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CS EXECUTIVE J'19 EXAM

SUBJECT- SETTING UP OF BUSINESS ENTITIES N CLOSURE

Test Code – CSE 2025

BRANCH - () (Date :)

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ANSWER-1

ANSWER-A

As regards the applicability of the provisions of the Companies Act, 2013 to foreign companies the following provisions of section 384 are to be noted:

(i) The provisions of section 71 relating to Debentures shall apply mutatis mutandis to a foreign company.

(ii) The provisions of Section 92 regarding (filing of annual returns) shall, subject to such exceptions, modifications or adaptations as may be made therein by the rules made under the Act, apply to a foreign company as they apply to a company incorporated in India.

(iii) The provisions of Section 128 relating to the (to the extent of requiring it to maintain at its principal place of business in India books of account with respect to moneys received and spent, sales and purchase made and assets and liabilities, in the course of or in relation to its business in India), Section 209A (inspection of accounts), Section 233A (Special audit), Section 233B (audit of cost accounts), Section 234-246 (investigations), so far as may be, apply only to the Indian business of a foreign company having an established place of business in India as they apply to a company incorporated in India.

(iv) The provisions of Chapter VI (Registration of Charges) shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.

(v) The provisions of Chapter XIV (Inspection, Inquiry and Investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

(5*1 = 5 Marks)

ANSWER-B

The main points of distinction between the memorandum and articles are given below:

1. Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation. Articles of association are the rules and regulations framed to govern this internal management of the company.

2. Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court. In the case of articles of association, members have a right to alter the articles by a special resolution. Generally, there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.

3. Memorandum of association cannot include any clause contrary to the provisions of the Companies Act. The articles of association are subsidiary both to the Companies Act and the memorandum of association.

4. The memorandum generally defines the relation between the company and the outsiders, while the articles regulate the relationship between the company and its members and between the members *inter se*.

5. Acts done by a company beyond the scope of the memorandum are absolutely void and *ultra vires* and cannot be ratified even by unanimous vote of all the shareholders. But the acts of the directors beyond the articles can be ratified by the shareholders.

(5*1 = 5 Marks)

ANSWER-2

ANSWER-A

Types of alteration of capital clause in the general meeting of a company limited by shares as per section 61

(1) of the Companies Act, 2013 can be enumerated as below: -

(a) increase its authorized share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(5*1 = 5 Marks)

ANSWER-B

A private limited company that can be classified as a small company enjoys a number of benefits under the Companies Act, 2013 and lesser compliance formalities. Some of the advantages enjoyed are:

1. <u>Filing of annual return</u>

The annual return of a private limited company classified as a small company, can be **<u>signed by a Company Secretary or by a Director of that private limited company.</u>**

The annual return of a private limited company not classified as a small company must be signed by a Director and a Company Secretary.

2. <u>Board Meeting</u>

It is sufficient for a small company to **<u>conduct only two Board Meetings in a calendar year, one in every half calendar year with a gap of not less than 90 days between these two meetings.</u>**

Private limited company not classified as a small company are required to conduct four Board Meetings in a financial year, i.e. at least one meeting in every quarter and the gap between the two consecutive meetings should not be more than 120 days.

3. <u>Cash Flow Statement</u>

A private limited company classified as a small company **<u>need not prepare cash flow statement as a part of the financial statements.</u>**

Private limited company not classified as a small company must prepare cash flow statement as a part of the financial statements.

4. <u>Rotation of Auditors</u>

(a) Private limited company classified as a small company are **<u>not required to rotate their statutory Auditors.</u>**

(b) Private limited company not classified as a small company must rotate their Auditors every 5 or 10 years as per the provisions of the Act, if these companies falls within the prescribed category such as their paid up share capital is more than 50 Crores more or these are having public borrowings from financial institutions, banks or public deposits of Rs. 50 Crores or more.

(5 Marks)

ANSWER-3

ANSWER-A

An application for changing the name of the LLP should be, first, submitted to the Ministry of Corporate Affairs. The application must have maximum six name preferences. One must ensure that the preferences are in tandem with the LLP naming guidelines that have been laid out in India. To start with, it should not be identical or similar to an already existing one. You can also check out the availability of a name on the MCA portal and then finalize a name.

<u>Along with the LLP name change application, the partners need to submit the following documents.</u>

1. **<u>Certified copy of consent of all partners involved for the name change;</u>**
2. **<u>Copy of the existing LLP agreement;</u>**
3. **<u>Trademark copy or a copy of the registration certificate;</u>**

After the suggested name gets approved, one has to file Form LLP-5, giving notice of the change in the name. The form has to be submitted to the Registrar within 30 days.

The ROC, after taking into consideration the application, will approve/deny the name change.

If the name is approved, the ROC will issue a certificate and the new name will be effective from the date mentioned in the certificate.

Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.

(5 Marks)

ANSWER-B

The various types of partner found in partnership firms are as follows:

(i) **Active Partners:** Partners who take **active part in the conduct of day-to-day business** of the firm are called active partners. These partners carry on business on behalf of the other partners.

(ii) **Sleeping or dormant partners:** Sleeping or dormant partners are **those who do not take active part in the management of the business.** Such partners **only contribute capital** in the firm and are bound by the activities of other partners. However, they **share in the profits and losses of the business.**

(iii) **Others:** Active and sleeping partners are, as a matter of fact, the full-fledged partners i.e. **they share in profits and losses of the business and are liable for its dues.** However, there are other types of partners also who may be associated with partnership directly or indirectly. They are not full-fledged partners, such partners may include the following:

(a) **Nominal Partners:** Nominal partners are **those who do not have interest in the business but lend their name to the firm.** They do not make any capital contribution, and are not entitled to take part in management, but are liable, like other partners, to third parties. Such partners generally have a **pecuniary interest (like a share in the profits)** in lending their name to a firm. However in certain cases they may not have any pecuniary interest in doing so. For example, a reputed industrialist may, without any profit motive lend his name to a firm run by his family members.

(b) **Partners by holding out: If a person by his words or conduct holds out to another that he is a partner, he will be prevented from denying that he is not a partner.** The person who thus becomes liable to third parties to pay the debts of the firm is known as a partner by holding out.

(5 Marks)

ANSWER-4

ANSWER-A

Difference between Public Trust and Private Trust

(a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust . If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists “for the purpose of its objects, the members of an uncertain and fluctuating body,” and is managed by a board of trustee. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.

(b) in a Public Trust, the interest is vested in an uncertain and fluctuating body . They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756)

(c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

A trust for the benefit of employees of a company however numerous would not be considered as public charitable. For example, an industrialist who creates a trust for the benefit of his 5,000 people, their spouses and children is considered private because who the beneficiaries are known.

While a public trust is set up for what is called ‘uncertain and fluctuating body of persons’ , it is possible to create a sectarian or communal trust as a public charitable trust. There are trusts which are only for specific religious communities. However, such trusts may not be tax-exempt.

(5 Marks)

ANSWER-B

A partnership form of organisation suffers from the following major limitations: **(any five)**

(i) **<u>Uncertainty of existence:</u>** The existence of a partnership firm is very uncertain. The retirement, death, bankruptcy or lunacy of any partner can put an end to the partnership. Further, the partnership business can come to a close if any partner demands it.

(ii) **<u>Risks of implied authority:</u>** It is true that like the sole proprietor each partner has unlimited liability. But his liability may arise not only from his own acts but also from the acts and mistakes of co- partners over whom he has no control. This discourages many persons with money and ability, to join a partnership firm as partner.

(iii) **<u>Risks of disharmony:</u>** In partnership, since decisions are taken unanimously, it is essential that all partners reconcile their views for the common good of the organisation. But there may arise situations when some partners may adopt rigid attitudes and make it impossible to arrive at a commonly agreed decision. Lack of harmony may paralyse the business and cause conflict and mutual bickering.

(iv) **<u>Difficulty in withdrawal from the firm:</u>** Investment in a partnership can be easily made but cannot be easily withdrawn. This is so because the withdrawal of a partner’s share requires the consent of all other partners.

(v) **<u>Lack of institutional confidence:</u>** A partnership business does not enjoy much confidence of banks and financial institutions. It is because the nature of its activities is not disclosed at public and the agreement among partners is not regulated by any law. As a result large financial resources cannot be raised by partnership and growth of business cannot be ensured.

(vi) **<u>Difficulties of expansion:</u>** It is difficult for a partnership firm to undertake modernization of expansion of its operations. This is because of its inability to raise adequate funds for the purpose. Limited membership (restricted to 20) and their limited personal resources do not permit large amounts of capital to be raised by the partners. Therefore, large-scale business cannot generally be organized by partnerships.

(5*1 = 5 Marks)

ANSWER-5

ANSWER-A

In terms of Section 581B (1) of the Companies Act, 1956, the objects of a producer company registered under this Act may be all or any of the following matters:

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the members or import of goods or services for their benefit.

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of the produce of its members.

(c) manufacturing, sale or supply of machinery, equipment or consumables mainly to its members.

(d) providing education on the mutual assistance principles to its members and others.

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members.

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce.

(g) insurance of producers or their primary produce.

(h) promoting techniques of mutuality and mutual assistance.

(i) welfare measures or facilities for the benefit of the members as may be decided by the Board.

any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) above or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner.

(j) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) above, which include extending of credit facilities or any other financial services to its members.

Further, under Section 581B(2) it has also been clarified that every producer company shall deal primarily with the produce of its active members for carrying out any of its objects specified above.

(5 Marks)

ANSWER-B

Section 2(62) of the Companies Act, 2013 define **"one person company" as a company which has only one person as member**. OPC is a type of Private Company as per Section 2(68) and Section 3(1)(c) of the Act.

Rule 3 of the Companies (Incorporation) Rules 2014 say, only a natural person who is an Indian citizen and resident in India:-

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

"Resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

The fundamental difference between a sole proprietorship and an OPC is the way liability is treated in the latter.

An one-person company is different from a sole proprietorship because it is a separate legal entity that distinguishes between the promoter and the company.

The promoter's liability is limited in an OPC in the event of a default or legal issues. On the other hand, in sole proprietorships, the liability is not restricted and extends to the individual and his or her entire assets would be liable to repay the debts due by the sole proprietorship business unlike OPC.

(5 Marks)