Intermediate Course: Group - I **(Mock Test Paper - Series : 1)**
DATE: 11.08.2024 **MAXIMUM MARKS: 100** **TIMING: 3¼ Hours**

CORPORATE AND OTHER LAW

1. **The question paper comprises two parts, Part I and Part II.**
2. **Part I comprises Case Scenario based Multiple Choice Questions (MCQs).**
3. **Part II comprises questions which require descriptive type answers.**

PART I – CASE SCENARIO BASED MCQs (30 MARKS)

PART - I IS COMPULSORY

Ans. 1 to Ans. 4
CASE SCENARIO
1. Ans. c
2. Ans. a
3. Ans. d
4. Ans. b

MCQ [4 MCQ of 2 Marks Each : Total 8 Marks]

Ans. 5 to Ans. 7
CASE SCENARIO
5. Ans. c
6. Ans. b
7. Ans. c

MCQ [3 MCQ of 2 Marks Each : Total 6 Marks]

Ans. 8 to Ans. 10
8. Ans. c
9. Ans. a
10. Ans. d

MCQ [3 MCQ of 2 Marks Each : Total 6 Marks]

Ans. 11 to Ans. 15
11. Ans. b
12. Ans. a
13. Ans. b
14. Ans. b
15. Ans. b

MCQ [5 MCQ of 2 Marks Each : Total 10 Marks]

PART II - DESCRIPTIVE QUESTIONS (70 MARKS)

QUESTIONS NO. 1 IS COMPULSORY. CANDIDATES ARE REQUIRED TO ANSWER ANY FOUR QUESTIONS FROM THE REMAINING FIVE QUESTIONS
Wherever necessary, suitable assumptions may be made and disclosed by way of a note. Working Notes should form part of the answer.

Answer 1:

(a) According to section 24(3), where a person has ceased to be a partner of a LLP (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the LLP) as still being a partner of the LLP unless— **{1 M}**

(a) the person has notice that the former partner has ceased to be a partner of the LLP; or

(b) notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar. **{1 M Each}**

Hence, by virtue of the above provisions, as no notice of resignation was given to ROC, Abhinav will still be liable for the loss of firm of the transactions entered after 01.11.2022. **{1 M}**

Answer:

(b) As per explanation to section 31, the expression "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.

A company is required to issue a prospectus each lime it accesses the capital market. It leads to unnecessary repetition for a company which makes more than one offer of securities in a year to mobiles funds from the public. A way out is shelf prospectus which remains valid (on the shelf) a specified time period during which offers for securities may be made by a company to the public without going through the arduous exercise of issuing fresh prospectus every time. **{1 M}**

1. **Filing of shelf prospectus with the Registrar**

   Shelf prospectus may be filled with the Registrar at the stage of first offer of securities, by class or classes of companies as the Securities and Exchange Board may provide by regulations in this behalf.

   It has to indicate a period not exceeding one year as the period of validity of such shelf prospectus. **{1 M}**

   The period of validity is to commence from the date of opening of the first offer of securities under such prospectus.

   In respect of any second or sub-sequent offer of such securities issued during the period of validity of such prospectus, no further prospectus is required.

2. **Filing of 'Information Memorandum' with the Shelf Prospectus**

   A company filing a shelf prospectus shall be required to file an information memorandum with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus containing;

   a. All material facts relating to new charges created,

   b. Changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities, and **{1 M}**

   c. Such other changes as may be prescribed,

   The information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

3. **Safeguard (in case of changes) to applicants who made payment in advance.**

   It is provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof. **{1 M}**

4. **Information Memorandum together with Shelf Prospectus is deemed Prospectus**

   Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus. **{1 M}**

Answer:

(c) (1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.
Hence, Priyansh is disqualified to be appointed as an auditor in Altroz Limited. **{2 M}**

(2) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Altroz Limited as he is indebted to Altroz Limited for rupees 2 lacs. **{3 M}**

Answer 2:

(a) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to- **{1/2 M Each}**

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(c) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services, **{1/2 M Each}**

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(i) In the given situation, Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013. **{0.75 M}**

(ii) In the given situation, Xen Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xen Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, Xen Limited Liability Company is a foreign company as per the Companies Act, 2013. **{0.75 M}**

Answer:

(b) According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.
However, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member. **{2 M}**

It is further provided that -

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members. **{1 M}**

In the instant case, Flora Fauna Limited may be converted* into a private company only if the total members of the company are limited to 200. Total Number of members

(i)	Directors and their relatives	50
(ii)	5 Couples (5x1)	5
(iii)	Others	145
	Total	**200**

{2 M}

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

Answer:

(c) Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India. **{2 M}**

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment. **{2 M}**

Answer 3:

(a) (i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Moon Technology Private Limited, a start-up company, received Rs. 20.00 lacs from Praveen in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. The amount received is below threshold limit of Rs. 25.00 lacs. Hence, the amount of Rs. 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly. **{1 M Each}**

(ii) According to Rule 3 (1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

(1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

(2) such deposits are repayable only on or after three months from the date of such deposits or renewal.
In the given case of Shyam Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits. **{1 M Each}**

(iii) As per Rule 2 (1) (e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76 (1), having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits: **{1/2 M}**

However, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.
Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of Rs. 400 crore and net worth of Rs. 50 crore. Hence, it cannot be termed as an eligible company and thus can not accept deposits from the public. **{1/2 M}**

Answer:

(b) (A) **Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required. **{$2^{1/2}$ M}**

(B) **Gift remittance exceeding US $ 10,000:** Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI. **{$2^{1/2}$ M}**

Answer:

(c) As per Section 123(3) of the Companies Act, 2013, 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:
Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. **{2 M}**

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the

rate of dividend declared shall not exceed 10%, the average of the rates (7+11+12=30/3) at which dividend was declared by it during the immediately preceding three financial years.
Therefore the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y. 2018-2019 is not valid. **{2 M}**

Answer 4:

(a) As per the provisions of section 2(16) of the Companies Act, 2013, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes mortgage. **{1 M}**

Whenever a company borrows money by way of loans including term loans or working capital loans from financial institutions or banks or any other persons, by offering its property or assets, as security a charge is created on such property or assets in favour of the lender. Such a charge is compulsorily registrable under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard. **{2 M}**

Thus, when Vivek (Private) Limited obtains working capital loans from financial institut ions by offering stock and Accounts Receivables as security, it is required to create a charge on such property or assets in favour of the lender. Hence, for Rs. 25 Lakh working capital loan, it is required to create a charge on it. **{1 M}**

Vivek (Private) Limited is not required to create a charge for Rs. 5 Lakh adhoc overdraft on the personal guarantee of a director. Since, charge is always created on the property or assets of a company and personal guarantee of director is not a property or asset of company. **{1 M}**

Answer:

(b) **(i)** **Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act. **{2 M}**

(ii) **Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary. **{2 M}**

Answer:

(c) **Doctrine of Indoor Management**

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. **{2 M}**

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. **{1 M}**

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice. **{2 M}**

Answer 5:

(a) According to section 7 of the Limited Liability Partnership Act, 2008, every Limited Liability Partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. **{$2^{1/2}$ M}**

In the given case, Rohan John LLP intends to appoint Mr. John and Ms. Kate (both are non resident Indians) as the only designated partners. This is not in consonance with provisions of the Limited Liability Partnership Act, 2008, as at least one of the designated partners should be a resident in India. **{$2^{1/2}$ M}**

Answer:

(b) Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

(i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;

(ii) The notice required under the Companies Act must have been duly given of the general meeting;

(iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting. **{$2^{1/2}$ M}**

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account. **{$1^{1/2}$ M}**

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order. **{1 M}**

Answer:

(c) **Financial Year:** According to Section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under section 3(66) as a year reckoned according to the British calendar. Thus, as per the General Clauses Act, 1897, year means calendar year which starts from January to December. **{3 M}**

Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January. **{1 M}**

Answer 6:

(a) The rule of Ejusdem Generis applies when:

1. The statute contains an enumeration of specific words
2. The subject of enumeration constitutes a class or category
3. That class or category is not exhausted by the enumeration
4. General terms follow the enumeration; and
5. There is no indication of a different legislative intent.

{1 M Each}

OR

Answer:

(a) Issue of Bonus Shares

According to section 63 (1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of— {1 M}

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Section 63 (2) provides that the company can issue bonus shares only when the partly paid -up shares, if any outstanding on the date of allotment, are made fully paid-up. {1 M}

(A) The following sources can be used by the company to issue bonus shares: {1 M}

1. General Reserve
2. Securities Premium
3. Surplus in statement of P&L

(B)

Particulars	Amount
Amount of bonus shares to be issued	90,000 shares x 1/4 = 22,500 shares {1 M}
Amount that ought to be capitalized for issue of bonus shares	22,500 x Rs. 10 per share = Rs. 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+25,000+2,00,000 = Rs. 3,45,000 {1 M}
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	Rs. 2,25,000

Answer:

(b) According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. {2 M}

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. {1 M}

Accordingly, the questions as asked may be answered as under:

(i) The contention of Ajay shall be tenable, for the reason that the notice was not properly served.

(ii) In the given circumstances, the company is bound to serve a valid notice to Ajay by registered post at his residential address at Kanpur and not outside India. {1 M Each}

Answer:

(c) (i) **Insurance Policies covering immovable property have been held to be immovable property:** This statement is not valid. Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property. {1 M}

(ii) **The word 'bullocks' could be interpreted to include 'cows':** This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'. **{1 M}**

Answer:

(d) According to section 123 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company. **{1 M}**

As per the given facts, G Medical Instruments Limited has earned a profit of Rs. 910 crores for the financial year 2021-2022. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so. **{1 M}**

__**__