Companies (Accounts) Rules, 2014* are being amended by insertion of further provisos in Rule 6. The said Notification is available at http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_03112014_1.pdf
- (iii) The MCA vide General Circular 38/2014 dated 14th October, 2014, has clarified about the manner of handling the deposit of ₹ one lakh received under sub-section (l) of section 160 of the Companies Act, 2013 by companies registered under section 8 of the Companies Act, 2013 if the depositor fails to secure more than twenty five per cent of the total valid votes. It is thereby provided that the Board of directors of section 8 companies is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded. The said Circular is available at http://www.mca.gov.in/Ministry/pdf/General_Circular_38-2014.pdf
- (iv) The MCA vide General Circular 39/2014 dated 14th October, 2014, has clarified on the manner of presentation of notes in Consolidated Financial Statement (CFS). The said circular provides that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being

consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only. The said circular is available at http://www.mca.gov.in/Ministry/pdf/General_Circular_39-2014.pdf

- (v) The MCA vide Notification No. G.S.R. 741(E) dated 24th October, 2014, has amended Schedule VII to the Companies Act, 2013, whereby, contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga have also been included in the activities which may be included by companies in their Corporate Social Responsibility policies. The said circular is available at http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_24102014.pdf
2. **The SEBI Act, 1992:** The Ministry of Law and Justice vide Notification dated 25th August, 2014 has issued Securities Laws (Amendment) Act, 2014 which is available at the following link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1409135096979.pdf
3. **SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009:** SEBI vide Notification dated 25th August, 2014 has issued SEBI (Issue of Capital and Disclosure Requirement) (Second Amendment) Regulations, 2014 which is available at the following link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1409120871432.pdf

(B) Non-Applicability of the following chapters for the said examinations:

S.No.	Subject Matter
(i)	Chapter 9 of the study material (October, 2014 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies.
(ii)	Chapter 15 of the study material (October, 2014 edition) covering provisions relating to the National Company Law Tribunal and Appellate Tribunal.

PART – II: QUESTIONS AND ANSWERS

QUESTIONS

SECTION – A: COMPANY LAW

Declaration and payment of dividend

1. The Board of Directors of Neema Tools Limited recommended dividend on 20th February, 2014 and the same was approved and declared by the company in its Annual General Meeting held on 31st May, 2014 and was paid to the shareholders on 15th June, 2014. But dividend was not paid to Mr. Goyameer, a shareholder. The company adjusted the amount of dividend against a sum due to it from Mr. Goyameer. Decide, under the provisions of the Companies Act, 2013 the liability of the company in this regard?

Accounts and audit

2. (a) The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ramesh, Mr. Suresh (Directors) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary.
- The financial statements of the company were signed by Mr. Ramesh and Mr. Suresh. Examine whether the authentication of financial statements of the company was in accordance with the provisions of the Companies Act, 2013?
- (b) Explaining the provisions of the Companies Act, 2013, answer the following:
- (i) Manner in which the companies are required to present the financial statements.
 - (ii) What kinds of companies are exempted from the preparation of the above statements in terms of nature and the contents?
 - (iii) State the consequences and the penalties in case the company does not comply with the accounting standards?
- 3 (a) Mr. Prince, A Chartered Accountant, holding certificate of practice from the Institute of Chartered Accountants of India has been appointed as auditor of ABC Limited, which is a public limited company. Mr. Y, a relative of Mr. Prince, hold security in the company, the face value of which is ₹ 5,000. Explaining the provisions of the Companies Act, 2013 answer the following:
- (i) Examine the validity of Mr. Prince's appointment as auditor in the above company.
 - (ii) What would be your answer in case Mr. Prince is already the auditor of 10 companies?
 - (iii) What shall be your answer in case Mr. Prince has some business relationship with a subsidiary company of ABC Limited and is rendering consulting services to the subsidiary company?
- (b) AB & Co. is an audit firm comprising of two partners Mr. A and Mr. B holding appointments as an auditor in 41 private companies out of which paid-up capital of 20 companies exceeds 50 Lakhs. XYZ Private Limited wants to appoint AB & Co. as its auditor. Decide whether this is in consonance with the provisions as contained in the Companies Act, 2013.

Appointment and qualification of Directors

- 4 (a) Authorised by Articles, the Board of Directors of Paras Medicines Limited made the following appointments:
- (i) Mr. Anderson, who could not be appointed as director in the general meeting, appointed as Additional Director.
 - (ii) In pursuance of an agreement with a financial institution, Mr. Black is appointed as a Nominee Director.

- (iii) Mr. Mohan appointed as alternate Director for a period of three months. Mr. Mohan is already holding alternate directorship for some other director in this company.

Decide the validity of the above appointments under the provisions of the Companies Act, 2013. Also point out whether the acts done by the said directors are valid under the Companies Act, 2013?

- (b) The Board of directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2014. Unfortunately Mr. C expired on 15th May, 2014 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard as per the provisions under the Companies Act, 2013.
- 5 (a) Mr. Influential is already a director of 19 companies out of which 10 are public limited companies and 9 are private companies. He is being appointed as a director of another company named Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:
- (i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof.
- (ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors in a public company?
- (b) Mr. Raj, a director of POL Ltd., submitted his resignation from the post of director to the Board of Directors on 30th June, 2014 and obtained a receipt thereof on the same day. The Board of Directors of POL Ltd. neither accepted the resignation nor did it file the required form with the Registrar of Companies. You are required to state whether Mr. Raj ceases to be the Director of POL Ltd. and if yes, since when?

Appointment and Remuneration of Managerial Personnel

- 6 (a) The Article of Association of a listed company have fixed payment of sitting fee for each Meeting of Directors subject to maximum of ₹ 30,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under Companies Act, 2013 to give effect to the proposal.
- (b) Advise Super Specialities Ltd. in respect of the following proposals under consideration of its Board of directors:
- (i) Appointment of Managing Director who is more than 70 years of age;
- (ii) Payment of commission of 4% of the net profits per annum to the Independent directors of the company;
- (iii) Payment of remuneration of ₹ 40,000 per month to the whole time director of the company running in loss and having an effective capital of ₹ 95.00 lacs.

Meetings of Board and its powers

- 7 (a) Board of Director of GHI Limited are to appoint a 'Stakeholders Relationship Committee' as required under the provisions of the Companies Act, 2013. The Board decides to constitute the committee with the following directors of the company who are the non-executive directors:

Mr. Wise

Mr. Intelligent

Mr. Green

Mr. Blue

You are required to:

- (i) Draft a resolution appointing the 'Stakeholders Relationship Committee'.
 - (ii) Which companies are required to constitute the 'Stakeholders Relationship Committee' under the provisions of the Companies Act, 2013?
- (b) In order to meet the expansion requirement, the Board of Directors of MNR Limited by passing a resolution decides to borrow from the company's bankers an additional sum of ₹ 200 crores, as long term loan. The company gives you the following financial information:

	₹
Equity Share Capital	100 crores
Preference Share Capital	50 crores
General Reserve	25 crores
Debenture Redemption Reserve	25 crores
Provision for Taxation	12 crores

Existing long term loan from company's bankers is ₹ 25 crores.

Examining the provisions of the Companies Act, 2013, the company seeks your advice about the extent to which the company can borrow from its bankers and also state whether the Board of Directors proposal to borrow ₹ 200 crores is valid.

- 8 (a) Analyse and Advise with reference to the provisions of the Companies Act, 2013, the following situations:
- (i) There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the Board Meeting?
 - (ii) There are 15 directors in a company and during discussion of a particular item, 13 of the directors are said to be 'interested' within the meaning of section 184(2) of the Companies Act, 2013. What shall be the quorum of the meeting?

- (b) XYZ Ltd. was incorporated on 1st January, 2012. On 1st November, 2014 a political party approaches the company for a contribution of ₹ ten lakhs for political purpose. Advise in respect of the following:
- (i) Is the company legally authorised to give this political contribution?
 - (ii) Will it make any difference, if the company was in existence on 1st October, 2011?
 - (iii) Can the company be penalised for defiance of provisions in this regard?

Inspection, Inquiry and Investigation

- 9 (a) What are the circumstances in which an inspector appointed under section 210 of the Companies Act, 2013, can investigate into affairs of related companies?
- (b) What provisions are applicable in respect of the Inspector's report on investigation as enumerated under Section 223 of the Companies Act, 2013?

Compromise, Arrangements and Amalgamations

- 10 (i) A meeting of members of ABC Limited was convened under the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 700 members holding in the aggregate 20,00,000 shares. The meeting was attended by 400 members holding 13,00,000 shares. 160 members holding 10,00,000 shares voted in favour of the scheme. 150 members holding 2,40,000 shares voted against the scheme. The remaining members abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 1956 whether the scheme is approved by the requisite majority.
- (ii) Does the scheme of compromise or arrangement require approval of preference shareholders?

Prevention of Oppression and Mismanagement

- 11 Examine the merits of the following petitions made under Sections 397 and 398 of the Companies Act, 1956 in the light of judicial pronouncements made in this regard:
- (i) A group of shareholders holding 12% of the issued share capital of Unique Products Limited have filed a petition before the Company Law Board alleging various acts of illegal, invalid and irregular transactions entered into in the name of the Company.
 - (ii) Speciality Chemicals Private Limited is controlled by two groups of members. The group holding majority of shares made an application to Company Law Board alleging oppression by the minority group.

Winding Up

- 12 (a) Modern Textiles Limited incurred huge losses during the last three financial years and its financial position was bad. The Company created a legal mortgage on some of its immovable properties in favour of a bank on 1st September, 2013 in the hope

that by keeping good faith with the bank it could get further advances from the bank and the same could be utilized to revive the Company. Some creditors filed winding up petition in the court on 15th January, 2014. The court passed an order of winding up on 1st August, 2014. Answer the following with reference to the provisions of the Companies Act, 1956:

- (i) What is meant by 'Fraudulent Preference'? State the effect of 'Fraudulent Preference'.
 - (ii) Whether the creation of legal mortgage by the Company in favour of the bank would amount to fraudulent preference?
- (b) A listed Public Company was ordered to be wound up by the order of the Bombay High Court. While ordering the winding up, the Court ordered the Official Liquidator to submit a preliminary report to the Court as per the provisions contained in the Companies Act. State briefly the details to be given in the preliminary report of the Official Liquidator.

Producer Companies

- 13 (a) Mr. Z an expert in modern agriculture practices is willing to lend his services as a director of M/s. Lord Krishna Cotton Producer Company Ltd. registered under Section 581C of the Companies Act, 1956. Advise Mr. Z as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the directors (3) The time limit within which the appointment should be made (4) the co-option of directors and (5) the voting powers of such co-opted directors.
- (b) A producer company was incorporated on 1st September, 2014. At present the paid-up share capital of the company is ₹ 10 lakhs consisting of 1,00,000 equity shares of ₹ 10 each fully paid-up held by 200 individuals and 20 producers institutions. You are required to answer the following with reference to the provisions of the Companies Act, 1956:-
- (i) What is the time limit for holding the First Annual General Meeting and the subsequent Annual General Meetings?
 - (ii) What is the Quorum for the Annual General Meeting?
 - (iii) State the manner in which the voting rights of the members are determined.
 - (iv) Is it possible to remove a member?

Companies Incorporated outside India

- 14 (a) Explain the provisions of the Companies Act, 2013 relating to the filing of documents by a company incorporated outside India, having a place of business in Mumbai. State whether failure on the part of such a company to comply with the provisions of the Act, shall affect the validity of any contract entered into by the company. Also state whether the company is entitled to bring any suit in respect of any such contract.

- (b) Under Section 387 of the Companies Act, 2013, what are the particulars required to be contained in a prospectus to be issued by an existing foreign company?

Offences and Penalties/E-Governance/Special Courts

- 15 (a) What is Director Identification Number (DIN) and what scanned documents are required to be attached with eform DIR-3?
- (b) What are the powers of the Central Government under the Companies Act, 2013 regarding:
- (i) Appointment of company prosecutors
 - (ii) Appeal against acquittal

Miscellaneous provisions

- 16 (a) What do you mean by wrongful withholding of property under the Companies Act, 2013 and what is the prescribed penalty for it?
- (b) Mr. Shri Nivasan has a unique business idea emerging from research and development in new commercial area, however, it is a future project and recently has no significant transactions, business activities in this regard. Mr. Shri Nivasan wants to know about the concept under Companies Act, 2013 to form a company whose business activities would be commenced subsequently.

Corporate Secretarial Practice-Drafting of Resolution, Minutes, Notices and Reports

- 17 Answer any **one** of the following:
- (i) Board of Directors of DBM Limited held a board meeting on 2nd May, 2014 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting.
 - (ii) Draft a board resolution for appointment of Mr. Paul as the managing director for 5 years with effect from 1st June, 2014 of DBM Limited passed in the above stated board meeting.

The Securities and Exchange Board of India (SEBI)

- 18 (a) A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise.
- (b) A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.
19. The Balance Sheet of Royal Ltd. as at 31-03-2015 disclosed the following details:
- (i) Authorised share capital ₹ 400 crores

- (ii) Paid up share capital ₹ 150 crores
- (iii) Reserves and surplus ₹ 750 crores

The company has issued in the year 2010, Fully Convertible Debentures of ₹ 100 crores which are due for conversion in the year 2015. The company proposes, after the conversion of Debentures to issue Bonus shares in the ratio of 1: 1. Explain briefly the requirements of the Securities and Exchange Board of India (SEBI) Regulations to be followed by the company in this regard.

Securities Contracts (Regulation) Act, 1956

- 20 (a) The shares of Maya Ltd. were listed in Mettle Stock Exchange. The stock exchange delists the shares of the company. The aggrieved company approaches you to know the remedy available to the company. Give your suggestion to the company keeping in view the provision of the Securities Contracts (Regulation) Act, 1956.
- (b) Crystal Ltd. is holding 33% of the paid up equity capital of Chennai Stock Exchange. The company appoints Glass Ltd. as its proxy who is not a member of the Chennai Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Chennai Stock Exchange can restrict the appointment of Glass Ltd. as proxy for Crystal Ltd. and further restrict, the voting rights of Crystal Ltd. in the Chennai Stock Exchange.

Foreign Exchange Management Act, 1999

- 21 (a) Examining the provisions of the Foreign Exchange Management Act, 1999, state as to when shall a person residing in India shall be treated as 'Person Resident in India'. Further state whether in the following situations, the person concerned shall be included within the meaning of 'Person Resident in India':
- (i) Mr. Naveen who has gone out of India for carrying business outside India during the preceding year.
 - (ii) Mr. Maurya, a person resident outside India controls an Office in India of a company.
- (b) Mr. Reyansh, an Indian National desires to obtain foreign exchange for the following purposes:
- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
 - (ii) US Dollar 100,000 for sending a tour of a cultural group to USA.
 - (iii) US Dollar 50,000 for meeting the expenses of his business tour to Europe.
- Advise him, if he can get the Foreign Exchange and under what conditions.

The Competition Act, 2002

- 22 (a) An enterprise is not satisfied with the decision of the Competition Commission. Advise whether any remedy is available to the aggrieved party against the decision of the Competition Commission under the Competition Act, 2002?

- (b) Examining the provisions of the Competition Act, 2002, state as to when can the Competition Commission inquire into certain agreements. What factors shall the Commission take into account while determining whether an agreement has an appreciable adverse effect on competition?

Interpretation of Statutes, Deeds and Documents

- 23 (a) Explain the Rule of "Reasonable construction under the interpretation of Statute, Deeds etc".
- (b) Explain the rule of "Ejusdem Generis" with reference to the interpretation of statutes. State the cases in which this rule is not applicable.

Banking Regulation Act, 1949, The Insurance Act, 1938, The Insurance Regulatory and Development Authority Act, 1999, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

- 24 (a) Referring to the provisions of the Banking Regulation Act, 1949, answer the following:
- (i) What are the powers of the Central Government to acquire any Banking company?
 - (ii) State the matters that may be included in the scheme of acquisition prepared by the Central Government.
- (b) With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts.

Prevention of Money Laundering Act, 2002

- 25 X has been arrested for committing an offence, under the Prevention of Money Laundering Act, 2002. The offence is punishable with imprisonment for a term exceeding three years. Can he be released on bail? Discuss.

SUGGESTED ANSWERS/HINTS

1. **Payment of dividend (Section 127 of the Companies Act, 2013):** Section 127 of the Companies Act, 2013 lays down that dividend has to be paid within 30 days from the date of its declaration. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and renders every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

The Section further provided that no offence shall be deemed to have been committed in the case where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

In the instant case, dividend was declared on 31st May, 2014 and was paid on 15th June, 2014 i.e. within 15 days. The time limit prescribed by section 127 of the said Act is 30 days so no offence is committed.

Further, no dividend was paid to Mr. Goyameer as the company adjusted the amount of dividend against a sum due to it from Mr. Goyameer. Section 127 expressly authorizes the company to lawfully adjust the amount of dividend against any sum due to it from the shareholder.

So, in the instant case, the adjustment of amount of dividend is also not violative of the Companies Act, 2013.

- 2 (a) Under section 134(1) of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:
- (i) The chairperson of the company where he is authorised by the Board; or
 - (ii) Two directors out of which one shall be managing director and
 - (iii) The Chief Executive Officer, if he is a director in the company,
 - (iv) The Chief Financial Officer and the company secretary of the company, wherever they are appointed.

In the instant case, the financial statements have been signed by Mr. Ramesh and Mr. Suresh, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the financial statement.

- (b) (i) In accordance with the provisions of the Companies Act, 2013 as contained in Section 129(1), the financial Statements of a company shall be prepared in such a manner so that these:
- (a) Give a true and fair view of the state of affairs of the company or companies.
 - (b) Comply with the accounting standards notified under Section 133 of the Act.
 - (c) Shall be in the form or forms as may be provided for different class or classes of companies in Schedule III to the Act.
 - (d) However, the items contained in such financial statements shall be in accordance with the accounting standards.

- (ii) The above provisions relating to nature and content of financial statement shall not apply to following companies:
 - (a) Insurance companies.
 - (b) Banking companies.
 - (c) Company engaged in the generation or supply of electricity.
 - (d) Any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.
- (iii) According to section 129(5) of the Act, in case the financial statements of a company are not prepared in compliance with the Accounting Standards, the company shall disclose in its financial statements the following viz.
 - (a) The extent to which the financial statements do not comply with Accounting Standards i.e. deviation from the Accounting Standards.
 - (b) The reasons for such deviation i.e. what has led the company to deviate from the Accounting Standards.
 - (c) The financial effects, if any, arising out of such deviation.

As per section 129(7) of the Act, if a company contravenes the provisions relating to preparation of financial statements, the Managing Director, the Whole-time Director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with:

- (a) Imprisonment for a term which may extend to 1 year; or
- (b) Fine which shall not be less than ₹ 50,000 which may extend to ₹ 5 lacs; or
- (c) Both with imprisonment as well as the fine.

- 3 (a) (i)** In accordance with the provisions of Companies Act, 2013 as contained in Section 141(3)(d), a person who, or his relative or partner, is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company cannot be appointed as an auditor of the company. However, if that relative is holding the security or interest in the company of face value not exceeding ₹ 1,00,000 as prescribed under the *Companies (Audit and Auditors) Rules, 2014*, a person can be appointed as an auditor of the company even though he is related to the person holding security or interest.

Therefore, the appointment of Mr. Prince as an auditor is valid, since Mr. Y, a relative of Mr. Prince holds securities of the value not more than ₹ 1,00,000 (₹, 5,000 in the given case).

- (ii) In the second case, Mr. Prince is already the auditor of 10 companies. As per

Section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company if a person is in full time employment elsewhere or a person or partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies. In this case since Mr. Prince is auditor in only 10 companies, he can accept the appointment as an auditor in 10 more companies.

- (iii) In the third case, in accordance with the provisions of the Act as contained in Section 141(3)(e), a person or a firm who, whether directly or indirectly has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed under the *Companies (Audit and Auditors) Rules, 2014*, shall be disqualified from being appointed as an auditor of a company. Therefore, Mr. Prince cannot be appointed as an auditor of the company in the given case, since he is having some business relationship with a subsidiary of ABC Limited.
- (b) As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company if a person is in full time employment elsewhere or a person or partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies. Private companies shall also been included in the provisions with respect to ceiling on number of audits.

As per section 141(3)(g), the limit of 20 company audits is per person. In the case of an audit firm having 2 partners, the overall ceiling will be $2 \times 20 = 40$ company audit. Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits on his account.

Therefore, in the instant case, AB & Co. is an audit firm comprising of two partners Mr. A and Mr. B holding appointments as an auditor in 41 private companies out of which paid-up capital of 20 companies exceeds 50 Lakhs. Therefore, XYZ Private Limited cannot appoint AB & Co. as its auditor since they are holding appointments as an auditor in 41 private companies which exceeds overall ceiling of 40. Thus, in above case such appointment shall not be in order. There is no relevance of paid up share capital in the above case.

- 4 (a) (i) **Appointment of Mr. Anderson as an Additional Director who could not be appointed as director in the general meeting**

According to Section 161(1) of the Companies Act, 2013, the article of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. Such person shall not be appointed as an additional director who fails to get appointed as a director in a general meeting. In the instant case, Mr. Anderson failed to get appointed as director in the general meeting. So his appointment as additional director is not valid.

(ii) **Appointment of Mr. Black as a Nominee Director, in pursuance of an agreement with a financial institution**

According to Section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a government company subject to the articles of the company.

In the instant case the appointment of Mr. Black as a nominee director is valid.

(iii) **Appointment of Mr. Mohan as alternate Director for a period of three months. Mr. Mohan is already holding alternate directorship for some other director in this company.**

According to Section 161(2) of the Companies Act, 2013, the Board of Director of a company, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company to act as alternate director for a director during his absence from India for a period of not less than three months.

In the instance case, Mr. Mohan is already holding the alternate directorship for some other director in the company and hence his appointment as alternate director by the Board of Directors is not valid.

Validity of acts of director: According to Section 176 of the Companies Act, 2013, no act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this act or in the articles of the company. But once the director's appointment has been noticed by the company to be invalid or to have terminated, nothing in this section shall be deemed to give validity to any act done by the director after words.

(b) Section 161(4) of the Companies Act, 2013 provides that in the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.

However, Mr. C expired on 15th May, 2014 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy resulting from Mr. P's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. C.

The Board may however appoint Mrs. C as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office until the conclusion of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

- 5 (a) (i) Under section 165 (1) of the Companies Act, 2013, no person, after the commencement of this Act, shall hold office as a director including any alternate directorship, in more than twenty companies at the same time.

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation to section 165 (1) clarifies that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

In the said question, Mr. Influential is already a director in 10 public companies and as Expensive Remedies Ltd is a public company, he cannot be appointed as a director therein, even though his total directorships are less than 20.

- (ii) For calculating the limit of 10 public companies, a private company which is neither a subsidiary nor a holding company of a public company will be excluded in terms of the explanation to section 165 (1) of the Companies Act, 2013.

- (b) Section 168(2) of the Companies Act, 2013 states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. The effectiveness of the resignation of the director is not in any way connected to its acceptance by the Company or the Board nor is it linked to the filing of required form with the Registrar.

However, under the Proviso to section 168 (1), the resigning director is also required to file with the Registrar a copy of his resignation and the reasons of his resignation in form DIR 11 within 30 days of the date of his resignation.

Hence, if the company has failed to file the form DIR 12 as required by the *Companies (Appointment & Qualifications of Directors) Rules, 2014*, the effectiveness of his resignation will not be impacted.

Therefore, in the given case, the resignation of Mr. Raj is valid and he will cease to be a director of POL Ltd. with effect from the date of notice i.e. 30th June 2014 as he has obtained the receipt of the notice on the same day.

- 6 (a) Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹ 30,000 to ₹ 45,000 per meeting by passing a Board Resolution.

- (b) (i) Under the proviso to section 196 (3)(a) of the Companies Act, 2013, a person who has attained the age of seventy years may be employed as managing director, whole-time director or manager by the approval of the members by a special resolution passed by the company in the general meeting and the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.
- (ii) Under section 197 (7) of the Companies Act, 2013, independent directors may be paid profit related commission as may be approved by the members. However, under section 197 (1) the limit of total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198. Further, the third proviso to section 197 (1) provides that except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors or whole-time directors shall not exceed one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; or three per cent of the net profits in any other case. Therefore, in the given case, the commission of 4% is beyond the limit specified, and the same should be approved by the members by ordinary resolution.
- (iii) If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of

Part II of schedule V provides that where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding ₹ 30 Lakhs for the year if the effective capital of the company is negative or upto ₹ 5 Crores. In the present case the proposed remuneration can be paid without the approval of Central Government.

- 7 (a) (i) 'Stakeholders Relationship Committee' under the provisions of the Companies Act, 2013 is appointed by the Board of Directors by passing resolution at its meeting. The resolution is as under:

"Resolved that the 'Stakeholders Relationship Committee' be and is hereby constituted as under:

Mr. Wise	Non-Executive Director (Chairperson).
Mr. Intelligent	Non-Executive Director
Mr. Green	Non-Executive Director
Mr. Blue	Non-Executive Director

The Committee further resolves to appoint Mr. Wise as the Committee's Chairman and Mr. Wise be and is hereby appointed as Chairman.

The Committee resolves authorising the Company Secretary to take necessary steps to complete the formalities relating to the above resolution."

Dated _____, 2015

Sd/

FOR BOARD OF DIRECTORS

- (ii) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at anytime during a financial year shall constitute a Stakeholders Relationship Committee consisting of a Chairperson who shall be a non-executive director and such other members as may be decided by the Board. [Section 178(5) of the Companies Act, 2013]

The Committee shall consider and resolve the grievances of security holders of the company [Section 178(6)].

The Chairperson of each of the committee constituted under the provisions of this Act or, in his absence any other member of the committee authorised by him in this behalf shall attend the general meetings of the company. [Section 178(7)].

In case of any contravention of the provisions of Section 177 and this section, the company shall be punishable with fine which shall not be less than ₹ One lakh but which may extend to ₹ 5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may

extend to one year or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ One lakh or with both. [Section 178(8)]

However, non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section. [Proviso to section 178(8)]

- 7 (b) Section 180 of the Companies Act, 2013 provides that the Board of directors of a company can exercise certain powers only with the consent of the company accorded by a special resolution passed at the company's general meeting.

Board of directors of the company can borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of the company's paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business, only with the consent of the company accorded by a special resolution passed at a general meeting. Every such special resolution shall specify the total amount up to which moneys may be borrowed by the Board of Directors.

In the given case, the aggregate of paid-up share capital + free reserves is ₹ 100 crores + ₹ 50 crores + ₹ 25 crores, i.e. ₹ 175 crores i.e. the maximum amount can be borrowed by the directors. As per resolution, the Board wants to borrow additional sum of ₹ 200 crores. Company has already borrowed ₹ 25 crores as existing long term loan. Since the amount of additional borrowing i.e. ₹ 200 crores is in excess of the above limit of ₹ 175 crores, the Board can borrow only by passing a special resolution passed in the general meeting of the company.

The Board of Directors of the company are, therefore, advised to get a special resolution passed in the company's general meeting and the resolution should also specify the amount that can be borrowed by the Board.

- 8 (a) (i) According to section 174(1) of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of a company shall be one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant, we find: $\frac{1}{3}$ of $(9-2) = \frac{1}{3}$ of $7 = 2 \frac{1}{3}$ directors which will be rounded off as 3. Therefore, being higher than 2, 3 directors would constitute the quorum for the Board meetings.
- (ii) Under section 174(3) of the Companies Act, 2013, if at any time the number of the remaining directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of the remaining directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum. Accordingly in the given problem, there are in all 15 directors and the Board meeting commences with all the 15 directors. During the meeting, an item comes up for discussion in respect of which 13 happen to be

“interested” directors. In this case, in spite of the excess of the interested directors being more than two-thirds, the prescribed minimum number of non-interested directors constituting the quorum, namely, 2 are present at the meeting and can transact the particular item of business.

- (b) (i) In terms of section 182 (1) of the Companies Act, 2013, the company is legally not authorized to make a political contribution unless it has been in existence for three financial years or more. Since XYZ Ltd. has not completed three years of existence on 1st November 2014, it is not eligible to give political contribution.
- (ii) Yes, because in that case, XYZ limited will complete three financial years of its existence by 1st October, 2014, therefore, will be eligible to give political contribution under section 182 (1) of the Companies Act, 2013 on 1st November, 2014. However, the amount of contribution in the aggregate in a financial year shall not exceed 7.5% of its average net profits during the three immediately preceding financial years. Further, no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors.
- (iii) Under section 182 (4) of the Companies Act, 2013 if a company makes any contribution in contravention of the provisions of section 182, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
- 9 (a) **Investigation into affairs of related companies:** According to section 219 of the Companies Act, 2013, if an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—
- (i) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
- (ii) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
- (iii) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
- (iv) director or manager or employee.
- (b) Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

- (i) **Submission of interim report and final report [Sub section (1)]:** An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- (ii) **Report to be writing or printed [Sub section (2)]:** Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.
- (iii) **Obtaining copy of report [Sub section (3)]:** A copy of the above report may be obtained by making an application in this regard to the Central Government.
- (iv) **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this Chapter shall be authenticated either—
 - (a) by the seal of the company whose affairs have been investigated; or
 - (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,
 and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (v) **Exceptions:** Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

- 10 (i) Compromise or Arrangement:** The scheme must be approved by a resolution passed with the special majority stipulated in section 391(2) of the Companies Act, 1956, namely a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case, out of 700 members, 400 members attended the meeting, but only 310 members voted at the meeting. As 160 members voted in favour of the scheme the requirement relating to majority in number (i.e. 156) is satisfied. 310 members who participated in the meeting held 12,40,000, three-fourth of which works out to 9,30,000 while 160 members who voted for the scheme held 10,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority. (It is presumed that all the shares are fully paid-up).

- (ii) **Preference shareholders:** The term 'member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence their approval is also required.

If the Court directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court.

- 11 (i) According to Sections 397 and 398 of the Companies Act, 1956, a group of shareholders of Unique Products Limited must hold more than 10% of the issued share capital of the Company or satisfy other requirements under section 399(1) of the Companies Act, 1956. Since, the group holds 12% of the issue capital they are entitled to file a petition before the Company Law Board under sections 397 and 398 of the Companies Act, 1956 by alleging that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the Company. However, on the basis of *Seth Mohanlal Ganpatram V. Shri Sayaji Jubilee Colton and Jute Mills Company Ltd.*, mere illegal, invalid or irregular transactions entered into in the name of the company do not constitute a ground for invoking the provisions of section 397 unless it is proved that they are oppressive to any shareholder or prejudicial to the interest of the company or to the public interest.

Thus, in the present case, the petition filed by the group of shareholders will fail unless they can prove to the satisfaction of the Company Law Board that the acts complained of in the petition are oppressive and prejudicial to the interest of the company and the public interest. And that to wind up the company would unfairly prejudice such member or members, but that otherwise those facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up.

- (ii) **Right not confined to minority:** According to section 399 of the Companies Act, 1956, the right to apply for relief under section 397 or 398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10 of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. As per *Re Sindhri Iron Foundry (P) Ltd.*, the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied.
- 12 (a) (i) **Fraudulent Preference:** According to the provisions of Section 531 of the Companies Act, 1956, all transfers of property, movable or immovable, made by delivery of goods or payment of money etc., if made by an insolvent person within 3 months before the presentation of insolvency petition, would be held to be a fraudulent preference of its creditors and would be invalid. Similarly, in the case of a company all such transfers, if made within 6 months before the commencement of its winding-up, would be deemed to be a fraudulent

preference of its creditors, and would be invalid.

- (ii) **Creation of legal mortgage by the company in favour of the bank:** In the present case, the Modern Textiles Limited created a legal mortgagee on some of its immovable properties in favour of a bank on 1st September, 2013 in the hope that by keeping good faith with the bank it could get further advances from the bank and the same could be utilized to revive the company.

For the purpose of proving a fraudulent preference, two things need be shown, viz.:

- (a) that in the case of a winding-up by or subject to the supervision of the Court, the transaction took place within 6 months before the presentation of the petition and in the case of voluntary winding-up, the transaction took place within 6 months of passing of resolution for winding-up; and
- (b) that the main motive in the mind of the company, acting through its directors, was to prefer one creditor to the other.

Thus, to prove fraudulent preference, it shall have to be established that the dominant motive was to commit an act of dishonesty. To find a case of fraudulent preference, the dominant motive in the mind of the company as represented by the directors or the general body of shareholders, as the case may be, must be to prefer the creditors. The dominant motive attending the transaction has to be ascertained, and if it is tainted with an element of dishonesty, questions of fraud arise. In validating such payment the question is not whether the company is or is not damaged by the payment, but whether it was made with a bona fide view to assisting the company.

Thus, the creation of legal mortgage on some of its immovable properties with the bank is not a fraudulent preference because it has been done in the good faith so that the company could get further advances from the bank. It is a transaction in good faith.

- (b) According to section 455 of the Companies Act, 1956, as soon as the winding up order is received by the official Liquidator, a preliminary report is required to be submitted to the court. This report should be submitted as soon as the Liquidator receives the Statement of Affairs from the persons who were directors of the company at the time of winding up.

The preliminary report should contain the following details:

- (i) The amount of capital issued, subscribed and paid up.
- (ii) The estimated amount of assets and liabilities giving separately (a) cash and negotiable securities; (b) debts due from contributories; (c) debts due to the company and securities, if any, available in respect thereof; (d) moveable and immovable properties belonging to the company; (e) unpaid calls.
- (iii) If the company has failed, the causes of the failure.

- (iv) The opinion of the Liquidator as to whether any further enquiry is desirable as to any matter relating to promotion, formation or failure of the company or the conduct of the business thereof.

The Official Liquidator has also the power to make a further report if in his opinion the company was formed with a view to commit a fraud or a fraud has been committed in respect of any matter which in his opinion is desirable to bring to the notice of the court.

- 13 (a)** According to section 581P (1) of the Companies Act, 1956 the members who sign the memorandum and the articles may designate (not less than five) as first directors and who shall govern the affairs of the company until the directors are appointed at the Annual General Meeting.

- (1) According to section 581-0 every producer company shall have at least five and not more than fifteen directors.
- (2) The period of office of director shall be not less than one year and not exceeding 5 years as may be specified in the articles. [Section 581P (3)]
- (3) The election of directors shall be conducted within 90 days from the date of registration of the producer company. [Section 581P (2)]
- (4) The directors are normally elected and appointed by the members in the Annual General Meeting. The Board may also co-opt one or more expert directors as an additional director. Such directors cannot exceed 1/5th of the total number of directors.
- (5) The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles.

Thus Mr. Z can be appointed as expert director but he will not have any voting right in the election of chairman of the Board of directors.

- (b) Annual General Meeting** – The first annual general meeting of a producer company shall be held within 90 days of incorporation i.e. on or before 29th November, 2014 in this case [Section 581ZA(2)]. In the case of subsequent Annual General Meetings gap between two Annual General Meetings must not be more than 15 months. Registrar of Companies may extend the time for holding any Annual General Meeting other than the first Annual General Meeting by a period not exceeding 3 months for any special reason [Section 581ZA(1)].

Quorum Unless the articles of association of the producer company provide for a larger number, 1/4th of the total number of members of the producer company shall be the quorum for its annual general meeting. In this case the company has got 220 members. Hence the quorum is 55 (Section 581ZA(9))

Voting rights of members: It depends on the type of membership. Where the membership consists of individuals and producer institutions, (as in this case) voting rights should be computed on the basis of a single vote for every member [Section 581D(1)(c)]

Removal of member: No person, who has any business interest which is in conflict with business of the producer company, shall become a member of that company (Section 581D(4)). A person who has become a member of the producer company acquires any business interest which is in conflict with the business of the producer company, shall cease to be a member of that company and be removed as a member in accordance with the articles (Section 581D(5)).

14 (a) In accordance with the provisions of the Companies Act, 2013, as contained in Section 380, every company incorporated outside India (i.e. Foreign Company) shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:

- (i) A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of a company and, if the instrument is not in the English language, a certified translation thereof in the English language.
- (ii) The full address of the registered or principal office of the company.
- (iii) A list of the directors and secretary of the company containing such particulars as may be prescribed.
- (iv) The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company.
- (v) The full address of the office of the company in India which is deemed to be its principal place of business in India.
- (vi) Particulars of opening and closing of a place of business in India on earlier occasion or occasions.
- (vii) Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- (viii) Any other information as may be prescribed.

Further, in accordance with the provisions of Section 393 of the Act, any failure by a company to comply with the provisions of the Act shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Act applicable to it.

(b) Under section 387 (1) of the Companies Act, 2013 no person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, unless the prospectus is

dated and signed, and contains particulars with respect to the following matters namely:

- (i) the instrument constituting or defining the constitution of the company;
- (ii) the enactments or provisions by or under which the incorporation of the company was effected;
- (iii) the address in India where the said instrument, enactments or provisions, or copies thereof can be inspected. If the same are not in the English language, a certified translation thereof in the English language should be available for inspection;
- (iv) the date on which and the country in which the company would be or was incorporated; and
- (v) whether the company has established a place of business in India and, if so, the address of its principal office in India; and
- (vi) the matters specified under section 26 (so far as they are applicable) which lays down the matters to be included in a prospectus issued by an Indian Company.

In terms of the proviso to section 387 (1) the above referred points (i), (ii) and (iii), shall not be applicable if the prospectus is issued more than 2 years after the date at which the company is entitled to commence business.

- 15 (a)** Director Identification Number (DIN): It is an unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 153 and 154 of the Companies Act, 2013.

Scanned documents required to be attached with eform DIR-3:

- (i) High resolution photograph of the applicant.
 - (ii) PAN is mandatory now. So copy of pan is mandatory for identity, name, father's name and date of birth. Proof of father's name is not required in the case of foreign nationals.
 - (iii) Copy of passport is mandatory as an id proof in the case of foreign nationals.
 - (iv) Present Address proof which should not be older than 2 months
 - (v) Verification as per form DIR-4 as per the format given on the website.
- (b) (i) Power of Central Government to appoint company prosecutors:** Section 443 of the Companies Act, 2013 lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.
- (1) Appointment of company prosecutors:** The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and

- (2) **Powers and Privileges:** The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

(ii) **Appeal against acquittal:**

- (1) According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –
- (a) any company prosecutor, or
 - (b) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.
- (2) Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

- 16 (a) Section 452 of the Companies Act, 2013 provides for penalty for wrongful withholding of property. According to this section:

- (i) If any officer or employee of a company—
- (a) wrongfully obtains possession of any property, including cash of the company; or
 - (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,
- he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh.
- (ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

- (b) According to section 455(1) of the Companies Act, 2013:

- (i) A company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
- (ii) Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- (iii) The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after considering of the application.

- (iv) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

- 17 (i) While drafting the minutes of a board meeting, following salient points should be kept in mind:
- (a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.
 - (b) the place, date and time of the meeting should be stated.
 - (c) The chairman of the meeting must be mentioned. The general phrase used in the Minutes is "Mr.---, chairman of the meeting took the chair and called the meeting to order".
 - (d) the minutes should clearly mention the attendance and the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.
 - (e) The adoption of the Minutes of the previous Board Meeting must be the first item on the Agenda by the directors giving their approval and the Chairman signing the Minutes as proof of approval of the Minutes.
 - (f) Conduct of the business at the meeting should be recorded in the chronological sequence as per the Agenda.
 - (e) In respect of each item of business the names of the directors dissenting or not concurring with any resolution passed at the board meeting should be mentioned.
 - (f) Reference about interested directors abstaining from voting is also required to be stated in the minutes.
 - (g) Chairman's signature and date of verification of minutes as correct.

- (ii) Resolution passed at the meeting of board of directors of DBM Limited held at its registered office situated at on 2nd May, 2014 at A.M.

“RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to the applicable provisions of the Companies Act, 2013, Mr. Paul be and is hereby appointed as the Managing Director of the Company with effect from 1st June, 2014 for a period of five years on a remuneration approved by the Remuneration Committee as enumerated below:

(1) Salary: ₹ per month

(2) Perquisites, Benefits and Facilities

RESOLVED FURTHER that Mr. Paul, so long as he functions as the Managing Director of the Company shall not be entitled to any sitting fee for attending the meeting of the board of directors or any committee thereof and that he shall not be liable to retire by rotation.

RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 2013.”

SECTION – B: ALLIED LAWS

18 (a) Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, a member of the SEBI has pecuniary interest in some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z has so abused his position as to render his continuation in office detrimental to the

public interest, the Central Government may remove Mr. Z from his office after giving him a reasonable opportunity of being heard in the matter.

- (b) The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of
- (i) to protect the interests of investors in securities
 - (ii) to promote the development of securities market
 - (iii) to regulate the securities market and
 - (iv) For matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

- (i) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
- (ii) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
- (iii) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

19 Bonus Issue (Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009)

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Royal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

1. The Articles of Royal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution.
2. Steps for determining whether any increase in authorised share capital is required:
 - (a) Paid up share capital as on 31st March, 2015: ₹ 150 crores.
 - (b) Paid up capital (after conversion of ₹ 100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ₹ 100 crores) ₹ 250 crores (150+100).
 - (c) Proposed bonus issue - 1 share for every 1 share held.
 - (d) Post bonus issue capital: ₹ 500 crores (250+250).

Since the Authorised share capital of the company is only ₹ 400 crores, it has to take steps to increase the amount to ₹ 500 crores or beyond by complying with the provisions laid down in the Companies Act.

3. Sources of bonus shares: Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ₹ 750 Crores

Since the source of issue of bonus shares (₹ 750 crores) is sufficient to issue bonus shares (₹ 250 crores), the proposed issue can be made.

4. Other legal requirements for issue of Bonus shares are as under:
 - (a) A resolution shall be passed by the Board in a duly convened Board meeting.
 - (b) The bonus issue shall be made within 15 days of passing the Board resolution.
 5. The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof; and payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc.
- 20 (a)** Section 21A of Securities Contracts (Regulation) Act, 1956 contains the provision relating to delisting of securities. As per this section
- (1) A recognized Stock Exchange may delist the securities after recording reasons therefor, from any recognized stock exchange on any ground or grounds as may be prescribed under this Act.
 - (2) The Securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.
 - (3) A listed company may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of recognized stock exchange delisting the securities.
 - (4) Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period of not exceeding one month.

So here, the company may make an appeal to the Securities Appellate Tribunal against the delisting within fifteen days or such extended period not exceeding one month after showing sufficient cause of not filing within fifteen days.

- (b)** Section 7A of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:
- (i) Restriction of voting right to members only.
 - (ii) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.
 - (iii) Restriction on right of members to appoint proxy.

As such Chennai Stock Exchange can restrict the appointment of Glass Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Chennai Stock Exchange can also restrict the voting rights of Crystal Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of Crystal Ltd appointment of proxies.

- 21 (a)** In accordance with the provisions of FEMA, 1999, as contained in Section 2 (v), 'person resident in India' means:
1. A person residing in India for more than 182 days during the course of the preceding financial year but does not include-
 - (a) person who has gone out of India or who stays outside India, in either case-
 - (i) For or on taking up employment outside India, or
 - (ii) For carrying on outside India a business or vocation outside India, or
 - (iii) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (b) A person who has come to or stays in India, in either case, otherwise than:
 - (i) For or on taking up employment in India, or
 - (ii) For carrying on in India a business or vocation in India, or
 - (iii) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
 2. Any person or body corporate registered or incorporated in India.
 3. An office, branch or agency in India owned or controlled by a person resident outside India.
 4. An office, branch or agency outside India owned or controlled by a person resident in India.

Accordingly, answer to the sub-questions are:

1. In this case Mr. Naveen shall not be a 'personal resident in India'
 2. In the second case, Mr. Maurya shall be called a 'person resident in India'.
- (b)** Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central government or Reserve Bank of India.
- (i) Remittance out of lottery winnings, is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

- (ii) Foreign Exchange meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Reyansh can withdraw the Foreign Exchange after obtaining such permission.
- (iii) The type of payment as envisaged is covered under Third Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and for withdrawing foreign Exchange exceeding US Dollar 25,000 for a business tour irrespective of period of stay Mr. Reyansh will require the prior permission of the Reserve Bank of India.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with Section 10 of the Foreign Exchange Management Act, 1999.

22 (a) Remedy against the decision of competition commission (sections 53B and 53T of the Competition Act, 2002)

Appeal to Appellate Tribunal

1. According to section 53B of the Competition Act, 2002, the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in section 53A may prefer an appeal to the Appellate Tribunal.
2. Every such appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed.
3. The Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
4. On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
5. The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
6. The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Appeal to Supreme Court (Section 53T)

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them. The Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from, filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

- (b) The competition Commission under the provisions of section 19(1) of the Competition Act, 2002 is empowered to inquire into any alleged contravention of the provisions contained in Section 3(1) or Section 4(1) either on its own or on:
- (a) Receipt of any information in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
 - (b) A reference made to it by the Central Government or a State Government or a statutory authority.

ADVERSE EFFECTS:

According to section 19(3) of the Competition Act, 2002, the Commission shall, while determining whether an agreement has an appreciable adverse effect on competition, have due regard to all or any of the following factors, viz:

- (a) Creation of barriers to new entrants in the market
 - (b) Driving existing competitors out of the market.
 - (c) Foreclosure of competition by hindering entry into the market.
 - (d) Accrual of benefits to consumers.
 - (e) Improvements in production or distribution of goods or provision of services.
 - (f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
- 23 (a) The rule of reasonable construction lays down that the words of a statute must be construed '*ut us maquis valeat quampareat*' meaning thereby that words of statute must be construed so as to a sensible meaning. Generally the words or phrases of a statute are to be given their ordinary meaning. In the case of *Dr. A.L. Mudaliar vs. LIC of India* (1963) (SC), it was held that the Memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs. Further, in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed; neither with rigidity nor with laxity. [*Waman Lal Chotanlal Parekh vs. Scindia Steam Navigation Co. Ltd.*(1944)].

If the court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

- (b) **Rule of Ejusdem Generis:** The term ejusdem generis means of the same kind or species. Simply stated the rule means where any Act enumerates different subjects, general words following specific words are to be construed with reference to the words that precede them. The general words are to be taken as applying to things of the same kind as the specific words previously mentioned unless there is something to show that a wider sense was intended. Thus, the rule of 'ejusdem generis' means that where specific words are used and after these specific words, some general words are used, the general words would take their colour from the specific words used earlier, eg: where an Act permitted keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wide animals like lions and tigers, but would only mean domesticated animals like horses, etc.

However, there are certain cases/circumstances on which this rule cannot be applied in the interpretation of statutes. The general principle of 'ejusdem generis' applies only where the specific words are all of the same nature. When they are of different categories, then the meaning of general words following these specific words remain unaffected. These general words would not take colour from the earlier specific words.

Again if the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus.

Further, the Courts have a discretion whether to apply the 'ejusdem generis' doctrine in a particular case or not. For instance, the 'just and equitable' clause in the winding up, powers of the Court is held to be not restricted by the first five situations in which the Court may wind up a company.

- 24 (a) (i) In accordance with the provisions of the Banking Regulation Act, 1949, as contained in Section 36AE, Central Government is empowered to acquire a Banking Company if it is of the opinion that the Banking Company has failed to comply the direction given to it by the Reserve Bank of India (RBI) relating to policy matters under Section 21 and 35A and/or the bank is being managed in a manner detrimental to the interest of the depositors or that of to the banking policy, or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to acquire the undertaking of such banking company, it (Central Government) may after consultation with RBI as it thinks fit, by notified order, acquire the undertaking of such banking company w.e.f. such date as may be specified (herein after referred as the appointed date) in this behalf by the Central Government. In

case of such a notification, on the appointed date the undertaking of the acquired bank and its assets and liabilities shall stand transferred to, and vest in, the Central Government.

Before acquiring the undertaking of any banking company, the Central Government shall give a reasonable opportunity to the banking company proposed to be acquired of showing cause against the proposed action.

- (ii) **MATTERS TO BE PROVIDED IN THE SCHEME:** The Scheme is prepared in consultation with the Reserve Bank of India (RBI). The scheme may provide for transfer of assets and liabilities of the acquired bank, constitution of the first Board of Management and matters incidental thereto, the service condition of the employees, compensation payable to the shareholders of the acquired bank and such other incidental, consequential and supplemental matters as may be necessary to complete the transfer.
- (b) **Requirement of Paid Up equity capital for insurance business:** No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has, —
 - (i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
 - (ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a re-insurer:

Items to be excluded in determining the amount of paid up equity share capital: In determining the paid-up equity capital specified above, following item must be excluded-

- (i) The deposit of 1% and 3 % of the gross premium with respect to life insurance and general insurance business in any financial year to be made by the insurer to the Reserve Bank of India.
- (ii) In the case of re-insurance business, a deposit of sum of rupees twenty crores made by the insurer to the Reserve Bank of India.
- (iii) Any preliminary expenses incurred in the formation and registration of the company, and

25 Bail In non-bailable offences (Section 45 of The Money Laundering Act, 2002)

1. Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
 - (i) The Public Prosecutor has been given an opportunity to oppose the application for such release; and

- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence that he is not likely to commit any offence while on bail.
- 2. Further, in case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.
- 3. The Special Court cannot take cognizance of any offence punishable under section 4 unless a complaint in writing is made by:-
 - (a) The Director or
 - (b) Any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Thus, Mr. X has no right to be released on bail but the court may release him on bail in its discretion.