

**PAPER – 2: CORPORATE AND OTHER LAWS**

**PART – I: ANNOUNCEMENTS STATING APPLICABILITY  
FOR NOVEMBER, 2018 EXAMINATIONS**

**Applicability for November, 2018 examinations**

The Study Material (July 2017 edition) is updated for all amendments till 30<sup>th</sup> April, 2017. Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1<sup>st</sup> May 2017 to 30<sup>th</sup> April, 2018 are mentioned below:

<b>Relevant Legislative amendments from 1<sup>st</sup> of May 2017 to 30<sup>th</sup> April, 2018</b>				
<b>The Companies Act, 2013/ Corporate Laws</b>				
<b>Sl. No.</b>	<b>Amendments related to</b>	<b>Relevant Amendments</b>	<b>Pg no.*</b>	<b>Earlier Law</b>
1.	Enforcement of the Companies (Acceptance of Deposits) Amendment Rules, 2017 Vide Notification G.S.R. 454 (E) dated 11 <sup>th</sup> May, 2017 in exercise of powers conferred by section 73 and 73 read with 469(1) and 469(2).	In the Companies (Acceptance of Deposits) Rules, 2014, In rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words "Domestic Venture Capital Funds" the words "Infrastructure Investment Trusts" shall be inserted.	5.4	(xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.
2.	Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13 <sup>th</sup> June, 2017	The Central Government amends the Notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015, whereby Exceptions, Modifications and Adaptations were provided in case of Government companies. Following is the amendments: In sub-section (2) of section 96, for the words "such other place as the Central Government may approve	7.51	Such other place as the Central Government may approve in this behalf.

		in this behalf”, the words “such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf” shall be substituted.”.		
		Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015: The aforesaid exceptions, modifications and adaptations (i.e. as given in Notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015 and Notification G.S.R. 582(E) Dated 13 <sup>th</sup> June, 2017) shall be applicable to a Government company which has not committed a default in filing of its financial statements under section 137 of the Companies Act or annual return under section 92 of the said Act with the Registrar.		
3.	Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13 <sup>TH</sup> June, 2017	The Central Government amends the Notification G.S.R. 464(E), dated 5 <sup>th</sup> June 2015 whereby Exceptions, Modifications and Adaptations were provided in case of Private companies. Following are the amendments:		
		(1) In Chapter I, <b>Clause (40) of section 2.</b> For the proviso, the following shall be substituted, namely:- Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement; Explanation. - For the purposes of this Act, the term „start-up“ or “start-up company” means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of	1.9	Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement

		Industrial Policy and Promotion, Ministry of Commerce and Industry.		
		<p>(2) In Chapter V, clauses (a) to (e) of sub-section (2) of section 73, shall not apply to a private company-</p> <p>(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or</p> <p>(B) which is a start-up, for five years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:-</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:</p> <p>Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.</p>	5.6	<p>Clause (a) to (e) of Section 73 provides conditions for acceptance of deposits from members.</p> <p>Notification dated 5th June, 2015, provided that Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p>
		<p>(3) In Chapter VII, clause (g) of sub-section (1) of section 92, shall apply to private companies which are small companies, namely:-</p>	7.11	<p>clause (g) of sub-section (1) of section 92 is read as “remuneration of</p>

		“(g) aggregate amount of remuneration drawn by directors;”		directors and key managerial personnel”
		(4) In Chapter VII, proviso to <b>sub-section (1) of section 92</b> , For the proviso, the following proviso shall be substituted, namely:- “Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”.	7.12	(4) However, in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
		(5) <b>Section 143(3)(i)</b> , shall not apply to a private company:- (i) which is a one person company or a small company; or which has turnover less than rupees fifty crores as per latest audited financial <b>statement or#</b> which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore.”	10.24	(5) Section 143(3)(i) provides- whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
		Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5 <sup>th</sup> June 2015: The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.		
<b>#4.</b>	Corrigendum vide Notification S.O. 2218(E) dated 13 <sup>th</sup> July 2017 with	Ministry of Corporate Affairs vide corrigendum stated that for the words “statement or” to read as “statement and” under section 143(3)(i).	Referred in point no. 3 above	In Section 143(3)(i)(ii) there were the words “statement or” which has been

	respect to the Notification G.S.R. 583(E) Dated 13 <sup>TH</sup> June, 2017			replaced with the word “statement and” through this notification.
5.	Enforcement of the Companies (Audit and Auditors) Second Amendment Rules, 2017 Vide Notification G.S.R. 621(E) dated 22 <sup>nd</sup> June 2017 in exercise of powers conferred by section 139.	The Central Government hereby amends the Companies (Audit and Auditors) Rules, 2014.  Through this amendment rule, in Rule 5(b), for the word “twenty”, the word “fifty” shall be substituted.	10.6	Earlier Rule 5(b) stated that -all private limited companies having paid up share capital of rupees 20 crore or more;
6.	Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25 <sup>th</sup> July 2017	Notification No. G.S.R. 583(E) dated 13th June, 2017 stated that requirements of reporting under section 143(3)(i) read Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Through issue of this circular, it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.	-	For the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness:  Provided that auditor of a company may

				voluntarily include the statement referred to in this rule for the financial year commencing on or after 1st April, 2014 and ending on or before 31st March, 2015.
7.	Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25 <sup>th</sup> July 2017	Notification No. G.S.R. 583(E) dated 13th June, 2017 stated that requirements of reporting under section 143(3)(i) read Rule 10 A of the Companies(Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Through issue of this circular, it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.	-	For the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness:  Provided that auditor of a company may voluntarily include the statement referred to in this rule for the financial year commencing on or after 1st April, 2014 and ending on or before 31st March, 2015.

<p>8.</p>	<p>Enforcement of the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 Vide Notification G.S.R. 1172(E) dated 19<sup>th</sup> September, 2017 in exercise of powers conferred by section 73 and 73 read with 469(1) and 469(2).</p>	<p>In the Companies (Acceptance of Deposits) Rules, 2014, in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-                  “Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.                  Explanation.—For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006:                  Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—                  (i) a private company which is a start-up, for five years from the date of its incorporation;                  (ii) a private company which fulfils all of the following conditions, namely:—</p>	<p>5.8</p>	<p>Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p>
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		<p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:</p> <p>Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.”.</p>		
9.	Vide notification S.O. 3086(E) dated 20 <sup>th</sup> September 2017	The Central Government hereby appoints the 20 <sup>th</sup> September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.	1.20	Earlier not notified
10.	Companies (Amendment) Act, 2017	Following sections of the Companies Act, 2013 have been amended by the Companies (Amendment) Act, 2017 with effect from 26 <sup>th</sup> January, 2018 [Notification S.O. 351 (E)] and from 9 <sup>th</sup> February, 2018 [Notification S. O. 630 (E)]		
		<p>1. In <b>section 2</b> of the Companies Act, 2013 (hereinafter referred to as the principal Act)-</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>		
		<p>(i) for <b>clause (28)</b>, the following clause shall be substituted, namely:—</p> <p>'(28) "Cost Accountant" means a cost accountant as defined in</p>	1.7	<b>Cost accountant means a cost accountant as defined in</b>



		clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;		<b>clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.</b>
		(ii) in <b>clause (30)</b> , the following proviso shall be inserted, namely: "Provided that— (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;";	1.8	– (The proviso is newly inserted)
		(iii) in <b>clause (41)</b> , in the first proviso, after the word "subsidiary", the words "or associate company" shall be inserted;	1.9	- which is a holding company or a subsidiary of a company incorporated outside India (The words are newly inserted)
		(iv) in <b>clause (46)</b> , the following Explanation shall be inserted, namely:- 'Explanation.—For the purposes of this clause, the expression "company" includes any body corporate;';	1.11	- (The Explanation is newly inserted)

		(v) clause (49) shall be omitted	1.11	<p>(49) Interested director means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;</p> <p>This definition is relevant for section 174 relating to quorum for meetings of the Board of Directors, for section 184 relating to disclosure of interest by directors and also for section 188 relating to</p>
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				<b>related party transactions of the Companies Act, 2013.</b>
		<p><b>(vi) in clause (51),-</b></p> <p>(a) in sub-clause (iv), the word "and" shall be omitted;</p> <p>(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:- "(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and</p> <p>(vi) such other officer as may be prescribed;"</p>	1.11	<p>(iii) the whole-time director;</p> <p>(iv) the Chief Financial Officer; <b>and</b></p> <p><b>(v) such other officer as may be prescribed;</b></p>
		<p><b>(vii) in clause (57),</b> for the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted</p>	1.12	<p>.....the aggregate value of the paid-up share capital and all reserves created out of the profits <b>and securities premium account</b>, after deducting the aggregate.....</p>
		<p><b>(viii) in clause (71),</b> in sub-clause (a), after the word "company;," the word "and" shall be inserted;</p>	1.15	<p>–</p> <p>(The word is newly inserted)</p>
		<p><b>(ix) in clause (72),</b> in the proviso, in clause (A), after the words "State Act", the words "other than this Act or the previous company law" shall be inserted;</p>	1.16	<p>-</p> <p>Provided that no institution shall be so notified unless—</p> <p>(A) it has been established or</p>

				constituted by or under any Central or State Act; (The words are newly inserted)
		<p><b>(x)</b> in <b>clause (76)</b>, for sub-clause (viii), the following sub-clause shall be substituted, namely:—</p> <p>"(viii) any body corporate which is— (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or (C) an investing company or the venturer of the company;"</p> <p>Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.</p>	1.17	<p><b>(viii) any company which is—</b></p> <p><b>(A) a holding, subsidiary or an associate company of such company; or</b></p> <p><b>(B) a subsidiary of a holding company to which it is also a subsidiary;</b></p>
		<p><b>(xi)</b> in <b>clause (85)-</b></p> <p><b>(a)</b> in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted;</p>	1.20	For <b>(a)</b> 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 <b>five crore rupees</b> ; or
		<p><b>(b)</b> in sub-clause (ii),-</p> <p>(A) for the words "as per its last profit and loss account", the words</p>		For <b>(b)</b> turnover of which <b>as per its</b>

		<p>"as per profit and loss account for the immediately preceding financial year" shall be substituted;</p> <p>(B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;</p>		<p><b>last profit and loss account</b> does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than <b>twenty crore rupees</b>:</p>
		<p>(xii) for <b>clause (91)</b>, the following clause shall be substituted, namely:-</p> <p>'(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'</p>	1.21	<p><b>(91) Turnover means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;</b></p> <p><b>Note: There is in ambiguity in definition. So, there is a need for amendment in this definition. Further, the change in definition is pending in the Companies (Amendment) Bill, 2016.</b></p>

	<p>2. After section 3 of the principal Act, the following section shall be inserted, namely:-</p> <p>"3A. If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	2.4	- (The section is newly inserted)
	<p>3. In section 4 of the principal Act, in sub-section (5), for clause (i), the following shall be substituted, namely:-</p> <p>"(i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed: Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period</p>	2.11	<b>Upon receipt of an application, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.</b>

		of sixty days from the date of approval." <b>Enforcement Date: 26<sup>th</sup> January, 2018</b>		
		<b>4. In section 21</b> of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	2.35	(ii) <b>an officer of the company</b> duly authorised by the Board in this behalf.
		<b>5. In section 35</b> of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:- "(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder." <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	3.22	- To be inserted in Point (2) after point (b)

		<p><b>6.</b> In <b>section 47</b>, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted.</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	4.6	<p>In Point (i), the following may be added,</p> <p>"Subject to the provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188,"</p>
		<p><b>7.</b> In <b>section 53</b> of the principal Act,-</p> <p>(i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	4.10	<p><b>For (i)</b></p> <p>Any share issued by a company at a <b>discounted price</b> shall be void.</p>
		<p><b>7.</b> In <b>section 53</b> of the principal Act,-</p> <p>(ii) after sub-section (2), the following sub-section shall be inserted, namely:-</p> <p>"(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	4.10	<p><b>For (ii): -</b></p>



	<p>8. In <b>section 62</b> of the principal Act,-</p> <p>(i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	4.22	<p>For (i)</p> <p>(c) to any persons, if it is authorised by a special resolution, ..... is determined by the valuation report of a <b>registered valuer</b> subject to such conditions as prescribed .....</p>
	<p>8. In <b>section 62</b> of the principal Act,-</p> <p>(ii) for sub-section (2), the following sub-section shall be substituted, namely:-</p> <p>"(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	4.22	<p>For (ii)</p> <p><b>The notice of offer of shares shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.</b></p>
	<p>9. In <b>section 76A</b> of the principal Act,-</p> <p>(a) in clause (a), for the words, "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted;</p>	(a) 5.14	<p>For (a)</p> <p>the company .....shall not be less than <b>one crore rupees</b> but which may extend to ten crore rupees; and</p>

		<b>Enforcement Date: 9<sup>th</sup> February, 2018</b>		
		<p><b>9.</b> In <b>section 76A</b> of the principal Act,-</p> <p><b>(b)</b> in clause (b),-</p> <p>(i) for the words "seven years or with fine", the words "seven years and with fine" shall be substituted;</p> <p>(ii) the words "or with both" shall be omitted</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	5.15	For <b>(b)</b> every officer .....with imprisonment which may extend to <b>seven years or with fine</b> which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, <b>or with both</b>
		<p><b>10.</b> In <b>section 100</b> of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:- "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India." <b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	7.52	- (The proviso is newly inserted)
		<p><b>11.</b> In <b>section 101</b> of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:- "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto-</p> <p>(i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and</p>	7.19	<b>The proviso to section 101(1) also states that a shorter notice may also be given with the consent of 95 per cent of the members entitled to vote. Generally meetings need to be called by giving a notice of 21 clear</b>

		<p>(ii) in the case of any other general meeting, by members of the company-</p> <p>(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or</p> <p>(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:</p> <p>Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	<p>days. However, they can be called on a shorter notice if, 95 per cent of the members entitled to vote in that meeting give their consent in writing or by electronic mode.</p> <p>It is also important to note that only the requirement as regards the length of the notice being 21 days, is dispensed with by such consent of not less than 95 per cent of the members entitled to vote at such meeting and not the necessity to call and hold such meeting.</p>
		<p><b>12.</b> In <b>section 110</b> of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:- "Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is</p>	<p>7.34</p> <p>-</p>

		required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section." <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>		
		<p><b>13.</b> In <b>section 123</b> of the principal Act,-</p> <p><b>(a)</b> in sub-section (1)- <b>(i)</b> in clause (a),- <b>(A)</b> for the words "both; or", the word "both;" shall be substituted; <b>(B)</b> the following proviso shall be inserted, namely:- "Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or";</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	8.4	<p>(i) For point <b>(A)</b> (c) out of <b>both (a) and (b); or</b></p> <p>For point <b>(B)</b>: - The proviso is newly inserted</p>
		<p><b>13.</b> In <b>section 123</b> of the principal Act,-</p> <p><b>(ii)</b> in the second proviso, for the words "transferred by the company to the reserves", the words "transferred by the company to the free reserves" shall be substituted; <b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	8.4	<p>For <b>(ii)</b> Where a company, ..... it in previous years and <b>transferred by the company</b> to the reserves, such declaration of dividend ..... with prescribed rules. [Second Proviso to section 123(1)]</p>

	<p>13. In <b>section 123</b> of the principal Act,-</p> <p>(b) for sub-section (3), the following sub-section shall be substituted, namely:-</p> <p>"(3) The 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 immediately preceding three financial years."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	8.6	<p>According to section 123(3), <b>the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.</b></p>
	<p>14. In <b>section 130</b> of the principal Act,-</p> <p>(i) in sub-section (1), in the proviso,-</p> <p>(a) after the words "regulatory body or authorities concerned", the</p>	9.13	<p>For (i) Provided that the court or the .....or any other statutory regulatory body or authority concerned and shall take into</p>

		<p>words "or any other person concerned" shall be inserted;</p> <p>(b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>		<p>consideration the representations, if any, ....., Securities and Exchange Board or the body or authority concerned before passing any order under this section. (The words are newly inserted)</p>
		<p><b>14.</b> In <b>section 130</b> of the principal Act,-</p> <p>(ii) after sub-section (2), the following sub-section shall be inserted, namely:-</p> <p>"(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	9.13	<p>For (ii) – (This sub-section is newly inserted)</p>
		<p><b>15.</b> In <b>section 136</b> of the principal Act,-</p> <p>(i) in sub-section (1),-</p> <p>(a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted;</p>	9.30	<p>As per the amendment the word Without prejudice to the provisions of</p>

		<b>Enforcement Date: 9<sup>th</sup> February, 2018</b>		section 101," shall be omitted
		<p><b>15.</b> In <b>section 136</b> of the principal Act,-</p> <p>(i) in sub-section (1),-</p> <p>(b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:-</p> <p>"Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members-</p> <p>(a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or</p> <p>(b) having, if the company has no share capital, not less than ninetyfive per cent. of the total voting power exercisable at the meeting:</p> <p>Provided further that";</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>		- (The proviso is newly inserted)
		<p><b>15.</b> In <b>section 136</b> of the principal Act,-</p> <p>(i) in sub-section (1),-</p> <p>(c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted;</p>	9.31	Related to point (ii) on Page 9.31

		<b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	
		<p><b>15.</b> In <b>section 136</b> of the principal Act,-</p> <p>(i) in sub-section (1),-</p> <p>(d) for the fourth proviso, the following provisos shall be substituted, namely:—</p> <p>'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any:</p> <p>Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")-</p> <p>(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;</p> <p>(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.'</p>	<p>9.31</p> <p>(iii) Subsidiary Companies:</p> <p><b>Every company having a subsidiary or subsidiaries shall,—</b></p> <p><b>(1) place separate audited accounts in respect of each of its subsidiary on its website, if any;</b></p> <p><b>(2) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.</b></p>



		<b>Enforcement Date: 9<sup>th</sup> February, 2018</b>		
		<p><b>15.</b> In <b>section 136</b> of the principal Act,-</p> <p><b>(ii)</b> in sub-section (2), the following proviso shall be inserted, namely:- "Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	9.32	- (The proviso is newly inserted) Add the proviso in point (iv)
		<p><b>16.</b> In <b>section 140</b> of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted.</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.15	(d) If the auditor does not ..... with fine which shall not be less than ` <b>50,000</b> but which may extend to ` 5 Lacs.
		<p><b>17.</b> In <b>section 141</b> of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:- '(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company. <i>Explanation.</i>—For the purposes of this clause, the term "directly or indirectly" shall have the meaning</p>	10.22	(9) <b>any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as</b>

		assigned to it in the Explanation to section 144.'		<b>provided in section 144</b>
		<b>Enforcement Date: 9<sup>th</sup> February, 2018</b>		
		<b>18. In section 143</b> of the principal Act,- (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted;  <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	10.23	(c) Access to record of all its subsidiaries: The auditor of a ..... the records of all <b>its subsidiaries</b> in so far as it relates to the consolidation of its financial statements with that of <b>its subsidiaries</b> .
		<b>18. In section 143</b> of the principal Act,- (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted;  <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	10.24	(9) whether the company has adequate <b>internal financial controls system</b> in place and the operating effectiveness of such controls;
		<b>18. In section 143</b> of the principal Act,- (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted  <b>Enforcement Date: 9<sup>th</sup> February, 2018</b>	10.36	The provisions of section 143 shall mutatis mutandis apply to the <b>cost accountant in practice</b> conducting cost audit under section 148.

	<p><b>19.</b> In <b>section 147</b> of the principal Act,-  <b>(i)</b> in sub-section (2),-  (a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.33	- The words shall be inserted in point (iii) (a)
	<p><b>19.</b> In <b>section 147</b> of the principal Act,-  <b>(i)</b> in sub-section (2),-  (b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.33	<b>and</b>  <b>(2) Fine which shall not be less than Rs. 1 lac but which may extend to Rs. 25 Lacs</b>
	<p><b>19.</b> In <b>section 147</b> of the principal Act,-  <b>(ii)</b> in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.33	(2) pay for damages to the company, statutory bodies or authorities <b>or to any other persons</b> for loss arising out of incorrect .... audit report.
	<p><b>19.</b> In <b>section 147</b> of the principal Act,-  <b>(iii)</b> in sub-section (5), the following proviso shall be inserted, namely:-</p>	10.33	- (The proviso is newly inserted)

		<p>"Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>		
		<p><b>20.</b> In <b>section 148</b> of the principal Act,-  <b>(i)</b> in sub-section (3),-  (a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.34	<p>(iv) The cost audit shall be conducted by a <b>Cost Accountant in practice</b> who shall be ..... by the members in such manner as may be prescribed.</p>
		<p><b>20.</b> In <b>section 148</b> of the principal Act,-  <b>(i)</b> in sub-section (3),-  (b) in the <i>Explanation</i>, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted;</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.35	<p>Here, the expression "cost auditing standards" mean such standards as are issued by the <b>Institute of Cost and Works Accountants of India</b>, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.</p>

		<p><b>20.</b> In <b>section 148</b> of the principal Act,-  <b>(ii)</b> in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted</p> <p><b>Enforcement Date: 9<sup>th</sup> February, 2018</b></p>	10.35	(x) The report on the audit of cost records shall be submitted by the <b>cost accountant in practice</b> to the Board of Directors (BoD) of the company.
11.	Amendment in the notification number G.S.R. 463(E) dated the 5th June, 2015 vide Notification no. S.O. 802(E) dated 23 <sup>rd</sup> February, 2018	<p>In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) and subsection (2) of section 462 of the Companies Act, 2013, the Central Government, in the interest of public amends the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 463(E) dated the 5th June, 2015 namely:—</p> <p>In the said notification, in the Table, for serial number 8 and entries relating thereto, the following serial number and entries shall be respectively substituted, namely:-</p> <p>"In Chapter IX, Section 129- Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting".</p>	9.7	Replace the footnote 'Section 129 shall not apply to the Government companies to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.
12.	Enforcement of sub-section (3) and (11) of Section 132 of the Companies Act, 2013 vide Notification No. S.o.	The Central Government appoints the 21 <sup>st</sup> March, 2018 as the date on which the provisions of sub-sections (3) and (11) of section 132 of the said Act shall come into force.	9.14	- (The said sub – sections have been notified)

	1316(E) dated 21st March, 2018			
13.	'Reservation of Name of Company'  Notification G.S.R. 284(E) dated 23 <sup>rd</sup> March, 2018	<b>Rule 9: Reservation of name</b> An application for reservation of name shall be made through the web service available at www.mca.gov.in by using [form RUN](Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re--submission of such application within fifteen days for rectification of the defects, if any.	2.11	-  (This Rule may read with respect to point (iv) Requirement for reservation of the name of the company)

\*Page No. of the Study material (New study material) with reference of relevant provisions

## PART – II : QUESTIONS AND ANSWERS

### QUESTIONS

#### COMPANY LAW

##### The Companies Act, 2013

1. Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?
2. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?
3. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
  - (i) The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

- (ii) Mary Ltd is a listed company having turnover of ₹ 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company.
4. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.
- (i) In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10<sup>th</sup> of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.
5. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.
6. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?
7. Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.
- CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013 :
- (1) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?
- (2) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
- (3) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
- (4) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?
8. Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹75000/- on 15<sup>th</sup> March, 2018. CA. 'Arjun', issued his audit report on 25<sup>th</sup> April, 2018. Examine the validity of this transaction under the

Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 150000/- (market value ₹ 95000/-)?

9. The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.

Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

10. The directors of Element Ltd. want to voluntarily revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

### OTHER LAWS

#### The Indian Contract Act, 1872

11. Explaining the provisions of the Indian Contract Act, 1872, answer the following:
- A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?
  - C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?
12. Mr. Avinash wanted a loan for expanding his business, from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise, ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872.

#### The Negotiable Instruments Act, 1881

13. A bill of exchange has been dishonoured by non- payment. Now, Mr. Sandip, the holder wants a certificate of protest for such a dishonoured bill. Advise, Mr. Sandip whether he can get the certificate of protest. Also, advise him regarding the provisions of Protest for better security.

#### The General Clauses Act, 1897

14. Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897.



**Interpretation of Statutes, Deeds and Documents**

15. The 'Statute should be read as a Whole'. Explain the statement.

**SUGGESTED ANSWERS/HINTS**

1. Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus
- (1) According to Section 31 of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—
- (A) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
- (B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

2. **Issue of Further Shares:** Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

- (a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer,

subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

- (c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

**Preference Shareholders:** From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

3. (i) According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

- (ii) In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.

4. Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

**Order of demand for poll by the chairman of meeting:** Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

**Withdrawal of the demand:** The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

**5. According to section 48 of the Companies Act, 2013-**

- (1) **Variation in rights of shareholders with consent:** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—
- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

**Provided** that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

- (2) **No consent for variation:** Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

**Provided** that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

6. Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

7. According to Section 139 (2) of the Companies Act, 2013,
- I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
  - II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
  - III. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
  - IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

- (1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- (2) The cooling- off period shall be of 5 years.
- (3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

- (4) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who

shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

8. As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the *Companies (Audit and Auditors) Rules, 2014*, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15<sup>th</sup> March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a transaction is valid.

Yes, the answer will be different in case where the face value of acquired shares is ₹ 1,50,000. Then in that case:

- (i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or
- (ii) Auditor has to vacate his office.

9. **Alteration in Articles of Association:** Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

- (1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
- (2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
- (4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any

default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

**10. (1) Preparation of revised financial statement or revised report on the approval of Tribunal:** If it appears to the directors of a company that—

- (a) the financial statement of the company; or
- (b) the report of the Board,

do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

**Tribunal to serve the notice:** Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

**Number of times of revision and recast:** Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

**Reason for revision to be disclosed:** Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

**(2) Limits of revisions:** Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—

- (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
- (b) the making of any necessary consequential alternation.

**(3) Framing of rules by the Central Government in relation to revised financial statement or director's report:** The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—

- (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
- (c) require the directors to take such steps as may be prescribed.

11. (i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

- (ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

12. According to section 173 of the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.

13. **Protest:** According to section 100 of the Negotiable Instruments Act, 1881, when a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest.

**Protest for better security:** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Thus, Mr. Sandip can get the certificate of protest by following the above provisions.

14. **“Provision as to offence punishable under two or more enactments” [Section 26]:** Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.

Thus, Mr. Ram shall be liable to be punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

15. **'Read the Statute as a Whole'**: It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.