Corporate Laws PYQ 2018

Q1 a A company in law is a different person altogether from the members." Comment, citing the relevant case laws.

Ans. The statement **"A company in law is a different person altogether from the members**" refers to the principle of **corporate personality**, which recognizes that a company is a separate legal entity distinct from its shareholders or members. This principle establishes that a company has its rights, liabilities, and obligations independent of those of its members. The company can enter into contracts, own property, sue and be sued, and engage in various legal transactions in its own name.

There have been several landmark cases that have reinforced and solidified the concept of corporate personality. Here are two notable examples:

Salomon v. Salomon & Co. Ltd. (1897):

This case is a cornerstone in company law and illustrates the concept of corporate personality. Mr. Salomon was the sole owner of a successful business, which he incorporated as a limited liability company. When the company encountered financial difficulties, it went into liquidation. Mr. Salomon argued that he should be personally liable for the company's debts. However, the House of Lords held that the company was a separate legal entity distinct from its owner, and therefore, Mr. Salomon was not personally liable for the company's debts. This case established the principle of separate legal personality and emphasized that once a company is incorporated, it is treated as a separate person in the eyes of the law.

Macaura v. Northern Assurance Co. Ltd. (1925):

In this case, Mr. Macaura owned timber and other assets, which he transferred to a company that he incorporated. He then purchased insurance policies on those assets in the name of the company. When the timber was destroyed in a fire, Mr. Macaura claimed insurance compensation. However, the court held that Mr. Macaura could not claim for the loss as he did not have an insurable interest in the assets owned by the company. The court reiterated that the company was a separate legal entity, and the ownership of the assets belonged to the company, not Mr. Macaura personally.

These cases, along with other legal precedents, firmly establish the principle that a company is a distinct legal entity from its members. The company has its own rights, obligations, and liabilities, and the actions and liabilities of its members are generally separate from those of the company. This separation of legal personality is a fundamental aspect of company law and provides protection to shareholders by limiting their personal liability to the extent of their investment in the company.

Q1 b Write a note on a 'small company'.

Ans. A **'small company' is a term used in company law to refer to a company that meets certain criteria of size and eligibility**. The concept of a small company aims to provide certain exemptions and simplified compliance requirements for companies that fall within its definition. The specific provisions and criteria for small companies may vary across jurisdictions, but here is a general overview:

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Size Criteria: Small companies are typically characterized by their size, which is determined based on factors such as their turnover, balance sheet total, and number of employees. The exact thresholds for these criteria may differ depending on the applicable company law. For example, a company may be considered small if its turnover does not exceed a certain amount, its balance sheet total is below a specified limit, and it has a limited number of employees.

Exemptions and Simplified Compliance: Small companies often enjoy certain exemptions and relaxed compliance requirements compared to larger companies. These exemptions are aimed at reducing the administrative burden and costs for small businesses. They may include exemptions related to financial reporting, audit requirements, filing obligations, and corporate governance provisions. Small companies may be allowed to prepare simplified financial statements, avail of reduced filing fees, and have fewer reporting obligations.

Private Company Status: In many jurisdictions, small companies are also classified as private companies. This means that they are not publicly traded on a stock exchange and have a limited number of shareholders. Private companies generally have fewer regulatory obligations compared to public companies.

Stimulating Entrepreneurship: The concept of small companies recognizes the importance of fostering entrepreneurship and supporting the growth of small businesses. By providing exemptions and simplified compliance requirements, small companies are encouraged to focus on their core activities and growth prospects without being burdened by excessive regulatory obligations.

It's **important to note that** the specific criteria and provisions for small companies may vary across jurisdictions, and it's necessary to refer to the relevant company law in a specific jurisdiction to understand the exact requirements and benefits applicable to small companies. **Additionally,** the status of a small company may change over time as the company's size and circumstances evolve, potentially resulting in the need to comply with different regulatory requirements.

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Q1 c The Companies Act is not against the profits made by a promoter, but its non-disclosure." Examine the statement with regard to duties and obligations of promoter of a company.

Ans. The statement suggests that the Companies Act is not inherently against promoters making profits but emphasizes the importance of disclosing those profits. Let's examine the duties and obligations of a promoter of a company to understand the context of the statement.

A promoter is an individual or a group of individuals who take the initiative to form a company, arrange its capital, and set it in motion. Promoters play a crucial role in the early stages of a company's formation and are responsible for bringing together the necessary resources and individuals to establish and promote the business. While their actions are essential for the company's creation, promoters also have certain duties and obligations towards the company and its future shareholders. These duties include:

Fiduciary Duty: Promoters owe a fiduciary duty towards the company they are promoting. This duty requires them to act in good faith, with loyalty, and in the best interests of the company. They should not exploit their position for personal gain or benefit at the expense of the company or its shareholders.

Duty of Full and Fair Disclosure: Promoters are obligated to provide full and accurate disclosure of all material facts, including their interests, profits, and any potential conflicts of interest. They should not withhold or misrepresent any information that may impact the company or its shareholders' decision-making.

Duty to Exercise Reasonable Care and Skill: Promoters are expected to exercise a reasonable degree of care, skill, and diligence in carrying out their promotional activities. They should ensure that all statements, representations, and information provided to potential investors or the public are accurate and not misleading.

Compliance with Legal Requirements: Promoters must comply with the provisions of the Companies Act and other relevant laws and regulations governing the formation and promotion of companies. They should adhere to the prescribed procedures, disclosure requirements, and ethical standards while promoting the company.

Regarding the statement, the Companies Act does not prohibit promoters from making profits. However, it emphasizes the importance of disclosing any profits made during the promotion process to ensure transparency and protect the interests of potential investors. Non-disclosure of profits by a promoter can be seen as a breach of their duty to provide full and fair disclosure, potentially misleading investors and compromising their decision-making.

Non-disclosure of profits may raise concerns about **conflicts of interest, self-dealing, or potential financial improprieties**. By requiring disclosure, the Companies Act aims to ensure that shareholders and investors have access to all relevant information to make informed decisions about the company's prospects and risks.

In **conclusion,** while the Companies Act does not prohibit promoters from making profits, it emphasizes the duty of full and fair disclosure. Promoters are expected to act in the best interests of the company, exercise reasonable care and skill, and comply with legal requirements, including the disclosure of any profits made during the promotion process.

OR

Q1 a "The property of a company is the property of its members." Comment on the statement with the help of suitable case laws.

Ans. The statement "The property of a company is the property of its members" reflects the principle of corporate personality, which establishes that a company is a legal entity separate from its members. As a separate legal entity, a company has its own assets and liabilities, distinct from those of its shareholders. Let's examine this principle further with the help of relevant case laws.

One notable case that supports the concept of separate corporate personality is the landmark case of Salomon v Salomon & Co Ltd (1897) AC 22. In this case, the House of Lords affirmed the principle that a company, once incorporated, has a distinct legal personality from its shareholders. Mr. Salomon was the majority shareholder and a creditor of Salomon & Co Ltd. When the company went into liquidation, the issue arose as to whether Mr. Salomon, as a shareholder, could claim a right to the company's assets ahead of other creditors. The court held that Mr. Salomon's separate legal personality as a shareholder prevented him from claiming the company's assets as his own. The

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company's property was deemed separate from the property of its shareholders, including Mr. Salomon.

This principle has been consistently upheld in subsequent cases, such as Macaura v Northern Assurance Co Ltd (1925) AC 619. In this case, Mr. Macaura insured timber that he owned personally but held in his capacity as the sole shareholder of a company. The company suffered a loss due to the timber being destroyed, and Mr. Macaura sought to claim compensation under the insurance policy. The court held that Mr. Macaura, as an individual, did not have an insurable interest in the company's property because it was distinct from his personal assets. The company's property was considered separate, and only the company itself could have an insurable interest in its own property.

These cases demonstrate that the property of a company is not the property of its members individually. A company's assets and property are held by the company as a separate legal entity, distinct from the personal assets of its shareholders. This principle of separate corporate personality provides important legal protection, allowing for limited liability for shareholders and facilitating the company's ability to own, manage, and transfer property in its own right.

However, it is essential to note that there are circumstances where the courts may "pierce the corporate veil" and disregard the separate legal personality of a company in certain exceptional situations, such as fraud, improper conduct, or evasion of legal obligations. But in the absence of such exceptional circumstances, the property of a company remains distinct from the property of its members.

In **conclusion,** the principle of separate corporate personality established in case laws such as Salomon v Salomon & Co Ltd reinforces that the property of a company belongs to the company itself and is not automatically the property of its members. The members of a company enjoy limited liability and do not have direct ownership or entitlement to the company's assets.

Q1 b Explain the concept of 'Producer Company'. State the objectives for which a producer company may be formed.

Ans. A producer company is a unique form of business organization that is specifically designed to cater to the needs and interests of agricultural producers and rural entrepreneurs in India. It is regulated by the Companies Act, 2013, and is intended to facilitate the formation of companies by farmers, artisans, and other rural producers. The primary objective of a producer company is to improve the livelihoods and enhance the welfare of its members who are engaged in primary production activities.

Here are some key features and objectives of a producer company:

Formation and Membership: A producer company can be formed by ten or more individuals, or two or more institutions (such as cooperatives or associations) engaged in primary production activities. The members of a producer company are primarily rural producers who contribute to or are involved in the company's activities.

Profit Generation: A producer company operates on the principle of earning profits through collective efforts and mutual cooperation. The primary aim is to enhance the income and economic

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well-being of its members by undertaking production, procurement, processing, marketing, and selling of agricultural produce, primary produce, or goods related to the activities of its members.

Benefit of Members: The primary focus of a producer company is to ensure the welfare and benefit of its members. The profits generated by the company are distributed among the members in proportion to their participation or contribution to the company's activities.

Limited Liability: Members of a producer company have limited liability, which means their personal assets are protected from the debts or liabilities of the company. This limited liability provides a safeguard to individual members and encourages them to participate in the company's activities.

Democratic Structure: A producer company functions on democratic principles, giving each member an equal say in decision-making processes. Members have the right to vote on matters related to the company's operations, policies, and governance.

Capacity Building: Producer companies aim to enhance the capacity and skills of their members by providing training, education, and technical support related to agricultural practices, technology adoption, marketing strategies, and financial management.

Market Access and Bargaining Power: By pooling their resources and collective strength, producer companies enable their members to have better access to markets, negotiate better prices for their produce, and have stronger bargaining power in dealing with intermediaries or buyers.

Sustainable Development: Producer companies encourage sustainable agricultural practices, eco-friendly techniques, and social responsibility among their members to promote sustainable development in rural areas.

Overall, the concept of a producer company is aimed at empowering rural producers, enhancing their incomes, and fostering inclusive economic growth. It provides a platform for farmers and rural entrepreneurs to collectively address challenges, gain market access, and improve their socio-economic conditions through mutual cooperation and shared prosperity.

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Q1 c Describe the essential steps to be taken for on-line registration of a company.

Ans. The process of online registration of a company in India involves several steps. Here are the essential steps to be taken for online registration:

Obtain Digital Signature Certificate (DSC): The first step is to obtain a digital signature certificate for the proposed directors and shareholders of the company. A digital signature is required to sign the electronic documents during the registration process. The DSC can be obtained from certified authorities.

Obtain Director Identification Number (DIN): The proposed directors of the company need to obtain Director Identification Number (DIN) from the Ministry of Corporate Affairs (MCA). DIN can be obtained by submitting an online application with necessary documents and fees.

Name Reservation: Choose a unique name for the company and check its availability on the MCA portal. Submit an online application for name reservation along with the required fees. The name should comply with the guidelines and restrictions provided by the MCA.

Prepare and File e-Forms: Prepare the necessary e-Forms for company registration, including the Memorandum of Association (MOA), Articles of Association (AOA), and other relevant forms like Form SPICe (Simplified Proforma for Incorporating Company Electronically). Fill in the required details accurately and attach the necessary documents as per the instructions provided.

Pay Fees and Stamp Duty: Pay the required registration fees and stamp duty for the incorporation of the company. The fees can be paid online through the MCA portal.

Verification and Scrutiny: After submitting the e-Forms and paying the fees, the MCA will review the application and supporting documents. The MCA may raise queries or seek clarifications during this process.

Certificate of Incorporation: Once the application is approved, the **Registrar of Companies (RoC**) will issue a Certificate of Incorporation (COI). The COI serves as proof of the company's legal existence. It contains important details such as the company name, registration number, date of incorporation, and registered office address.

Apply for PAN and TAN: After obtaining the COI, apply for the company's Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN) with the relevant authorities.

Compliance and Post-Incorporation Requirements: After the company is incorporated, certain compliance requirements need to be fulfilled, such as obtaining a Goods and Services Tax (GST) registration (if applicable), opening a bank account, maintaining books of accounts, and complying with annual filing and other statutory obligations.

It is **important to note that the online registration process may vary depending on the type of company (private limited, public limited, one person company, etc**.) and the specific requirements of the MCA. It is advisable to consult with professionals or seek guidance from the MCA portal for accurate and up-to-date information on the online registration process.

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Q2 a "A company cannot justify a breach of contract by altering its Articles of Association." Explain.

Ans. The statement "**A company cannot justify a breach of contract by altering its Articles of Association**" refers to the principle that a company cannot escape its contractual obligations by amending its internal regulations, specifically the Articles of Association.

The Articles of Association of a company are its internal rules and regulations that govern the company's operations, management, and relationships between its members. They are a contract between the company and its members, as well as among the members themselves. These articles establish the rights and obligations of the company and its members, and they form a binding agreement.

When a company enters into a contract with another party, it creates a separate legal relationship that is independent of the company's internal rules. The company is obligated to fulfill its contractual obligations, and it cannot simply amend its Articles of Association to evade those obligations. The contractual rights and obligations established in the contract cannot be overridden or invalidated by internal changes to the company's Articles.

The principle is based on the doctrine of privity of contract, which states that only parties to a contract have rights and obligations under that contract. Third parties who are not party to the contract, such as members of the company, cannot unilaterally alter or modify the terms of the contract.

There have been legal precedents that support this principle. In the case of Hickman v. Kent or Romney Marsh Sheep-Breeders' Association, it was held that a company's resolution to amend its Articles of Association could not be used to excuse a breach of contract. The court emphasized the distinction between the company's internal affairs and its contractual obligations.

Therefore, a company cannot rely on amendments to its Articles of Association to justify or excuse a breach of contract. The company remains bound by its contractual obligations, and any disputes arising from such breaches are to be resolved under contract law rather than by internal changes to the company's governing documents.

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Q2 b 'A' applied for certain shares of a company on the basis of a prospectus containing the names of six directors of the company. Two directors from these six retired before the shares were allotted. Can 'A' exercise the right of rescission against the company? Also explain the cases where he will lose this right.

Ans. In **the given scenario, 'A' applied for shares of a company based on a prospectus that listed six directors**. **However**, before the shares were allotted, two of the listed directors retired. The question is whether 'A' can exercise the right of rescission against the company, and under what circumstances 'A' may lose this right.

The right of rescission allows a person who has entered into a contract based on a misrepresentation to cancel or rescind the contract and seek remedies, such as a refund of the money paid. In this case, if the retirement of the two directors before the shares were allotted constitutes a misrepresentation, 'A' may have the right to rescind the contract and seek appropriate remedies.

However, whether 'A' can exercise the right of rescission depends on the specific circumstances and the nature of the misrepresentation. Here are two scenarios to consider:

Material Misrepresentation: If the presence of the two directors in the prospectus was a material representation upon which 'A' relied when applying for the shares, their retirement before the shares were allotted may be considered a misrepresentation. In this case, 'A' can exercise the right of rescission against the company, as the misrepresentation would have influenced 'A's decision to invest in the shares.

Immaterial Misrepresentation: If the retirement of the two directors is considered immaterial and does not affect the overall decision-making process of 'A', it may not constitute a misrepresentation that would warrant the right of rescission. The court would assess whether the retirement of the directors had a significant impact on 'A's decision to invest in the shares.

It's important to note that 'A' may lose the right of rescission in certain circumstances:

Ratification: If 'A' continues with the contract after being aware of the retirement of the two directors and does not take any action to rescind the contract, 'A' may be deemed to have ratified the contract and would lose the right of rescission.

Delay: If 'A' delays unreasonably in exercising the right of rescission, such delay may be considered a waiver of the right. The court may determine whether 'A' acted promptly upon discovering the misrepresentation.

In **summary**, whether 'A' can exercise the right of rescission against the company depends on the materiality of the misrepresentation caused by the retirement of the two directors. If the misrepresentation is significant and 'A' relied on it when applying for the shares, 'A' may have the right to rescind the contract. However, if the misrepresentation is immaterial or if 'A' fails to act promptly, 'A' may lose the right of rescission. The final determination would be made by the court based on the specific facts and circumstances of the case.

Q2 c State the importance of "Memorandum of Association' of the company. Explain the procedure relating to the alteration of object clause of Memorandum of association.

Ans. The Memorandum of Association (MOA) is a fundamental document of a company that sets out the constitution, scope, and objectives of the company. It holds great importance as it defines the company's purpose, powers, and the extent of its activities. The MOA serves as a charter or a foundation upon which the company operates, and it provides essential information to shareholders, creditors, and other stakeholders. Some of the key importance of the MOA are as follows:

Legal Basis: The MOA establishes the legal existence of the company and defines its scope of operations. It serves as a contract between the company and its members and sets out their rights, liabilities, and obligations.

Objectives and Powers: The MOA specifies the objectives for which the company is formed and the powers it can exercise to achieve those objectives. It provides clarity to the shareholders and stakeholders about the purpose and activities the company can undertake.

Binding on the Company and its Members: The MOA is binding on the company and its members. It ensures that the company operates within the boundaries defined by its constitution and that the actions of the company and its members are aligned with its stated objectives.

Protection for Stakeholders: The MOA provides protection to stakeholders, such as shareholders and creditors, by establishing the company's legal framework and limiting its activities to those stated in the MOA. It helps stakeholders understand the scope of the company's operations and make informed decisions.

Procedure for Alteration of Object Clause of Memorandum of Association:

The alteration of the object clause of the Memorandum of Association requires compliance with certain procedures as specified in the Companies Act, 2013. The steps involved in the alteration process are as follows:

Board Resolution: The alteration of the object clause must be initiated by the board of directors. The board must pass a resolution proposing the alteration and convene a general meeting of shareholders to seek their approval.

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Shareholders' Approval: A special resolution must be passed by the shareholders in a general meeting. The notice of the meeting, along with the proposed alteration, must be sent to all shareholders, specifying the intention to alter the object clause.

Application to the Registrar: After obtaining shareholders' approval, the company must file an application with the Registrar of Companies (ROC) within 30 days. The application should include a copy of the special resolution, the altered object clause, and other required documents.

Approval by the ROC: The ROC examines the application and verifies its compliance with the legal requirements. If the ROC is satisfied, it will issue a certificate of registration, which confirms the alteration of the object clause.

Effective Date: The alteration of the object clause becomes effective upon receiving the certificate of registration from the ROC. The company must update its records and ensure compliance with the new object clause.

It **is important to note that any** alteration must be within the legal framework and should not be inconsistent with the provisions of the Companies Act or any other relevant laws. Additionally, the alteration should not be prejudicial to the interests of the company's shareholders or creditors.

OR

Q2 a A company was in financial difficulties and the majority shareholders representing 95% of the shares were willing to provide the required capital if remaining shareholders amounting to 5% would sell their shares to the majority shareholders. However, the minority shareholders refused to sell them shares to majorly shareholders, but the company altered its Articles so as to authorize the majority shareholders to purchase the shares of minority shareholders compulsorily upon certain terms. Are the minority shareholders bound by this alteration? Explain.

Ans. In the given scenario, where the majority shareholders hold 95% of the shares and are willing to provide the required capital to the company, but the minority shareholders (holding 5% of the shares) refuse to sell their shares, the company alters its Articles of Association to authorize the majority shareholders to purchase the shares of the minority shareholders compulsorily. The question arises whether the minority shareholders are bound by this alteration.

The alteration of the Articles of Association is subject to certain legal requirements and restrictions. One such requirement is that any alteration must be within the powers conferred by the Companies Act and must not be contrary to the provisions of the Act. Additionally, alterations must not be oppressive or unfairly prejudicial to the interests of the minority shareholders.

In this case, the alteration of the Articles to authorize the compulsory purchase of shares from minority shareholders by the majority shareholders raises concerns regarding fairness and prejudicial treatment. The minority shareholders are being forced to sell their shares against their will, which can be seen as an infringement of their rights as shareholders.

Under such circumstances, the minority shareholders can challenge the alteration of the Articles in court. They can argue that the alteration is oppressive or unfairly prejudicial to their interests. The court will assess the merits of the case and determine whether the alteration is valid or not.

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If the court finds that the alteration is oppressive or unfairly prejudicial, it may declare the alteration void or provide appropriate relief to the minority shareholders. The court can order the company to revoke the alteration or take any other suitable measures to protect the rights and interests of the minority shareholders.

Therefore, in this case, the minority shareholders may not be bound by the alteration of the Articles authorizing the compulsory purchase of their shares by the majority shareholders. They have the right to challenge the alteration in court and seek appropriate remedies if they can demonstrate that their interests are being unfairly prejudiced.

Q2 b Write a note on "Deemed Prospectus'.

Ans. A deemed prospectus refers to certain documents or communications that are treated as a prospectus under the provisions of company law, even if they are not labeled as such. These documents or communications are deemed to have the same legal effect as a prospectus and are subject to the same regulatory requirements and liabilities.

The concept of a deemed prospectus is important in situations where companies may make offers or invitations to the public to subscribe for their securities without issuing a formal prospectus. The Companies Act or relevant securities laws define specific documents or communications that are considered as deemed prospectuses. Some common examples of deemed prospectuses include:

Circulars: Any circular or other document inviting offers from the public for the subscription or purchase of securities is deemed to be a prospectus.

Notices: Any notice, circular, advertisement, or other document inviting or offering securities for sale or subscription to the public is treated as a prospectus.

Webpages and Online Platforms: In the digital age, information published on a company's website or an online platform that offers securities for subscription or purchase may be deemed as a prospectus.

Statements: Statements made by a company or its directors in relation to the offer of securities, whether in writing or orally, can be deemed prospectuses.

The purpose of deeming certain documents as prospectuses is to ensure investor protection and promote transparency in the capital markets. By treating these documents as prospectuses, the law imposes obligations on the company to provide accurate and complete information to the public regarding the securities being offered. This helps potential investors make informed decisions and protects them from misleading or false information.

It is important for companies and their advisors to be aware of the provisions regarding deemed prospectuses and ensure compliance with the relevant disclosure requirements. Failure to comply with the obligations associated with deemed prospectuses can lead to legal consequences, including potential liability for the company and its officers.

In summary, a deemed prospectus refers to documents or communications that, although not explicitly labeled as prospectuses, are treated as such under the law. They carry the same legal effect as a prospectus and are subject to the regulatory requirements and liabilities associated with

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prospectuses. These provisions aim to safeguard investor interests and promote transparency in securities offerings.

Q2 c A company wants to shift its registered office from Chennai to Combatore both in the state of Tamil Nadu for administrative convenience. What provisions the company has to comply with under the Companies Act, 2013 for shifting its registered office.

Ans. Under the Companies Act, 2013, **a company is allowed to shift its registered office from one place to another within the same state** by following certain legal procedures. In the given scenario, where a company wants to shift its registered office from Chennai to Coimbatore in Tamil Nadu, the following provisions need to be complied with:

Board Resolution: The company needs to pass a board resolution approving the proposal to shift the registered office from Chennai to Coimbatore. The resolution should include the reasons for the shift and the authorization to convene a general meeting to obtain shareholder approval.

Shareholder Approval: A special resolution needs to be passed by the shareholders in a general meeting approving the shift of the registered office. The notice for the general meeting, along with the explanatory statement, should be sent to all shareholders, specifying the details of the proposed shift and the reasons behind it.

Form Filing with Registrar of Companies (RoC): After obtaining shareholder approval, the company needs to file an application in the prescribed format (e.g., Form INC-23) with the RoC within 30 days from the date of passing the special resolution. The application should be accompanied by the necessary documents, such as the board resolution, special resolution, and updated copy of the company's memorandum and articles of association.

Publication of Notice: The company is required to publish a notice in the prescribed manner (e.g., in a newspaper) notifying the proposed change in the registered office from Chennai to Coimbatore. The notice should be published at least once in a vernacular newspaper widely circulated in the district where the registered office is situated and in an English newspaper circulating in that district.

Update in Company Records: Once the RoC approves the application, the company's records, including the Memorandum of Association and Articles of Association, need to be updated to reflect the new registered office address in Coimbatore. The company should also update its letterheads, stationery, and other official documents to reflect the change.

Intimation to Other Authorities: The company should inform various authorities, such as the income tax department, GST authorities, banks, and other relevant government agencies, about the change in the registered office address. Necessary changes should be made in the company's records and official correspondence with these authorities.

It is important to note that compliance with the above procedures is essential to ensure the validity of the shift in the registered office. Failure to comply with these requirements may result in legal consequences and can affect the company's legal standing and obligations.

It is advisable for the company to seek professional assistance from legal experts or company secretaries to ensure compliance with the specific provisions of the Companies Act, 2013 and related regulations applicable to the shifting of the registered office.

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Q3 a What do you understand by the forfeiture of shares? Explain the requirements of a valid forfeiture of shares by a company.

Ans. **Forfeiture of shares refers to the process by which a company cancels and reclaims shares from a shareholder who has failed to fulfill certain obligations**, typically related to payment of calls or meeting other contractual obligations. It is a legal action taken by the company to enforce compliance and protect the interests of the shareholders and the company as a whole.

The requirements for a valid forfeiture of shares by a company are as follows:

Power to Forfeit: The company's articles of association must grant the power to forfeit shares in case of non-compliance by the shareholder. The articles should specifically outline the circumstances under which shares can be forfeited and the procedure to be followed.

Notice of Call: The company must issue a notice to the shareholder demanding payment for the unpaid calls or fulfillment of any other obligation within a specified time period. The notice should clearly state the consequences of non-payment, which may include forfeiture of shares.

Expiry of Notice Period: If the shareholder fails to comply with the notice within the specified time period, the company can proceed with the forfeiture of shares. The notice period should be reasonable and provide the shareholder with sufficient time to rectify the non-compliance.

Resolution by the Board: The board of directors must pass a resolution to forfeit the shares. The resolution should be duly recorded in the minutes of the board meeting. It is important that the resolution is passed in accordance with the provisions of the Companies Act and the company's articles of association.

Written Notice to Shareholder: After passing the resolution, the company must serve a written notice of forfeiture on the shareholder. The notice should clearly state the number of shares being forfeited, the reasons for forfeiture, and the date on which the shares will be forfeited.

Surrender of Share Certificate: The shareholder must surrender the share certificate for the forfeited shares to the company. The surrendered shares will then be cancelled by the company.

Effect of Forfeiture: Once the shares are forfeited, the shareholder loses all rights and interests associated with the forfeited shares, including voting rights and entitlement to dividends. The company may choose to reissue the forfeited shares or cancel them, depending on its requirements.

It is important for the company to strictly adhere to the provisions of the Companies Act and its own articles of association when undertaking the forfeiture of shares. Non-compliance with the procedural requirements may render the forfeiture invalid and expose the company to legal risks. Therefore, it is recommended to seek professional advice and ensure compliance with the relevant laws and regulations.

Q3 b What are the conditions to be fulfilled by a company that proposes to issue 'sweat equity shares' under the Companies Act, 2013 ?

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Ans. Under the Companies Act, 2013, **sweat equity shares are equity shares issued by a company to its directors or employees at a discounted or concessional rate, or for consideration other than cash**, in recognition of their intellectual property rights or other value additions made by them to the company. The conditions to be fulfilled by a company that proposes to issue sweat equity shares are as follows:

Authorization in Articles of Association: The company's articles of association must authorize the issue of sweat equity shares. If the articles do not contain such authorization, they need to be amended before issuing sweat equity shares.

Special Resolution: The issue of sweat equity shares requires the approval of the company's shareholders by way of a special resolution passed at a general meeting. The notice convening the general meeting must specify the details of the proposed issue.

Valuation Report: A valuation report by a registered valuer is required to determine the price of the sweat equity shares. The report should provide a justification for the proposed price and the methodology used for valuation.

Approval by the Board of Directors: The board of directors must approve the issue of sweat equity shares and ensure that it complies with the provisions of the Companies Act, the articles of association, and any applicable rules or regulations.

Lock-in Period: The sweat equity shares issued to the directors or employees must be subject to a lock-in period of at least three years from the date of allotment. During this period, the shares cannot be transferred or sold.

Maximum Limit: The total number of sweat equity shares issued in a financial year cannot exceed 15% of the existing paid-up equity share capital or 25% in case of newly incorporated companies or companies listed on recognized stock exchanges.

Disclosures in Board's Report: The company is required to disclose in its board's report the particulars of the sweat equity shares issued during the financial year, including the names of the allottees, the relationship between the allottees and the company, and the reasons for issuing sweat equity shares.

It is important for the company to comply with these conditions and any other relevant provisions of the Companies Act and applicable rules or regulations while issuing sweat equity shares. Non-compliance may lead to legal consequences and affect the validity of the issued shares. It is advisable to consult legal and financial professionals to ensure compliance with all requirements.

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Q3 c Why does the Companies Act allow a company to buy back its shares? Which sources of funds can be used by the company for this purpose?

Ans. The Companies Act allows a company to buy back its shares for various reasons, which include:

Utilization of Surplus Cash: If a company has surplus cash or free reserves, it can choose to buy back its shares as a means of utilizing the excess funds. This helps in efficient capital management and enhances the return on investment for shareholders.

Enhancing Shareholder Value: Share buybacks can lead to an increase in earnings per share and improve the financial ratios of the company. By reducing the number of outstanding shares, the company can distribute its earnings among a smaller shareholder base, potentially increasing the value of each remaining share.

Capital Structure Optimization: Buybacks provide flexibility to adjust the company's capital structure by reducing the equity base. This can result in a higher proportion of debt to equity, leading to potential tax benefits and improved financial leverage.

Preventing Hostile Takeovers: Share buybacks can be used as a defensive measure to prevent hostile takeovers. By repurchasing its own shares, a company can make it more expensive for an acquiring entity to gain control.

The sources of funds that can be used by a company to buy back its shares include:

Free Reserves: Companies can utilize their free reserves, which are accumulated profits or reserves not specifically earmarked for any purpose, to fund the share buyback.

Securities Premium Account: Companies can also use the securities premium account, which is created when shares are issued at a premium, to finance the buyback.

Proceeds from the Issue of Shares: Companies can utilize the proceeds from the fresh issue of shares, such as a rights issue or preferential allotment, to buy back its own shares.

Debt or Borrowings: Companies can raise funds through debt or borrowings, subject to compliance with applicable laws and regulations, to finance the share buyback.

It is important to note that the Companies Act imposes certain restrictions and conditions on share buybacks to protect the interests of shareholders and maintain the integrity of the capital markets. Companies need to comply with the provisions related to the maximum amount of buyback, timing, pricing, and disclosure requirements as specified in the Companies Act and relevant rules and regulations.

OR

Q3 a Who is member of a company? Explain various modes of acquiring membership of a company.

Ans. A member of a company refers to an individual or entity that holds shares or has ownership in the company. Membership in a company signifies the legal relationship between the company and its shareholders, entitling them to certain rights and obligations.

There are various modes of acquiring membership in a company, which include:

Subscription of Memorandum: The most common way of becoming a member of a company is by subscribing to the memorandum of association during the incorporation process. Individuals or entities can contribute capital by subscribing to shares at the time of company formation, thereby becoming initial members of the company.

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Allotment of Shares: Membership can also be acquired by the allotment of shares. After the company's incorporation, it may issue and allot shares to individuals or entities who have applied for them. Upon the allotment of shares, the allottees become members of the company.

Transfer of Shares: Membership can be acquired through the transfer of shares. Existing shareholders can sell or transfer their shares to other individuals or entities, who then become members of the company upon the registration of the transfer and issuance of a new share certificate.

Transmission of Shares: In the event of the death, bankruptcy, or insolvency of a member, the shares may be transferred to the legal heirs, executors, or administrators. This process is known as transmission, and the individuals who receive the shares become members of the company.

Conversion of Debentures or Bonds: If a company issues convertible debentures or bonds, the holders of such securities may have the right to convert them into shares. Upon conversion, the holders become members of the company.

Membership by Operation of Law: In certain cases, membership in a company can be acquired by operation of law. For example, in a merger or amalgamation of companies, the shareholders of the merging or amalgamating companies become members of the merged or amalgamated company.

It is important to note that the specific procedures and requirements for acquiring membership may vary depending on the company's constitution, relevant laws, and the terms and conditions of the shares or securities being acquired.

Q3 b What are the bonus shares? State the conditions that must be complied with before a company makes a bonus Issue.

Ans. **Bonus shares, also known as scrip dividends or capitalization issues, are additional shares issued by a company to its existing shareholders without any consideration or payment**. These shares are issued as a bonus or reward to the shareholders, and they are in proportion to their existing shareholdings.

Conditions to be complied with before a company makes a bonus issue:

Authority: The power to issue bonus shares must be conferred upon the company's board of directors by the company's Articles of Association or by a special resolution passed by the shareholders in a general meeting.

Availability of Reserves: Before making a bonus issue, the company must have sufficient accumulated profits or free reserves in its financial statements, which are available for capitalization. These reserves should be created through genuine profits and not by revaluation of assets or by writing back of any provision.

Approval of Shareholders: The proposed bonus issue must be approved by the shareholders of the company in a general meeting. The shareholders' approval is obtained through an ordinary resolution passed by a simple majority.

Disclosure and Compliance: The company must comply with the disclosure requirements as prescribed by the regulatory authorities, such as the Securities and Exchange Board of India (SEBI).

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The necessary filings, notifications, and compliance with applicable regulations must be made before proceeding with the bonus issue.

Issuance of Bonus Shares: After fulfilling the above conditions, the company can issue bonus shares to its existing shareholders in proportion to their existing shareholding. The issue is made by capitalizing the accumulated profits or free reserves, which are then converted into additional shares.

Allotment and Listing: The bonus shares are allotted to the shareholders and entered into their respective demat accounts or issued physical share certificates, as per the choice of the shareholders. If the company's shares are listed on a stock exchange, the bonus shares must also be listed and traded on the stock exchange.

It is **important for the company** to comply with the **applicable laws,** regulations, and procedures while making a bonus issue to ensure transparency and protect the rights of the shareholders.

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Q3 c What are the sources of money credited to the 'Investor Education and Protection Fund'?

Ans. The 'Investor Education and Protection Fund' (IEPF) is a fund established under the provisions of the Companies Act, 2013 in India. The primary objective of the fund is to promote investor education and protect the interests of investors. The sources of money credited to the IEPF are as follows:

Unpaid Dividends: Any unpaid or unclaimed dividends, including interim dividends, which remain unclaimed for a period of seven years from the date of transfer to the unpaid dividend account of a company, are transferred to the IEPF. This ensures that the unclaimed dividends are utilized for the benefit of investors.

Unclaimed Shares: Any shares held in physical form that are unclaimed for a period of seven years from the date of transfer to the unpaid dividend account are also transferred to the IEPF. This includes shares on which the dividend has not been claimed by the shareholders.

Matured Deposits: Any matured deposits with companies that have remained unclaimed or unpaid for a period of seven years are transferred to the IEPF. This ensures that the funds belonging to the depositors are safeguarded and utilized for their benefit.

Application Money: Any application money received by companies for allotment of securities that remains unclaimed or unpaid for a period of seven years is transferred to the IEPF.

Sale Proceeds of Fractional Shares: When fractional shares arising out of bonus issues, rights issues, etc., are sold by the company, the sale proceeds of such fractional shares are credited to the IEPF.

Other Sources: Any other money or property that is required to be credited to the IEPF as per the provisions of the Companies Act, 2013 or any other relevant regulations is also considered as a source of funds for the IEPF.

The money credited to the IEPF is utilized for various investor protection and education initiatives, including awareness programs, investor education campaigns, dissemination of information, conducting research, and promoting good corporate governance practices. The aim is to enhance investor confidence and ensure the protection of their interests in the Indian capital markets.

Q4 a Write a note on 'voting by electronic means'

Ans. Voting by electronic means refers to the process of casting votes by shareholders of a company through electronic methods, such as **electronic voting machines, internet-based platforms, or other electronic communication channels**. This mode of voting provides convenience, efficiency, and transparency in the corporate decision-making process. Here are some key points to note about voting by electronic means:

Legal Provisions: The Companies Act, 2013 in India provides for electronic voting as a valid and recognized method for conducting voting by shareholders. The Act, along with the rules and regulations framed thereunder, lays down the framework for electronic voting in meetings of shareholders.

Applicability: Voting by electronic means is primarily applicable to general meetings of companies, including annual general meetings (AGMs) and extraordinary general meetings (EGMs). It allows shareholders to cast their votes on various resolutions put forth during these meetings without physically being present at the meeting venue.

Procedure: The specific procedure for voting by electronic means is outlined in the Companies Act and relevant rules. It typically involves the following steps:

a. The company provides a notice to shareholders regarding the option to vote electronically along with the necessary details.

b. Shareholders are provided with unique login credentials or authentication mechanisms to access the electronic voting platform.

c. Shareholders can log in to the platform and cast their votes electronically on the resolutions put forth.

d. The electronic voting process has a designated timeframe within which shareholders can submit their votes.

e. The votes cast electronically are securely recorded and stored for tabulation and declaration of results.

Transparency and Efficiency: Voting by electronic means enhances transparency and efficiency in the voting process. It allows shareholders to cast their votes remotely, eliminating the need for physical attendance at meetings. This enables broader shareholder participation and convenience, especially for shareholders who may not be able to attend meetings in person.

Safeguards: The electronic voting process incorporates various safeguards to ensure the authenticity, security, and integrity of the voting system. These safeguards may include encryption, secure authentication mechanisms, data protection measures, and audit trails to maintain the confidentiality and accuracy of the votes cast.

Proxy Voting: Electronic voting also facilitates proxy voting, wherein shareholders can appoint proxies to cast votes on their behalf through the electronic voting platform. This allows shareholders to exercise their voting rights even if they are unable to attend the meeting.

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Compliance and Record-Keeping: Companies are required to maintain proper records of the electronic voting process, including the votes cast, the results, and any other relevant information. These records serve as evidence of shareholder participation and ensure compliance with regulatory requirements.

Voting by electronic means offers an efficient and convenient way for shareholders to participate in corporate decision-making processes. It promotes shareholder democracy, transparency, and wider shareholder engagement, ultimately contributing to effective corporate governance.

Q4 b Discuss the provisions of the Companies Act, 2013 regarding the Directors Identification number.

Ans. The Companies Act, 2013 introduced the concept of Directors Identification Number (DIN) as a unique identification number for individuals serving as directors of companies. The provisions regarding DIN are aimed at improving corporate governance and ensuring transparency in the appointment and functioning of directors. Here are the key provisions of the Companies Act, 2013 regarding DIN:

Mandatory Requirement: As per Section 153 of the Companies Act, 2013, every individual who intends to be appointed as a director of a company must obtain a DIN. It is a mandatory requirement for all directors, including existing directors, to have a DIN.

Unique Identification Number: The DIN is a unique, 8-digit number assigned to each director. It serves as an identification number throughout the director's tenure and remains unchanged even if the director serves in multiple companies.

Application and Allocation: To obtain a DIN, an individual must make an application in Form DIR-3 to the Ministry of Corporate Affairs (MCA) or the designated Registrar of Companies (ROC). The application should include the necessary supporting documents and information as prescribed by the MCA.

Centralized Database: The DINs issued to directors are maintained in a centralized database called the Director Identification Number (DIN) database. This database contains information about the directors and their associated companies, and it facilitates easy access to the details of directors across different companies.

Validity and Continuity: The DIN is valid for the lifetime of the director unless suspended, deactivated, or surrendered. It remains constant even if the director resigns from one company and joins another. This ensures continuity and allows for tracking the director's history and involvement in different companies.

Director's Obligations: Directors are required to provide their DIN in various filings, applications, and forms submitted to the MCA or ROC. It is used as a unique identifier in documents related to the appointment, resignation, disclosure of interest, and other director-related activities.

Disclosure of DIN: The DIN of directors must be mentioned in all official communications, correspondences, notices, letters, and other documents pertaining to the company.

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Amendments and Updates: Directors are responsible for updating their DIN records with any changes in personal information, such as name, address, or contact details, within a prescribed timeframe. This ensures that the DIN database remains accurate and up to date.

The introduction of DIN under the Companies Act, 2013 has brought about greater transparency and accountability in the functioning of directors. It allows for easier identification and tracking of directors' roles in different companies and helps prevent fraudulent activities by ensuring that individuals holding directorship positions can be readily identified and verified.

Q4 c Under what circumstances a director is deemed to have vacated the office of directorship?

Ans. Under the Companies Act, there are certain circumstances under which a director is deemed to have vacated the office of directorship. These circumstances are outlined below:

Expiry of Term: If a director is appointed for a fixed term, such as through the articles of association or a specific resolution, the directorship automatically comes to an end upon the expiry of that term.

Resignation: A director may voluntarily resign from their position by submitting a resignation letter to the company. The resignation takes effect from the date specified in the letter or from the date of its receipt by the company, whichever is later.

Removal by Shareholders: Shareholders have the power to remove a director before the expiration of their term by passing an ordinary resolution in a general meeting of the company. The director is deemed to have vacated the office upon the passing of the resolution.

Disqualification: A director may become disqualified from holding the position if they fall under any of the disqualifications specified in the Companies Act. Examples of disqualifications include being of unsound mind, being an undischarged insolvent, or being convicted of certain offenses.

Bankruptcy: If a director becomes bankrupt, it may result in automatic vacation of the office of directorship, subject to certain exceptions and provisions under the law.

Death: The death of a director automatically terminates their directorship.

Inability to Act: If a director becomes incapable of acting as a director due to physical or mental incapacity, it may lead to the vacation of their office. In such cases, the company may need to take appropriate actions to fill the vacancy.

It is important to note that the circumstances leading to the vacation of the office of directorship may vary depending on the specific provisions in the company's articles of association and any applicable laws and regulations. Directors are also subject to their fiduciary duties and obligations as outlined in the Companies Act, which, if breached, may result in their removal from the position.

OR

Q4 a Write a note on Woman Director.

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Ans. A woman director refers to a female individual who holds a position on the board of directors of a company. The concept of having a woman director is aimed at promoting gender diversity and inclusivity in corporate governance. It is a significant step towards empowering women and enhancing their participation in decision-making processes within companies. Several countries, including India, have introduced legal provisions requiring certain categories of companies to have at least one woman director on their board.

In India, the Companies Act, 2013 mandates the appointment of at least one woman director in certain classes of companies. The provisions of the Act state that the following categories of companies must have a woman director:

Listed Companies: Every listed company, whether it is listed on a stock exchange in India or abroad, must have at least one woman director on its board.

Public Companies: Public companies having a paid-up share capital of INR 100 crore or more, or having a turnover of INR 300 crore or more, are required to appoint a woman director.

The appointment of a woman director is aimed at bringing a fresh perspective, diversity of thought, and gender balance in the boardroom. It helps in broadening the pool of talent and expertise, promoting inclusivity, and ensuring better decision-making.

The woman director is expected to fulfill the same roles, responsibilities, and fiduciary duties as any other director. She is entrusted with the task of providing guidance, contributing to strategic discussions, exercising independent judgment, and safeguarding the interests of various stakeholders. The woman director is an integral part of the board, and her active participation enhances the overall effectiveness and performance of the company.

Companies are encouraged to promote gender diversity beyond the legal requirements and strive for a balanced representation of women on their boards. The presence of women directors fosters an environment of equal opportunities, strengthens corporate governance, and reflects a company's commitment to inclusivity and social responsibility.

It is worth noting that the requirements and regulations regarding the appointment and role of woman directors may vary in different jurisdictions. Companies should comply with the applicable laws and regulations specific to their country or region regarding the appointment of women directors.

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Q4 b Who is a proxy? Is it essential for a proxy to be a member of the company? If a proxy is appointed by a shareholder but in the meeting shareholder also casts his vote, whose vote will be considered valid and why?

Ans. A proxy is an individual appointed by a shareholder to attend a meeting on their behalf and exercise their voting rights. The proxy holder acts as a representative of the shareholder and casts votes as per the instructions given by the shareholder.

In **general**, a proxy does not need to be a member of the company. The Companies Act, as well as the Articles of Association of a company, specify the rules and regulations regarding the appointment of a proxy. However, the specific requirements may vary depending on the jurisdiction and the company's governing documents.

In the scenario where a shareholder appoints a proxy but also attends the meeting in person and casts their vote, the vote cast by the shareholder in person will be considered valid, and the proxy's vote will become redundant. This is because the shareholder's personal presence and vote override the authority granted to the proxy. The principle is based on the concept that a shareholder has the right to exercise their voting rights directly if they choose to do so, even if they have appointed a proxy.

It is important to note that the appointment of a proxy is usually done to enable a shareholder who cannot attend the meeting in person to have their vote counted. The proxy acts as a representative and exercises the voting rights on behalf of the shareholder as instructed. However, if the shareholder attends the meeting in person, they have the option to cast their vote directly, and the proxy's role becomes redundant in that particular instance.

It is advisable for **shareholders to carefully consider their options and communicate** their intentions regarding voting to avoid any confusion or conflicts between the proxy and the shareholder's personal vote.

Q4 c State the provisions of the Companies Act, 2013 with respect to qualification and disqualification of Directors.

Ans. The Companies Act, 2013 in India lays down provisions regarding the qualification and disqualification of directors. These provisions ensure that individuals appointed as directors possess the necessary qualifications and meet the prescribed criteria, while also setting out circumstances that may disqualify a person from holding the position of a director. Here are the key provisions:

Qualification of Directors:

Minimum Age: A person must be at least 18 years old to be eligible to be appointed as a director of a company.

Director Identification Number (DIN): Every individual appointed as a director must obtain a unique DIN issued by the Ministry of Corporate Affairs (MCA).

Consent and Eligibility: The person being appointed as a director must give his/her consent to act as a director and must also meet the eligibility criteria specified in the Act.

Disqualification of Directors:

Prohibited Categories: Certain individuals are automatically disqualified from being appointed as directors, including minors, insolvent persons, persons of unsound mind, undischarged bankrupts, and persons convicted of certain offenses.

Non-Compliance: Directors who fail to comply with the requirements of filing annual returns, financial statements, or other documents with the Registrar of Companies may face disqualification.

Defaulting Companies: Directors of companies that have not filed annual returns or financial statements for a continuous period of three financial years are also subject to disqualification.

Convictions: Individuals convicted of certain offenses under various laws, such as fraud, dishonesty, or economic offenses, may be disqualified from acting as directors.

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Contravention of Act: Directors who have contravened the provisions of the Companies Act, such as related party transactions, loans to directors, or non-compliance with corporate governance requirements, may also face disqualification.

It is important for companies and individuals to adhere to these provisions to ensure compliance with the law and maintain good corporate governance practices. Non-compliance with these provisions can lead to disqualification of directors, and such directors may be prohibited from holding the position of director in any company for a specified period.

Q5 a What is the process of dematerialisation of physical shares under the Depository system? Can these be rematerialised?

Ans. The process of dematerialization refers to the conversion of physical shares (in the form of share certificates) into electronic or dematerialized form. It is facilitated by a depository system, such as the Central Depository Services Limited (CDSL) or the National Securities Depository Limited (NSDL) in India. Here is the process of dematerialization:

Demat Account: The shareholder must open a demat account with a registered depository participant (DP) of their choice. The DP could be a bank, financial institution, or brokerage firm.

Request for Dematerialization: The shareholder submits a dematerialization request to the DP, along with the physical share certificates they wish to dematerialize. The request includes details such as the company name, certificate numbers, and quantity of shares.

Verification and Processing: The DP verifies the share certificates and sends them to the company's registrar or the respective share transfer agent for verification. Once the verification is completed, the registrar updates the dematerialization request.

Conversion into Electronic Form: Upon verification, the registrar cancels the physical share certificates and updates the dematerialization request in the depository system. The equivalent number of shares is credited to the shareholder's demat account.

Intimation and Statement: The depository participant informs the shareholder about the successful dematerialization of shares and provides an electronic statement of holdings reflecting the dematerialized shares.

Once shares are dematerialized, they exist only in electronic form in the demat account. However, in certain circumstances, it is possible to rematerialize or convert electronic shares back into physical form. The process of rematerialization involves submitting a request to the DP, who will coordinate with the depository to convert the electronic shares into physical certificates. Rematerialization is less common today, as the trend is towards holding shares in dematerialized form due to its convenience and efficiency.

It's important to note that the process and requirements for dematerialization and rematerialization may vary depending on the jurisdiction and the specific rules and regulations of the depository system and the company.

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Q5 b What is 'Audit Committee' of Board of Directors? Explain the functions of this committee.

Ans. An Audit Committee is a committee of the Board of Directors of a company that is responsible for overseeing the financial reporting process, internal controls, and audit functions. It plays a crucial role in promoting transparency, integrity, and accountability in financial reporting and helps to safeguard the interests of shareholders.

The functions of an Audit Committee typically include:

Financial Reporting: The committee reviews and monitors the financial statements and ensures their accuracy, completeness, and compliance with accounting standards and applicable laws. It oversees the preparation and presentation of financial reports, including annual financial statements, quarterly statements, and other financial disclosures.

Internal Controls: The committee evaluates and monitors the effectiveness of the company's internal control systems. It reviews the adequacy and integrity of internal control mechanisms, including financial and operational controls, risk management processes, and compliance procedures. The committee ensures that proper controls are in place to safeguard assets, prevent fraud, and maintain the reliability of financial information.

External Audit: The committee oversees the relationship with the external auditors and ensures their independence, objectivity, and effectiveness. It reviews and approves the appointment, reappointment, or removal of external auditors. The committee evaluates the scope of the audit engagement, assesses the audit plan and findings, and reviews the audit fees and services provided.

Risk Management: The committee assesses the company's risk management policies and practices. It identifies significant business risks, evaluates the adequacy of risk mitigation measures, and monitors the implementation of risk management strategies. The committee also reviews the effectiveness of the company's internal audit function, if applicable.

Legal and Regulatory Compliance: The committee ensures compliance with relevant laws, regulations, and corporate governance requirements. It reviews legal and regulatory matters that may have a significant impact on the financial statements and oversees the company's compliance programs.

Communication and Reporting: The committee maintains open communication with management, internal auditors, external auditors, and other relevant stakeholders. It reports to the Board of Directors on its activities, findings, and recommendations. The committee also interacts with shareholders and addresses their concerns related to financial reporting and auditing.

The specific functions and responsibilities of an Audit Committee may vary based on the company's size, industry, and applicable regulations. The Companies Act, 2013, in India, provides detailed guidelines and requirements for the constitution, composition, and functioning of Audit Committees for certain classes of companies.

Q5 c Explain 'Advisory Committee' which is constituted in case of Compulsory Winding up.

Ans. In the context of compulsory winding up of a company, an Advisory Committee may be constituted to assist and advise the Official Liquidator appointed by the court. The Advisory Committee is typically composed of individuals with relevant expertise and experience in business,

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finance, or law. The main purpose of the Advisory Committee is to provide guidance and support to the Official Liquidator throughout the winding up process.

The key aspects of the Advisory Committee in compulsory winding up are as follows:

Appointment: The Advisory Committee is appointed by the Official Liquidator with the approval of the court. The committee members are usually selected based on their qualifications, expertise, and ability to contribute effectively to the winding up proceedings.

Expertise and Advice: The Advisory Committee members bring their specialized knowledge and experience to provide advice and guidance to the Official Liquidator. They assist in matters such as the valuation and realization of assets, assessment of claims, distribution of funds, and any other issues that arise during the winding up process.

Assistance to Official Liquidator: The Advisory Committee works closely with the Official Liquidator and assists in carrying out various tasks and responsibilities. They may review and provide input on the Official Liquidator's actions, strategies, and decisions related to the winding up proceedings. The committee members may also be involved in the assessment of complex legal or financial matters.

Reporting and Recommendations: The Advisory Committee submits periodic reports to the Official Liquidator, highlighting the progress of the winding up process, key challenges or issues encountered, and recommendations for resolving any significant matters. These reports serve as a valuable source of information and guidance for the Official Liquidator and the court.

Stakeholder Engagement: The Advisory Committee may also act as a channel of communication between the Official Liquidator and various stakeholders, such as creditors, shareholders, employees, and other interested parties. They may facilitate the resolution of disputes, address concerns, and provide updates to the stakeholders regarding the winding up proceedings.

It is important to note that the constitution and functioning of the Advisory Committee in compulsory winding up may vary based on the specific jurisdiction and applicable laws. The Companies Act and other relevant regulations provide guidance on the establishment and operation of the Advisory Committee in the context of winding up proceedings.

OR

Q5 a Is it mandatory for every company to rotate its Auditors? What are the provisions of the Companies Act with regard to Rotation of Auditors ?

Ans. Yes, it is mandatory for certain classes of companies to rotate their auditors as per the provisions of the Companies Act, 2013. The rotation of auditors aims to ensure independence, transparency, and accountability in the audit process and enhance the credibility of financial reporting. The provisions regarding the rotation of auditors are outlined in Section 139 of the Companies Act, 2013 and the rules prescribed thereunder.

According to the Companies Act, the following classes of companies are required to rotate their auditors:

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Listed Companies: Every listed company (public or private) is required to rotate its auditors after a maximum term of 5 consecutive years. This rotation is mandatory and the same audit firm cannot be reappointed for a period of 5 years from the completion of their term.

Certain Classes of Companies: Certain classes of companies, such as public companies having a paid-up share capital of Rs. 10 crore or more, or public companies having an annual turnover of Rs. 100 crore or more, or public companies having outstanding loans or borrowings from banks or public financial institutions of Rs. 50 crore or more, are also required to rotate their auditors after a maximum term of 10 consecutive years.

The rotation of auditors is subject to certain conditions and exemptions as specified in the Companies Act. These conditions include provisions related to cooling-off period, meaning the minimum period of time that must elapse before the same audit firm can be reappointed as the auditor of the company.

It is important to note that the provisions for rotation of auditors do not apply to private companies that do not fall under any of the above-mentioned categories. However, private companies can voluntarily opt for the rotation of auditors as per their internal policies or corporate governance practices.

The primary objective of the rotation of auditors is to ensure independence, maintain the quality of financial reporting, and prevent any undue influence or familiarity between the auditor and the audited company. By requiring the rotation of auditors, the Companies Act promotes objectivity and professional skepticism in the audit process, which contributes to the overall transparency and integrity of corporate financial statements.

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Q5 b Explain winding up of a company on 'just and equitable' grounds.

Ans. Winding up of a company on "**just and equitable**" grounds refers to the situation where a company is ordered to be dissolved by the court due to circumstances that make it fair and equitable to wind up the company's affairs. This provision is covered under Section 433(f) of the **Companies Act, 1956** (which is the relevant provision at the time of my knowledge cutoff in September 2021) and has been further elaborated in various court judgments.

The "just and equitable" ground for winding up is based on the principle that a company is an association of individuals who have entered into a mutual agreement to carry on a business. When there is a breakdown of mutual trust, confidence, or a fundamental deadlock between the shareholders, or the affairs of the company are being conducted in a manner prejudicial to the interests of the shareholders, the court may order the winding up of the company on just and equitable grounds.

The following are some common situations where the court may order the winding up of a company on just and equitable grounds:

Oppression: If the majority shareholders or the management of the company are acting in an oppressive manner, unfairly prejudicing the rights or interests of minority shareholders or conducting the affairs of the company in a manner that is oppressive or unfairly discriminatory, the court may order winding up on just and equitable grounds.

Deadlock: When there is a deadlock between the shareholders or between different factions of the company's management, and it becomes impossible to carry on the company's business effectively or in the best interests of the shareholders, the court may order winding up.

Breakdown of trust: If there is a breakdown of trust and confidence between the shareholders, or if the directors and shareholders are unable to work together harmoniously, leading to irreparable differences and a dysfunctional management structure, the court may order winding up.

It is important to note that the court has discretionary power in deciding whether to wind up a company on just and equitable grounds. The court will consider the specific facts and circumstances of each case and determine if there is sufficient evidence to demonstrate that it is just and equitable to wind up the company.

Winding up on just and equitable grounds is a remedy of last resort, and the court may consider alternative remedies such as ordering a buy-out of shares, appointment of an independent director, or any other appropriate solution to resolve the deadlock or oppressive conduct before resorting to winding up.

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Q5 c What do you understand by scriptless trading system as per the Depository Act, 1996? Explain its benefits.

Ans. The scriptless trading system, also known as dematerialized or electronic trading, is a system introduced by the Depository Act, 1996, in which securities are traded and held in electronic or dematerialized form instead of physical certificates. Under this system, the physical securities are converted into electronic form and stored in a central depository.

The benefits of the scriptless trading system are as follows:

Elimination of physical certificates: The scriptless trading system eliminates the need for physical share certificates. Instead, securities are held and transferred electronically, reducing the risk of loss, theft, forgery, or damage associated with physical certificates.

Faster and more efficient transactions: With the scriptless trading system, the transfer of securities becomes faster and more efficient. The electronic transfer of securities takes place through a computerized network, reducing paperwork and manual processes. This results in quicker settlement of trades, reducing the time and cost involved in share transfers.

Increased transparency and accuracy: The electronic nature of the scriptless trading system enhances transparency and accuracy in share transactions. All details of the securities, such as ownership, transfers, and changes in holdings, are recorded electronically, reducing the chances of errors or disputes.

Lower costs and operational efficiency: The scriptless trading system reduces administrative costs associated with physical certificates, such as printing, handling, and storage. It also streamlines processes, reduces paperwork, and eliminates the need for physical movement of securities, leading to greater operational efficiency and cost savings.

Facilitation of corporate actions: The electronic nature of the scriptless trading system makes it easier to handle corporate actions such as dividends, bonus issues, rights issues, and mergers. The

central depository can efficiently distribute dividends and issue additional shares or entitlements to shareholders electronically.

Improved accessibility and liquidity: Scriptless trading allows investors to hold and trade securities electronically, making it more accessible and convenient. It enhances market liquidity by facilitating quick and efficient buying and selling of securities, attracting more participants and increasing market depth.

Enhanced investor protection: The scriptless trading system provides a secure environment for holding and transferring securities. The central depository maintains accurate records of ownership, reducing the risk of fraudulent practices and improving investor protection.

Overall, the scriptless trading system introduced by the Depository Act, 1996, has revolutionized the securities market by providing a secure, efficient, and transparent platform for trading and holding securities in electronic form. It has significantly enhanced the speed, accuracy, accessibility, and efficiency of share transactions, benefiting investors, companies, and the overall functioning of the capital markets.

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