GUIDELINE ANSWERS
JUNE 2024 EXAMINATION
COMPANY LAW
MODULE 1 PAPER 2
EXECUTIVE PROGRAMME
(SYLLABUS 2017)

Question Paper Weblink	https://www.icsi.edu/media/webmodules/examination/june2024/422.pdf

PART- 1

Answer to Question No. 1 (a)

Rule 13 of Companies (Share Capital and Debenture) Rules, 2014 deals with provisions on preferential offer by unlisted companies. Accordingly,

(i) Allotment of shares on a preferential basis shall be completed within a period of twelve months of the date of passing of the special resolution.

(ii) If the allotment of shares is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

(iii) Where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-

a. either upfront at the time when the offer of convertible securities is made, on the basis of the valuation report of the registered valuer given at the stage of such offer; or

b. at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of the valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares.

The company should take a decision on basis of above (a) or (b) at the time of the offer of convertible securities itself and make such disclosure in an explanatory statement.

Answer to Question No. 1 (b)

Fourth proviso to section 137(1) of the Companies Act, 2013 requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India.

Ministry of Corporate Affairs vide its General circular 11/2015 dated 21 July, 2015 has clarified the issue raised in question.

Clarification has been sought on: Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted. and:

The matter has been examined in the Ministry and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding / parent Indian company may place / file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English if the original accounts are not in English Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts.

In view of the above, if Strong Ltd. decides to get the accounts of the subsidiary company incorporated in Korea audited by its own auditor, it can do so provided:

a) The accounts of the subsidiary company abroad are translated in English, if the original accounts are not in English; and

b) the format of accounts of foreign subsidiary should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts of Strong Ltd.

Answer to Question No. 1 (c)

According to Section 204(1) of Companies Act, 2013 (the Act), read with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following companies are required to annex with its Board's Report under section 134 of the Act, a Secretarial Audit Report given by a company secretary in practice in Form MR-3:

a) Every listed company; or
b) Every public company with a paid-up equity share capital of Rs. 50 crore or more
c) Every public company with a turnover of Rs. 250 crore or more or
d) Every company having outstanding loan from banks or public financial institutions of Rs.100 crore or more.

According to Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), every listed entity and its material unlisted subsidiary(ies) incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice in Form MR-3 along with the annual report of the listed entity as per Schedule V of LODR.

According to Regulation 24A of LODR, every listed company shall also submit secretarial compliance report to the stock exchanges within 60 days from end of financial year.

The annual secretarial compliance report, apart from the coverage on compliance of laws applicable to the listed company, also requires the practicing company secretary to report on compliance of all applicable SEBI regulations, circulars and guidelines to the stock exchanges.

Thus, the given statement that every Company is mandated to obtain annual secretarial audit report and annual secretarial compliance report is not correct.

The statutory auditor of the company is a practicing-chartered accountant. Under Section 143 of the Companies Act, 2013, the statutory auditor is required to audit the financial accounts of the company and give his opinion whether the financial statements give a true and fair view of the state of affairs of the company.

The statutory auditor has no role in certifying the annual secretarial audit report or annual secretarial compliance report. Thus, the second part of the statement is also incorrect.

Annual secretarial audit report is different from annual secretarial compliance report. Both Annual secretarial audit report and Annual secretarial compliance reports are given by a practicing company secretary and not by the statutory auditor.

Thus, the second part of the statement is also incorrect.

Answer to Question No. 1 (d)

(i) The statement given is not true. Only eligible public companies as referred in sub section (1) of Section 76 of the Companies Act, 2013 read with The Companies (Acceptance of Deposits) Rules, 2014 having net worth of Rs. 100 crore or more or having an annual turnover of Rs. 500 crore or more and which has obtained prior consent of its members by a special resolution and filed the special resolution with the Registrar of Companies (ROC) at least 30 days before issue of circular to the depositor in Form DPT-1 can accept deposits from the public.

Thus, only passing a Board resolution for accepting deposits is not sufficient. Approval of members in general meeting by special resolution is mandatory for accepting deposits by the company.

(ii) The statement is not true. Appointment of independent deposit trustees is to safeguard the interests of the depositors. Appointment of deposit trustee is mandatory for companies accepting deposits from its members under section 73(2) of the Companies Act, 2013 (the Act) and also for eligible companies accepting deposits from the public under section 76(1) of the Act.

According to Rule 7(1) of Companies (Acceptance of Deposit) Rules, 2014, no company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

Whereas According to Section 71(5) of the Act read with Rule 18(2) of Companies (Share Capital and debentures) Rules, 2014, appointment of debenture trustee for a company is mandatory for a company issuing debentures when the number of debenture holders exceeds five hundred.

Hence, the appointment of deposit trustee is mandatory for companies accepting deposits irrespective of the number of deposit holders.

(iii) As per Section 73 (5), the amount deposited in the deposit repayment reserve account shall not be utilized for any purpose other than for the purpose of repayment of deposits. Thus, the amount lying in Deposit Repayment Reserve cannot be used to issue bonus share.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Answer to Question No. 2 (a)

According to Section 124 of Companies Act, 2013 (the Act), when dividend, has been declared by company but has not been paid by the company or not claimed by the shareholder within 30 days of the date of declaration of dividend, the company shall, within 7 days from the expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened in a scheduled bank called unpaid dividend account.

Any member entitled to any money transferred u/s 124(1) of the Act as unpaid dividend may apply to the company u/s 124(4) for the payment of unpaid dividend up to a period of 7 years from the date of transfer to the unpaid dividend account.

Effects of non-transfer of the dividend:

As per section 124(3) of the Companies Act, 2013 if any default is made in transferring the total amount referred in section 124(1) of the Act or any part thereof to the unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much amount as has not been transferred to the said account, at the rate of 12% per annum and interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

Section 124(5) of the Companies Act 2013 states that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued if any thereon to the Investor Education and Protection fund.

Answer to Question No. 2 (b)

Pursuant to Rule 3(6) of the Companies (Accounts) Rules, 2014 the company shall, where books of account are maintained in electronic mode, intimate to the Registrar on an annual basis at the time of filing of financial statement —

a) the name of the service provider;
b) the internet protocol address of service provider;
c) the location of the service provider (wherever applicable);
d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India**.**

Answer to Question No. 2 (c)

In accordance with Section 85(1) of the Companies Act, 2013 read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014 the entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case maybe.

Therefore, Sayani — Senior Manager (Accounts) ought to make entry in the Register of Charges maintained by the company in Form No CHG - 7 forthwith after creation of the same on 12^{th} March, 2023.

In accordance with Section 85(1) read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014, the register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

Thus, views of Sayani Senior Manager (Accounts) are not in order.

Answer to Question No. 2 (d)

According to section 91(1) of Companies Act, 2013 a company may close the register of members or register of debenture holders or register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time. A previous notice of at least seven days or such lesser period as may be specified by SEBI is to be given by a listed company.

In the case given in question Vibgyor Ltd. has closed its register of members for 14 and 16 days in May and July 2023 respectively. Therefore, the closure is within the time limits prescribed in section 91(1) as each closure has not exceeded 30 days.

If the company closes the register again in November 2023 for another 20 days, the aggregate closure during the year would be 50 (14+16+20) days which will exceed the prescribed time limit of 45 days.

Hence, the proposal of Prakash, HOD (Finance) of the company, is not valid under the Companies Act, 2013.

Answer to Question No. 2 (e)

In the case of joint-shareholders, one or more of them may require the company to alter or rearrange order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint- holders will be recognised for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorised officer of the company. Since no transfer of any interest in the shares take place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition also does not require stamp duty.

Transposition of names of shareholders in the register of members do not require the execution through instrument of transfer in Form SH-4.

The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.

OR (Alternate Question to Q. No. 2)

Answer to Question No. 2 A (i)

In terms of Rule 3 of Companies (Filing of Documents & Forms in XBRL) Rules, 2015 the Government has mandated certain classes of companies to file financial statements in XBRL mode using XBRL taxonomies. The following classes of companies have to file financial statements in XBRL form:

(i) all companies listed with any Stock exchange(s) in India and their Indian subsidiaries; or
(ii) all companies having a paid-up capital of ₹5 crore and above; or
(iii) all companies having a turnover more than ₹100 crores and above; or
(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015

However, banking companies, insurance companies, housing finance and non-banking financial companies have been exempted from XBRL filing.

The company is not required to file its financial statements for the year ended 31st March, 2024 through XBRL mode as it is a housing finance company and is exempted from application of the provisions. The Junior Officer (Accounts) has to be advised accordingly.

Answer to Question No. 2 A (ii)

As per Rule 2(h) of the Companies (Significant Beneficial Owners) Rules 2018, Significant Beneficial Owner in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

(i) holds indirectly, or together with any direct holdings, not less than 10% of the shares;

(ii) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

(iii) has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holding alone, or together with any direct holdings

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

a) Joy holds 7% of equity in Zed Ltd. directly. He is also the trustee of a discretionary trust that holds 4% equity in Zed Ltd. He is a Significant Beneficial Owner since he holds total 11% equity in Zed Ltd. through indirect and direct holdings. Holding by way of being a trustee of a discretionary trust is considered to be indirect holding.

b) Joy holds 6% of equity while Mahek holds 7% of equity in Zed Ltd. and they are deemed to act together — Joy and Mahek are not Significant Beneficial Owner as there is no indirect holding and their acting together is irrelevant.

c) Joy holds 9% of equity in Zed Ltd. directly. He is also the Karta of a HUF that holds 7% of equity in Zed Ltd. - He is a Significant Beneficial Owner since he holds total 16% equity through indirect and direct holdings.

Answer to Question No. 2 A (iii)

Rule 4 of Companies (Cost Records and Audit) Rules, 2014 provides for applicability of cost audit. Accordingly,

1) Every company specified in item (A) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees fifty crore or more and the aggregate turnover of the individual product or products or services for which cost records are required to be made under rule 3 is rupees twenty five crore or more.
2) Every company specified in item (B) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. non-regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services

during the immediately preceding financial year is rupees one hundred crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be made under rule 3 is rupees thirty five crore or more.

3) the requirement of cost audit under these rules shall not apply to a company which is covered in rule 3, and
   i) whose revenue from exports in foreign exchange exceeds seventy five percent of its total revenue; or
   ii) which is operating from a SEZ.
   iii) which is engaged in generation of electricity for captive consumption through captive generating plant.

In the given case, the turnover of Chirag Ltd. is Rs. 30 Crore. The company is advised that if the company operates in regulated sector, and the aggregate turnover of the individual product(s) /service(s) is Rs. 25 crores or more, then, cost audit will be applicable.

If it operates in non-regulated sector, cost audit is not applicable, as the turnover of the company does not meet the criteria prescribed in the Rules.

Answer to Question No. 2 A (iv)

As per Rule 10 (3) of Companies (Registration Offices and Fees) Rules, 2014 Except as otherwise provided in the Act the Registrar shall allow fifteen days' time to the person or company which has filed the application or e-form or document for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document.

In line with the above, the action of Assistant Registrar of Companies by giving fourteen days' time for furnishing further information or rectification of defects is not acceptable.

The e-form in which additional information is to be furnished by the company is GNL- 4.

In the case, where further information called for has not been provided or has been furnished partially or defects or incompleteness is not rectified or rectified partially within the period allowed, the Registrar shall either reject or treat the application or e-form or document as invalid. Consequently, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee as applicable at the time of fresh filing without prejudice to any other liability under the Act.

Answer to Question No. 2 A (v)

The issue in question relates to the lifting of the corporate veil under judicial interpretations. Normally Courts are reluctant or very cautious about the lifting of the veil of corporate personality to see the real persons behind it.

The facts of the case are that Madhuri, a famous singer, was a rich woman enjoying large dividends and interest income. She formed three private companies and agreed with each to hold a block of investment as an agent for it. The Income received was credited in the accounts of the company but the company handed back the amount to her as a loan in disguise. This way she divided her income in three parts in a bid to reduce her tax liability.

It was held the company was formed by the person purely and simply as a means of avoiding tax and the company was nothing more than the person/assessee herself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. The Court decided to disregard the corporate entity and ascertain the real persons behind as it was being used for tax evasion (*Re. Sir Dinshaw Maneckjee Petit, A.I.R. 1927 Bombay 371).*

Thus, on the basis of the above, it can be concluded that formation of Company to reduce tax liability is illegal in reference to fundamental concepts of company formation.

Answer to Question No. 3 (a)

(i) Surplus arising out of the CSR activities
Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the unspent CSR account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII of the Companies Act, 2013 (the Act) within a period of six months of the expiry of the financial year.

(ii) Excess CSR spends may be set off

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 of the Companies Act, 2013 read with rule 7 of Companies (Corporate Social Responsibility Policy) Rules, 2014, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that:

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

(iii) In case of specified IFSC public / private company — section 135 shall not apply for a period of five years from the commencement of business as per notification dated 4th January, 2017.Thus, CSR can be made not applicable to these Companies.

Answer to Question No. 3 (b)

(i) Secretarial Standard 4 (SS-4) pertaining to Report of the board of directors indicates that as a good governance practice the disclosure on credit rating should also be included in the Board's Report. The disclosure shall include the following:
   (a) credit rating obtained in respect of various securities;
   (b) name of the credit rating agency;
   (c) date on which the credit rating was obtained;
   (d) revision in the credit rating;
   (e) reason provided by the rating agency for a downward revision, if any.

(ii) Under section 92(2) of the Companies Act, 2013 read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014 the annual return of a listed company or of a company having a paid- up share capital of ₹10 crore or more or turnover of ₹50 crore or more shall be certified by a Company Secretary in practice in Form MGT-8. Accordingly, annual return of Bright Ltd., an unlisted company having a turnover of ₹60 crore shall be certified by none of the persons given in question but by a practicing Company Secretary.

Answer to Question No. 3 (c)

Disclosure(s) to stock exchange after the conclusion of a board meeting by Silence Ltd. a listed company -

In the case of a listed company, not later than 30 minutes of the closure of the Board meeting, intimate the stock exchanges with regard to the Board's decision about the declaration and payment of dividends [Regulations 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 read with Schedule III].

Notice of book closure:

Rule 10 of Companies (Management and Administration) Rules, 2014 mentions to publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company at least seven days before the date of commencement of book closure and in such manner as may be specified by Securities and Exchange Board of India

In case of listed companies:

(i) To give notice in advance of at least 7 working days (excluding the date of intimation and the record date) or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, specifying the purpose of Record Date [Regulation 42 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].

    The company shall recommend or declare all dividend at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

(ii) Time gap between two book closures would be at least 30 days [Regulation 42(4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].

PART – II

Answer to Question No. 4 (a)

(i) In line with para 1.3.6 of Secretarial Standard 1(SS-1) notice of an adjourned board meeting shall be given to all directors including those who did not attend the meeting on the originally convened date. Therefore, though D could not attend the original meeting due to preoccupation by seeking leave of absence which was granted, notice of adjourned board meeting should be sent to him whether or not there is any extraordinary business to be transacted in the adjourned meeting.

(ii) Para 1.3.7 of SS-1 provides that where a director specifies a particular means or delivery of agenda and notes thereon these papers shall be sent to him by such means. But in case of a meeting conducted at a shorter notice the company may choose an expedient mode of sending agenda and notes on agenda.

Applying the provisions in the given situation, delivery of agenda and notes thereon by hand at residence of small shareholder director Saptarshi when board meeting is convened at a shorter notice suddenly is valid though he had specified the delivery of same to him by email earlier. The objection raised by Saptarshi is not tenable.

Answer to Question No. 4 (b)

i) A director of a company may resign from office under section 168 of Companies Act, 2013 (Act) read with Rule (15) of Companies (Appointment and Qualifications of Directors) Rules, 2014 (Rules), by giving a Notice along with reasons for resignation to the company.

The Board of Directors (BOD) shall, on receipt of such Notice of resignation from a director, shall take note of the same.

ii) The company shall, within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar of Companies (ROC) in Form DIR-12 and may also post the information on its website as per Rule (15).

The BOD shall also mention the fact of such resignation of director in the Report of the Board of Directors under section 134 of the Act laid in the immediately following Annual General Meeting of the company.

iii) The director may, within 30 days from the date of resignation, forward to the ROC a copy of his letter of resignation along with reasons for resignation in Form DIR-11 along with the requisite registration fees as provided under Companies (Registration Offices and fees) Rules, 2014.

iv) The resignation shall be effective from the date on which the notice of resignation was received by the company or the date specified by the director in the Notice of resignation, whichever is later.

In this case, the director has filed a criminal complaint stating that the resignation letter was not signed by him, not genuine and also that his signature was forged.

v) However, as decided by NCLAT in a case *Harish Jain v Haveli Restaurant and Resorts Limited dated 26/02/2020, (Company Appeal (AT) No. 390 of 2018)* when a director alleges that his signature on the resignation letter was forged, it is for the director to prove that the resignation letter was a forged document. In other words, onus of proof falls on the complainant.

Thus, besides initiating measures to obtain anticipatory bail for all the KMPs of the company, the company secretary Rohit Biswas and the company can also contest the case on merits in the appropriate legal forum.

Answer to Question No. 4 (c)

(i) Yes, Companies can restrict the speakers depending on the availability of time. The notice calling for meeting should require the speaker shareholders to register themselves in advance and depending on the time availability, it shall be at the discretion of the Chairman to allow the speakers. In addition, the companies may allow recordings to be sent in advance with the permission of the Chairman and shareholders in order to avoid scenarios where a speaker shareholder may get disconnected or have an audio/visual connection issue thus saving time and effectively maintaining the decorum of the meeting.

(ii) In case the registers are not maintained in an electronic form, the physical registers/documents should be scanned for uploading in a virtual data room established for the purpose. Login ID and password can be provided for inspection and it is to be ensured that only view rights are given for inspection and the registers/documents cannot be deleted, copied or downloaded or the register/documents may be made available for inspection on a virtual platform (e.g., Zoom, Microsoft teams, etc.), and displayed in a presentation form. The registers/documents which shall be made available for inspection in connection with the AGM, shall be made available from the time notice is given till the conclusion of the meeting.

Therefore, the physical registers should be scanned to keep them open for inspection at the meeting to be held by video conferencing.

Answer to Question No. 4 (d)

As per Rule 5(2) of the Corporate Social Responsibility Policy Rules, 2014 the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely: -

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
(d) monitoring and reporting mechanism for the projects or programmes; and
(e) details of need and impact assessment, if any, for the projects undertaken by the company.

However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Attempt all parts of either Q. No. 5 or Q. No. 5A

Answer to Question No. 5 (a)

Yes. It is mandatory under section 173(2) of the Companies Act, 2013 for the company to allow the participation of directors in a meeting through video conferencing, unless the Companies Act, 2013 or any other law specifically prohibits such participation through electronic mode in respect of any item of business.

Accordingly, subject to the prior intimation to that effect received from the director sufficiently in advance so that the company is able to make suitable arrangements on this behalf, the Chairman shall make arrangements to allow the participation of the said Director in the meeting through video conferencing in accordance with the said Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. However, if the request is received too late so as not to allow reasonable time to make the necessary arrangements, then the Chairman is not bound to provide the video conferencing facility to the Director.

Yes. It is permitted under Section 173(2) of the Companies Act, 2013 read with Rules made thereunder, for even the Chairman of the meeting to join the meeting through video conferencing. Guidance Note on Secretarial Standards – 1 issued by the ICSI mentions that, in case the Chairman of the Board Meeting is participating through electronic mode, he should, while transacting any interested items of business in which he is interested, vacate the Chair and entrust the conduct of the proceedings in respect of such items to any other non-interested director attending the meeting and should not participate in the meeting in respect of such items.

Answer to Question No. 5 (b)

Section 167(1) of the Companies Act, 2013 provides for the cases where the office of a director shall become vacant. Section 167(1)(b) states that the office of a director shall be vacated if he absents himself from all the meetings of the Board of directors held during a period of twelve months with or without seeking leave of absence of the Board.

Examining the given case, Thunder, the director absented from all the four meetings of the board held from July to December 2023 by seeking leave of absence in first three and not seeking leave of absence in the last one. It is not that he did not attend all the meetings for a period of twelve months. Thus, his office does not become vacant and he can continue to be a director in the Board.

Disqualification of directors is dealt with under section 164 of the Companies Act, 2013 and is different from vacation of office of directors under section 167. Section 167(1)(a) provides that the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164, which does not include non-attendance of board meetings as a reason for disqualification.

Answer to Question No. 5 (c)

Section 174 of the Companies Act, 2013 deals with quorum for a Board meeting.

The section states that quorum for a meeting of Board of directors of a company shall be one third of its total strength or two directors, whichever is higher. Any fraction of a number shall be rounded off as one. Thus, where a company has nine directors quorum for Board meeting shall be higher of three (1/3 of 9) or two, i.e., three directors. Accordingly, three directors shall be quorum in case of Moon Ltd.

However, articles of a company can provide for a higher quorum. The quorum provided under section 174 is the minimum quorum. It is open to the company, by its articles, to indicate a higher, but not a lower number or proportion as constituting a valid quorum. *Amrit Kaur Puri vs Kapurthala Flour Oil & General Mills Co. Pvt Ltd (1984) 56 Com. Cases 194 (P&H).*

Hence, the clause in Articles of Moon Ltd. stipulating that quorum for a Board meeting will be at least 5 directors of which two are foreign nationals is valid.

Answer to Question No. 5 (d)

The following provisions are contained in Section 165 of the Companies Act, 2013 (the Act) for number of directorships a person can hold in companies.

(1) As per Section 165 (1) of the Companies Act, 2013, after commencement of the Act, no person shall hold office of a director, including any alternate directorship in more than twenty companies at the same time, provided that maximum number of public companies in which a person can be appointed shall not exceed ten.

(2) As per the explanations provided in Section 165(1) of the Companies Act, 2013:
   (i) for reckoning the limit of public limited companies in which a person can be appointed as director, the directorship in private companies that are either holding or subsidiary company of a public company shall be included.
   (ii) for reckoning the limit of directorships in twenty companies, the directorship in a dormant company shall not be included.

In view of the above provisions for calculating the directorships held by Sukanya, the directorship held in 1 dormant public limited company shall be excluded.

Therefore, she can accept the invitation of Green Ltd. for directorship and after appointment in Green Ltd., the directorships held by her will be within the overall prescribed limit of 20 companies (including not more than 10 Public companies) as indicated under:

1) 10 public limited companies
2) 1 dormant public limited company (excluded from the limit as above)
3) 10 private companies

Answer to Question No. 5 (e)

i) As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as ‘Compliance Officer’, who will be responsible for the following –

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.
(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity.
(d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

ii) Company Secretary has been defined as 'Officer who is in default' under Section 2(60) of the Companies Act, 2013 along with Managing Director, Manager and Whole time Director etc. Thus, he can be punished in respect of offences under Companies Act, 2013. He may be held liable as Key Managerial Personnel also under various provisions of the Act.

OR (Alternate Question to Q. No. 5)

Answer to Question No. 5 A (i)

(a) According to Sec 149(6) of Companies Act, 2013 read with Regulation 25(2A) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), an independent director of a listed company shall be appointed by passing a special resolution in the general meeting.

According to Regulation 16(1)(b) of LODR the independent director shall not be less than 21 years of age.

Hence, the appointment of Sudarshan Chakraborty, aged 20 is invalid on both counts.

(b) Section 161(3) of the Companies Act, 2013, provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

However, there is an exception to this sub section in case of specified IFSC public company and specified IFSC private company. Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the appointing bank/institution/Government, the company may choose any of these two methods.

Thus, in view of above, Karna Kumar Baag, a nominee director appointed by BICCI Bank Ltd. Cannot be removed by Reliable Capacitors limited, a listed Company, by passing an ordinary resolution.

Answer to Question No. 5 A (ii)

(a) According to Section 96 read with Secretarial Standard-2(SS-2), the Annual General Meeting (AGM) of the listed company needs to be conducted at the village/town/city where the Registered Office of the company is located.
However, the Central Government may exempt any company from the provisions of section 96(2) subject to such conditions as it may impose.

Unless the company has obtained exemption from the Central Government, the action of the company of holding the AGM in Kolkata is not valid.

(b) As per Para 15.2 of SS-2, if a general meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned meeting shall be given at least 21 clear days before the adjourned meeting to comply with provisions of Section 101 of the Companies Act, 2013 relating to Notice.

Since, the AGM has been adjourned for more than 2 months, three days' Notice and posting of Notice on the website of the company is not valid. The company needs to send Notice of the adjourned meeting at least 21 clear days before the meeting by permitted mode of communication like, electronic means.

Answer to Question No. 5 A (iii)

As per para 6.1.2 of Secretarial Standard on Board Meeting (SS-1), where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the resolution for consideration at a Meeting of the Board.

"Total number of Directors" above means the "total strength of the Board" which does not include Directors whose places are vacant. Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

In the case under consideration, total number of directors is nine i.e., twelve less three. For the purpose of reckoning l/3rd stipulation as above, total number of directors be taken as 9 and not six (nine less three interested directors).

Thus, if three directors (1/3rd of 9 which may include interested directors) require resolution under circulation to be decided at a Meeting, the resolution by circulation should not be proceeded with.

Answer to Question No. 5 A (iv)

Section 184 of the Companies Act, 2013 requires the disclosure of interest by a director and prohibits an interested director to participate or vote in respect of that particular transaction at the Board meeting subject to certain exceptions for private limited companies. Further, his presence will not be counted for quorum too. But where the whole body of directors is aware of the fact relating to interest of a director, formal disclosure is not necessary. (*Ramakrishna Rao vs Bangalore Race Club).*

The mere voting by an interested director will not render the contract void or voidable unless in the absence of that vote, there would have been no quorum. The mere fact that voting in such situation the director shall be liable to a penalty of one lakh rupees under section 184 (4) of the Act does not ipso facto render the contract void or voidable. In this case, there is no allegation of earning secret profits.

Under section 184 of the Act, there does not exist any ban on contract in which directors are interested. The only requirement is that interest should be disclosed. Even where the interest is not disclosed, the transaction is only voidable against the interested director and not void as decided in *Narayan Das Shreeram Somani vs Sangli Bank.*

Under section 184(3) of the Act, a contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

Answer to Question No. 5 A (v)

Section 149(10) of the Companies Act, 2013 prescribes that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) states that no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

General Circular No. 14/2014 issued by MCA dated 9th June, 2014 clarifies that though an independent director is to be appointed for a term up to 5 years, there is no bar on appointment for a term of less than 5 years. However, such appointment for less than 5 years is to be counted as one term and at the end of two such consecutive terms, the director should demit his office, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case, at the end of the 2 consecutive terms, he cannot be reappointed again as independent director and the cooling period of 3 years shall start.

In view of the above, Jupiter Ltd. cannot reappoint Ashok as independent director of the company at the end of second consecutive term.

PART - III

Answer to Question No. 6 (a)

Clause 7 of Part I of the First Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he— "Advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or signboards, unless it be a degree of a university established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

In line with the above, advertisement by a Practicing member for staff for his office in the press should in no way savour of any advertisement of professional attainments or services. The use of certain adjectives like "a reputed firm", "a well-known firm", etc. may be treated as inconsistent with the spirit of this clause. A practicing Company Secretary cannot include in his advertisement following particulars like the infrastructure available in his own office, details of Associate practicing Company Secretaries, details of his networking in other places within & outside India, infrastructure at such networked offices, number of trainees who have completed training from his office, certain landmark achievements like number of companies incorporated since he started his practice, number of appearances made before NCLT, CBDT, Tribunals, Regulatory Authorities, Commissions, number of Foreign Collaborations handled, number of Merger & Acquisitions handled, number of due diligence carried out etc.

Thus, in the given case CS Nitesh can be held guilty of professional misconduct under clause 7 of Part I of First Schedule to Company Secretaries Act, 1980.

Answer to Question No. 6 (b)

(i) The revenue sharing model of a Mega Firm could be the following:

1. Partner bringing new client shall be given referral or induction share, say, @ 15% of the fees settled and received; it can be for the first year or for given number of years;
2. Certain percentage of fees, say 15% shall be retained in business in common pool for meeting expenses;
3. 70% of the fees shall be given to the partner or partners who actually work on the assignment (assignment share). When more than one partners are involved in an assignment their share can be determined based on respective role;
4. At the year-end after meeting expenses resultant profit shall be shared in proportion of contribution of individual in the gross earnings/ net profit of the firm;
5. Internally, different verticals can be created and surplus generated by each one can be assessed as an independent cost centre.

(ii) As per para 8.3 of Secretarial Standard – 2 on General Meetings minutes book shall be kept in the custody of any director duly authorised for the purpose by Board where there is no Company Secretary in the company.

Therefore, the minute book can be kept in the custody of any authorized director and not in the custody of the senior officer.