



INTER CA – NOVEMBER 2018

Sub: BUSINESS & OTHER CORPORATE LAWS
Topics – The Companies Act, 2013 – Deposits,
Charges, Management & Administration
(Registers, Returns Etc), Dividend, Accounts.

Test Code – N10

Branch: Multiple

Date:

(50 Marks)

Answer 1

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxies, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. **(4 marks)**

Thus, in case of Member X, the proxy Z (and not Proxy Y) will be permitted to vote on his behalf. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting. **(2 marks)**

Answer 2 (1/2 mark for each point)

According to the Companies (Acceptance of Deposits) Rules, 2014, following categories of amount may not be considered as deposit-

- (i) Any amount received from the Central Government or a state Government, or from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature ;
- (ii) Any amount received from foreign Governments, foreign international banks, multilateral financial institutions etc. subject to the provisions of Foreign Exchange Management Act, 1999
- (iii) any amount received as a loan or facility from any banking company.
- (iv) Any amount received as a loan or financial assistance from Public Financial Institutions
- (v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
- (vi) any amount received by a company from any other company;
- (vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, (including share application money or advance towards allotment of securities, pending allotment), so long as such amount is appropriated only against the amount due on allotment of the securities applied for; If the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.
- (viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company
- (ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act
- (x) any amount received from an employee of the company
- (xi) any non-interest bearing amount received or held in trust;
- (xii) any amount received in the course of, or for the purposes of, the business of the company – as an advance for the supply of goods or provision of services accounted for, as advance
- (xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank.

(xiv) any amount accepted by a Nidhi company in accordance with the section 406 of the Act.

Answer 3

1. According to Companies Act in order to constitute valid meeting 21 Days clear notice of an AGM must be given. In case of notice by post, the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting. Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded. Accordingly, 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened. **(4 marks)**
2. Yes, there is shortfall of 2 days in sending valid notice. **(2 marks)**
3. An AGM called at a notice shorter than 21 clear days shall be valid if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting. **(2 marks)**

Answer 4

Under section 134(1) of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least :

1. The chairperson of the company where he is authorised by the Board; or
2. Two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, and
3. The Chief Financial Officer and the company secretary of the company, wherever they are appointed. **(3 marks)**

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit and Loss Account. **(2 marks)**

Answer 5

Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares. **(3 marks)**

In the given instance, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. So according to the above provision, declaration of dividend by the ABC Limited is not valid. **(2 marks)**

Answer 6

“Eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits

An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. **(3 marks)**

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.

Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. **(2 marks)**

Answer 7

The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge

In this case particulars of charge have not been filed within the prescribed period of 30 days. **(2 marks)**
However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, MNC Limited, should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge. There will be no change in the situation if the charge was created on 12th February, 2017. **(2 marks)**

Answer 8 (2 marks eah for modification and satisfaction of charge)

1) a) **Modification of charge:** The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

1) b) Section 79 of the Companies Act, 2013 provides that “whenever the terms or conditions or the extent or operation of any charge registered under section 77 of the Act are modified, it shall be the duty of the company to send to the Registrar the particulars of such modifications and get such modification registered. The provisions applicable to the registration of a charge under section 77 shall apply to modification of the charge.” Some examples of modification are as under:

1. where the charge is modified by varying any terms and conditions of the existing charge by agreement;
2. where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
3. where the modification is by ceding a pari passu charge;
4. change in rate of interest (other than bank rate);
5. change in repayment schedule of loan; (this is not applicable in working loans which are repayable on demand) and
6. partial release of the charge on a particular asset or property.

2) a) **Satisfaction of charge:** The term satisfaction of charge means that the company has either paid off the debt against which the charge was created or the assets charged have been disposed off and the debt paid off. In either case, the full payment of the debt results in the satisfaction of charge and when this happens the charge must be got vacated.

2) b) Under section 82 (1) a company shall give intimation to the Registrar in the prescribed form, of the payment or satisfaction in full of any charge registered under this Chapter within a period of thirty days from the date of such payment or satisfaction.

2) c) Section 82 (2) provides that the Registrar shall, on receipt of intimation under sub-section (1), send a notice to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar. If no cause is shown, by such holder of the charge, the Registrar shall order that a memorandum of satisfaction shall be entered in the register of charges and shall inform the company that he has done so:

2) d) Section 83 (1) states that the Registrar may, on evidence being given to his satisfaction with respect to any registered charge
(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
(b) that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,
enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be

2) e) Section 82 (2) further requires the Registrar to inform the affected parties within thirty days of making the entry in the register of charges kept under sub-section (1) of section 81. Part payment or satisfaction of charge need not be intimated to the Registrar; only satisfaction in full has to be reported within 30 days from the date of such payment of satisfaction.

Answer 9

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- b) in the case of any other company, by any member or members present in
- c) person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand. **(6 marks)**

Hence, on the basis on the above provisions of the Companies Act, 2013:

1. The chairman cannot reject the demand for poll subject to provision in the articles of company.
2. The chairman cannot reject the request of the members for withdrawing the demand of the Poll. **(2 marks)**