

MOCK TEST PAPER 2
FINAL COURSE GROUP I
PAPER 4: CORPORATE AND ECONOMIC LAWS

Time Allowed: 3 Hours

Maximum Marks: 100

DIVISION A: MULTIPLE CHOICE QUESTIONS (TOTAL OF 30 MARKS)

Instructions: All questions are compulsory.

Case Scenario 1 (Marks each: 2 X 4 = 8 Marks)

Maps and Architectures Ltd., (the Company) was incorporated as a public limited company and the Certificate of Incorporation was given on 15th April 2021. Its Authorised Capital is 500 crores rupees and paid-up capital is 100 crores rupees. The Articles of the Company do not have any provision relating to the appointment of the first director. Satish is holding a degree in BE (Civil) and the company want him to have in its Board as an Independent Director. Satish is a partner in 'Satish Consultants LLP' (A Limited Liability Partnership) and holds Designated Partnership Identification Number (DPIN). The Company appointed Ms. Surekha (wife of Praveen, the Promoter and Managing Director of the Company) as Woman Director with effect from 1st December, 2021. Ms. Surekha, however, failed to inform the Company about the Director's Identification Number (DIN).

Based on the above scenario, answer the following questions:

1. Can the company in the given case, appoint Ms. Surekha as a woman director on the Board:
 - (a) No, being an unlisted company
 - (b) Yes, it's a mandatory requirement for every Public Limited Company having Authorised Capital of 100 Crore Rupees to appoint at least one woman director.
 - (c) No, as the company is not meeting the requirement of holding more than Paid-up Capitals of 100 Crore
 - (d) Yes, as every Public Limited Company having Paid-up Capitals of 100 Crore or more is eligible to appoint at least one woman director. **(2 Marks)**
2. In given case scenario, who shall be appointed as the first directors of the Company?
 - (a) The first directors shall be, those who are appointed by the company in the General Meeting.
 - (b) The first directors shall be, those who are appointed by the Promoters of the Company.
 - (c) Where the Articles of the Company have no provision for the appointment of the first directors, the subscribers to the Memorandum, shall be the first directors of the Company.
 - (d) Till the directors are appointed by the Company in General Meeting, the Promoters will run the company. **(2 Marks)**
3. Satish is a partner in 'Satish Consultants LLP' (A Limited Liability Partnership) and holds Designated Partnership Identification Number (DPIN). Whether Satish shall be required to apply for Director Identification Number (DIN) for being an Independent Director in the Company:
 - (a) Yes, Satish is required to apply for the DIN
 - (b) Since Satish shall hold the position of Independent Director, hence he is not required to apply for the DIN

- (c) Since Satish is already having the DPIN hence there is no need to apply for DIN.
- (d) For each of the entity (Whether LLP or a Company) one has to apply for the separate DIN.

(2 Marks)

4. Ms. Surekha, failed to inform the Company about the Director's Identification Number (DIN). What are the consequences for such failure:

- (a) Since Surekha, who has been appointed as 'Woman Director', is the wife of wife of Praveen, (the Promoter and Managing Director of the Company), hence not liable for any penalty
- (b) Surekha being a 'Woman Director' is exempted from the penal provisions
- (c) Surekha shall be liable for a penalty of 50,000 rupees
- (d) Surekha shall be liable for a penalty up to 50,000 rupees

(2 Marks)

Case Scenario 2 (2 Marks each = 5 X 2 = 10 Marks)

Sumona is the Managing Director of Everest Marbles Limited (EML). She joined the EML as an Officer and gradually promoted and reached to the position of General Manager. She was elevated to the post of Managing Director with effect from 30th April, 2021. Sumona celebrated her 70th birth day on 10th June 2022.

Dharmesh, one of the directors of the company went to Germany in May 2021 for his medical treatment. After May 2021 to June 2022, the Board's Meetings of the Company were held 6 times and in all these meetings Dharmesh neither joined the Board's Meeting physically nor through the Video Conferencing. However, every time he sought the leave of absence of the Board quoting the reason of having undergone major surgical operation in Germany, he is confined to bed and cannot move.

Samant, another director of the company got a ticket of MP from a political party, for the upcoming election to be held in December, 2022. The Political Party insisted Samant to get some contribution from his company. Samant put a request before the Board Members to make political contribution to the tune of 10 lakh rupees. It is to mention here that the company is incurring losses for the past three years and the accumulated losses as at the end of the FY ending of March 2022 amounted to 25 crores. The company's paid-up is 150 crore rupees.

Raghvan, is a Chartered Accountant (CA) and is designated as Chief Financial Officer (CFO) of the company. He tendered his resignation to the company on account of personal reasons. Triloki, who is junior to Raghvan, was designated as new CFO. Triloki is not having formal qualification of accounting like CA, but is well versed with the accounting principles by virtue of his experience in the accounts department.

Based on the above scenario, answer the following questions:

5. Whether Sumona, after reaching of age of 70 years, can continue to remain on the position of Managing Director:
- (a) No, after reaching of the age of 70 years, no person is allowed to remain on the position of Managing Director
 - (b) The Company may by passing a special resolution along with the explanatory statement annexed to the notice for such motion, in the General Meeting, may continue Sumona for the post of Managing Director
 - (c) Since Sumona was appointed as Managing Director with effect from 30th April, 2021, so she can continue up to 5 years from the date of appointment
 - (d) The Board of Directors may pass a resolution for continuation of Sumona for the post of Managing Director

(2 Marks)

6. What is the consequence for not attending of the Board's Meeting by Dharmesh:
- Dharmesh will continue to hold the position of directorship.
 - Dharmesh has every time sought the leave of absence of the Board, hence he can continue to hold the directorship.
 - Dharmesh shall be required to vacate his office of director irrespective of the fact that he sought absence of leave of the Board
 - Since Dharmesh could not joined the Board's Meeting due to his ill health, so on the medical ground, he is exempted from the provision and can continue to hold the office of director. **(2 Marks)**
7. Samant put a request before the Board Members to make political contribution to the tune of 10 lakh rupees on being insisted by the Political Party insisted. In the light of the given facts, which among the following statement with regards to political contribution by a EML, is correct:
- Only a profit-making company can make political contribution.
 - There is ceiling of 0.10% of the paid-up capital.
 - There is ceiling of 0.10% of the profit as per the latest audited financial statements, since the company has incurred losses, hence not eligible to make political contribution.
 - A company which has been in existence for 3 years or more may contribute any amount to any political party subject to the passing of such resolution in its Board's Meeting. **(2 Marks)**
8. State whether Triloki is eligible to be appointed as CFO:
- No, as CFO should necessarily be a Chartered Accountant
 - No, as CFO should have accounting knowledge
 - Yes, he can be appointed as CFO, as he is well versed with the accounting principles by virtue of his experience in the accounts department.
 - No, as per requirement, CFO should be a Cost Accountant **(2 Marks)**
9. What's the requirement for the appointment of Triloki as CFO in the company?
- The CFO shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
 - The CFO shall be appointed by the Audit Committee of the Board by means of a resolution containing the terms and conditions of the appointment including the remuneration.
 - The CFO shall be appointed by means of a special resolution by the members in the General Meeting containing the terms and conditions of the appointment including the remuneration.
 - The CFO shall be appointed by means of an ordinary resolution by the members in the General Meeting containing the terms and conditions of the appointment including the remuneration. **(2 Marks)**

Independent MCQs (12 Marks)

10. Innovations Ltd. is a company engaged in the business of manufacturing and selling of electronic goods which are used for domestic purpose. The company is having its registered office at Mumbai with 500 members. Some of the members came to know that the business of the company is being conducted with intent to defraud its members. The promoters of the company are actually enjoying with the public money, siphoned the shareholders capital in purchasing the real estate in the names of the promoters.

During the course of the AGM of company in Mumbai, the members assembled there, planned to have an investigation of the affairs of its business.

In order to make an application to the National Company Law Tribunal, how many members are required?

- (a) Not less than 50 members or members holding not less than one-fifth of the total voting power
- (b) Not less than 100 members or members holding not less than one-tenth of the total voting power
- (c) Not less than 150 members or members holding not less than one-tenth of the total voting power
- (d) Not less than 200 members or members holding not less than one-tenth of the total voting power

(2 Marks)

11. Accurate Arms and Ammunitions Ltd. is a company engaged in manufacturing of ultra-powered sophisticated guns. The company has tie-up arrangement of supply of 100% of its production to the Central Government. The production capacity and the actual number of guns manufactured is required to be shown to the Central Government. During the course of the audit, it was revealed that the company was actually manufacturing more guns whereas less quantity was being declared. The undeclared manufactured guns were being sold to a group of persons having connections with terrorist groups. On what ground the Central Government can make an application to the NCLT:

- (a) The company has mis-reported the count of the manufactured guns
- (b) The manufacturing of the guns is against the public policy and only the Government owned company can manufacture the guns
- (c) The company has acted against the interests of the sovereignty and integrity of India
- (d) The Company has supplied less number of guns to the Central Government

(2 Marks)

12. Shrenik Ltd. is a listed entity and comes under the top 2000 listed entities (as of 1st April, 2020). The Board consists of 10 directors. Abhijit, one of the directors of the company has celebrated his 75th Birthday on 10th June 2022. By virtue of his rich qualifications and experiences, the company wants to continue him. What procedure is to be followed by the company:

- (a) The Company has to pass a special resolution to this effect.
- (b) The Company has to pass a resolution in its Board's Meeting.
- (c) The requirement of passing a special resolution is only in case of Managing Director and not for the any other Director.
- (d) A person can continue to hold the directorship, as far as he is of good health and have willingness to continue.

(2 Marks)

13. Priti, on 1st September, 2021 went to UK for doing one year MBA course. Her MBA course completed on 31st August, 2022 and she returned India on the next day. What shall be her residential status for the FY 2022-23 and 2023-24:

- (a) Resident in India for FY 2022-23 and FY 2023-24
- (b) Resident in India for FY 2022-23 and Resident outside India for FY 2023-24
- (c) Resident outside India for FY 2022-23 and FY 2023-24
- (d) Resident outside India for FY 2022-23 and Resident in India for FY 2023-24

(2 Marks)

14. Kamlesh has got the admission in a US based University names as 'Illinois Institute of Technology', where he does the MS in Technology. The initial expenses for travelling and other miscellaneous expenses to US were born by the Kamlesh's father. After taking the formal admission in the course, the University provide scholarship to Kamlesh to cover the cost of education and stay. Other expenses are to be meet out by the candidate from his own source. In light of this fact, what shall be the treatment of receiving of the scholarship from the Foreign Source in reference to the Foreign Contribution (Regulation) Act, 2010:
- (a) Receiving of such foreign contribution is prohibited under the FCRA.
 - (b) Receiving of such foreign contribution require prior registration with the Central Government.
 - (c) Receiving of such foreign contribution in the nature of scholarship comes under the exempted category.
 - (d) Receiving of scholarship from foreign university is not permitted activity since no reciprocal arrangement are present in India. **(2 Marks)**
15. New Era Financial Services Limited of New Delhi, registered with Reserve Bank of India as Non-banking Financial Company (NBFC), has defaulted in the payment of dues to its catering contractor, Samarth Sweets, a partnership concern owned by two real brothers Swarn and Shivi. From the following four options, select the one which indicates whether Samarth Sweets being catering contractor can initiate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016, against the company in the capacity as an operational creditor:
- (a) The catering contractor Samarth Sweets in the capacity as operational creditor is entitled to initiate insolvency process against New Era Financial Services Limited.
 - (b) The catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited because 'financial service providers' are excluded.
 - (c) The catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited since it is a partnership concern and not a limited company.
 - (d) Since 'catering service provider' is an excluded service, the catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited. **(2 Marks)**

DIVISION B: Descriptive Questions (70 Marks)

Question No. 1 is compulsory. Attempt any **four** questions out of the remaining **five** questions.

1. (a) Atlanto Tyres Ltd (ATL) is engaged in the business of manufacturing of tyres of all types of vehicles. The company have 6 directors. Recently the company has acquired a foreign company in UK which was engaged in manufacturing of tyres. The company thought that the merger will be beneficial for it. In order to take care of the operations and networking of the merged foreign entity, the directors of ATL travelled to UK on and often. Due to frequent travelling to UK, it was observed that all the directors in the FY 2020-21 could not stayed in India for a minimum period as prescribed in the Act. Examine the given situation in the light of the related law as in case if the same is not in compliance. **(4 Marks)**
- (b) The following particulars are extracted from the statement of profit and loss of Sunlight Limited for the year ended 31st March 2022:

Sr. No	Particulars	Amount
1	Gross Profit	60,00,000
2	Profit on sale of building (Cost ` 10,00,000 and written down value ` 6,00,000)	5,00,000
3	Salaries & wages	2,50,000
4	Sundry Repairs to Fixed Assets	1,00,000
5	Subsidy from the government	3,00,000
6	Compensation for breach of contract	1,00,000
7	Depreciation	1,40,000
8	Loss on sale of investments	2,00,000
9	Interest on unsecured loans	50,000
10	Interest on debentures issued by the company	1,00,000
11	Repair Expenses to fixed assets (Capital in nature)	2,00,000
12	Net Profit	13,00,000

You are required to calculate the overall managerial remuneration payable under section 197 of the Companies Act, 2013 subject to the provisions under Schedule V. **(6 Marks)**

(c) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

- (i) Mr. X, an interested Director of the company.
- (ii) Mr. Y, a Director who has expressed his inability to attend a particular Board Meeting;

(4 Marks)

2. (a) Anurag is the Managing Director of ABC Ltd. His term was expired in the month of September 2022 in spite of this, he is continuing to hold the office of MD. No meeting of the Board was held for his re-appointment. Being a shareholder of the company, can you take any action and how it will be taken? **(4 Marks)**

(b) The Registrar of Company (RoC), Mumbai has observed that Ronak Enterprises Ltd. have not filed its financial statements and annual returns for the last immediately preceding 5 consecutive years. What course of action is available before the RoC in the given case in line with the requisite compliance on the presentation of petition? **(4 Marks)**

(c) (i) Elegant Educations Ltd. is a UK based company, engaged in the business of providing on-line education. It has introduced some certificate courses having duration of 4 to 6 months and any person can enrol in the courses. The education is provided through on-line classes, webinars and study materials are supplied through e-mails to the registered candidates. The company is not having any place of business in India. It is mentioned that all the candidates who have enrolled in the course are the Indian Citizens residing in India.

Based on the above facts of procuring 100% business from India, whether the company will be treated as foreign company or an Indian company. **(3 Marks)**

(ii) What will be your answer if in the above question, more than 55% of that foreign company's paid-up share capital is held by Indian Companies or Indian Citizens. **(3 Marks)**

3. (a) Sukesh after passing of the CA examination, applied for the membership and Certificate of Practice from ICAI. Sukesh married to Manyata, who has done Graduation in Civil Engineering. Manyata had worked for 6 years in Town Planning Dept in Brihanmumbai Municipal Corporation, Mumbai.

After one year of his practice Sukesh appeared in valuation examination (Securities or Financial Assets). Sukesh also advised Manyata to appear in valuation exam (Land and Building). Both, Sukesh and Manyata passed the respective examination of valuation and applied for membership of IBBI.

Based on the above facts answer the following sub-questions:

- (i) Whether Sukesh is eligible to be Registered Valuer?
 - (ii) Whether Manyata is eligible to be Registered Valuer?
 - (iii) Whether Manyata is eligible to accept valuation of Securities or Financial Assets? **(6 Marks)**
- (b) Vikas Nidhi Ltd was incorporated as a Nidhi Company in the year 2018. It has 500 members with a Net Owned Funds (NOF) of 10 crore rupees and deposits of 190 crores as of 31.03.2022.

For the FY 2022-23 the company targets-

- (i) To raise deposits by 20%.
- (ii) To invite the public to deposit with the company.
- (iii) To issue lockers to the depositors.
- (iv) To grant loan against Gold Jewellery to any person.

Examine each of the above points, whether the Nidhi company is permitted to do so? **(4 Marks)**

- (c) Ramesh has been appointed as member of the SEBI by the Central Government. Ramesh also holds directorship in 6 other listed entities. The meetings of the SEBI Board are being conducted on and often as per the requirement and all the members attend the meetings and members are expected to discuss over the agenda and vote. However, on certain occasions Ramesh attended the meetings but did not discuss and voted on some of the agenda items due to conflict of interest.

In light of this, explain the provisions of SEBI Act, 1992 in which a member is not supposed to discuss and vote on the agenda in the Board meeting? **(4 Marks)**

4. (a) Surbhi deals in exporting of handicrafts items to abroad. On 1st January, 2022 Surbhi exported handicrafts items to UK. However, the payment of the same has not been realised even after passing of more than 9 months.

Explain the relevant provisions under the FEMA relating to –

- (i) the realisation period of exported goods.
 - (ii) the delay in receipt of payment. **(6 Marks)**
- (b) ABC Ltd. and XYZ Ltd. entered in to a Joint Venture (JV) to construct a town consisting of 500 flats nearby Pune, which will be sold to the retail home buyers. They prepared a JV Agreement in which an arbitration clause entered. This clause specifies that in case of any dispute, the matter shall be referred to the arbitration. After some time, a dispute was aroused between the companies. ABC Ltd. contended that there was no separate agreement in writing between the companies to refer the matter to the arbitration and it was just a clause in the JV Agreement, hence the matter should be referred to the Court of law instead of arbitration.

Based on the above facts define the meaning of the arbitration agreement and whether the insertion of arbitration clause in the JV agreement is sufficient or it should be a separate agreement for arbitration? **(4 Marks)**

- (c) Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose.

After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK' bank account, so she planned to purchase a second flat in the UK.

Based on the above facts, answer the following questions:

- (i) Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?
- (ii) Whether Ruchika can purchase second flat in UK after returning to India? **(4 Marks)**

5. (a) Good Bank Ltd. granted a credit facility of Rs. 50 lakh to Sandhya Cosmetics Pvt Ltd. on the personal guarantee of Sandhya, who is the Managing Director of the Company.

After some time the company defaulted in paying the dues of the Bank so the financial creditor initiated CIRP against Sandhya. Sandhya opposed and pleaded that-

- (i) The company has defaulted in payment of the dues of the Bank and not the 'Sandhya'. 'Sandhya' and 'Sandhya Cosmetics Ltd.' are two different persons, one is individual and the second is the corporate person. The Bank should first initiate action against the company and not against the Sandhya in her individual capacity.
- (ii) The Adjudicating Authority for individual is DRT and not the NCLT. **(4 Marks)**

5. (b) A Ltd. (transferee) decides to acquire B Ltd. (transferor) by acquiring its shares via a process of takeover u/s 235 of the Companies Act, 2013. A Ltd. prepared a scheme by which an offer was made to the shareholders of B Ltd. The offer was made on 1st August, 2019. The offer remained open for 4 months. Such offer was approved by shareholders having 92% value of the shares. Subsequently A Ltd. gave a notice to the remaining shareholders that it desires to acquire their shares. Such notice was given on 5th January, 2019. Certain dissenting shareholders made an application to the tribunal that acquisition of their shares should not be permitted. Such application was dismissed by the tribunal. Hence A Ltd. acquired shares of 5% of the dissenting shareholders (out of balance 8%). The shareholding of balance 3% shareholders continued to remain with them. Comment on the validity of such a takeover by A Ltd. **(6 Marks)**

- (c) Win Bank Ltd., invited tender for supply of stationery items to Stationery Dept. This Stationery Dept. of the Bank is a centralised dept. of the Bank, which undertakes to supply the stationery items for whole of the financial year for its branches.

Vallabh Stationers won the tender and supplied the materials as per the requirements of the Bank. After some times the quality of the stationery items supplied by the Vallabh Stationers went down and the Bank stopped making the payment. Aggrieved to this the Vallabh Stationers planned to initiated CIRP proceedings against the Bank under section 9 of the Code.

Discuss, whether the application for initiation of CIRP by the Vallabh Stationers as Operational Creditor will succeed? **(4 Marks)**

6. (a) Ravi is a Mining Engineer and employed in Mines and Geology Dept of Government of Rajasthan. He earned a good amount of money through bribe to the tune of 50 lakhs just in a year. He purchased a flat of Rs 60 lakh and to show the funding, availed housing loan of Rs 50 lakh from a bank and rest Rs 10 lakh as margin money by availing gold loan (in the name of his wife) from another bank by pledging the gold jewellery of his wife. The repayment period of housing loan was for 20 years and gold loan was for 2 years. He however, liquidated the gold loan in just 3 months. The housing loan was also paid within a year.

Ravi continued to take bribe and one day he was caught red handed by a team of Anti-Corruption Bureau (ACB). His house was inspected and bank accounts were also seized. The ACB team observed that in just 3 years of his service, the assets (including the flat and gold jewellery) were not in proportion of his salary. The ACB reported the matter to the Enforcement Directorate (ED) which treated the house property as the proceeds of crime and accordingly attached the house property.

Ravi pleaded that house property was purchased through bank finance and cannot be treated as proceeds of crime.

Based on the above facts, whether the house property shall be treated as 'Proceeds of Crime'.

(6 Marks)

- (b) Progress Ltd. was incorporated with charitable object under Section 8 of the Companies Act, 2013. However, the company made default in complying with the requirements relating to the formation of companies with charitable object.

Whether this offence is a compoundable offence? State the relevant provisions of the Companies Act, 2013.

(4 Marks)

- (c) Draft a resolution for authorising to make application for compounding of offence under Section 8 of the Companies Act, 2013.

(4 Marks)