

**GUIDELINE ANSWERS
JUNE 2024 EXAMINATION
SETTING UP OF BUSINESS ENTITIES AND CLOSURE
MODULE 1 PAPER 3
JUNE 2024, SESSION
EXECUTIVE PROGRAMME
(SYLLABUS 2017)**

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PART- A

Answer to Question No. 1 (a)

As per Section 4(1) of the Companies Act, 2013, the memorandum of a limited company must state the following:

- (a) the name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company (*Name Clause*)

This shall not apply in case of companies registered under section 8 Similarly, in case of government companies the name of the company need not be ended with the words "Limited" or "Private Limited". This is as per the exemptions to Government Companies under Section 462 of the Companies Act, 2013 vide MCA notification dated June 5, 2015

- (b) the State in which the registered office of the company is to be situated (*Situation Clause*);

- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (*Objects Clause*);

- (d) the liability of members of the company, whether limited or unlimited, and also state, - (*Liability Clause*):

- i. in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- ii. in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute -
(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.

(e) in the case of a company having a share capital (*Capital Clause*) -the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

Subscription Clause:

- i. the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
- ii. the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

(f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

As per section 4(6) of the Companies Act, 2013, the memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. The above clauses are compulsory and are designated as "conditions" prescribed by the Companies Act, 2013 on the basis of which a company is incorporated.

Accordingly, Ravi and Suraj are advised.

Answer to Question No. 1 (b)

To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing start-ups.

1. Simple process

Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested in setting up a startup can fill up a simple form on the website and upload certain documents. The entire process is completely online.

2. Reduction in cost

The government also provides lists of facilitators of patents and trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startup will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.

3. Easy access to Funds

A 10,000 crore rupees fund is set-up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.

4. *Tax holiday for 3 Years*

Startups will be exempted from income tax for 3 years provided they get a certification from Inter-Ministerial Board (IMB). Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

5. *Apply for tenders*

Startups can apply for government tenders. They are exempted from the "prior experience/turnover" criteria applicable for normal companies answering to government tenders.

6. *R&D facilities*

Seven new Research Parks will be set up to provide facilities to startups in the R&D sector.

7. *No time-consuming compliances*

Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.

8. *Tax saving for investors*

People investing their capital gains in the venture funds setup by government will get exemption from capital gains. This will help startups to attract more investors.

9. *Choose your investor*

The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.

10. *Easy exit*

In case of exit, a startup can close its business within 90 days from the date of application of winding up

11. *Meet other entrepreneurs*

Government has proposed to hold 2 startup tests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

Accordingly, Vijay is advised.

Answer to Question No. 1 (c)

Key advantages of using an Limited Liability Partnership (LLP) firm as an Special Purpose Vehicle (SPV) as compared to a company are as follows:

- i. Low cost of incorporation of an LLP;
- ii. Flexibility of rules of management and governance based on Agreement between the contracting Partners;
- iii. Partners can be companies while management is run by Designated Partners who are individuals. By this, there is separation between ownership and management;
- iv. Low annual maintenance cost;
- v. There may not be any necessity of getting the accounts audited before the project takes off;
- vi. An LLP firm does not have to pay Dividend Distribution Tax (DDT) on share of profits transferred to the Partners, which makes it tax efficient;
- vii. Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;
- viii. Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

Accordingly, Komoto Corporation is advised.

Answer to Question No. 1 (d)

Choosing business location is depends on the entry barriers in the governing law as some of the countries provide easy access to the businesses such as Property transfer, Reliability of electricity, Labor market regulation, Trade regulation and costs, Court efficiency, Creditors' rights, Credit information, Shareholders' rights, Tax regulation, Foreign direct investment, Overall business regulatory environment. However, the same can be categorised as under:

A. Geographical Location of the Business

- Infrastructure (ports, airports, storage, specific storage types - such as cold-storage, secure storage);
- Access (transportation of goods, materials and personnel);
- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce);
- Availability of talent pool for productions (labour), services and management.

B. Economic Aspects

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability;
- Cost of doing business: return on investment computations vis- a-vis comparable locations;

- Laws relating to labour;
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as Foreign Account Tax Compliance Act (FATCA), Tax Residency Certificate (TRC), etc.

C. Political Aspects

- Friendly country, Most Favoured Nation (MFN) status;
- Long-standing and established legislative precedents with companies going through regulatory recourse;
- Their relations with neighboring countries and neighbours and your country.

D. Social Aspects

- Trade bodies, interaction between commercial entities of both nations;
- Expatriate-friendliness of the nation for relocating key employee personnel.

E. Technological Aspects

- Intellectual property protection - create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress;
- Power, communication, telecom - availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long-term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

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

Answer to Question No. 2 (a)

Meaning of Micro Finance Institutions (MFI)

A micro finance institution is an organization that offers financial services to low-income populations. Almost all give loans to their members, and many offer insurance, deposit and other services. Organizations which finance on a larger scale are regarded as microfinance institutes. They are those that offer credits and other financial services to the representatives of poor strata of population (except for extremely poor strata). An increasing number of microfinance

institutions (MFIs) are seeking non-banking finance company (NBFC) status from RBI to get wide access to funding, including bank finance.

NABARD has defined microfinance as "provision of thrift, credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas provided to customers to meet their financial needs with only qualification that (1) transactions value is small and (2) customers are poor."

Characteristics of a Micro Finance Institution:

- (1) Micro finance provides financial services to those whose income is small and unstable. These people are in need of credit facilities for several reasons. To name a few:
 - (a) their needs are small and arise suddenly.
 - (b) the institutional providers of finance, namely, the banks, demand collateral security which they cannot provide.
 - (c) most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education, illness, funerals, weddings for which it is difficult to obtain institution finance
 - (d) for purpose of investment in income generating activities.
- (2) Concept of Self-Help Group (SHGs) is the most exciting discovery In the context of microfinance. The Indian microfinance scene is dominated by SHGs and their linkage with banks. This has helped in empowerment of women and eradication of poverty among people with low income.
- (3) Microfinance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self-mobilization, by way of saving and sale of assets.
- (4) The biggest flexibility in the case of microfinance is the lack of any physical collateral, even in case of loan from the bank.

The characteristics of MFIs may be summarized as under:

- i. The size of the loan given by the MFI is small.
- ii. The repayment period is short.
- iii. MFI can mobilize resources both from internal and external sources.
- iv. No collateral for loan is required.
- v. the purpose of end use of loan is flexible.
- vi. loans given are mostly group loans, trickling down to individuals.
- vii. Transaction cost is low, due to group lending.

Answer to Question No. 2 (b)

In terms of Section 394 of the Companies Act, 2013, where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be-

- (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
- (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor General of India.

Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

Answer to Question No. 2 (c)

The deed should be prepared on stamp paper declaring the formation of the Hindu Undivided Family (HUF). It should have all the details, including the name of Karta, co-parceners, address and source of funds in the corpus. Creating a HUF Deed is not mandatory. However, it is always beneficial to have a HUF Deed.

Following are the key issues to be noted in preparation of a HUF Deed:

- i. A HUF deed is a written formal document on a stamp paper (as applicable in the respective State) specifying the name of Karta and Coparceners of HUF.
- ii. The eldest male member of HUF becomes Karta of HUF.
- iii. The name of members of HUF and the name of the HUF is also required to be stated in the HUF Deed at the time of creating of HUF.
- iv. The name of HUF is usually the name of the Karta followed by the word HUF e.g., Ram Kumar HUF.
- v. HUF Deed also states the capital with which the HUF has been initiated. There are various sources through which capital can be introduced.
- vi. A declaration is also provided by each member of family where they declare the name of Karta and also state that -
 - i. Karta has the authority of the accounts vested in his hand;
 - ii. Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.
- vii. Further, a rubber stamp of HUF will also be prepared. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.
- viii. It is recommended that the Deed should be notarized.
 - i. Register the Deed.
 - ii. Obtain PAN.

- iii. Once the declaration deed is made, the karta should apply for a permanent account number (PAN) for the HUF. This is mandatory because all financial transactions must carry PAN.
- iv. Open bank account.

After the PAN is allotted, open a bank account in the name of the HUF. It is also advisable to get some stationery printed for official communication. The HUF is now functional. The Karta will have to invest in tax saving instruments and file tax returns on behalf of the HUF.

Answer to Question No. 2 (d)

The word 'ultra' means beyond and the word 'vires' means powers. In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it.

Also, as stated earlier, the company cannot make it valid, even if every member assents to it. The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982)*].

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653*.

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors."

The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way and thereby such acts can be duly ratified.

Answer to Question No. 2 (e)

National Housing Bank (NHB) after satisfying itself on the fulfilment of following conditions provided under of Section 29A (4) of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

1. Housing Finance institution is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;
2. Affairs of the Housing Finance institution are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

3. General character of the management or the proposed management of the housing finance institution shall not be prejudicial to the public interest or to the interests of its depositors;
4. Housing finance institution has adequate capital structure and earning prospects;
5. Public interest shall be served by the grant of certificate of registration to the housing finance institution to commence or carry on the business in India;
6. Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and
7. Any other condition, fulfilment of which in the opinion of the Reserve Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a Housing finance institution shall not be prejudicial to the public interest or in the interests of the depositors.

The Reserve Bank may, wherever it considers necessary so to do, require the National Housing Bank to inspect the books of such housing finance institution and submit a report to the Reserve Bank for the purpose of considering the application.

The Reserve Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

Housing finance institutions are categorized in terms of the type of liabilities, by NHB, into Deposit and Non-Deposit accepting Housing finance institutions and are issued Certificate of Registration accordingly.

OR (Alternate Question to Q. No. 2)

Answer to Question No. 2 A (i)

Payment Banks are regulated by the Reserve Bank of India (RBI). It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016.

An application has to be filed with Reserve Bank of India in Form III under Section 22 of the Banking Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence banking business.

Key issues which require compliance by an applicant company are summarized below:

1. Compliance with the minimum capital requirement
2. Foreign shareholding will be allowed in these banks as per the Rules/Regulations for Foreign Direct Investment in private banks in India.
3. Compliance with the voting rights as per the Banking Regulation Act, 1949.

4. The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
5. The bank should be fully networked from the beginning. The bank can accept utility bills. It cannot form subsidiaries to undertake non-banking activities.
6. Initially, the deposits will be capped at Rs. 200,000 per customer, but it may be raised by the RBI based on the performance of the bank.
7. The bank cannot undertake lending activities 25% of its branches must be in the unbanked rural area.
8. The bank must use the term "payments bank" in its name to differentiate it from other types of bank.
9. The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949.
10. It will be registered as public limited company under the Companies Act, 2013.

Accordingly, KBC Money Ltd. is advised.

Answer to Question No. 2 A (ii)

The memorandum and articles constitute a contract binding on the members of the company. The members, as members, are bound to the company. Each member must, therefore, observe the provisions of the memorandum and articles.

Each member is bound by the covenants of the Memorandum as originally made and as altered from time to time [*Malleon v. National Insurance Co.*]. In another case, the shareholders could not enter into an agreement which was contrary to or inconsistent with the articles of association of the company [*V.B. Rangaraj v. V.B. Gopalkrishnan (1992)*]

In *Boreland's Trustee v. Steel Brother and Co. Ltd. (1901)*, the articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons and at a price fixed by the directors. B, a shareholder was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by these provisions and should be at liberty to sell the shares at their true value. It was held that the trustee was bound by the articles, as the shares were purchased by B in terms of the articles.

In view of the above, the claim of trustee of Kush is not valid.

Answer to Question No. 2 A (iii)

- (a) As per Section 7(1) of the LLP Act, 2008 Limited liability partnership may have all the partners as bodies corporate. However, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

- (b) As per Section 7(1) of the LLP Act, 2008, every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year. Therefore, all the designated partners of LLP cannot be the foreign nationals.
- (c) As per Section 7(1) of the LLP Act, 2008 every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (d) As per Rule 21(1) of the LLP Rules, 2009 indicates that that any change made in the limited liability partnership agreement shall be filed in Form 3 within thirty days of such change along with the fee as provided in Annexure 'A'.

Answer to Question No. 2 A (iv)

PMC foundation would require the following documents for registration of society as a company limited by guarantee under section 8:

In case of an application by a society for registration as a company limited by guarantee under section 8-

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the society with proof of membership;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
- (iii) a list containing the names and addresses of the members of the governing body of the society;
- (iv) a certified copy of the certificate of registration of the society;
- (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the resolution shall also provide for declaration of the amount of guarantee;
- (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable;
- (viii) a copy of the latest income tax return of the society;

- (ix) details of the objects of the company along with a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.

Answer to Question No. 2 A (v)

The Ministry of Corporate Affairs (MCA) under Section 462 of the Companies Act, 2013 vide notification no: G.S.R. 151(E), dated 02nd March, 2020, has exempted the Government Companies with respect to the related party transactions.

First and Second proviso to sub-section (1) of section 188 shall not apply to -

- a. Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;
- b. a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Before this amendment the contracts or arrangements with any other Government Company was only exempted, with this amendment the exemption is also extended to the contracts or arrangements with the Central Government or any State Government or any combination thereof.

In view of the above, as the contract is between two Government Companies, RCL and BVCL are not required to comply with the provisions of Related Party Transaction under section 188 of the Companies Act, 2013.

PART- B

Answer to Question No. 3 (a)

1. Industries retained under compulsory licensing: The following industries require compulsory license:
 - Alcoholics drinks
 - Cigarettes and tobacco products
 - Electronic aerospace and defense equipment
 - Explosives
 - Hazardous chemicals such as hydrocyanic acid, phosgene, isocyanates and di-isocyanates of hydro-carbon and derivatives.
2. Manufacture of items reserved for small scale sector by larger units large or medium industries undertaking manufacture of items reserved for SSI units. The Government has reserved certain items for exclusive manufacture in the small-scale sector. Non-small-scale units can undertake the manufacture of items reserved for small scale sector, only after obtaining an industrial licence. In such cases, the non-small-scale unit is required to undertake an obligation to export 50% of the production of SSI reserved items.
3. When the proposed location attracts locational restriction.

Locational restrictions:

Industrial undertakings to be located within 25 kms of the standard urban area limit of 23 cities having a population of 1 million as per 1991 census require an industrial license. Industrial license even in these cases is not required if:

- (i) a unit is located in an area designated as an industrial area before 1991 or
- (ii) it is non-polluting industries such as electronics, computer software, printing and other specified industries.
 - The DPIIT has established the Department for Promotion of Industry and Internal Trade G2B Portal - a single window portal to obtain clearance from various governments and government agencies. The portal is an integrated platform that provides access to government to business (G2B) services, such as filing of Industrial Entrepreneurs Memorandum (IEM) and Industrial License (IL) applications online. The online portal has the required authentication mechanisms for submitting IEM and IL applications.
 - Previously, the application for registration was made to the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP) along with a fee.

- Once the license is obtained, an industrial undertaking is eligible for the allotment of controlled commodities and for the issuance of an import license for goods required for its construction and operation.

Accordingly, MNC Ltd. is advised.

Answer to Question No. 3 (b)

Section 11 of the Factories Act, 1948 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect:

(a) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;

(b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;

(c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall

(i) where they are painted otherwise than with washable water-paint or varnished, be repainted or revarnished at least once in every period of five years;

(ia) where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months

(ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;

(iii) in any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;

(dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;

(e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

(2) If, in view of the nature of the operations carried on in a factory or class or description of factories or any part of a factory or class or description of factories, it is not possible for the occupier to comply with all or any of the provisions of subsection (1), the State Government may by order exempt such factory or class or description of factories or part from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state

S should take aforesaid cleanliness measures under the Factories Act, 1948.

Answer to Question No. 3 (c)

Chapter II of the Rights of Persons with Disabilities Act, 2016 deals with the rights and entitlements for persons with disabilities.

Section 3 speaks about Equality and Non-Discrimination. It states that it is the duty of the appropriate Government to ensure that persons with disabilities enjoy right to equality, a life with dignity and respect or his or her integrity equally with others.

It mandates the Government to take appropriate steps to utilise the capacity of persons with disabilities by providing appropriate environment.

The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

Section 4 states that the appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others and also shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.

Section 5 allows such persons with disability to the right to live in the community.

Section 6 of the Act states that the appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

Section 7 instructs the Government to take measure in order to protect persons with disability from any sort of abuse, violence or exploitation.

It also speaks about the duties of a police officer when cases of cruelty against persons with disability are reported. It shall be his duty to let the victim know about his rights to approach the

Executive Magistrate for maintenance or the particulars about the nearest organisation that works for the rehabilitation of person with disabilities or even his right to free legal aid.

Section 8 ensures the protection and safety of persons with disability in cases of any risk, armed conflict, humanitarian emergencies or natural disasters.

Sections 9 and 10 majorly deal with home and family rights. Section 9 prevents the separation of any child with disability, from his parents except by an order of the court and necessary relocation to any family member, community member or any governmental or private run home.

Section 10, deals with the providing of information to persons with disability, relating to reproduction and family planning.

Section 11 states that it is the duty of the Election Commissions to ensure that the electoral process is understandable and accessible to them.

Section 12 reflects the duty of the appropriate Government to make the legal process accessible for such persons with disability and to ensure suitable measure to render justice to such persons especially the ones requiring high support.

Section 13 deals with legal capacity of such persons with disability. It states that the appropriate Government shall have the duty to ensure that the persons with disabilities enjoy legal capacity equally like any other person and has the right to equal recognition.

Answer to Question No. 3 (d)

The salient features of Geographical indication of Goods (Registration and Protection) Act, 1999 are as under:

- a. Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc.
- b. Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
- c. Registration of geographical indications of goods in specified classes.
- d. Prohibition of registration of certain geographical indications.
- e. Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.
- f. Compulsory advertisement of all accepted geographical indication applications and for inviting objections.

- g. Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.
- h. Provisions for higher level of protection for notified goods.
- i. Prohibition of assignment etc. of a geographical indication as it is public property.
- j. Prohibition of registration of geographical indication as a trademark.
- k. Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation.
- l. Provision relating to offences and penalties.
- m. Provision detailing the effects of registration and the rights conferred by registration.
- n. Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

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

Answer to Question No. 4 (a)

The definition of the word “Invention” as per Section 2(1)(j) of the Patents Act, 1970 includes a new product or process involving an inventive step and capable of industrial application. Inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

Therefore, a patent can be applied for the “Product” as well as “Process” which is new, involving inventive step and capable of industrial application can be patented in India.

The invention will not be considered new if it has been disclosed to the public in India or anywhere else in the world by a written or oral description or by use or in any other way before the filing date of the patent application. The information appearing in magazines, technical journals, books etc., will also constitute the prior knowledge. If the invention is already a part of the state of the art, a patent cannot be granted. Examples of such disclosure are displaying of products in exhibitions, trade fairs, etc. explaining its working, and similar disclosures in an article or a publication.

It is important to note that any invention which falls under section 3 and Section 4 of the Patents Act, 1970 are not patentable.

Answer to Question No. 4 (b)

Section 7(2) of the Payment of Wages Act, 1936 allows deductions from the wages of an employee on the account of the following: -

- (a) fines;

- (b) for absence from duty;
- (c) damage to or loss of goods expressly entrusted to the employed for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default
- (d) house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by appropriate Government by notification in the Official Gazette;
- (e) such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise;
- (f) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government, and the interest due in respect thereof;
- (g) subscriptions to and for repayment of advances from any provident fund;
- (h) income-tax;
- (i) payments to co-operative societies approved by the appropriate Government or to a scheme of insurance maintained by the Indian Post Office;
- (j) deductions made with the written authorization of the employee for payment of any premium on his life insurance policy or purchase of securities.

Answer to Question No. 4 (c)

- Section 2(77) of the Central Goods & Services Tax Act, 2017 defines "non-resident taxable person" as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.
- Hence, a non-resident taxable person is someone who has a business outside India, but comes to a different state for a business purpose temporarily. For example, a person from Paris, comes to participate in an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a non-resident taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.
- As per Section 24 of Central Goods & Services Tax Act, 2017 a non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least five days prior to the commencement of business at the common portal.

Answer to Question No. 4 (d)

Copyright Act, 1957 protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings. The following rights are protected:

- reproduce the work.
- issue copies of the work to the public.
- perform the work in public.
- communicate the work to the public.
- make cinematograph film or sound recording in respect of the work.
- make any translation of the work.
- make any adaptation of the work (conversion of dramatic work into non dramatic work, literary work into dramatic work, re- arrangement of literary or dramatic work, depiction in comic form or through pictures of a literary or dramatic work, transcription of musical work or any act involving rearrangement or alteration of an existing work and the making of a cinematograph film of literary or dramatic or musical work).

In addition to all the rights applicable to a literary work, owner of the copyright in a computer programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

Answer to Question No. 4 (e)

The objective of the National Green Tribunal can be derived from Preamble of the National Green Tribunal Act, 2010 are as under:

- Establishment of a National Green Tribunal (NGT) for the effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- It aims at enforcing all the legal rights relating to the environment.
- It also accounts for providing compensation and relief to effected people for damage of property.

OR (Alternate Question to Q. No. 4)

Answer to Question No. 4 A (i)

Section 94 of the Companies Act, 2013 prescribed that the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the Company. Such registers may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

In the given case, the RMC Ltd. is having 70 shareholders and 10 shareholders residing at Noida which is as more than one-tenth of the total number of members (one-tenth of 70 i.e. 7). Therefore, the records and registers may be kept at Noida provided special resolution passed at a general meeting of the company for this purpose.

Answer to Question No. 4 A (ii)

The documents required for starting a pharmacy business varies from State to State. However, the following is an indicative list of documents required for obtaining drug license in India:

- a. Application form in the prescribed format
- b. Covering Letter with the intent of the application signed with name and designation of the applicant
- c. Challan of fee deposited for obtaining drug license
- d. Declaration form in the format prescribed
- e. Key plan (Blue print) for the premises
- f. Site plan (Blue print) for the premises
- g. Basis of possession of the premises
- h. Proof of ownership of the premises, if rented
- i. Proof of constitution of the business (Incorporation Certificate/ MOA / AOA / Partnership Deed)
- j. Affidavit of non-conviction of proprietor / partners/ directors under Drugs and Cosmetics Act, 1940
- k. Affidavit of registered pharmacist or competent person working full time
- l. Appointment letter of registered pharmacist/competent person, if employed person.

Accordingly, Raj is advised.

Answer to Question No. 4 A (iii)

As per Section 2 (n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the term "Sexual Harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely: (i) physical contact and

advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

As per Section 3 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

In view of the above, the act or behavior of K by making sexually coloured remark and by promising the promotion amounts to sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Answer to Question No. 4 A (iv)

Section 24 of the Central Goods and Services Tax, 2017 stipulates the requirement of Compulsory Registration. Section 24 prescribed the instances when compulsory registration is mandatory irrespective of the aggregate turnover which inter alia includes for a supplier who makes inter-state supplies.

Since Ramesh is making inter-state supplies, he is mandatorily required to obtain registration of his business under the Goods and Services Tax Act, 2017.

Answer to Question No. 4 A (v)

Food Safety and Standards Act, 2006 regulates Food Safety and Standards Authority of India (FSSAI) registration in India.

FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- (a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- (b) Distributes foods including in any religious or social gathering except a caterer; or
- (c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A or by applying online on the FoSCoS portal. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.

In view of the above, Sunita is required to obtain FSSAI registration before starting petty food business at Chawri Bazar, Delhi.

PART- C

Answer to Question No. 5 (a)

In terms of the Insolvency and Bankruptcy Code, 2016 when a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs 10 lakhs, it can opt for Pre-Packaged Insolvency Resolution Process (PPIRP).

The Central Government can increase minimum default limit to Rs 1 crore.

The following MSMEs cannot opt for Pre-packaged Insolvency Resolution Process (PPIRP):

- (a) MSME which has completed PPIRP or completed Corporate Insolvency Resolution Process (CIRP), as the case may be, during the period of three years preceding the initiation date;
- (b) MSME which is undergoing a CIRP;
- (c) MSME which is undergoing a liquidation under section 33; and
- (d) MSME not eligible to submit a resolution plan under section 29A.

Answer to Question No. 5 (b)

Section 455 of the Companies Act 2013 contains provisions with regards to dormant Company. As per the provisions of rule 3 of the Companies (Miscellaneous) Rule, 2014, shareholders' approval in any of the following two manners is required to be obtained before making an application for dormant status, to the Registrar of Companies:

- Special resolution to this effect in the general meeting of the company or;
- after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least $\frac{3}{4}$ th shareholders (in value).

After passing the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution within 30 days from passing of the said special resolution.

Since in the given case, Fresh Water Ltd. has obtained the approval of shareholders by way of Ordinary Resolution and not Special Resolution, the rejection of the application by the Registrar of Companies is valid.

Answer to Question No. 5 (c)

Many times, the terms 'winding up' and 'dissolution' are used interchangeably. This is not correct. There are very important differences in these two terms which are given below:

(1) Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities paid off and surplus, if any, is distributed amongst the contributories. Whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.

(2) The winding up process is handled by a liquidator / insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.

(3) Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists on dissolution.

(4) Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over/ amalgamated by any other entity I company which will result in the company coming out of winding up process and being handed over to the shareholders. This is not possible in case of dissolution.

Answer to Question No. 5 (d)

All the Designated Partners of the LLP must execute an affidavit, either jointly or severally, along with the application for striking of the name of the LLP, to the effect, -

- i. that the Limited Liability Partnership has not commenced business or where it commenced business, it ceased to carry on such business from (dd/mm/yyyy);
- ii. that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;
- iii. that the Limited Liability Partnership has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account;
- iv. that the Limited Liability Partnership has not filed any Income- tax return where it has not carried on any business since its incorporation, if applicable.

The above are the contents of affidavit to be submitted by the designated partners of Rath Sahay LLP for striking off the name of LLP.

Answer to Question No. 5 (e)

The Compliance requirements for the dormant Company are governed by the provisions of Companies Act, 2013

The ROC maintains the Register of dormant companies. The compliance requirements to retain the status of a dormant company are as follows:

- a. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.

- b. A dormant company is required to file a “Return of Dormant Company” in form MSC-3 annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.
- c. A Dormant Company need not enclose cash flow statements in its annual accounts.
- d. A Dormant Company is required to convene at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days. [Section 173(5) of the Companies Act, 2013]
- e. The provisions of the Companies Act, 2013 in relation to the rotation of auditors are not applicable to dormant companies.
- f. A Dormant Company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Companies Act, 2013, whenever the company allots any security to any person or there is any change in the directors of the company.

Answer to Question No. 6 (a)

As per Section 9 of Insolvency and Bankruptcy Code, 2016, PP Constructions Ltd. (PPCL) being the Operational Creditor may follow the following procedure to initiate Corporate Insolvency Resolution Process against MNBL.

1. An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.
2. The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor-
 - (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
 - (b) the payment of unpaid operational debt-
 - (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

A “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

3. After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
4. The operational creditor shall, along with the application furnish-

- a. a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- b. an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- c. a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
- d. a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
- e. any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

Answer to Question No. 6 (b)

The liquidator is required to submit to the National Company Law Tribunal (NCLT), a report containing the following particulars, within sixty days from the order of winding up or appointment of liquidator:

- (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company;
- (b) valuation Report of the assets obtained from registered valuers;
- (c) amount of capital issued, subscribed and paid-up;
- (d) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (e) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (f) guarantees, if any, extended by the company;
- (g) list of contributories and dues, if any, payable by them and details of any unpaid call;
- (h) details of trademarks and intellectual properties, if any, owned by the company;
- (i) details of subsisting contracts, joint ventures and collaborations, if any;
- (j) details of holding and subsidiary companies, if any;
- (k) details of legal cases filed by or against the company; and
- (l) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in

its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal. He shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company. The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company. In such form and manner as may be prescribed. He may make any further reports as he thinks fit.

When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company. The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

The Tribunal shall on an application filed by the Company Liquidator or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. A copy of the order shall be forwarded by the Company Liquidator to the Registrar, within thirty days from the date thereof, who shall record the dissolution of the company In the Register of Companies.
