**SAINTGITS COLLEGE OF APPLIED SCIENCES**

**SEMESTER 1 FIRST INTERNAL EXAMINATION SEPTEMBER 2018**

**Corporate Regulations and Administration**

**Answer scheme**

Section A

1. Corporate Identity Number is a unique number assigned by the registrar of joint stock companies functioning in various states under Ministrty of corporate affairs to the companies registered in India.it is a 21 character company code and quoted in every official communication by the company
2. Pre incorporation contracts or preliminary contracts are contracts entered into by the promoters on behalf of the company before it is duly incorporated as the company has no legal existence until it is incorporated.
3. Effects of ultra vires includes :
4. Injunction against the company : court order against proceeding with ultra vires
5. Personal liability of directors to the company for the ultra vires act
6. Personal liability of directors to third party for any loss suffered by third parties
7. Ultra vires contracts are void
8. One Person Company is a one shareholder corporate entity. It is company in which one person holds substantial number of shares and has controlling power over the company.
9. A company may change its objects by adopting the following procedure
10. By passing a special resolution
11. By filing the special resolution with the registrar of companies within one month from the date of such resolution.
12. Illegal association means any association of persons having more number of members than the maximum number of members fixed by law. (banking business –more than 10 members and in any other business more than 20 members)Such associations has no legal existence in the eyes of law and cannot enter into any binding contracts.

Section B

1. Doctrine of constructive notice : It is the duty of every person dealing with the company to inspect MOA and AOA to make sure that his contract with the company is in accordance with the provisions of these documents .he will be presumed to have read the documents and to know their contents. This kind of presumed knowledge of these documents is called constructive notice of MOA and AOA.

Doctrine of Indoor Management :It is an exception to the rule ofconstructive notice.As per this doctrine every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned. Thus a person dealing with the company is not presumed to have the knowledge of internal proceedings of the company.

1. A corporate veil is a legal concept that separates the personality of a corporation from the personalities of its shareholder and protects them from being personally liable for the company’s debts and other obligations.

Circumstances under which corporate veil is lifted

1. Determination of character of the company: to determine the character of a company to see whether it has assumed any enemy character. In such case Court may lift the veil and determine the character of person who are in real control of company affairs
2. Protection of Revenue: the court may disregard corporate entity of a company where it is used for tax evasion or to circumvent tax obligation.
3. Protection of company’s own justified interest that its separate entity should be ignored and treated alike with the members.
4. Avoidance of contractual obligation
5. Prevention of fraud or improper conduct : if it appears that company formed for some fraudulent or Improper purpose court may lift the corporate veil.
6. Dummy companies : if it appears that separate entity of the company being misused for certain persons own personal business.
7. Prevention of fraud upon public

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| --- | --- | --- | --- |
| No | Point of difference | Private company | Public company |
| 1 | Minimum Number | Minimum no. of members to form a private company is 2 | Minimum no. of members to form a public company is 7 |
| 2 | Maximum Number | Maximum Number of members must not exceed 200 | No restriction on Maximum Number of members |
| 3 | Share transfer | Not freely transferable | freely transferable |
| 4 | Issue of prospectus | Prohibited from issuing prospectus | Permitted to issue prospectus |
| 5 | Number of directors | Minimum 2 directors | Minimum 3 directors |
| 6 | Certificate to commence business | Not required | Required to obtain from registrar |
| 7 | Statutory meeting | Not required to hold statutory meeting or file statutory report with registrar of companies. | required to hold statutory meeting or file statutory report with registrar of companies |
| 8 | Use of the word Limited | Private company with limited liability must add the word ‘Private Limited’ at the end of its name. | Public company with limited liability must add the word ‘Limited’ only at the end of its name. |
| 9 | Written consent | The director is not required to file with registrar a written consent to act as director | The director is not required to file with registrar a written consent to act as director |
| 10 | Appointment of director | Appointed by single resolution | Cannot be appointed by single resolution |
| 11 | Retirement of directors | Directors are not required to retire by rotation | Two third of directors are required to retire by rotation |
| 12 | Increase in no of directors | The number of directors can be increased to any extent without the permission of central govt. | The number of directors cannot be increased to any extent without the permission of central govt |
| 13 | Quorum | Quorum required for holding a meeting is 2 members | Quorum required for holding a meeting is 2 members |
| 14 | Special Privileges | Enjoys certain special privileges | Enjoys certain special privileges |
| 15 | Index of members | Not required to keep index of members | required to keep index of members if number of members exceeds 50 |
| 16 | Minimum capital | Must have minimum one lakh | Need not maintain minimum capital |
| 17 | Managerial remuneration | No restriction on Managerial remuneration | There is legal restriction on Managerial remuneration |

10.a) **On the basis of incorporation**

* Chartered company : incorporated under special charter granted by the king or queen of England.
* Statutory company : incorporated by special act of the legislature
* Registered Company : Which is formed and registered under Companys act 2013

**b) On the basis of Liability**

* Liability limited by shares : company where the liability of members are limited to the extent of value of shares held by them
* Liability limited by guarantee : company where the liability of members are limited to the extent of amount guaranteed by them to contribute to the assets of the company which is to be utilised at the time of winding up of company.
* Unlimited liability : Company where its members liability is unlimited. Their personal property can also be utilised to payoff company liabilities.

**c) On the basis of number of members**

* Private company : a company with minimum paid up share capital of rupees one lakh or such higher paid up capital as may be prescribed and by which its articles restricts : right to transfer its shares, limits maximum number of members to 200, prohibits any invitation to public to subscribe for any share.
* Public company: A Company formed with minimum number of 7 persons and without any restriction to the maximum number and also without any minimum capital requirement

**d) On the basis of control**

* Holding Company : a company which controls or holds one or more other companies by holding majority shares in that company or companies.
* Subsidiary company : a subsidiary company is a company of which more than 50% of the shares are held by another company known as holding company

**e) On the basis of Ownership**

* Government company : any company in which not less than 51% of paid up capital is held by central govt. or state govt. or partly by central govt. or partly by one or more state govts.
* Non- Government company : a company which is not a government company is called non- government company.

**f) On the basis of nationality**

* National company : Company formed under special companies act of the country
* Foreign company : A company which is incorporated outside India under the law of that country and has established a place of business in India.

**g) New generation companies**

* One Person company : a company in which one person holds substantial number of shares and has controlling power over the company.
* Small company : a company in which maximum paid up capital is fixed at 50 lakh (not exceeding 5 crore) and maximum turnover fixed at 2 crore ( not exceeding 20 crore)
* Associate company : A company is considered to be an associate company of the other company , if the other company has significant influence over such company or is a joint venture company.
* Dormant company : a company formed and registered under company’s act 2013 for future project or to hold an asset or intellectual property and has no significant accounting transaction.
* Producer company : any company in which members are primary producers. Name of the company shall end with the words ‘producer company limited’ .
* Associations not for profit : an association which is formed not fot earning profit but for promoting commerce arts , science, religion , charity etc.
* Illegal association :Illegal association means any association of persons having more number of members than the maximum number of members fixed by law.

11. Contents of memorandum of association

1. Name clause : contains name of company with which company will be known. It should not be identical to the name of any other existing company

2. registered office or domicile clause: name of the state in which registered office of the company is proposed to be situated

3. object clause : defines the purpose for which company is formed . includes main objects and other objects.

4. liability clause :states the liability of members limited to the unpaid amount on the shares owned by them

5. capital clause :Specifies maximum capital which the company will be authorised to issue through issue of shares.

6. Association Clause : signatories to the memorandum express their desire and agreement to form a company

12. Features of company’s act 2013 are as follows :

* More powers to board of directors
* Key managerial personnel
* Woman director
* Independent directors
* Corporate social responsibility
* Secretarial audit report
* Managerial remuneration
* Prohibits auditor from performing non audit services
* Punishment of auditors
* One Person Company
* More powers to shareholders
* National company law tribunal
* Increase in number f shareholders
* Limit on maximum partners

Section C

13. formation of a company involves the following stages

1) promotion of a company: it is the first stage in the formation of a company. It is the process of identifying business opportunity analysing its prospects and taking appropriate steps to implement it for the formation of the company . – Promoter :The person who originates the idea of starting a business and actually brings into existence is the promoter.- Pre incorporation contracts are contracts entered into by the promoters on behalf of the company before it is duly incorporated are called pre incorporation contracts.

2) Incorporation of the company :refers to the registration of the company under Company’s act ,2013 – Online and offline registration-memorandum and articles of association

3) capital subscription : raising of necessary capital for company by issuing shares and debentures –minimum subscription

4) Commencement of business : after receiving minimum subscription a public company makes an application to the registrar for certificate of commencement of business

14 . According to sec 2(20) of the Companies act 2013 “ a company means a company incorporated under this act or any previous company law”.

Characteristics of the company are as follows:

1. Artificial person : on incorporation a company becomes an artificial person in the eyes of law with distinct name and perpetual succession.
2. Voluntary association : it may be described as a voluntary association of many persons who contribute capital to common fund and employ it to carry on a definite business activity to share profits.
3. Incorporated association: a company must be incorporated or registered under companies act either as a private or public company.
4. Share capital: finance required by the company for its business activities are collected from the public. The money so raised is called the capital of the company which is divided into different units. These units are called shares.
5. Separate legal entity : it means that the existence of a company is independent and separated from its members.
6. Perpetual succession : A company has perpetual succession i.e. company never dies.
7. Separate property : all in the property in the name of the company is its separate property which is managed controlled and disposed of by the company in its own name.
8. Capacity to sue and being sued : being a legal person the company can file suits against others in its own name and suits can be filed against the company.
9. Common seal : The common seal is the official signature of the company. Common seal is used as a substitute for its signature.
10. Limited liability: Company may be limited by liability or by guarantee. In a company limited by shares the liability of members are limited to the extent of value of shares held by them and in a company limited by guarantee the liability of members are limited to the extent of amount guaranteed by them to contribute to the assets of the company which is to be utilised at the time of winding up of company.