

**CA – Inter (New Syllabus)**  
**Paper – 2 “Corporate and Other Laws”**

**M.M.: 35****Time allowed: 60 Mins.****Instructions: All Questions of Division A are compulsory.**

<b>Division A – Multiple Choice Questions</b>			<b>Marks</b>
<b>Case Scenario 1</b>			
<b>Q.1</b>	(b)	Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.	2
<b>Q.2</b>	(b)	No, OPC cannot be converted into Sec. 8 company.	2
<b>Q.3</b>	(d)	29th September 2022.	2
<b>General MCQs</b>			
<b>Q.4</b>	(b)	No, as Angel Infrastructure Pvt. Ltd. is a subsidiary company.	1
<b>Q.5</b>	(b)	will have the right to vote because dividend for last two years have not been paid.	1
<b>Q.6</b>	(d)	A private limited company can have unlimited share capital.	1
<b>Q.7</b>	(b)	At the time of delivery of the prospectus for registration.	1

**DIVISION B – DESCRIPTIVE QUESTION****Q. No. 1 is compulsory****Attempt any four questions from the Rest**

- Q.1 (a) Officer in Default:** 5
- As per Sec. 2(60) of Companies Act, 2013, officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:
- (i) whole-time director;
  - (ii) key managerial personnel (KMP);
  - (iii) where there is no KMP, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
  - (iv) any person who, under the immediate authority of the Board or any KMP, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  - (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
  - (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; and

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

**Conclusion:** In the given case, there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

**(b) Issue of Sweat Equity shares by a startup company:**

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- As per Sec. 54 of the Companies Act, 2013, a company can issue sweat equity shares to its director and permanent employees of the company.
- Rule 8 of the Companies (Share Capital and debentures) Rules, 2014 provides that a startup company, may issue sweat equity share not exceeding 50% of its paid-up share capital up to 10 years from the date of its incorporation or registration.
- Further, the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment.
- In the given case, a startup company is willing to issue 10% sweat equity shares (which in total will add up to 30% of its paid-up equity shares), with a locking period of 5 years.

**Conclusion:** Company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid-up share capital. But the lock in period of the shares is limited to maximum 3 years period from the date of allotment.

**Q.2 Private Placement:**

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- As per Sec. 42 of Companies Act, 2013, a private placement shall be made only to a select group of persons who have been identified by the Board through issue of a private placement offer-cum-application. The offer of securities or invitation to subscribe securities, shall be made maximum to 50 persons or such higher number as may be prescribed, in a financial year and on such conditions as may be prescribed. However, this does not include qualified institutional buyers and employees of the company being offered securities under a scheme of employee's stock option.
- As per Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014, such offer or invitation shall be made to not more than 200 persons in the aggregate in a financial year. 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. The restrictions would be reckoned individually for each kind of security that is equity share, preference share or debenture.
- No fresh offer or invitation u/s 42 shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
- Any offer or invitation not in compliance with the provisions of Sec. 42 shall be treated as a public offer and all provisions will apply accordingly.
- In given case, PQR Bakers Limited issued private placement offer letters for issuing equity shares to 55 persons. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures.

**Conclusion:** Applying the provisions as stated above, following conclusions may be drawn:

- (a) PQR Bakers Limited is allowed to raise funds through private placement offer. 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.
- (b) Private placement offer of debentures was made before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of Sec. 42. Hence, the offers given by the company will be treated as public offer.
- (c) If the offer for debentures is given after allotment of equity shares, then both the offers can be treated as private placement offers.

**Q.3 Companies not to be considered as listed companies:**

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As per Rule 2A of Companies (Specification of Definitions details) Rules, 2014, for the purpose of Sec. 2(52), the following classes of companies shall not be considered as listed companies, namely:

- (a) Public companies which have not listed their equity shares on a recognised stock exchange but have listed their-
  - (i) non-convertible debt securities on private placement basis in terms of SEBI (Issue and Listing of debt Securities) Regulations, 2008; or
  - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-convertible Redeemable Preference Shares) Regulations, 2013; or
  - (iii) both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
- (c) Public companies which have not listed their equity shares on a recognised stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in Sec. 23(3) of the Act.

**Q.4 Change of registered Office:**

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Provisions relating to change of registered office of the company are covered u/s 12 of the Companies Act, 2013.

- (i) **Shifting of Registered office from Thane to Dadar (one District to another District) falling under jurisdiction of same ROC i.e. Registrar of Mumbai:** As per Sec. 12 of the Companies Act, 2013, change in registered office outside the local limit from one town or city to another in the same state, may take place by virtue of a special resolution passed by the company. No approval of regional director is required. Accordingly, said proposal is valid.
- (ii) **Shifting of Corporate Office from Pune to Mumbai:** Sec. 12 talks about shifting of Registered office only. In this case, corporate office is being shifted from Pune to Mumbai under the authority of Board resolution. Hence, shifting of corporate office under the board resolution is valid.
- (iii) **Shifting of Registered Office within the same city:** As the registered office is shifted within the same city, said proposal is valid in terms it has been passed under the authority of Board resolution.

**Q.5 Issue of Further Shares:**

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As per Sec. 62(1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to:

- (a) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
- (b) employees under a scheme of employees’ stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
- (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

In the given case Dhyam Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shyam Ltd. is neither an existing equity shareholder of the company nor an employee.

**Conclusion:** Dhyam Dairy Ltd., if it is authorised by a special resolution, may issue shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

**Q.6 (i) Revocation of License of Sec. 8 company:**

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- As per the Sec. 8 of the Companies Act, 2013, the C.G. may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.
- On revocation, the Registrar shall put ‘Limited’ or ‘Private Limited’ against the company’s name in the register. But before such revocation, the C.G. must give the company a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

**Conclusion:** C.G. can revoke the license given to State Cricket Club as Sec. 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given u/s 8.

**(ii) Winding up of Sec. 8 company:**

- Where a licence of Sec. 8 company is revoked, the C.G. may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.
- However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

**Conclusion:** Star Cricket Club may be wound up.

**(iii) Amalgamation of Sec. 8 company with another company:**

- A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

**Conclusion:** State Cricket Club cannot be merged with Cool Net Private Limited as the objects of both the companies are different and not similar.

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