

SETTING OF BUSINESS ENTITIES AND CLOSURE

DEC - 2022

423

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

NOTE : Answer ALL Questions.

PART-A

1. (a) Sumit Bhasin has an expertise in the field of Modular Kitchen designing, he possesses adequate education too in this field. Now in order to start his venture, he wants to consult a Company Secretary for getting aware of various modes of organization and to select the best mode keeping in view their merits and demerits. As a Company Secretary, make Sumit Bhasin acquainted with available modes of organization while briefing the merits and demerits of each.
- (5 marks)
- (b) Raman is an Indian Citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Sanjay, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Raman eligible to incorporate a One-Person Company (OPC) ? If yes, can he give the name of Sanjay in the Memorandum of Association as his nominee ? Justify your answers with relevant provisions of the Companies Act, 2013.
- (5 marks)
- (c) Ramesh wishes to form a Nidhi Company with a minimum paid-up equity share capital of ₹ 12 lakh. Ramesh is seeking your guidance regarding the general limitations and prohibitions put in place for Nidhi Companies.

(5 marks)

- (d) Hardev Lal, Director of JKL Limited acted bona fide to pursue one of the 'objects' of the Company not falling within the 'object clause' of its Memorandum of Association. Subsequently, such fact was noticed through the contents of the Boards' Report wherein it was reported that such persuasion had resulted in a loss to the Company to the extent of ₹ 25 lakh during the first year itself. The members of the Company disapproved the transaction and required explanation from the Board of Directors. As a Company Secretary, what do you advise the management in this matter and how to fix the responsibility of Hardev Lal. Support your answer with the help of leading case law.

(5 marks)

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

2. (a) Matrix Limited is an unlisted company, having its registered office at Chennai. The Annual General Meeting was held at Goa on 1st July, 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa was received by 24th June, 2021 through Email.

- (i) Examine the validity of the meeting as per the provisions of the Companies Act, 2013.
- (ii) State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director.

(2+2=4 marks)

- (b) Explain the difference between Public Trust and Private Trust.

(4 marks)

- (c) Radha Furnishing Pvt. Ltd. a Start-up Company wants to issue sweat equity shares to its employees. Is there any provision regarding it ? Explain.

(4 marks)

: 3 :

- (d) Wonkar Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. A, a member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.
- (i) Is there any provision under the Companies Act, 2013 to revoke the license ?
If so, state the provisions.
- (ii) Whether the Wonkar Club can be merged with Stick Private Limited, a company engaged in the business of Networking ?

(2+2=4 marks)

- (e) SDM Pvt. Ltd. is having paid up share capital of ₹ 45 Lakh and annual turnover of ₹ 185 Lakh. It is a wholly owned subsidiary of K Ltd. a listed company. Can SDM Pvt. Ltd. be called a Small Company as per the provisions of the Companies Act, 2013.

(4 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) (a) Shankar Narain, director of Rakant Business Solutions Ltd. resigned with effect from 1st April, 2021. As required under the provisions of the Companies Act, 2013, the company has filed e-form No. DIR-12 with the Registrar of Companies mentioning the date of resignation as 30th June, 2021 being the date of acceptance of such resignation by the Company. The Company continued to issue various cheques (with pre-printed signatures of resigned director) in the ordinary course of its business to its investors in repayment of the deposits after 1st April, 2021 but the said cheques were dishonoured. The investors filed complaints against the company and Shankar Narain, the former director of the company. Discuss and advice whether Shankar Narain shall be liable or not in this case for the cheques issued till 30th June, 2021.

(2 marks)

P.T.O.

- (b) Lakshmi Tube Lights Private Limited has committed a default which is in violation of the provisions of the Companies Act, 2013. No specific penalty or punishment is provided in the Act for the said default. In the given circumstances, decide the quantum of punishment for contravention that may apply to Lakshmi Tube Lights Private Limited, as provided under the Companies Act, 2013.
(2 marks)
- (ii) NBFCs lend and make investments and hence their activities are akin to that of banks; however, there are a few differences between them. Explain.
(4 marks)
- (iii) Delta LLC is a Limited Liability Corporation registered in California (USA). The company has no place of business in India by itself or through agent, but it's doing online business through electronic mode in India. Explain whether Delta LLC will be treated as a Foreign Company as per the provisions of the Companies Act, 2013 ?
(4 marks)
- (iv) Is the procedure for incorporating Housing Finance Company is same as any other Company ? Elucidate.
(4 marks)
- (v) Define the term "Unicorn Start-ups".
(4 marks)

PART-B

3. (a) (i) Central Goods & Services Tax Act, 2017 (CGST Act, 2017) prescribe the cases where registration under the Act is compulsory, irrespective of the aggregate turnover. Discuss.
(ii) On the other hand, under CGST Act, 2017 there are certain people who are not liable to be registered. Discuss.
(3+2 marks)
- (b) Vikram Overseas Pvt. Ltd. has a paid up capital of ₹ 50 lakh and turnover of ₹ 15.80 crore in the last financial year 2020-21. The Company has filed its annual return for the relevant financial year signed by only one director of the company. With reference to the provisions of the Companies Act, 2013, analytically comment whether the act of the company is in order ?
(5 marks)

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(c) Entrepreneurs are required to obtain Statutory Clearances relating to Pollution Control and Environment while setting up an Industrial Project. Central Pollution Control Board has specified list of industries requiring pollution license/certificate or consent. Ministry of Environment carries on the classification from highest to lowest Pollution Index and categorized the industries. Explain.

(5 marks)

(d) (i) Define the term "Commercial Establishment" under Shop & Establishment Act.

(ii) What do you understand from "Assignment of Copyright" ?

(5 marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

4. (a) Any business entity doing business in India requires a PAN (Permanent Account Number) whether it is registered in India or not. Elucidate.

(3 marks)

(b) Garg Builders Pvt. Ltd. has changed its name. There is no alteration in the constitution or legal status of the company. The fact of alteration of name was not brought to the notice of the Tribunal. Has the company got a right to execute a decree in its new name after change of name ?

(3 marks)

(c) Triveni Pvt. Ltd. incorporated on 1st August, 2018 having its registered office at Shahdara, New Delhi. Management of the Company kept some of the statutory records in the other branch of the Company in Janakpuri, New Delhi. Explain whether Company is eligible to keep its statutory records at place other than its registered office under the Companies Act, 2013 ?

(3 marks)

P.T.O.

: 6 :

- (d) Are the Enterprises required mandatorily to maintain cash records in the era of Digitalization ?
(3 marks)
- (e) Ramesh is going to setup a manufacturing, storing and packaging plant of cow ghee. He seeks your advice on the types of FSSAI license required to take before starting food business. Advise.
(3 marks)

OR (Alternate question to Q. No. 4)

- 4A. (i) Briefly discuss prime objectives of different labour legislations with its type of interventions/ areas dealt with therein.
- (ii) Discuss Udyog Aadhar Memorandum.
- (iii) What are the circumstances under which RBI may cancel the license granted to a banking company regulated under the Banking Regulation Act, 1949 ?
- (iv) Explain the deductions that can be made from the wages of an employee under Payment of Wages Act, 1936. <https://www.pyqonline.com>
- (v) Abhinav has joined Vuddle Modulars Pvt. Ltd. as Trainee, to the Secretarial & Legal Department of the Company. He has been asked to prepare a checklist of compliances under Environmental Laws attributing **Waste Management, Air Emissions and Contamination**. Help him prepare the same.
(3 marks each)

PART-C

5. (a) In a winding up petition filed before NCLT, one of the recognized Trade Union raised its voice against such winding up for the reasons inter alia that the closure of the unit affects the livelihood of the workers/employees. Decide whether workmen have a right to be heard before winding up petition is admitted ?
(3 marks)

Contd.

: 7 :

- (b) In the case of Unique Metals Limited, all the creditors have been satisfied. Can the Adjudicating Authority without waiting for 180 days of Resolution Process, approve Resolution Plan under Section 31 of IBC ? (3 marks)
- (c) What is the threshold limit for making an application for insolvency and liquidation of corporate persons ? (3 marks)
- (d) What are the various compliance requirements by a Dormant Company ? (3 marks)
- (e) Can a petition for winding up be made by a profit making company ? Discuss. (3 marks)
6. - (a) List the types of companies which cannot be removed/strike off under the provisions of Section 248 (1) and (2) of the Companies Act, 2013.
- (b) Describe the procedure mentioned under Section 53 of Insolvency and Bankruptcy Code (IBC), 2016 for distribution of assets. (5 marks each)

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