CA Intermediate Paper-2

Company & Other Laws

May-18 Exam Paper with

Suggested Answers

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(Disclaimer: Though every care has been taken to make these answer error free but these answers are prepared in a short period of time if you find any error please inform me at abovementioned contact details.)

Question 1(a)
MNP Private Ltd. is a company registered under the Companies Act. 2013 with a Paid Up Share Capital of Rs.45 lakh and turnover of Rs.3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is Rs.1.50 crore? **(6 Marks)**

Answer 1(a)
As per Section 2(85) of the Companies Act, 2013 ''**small company**'' means a company, other than a public company,—

(i) paid-up share **capital** of which does not exceed **fifty lakh** rupees (or such higher amount as may be prescribed which shall not be more than ten crore rupees); **and**
(ii) **turnover** of which as per its last profit and loss account does not exceed **two crore** rupees (or such higher amount as may be prescribed which shall not be more than one hundred crore rupees).

Provided that nothing in this clause shall apply to—

(A) a **holding** company or a **subsidiary** company;
(B) a company registered under **section 8**; or
(C) a company or body corporate governed by any **special Act**;

In the given case MNP private limited has a paid up share capital of Rs.45 lakhs, which is well within the limit of Rs.50 lakhs. But its turnover is Rs.3 crores which is above the limit of Rs.2 crore. Hence it does not fulfil this condition. And to be a small company a private company must fulfil both the conditions.

Therefore we can conclude that MNP Private Ltd. is not a small company.

But if its turnover is Rs.1.5 crores then it fulfils both the conditions hence in that case it is a small company.

Question 1(b)
Rera Ltd. a company incorporated under the Companies Act, 2013 6 having turnover of Rs.100 crore, net profit Rs.3 crore, accumulated loss of Rs.50 crore and securities premium Rs.300 crore as per the audited accounts of the company for the Financial Year 2016-17.

The CFO of the company informed the directors of the Company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not. **(6 Marks)**

Answer 1(b)
As per Section 135(1) of the Companies Act, 2013, (1) Every company having:

(i) net worth of rupees 500 crore or more, or
(ii) turnover of rupees 1000 crore or more or
(iii) a net profit of rupees 5 crore or more

during immediately preceding financial year shall constitute a Corporate Social Responsibility **Committee** of the Board consisting of **three or more directors**, out of which at least **one** director shall be an **independent director**.

Provided that where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee **two or more directors**.

a **foreign** company shall have at least **2 persons** of which 1 person shall be as specified under section 380(1)(d) and another person shall be nominated by the foreign company.]

Here Net worth = paid up share capital + security premium + reserves created out of profits – accumulated losses – deferred expenditure – miscellaneous expenses not written off. It does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

In the given case Rera Ltd. has turnover of Rs.100 crores, which is well below the limit of Rs.1000 crore. Its net profit is Rs.3 crore, which is less than the limit of Rs.5 crore. But we can't calculate its net worth because its paid up capital is not given in the question. Therefore let's assume that it is less than Rs.500 crores.

Therefore we can conclude that CSR requirement is not applicable to the company.

Question 2(a)(i)

PET Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12% 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act. 2013. **(4 Marks)**

Answer 2(a)(i)

According to section 123(3) of the Companies Act, 2013 **Board of Directors** of a company may declare **interim dividend** during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the given case PET Ltd. incurred loss upto current quarter therefore it can't distribute interim dividend which is more than average dividend rate of last three financial year. Here the rate of dividend for last 3 years is 12%, 15% and 18% hence the average rate is

(12%+15%+18%)/3 = 15%. Hence company can't give dividend at a rate more than 15% of face value of shares.

Board of directors of company has decided to declare interim dividend @15%. Looking at above provisions and discussion we can conclude that company can give this interim dividend. But it must have sufficient surplus in profit and loss account to distribute this amount.

Question 2(a)(ii)

Alpha Ltd,. A Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013. **(2 Marks)**

Answer 2(a)(ii)

According to section 8 of the Companies Act, 2013 not for profit company means a **limited** company which —

(a) has in its **objects** the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
(b) intends to **apply its profits**, if any, or other income in promoting its objects; and
(c) intends to **prohibit** the payment of any **dividend** to its members,

In the given case Alpha Ltd. a section 8 company is planning to distribute dividend, which is against the provisions of section 8 of the Companies act, 2013. Hence company can't distribute dividend.

In face if company gives dividend then Central Government can revoke its license under section 8.

Question 2(b)

As per the provisions of the Companies Act 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92. in Form MGT-7. Explain the particulars required to be contained in it. **(6 Marks)**

Answer 2(b)

According to section 92 of the Companies Act, 2013 every company shall prepare an annual return containing the particulars as they stood on the close of the financial year regarding—

(a) its registered office, principal **business** activities, particulars of its holding, subsidiary and associate companies;
(b) its shares, debentures and other **securities** and shareholding pattern;
(c) its **members** and debenture-holders along with changes therein since the close of the previous financial year;
(d) its **promoters**, directors, key managerial personnel along with changes therein since the close of the previous financial year;
(e) **meetings** of members or a class thereof, Board and its various committees along with attendance details;

(f) **remuneration** of directors and key managerial personnel;
(g) matters relating to certification of **compliances**, disclosures as may be prescribed;
(h) details in respect of shares held by or on behalf of the **Foreign** Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
(i) such other matters as may be prescribed.

Question 2(c)
Mr. V draws a cheque of 11,000 and gives to Mr. B by way of gift.
State with reason whether —
(1) Mr. B is a holder in due course as per the Negotiable Instrument Act. 1881?
(2) Mr. B is entitled to receive the amount of Z 11,000 from the bank? **(4 Marks)**

Answer 2(c)
According to the Negotiable Instruments Act, 1881 "Holder in due course" means any person:

- who for **consideration**
- became the **possessor** of a promissory note, bill of exchange or cheque if payable to bearer, or
- the **payee** or **indorsee** thereof, if payable to order,
- **before** the amount mentioned in it became payable, and
- without having sufficient cause to believe that any **defect** existed in the title of the person from whom he derived his title.

In the given case Mr. B obtained cheque from Mr. V by way of gift, i.e., without consideration. While to become holder in due course there must be consideration. Therefor Mr.B is not a holder in due course.

Now as per Negotiable Instruments Act, 1881 holder of a negotiable instrument is any person:

- any person entitled in his own name to the possession thereof and
- to receive or recover the amount due thereon from the parties thereto.

In the given case though Mr. B is not a holder in due but he is a holder. Therefore he can recover amount of Rs.11000 from the bank.

Question 2(d)
Bholenath drew a cheque in favour of Surendar. After having issued the 4 cheque, Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of The Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence? **(4 Marks)**

Answer 2(d)
As per section 138 of the Negotiable Instruments Act, 1881 Drawer of a dishonoured cheque shall be punishable with imprisonment upto 2 years or with fine which may extend upto twice the amount of the cheque or with both.

Also After issuing cheque if drawer intimates holder to not to present the cheque and holder still presents then cheque and it is dishonoured by bank. Still Drawer is liable for punishment under section 138.

In the give case Bholenath issued a cheque to Surendar and later requested him to not to present the cheque and gave a stop payment request to the bank. Now if Surendar presents the cheque to bank for payment, bank will dishonor it because of stop payment order. In that case Surendar can file a suit on Bholenath and bholenath will be punishable subject to fulfillment of other conditions of section 138.

Question 3(a)
TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013. **(6 Marks)**

Answer 3(a)
As a Chartered Accountant, I will apprise following points to board of directors of TDL Ltd. For payment of underwriting commission, which are given in the Companies **(Prospectus and Allotment of Securities)** Rules, 2014:

(a) **Authorized by the Articles:** The payment of such commission shall be authorized in the company's articles of association;
(b) **Paid out of the proceeds of the issue/profit**: The commission may be paid out of proceeds of the issue or the profit of the company or both;
(c) **Rate of Commssion:** The rate of commission paid or agreed to be paid shall not exceed, in case of shares, **5%** of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed **2.5%** of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
(d) **Disclosure of the particulars:** The prospectus of the company shall disclose -
    (i) the name of the underwriters
    (ii) the rate and amount of the commission payable to the underwriter; and
    (iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
(e) **No payment of commission**: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription.

(f) **Copy of the contract to be delivered to the Registrar:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question 3(b)(i)
Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the

provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor. **(3 Marks)**

Answer 3(b)(i)

As per section 139(1) of the Companies Act, 2013 every **company** shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of **every sixth meeting.**

As per sub section (2) No **listed** company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an **individual** as auditor for more than **one term of five** consecutive years;

(b) an audit **firm** as auditor for more than **two terms of five** consecutive years.

Provided that an auditor who has completed his term as specified above shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

Question 3(b)(ii)

PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)? **(3 Marks)**

Answer 3(b)(ii)

As per rule 3 for appointment of companies (audit & auditors) rules, 2014 The auditor appointed shall submit a certificate that -

(a) he is eligible for appointment and is **not disqualified** for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(b) the proposed appointment is **as per** the term provided under the **Act**;

(c) the proposed appointment is **within the limits** laid down by or under the authority of the Act;

(d) the list of **proceedings** against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is **true and correct**.

Question 3(d)

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? **(4 Marks)**

Answer 3(d)

‘May’ and ‘shall’ : If the word “may” is used it means the provision is directory in nature and it is not compulsory to follow it.

On the other hand if the word “shall” is used it means the provision is mandatory in nature and it is compulsory to follow it.

Example: For example section 96 of the Companies Act, 2013 says that

" Every company other than a One Person Company **shall** in each year hold in addition to any other meetings, a general meeting as its annual general meeting" it means that holding AGM is compulsory and it is not the choice of the company.

"Provided also that the Registrar **may**, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months." Here ROC has the power to extend time for AGM but it is at his option he may or may not increase the lime limit.

Reverse Meaning: The word 'may' generally has a directory for but is also has a mandatory force where subject involves discretion coupled with obligation, where the word 'may' has been used in the statute as a matter of pure conventional courtesy and also where the word 'may' may defeat the objective of the statute.

Similarly 'shall' is considered to have a mandatory force and is used in cases of statutes providing specific penalty. 'Must' on the other hand had a directory force and is used for statutes against the government or using a mandatory force may result in absurd results. While this rule seems simple, the draftsmanship lies in deciding whether the statute should use a mandatory for or a directory force.

No general rule can be laid down for deciding whether any particular provision on a statue is mandatory or directory. In each case the court has to consider not only the actual word used, but has to decide the legislatures intent.

Question 4(a)

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? **(4 Marks)**

Answer 4(a)

According to section 92(4) of the Companies Act, 2013 every company shall file with the **Registrar** a copy of the annual return, within **sixty days** from the date of annual general meeting. But if AGM is not held or not held within time, then it should be filed **within 60 days from the last date for holding AGM**.

As per sub section 5 If a company fails to file its annual return the company shall be **punishable** with fine and every **officer** of the company who is in default shall be punishable with imprisonment or with fine or with both.

Also as per section 103(2) If the quorum is not present within **half-an-hour** from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the **next week** at the same time and place, or to such other date and such other time and place as the Board may determine; or
(b) the meeting, if called by requisitionists under section 100, shall stand **cancelled**:

In the given case Bazaar Limited cancelled its AGM for want to quorum. Looking at above provisions it seems illogical. It should be adjourned the meeting.

Also the company did not file Annual return because there was no AGM. But if we read above provisions carefully we can see that Annual return should be filed with ROC even if the AGM is not held. And in this case it should be filed within 60 days from the last day for holding AGM.

Question 4(b)
Benson Limited issued a notice with the agenda for nine businesses to the transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions. **(4 Marks)**

Answer 4(b)
Section 114 of the Companies Act, 2013 specifies that how to pass an ordinary or special resolution but it does not specify anything about passing of resolution together.

In the given case chairman of Benson Limited wants to move all the nine resolutions together including two resolutions for appointment of Mr. Sahu and Mr. Pranav as director.

Though companies act is silent regarding this matter but it is prudent that each resolution should be moved one by one to avoid any conflict. But is all the members present in the meeting unanimously decide to move all resolution together then it can be done.

Still it is advisable that resolutions to appoint any director should be moved separately.

Question 4(c)
State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013. **(4 Marks)**

Answer 4(c)
As per section 134(3) of the Companies Act, 2013 (5) The **Directors' Responsibility Statement** shall state that—

(a) in the preparation of the annual accounts, the applicable **accounting standards** had been **followed** along with proper explanation relating to material departures;

(b) the directors had selected such **accounting policies** and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a

true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for **safeguarding** the assets of the company and for preventing and detecting **fraud** and other irregularities;

(d) the directors had prepared the annual accounts on a **going concern basis**; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such **internal financial controls** are adequate and were operating effectively.

Question 4(d)(i)
Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?
(4 Marks)

Answer 4(d)(i)
This is the first Primary rule of interpretation. It says that in construing Statutes the cardinal (Principal) rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. This rule is also known as the **Plain meaning rule**.

There should be no additions, deletion or substitution of words in the construction of statutes and in its interpretation. The primary rule is to interpret words as they are.

If the words are clear, they must be applied, even though the intention of the legislator may have been different or the result is harsh or undesirable. **The literal rule is what the law says instead of what the law means.**

Rationale for this Rule
Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues. In probate law (law related to will) the rule is also favoured because the testator (will maker) is typically not around to indicate his intention. Also this rule can help to provide for consistency in interpretation.

When Not to use this rule: It should be taken into note that the rule can be applied only when the meanings of the words are **clear** i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.

Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. With time and context meaning of words changes.

Therefore in this case other rules of construction like “reasonable construction” should be used.

Question 5(a)(i)

Harsh purchased 1000 shares of Singhania Ltd., from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him? **(4 Marks)**

Answer 5(a)(i)

As per section 58 of the Companies Act, 2013 If a **public** company without sufficient cause refuses to register the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, **appeal to the Tribunal**.

The Tribunal, while dealing with an appeal made under, may, after hearing the parties, either **dismiss the appeal**, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

*(b) direct **rectification** of the register and also direct the company to pay damages,* if any, sustained by any party aggrieved.

In the given case Singhania Ltd. neither transferred the shares nor sent any notice of refusal of transfer within time. Looking at above provisions company should have replied to Harsh within 30 days from the date of request of transfer.

Now Harsh can file an appeal with National Company Law Tribunal within 90 days from the date of delivery of instrument of transfer to the company.

Question 5(a)(ii)

Xgen Limited has a paid-up equity capital and free reserves to the 3 extent of Rs.50,00,000. The company is planning to buy-back shares to the extent of Rs.4,50,000. The company approaches you for advice with regard to the following:

(i) Is special resolution required to be passed?
(ii) What is the time limit for completion of buy-back?
(iii) What should be ratio of aggregate debts to the paid-up capital and free reserves after buy-back? **(3 Marks)**

Answer 5(a)(ii)

Following are relevant provisions of section 68 of the Companies Act, 2013 for buy back of securities:

(1) a **special resolution** has been passed at a general meeting of the company authorizing the buy-back. But following conditions should be fulfilled:

  (i) the buy-back is **ten per cent** or less of the total paid-up equity capital and free reserves of the company; and

(ii) such buy-back has been authorised by the **Board** by means of a resolution passed at its meeting;

(2) the ratio of the aggregate of secured and unsecured **debts** owed by the company after buy-back is not more than **twice** the paid-up capital and its free reserves.
Provided that the Central Government may notify a **higher** ratio of the debt to capital and free reserves for a class or classes of companies;

(3) Buy-back shall be completed within a period of **one year** from the date of passing of the special resolution or the board resolution.

In the given case Xgen Limited has a paid up capital and free reserves of Rs.50,00,000 hence upto 10%, i.e., Rs.5,00,000 it can proceed to buy back by passing a board resolution. Therefore looking at above provision and facts of case we can say that:

(i) There is no need to pass a special resolution. It can simply pass a resolution in the meeting of board of directors.
(ii) Buy back should be completed within 1 years from passing of board resolution.
(iii) Post buy back debt equity ratio should be atleast 2:1.

Question 5(b)
M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

(i) Explain with provisions of Companies Act. 2013. Whether the company can keep the Registers and Returns at Kolkata.
(ii) Does Mr. Ranjit, Director (hut not a shareholder) of the company have the right to inspect the Register of Members? **(5 Marks)**

Answer 5(b)
Following are relevant provisions of section 94 of the Companies Act, 2013:

(1) The registers of security holders copies of the annual return shall be kept at the **registered office** of the company.

It may also be kept at any other place in India in which more than one-tenth of the total number of members reside, if approved by a **special resolution** passed at a general meeting of the company.

(2) The registers and their indices and the copies of all the returns shall be open for **inspection** by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of prescribed fees.

In the given case registered office of Techno Ltd. is in Mumbai while members residing in Kolkata want to keep register of members in Kolkata. It can be done provided number of members in Kolkata are atelast $1/10^{th}$ of total number of members in the company and a special resoltuion is passed in general meeting of the company.

Also Mr. Ranjit a non member director of company want to inspect register of members. This right is available to members only hence Mr. Ranjit can't use that right. But he can do so on payment of a prescribed fees to the company.

Question 6(a)
Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. **(6 Marks)**

Answer 6(a)
As per section 43 of the Companies Act, 2013 The share capital of a company shall be of two kinds, namely:—

(a) equity share capital—
   (i) with **voting** rights; or
   (ii) with **differential** rights as to dividend, voting etc.; and
(b) preference share capital.

Therefore we can say that a company can issue equity shares with differential voting rights.

Condition for the issue of equity shares with differential rights:

(a) the **articles** of association of the company authorizes the issue of shares with differential rights;

(b) the issue of shares is authorized by an **ordinary resolution** passed at a general meeting of the shareholders. Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through **postal ballot**.

(c) the shares with differential rights shall **not exceed 26 percent** of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the company having consistent track record of distributable **profits** for the **last three years**;

(e) the company has **not defaulted** in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

(f) the company has **no subsisting financial default**

(g) the company has **not been penalized** by Court or Tribunal during the last three years of any offence under which such companies being regulated.

Question 6(b)
Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?

Answer 6(b)
When all rights in a property are transferred in favour of another person it is transfer of ownership. While if only some of the rights in a property are transferred in favour of anohter person it is termed as creation of charge. Charges are of two types 1) Fixed Charge & 2) Floating charge.

Chage is created usually to secure a loan or to guarantee fulfilment of any other obligation. Some of the examples of charges are equitable mortgage for a housing loan, hypothecation of stock for a cc limit, pledge of jewellery for personal loan etc.

As per section 77 of the Companies Act, 2013 It shall be the duty of every company creating a charge within or outside India, on its assets, whether tangible or otherwise, and situated in or outside India, to **register** the particulars of the charge together with the instruments, if any, creating such charge, with the Registrar within **thirty days** of its creation.

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of **three hundred days** of such creation on payment of prescribed **additional** fees.

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall **seek extension** of time in accordance with section 87.

Provided also that any subsequent registration of a charge shall **not prejudice** any right acquired in respect of any property before the charge is actually registered.

Question 6(b) Alternative question
Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013. **(6 Marks)**

Answer 6(b) for alternative question
(1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits:

Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

(2) The company shall execute a deposit trust deed in Form **DPT-2** at least seven days before issuing the circular or circular in the form of advertisement.

(3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any material pecuniary relationship with the company;

(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

(e) is related to any person specified in clause (a) above.

(4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Question 6(d)
State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange. **(5 Marks)**

Answer 6(d)
As per the Negotiable Instruments Act, 1881 following are rules of maturity:

1) Days of grace: Maturity date is the **third day** after the day on which a B/E or P/N is **expressed** to be payable. (Sec.22) [for example if due date is 1st January then the maturity date is 4th January.]
2) In case a bill or P/N is payable '**after certain months**', due date will be the **date corresponding** in the month in which the period terminate. But if there is no corresponding date in that month, the period shall be held to terminate on the **last day of such month**. (Sec. 23) [if a P/N made on 28th Feb is payable after one month then its due date will be 28th March and maturity date will be on 31st March. If a B/E is drawn on 31st Jan is payable after one month then its due date is 28th Feb and maturity date is 3rd March.]
3) In case the bill of P/N is payable '**after certain days'**, the day from which period runs, shall be excluded. (Sec. 24) [if I promise on 1st Jan to make payment after 10 days then due date will be 11th Jan and maturity date will be 14th Jan.]
4) Holiday: if maturity date is a '**public holiday**' then the N/I shall be deemed to mature on the **next preceding business day**. (Sec. 25) [if maturity date falls on 15th August (Monday) then it will be deemed to be on 13th August.]
5) If an instrument is payable in **installments**, three days of grace are to be allowed on each installment (Sec. 67)

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