# Corporate Regulations & Administrations, Oct 2019

Answer Key

### Section A

1. According to Sec 2(20) of the Companies Act, 2013, company means ‘ a company incorporated under this Act or under any of the previous law.’
2. One person company means a company which has only one person as a member.
3. Memorandum of Association is a document which contains the fundamental rules regarding the constitution and activities of a company. It is the basic document which lays down how the company is to be constituted and what work it shall undertake.
4. Ultra means beyond and vires means powers. Ultra vires the company means beyond the power of a company. If an act ultra vires the company, it does not create any legal relationship.
5. The acronym MCA21 stands for the Ministry of Corporate Affairs in the 21st century.
6. An employee stock ownership plan (**ESOP**) is an employee benefit plan that gives workers ownership interest in the company.
7. Director means a director appointed to the Board ofca company. A person in accordance with whose directions or instructions, the Board of directors of a company are accustomed to act, is deemed to be a director of the company.
8. Quorum is the minimum number of members who must be present at a meeting in order that the business of the meeting may be validly transacted.
9. A proxy is a person appointed or authorized by a member of a company to be present at a meeting and to vote on his behalf. It is also known as an instrument or a letter of authority to vote for another.
10. National company law tribunal-compulsory winding up process is done through NCLT.
11. Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up. A person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.
12. It means the termination of the life of a company. It is the end result of the process of winding up.

### Section B

13.

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| Point of difference | Private company | Public company |
| Minimum Number | Minimum no. of members to form a private company is 2 | Minimum no. of members to form a public company is 7 |
| Maximum Number | Maximum Number of members must not exceed 200 | No restriction on Maximum Number of members |
| Share transfer | Not freely transferable | freely transferable |
| Issue of prospectus | Prohibited from issuing prospectus | Permitted to issue prospectus |
| Number of directors | Minimum 2 directors | Minimum 3 directors |
| Certificate to commence business | Not required | Required to obtain from registrar |
| 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 |
| 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. |
| 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 |
| Appointment of director | Appointed by single resolution | Cannot be appointed by single resolution |
| Retirement of directors | Directors are not required to retire by rotation | Two third of directors are required to retire by rotation |
| 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 |
| Quorum | Quorum required for holding a meeting is 2 members | Quorum required for holding a meeting is 2 members |
| Special Privileges | Enjoys certain special privileges | Enjoys certain special privileges |
| Index of members | Not required to keep index of members | required to keep index of members if number of members exceeds 50 |
| Minimum capital | Must have minimum one lakh | Need not maintain minimum capital |
| Managerial remuneration | No restriction on Managerial remuneration | There is legal restriction on Managerial remuneration |

14 a). To orginate the idea of starting a business and forming a company

b) to investigate the idea and to know whether the formation of a company is possible and profitable.

c) to collect the requisite number of persons necessary for the formation of the company and to find out the first directors

d) to settle the name of the company

e) to settle the details of MOA & AOA of the company and to get these documents drafted and printed and to arrange for registration of the company

f) to arrange for preparation of prospectus and its issue

g) to enter into preliminary contracts

h) to pay preliminary expenses

i) to arrange for the loan from various financial institutions

j) to perform such other functions necessary for the formation of company

k) to conduct negotiation for the purchase of business where it is intended to purchase an existing business.

15.According to this principle , a person dealing with the company is deemed to have knowledge of the contents of MOA & AOA but is not presumed to have the knowledge of internal proceedings of the company.An outsider May assume that the things have been done according to the provisions and procedure laid down in MOA & AOA. Thus if the internal formalities have not been complied with, the contract will be binding on the company and it will be liable to the outsiders.

Exception to this rule include s the following

1. Knowledge of irregularities
2. Suspicion of irregularities
3. Forgery
4. No knowledge of articles and memorandum of association
5. Act outside apparent authority

16.The term lifting of corporate veil means ignoring the separate legal identity of the company and looking into realities. Circumstances under which corporate veil is lifted includes the following

1. For determination of character of company
2. For protection of revenue
3. Protection of companies own justified interest
4. Avoidance of contractual obligation
5. Prevention of fraud or improper conduct
6. Dummy companies
7. Prevention

17.sec 274 provides the following disqualification of directors.

. A person with unsound mind

.an undischarged insolvent.

. A person who has applied to be adjudged an insolvent.

.a person who has been convicted by a court of an offence

.a person who has not paid any call in respect of shares held by him

.a person who is already a director who has not filed the annual accounts for any continuous three financial year.

.adirector who has been removed from office by central government

.a person not competent to enter contract

.a person fail to take up qualification shares.

18. The different types of share issue are:

a. Public issue through prospectus

b. Private placement

c. Rights issue

d.Bonus Isssue

19.

* To carry on the business of the company so far as may be necessary for the beneficial winding up of the company.
* To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal.
* To sell the immovable and movable property and actionable claims of the company.
* To sell the whole of the undertaking of the company as a going concern.
* To raise any money required on the security of the assets of the company.
* To Institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company.
* To inspect the records and returns of the company on the files of the registrar or any other authority.
* To take out in his official name, letters of administration to any deceased contributory.
* To obtain any professional assistance from any person or appoint any professional in discharge of his duties, obligations and responsibilities.
* To apply to the tribunal for such orders or directions as may be necessary for the winding up of the company.

20.Sec 2(36) of the Companies Act defines prospectus as any document described or issued as a prospectus and include any notice, circular, advertisement or other document inviting deposits from the public inviting offers from the public for subscription or purchase of any shares in, or debentures of a body corporate.” A prospectus sets out the prospects of the company and the purpose for which the capital is required.

The different types of prospectus are:

* 1. Prospectus by Implication or Deemed prospectus
  2. Shelf Prospectus & Information Memorandum
  3. Red-herring prospectus
  4. Abridged prospectus

21 Contents of Articles of association:

* Definition of important terms and phrases
* Adoption or incorporation of pre-incorporation contracts
* Share capital and rights of shareholders
* Allotment of shares
* Procedure as to making of calls on shares
* Procedure as to forfeiture of shares
* Transfer of shares
* Lien on shares
* Share certificates and share warrants
* Alteration of share capital
* Conversion of shares into stock
* Accounts and audit
* Dividend reserve and capitalisation of profit
* Borrowing powers
* Voting rights and proxies
* Winding up of company
* Accounts and audit
* Appointment of managerial personnel

### Section C

22. A meeting is an association of persons at a particular place and at a particular time for determining a certain specific matter or some matter which may be put before the meeting.

Essentials of a valid meeting

a. Proper authority

b. Notice

c. Agenda

d. Chairman

e. Quorum

f. Minutes

23. Memorandum of association is a document which contains the fundamentals rules regarding the constitution and activities of a company.

Contents of memorandum

* Name clause- contains thenameof the company. It shouldnot be identical or nearly resembles the name of an existing company. Similarly the name shall not be such that it's use by the company 1) will constitute an offence under any law or 2) in the opinion of Central government is undesirable.
* Registered office clause- states the name of the state where the registered of the company is to situate.
* Object clause-shows the objects for which the company is formed and extent of power which the company can exercise in order to achieve the objects.
* Liability clause-state the nature of liability of members.
* Capital clause-amount of share capital with which the company is to be registered.
* Association clause-provides that those who have agreed to subscribe to the memorandum must signify their willingness and form a company.

24.Kinds of company meeting

* Meeting of member

Annual General Meeting- it must be held in each year in addition to any other meeting.

Extra ordinary general meeting-all general meetings other than annual general Meeting.

Class meeting-meeting of a particular class of shareholders.

* Meeting of directors

Board meeting- meeting of board of directors. Minimum 4 meetings per year.

Committee meeting- meeting of various committees of directors.

* Other meetings

Meeting of creditors

Meeting of debentureholders

Meeting of contributories.

25.Winding up is a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors .

Compulsory winding up is done by National Company Law Tribunal

**.** Circumstances-a company is wound up by the tribunal when the company is unable to pay its debts, bypassing a special resolution , if company acts against the interest of the integrity of India, if company not filled its financial statements

.Filling petition- the petition for a compulsory winding up can be presented by company , creditors, contributory , central or state govt , by the registrar of any person authorized by central govt .

.Appointment of provisional liquidator

.on hearing the petition , NCLT may dismiss , adjourn , make an interim order or make an order for winding up the company

.Appointment of official liquidator

.once the NCLT makes an order for the winding up of the company , its consequences date back to the commencement of winding up.

. within a period not exceeding two weeks from the date of passing of the order , cause intimation to be sent to official liquidator

.liquidator do as per the directions of NCLT and administers assets ,summon meetings,shall keep proper books,present to NCLT an accounting recipients and payments, call creditors meeting.

.liquidator shall within 2 months of the expiry of each year from the commencement of winding up ,file a statement duly audited by a qualified auditor of the company ,with respect to the proceedings

As soon as the affairs of the company are fully wound up ,the liquidator prepares account showing how it is conducted and property is disposed of and present to NCLT for order for dissolution.

. After scrutinizing the NCLT will give order for dissolution of the company.