

highlight the important keywords or area of answer

(a) Related provision:- As per Sec 138 of the Companies Act 2013, a company shall appoint an external auditor if it is a listed company or a public company satisfying any of the following conditions:-

As per the section 138 of companies act 2013

following class of company need to appoint internal auditor

- Paid up share capital of at least 50 crore.
- Outstanding borrowings exceeding 100 crore.
- Turnover of at least 200 crore.
- Unlisted company having paid up share capital of 50 cr or more during preceding FY or turnover 200 crore or os loan of 100 cr with a private company satisfying any of the following conditions:-

- every private company with turnover 200 cr or outstanding loan or borrowing 100 cr
- turnover at 200 crore.

Fact & Analysis:- In the given case, ABC Pvt Ltd. has a turnover of Rs 150 crore and outstanding loan & borrowings of Rs 120 crore.

each class of companies has different criteria.

The provision of Internal Auditor shall apply in the present case of ABC Ltd, ABC Ltd is private company with a turnover less than 200 crore but outstanding borrowing is above 100 crore.

Conclusion:- In my opinion, ABC Pvt Ltd shall appoint an external auditor as per provision of law.

Yes, ABC Ltd has to appoint the internal Auditor under section 138 of companies Act 2013

differences should be written in tabular format have 3 parts
basis of difference, Difference -1 and Difference -2

Page No.	2
Date	

(b) Fixed charge refers to charge made on fixed assets. The value of fixed assets does not change or vary.

Floating charge refers to charge made on current assets. The value of floating charge keeps on varying.

eg: charge created on cash, debtors, etc.

A floating charge can be crystallised into a fixed charge following ways:-

- on liquidation of the company,
- on winding up of the company,
- on order of court to convert floating charge into fixed charge,
- As per terms of agreement mentioned in the contract.
- on happening of an event mentioned in the agreement.

2

you have written correct section number, try to highlight the same in each answer

(C) As per Sec 32 of The Companies Act, 2013.

- a red herring prospectus is a prospectus issued by the company.

- It is an incomplete prospectus as it does not contain the two important information.

(i) price of

(ii) quantum of

first clearly explain the meaning of red-herring

- It contains price band of the securities. ~~The~~ i.e. explaining features the floor price and the cap price.

- The ~~floor~~ ^{cap} price cannot exceed 20% of the floor price.

- It shall be filed 3 days before to such issue.

- Any changes in the red herring prospectus and the main prospectus shall be mentioned in the main prospectus as "VARIATIONS" ~~including~~ which the company shall ~~attach~~ attach form D/S 447.

As per Sec 232 of The Companies Act 2013, the company shall conduct the meeting of shareholders ~~and~~ after the direction given by the ~~members~~ **avoid writing short forms**
 C.A.

The company (both the transferee and transferor) shall obtain consent of majority of the shareholders and 75% of the creditors in value.

The ~~dir~~ notice of the meeting shall also be sent to other authorities:-
 → Income Tax
 → C.A.

→ SEBI → other regulatory authorities.
no approval needed in case of unlisted company

They shall file their objections within 30 days with SEBI.

NCLT after taking it in consideration, shall ~~file~~ grant the order of amalgamation.

A copy of ROC ~~with~~ shall be filed within 30 days.

A ~~copy~~ copy of ~~audited~~ audit report shall also be filed with ROC.

A declaration from CA/CS/CMA in practice ~~at the end of every year~~ within 30 days from the end of FY the amalgamation process is completed shall be filed.

(b) The following documents shall be circulated after NCLT's direction:-

1. Draft of the proposed scheme adopted by the directors of the company.
2. Report adopted by the directors mentioning effect of such amalgamation on NMP, directors, shareholders, creditors, & other security holders.
3. Copy Confirmation that draft of the proposed scheme adopted by the directors has been filed with ROC.
4. Expert's report on valuation.
5. Supp. accounting report, if any.

(c) The Tribunal can provide for the following matters:-

- Assets, liabilities, property, debt transferred to the transferee company.
- Shareholders, creditors, debentureholders transferred.
- Continuation of legal proceedings by the transferor company against the transferee company.

• Provision of for transferee company without involving up

• Provision for dissenting shareholders.

• Provision for non resident shareholders.

• Transfer of employees from the transferee to the transferee company.

• If the transferee company is not listed and transferee company is listed, it shall remain unlisted unless it obtains the listing approval.

(d) Specific Ac



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treatment:-

• Record assets and liabilities at book value or fair value.

• Record goodwill/capital reserve.

• Disclose the same in financial accounts of the company.

please refer to suggested answers

prerequisites are to be written first then other part of the answers.

follow the same pattern as asked in que

Q. (a) Steps to convert company into dominant company

(i) Hold Board Meeting:- The company shall send notice of board meeting (RM) within 7 days of such date.

The company shall conduct the BM and pass Board Resolution.

(ii) General Meeting:- The company shall send notice of general meeting within 21 days of such date. The company shall obtain special Resolution in general meeting.

(iii) Filing with ROC:- The company shall file MSC-1 with ROC along with the following documents attached to it:-

- Copy of BR at BM
- Copy of SR in GM
- Company's financial position.
- Auditor's report
- No objection certificate from regulatory authority, if any
- ~~Report~~ Declaration by CA/CL/MA in practice.

avoid writing short forms

(iii) The following shall be perquisites in obtaining the ~~approval~~ status of dormant company:-

- No default is done in filing of annual report - in MSC-3.
- No default in statutory dues.
- No default is done in repayment of loan/borrowings.
- No prosecution is pending on the company.
- No investigation, inquiry has been initiated on the company.

(iv) After satisfying the following conditions, if ROC is satisfied it shall give the ~~license~~ status to such company as dormant company and issue MSC-2 as certificate of dormant company.

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(b) Inquiry ~~mean~~ initiation to The Companies Act 2013, to

- when the company's affairs are mismanaged.
 - Director's grievances are not resolved.
 - fraudulent acts are done in the company.
- The ROC after such circumstances initiate inquiry against the company.
- The ROC can ~~initiate~~ ask for information, explanation, books of accounts, books & papers.

from such company on whom enquiry is initiated.

- The company may seek information from the employees, officers, directors of the company.
- If the offence relates to any past period, the officer at that time shall give such information.

Significance of Enquiry:-

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- A enquiry is initiated so that the accounts of the company are managed in a fair way.
- To protect the interest of public.
- To protect the interest of shareholders and other security holders in the company.
- To solve the investor's grievances.
- To detect any fraudulent acts, undue gains, to any particular person.

Page No. 10
Date / /

(a) Power granted to Registrar or Inspector regarding
search & seizure;

• The powers of Registrar and Inspector are similar to civil courts.

• The Inspector can enter any company.

• It can take possession of any document after the approval of ROC.

• The seizure of document can be done for at least 180 days. Further possession can be obtained after approval of NCLT.

• If the Inspector is in opinion that such record and document can be destroyed, altered, falsified or can be removed and take possession of such document.

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Q3.

(a)

(i) As per the provisions of The Companies Act 2013, the company shall declare dividend only after adjusting any previous year's carry forward losses and depreciation from the current year's profit.

The company mentioned in the question, XYZ Ltd cannot declare such dividend without

Date _____

providing for losses and depreciation from the profit of current year.

It shall not be valid.

(11.) Any dividend declared at the end of the financial year shall be final dividend. Such dividend is declared out of current year profit.

Interim dividend refers to dividend declared between of the financial year. It is declared out of surplus in profit & loss.

XYZ Ltd cannot declare Interim dividend at the end of financial year. Such dividend is a final dividend and declared out of current year profit and loss.

Here it is not be valid.

(b) Related provisions :- As per Sec 180 of The Companies Act 2013, the board of directors shall so obtain the consent of the members in general meeting (GM) by passing Special Resolution (SR) on the following matters :-

- To sell, lease, dispose off part or whole of substantial undertaking.
- To enter otherwise in trust securities, proceeds of amalgamation / merger.

- If present borrowings and proposed borrowings exceed ~~paid up~~ the sum of paid up share capital, security premium, free reserves. (PUC + PR + SPR).
- To change the terms of the loan given ~~to~~ ^{in relation to} the directors.

to change the course of the loan given ~~to~~ⁱⁿ relation to directors.

Fact & Analyse :- In the given question, ~~deep~~ The
BOD of Deepika Ltd wants to borrow
₹ 50 lakh without paying 1% per cm.

Heur,

present bourgeoisie = 125 lakhs.
P.P. = 50 lakhs.

proposed borrowings = 50 lakh.

proposed remuneration = 50 lakh.
(PUSC + FR + SPR) = 100 lakh + 50 lakh + 25 lakh
= 175 lakh.

Нене, ре
ссылка к
Резерву

Succeed

Requisito

does not have PR + SPR and no consent no membership.

Such condition is only applicable on public companies.
In the case of private companies, no consent is required even if exceeds the (POSC + PR + SPR) and hence, it shall be valid.

Conclusion:- The proposal of not taking consent of members is valid as it does not exceed the (PUSC + PR + SPR) and can obtain such loan of ₹ 50 lakhs.

(c) Related person:- As per sec 188 of the Companies Act 2013, related party transactions refer to:-
(RTP)

- director & his relative
- KMP & his relative
- a public company in which the director or manager is a director and holds more than 2%.
- a private company in which the director or manager is a director or member.
- any company's BOD entrusted to act as per another company's BOD.
- ~~on which any company's BOD~~ The company's BOD acts as per any other company's BOD.
- firm in which director or manager or his relative is a partner
- holding company, subsidiary, associate company.

This provision does not apply to:-
→ government company (listed or unlisted) entering into contract with another government company

- done in the course of business
- on a regular basis

Fact & Analysis:- In the given case, one government company wants to enter into contract with another government company to purchase goods worth Rs 50 crores. Such contract does not require shareholder's consent but it requires BOD's approval and

disclosure in Board Report by the company.

Conclusion:- The ABC Ltd shall comply with provisions of RTP under sec 188 for the contract but by obtaining every approval from Board.

Part II

Q6.

(a) Resolved

RESOLVED THAT, as per pursuant to Sec 177 of The Companies Act 2013, the Board of Directors of the Company hereby constitute the Audit Committee consisting of majority Independent directors, i.e. 3 directors.

A - Chair

B - Direct

C - director

D - director.

RESOLVED FURTHER THAT, as per pursuant to The Companies Act 2013 and rules made thereunder, the chairman shall be a Independent director.

RESOLVED FURTHER THAT, the quorum for Audit Committee shall be 2 directors or $\frac{1}{3}$ of the total members along with 2 Independent directors.

RESOLVED THAT, the functions that shall be performed by audit committee are:-

3 Recommendation of name and remuneration of auditors.

- Monitoring the end use of funds raised through public issue.

(b). The collective body of directors in relation to a company refers to Board of Directors (BoD).

- The board of directors is appointed for management of day to day affairs of the company.

- Directors make policies, interests of shareholders.

- 4 Minimum directors in a public company shall be 3.

In private company - It shall be 2.

- Maximum directors can be 15. If more than 15 company has to pass special resolution in general meeting.

- The BoD is allowed to do all acts mentioned in MOA, AOA, rules, acts & provisions.

- The Directors can be Independent, executive, non executive, nominee, additional.

(1.) Related provisions:- As per provisions of The Companies Act 2013 and SEBI (LODR) Reg, 2015 a Independent director shall be appointed in an unlisted subsidiary if the net worth of such subsidiary exceeds or is equal to 10% of the consolidated net worth of all subsidiaries.

Fact & Anal As per Sec 149 (6) of The Companies Act 2013, a Independent director shall not be related to another director of the company. He shall not be partner or joint holder of any office of employee's of any.

Fact & Analysis:- In the given question, Munkh Ltd. has ~~the~~ unlisted subsidiary wants to appoint Independent director in the subsidiaries.

Here,
Kaarthik Ltd:- $3500 \times \frac{10}{100} = 350 \text{ million}$

net worth does not exceed 350 million (350 > 120).

Suvarahi Ltd:- 2500 Net worth exceeds 350 million.

Teffal Ltd:- Net worth exceeds 350 million.

Suvarahi & Teffal Ltd shall appoint Independent director as their net worth exceeds consolidated net worth's 10%.

The wife of a director of a step down subsidiary cannot become the ~~director~~ independent director. In above companies, any ~~particular~~ ~~or~~ or person related to promoter and director shall not be an independent director. (TD) ✓

Conclusion:- Impanshi Ltd and Teppal Ltd shall appoint TD.

conclusion should be clear- whether you agree to the case or disagree

(d) As per Sec 166 of The Companies Act 2013, following are the duties of a director in a company:-

(i) ~~he~~ shall act as per provisions of MOA, AoA and provisions of act. ✓

(ii) he shall apply due diligence and care in discharging his duties and functions. ✓

(iii) he shall not be involved in conflict of interest. ✓

(iv) he shall promote good corporate governance. ✓

(v) he shall not assign his office to his relatives. ✓

(vi) he shall not take undue gain / advantages from the company. ✓

Q5.

(a) As per Sec 96 of The Companies Act 2013, a company shall conduct its AGM ~~and~~ ^{where} ~~at~~ ⁱⁿ ~~the~~ ^{at} ~~least~~ ^{not less than} 15 months from the last AGM, 6 months from the end of financial year w.e. 15 months.

As per Sec 99 of The Companies Act 2013, if a company is unable to hold its AGM ~~where~~ ⁱⁿ ~~the~~ ^{at} ~~least~~ ^{not less than} 15 months from the end of financial year, it shall attract penalty of 1 lac. and 5000/- for which default continues ~~subject to~~ ^{CS} ~~fine~~.

3 As per Sec 97, if the company is unable to hold its AGM, it may apply to NCLT, for such order as it deems fit. The order that one member can form the valid quorum and decision taken at such meeting shall be valid.

In the given case, the company and officers shall be liable for ₹ 1 lac + ₹ 5000/- for which the default continues for non compliance by holding the AGM for two consecutive years.

(b) As per Sec 100 of The Companies Act 2013, members holding 1/10th share capital can request the company to hold EGM by submitting a written requisition at the company's registered office mentioning the item to be considered for

The ECM. The BoD shall ~~conduct~~ take necessary steps within 21 days to call the ECM within 45 days. (The time limits shall be taken from the date of receipt of the requisition at the company's Registered Office)

Failing which, the members shall themselves call the ECM within 3 months in the same way in which the BoD have called. Any cost incurred in calling the ECM shall be recovered from the defaulting director's remuneration.

In the 2nd case, members can call the ECM within 3 months of receipt of requisition at company's registered office.

Any order may also apply to NCLT, and NCLT may pass such order as it may deem fit. It may even pass such order that the members either personally or through proxy shall form a valid quorum and the decision in such ECM shall be valid.

(d) SEBI shall protect the Interest of Investors by following actions:-

- By enforcing a good corporate governance & enforcement.
- The provisions of Independent director to be followed.

- Monitoring quarterly financial disclosure in related party transactions, insider trading.
- Protecting rights of minority shareholders.
- By ensuring if LODR Regulation 2015 are complied or not, in committees, process, composition.
- SEBI shall impose penalties on non compliance of provisions.
- SEBI supports class action to empower shareholders to seek remedies in case of misdeeds.
- SEBI shall initiate regulatory proceedings in the company where affairs are done in fraudulent ways.
- SEBI shall ensure the holding of promoters, debenture holders, directors, promoters follow according to the capital market.

(c) Potential conflict of interest and corporate governance are for interested directors nothing, no right mechanism, related party transactions, poor disclosure, lack of independent oversight.

Board shall ensure transparency and fairness by establishing proper right mechanism,

proper disclosure of independence by independent
directors, proper voting through postal
ballot, disclosure of related party
transactions.

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