

Mock Test Paper - Series I: March, 2025

Date of Paper: 10th March, 2025

Time of Paper: 10 A.M. to 1 P.M.

INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

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

Case Scenario 1

New Limited, a listed entity, passed a resolution in its Board meeting for the appointment of Verma & Associates, Chartered Accountants, as the statutory auditor of the company. The company obtained written consent from Verma & Associates and placed this recommendation before the Annual General Meeting (AGM) of shareholders, where it was duly approved. After securing approval, New Limited informed the firm of their appointment and filed a notice of appointment with the Registrar of Companies within the prescribed time.

Verma & Associates has three partners: A Verma, B Verma, and C Verma. The firm also take services of two persons, Dev Verma and Mia Verma, who work on a case-to-case basis and are not on a fixed salary.

It is also informed that prior to this appointment, Agrawal Verma & Associates was serving as the statutory auditor of New Limited. This firm had six partners: Shrey Agrawal, Alam Agrawal, Vishal Agrawal, Vyom Agrawal, Dev Verma, and Mia Verma. Notably, Dev Verma and Mia Verma were common members in both Verma & Associates and Agrawal Verma & Associates.

While working with New Limited, Verma & Associates started facing severe disagreements with the management regarding certain financial reporting matters and governance issues. As a result of these persistent disputes, the firm decided to resign as the statutory auditor.

Meanwhile, New Limited was also required to hold its Annual General Meeting (AGM) within the prescribed period, ensuring compliance with the legal provisions regarding financial reporting, auditor appointments, and shareholder approvals. However, due to internal conflicts and auditor resignation, the company faced challenges in adhering to these timelines.

Additionally, New Limited decided to shift its registered office from Mumbai to Bengaluru for operational efficiency. The company passed a Board resolution for

the change and later obtained shareholder approval in the AGM. However, due to an oversight, the filing of the notice of change of registered office with the Registrar of Companies was delayed. As a result, several important communications, including regulatory notices and shareholder correspondence, were being sent to the Mumbai office, causing disruptions in company operations.

On the basis of above facts and by applying applicable provisions of the Companies Act, 2013 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 1-5, of 2 marks each) given herein under:

1. The newly appointed CA Firm (Verma & Associates) and retiring CA Firm (Agrawal Verma & Associates) have common persons i.e., Dev Verma and Mia Verma. Whether the appointment of Verma & Associates in New Limited is valid as per the provisions of the Companies Act, 2013:
 - (a) It not valid since both the CA Firms (New and Old) have common persons
 - (b) Dev Verma and Mia Verma are working on case-to-case basis in Verma & Associates and are not the partners, hence appointment of Verma & Associates, is valid
 - (c) Verma & Associates should expel Dev Verma and Mia Verma in order to retain its appointment
 - (d) Agrawal Verma & Associates should expel Dev Verma and Mia Verma
2. What would have been the position if, Dev Verma and Mia Verma are partners in Verma & Associates:
 - (a) The position will remain same as MCQ 1 above
 - (b) There shall be no change and the Verma & Associates may continue as audit firm
 - (c) The appointment of Verma & Associates would not have been in terms of the provisions of the Companies Act, 2013
 - (d) The company may obtain permission from the shareholders in the general meeting by way of Special Resolution for continuation of appointment of Verma & Associates
3. In the given case, Verma & Associates due to some dispute with the management on some issues resigned from the company. Choose the correct option in respect to filling of this vacancy:
 - (a) Verma & Associates cannot resign and has to hold the office till the conclusion of the next annual general meeting
 - (b) The resignation is tendered by the auditor, the Board of Directors shall appoint new auditor within 30 days and such appointment shall also be approved by the shareholders in the general meeting within 3 months of the recommendation of the Board
 - (c) This vacancy of auditor can be filled by the shareholders in consultation of the Central Government

- (d) This vacancy of auditor can be filled by the Board of Directors in consultation of the Comptroller and Auditor-General of India
- 4. AGM of New Limited could not be held within the prescribed time limit. Choose the correct statement in this case.
 - (a) The company can postpone the AGM indefinitely until internal conflicts are resolved.
 - (b) The company can apply to the Registrar of Companies (RoC) for an extension and Registrar can do so for a period not exceeding 3 months.
 - (c) The Board should reappoint Verma & Associates if they agree to withdraw their resignation and then conduct the AGM by 31st January of the following year.
 - (d) The company must approach the National Financial Reporting Authority (NFRA) for extension of date of AGM.
- 5. If New Limited wants to shift its registered office from Maharashtra (Mumbai) to Karnataka (Bengaluru), which of the following is required?
 - (a) Board approval only.
 - (b) Only shareholder approval in a general meeting.
 - (c) Approval from the Regional Director along with copy of proposed alteration in memorandum, copy of Board's resolution and Minutes of general meeting authorising the change from one state to another.
 - (d) No approval is required.

Case Scenario 2

Studies LLP was incorporated on 15th April, 2024, with Prem, Pramod, Naveen, and Vimal as partners. Among them, Prem and Pramod were designated partners. The LLP was established for the manufacturing and trading of toys, and its business operations were progressing smoothly.

However, on 30th April, 2024, an individual named Samudra filed an application with the Registrar of LLPs, claiming that he owned a registered trademark under the name "Studies Masters", which had been registered before 15th April, 2024. He requested that Studies LLP change its name, as it closely resembled his registered trademark.

After conducting an initial investigation, the Registrar found merit in Samudra's claim and issued a directive to Studies LLP to change its name. The official notice, dated 5th May, 2024, was sent via post. However, due to a postal delay, the LLP received the notice only on 10th May, 2024. Despite the directive, Studies LLP ignored the notice and continued operating under the same name.

On 16th August, 2023, the Registrar, acting suo-moto, assigned the LLP a new name, "Sahitya Masterminds LLP", and updated the register of LLPs accordingly. A fresh Certificate of Incorporation reflecting the new name was issued. However, the partners were not comfortable with the new name and initiated steps to change it again.

Additionally, on 20th June, 2024, Vimal submitted a written notice to the LLP stating that he would cease to be a partner effective 22nd July, 2024. However, neither Vimal nor the LLP informed the Registrar about his cessation.

On the basis of above facts and by applying applicable provisions of the Limited Liability Partnership Act, 2008 and the applicable Rules therein, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 6-8, of 2 marks each) given herein under:

6. On what basis did the Registrar direct Studies LLP to change its name?
 - (a) The name of designated partners of both the LLPs were identical.
 - (b) The LLP's name closely resembled a registered trademark owned by another party.
 - (c) The LLP failed to register its name properly.
 - (d) The LLP was engaged in fraudulent activities.
7. If an LLP fails to comply with the Registrar's directive to change its name, what action can the Registrar take?
 - (a) Impose a penalty but allow the LLP to continue using the same name.
 - (b) Suo-moto allot a new name and issue a fresh Certificate of Incorporation.
 - (c) Cancel the LLP's registration.
 - (d) Allow the LLP to continue operating under the disputed name until the matter is resolved in court.
8. Vimal resigned as a partner with effect from 22nd July, 2024, but the LLP did not inform the Registrar. Who is legally responsible for updating the Registrar about his resignation?
 - (a) The LLP and Vimal are both responsible for notifying the Registrar.
 - (b) Only Vimal is responsible for reporting his resignation.
 - (c) Only the designated partners of the LLP are responsible.
 - (d) No one is responsible; this is an internal matter of the LLP.

Case Scenario 3

Mr. Arun Kumar, a software engineer from Bangalore, had worked with a US-based technology company in Silicon Valley for the past 4 years. In April 2023, he returned to India to establish a technology startup, Global Ventures Private Limited. He maintained his foreign currency accounts in USA, containing earnings from his previous employment. His wife continues to work in USA.

During August 2023, Mr. Kumar undertook several transactions:

- He received USD 200,000 from his US savings account to invest in his Indian startup
- He gifted USD 75,000 to his brother in India for purchasing property

- He imported specialized software equipment worth USD 150,000 from a Singapore-based supplier on 3 months' credit
- He helped his wife (US-based) remit USD 40,000 for their daughter's higher education from a recognised university

Global Ventures also set up a branch office in Singapore in October 2023, fully controlled and managed from its Bangalore headquarters. The company plans to raise foreign currency loans and explore various overseas investment opportunities.

On the basis of above facts and by applying applicable provisions of the Foreign Exchange Management Act (FEMA), 1999, choose the correct answer (one out of four) of the following Multiple Choice Questions (MCQs 9-11, of 2 marks each) given herein under:

- Under FEMA, 1999, what would be Mr. Arun Kumar's residential status for FY 2023-24?
 - Person Resident in India from April 2023
 - Person Resident Outside India throughout the year
 - Person Resident in India only after completing 175 days
 - Person Resident Outside India till August 2023
- Which of the following transactions by Mr. Kumar requires prior the Reserve Bank of India's approval?
 - Receiving USD 200,000 from his own foreign account
 - Gift of USD 75,000 to his brother
 - Import of equipment on credit terms
 - Setting up a branch office in Singapore
- Whether, Mr. Kumar's remittance of USD 40,000 for his daughter's higher education from a recognised university, permissible:
 - Yes
 - No, as it requires Reserve Bank of India's approval
 - It is a prohibited transaction under FEMA, 1999
 - Yes, after seeking approval from the Central Government

Independent case scenarios

- A Limited made a public issue of debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Sun Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:
 - 5%
 - 2%

(c) 2.5%

(d) 2.25%

(2 Marks)

13. ABC Limited has received application money of rupees 20,00,000 (2,00,000 equity shares of rupees 10 each) on 10th October, 2024 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.

(a) 9th November, 2024

(b) 24^h November, 2024

(c) 9th December, 2024

(d) 8th January, 2025

(2 Marks)

14. ABC Limited operates a factory near a river. A recent Central Act mandates that factories must be located at least 3 kilometers away from any river.

An environmental agency claims that ABC Limited's factory is only 2.5 kilometers away from the river, while ABC Limited argues that the distance is 4 kilometers, based on the road distance along a winding path leading to the river.

As per the General Clauses Act, 1897, how should the distance between ABC Limited's factory and the river be measured to determine compliance with the Central Act?

(a) The distance should be measured along the shortest possible straight line (horizontal plane) between the factory and the river.

(b) The distance should be measured along the road/ path actually travelled, as argued by ABC Limited.

(c) The environmental agency's estimate of 2.5 kilometres should be automatically accepted since it favors environmental protection.

(d) The distance should be measured based on any reasonable method, as long as it justifies the company's compliance.

(2 Marks)

15. Mr. Mukhiya owned a land with fifty neem trees. He sold his land and the timber (obtained after cutting the trees) to Mr. Ambar. As per the General Clauses Act, 1897, does the sale of timber amount to the sale of immovable property?

(a) Yes, timber is part of the land, so its sale is a sale of immovable property.

(b) No, timber is considered movable property once it is cut from the land.

(c) Yes, since trees were earlier rooted in the land, selling timber is similar to selling land.

(d) No, because movable property only includes motor cars, jewellery and cash.

(2 Marks)

PART – II Descriptive Questions (70 Marks)

Question No.1 is compulsory.

*Attempt any **Four** questions out of the remaining **Five** questions.*

1. (a) Alok incorporated a One Person Company making his sister Apeksha as the nominee. Apeksha is an Indian citizen. She was born and brought up in Moradabad. However, now Apeksha and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013, advise whether Alok can appoint his minor son Shambhu as the nominee of the OPC? **(5 Marks)**
- (b) ABC Private Limited was incorporated on 30th September 2020. It has a paid up share capital of ` 45 crore. The company had a turnover of 250 crore for the financial year 2023-24. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2024-25. The management of the company have approached you to advise them about the appointment of internal auditor, as per the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) Analyse the below mentioned situation in the light of the provisions of the Foreign Exchange Management Act, 1999.
 - (i) Mr. New has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in Singapore.
 - (ii) Mr. Manoj requires US Dollar 5,000 for remittance towards hiring charges of transponders. **(4 Marks)**
2. (a) ABC Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2024 (Monday) at 11:00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.

On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Advise, as per the provisions of the Companies Act, 2013:

 - (i) Whether the original meeting was validly adjourned?
 - (ii) Whether the adjourned AGM was validly conducted? **(5 Marks)**
- (b) One of the matters contained in the articles of PQR Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

However, such alteration in the articles (on the grounds that it was not valid), was opposed by ABC & Co., a partnership firm which is its member.

Advise, as per the provisions of the Companies Act, 2013, whether the contention of ABC & Co. was valid and whether it can be a member in such company. **(5 Marks)**

- (c) Explain the following with reference to the provisions of the General Clauses Act, 1897:
- (i) Affidavit
 - (ii) Good Faith **(4 Marks)**
3. (a) Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:
- (i) ABC Limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers.
 - (ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.
 - (iii) Being a public company can it issue securities in a private placement offers? **(5 Marks)**
- (b) Lily Private Limited on 5th February 2024 obtained rupees 30 lakh working capital loan by offering its Stock and Accounts Receivables as security and rupees 5 Lakh adhoc overdraft on the personal guarantee of a Director of Lily Private Limited, from a financial institution.
- As per the provisions of the Companies Act, 2013, whether the company is required to create charge for working capital loan and adhoc overdraft? **(5 Marks)**
- (c) Does an explanation added to a section widen the ambit of a section? **(4 Marks)**
4. (a) Sriram Private Limited is a start-up company. Mr. Lovely has been appointed as Accounts Manager of Sriram Private Limited. The Board meeting for approval of accounts is to be held on 1st August, 2024 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Lovely about the statements that are required to be prepared. **(5 Marks)**
- (b) XYZ LLP was incorporated on 15th March, 2023, with its registered office in Mumbai. The LLP received a legal notice from a supplier at this address. However, the partners claim they never received the notice, as

they had shifted their office to Pune on 10th January, 2024, but had not informed the Registrar about the change.

Based on the provisions of the provisions of the Limited Liability Partnership (LLP) Act, 2008, advise whether the service of notice at the Mumbai address is legally valid. **(5 Marks)**

- (c) When can the Preamble be used as an aid to interpretation of a statute? **(4 Marks)**

5. (a) Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company? **(5 Marks)**

- (b) Under the Companies Act, 2013, an auditor appointed by a company is allowed to provide only those services that are approved by the Board of Directors or the Audit Committee. However, there are certain services that an auditor is expressly prohibited from rendering, whether directly or indirectly, to the company, its holding company, or its subsidiary company.

List any seven such restricted services that an auditor cannot provide.

(5 Marks)

- (c) Ms. Alka was director in Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Ms. Alka. She contended that section 166 of the Companies Act, 2013, provides "A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company." She contended that section 166 is applicable to male director only, she being female will not be liable.

In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013. **(4 Marks)**

6. (a) In a general meeting of a company, the shareholders passed a special resolution regarding some special matters. There were 30 members present in the meeting. Out of which 15 voted in favour of the resolution, 6 voted against it and 5 votes were found invalid. The remaining 4 members abstained from voting. The chairman of the meeting declared the resolution as passed. With reference to provisions of the Companies Act, 2013 examine the validity of chairman's declaration.

(5 Marks)

- (b) Namaste Limited, a foreign company having its Indian principal place of business at Ranchi, Jharkhand is required to deliver various documents

to Registrar of Companies under the provisions of the Companies Act, 2013. State where should the said company deliver such documents.

(5 Marks)

- (c) List any seven permissible classes of Capital account transactions that a person resident in India can undertake, under the Foreign Exchange Management Act (FEMA), 1999.

(4 Marks)

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INTERMEDIATE COURSE: GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWER TO PART – I CASE SCENARIO BASED MCQS

1. (b)
2. (c)
3. (b)
4. (b)
5. (c)
6. (b)
7. (b)
8. (a)
9. (a)
10. (b)
11. (a)
12. (b)
13. (c)
14. (a)
15. (b)

ANSWERS OF PART – II DESCRIPTIVE QUESTIONS

1. (a) According to Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate a One Person Company.

The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

As per the facts of the question, Apeksha as the earlier nominee is withdrawing her consent of nomination in the OPC of her brother Alok. Now, Alok is intending to appoint her son Shambhu as the nominee in his OPC.

In the light of the provision of the Companies Act, 2013, it is clear that a minor cannot be appointed as a nominee/ member of OPC. Hence, Alok cannot appoint his son Shambhu as a nominee to his OPC.

(b) According to section 138 read along with Rules of the Companies Act, 2013, every private company having:

- (A) turnover of 200 crore rupees or more during the preceding financial year; or
- (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ` 45 crore and turnover of ` 250 crore for the financial year 2023-24.

Since, the company is fulfilling the criteria of turnover (i.e. more than ` 200 crore), hence, it is required to appoint an internal auditor for the financial year 2024-25.

(c) According to section 5 of the Foreign Exchange Management Act, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and

3. Transactions which require RBI's prior approval for drawl of foreign exchange.

- (i) Mr. New wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in Singapore. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. New cannot withdraw foreign exchange for this purpose.

- (ii) In the given situation, it is a current account transaction, where Mr. Manoj is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

2. (a) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.

If the specified quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

In the instant case, there were only 12 members personally present on the day (i.e. 2nd September 2024) of meeting of ABC Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present. However, as per the provisions of section 103, in the adjourned meeting, the members present shall be considered as quorum.

In the light of provision of law and facts of the case:

- (i) The original meeting was validly adjourned, as the required quorum was not present.
- (ii) The adjourned AGM was validly conducted as members present shall be considered as quorum.

- (b) According to section 8 of the Companies Act, 2013, a company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Registrar of Companies.

Also, a firm may be a member of the company registered under section 8.

Here, one of the matters of articles of PQR Foundation was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies.

As per the provisions of the Act, it is necessary to take previous approval of the Registrar of Companies for the same which was not done in the present case and thus the contention of ABC & Co. was valid.

Also, section 8 allows a firm to be a member of such company and hence, ABC & Co. can be its member.

- (c) (i) **“Affidavit” [Section 3(3) of the General Clauses Act, 1897]:** ‘Affidavit’ shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

- (ii) **“Good Faith” [Section 3(22) of the General Clauses Act, 1897]:** A thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to be determined with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide, whether it is done negligently or not is presumed to have been done in good faith.

3. (a) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees’ stock option will not be considered.

Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities

under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

(i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

(ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

(iii) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.

(b) 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.

Whenever a company obtains working capital loans from financial institutions 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 ₹ 30 Lakh working capital loan, Lily Private Limited is required to create a charge on it.

Lily Private Limited is not required to create a charge for ₹ 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.

- (c) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up the ambiguity in the main section. Something may be added to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

- 4. (a) As per section 2(40) of the Companies Act, 2013, **Financial Statement** in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), 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.

In the instant case, Mr. Lovely has to prepare the above financial statements except Cash Flow Statement; since Sriram Private Limited is a start-up private company

- (b) **Registered Office of LLP and Change therein**

As per section 13 of the Limited Liability Partnership Act, 2013,

- (1) Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

- (2) A document may be served on a LLP or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
- (3) A LLP may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

In the given question, the registered office of XYZ LLP is at Mumbai. Further, the question informs that the LLP has shifted their office to Pune.

In the light of the provisions of the Act and the facts of question, the registered office of XYZ LLP will be Mumbai as it is registered with the Registrar. The changed office to Pune cannot be treated as a registered office.

Thus, the service of notice at the Mumbai address is legally valid.

- (c) While the Preamble can be used to know the aims and objects of the legislation it cannot be used to control or qualify the precise and unambiguous language of an enactment. The preamble is the key to the mind of the maker of the law, but it cannot override in order to enlarge or restrict the enacting provision of the Act. A provision contained in the Act cannot be considered as invalid because they do not accord with the preamble, which is only a brief summary of legislative objectives behind the Act, and if there is any conflict between the preamble and any provision of an Act, the provision prevails.

The preamble merely affords help in the matter of construction if there is any ambiguity. Where the language of the Act is clear, the court is bound to give it effect.

When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

5. (a) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20(2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, 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. However, 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.

- (b) An auditor appointed under the Companies Act, 2013, shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be.

But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:

1. Accounting and book keeping services;
2. Internal audit;
3. Design and implementation of any financial information system;
4. Actuarial services;
5. Investment advisory services;
6. Investment banking services;
7. Rendering of outsourced financial services;
8. Management services; and
9. Any other kind of services as may be prescribed

- (c) By virtue of provisions of section 13 of the General Clauses Act, 1897, in all Central Acts or Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females.

Ms. Alka, director in Sweets Private Limited, made an undue gain in the form of commission (from supplier for making the deal) in dealing for Sweets Private Limited but she denied accepting the liability by saying that the language of section 166 provides penalty only for male directors not for females.

On the basis of provisions of the General Clauses Act, 1897 and facts of the case, the provisions of section 166 of the Companies Act, 2013, are not only applicable to males but also to females. Therefore, Ms. Alka is bound to comply by section 166 of the Companies Act, 2013.

6. (a) According to section 114 of the Companies Act, 2013, a resolution shall be a special resolution when the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

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.

Accordingly, in the given problem, the votes cast in favour (15) being not more than 3 times of the votes cast against (6), therefore the decision of the chairman is not in order.

- (b) The Companies Act, 2013 vide section 380 state that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.
- (c) The list of permissible classes of transactions made by persons resident in India is:
- (a) Investment by a person resident in India in foreign securities.

- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Undertake derivative contracts