PAPER – 2: BUSINESS LAW, ETHICS & COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY & NON-APPLICABILITY FOR MAY, 2017 EXAMINATION

I. Applicability for May 2017 examinations

The Study Material (July 2015 edition), Practice Manual (April 2016 edition) along with the "Supplementary Study Paper 2016 for Paper 2: Business Law, Ethics and Communication" is relevant for May 2017 examinations. Supplementary Study Paper 2016 contains all relevant amendments/ circulars/ notifications etc. in the Business and the Company law part made from 1st May 2015 to 30th April, 2016. Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1st May 2016 to 31st October, 2016 are mentioned below:

1. The Ministry of Corporate Affairs vide Notification S.O. 1934(E), dated 1st June**, 2016** hereby appoints the 1st day of June, 2016 as the date on which the following provisions of the said Act shall come into force, namely:

Sl. No.	Section	Reference of relevant provisions in the Study material July 2015 edition
1.	**Sub-section (7) of section 7 [except clause (c) and (d)]** . This Sub-section pertains with the issuing of order by the Tribunal in the case where company has been got incorporated by furnishing any false /incorrect information/representation/ by suppressing any material fact in any of the documents/ declaration filed.	Page no. 6.19 –Para 1.6 –Point no.(7)
2.	**Second proviso to sub-section (1) of section 14.** This proviso states that "Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit".	Page no. 6.34 –Para 1.10 –Point no.(2)
3.	**Sub-section (2) of section 14**. This Sub-section provides of filing of every alteration of the articles and a copy of order of the Tribunal approving the alteration with the registrar.	Page no. 6.34 –Para 1.10 –Point no.(3)
4.	Proviso to **Clause (b) of sub-section (1) of section 61**. This section provides of power of limited company to alter its share capital. Proviso given under clause (b) states that "Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by	Page no. 6.87 –Para 3.7 –Point no.(b)

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	the Tribunal on an application made in the prescribed manner;"	
5.	**Sub-sections (4) to (6) of section 62.** This sections deals with the further issue of share capital. Sub-section (4) deals with the law related to the conversion of debentures/ loan into shares, Sub-section (5) provides the law determining the term and condition of conversion, and Sub-section (6) provides law in case where no appeal has been preferred/ such an appeal is dismissed on conversion of debenture/loan/any part thereof into shares in a company.	Page no. 6.85- 3.86 – Para 3.5
6.	**Sub-sections (9) to (11) of section 71**. This section specifies laws related to debentures. Relevant Sub-sections deals with the filing of petition by the debenture trustee before the Tribunal in case of insufficient assets of the company, where the company fails to redeem the debentures / to pay interest on the dentures and in case of commission of default in compliance of order of the Tribunal.	Page no. 6.106 –Para 3.24 –Point no.(9), (10) & (11).
7.	**Section 75**. This section deals with the law related to imposing of damages for fraud where the company fails to repay the deposit/part thereof/any interest referred to in section 74.	Page no. 6.65 –Para 2.21 –Point no.(7)
8.	**Section 97.** This section provides powers of tribunal to call annual general meeting in case of default in holding of annual general meeting of a company under section 96.	Page no. 6.177 – Annexure
9.	**Section 98.** This section stipulates powers of tribunal to call meetings of members, etc. either suo- moto or on the application of any director or member of the company.	Page no. 6.177 – Annexure
10.	**Section 99.** This section lays the provisions related to the punishment for default in complying with provisions of sections 96 to 98.	Page no. 6.177 – Annexure
11.	**Sub-section (4) of section 119**. This section deals with the Inspection of minute- books of General Meeting. This sub- section pertains with the immediate inspection of the minute books on the order of the tribunal.	Page no. 6.170 – Para-4.14 – Point no. (4)

2. The Ministry of Corporate Affairs (MCA) vide Notification G.S.R. 639(E) dated 29th June, 2016, has amended the Companies (Acceptance of Deposits) Rules, 2014 through Companies (Acceptance of Deposits) Amendment Rules, 2016, wherein the key changes are:

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Rule 16A – Disclosures in the financial statement has been inserted which provides,

"(1) Every company, **other than a private company**, shall disclose in its financial statement, by way of notes, about the money received from the director.

(2) **Every private company** shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors."

[Refer Para 2.2, Page 6.62 of the SM (July 2015 edition)]

3. The MCA vide Notification G.S.R. 704(E) dated 19th July, 2016, has amended the Companies (Share Capital and Debentures) Rules, 2014 through Companies (Share Capital and Debentures) Third Amendment Rules, 2016, wherein the key changes have been made in Rule 8 (4) which deals with the issue of equity shares. The change is:

In rule 8, in sub-rule (4), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty per cent of its paid up capital upto five years from the date of its incorporation or registration."

[Refer Para 3.11, Page 6.89 of the SM (July 2015 edition)]

4. The MCA vide Notification G.S.R. 743(E) dated 27th July, 2016, has amended the Companies (Incorporation) Rules, 2014 through Companies (Incorporation) Third Amendment Rules, 2016, wherein the key changes are pertaining to OPC, Particulars of subscibers to be filed with the Registrar at the time of incorporation, publication of name of company and alteration of memorandum due to change of name:

(i) In rule 3, for sub-rule (2), the following shall be substituted, namely:-

"A **natural person shall not be member of more than** a **One Person Company** at any point of time and the said person shall not be a nominee of more than a One Person Company"

[Refer Para 1.6, Page 6.17 for relevant Rule in SM]

(ii) In rule16, in sub-rule (1),-

in clause (m), the following Explanation shall be inserted, namely:-

"Explanation.- In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached";

[Refer Para 1.6, Page 6.18 for relevant Rule in SM]

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(iii) Rule 26 shall be substituted by:

"26. **Publication of name by company**.-

(1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

(2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed."

[Refer Page 6.23 for relevant Rule in SM]

(iv) In rule 29, for sub-rule (1), the following shall be substituted, namely:-

"(1) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be."

[Refer Para 1.8, Page 6.29 for relevant Rule in SM]

5. The MCA vide Notification G.S.R. 908(E) dated 23rd September, 2016, has amended the Companies (Management and Administration) Rules, 2014 through Companies (Management and Administration) Amendment Rules, 2016, wherein the key changes are with respect to Return of changes in shareholding position of promoters and top ten shareholders, calling of Extra Ordinary General meeting by requistionists, voting through electronic means and procedure to be followed for conducting business through postal ballot. The changes are:

(i) For rule 13 the following rule shall be substituted, namely:-

"Every listed company shall file with the Registrar, a return in Form No. MGT.10, with respect to changes in the shareholding position of promoters and top ten shareholders of the company, in each case, representing increase or decrease by two per cent or more of the paid-up share capital of the company, within fifteen days of such change."

[Refer Para 4.16, Page 6.125 for relevant Rule (SM July 2015 edition)]

(ii) In rule 17, in sub-section (2), in the Explanation, for the words "on working day", the words "on any day except national holiday" shall be substituted.

[Refer Page 6.131 point (2) for relevant Rule (SM July 2015 edition)]

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(iii) In rule 20, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"Every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means:

Provided that a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means:

Explanation.- For the purpose of this sub-rule, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies."

[Refer Para 4.10, Page 6.149 for relevant Rule (SM July 2015 edition)]

(iv) In rule 22, sub-rule (7) and sub-rule (14) shall be omitted.

Sub- Rule 7 dealt with "If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf"

Sub – Rule 14 dealt with "The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf".

[Refer Para 4.13, Page 6.164, point (5) & point (12) for relevant Rule (SM July 2015 edition)]

6. The MCA vide Notification G.S.R. 936(E) dated 1st October, 2016, has amended the Companies (Incorporation) Rules, 2014 through Companies (Incorporation) Fourth Amendment Rules, 2016, wherein the key changes are made by introducing Simplified Proforma for Incorporating Company Electronically (SPICe):

Simplified Proforma for Incorporating Company Electronically (SPICe)

The Ministry of Corporate Affairs has taken various initiatives for ease of business. In a step towards easy setting up of business, MCA has simplified the process of filing of forms for incorporation of a company through Simplified Proforma for incorporating company electronically.

Following are the steps for SPICe:

(1) The application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-32, for One Person Company, Private company, Public Company and Producer Company, with the

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Registrar within whose jurisdiction the registered office of the company is proposed to be situated, alongwith the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(2) For the purposes of filing Integrated Incorporation form, the particulars of maximum of three directors shall be allowed to be filed in INC-32 and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form INC-32 in case of proposed directors not having approved Director Identification Number.

(3) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-32.

(4) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-33 and may opt for templates of Articles of Association in Form INC-34 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.

(5) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-32 in accordance with the provisions of rule 16 for preparation of Memorandum of Association and Articles of Association.

(6) The facility to file Integrated application for incorporation in Form INC-32 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules.

(7) For an application filed using the Integrated process of incorporation as provided in this rule, the provisions of sub clause (i) of sub-section (5) of section 4 of the Act and rule 9 of these rules shall not apply.

(8) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e-Form INC -32 in which case the company shall attach along with such e-Form INC-32, any of the documents referred to in sub-rule (2) of rule 25.

(9) The requirement of filing e-Form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address.

(10) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-32 including application for allotment of Director Identification Number.

(11) (a) Where the Registrar, on examining e-form INC-32, finds that it is necessary to call for further information or finds such application or document to be

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defective or incomplete in any respect, he shall give intimation to the application to remove the defects and re-submit the e-form within 15 days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of 15 days to remove such defects or deficiencies.

(ba) After the re-submission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects and deficiencies;

Provided that the total period for re-submission of documents shall not exceed a total period of 30 days.

(c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such three opportunities, the e-form INC-29 of the proposed company shall be rejected.

(12) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.

[Refer Page 6 of the Supplementary Study Paper 2016 for relevant Rule 36 which have been omitted and repealed with this Simplified Process of filing forms for incorporating company electronically]

II. Non-Applicability of the following relevant sections of the Companies Act, 2013 for May 2017 examinations

S.No.	Section No.	Section title
1.	Section 48	Variation of shareholders' right
2.	Section 66	Reduction of share capital

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

PART – A: BUSINESS LAWS

The Indian Contract Act,1872

1. (a) Examine what is the legal position, as to the following:

(i) Mr. A offered to sell his house to Mr. B for ₹ 15,00,000. Mr. B accepted the offer by post. On the very next day Mr. B sent a telegram revoking the acceptance which reached Mr. A before the letter of acceptance. Is the revocation of acceptance valid? Would it make any difference if both the letter

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of acceptance and the telegram of revocation of acceptance reach Mr. A at the same time?

(ii) Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Explain the concept of 'misrepresentation' in matters of contract. In the instant situation, whether Suraj can rescind the contract on the grounds of misrepresentation.

(b) Zarine rent out his house situated at Mumbai to Wasabi for a rent of ₹ 10,000 per month. A sum of ₹ 5 lac, the house tax payable by Zarine to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. Wasabi pays the corporation, the sum due from Zarine to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether Wasabi is entitled to get the reimbursement of the said amount from Zarine.

2. (a) M lends a sum of ₹ 5,000 to B, on the security of two shares of a Limited Company on 1st April 2016. On 15th June, 2016, the company issued two bonus shares. B returns the loan amount of ₹ 5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

(b) Ashish appoints Megha, a minor, as his agent to sell his watch for cash at a price not less than ₹ 1700. Megha sells it to Diwan for ₹ 1200. Is the sale valid? Explain the legal position of Megha and Diwan, referring to the provisions of the Indian Contract Act, 1872.

The Negotiable Instruments Act, 1881

3. A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of Vishnu who takes it in good faith and gives value for it. Vishnu deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from Vishnu. Explain whether the banks are liable or not?

4. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-.

(i) Whether D can sue the prior parties of the bill, and

(ii) Whether the prior parties other than D have any right of action inter se?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

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The Payment of Bonus Act, 1965

5. Vikas is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –

   (i) overtime allowance,

   (ii) dearness allowance

   (iii) commission on sales

   (iv) employer's contribution towards pension fund

   (v) value of food.

   Examine as to which of the above payments may form part of "salary" of Vikas under the provisions of the Payment of Bonus Act, 1965.

6. Ganesh limited company earned super profits during financial year 2015 - 2016. It intends to give maximum bonus to its employees. In this regard you are asked to advice the company on permissible maximum bonus under the Payment of Bonus Act, 1965.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

7. While calculating/computing the 'Basic Wages' of Mr. Aman, an employee of Glory Ltd. under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952., the following payments were included-

   (a) Emoluments earned by an employee while on duty and which are paid to him or payable in cash to him.

   (b) Cash value of food concession

   (c) Dearness allowance

   (d) Diwali gift

   Explain stating clearly the meaning of the term 'Basic wages' as defined under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. State also what is not included in the term 'Basic Wages'.

8. An employee of a limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority even after six months. Referring to the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 what is the role of commissioner in this respect. Also, state the penalty, if any, for default in payment.

The Payment of Gratuity Act, 1972

9. Peacock Limited decided to forfeit the amount of gratuity of its employees X and Y on account of disorderly conduct and other acts which caused loss to the property belonging to the company. X and Y committed the following acts:

   (i) X committed theft under law involving offence of moral turpitude.

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(ii) Y after superannuation continued to occupy the quarter belonging to the company for six months.

Against the decision of the company, X and Y applied to the appropriate authorities for relief. The company contented that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law.

Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

10. Mr. Yellow was an employee of White Sugars, Ltd. The whole of undertaking of White Sugars Ltd. was taken-over by a new company named Modern Sugars Ltd. The services of Mr. Yellow remained continuous in the new company. After serving for one year Mr. Yellow met with an accident and became permanently disabled. Mr. Yellow applied to the new company for the payment of gratuity. The new company refused to pay gratuity on the ground that Mr. Yellow has served only for a year in the new company.

Examine the validity of the refusal by the company in the light of the provisions of the Payment of Gratuity Act, 1972.

The Companies Act, 2013

11. Glowing Products Ltd., wishes to sell one of its line of Business and decides to call an extra ordinary general meeting (EGM) and to pass a resolution thereat. State the material facts to be set out in the statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting.

12. (a) The Articles of Impression Limited clearly stated that Mr. Swift will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Mr. Best in place of Mr. Swift as the solicitor of the company by altering the articles of association. Examine, whether the company can do so? State the reasons clearly.

(b) The Secretary of a Company issued a share certificate to 'Prem' under the Company's seal with his own signature and the signature of a Director forged by him. 'Prem' borrowed money from 'Amar' on the strength of this certificate. 'Amar' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'Amar' will succeed in getting the share registered in his name.

Explain with the help of the doctrine of 'Indoor management' in brief.

13. A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.

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14. The date of approval of financial statements by the Board of Directors of KMP Ltd. is 17th July, 2016 and the date of notice of Annual General meeting (AGM) is 25th August, 2016. Accountant of KMP Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of notice of AGM should be 45 days. The Directors have approached you to advise them regarding the same in view of the provisions of Companies Act, 2013.
15. Mr Antriksh entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Antriksh comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Antriksh saying that he ought to have had the knowledge of charge created on the property of the company. Explain with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

PART – B: ETHICS

16. State the ethical issues which are being faced by an individual at the workplace of an industrial organization.
17. Differentiate between 'consumer interest' and 'public interest'.
18. State the Common Corporate Social responsibility (CSR) policies for business organizations.
19. Explain the fundamental principles relating to ethics.
20. State, how far a sound ethical environment in a company may be created and corporate scandals may be avoided.

PART – C: COMMUNICATION

21. Explain the various forms of formal communication.
22. Explain the functions of interpersonal communication.
23. Explain the factors which are responsible for the growing importance of communication of an organization.
24. Suggest guidelines to handle communication ethics dilemmas.
25. Board of Directors of ABC Traders Private Limited proposes to convene an Extraordinary General Meeting for changing the name of the company to ABC International Private Limited. Draft the notice for calling the Extraordinary General Meeting of the Members.

SUGGESTED ANSWERS

1. (a) (i) Communication and revocation of acceptance when complete: The problem is related with the communication and time of acceptance and its

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revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

(1) Yes, the revocation of acceptance by Mr. B (the acceptor) is valid.

(2) If Mr. A opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

(ii) Misrepresentation: According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:

1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale.

(b) Section 69 of the Indian Contract Act, 1872 provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other".

In the given problem Wasabi has made the payment of lawful dues of Zarine in which Wasabi had an interest. Therefore, Wasabi is entitled to get the reimbursement from Zarine.

2. (a) Bailee's Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to

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deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also.

(b) According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal.

A person in order to be an agent must have authority to contract. So, minor has no capacity to contract but may have authority to act as agent. An agent brings about a contractual relationship between the principal and third persons and therefore his contractual capacity is immaterial Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, Diwan gets a good title to the watch. Megha is not liable to Ashish for her negligence in the performance of her duties.

3. The cheque in the given case was crossed generally and marked 'Not Negotiable'. Thereafter, the cheque was lost or stolen and came into the possession of Vishnu, who takes it in good faith and gives value for it.

Section 130 of the Negotiable Instruments Act, 1881 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. In view of these provisions, Vishnu, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. The addition of the words 'not negotiable' entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in due course. Vishnu did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque. Therefore, as regards the true owner, Vishnu was in no better position than the transferor. Vishnu is also liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque.

In the given case, both the collecting banker and the paying bankers would be exonerated. Since the collecting banker, in good faith and without negligence, had received payment for Vishnu, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (as per Section 131). Since the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner (as per Section 128).

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4. Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly laid down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

5. **Computation of Salary / Wages:** According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

(i) Any other allowance which the employee is for the time being entitled to;

(ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;

(iii) Any traveling concession;

(iv) Any bonus including incentive, production or attendance bonus;

(v) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.

(vi) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and

(vii) Any commission payable to the employee.

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It has been clarified in the explanation to the section that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Vikas while the remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds shall not form part of his salary, under the provisions of the Payment of Bonus Act, 1965.

6. Where, in respect of any accounting year referred to in Section 10 of the Payment of Bonus Act,1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

In the given case therefore, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year. From the facts given, it may be presumed that the bonus at 20% may be payable during the Financial Year 2015 - 2016.

However, in relation to the maximum bonus payable the most important term to understand is "allocable surplus". The eligibility for maximum bonus arises from the "allocable surplus" but is not limited by it, as the allocable surplus may justify a bonus at a rate higher than 20% but bonus will still be limited to 20%.

7. **Basic Wages:** As per Section 2(b) of the Employees' Provident Funds and Miscellaneous Provision Act, 1952, "Basic Wages" mean all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concessions;

(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment; or

(iii) any presents made by the employer.

The key characteristics of basic wages are:

(a) All emoluments (of whatever nature) earned during duty or during paid leave or during paid holidays;

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(b) The above emoluments are in accordance with the terms of employment of the employee;

(c) The above emoluments are paid or payable in cash.

Therefore, emoluments or benefits of a non cash nature or any payment not in accordance with the terms of employment shall not form part of basic wage. Thus, if an employer pays any amount as a reward to the employee out of his own will without being under the obligation to do so under the terms of employment of the employee, such payment shall not be basic wage under this Act.

Applying the above provisions of this Act to the given problem, the Basic wages of Aman will include only Emoluments earned while on duty and which are paid to him or payable in cash to him but will exclude the Cash value of food concession, Dearness allowance, and Diwali gift.

8. The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount to be paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner.

If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.

In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

9. **Forfeiture of Gratuity:** In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused.

Further, if the services of such an employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited.

Under section 4(1) of the Payment of Gratuity Act, 1972 gratuity is payable to an employee on termination of employment provided he completes five years of continuous service with the employer. The condition of the completion of five years' continuous service is not essential in case of the termination of the employment of any employee due to death or disablement.

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The gratuity payable is an obligation of the employer and any forfeiture in full or part of the gratuity payable to an employee can be made only in terms of section 4(6).

The correctness of the decision taken by Peacock Ltd. in the given case, regarding forfeiture of the gratuity to its employees X and Y may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.

(i) The offence of theft committed by X, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Section 4(6) of the Act. It is presumed that such theft is committed by X in the course of his employment.

(ii) Y had wrongfully occupied the company's quarter after the termination of his employment for six months. Y may have caused a deliberate loss to the company by his wrongful occupation for 6 months as the quarter could not be given to another employee and the company may have incurred the cost of rent in such case. Hence, the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid.

10. (1) **Entitlement to Gratuity:** According to Section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The proviso to the said section states that the condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.

(2) **Disablement:** Disablement has been explained as such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(3) **Change in Ownership of Company:** When there is change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees.

The given problem fulfils all the above requirements as stated. Therefore, Mr. Yellow is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

11. Following are the material facts to be set out in the explanatory statement to be annexed to the Notice of EGM of Glowing Products Ltd. as per Section 102(1) of Companies Act, 2013:

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of-

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(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Further, where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid up share capital of that company, also be set out in the statement.

12. (a) According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and articles.

Further, under Section 14 (1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may, by a special resolution, alter its Articles.

Moreover, under section 14 (2) the company will be required to file with the Registrar every alteration of the Articles and a copy of the order of the Tribunal approving the alteration, together with the printed copy of the altered Articles, within 15 days. On receipt of all documents the Registrar shall register the same.

Section 14 (3) further provides that any alterations in the Articles registered will be valid as if they were originally in the Articles.

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of Mr. Best will stand and Mr. Swift will be terminated.

(b) The doctrine of Indoor Management is laid down in the *Royal British Bank vs. Turquand (1956) 6E&B 327 case* in which the directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume

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that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority.

However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.

In the instant problem, the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to Prem and thereby to Amar. Hence, Amar will not succeed in getting the share registered in his name.

13. The Companies Act, 2013 vide sections 34 and 35 lay down the criminal and civil liabilities of the guilty parties in case of mis-statements and misleading inclusions and omissions in a prospectus. Further, section 36 lays down the punishment for fraudulently inducing persons to invest moneys.

However, the present case before us is not in respect of liability for a possible mis-statement but on the right of the allottee to avoid the contract of purchasing the shares from the company. In order to decide this, key factor is to determine if any material mis-representation or concealment of a material fact has taken place and if such misrepresentation is fraudulent.

The non disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made.

Hence, in the given case the allottee can avoid the contract of allotment of shares.

14. Section 101 of the Companies Act, 2013 dealing with Notice of meeting, states that a general meeting of a company may be called by giving at least clear 21 days' notice.

However, the Companies Act, 2013 does not prescribe the time limit between the date of approval of financial statements by the Board of Directors of a company and the date of notice of Annual General Meeting.

Hence, in the given question, the Board of directors of KMP Ltd. should ensure that the gap between the board meeting in which the financial statements are approved and the AGM, should have a minimum gap of 21 clear days (in order to ensure at least 21 days' clear notice), unless the meeting is at a shorter notice.

15. **Notice of Charge:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.

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Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct.

16. **Ethical decisions are influenced by three key factors:** Individual moral standards, the influence of managers and co-workers and the opportunity to engage in misconduct. While one may have great control over personal ethics outside the workspace, co-workers and the management exert significant control on one's choices at work. The activities and examples set by co-workers along with rules and policies are critical in gaining consistent ethical compliance in an organization. If a company fails to provide good examples and direction for appropriate conduct, confusion and conflict will develop and result in the opportunity for unethical behaviour. *Example:* If the boss or co-workers leave work early, one may be tempted to do so as well. If one sees co-workers making personal long distance phone calls at work and charging them to the company, one may be more likely to do so also. In addition having sound personal values contributes to an ethical work place.

    Some examples of ethical issues faced by an individual in the workplace are:

    1. Relationships with suppliers and business partners
        a. Bribery and immoral entertainment
        b. Discrimination between suppliers
        c. Dishonesty in making and keeping contracts
    2. Relationship with customers
        a. Unfair pricing
        b. Cheating customers
        c. Dishonest advertising
    3. Relationship with employees
        a. Discrimination in hiring, promoting, etc
        b. Unequal treatment
    4. Management of resources: Misuse of official funds
        b. Tax evasion.

17. **Consumer interest and public interest:** Apparently it seems that public interest and consumer interest are synonymous, but it is not so. They may be differentiated as under:

    (i) In the name of public interest, many Governmental policies are formulated which manifest themselves in anti-competitive behaviour. If the consumer is at the fulcrum,

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consumer interest and welfare should have primacy in all governmental policy formulations.

(ii) Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. They are being affected by pricing policy, financing practice, quality of goods, services and trade practices. They are clearly distinguished from manufacturers who produce goods for wholesalers, retailers who sell goods in public interest.

(iii) Public interest is something in which the society as a whole has some interest, and is seen as an externality to competitive markets. There is also a justifiable apprehension that in the name of public interest, Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. In fact in such situations, there is the possibility that a conflict could arise between public interest and consumer interest.

18. Common Policies under Corporate Social Responsibilities are as under:

- Commitment to diversity in hiring employees and barring discrimination;
- Adoption of internal controls reform;
- Management teams that view employees as assets rather than costs;
- High performance workplaces that integrate the views of line employees into decision-making processes;
- Adoption of operating policies that exceed compliance with social and environmental laws;
- Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (such as recycled content and product recycling); and
- Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.

19. The fundamental principles relating to ethics may be summarized as under:

1. **The Principle of Integrity:** It calls upon all accounting and finance professionals to adhere to honesty and straightforwardness while discharging their respective professional duties.
2. **The Principle of Objectivity:** This principle requires accounting and finance professionals to stick to their professional and financial judgment.
3. **The Principle of Confidentiality:** This principle requires practitioners of accounting and financial management to refrain from disclosing confidential information related to their work.

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4. **The Principle of Professional Competence and due care:** Finance and accounting professionals need to update their professional skills from time to time in order to provide competent professional services to their clients.

5. **The Principle of Professional Behaviour**: This principle requires accounting and finance professionals to comply with relevant laws and regulations and avoid such actions which may result in discrediting the profession.

20. Creating an ethical environment in company: A sound ethical environment in a company may be created and corporate scandals may be avoided by adopting the following methods:

(i) Ensuring that employees are aware of their legal and ethical responsibilities.

Some ethical organisations are having policies to train and motivate employees towards ethical behaviour. To start with, such initiation should be from the top. A number of companies in India and abroad are being known for their quality and soundness of their ethics programmes. Companies like Raytheon, Texas Instruments, Wipro are pioneers in establishing ethical environment among the employees enabling them to take ethical decisions.

(ii) Providing a communication system between the management and employees so that anyone in the company can report fraud and mismanagement without the fear of being reprimanded.

In India, Wipro has introduced a helpline comprising of senior members of the company, who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

(iii) Ensuring fair treatment to those who act as whistle blowers.

This is perhaps the most important and sensitive issue. Fair treatment to whistle blowers is a basic necessity to check fraud. Some acts must be appreciated and that appreciation should be extended from within the company rather than outside.

21. A formal communication flows along prescribed channels which all organizational members desirous of communicating with one another are obliged to follow. Every organization has built-in hierarchical system, communication in an organization is multidirectional. On the basis of various directions in which communications are sent, we can classify formal communication in these forms:

(i) Downward Communication

(ii) Upward Communication

(iii) Horizontal or Lateral Communication

(iv) Diagonal or Crosswise Communication

Communication generally flows from top to bottom. Downward communication means communication from superior to subordinate in the hierarchical system of the

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organization. It includes orders and instructions. In upward communication, message flows from the subordinate to superior in the form of request, reports, instructions complaints and suggestions. Communication between co-workers with different areas of responsibility is called horizontal (lateral) communication. Communication among the functional managers of a company is the best example of horizontal communication. Diagonal communication means communication among the various Department/ employees of the organization without any hierarchical system in case of emergency.

22. Functions of Interpersonal Communication: Interpersonal communication is important because of the following functions it achieves:

Gaining Information: One reason, we engage in interpersonal communication, is to gain knowledge about another individual. We attempt to gain information about others so that we can interact with them more effectively.

Building Understanding: Interpersonal communication helps us to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. **Content Messages** refer to the surface level meaning of a message. **Relationship Messages** refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps us understand each other better.

Establishing Identity: We also engage in interpersonal communication to establish an identity based on our relationships and the image we present to others.

Interpersonal Needs: We also engage in interpersonal communication to express interpersonal needs. William Schutz has identified three such needs: inclusion, control, and affection.

- Inclusion is the need to establish identity with others.
- Control is the need to exercise leadership and prove one's abilities.
- Affection is the need to develop relationships with people. Groups are an excellent way to make friends and establish relationships.

23. The importance of communication in the industrial organization has increased immensely in these days. The following factors are responsible for the growing importance of communication:

(a) Growth in the size and multiple locations of organizations: Most of the organizations are growing larger and larger in size. The people are working in the country and abroad, of these organizations. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.

(b) Growth of trade unions: Over the last so many decades, trade unions have been growing strong. No management can be successful without taking the trade unions

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into confidence. Effective communication will create relationship between the management and the workers.

(c) Growing importance of human relations: Workers in an organization are not like machines. They have their own hopes and aspirations. Management has to recognize them and should work with the spirit of integration so that human relations may be maintained. This may only be achieved though effective communication.

(d) Public relations: Every organization has a social responsibility towards customers, government, suppliers and the public at large. Communication is the only way an organization can project a positive image of itself.

(e) Advances in behavioral sciences: Modern management is deeply influenced by exciting discoveries made in behavioral sciences like psychology, sociology, transactional analysis etc. All of them throw light on suitable aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationship. This is possible only through communication.

(f) Technological advancement: The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only the methods of work but also the compositions of groups. In such a situation, proper communication between superiors and subordinates becomes very necessary.

24. Guidelines to handle communication ethics dilemmas:

(a) Maintain candour: Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others.

(b) Keep message accurate: At the time of relaying information from one source to another, communicate the original message as accurately as possible.

(c) Secrecy: One has to maintain secrecy and confidence in communication. So one should not divulge such information to others

(d) Ensure timeliness of communication: The timing of messages can be critical. Delay in sending messages can be assumed unethical.

(e) Avoid deception: Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication.

(f) Confront unethical behaviour: One must confront an unethical behaviour in order to ensure a consistent ethical view point.

25. Notice for Extraordinary General Meeting of the Members

Notice is hereby given that extraordinary General Meeting of the members of ABC Traders Private Limited will be held on Monday, the ……day of 2017, at the registered office of the company at…….Mumbai at……..P.M. to transact the following business.

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Special Business

To consider and if thought fit, to pass with or without modification the following resolution as special resolution.

"Resolved that, subject to the approval of the Central Government under section 13 of the Companies Act,2013, the name of the company be and is changed from ABC Traders Private Limited to ABC International Private Limited and that consequent to this change clause I of the Memorandum and Articles of Association of the company be altered accordingly.

By order of the Board of Directors of ABC Traders Private Limited.

Secretary……

Place:……

Date:……

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