

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

## GROUP 1 PAPER 1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART- I

#### Question 1

- (a) You are an extrovert Company Secretary possessing rich experience of more than a decade in providing professional advice on a diverse range of corporate and economic laws with special emphasis on best governance practices, risk management, principles and practice of environmental, social and governance, and corporate sustainability reporting.

You are known for implementing governance and ethics into the very fabric of the client's organization, revising and re-framing the compliance framework, policies, processes in line with the corporate and local regulations and guidelines, exercising company's zero error and zero breach standards and contributing strategically to the achievement of business objectives and goals.

You have recently been approached by 'Air Voice Limited' (shortly Air Voice), an unlisted Public Company, having its registered office at Pune.

'Air Voice' has provided the following data from its audited financial statements :

(₹ in Crores)

| Financial year | Paid up share capital as on 31st March | Turnover for the year ended | Aggregate of outstanding loans, debentures and deposit |
|----------------|--|-----------------------------|--|
| 2018-19        | 5                                      | 100                         | 60   |
| 2019-20        | 5                                      | 110                         | 55   |
| 2021-21        | 7                                      | 95                          | 50   |
| 2021-22        | 7                                      | 90                          | 45   |
| 2022-23        | 7                                      | 75                          | 10   |

During the FY 2022-23, the liquidity of the Company was highly affected due to the brunt of stiff competition, wafer thin margins and due to Covid 19 pandemic. The aggregate outstanding loans, debentures and deposits increased from ₹ 45 crore as on 31st March 2022 to ₹ 60 crore as on 30th September, 2022 and dropped down to ₹ 40 crore as on 31st March 2023. There was no such increase in the aggregate of outstanding loans, debentures and deposits during the earlier financial years. Air Voice, which was obligated to constitute an

Audit Committee in the Financial Year 2019-20 decided to dismantle it in the FY 2023-24. Now, taking into account the above inputs and in the light of the provisions of the Companies Act, 2013, examine :

- (i) Whether Air Voice Limited has complied with the provisions of the Act and the Rules made thereunder in dismantling the Audit Committee ?

(3 marks)

- (ii) What will be your answer in case Air Voice Limited is a subsidiary of Fast Voice Limited, a listed entity ?

(2 marks)

- (b) Mrs. Bhawani, one of the directors in ABC Limited (Listed Entity) got evidence against Mrs. Gowri, Chief Financial Officer (CFO), that she is indulged in the revenue leakage activities in the Company. Mrs. Bhawani is scared to report the above matter since Mrs. Gowri is a very close relative of other Directors, and Mrs. Bhawani will not get adequate safeguards from the Company. Advise Mrs. Bhawani, referring to provisions of the Companies Act, 2013, regarding the vigil mechanism, on the following points :

- (i) Can Mrs. Bhawani (Director) use the safeguards mechanism option available in the company regarding the above reporting.

(3 marks)

- (ii) Who is the reporting authority to whom victims can access to report the above matter ?

(1 mark)

- (iii) What are the disclosure requirements of details of Vigil Mechanism ?

(1 mark)

- (c) Blue Star Limited has borrowed a sum of ₹ 50,00,000 from its director, Mr. Timothy Edwin. In this regard, the Company failed to obtain the prior approval of the Audit Committee constituted under the provisions of Section 177 of the Companies Act, 2013. The Statutory Auditors of the Company expressed the view that the approval of Audit Committee was mandatory being a related party transaction. However, the Company Secretary submitted his comment that since this transaction is not covered under the related party transaction as per Section 188 of the Act, approval of Audit Committee was not required and hence, the Company has not committed any violation of the provisions of the Act.

Referring to the provisions of the Companies Act, 2013, examine :

- (i) Whether omnibus approval of Audit Committee was needed to the borrowings, if the transaction was not a 'Related Party Transaction' under Section 188 of the Act ?

(3 marks)

- (ii) Can a post transaction approval of Audit Committee be obtained for related party transaction and if not done so, what will be the effect on the transaction ?

- (d) Mr. Manoj was acting as an Independent Director of Cine Movies Limited (CML), a listed entity, during his second term of his appointment as an Independent Director. Unfortunately due to sudden demise of his son on 01.10.2023, in a tragic road accident, Mr. Manoj resigned from his coveted position as an independent Director of CML w.e.f. 15.10.2023 which was duly accepted by the Board. However, due to his extreme potential in effectively guiding

the Board, he was approached by CML on 15.04.2024 and was offered the position of Executive Director in one of the Companies belonging to the Promoter's Group. Referring to SEBI (LODR) Regulations, 2015, answer whether the proposed offer of Executive Director to Mr. Manoj is valid in law as per Company Act, if it is accepted by him ?

(2 marks)

(e) In the light of the SEBI (LODR) Regulations, 2015, answer the following questions :

- (i) What shall be minimum number of members in a 'Risk Management Committee' (RMC) ?
- (ii) Can Senior Executives of a listed entity be members of the RMC ?
- (iii) What shall be the gap between two meetings of the RMC ?

(3 marks)

### Answer 1(a)

(i) Following Companies are required to constitute an Audit Committee [Section 177 (1) of Companies Act, 2013 and Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014]:

- (A) Every listed public company; and
- (B) Public companies having paid up share capital of ten crore rupees or more; or
- (C) Public companies having turnover of one hundred crore rupees or more; or
- (D) Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

#### Clarification:

Explanation to Rule 4(1) clarifies that the paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

In the instant case, Air Voice Limited was obligated to constitute the Audit Committee in the Financial Year 2018-19 as it was having turnover of Rs.100 crore and aggregate of outstanding loans, debentures and deposits of Rs.60 crore on 31<sup>st</sup> March, 2019.

Now, the Company has ceased to meet the three conditions related to paid up share capital, turnover and aggregate of outstanding loans, debentures and deposits for three consecutive years as laid down in third proviso to Rule 4(1) (as on 31<sup>st</sup> March, 2020, 31<sup>st</sup> March 2021 and 31<sup>st</sup> March 2022). Hence, the Company is not required to constitute Audit Committee in the financial year 2023-24.

(ii) If Air Voice Limited is a subsidiary of Fast Voice Limited, a listed entity:

Air Voice Limited is a subsidiary of Fast Voice Limited, a listed entity, is not to be considered as listed company unless the same is registered on the recognised stock exchange. Also since Air Voice Limited is a subsidiary and not a wholly-owned subsidiary, no exemption is given to Air Voice Limited under the prescribed class of companies under Rule 4 for constitution of Audit Committee. Therefore, Air Voice Limited has to comply with the provisions of the Act and rules made thereunder for constitution of the Audit Committee.

### Answer 1(b)

The provisions related to Vigil Mechanism is contained in Section 177 (9) and (10) of the Companies



Act, 2013 (the Act) read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014.

- (i) According to Section 177(9) of the Act, vigil mechanism shall be formed by the listed companies for the directors and employees who may report genuine concerns in the manner prescribed in Rule 7 for adequate safeguards against their victimization by use of such mechanism and make provision for direct access to the Chairperson of the Audit Committee in appropriate or exceptional cases.

Accordingly, the answer is-Yes, Mrs. Bhawani, Director can opt to use safeguard mechanism available to her under the Vigil Mechanism Policy of ABC Limited against Mrs. Gowri, CFO who indulged in the revenue leakage activities in the company and she may directly report the matter to the Chairman of the Audit Committee and in case the Chairman of the Audit Committee has interest (being a relative of CFO) in the matter, Mrs. Bhawani may directly report the matter to the Chairman of the Board.

- (ii) Reporting Authority shall be the Chairman of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- (iii) It is imperative for the company to disclose the details of the establishment of vigil mechanism on the website of the company and in Board's report.

### Answer 1(c)

As per Section 2(76) read with Section 177 (4) (iv), 188 of the Companies Act, 2013, and Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 following shall be the answers:

- (i) As per Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014, all related party transactions shall require approval of the Audit Committee and the Audit Committee may take omnibus approval for related party transactions proposed to be entered into by the company subject to the certain conditions.

As per Section 177(4)(iv), every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include approval or any subsequent modification of transaction of the company with related parties.

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

Provided further that in case of transactions, other than transactions referred to in Section 188 and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

In the instant case, borrowings of sum of Rs. 50,00,000 by Blue Star Limited from its director Mr. Timothy Edwin reflects that they are related parties as per Section 2(76) and the transaction is a related party transaction though the transaction i.e. borrowings of Rs. 50,00,000 between them is not Related Party Transaction as per Section 188(1).

Hence, in the given case, said transaction of borrowings, was a Related Party Transaction other than the transaction given under Section 188(1).

- (ii) As per Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014, all related party transactions shall require approval of the Audit Committee. Where the need for related party transaction cannot be foreseen and no information related to that are available, the audit committee may make omnibus approval for such transactions subject to their value not exceeding Rs. 1 Crore per transaction.

In case of a transaction which does not involve an amount exceeding one crore rupees and which is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and if it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee.

In view of above, a post transaction approval of the Audit Committee can be obtained for related party transaction and if not done so, such transaction shall be voidable at the option of the Audit Committee. Further, in case such transaction is with the related party to any director, the director concerned shall indemnify the company against any loss incurred by it.

### Answer 1(d)

No Independent Director who resigns from a listed entity shall be appointed as an Executive / Whole time Director on the Board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent Director. [Regulation 25(11) of SEBI (LODR) Regulations, 2015.

Mr. Manoj resigned from his coveted position as an Independent Director of CML w.e.f. 15.10.2023. He was approached by CML on 15.05.2024 and was offered the position of Executive Director in one of the companies belonging to the Promoters Group. Since one year has not elapsed from the date of resignation of Manoj, the proposed offer to appoint Manoj as Executive Director in one of the companies belonging to the promoters group is not valid in law.

### Answer 1(e)

- (i) The Risk Management Committee (RMC) shall have minimum three members with majority of them being members of the Board, including at least one independent director and in the case of a listed entity having outstanding SR Equity Shares, at least 2/3rd of the Committee shall comprise independent directors.
- (ii) Yes, Senior Executives of a listed entity may be members of the RMC.
- (iii) The meetings of the RMC shall be conducted in such a manner that on a continuous basis not more than 180 days shall elapse between any two consecutive meetings.

### Question 2

- (a) Environmental Impacts are changes in the natural or built environment, resulting directly from an activity that can have adverse effects on the air, land, water, fish, wildlife or the inhabitants of the ecosystem. Discuss the ramifications of environmental impact from the following :

|       |   |
|-------|---|
| (i)   | Pollution and contamination   |
| (ii)  | Mass transit on maintenance of infra-structure, facilities and vehicles |
| (iii) | Fossil fuels  |
| (iv)  | Health  |
| (v)   | Shipping  |

(5 marks)

- (b) 'Business Ethics' is the study of business situations, activities and decisions where issues of right

and wrong are addressed. It acts as guidelines for the way a business conducts itself and its transactions. In this context, what are the salient features of Business Ethics ?

(5 marks)

- (c) In the 'Information Era' rapidly evolving technologies and cutting-edge analytics, where massive amount of data is used everyday to drive critical business processes and decisions, data governance plays a vital role in an organization. Elucidate the various data governance principles that are espoused globally for better analysis, consistent compliances, improved data management and data quality ?

(5 marks)

### Answer 2(a)

- (i) **Pollution, contamination** or destruction that occurs as a consequence of an action that can have short-term or long-term ramifications is considered an environmental impact. Most adverse environmental impacts also have a direct link to public health and quality of life issues. Several successful reductions in pollution levels have been attributed to stricter regulations, including levels of carbon monoxide and more recent reduction in fine particulate matter.
- (ii) **Mass transit**, as a result of the operations and maintenance of infrastructure, facilities, and vehicles, has numerous potential environmental impacts to manage, including air pollution and greenhouse gas from energy use, noise, and vibrations, water discharges, waste removal of passenger trash, harmful materials such as lead based paint, mercury, PCBs, asbestos, contaminated soil, and groundwater.
- (iii) **The environmental impacts of fossil fuels** often result in real costs to society, in terms of human health (i.e., loss of work days, health care costs), infrastructure decay (i.e., from acid rain), declines in forests and fisheries, and perhaps ultimately, the costs associated with climate change.
- (iv) **Environmental impacts on health** have long been a major concern of social reformers, forward-looking health professionals, and social movements. The state of a society's environmental health is much related to its social and economic organization. The huge upsurge of synthetic chemicals since World War II has altered the environment in dramatic ways, leading to increased cancers of various types and to other diseases. Actual and potential environmental hazards and catastrophes have become a significant component of the cultural milieu of many societies.
- (v) **Environmental impacts from shipping** have been the focus of increasing attention over the past decades, primarily focused on waterborne discharges and spills of oil, chemical, and sewage pollution. A number of international treaties and national laws have been adopted, along with industry best practices, to prevent these pollution releases through accident or sub-standard operation.

### Answer 2(b)

The salient features of business ethics are as under:

*Code of Conduct* – Business ethics is actually a form of codes of conduct. It lets us know what to do and what not to do. Businesses must follow this code of conduct.

*Based on Moral and Social Values* – Business ethics is a subject that is based on moral and social values. It offers some moral and social principles (rules) for conducting a business.

*Protection to Social Groups* – Business ethics protect various social groups including consumers, employees, small businesspersons, government, shareholders, creditors, etc.



*Offers a Basic Framework* – Business ethics is the basic framework for doing business properly. It constructs the social, cultural, legal, economic, and other limits in which a business must operate.

*Voluntary* – Business ethics is meant to be voluntary. It should be self-practiced and must not be forced by law.

*Requires Education & Guidance* – Businessmen should get proper education and guidance about business ethics. Trade Associations and Chambers of Commerce should be active enough in this matter.

*Relative Term* – Business ethics is a relative term. It changes from one business to another and from one country to another.

*New Concept* – Business ethics is a relatively newer concept. Developed countries have more exposure to business ethics, while poor and developing countries are relatively backward in applying the principles of business ethics.

### Answer 2(c)

The data governance principles espoused globally are as under:

- (1) **Maintaining the Integrity of the Data:** A principle of the highest importance is integrity. It depends on the entity using your data whether or not it is being used in the appropriate manner. Data integrity is maintained if their means and goals are ethical. In all decisions about the data, the participants must be honest and forthcoming. This can include decisions about actions, impacts, constraints, etc.
- (2) **Transparency:** In every case where data is used, proper transparency must always be maintained. To use data, as well as whose data is being used, all parties must understand how it is being utilized. Whenever there is a decision about usage or control, it must be communicated effectively to all parties involved.
- (3) **Accountability and Ownership of the Data:** The ownership of the data must be defined. Appropriate procedures should be followed for defining access rights. Data governance applies to any data that is used across functions. As a result, data governance defines all decisions, processes, and controls related to data, i.e., its accountability.
- (4) **Data Audit:** Audits are permitted on every piece of data used. Any decision, control, and process about data that relates to data governance can be audited. Therefore, they must contain documentation proving compliance.
- (5) **Standardization of Data:** A company's data is used by many teams. In this case, the data in one format might not be compatible with another. It is imperative that specific guidelines and rules be defined in order to standardize data. In addition to these, there are rules for data definition, accessibility, security, and privacy.
- (6) **Change Management:** There may be some discrepancies in the data that require a change. As a result, there is always a risk of tainting the data. Therefore, data governance ensures proper change management activities, whether proactive or reactive. The data will include reference values, metadata, master data, and its use and structure.
- (7) **Stewardship:** The principle of stewardship should be adhered to. Accountability goes hand in hand with responsibility. It is essential to appoint a data steward in any organization. All rules and regulations must be followed by the data steward. This holds true for groups of stewards as well. It is their responsibility to ensure that the data is stored and used appropriately. It is their responsibility to always follow the best practices when managing data.

**Question 3**

- (a) Discuss the applicability of Section 118 (10) of the Companies Act, 2013 with example.
- (b) Discuss the applicability of SEBI regulation 2015 that describes the role of directors in prevention of Insiders Trading.
- (c) "The Secretarial Standard 1 (SS1) requires Company Secretary to oversee the Vital process of recording and facilitating implementations of the decisions of the Board" Discuss SS1 with its applicability.

(5 marks each)

**Answer 3(a)**

Section 118 (10) of the Companies Act, 2013 mandates that every company, except for a few specific exemptions, must conform with the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) for conducting general meetings and board meetings. These standards, approved by the Central Government, ensure proper procedures and documentation for these crucial company events.

Example:

Imagine a company called "ABC Ltd." They are planning their annual general meeting (AGM) where shareholders will discuss and vote on important matters. Here's how Section 118 (10) comes into play:

**Convening the Meeting:** ABC Ltd. must follow Secretarial Standard-1 (SS-1) guidelines for convening the AGM. This includes:

- Sending proper notice to shareholders within the stipulated timeframe, specifying date, time, venue, and agenda.
- Maintaining a register of shareholders for sending notices.

**Conducting the Meeting:** During the AGM, SS-1 provides guidance for:

- Appointment of a chairperson for the meeting. Presentation of the agenda and discussion.
- Recording of minutes that accurately capture the proceedings, discussions, and resolutions passed by voting.

**Post-Meeting Procedures:** SS-1 also dictates post-meeting procedures like:

- Getting the minutes signed by the chairperson and company secretary.
- Maintaining proper records of the meeting, including attendance register, proxy forms, and voting results.

Thus, by adhering to the Secretarial Standards as mandated by Section 118 (10), ABC Ltd. ensures adherence to the Secretarial Standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India and approved as such by the Central Government.

**Answer 3(b)**

The SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) play a crucial role in ensuring market fairness by outlining the responsibilities of directors in preventing insider trading. Let's explore their applicability with an example:

**Applicability Based on Company Type:** The PIT Regulations primarily apply to:

- Listed Public Companies: These companies are already under SEBI's purview due to their



public listing. Directors in such companies have a clear and significant obligation to comply with the regulations.

*For Example: "ABC Pharmaceuticals" – A Public Limited Company*

Imagine "ABC Pharmaceuticals," a publicly listed company developing a revolutionary new drug. This information qualifies as Unpublished Price Sensitive Information (UPSI). Here's how SEBI PIT Regulations apply to the directors of ABC Pharmaceuticals:

**Code of Conduct (Regulation 9):** The Board of Directors, implements a Code of Conduct as mandated by Regulation 8. This code clearly defines UPSI, prohibits insider trading, and outlines trading restrictions for directors and employees during clinical trial periods (blackout periods). The code also specifies consequences for violating these provisions.

**Disclosure Requirements (Regulation 7):** Directors and other "covered persons" (promoters, employees with access to UPSI) are required to disclose their holdings and any changes in their holdings of ABC Pharmaceuticals' securities as per Regulation 7. This transparency in holdings helps deter insider trading.

**Importance of Applicability:** By adhering to these regulations, the directors of ABC Pharmaceuticals demonstrate their commitment to preventing insider trading and fostering a fair and ethical market environment.

- *Protects Investors:* Investors are assured that the market operates on the basis of publicly available information, not insider knowledge.
- *Maintains Market Integrity:* SEBI PIT Regulations help prevent manipulation and create a level playing field for all investors.
- *Strengthens Corporate Governance:* Directors who actively prevent insider trading uphold good governance practices.

**Conclusion:** The applicability of SEBI PIT Regulations ensures that directors across various listed companies and those aspiring for listing play a vital role in preventing insider trading. By understanding their responsibilities and implementing effective measures, directors can create a market that is fair, transparent, and fosters investor confidence.

### Answer 3(c)

*Applicability of Secretarial Standard 1 (SS-1)*

The statement about SS-1 requiring the Company Secretary (CS) to oversee recording and facilitating board decision implementation is accurate. Let's delve into the applicability of SS-1:

*Applicability:* SS-1 applies to all meetings of the Board of Directors and meetings of Committees of the Board of a company, with a few exceptions:

- **One Person Company (OPC)** with a single director: OPCs with only one director are exempt from SS-1 compliance.
- **Section 8 Companies** (with a caveat): Companies registered under Section 8 of the Companies Act, 2013, are generally not subject to SS-1. However, they still need to comply with the relevant provisions of the Act related to board meetings.

*Key Responsibilities of the CS under SS-1:* As per SS-1, the Company Secretary plays a vital role in ensuring proper board meeting conduct and decision execution. Here are their key responsibilities:

#### 1. Meeting Convening and Notice:

- The CS assists in convening board meetings by ensuring proper procedures are

followed, including issuing timely notices to directors as per their preferred mode of delivery (physical, email, etc.).

2. *Meeting Materials and Agenda:*

- The CS prepares the agenda for board meetings, outlining the topics for discussion and decisions to be made.
- They also ensure relevant materials and information are circulated to directors beforehand.

3. *Meeting Conduct and Recording:*

- The CS attends board meetings and plays a key role in maintaining proper decorum and adherence to procedures.
- Most importantly, they take accurate minutes that capture the discussions, decisions passed through voting, and any dissent from directors.

4. *Minute Book Maintenance:*

- The CS is responsible for maintaining the minute book, which is the official record of all board meetings and committee meetings.
- They ensure minutes are properly signed by the Chairperson and stored securely.

5. *Post-Meeting Actions:*

- After the meeting, the CS facilitates the implementation of board decisions. This might involve:
  - Communicating decisions to relevant departments and personnel.
  - Preparing and disseminating resolutions and necessary documents.
  - Following up on the progress of implementation and reporting back to the Board.

*Importance of SS-1 Applicability:* The applicability of SS-1 ensures several benefits:

- *Transparency:* Proper recording of discussions and decisions fosters transparency in the board decision-making process.
- *Accountability:* The documented record holds the Board accountable for its decisions.
- *Good Governance:* SS-1 promotes good corporate governance practices by ensuring structured and well-documented board meetings.
- *Effective Implementation:* The CS's role in facilitating implementation helps ensure decisions are translated into action efficiently.

*Conclusion:* SS-1's applicability is crucial for ensuring proper board meeting conduct and effective execution of board decisions. The Company Secretary plays a vital role as a guardian of this process, promoting transparency, accountability, and good corporate governance within the company.

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

**Question 4**

- Discuss the impact of Global ESG frameworks and rating agencies on Indian Corporations in 2022-23 with suitable example.
- "Businesses should conduct and govern themselves with integrity and in Ethical, Transparent and Accountable manner." Discuss with example.

- (c) An Institutional Investor is a legal entity that pools funds of a large number of individual investors or other legal entities and invests in different financial instruments such as stocks, bonds, commodities or any other investment option. There are several different types of Institutional Investors in the market depending upon their specialization in specific asset classes and the investment strategies. State and brief at least five prominent types of Institutional Investors that are in vogue in India.

(5 marks each)

**OR (Alternative questions to Q. No. 4)**

**Question 4A**

- (i) 'Resource Efficiency' is using the earth's limited resources in a sustainable manner while minimizing the impacts on the environment. Continued worldwide population growth is resulting in a global increase in demand for products and associated resources. Currently, our society consumes more resources than the earth can provide and renew. Only improved efficiency can counteract the soaring consumption of natural resources. In this context, briefly explain the ways and means to improve resource efficiency in business organizations.

(8 marks)

- (ii) Family businesses are the major form of enterprise in India and across the world wherein all key managerial positions are held by family members and family values are ingrained in organization values. There are certain provisions of Corporate Governance in a family-owned Companies that has been legalised and have been incorporated in the Companies Act, 2013. Explain such provisions enshrined in the Act.

(7 marks)

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

**Answer 4(a)**

Impact of Global ESG Frameworks and Rating Agencies on Indian Corporations in 2022- 23:

The year 2022-23 witnessed a significant rise in the influence of Global ESG frameworks and rating agencies on Indian corporations. Here's a breakdown of the key trends with a specific example:

*Heightened Awareness and Regulatory Push:*

**SEBI's BRSR Mandate:** The Securities and Exchange Board of India (SEBI) mandated the Business Responsibility and Sustainability Report (BRSR) for the top 1000 listed companies in FY 2022-23. This move, aligned with global frameworks like GRI, significantly increased awareness of ESG reporting standards.

*Example: Tata Steel*, a leading Indian steel producer, responded to SEBI's BRSR mandate by revamping its sustainability reporting practices. They adopted the GRI Standards and focused on disclosing their environmental impact, social initiatives, and governance structure in a more comprehensive and transparent manner.

*Focus on Disclosure and Transparency:*

**Improved Reporting:** Companies started paying closer attention to disclosures, aiming for better ratings from agencies like Sustainalytics and MSCI ESG.

**Data Challenges:** Despite the focus on reporting, ensuring reliable and transparent ESG data collection remained a challenge for some companies.



*Example: ITC Limited*, a diversified conglomerate, faced challenges in accurately quantifying the social impact of its agricultural initiatives. However, they actively engaged with stakeholders and sustainability experts to improve their data collection methodologies and enhance the transparency of their social responsibility reporting.

*Shift in Investor Preferences:*

**Sustainable Investments:** Global investors increasingly prioritized companies with strong ESG performance. This trend motivated Indian corporations to improve their ESG practices to attract capital.

*Example: The Life Insurance Corporation of India (LIC)*, a major domestic investor, announced its intention to integrate ESG factors into its investment decisions. This move put pressure on Indian companies to improve their ESG performance to remain attractive investment options.

*Impact on Corporate Behaviour:*

**Increased ESG Spending:** Many companies in sectors like energy, infrastructure, and manufacturing allocated resources towards cleaner technologies and sustainable practices.

**Focus on Social Responsibility:** Companies placed greater emphasis on labour standards, diversity and inclusion initiatives, and community engagement.

*Looking Ahead:*

**Evolving Regulatory Landscape:** The Indian government is expected to introduce stricter regulations and disclosure norms related to ESG in the coming years. Companies need to stay updated and compliant.

**Localization of Frameworks:** Discussions around developing ESG frameworks that better reflect India's specific social and environmental context gained momentum.

**Overall Impact:** In 2022-23, Global ESG frameworks and rating agencies played a crucial role in driving positive change within Indian corporations. While challenges remain, the overall impact is a push towards:

**Environmental Sustainability:** Reduced carbon footprint, waste management, and resource efficiency initiatives.

**Social Responsibility:** Improved labour practices, diversity & inclusion, and community engagement.

**Enhanced Governance:** Greater transparency, board diversity, and stronger risk management practices.

**Conclusion:** By embracing ESG principles and aligning themselves with global frameworks, Indian corporations can enhance their long-term sustainability, attract responsible investors, and contribute to a more sustainable future for India. This not only benefits the environment and society but also strengthens their competitive edge in a global market increasingly focused on ESG performance.

#### Answer 4(b)

Importance of Ethical, Transparent, and Accountable Business Practices:

Operating with integrity and adhering to ethical, transparent, and accountable principles is crucial for businesses in today's world. Here's why:

- **Builds Trust:** Consumers, investors, and employees are more likely to trust and engage with businesses that operate ethically and transparently.
- **Reduces Risk:** Ethical conduct minimizes legal and reputational risks associated with unethical practices such as corruption or environmental pollution.

- **Attracts Talent and Investment:** A strong ethical reputation attracts top talent and responsible investors who prioritize companies aligned with their values.
- **Sustainable Growth:** Ethical and sustainable practices can lead to long-term growth and profitability by fostering customer loyalty and brand reputation.

*Examples of Ethical, Transparent, and Accountable Business Practices:*

- **Fair Labor Practices:** Ensuring fair wages, safe working conditions, and respecting worker rights demonstrates ethical conduct.

*Example:* A garment company implements a transparent supply chain to ensure its clothing is produced in factories meeting fair labor standards.

- **Environmental Sustainability:** Reducing carbon footprint, minimizing waste, and adopting sustainable practices demonstrate environmental responsibility.

*Example:* A manufacturing company invests in renewable energy sources to power its operations and reduces its reliance on fossil fuels.

- **Transparency in Products and Services:** Providing accurate information about products and services, including potential risks or limitations, builds trust with consumers.

*Example:* A food company discloses the ingredients in its products clearly and accurately, even if some ingredients might be less appealing to consumers.

- **Accountability to Stakeholders:** Businesses should be accountable not just to shareholders but also to employees, communities, and the environment.

*Example:* A pharmaceutical company conducts clinical trials ethically and transparently, considering the well-being of participants and being accountable for the safety and efficacy of its drugs.

**Conclusion:** Businesses that prioritize integrity, ethical conduct, transparency, and accountability establish a strong foundation for success. These principles foster trust, attract stakeholders, and contribute to a sustainable and responsible business environment. By adhering to these principles, companies can not only achieve financial goals but also contribute positively to society and the environment.

#### **Answer 4(c)**

Institutional Investors in India:

*(i) Hedge Funds:*

Hedge funds are one of the most well-known types of institutional investors in the financial world. Hedge fund investors are locked into the investment for a longer period of time without the freedom to cash out and exit. In addition, hedge funds typically use a concentrated investment strategy, where funds are directed to a few assets in larger proportions, making it more susceptible to larger gains and losses. Hedge funds are hence considered to be a more aggressive and riskier asset class.

*(ii) Mutual Funds:*

Mutual funds are a well-diversified form of investment across different industries and sectors available in the market. They are designed to mitigate the risk of capital losses for their investors through diversification. Mutual funds typically do not have entry requirements for investors and are open to individual or retail investors even with a small investment size. Mutual Funds are considered as one of the most attractive and less riskier options for beginner investors.

(iii) *Insurance Companies:*

Insurance companies are one of the high impact institutional investors. The premium these insurance companies receive from investors is very well managed and invested in securities, returns of which are used to repay the investors. Due to the considerable amount of premium received and invested they become one of the important institutional investors directing the markets.

(iv) *Endowment Funds:*

Endowment funds are generally established by universities, hospitals, charitable foundations, or other non-profit organizations to manage their money. The income generated from investment activities is typically required to be used to finance the beneficiaries' activities, such as to provide scholarships etc.

(v) *Pension Funds:*

Pension funds are funds established using monetary contributions from pension plans. Both employee and employer can contribute to the pension plans. The accumulated capital is typically allocated to income generating and stable investments, fulfilling the whole purpose of pensions, i.e. generating stable and regular income.

(vi) *Private Equity (PE) Funds:*

Private Equity funds are pooled investment vehicles with a structure of a Limited Partnership and a fixed term of usually ten years. These funds provide equity financing to private entities that are unable to raise capital from the public.

These investments are illiquid in nature. P/E funds carry a high risk, and therefore investors expect a high return on their investment. The high risk is associated with the non- public nature and small size of the investee companies.

(vii) *Venture Capital Funds:*

Venture Capitals (VC) mostly invest in small private companies with a very high growth potential and failure rate. The suppliers of VC usually take part in the management of the company the shares of they purchased.

**OR (Alternative questions to Q. No. 4)**

**Answer 4A(i)**

The ways to improve resource efficiency in business organizations:

*Application of Waste Hierarchy:* The Waste Hierarchy ranks waste management options according to what is best for the environment, with prevention being the most desirable option and disposal being the least. To put this in place, one should identify what type of waste the business creates, if any of this waste can be re-purposed, if recycling more waste materials is possible, and if any organic waste (e.g. food/garden waste) can be used to create renewable energy or composted.

*Waste Assessment:* Assessing waste will not only help the organisation to apply waste hierarchy, but also to identify problem areas and develop a plan of action. The management might discover that a particular process is causing more waste than realised, or that a different material can be used in place of a less efficient one.

*Controlling of Waste:* By enhancing accuracy, improving communication, and providing the appropriate tools and training, the management can assist its team in reducing wastages, thereby saving cost and also contribute substantially towards preserving the environment.



*Implementation of Environmental Management System:* Environmental management systems, such as ISO 14001, are becoming increasingly popular for businesses looking to reduce their environmental impact. These management systems can help an organization to improve its environmental performance, reduce environmental liability, and decrease costs.

*Reduce Energy Consumption:* By reducing the consumption of energy, an organization can save both energy as well as costs. Some of the ways to reduce energy consumption include turning off lights and equipment when not in use, use cold water rather than hot water where possible, and utilizing power saving functions in usage of various machines and other electrical gadgets.

*Increase Energy Efficiency:* Not only the business organisation can take steps to reduce energy consumption in the workplace, but can also make changes in order to improve energy efficiency. For example, the business enterprise could change its lights to LEDs which use up to 90% less energy than traditional incandescent bulbs.

*Communication with Staff:* It is essential that management communicate the organisation's goals clearly to its human capital for enhancing efficiency and reduce waste in the workplace. Further, clarity in communication assist in creating an awareness among the team members as to what is expected from them by the management.

*Participative Management Style* needs to be embraced wherein the human capital employed at various levels of the hierarchy are consulted in order to obtain their views/ suggestions on improving efficiency in production and reducing wastages.

*Using Re-use and Refill Approach:* According to the United Nations Environment Programme, only about 9 percent of the 9.9 billion tons of plastic generated globally since the 1950s has been recycled. And, almost half of the plastic waste poisoning marine life, contaminating food, and clogging waterways and sewers comes from consumer packaging. As citizens and governments wake up to this plastic pollution problem, they're turning to business to solve it.

In response, companies are trying to craft new approaches to plastic, whether reducing over packaging or rolling out biodegradable materials made of seaweed and corn-starch. But one solution – the reuse and refill business model – stands out for its potential to shift consumer behavior while unlocking new revenue streams and cost savings for companies.

*Reduce Wasteful Office Practices:* Going by the waste hierarchy, the best-case scenario is to prevent waste, even if it is recyclable. With this in view, the management may review the office practices to find ways to limit waste. Printing is one of the biggest culprits for unnecessary waste in the office – to combat this the management may discourage printing of long documents and prefer e-version of the documents as far as possible.

*Understand the Legislation:* It is essential that to comprehend the regulatory framework that governs the waste generated by the organisation. In this regard, the business organisations may adopt the following:

- Keep waste to a minimum.
- Sort and store waste correctly.
- Complete waste transfer notes.
- Ensuring registration of waste carrier.
- Ensuring that waste carrier disposes off the waste legally.

**Answer 4A(ii)**

Corporate Governance in Family Owned Companies – Provisions in the Companies Act, 2013:

*Independent Directors and Women Directors:* To build up the transparency and accountability of the Board of Directors, the Act now requires at least 1/3rd of the total directors of a listed company to be Independent Directors and have no material or pecuniary relationship with the company or related persons. Unlisted Public companies with paid up share capital of Rs. 10 Crores or more; turnover of Rs. 100 crore or more; aggregate outstanding loans, debentures, and deposits, of Rs. 50 crore or more are statutorily required to have at least 2 directors as Independent Directors.

To ensure diversity on the board, all listed companies and non-listed public companies having paid up share capital more than Rs.100 Crores or more and turn over exceeding Rs.300 Crores or more are required to have at least one woman director on the board.

*Corporate Social Responsibility (CSR):* Every company having net worth of Rs. 500 Crores or more, turnover exceeding Rs. 1000 Crores or net profit of more than Rs. 5 Crore is required to constitute a Corporate Social Responsibility Committee under Section 135 of the Companies Act, 2013 constituting 3 or more directors with at least 1 Independent Director to formulate policies and recommend activities that the company may undertake for promotion of education, gender equality, health, poverty eradication, environment, employment etc. Again, this measure puts responsibility on the company for the social wellbeing not just of its workforce, but also makes it publicly accountable.

*Audit Committee of Board:* The Act provides for the setting up of an Audit Committee comprising of at least 3 directors by all listed companies, majority of which have to be independent directors. The members of such a committee have to be persons who can read and understand financial statements and the task entrusted to such a committee is recommending remuneration and appointments of auditors and reviewing their independence.

*Nomination and Remuneration Committee:* The Nomination and Remuneration committee shall comprise of 3 or more non-executive directors out of which at least half shall be Independent Directors. Such committee shall identify persons qualified to become directors of the company and make recommendations to the board of directors regarding their appointment and approval.

*Serious Fraud Investigation Office:* Section 211 of the Act provides for the establishment of a Serious Fraud Investigation Office to look into the affairs of the company and investigate incidences of fraud upon receipt of report of the Registrar or inspector or generally in the public interest or request from any Department of Central or State Government.

**PART-II**

**Attempt all parts of either Q. No. 5 or Q. No. 5A**

**Question 5**

Cyber risks are cited as the biggest threat faced by Indian organizations with 38 per cent of respondents feeling highly or extremely exposed to it, says a survey. With this, cybersecurity has jumped two spots from number three to number one on the risk radar when compared to the 2022 Global Risk Survey, the ABC's 2023 Global Risk Survey-India edition stated. ABC said the final results of the survey are based on 3,910 survey responses from Business and Risk Management leaders (CEO, board, risk management, operations, technology, finance, audit) across 67 territories providing their views on the status and direction of risk in their organization. 163 Indian organizations were a part of this survey. Other digital and technology risks are also top concerns for business leaders in India (at 35 per cent).

To address the challenges, Indian organizations are making bold investments in cybersecurity with more than half of the respondents planning to invest in cybersecurity tools (55 per cent) and AI, machine learning and automation technologies (55 per cent) in the next 1-3 years, according to survey findings.

To back these investments, 71 per cent of Indian organizations are gathering and analyzing cybersecurity and IT data for risk management and opportunity identification. Globally 61 per cent of the organizations are doing the same.

2023 Global Risk Survey shows that Indian business leaders are not only demonstrating an increased appetite for taking risks but are also doing a reasonable job of identifying opportunities presented by risks.

Further, Indian businesses are seeing technology disruptors as opportunities, with 69 per cent of Indian executives seeing Generative AI as an opportunity (against 60 per cent globally). The survey also revealed how organizations are taking the help of emerging technologies such as GenAI for risk management, with 48 per cent of Indian enterprises having deployed AI and machine learning for automated risk assessment and response to a large extent. This is slightly lower than the global response of 50 per cent.

To leverage the positives brought in by risks and disruptions, the survey said 88 per cent of Indian organizations are actively investing in building resilience in their ecosystem over the last 12 months. Globally, 77 per cent of the businesses are investing in the same.

Based on the above facts answer the following questions :

- (a) "Cyber Risk is a critical issue demanding immediate action." Discuss.
- (b) "India can build a more resilient digital environment by prioritizing cybersecurity, fostering collaboration, and promoting cyber awareness." Discuss.
- (c) "Indian enterprises having deployed AI and Machine Learning for automated risk assessment." Discuss.
- (d) Elaborate that every listed company should have Risk Management Committee (RMC) as per Regulation 21 of SEBI (LODR) Regulations, 2015.

(5 marks each)

**OR (Alternative questions to Q. No. 5)**

**Question 5A**

- (i) Newgen Technologies Ltd. (NTL) is a multimillion-dollar public limited company with over two decades of time-tested experience for clients across the globe. As a leading offshore software development company, headquartered at Hyderabad in India, NTL employs over 525 plus professionals across the globe.

In the last year, NTL earned a reputation and niche for its services. For example, a super critical boiler in a thermal power plant takes 10-12 days to be fine-tuned or synchronized. It means system is shut for power generation and lead to loss of millions of dollars. NTL came up with a solution that cuts the time taken to synchronize a boiler from 10-12 days to 3-4 days through the use of software and services of IT professionals. The main strength of NTL is the IT professional they employed with it. It captured data through sensors on the boilers, use the algorithm built in house to check nearly 240 parameters and over 10,000 combinations to tune the boiler. It also helped a global heating, ventilation and air conditioning firm to bring down the time taken to design an AC solution in a building or office from 9 days to just 2 hours



now. However, traditional outsourcing business of NTL is dying a slow death as clients cutting their budgets on such services and shifting their focus on newer areas such as digital and cloud.

Three-fourth of the revenue of NTL is from traditional services. However, half of its revenue still comes from fixed price projects which allow it the flexibility to determine the resources it deploys and use software tools to deliver services. Now, the aim is to increase that goal by reducing the dependency on people and more on software led services which coincide with its goal of IT Modernization.

NTL derives a major portion of its revenues from customers discretionary spending which is linked to their business outlook. Its major revenues are from UK, USA and other European countries.

Some draft legislations in USA have been made to restrict the availability of work visas. Such protectionist policies threaten the prospect of global mobility of people which may also affect the work of NTL as distributed software development requires free movement of people.

Appreciation of the rupee against any major currency results in the revenue denominated in that currency to appear lesser in reported terms. Then, there may be different exchange rate when sale took place and when invoice is collected.

*Internal Financial Control System :*

The internal Financial Control System of NTL has been laid down as below :

- (a) Recording and providing reliable financial and operation information.
- (b) Safeguarding Assets.
- (c) Ensuring compliance with corporate policies.
- (d) Well defined delegation of power.
- (e) Efficient ERP system.
- (f) Internal audit by one of the big audit firm.
- (g) Audit Committee found internal financial control adequate.

Based on the above inputs, answer the following questions :

- (a) Discuss the SWOT analysis of Newgen Technologies Limited.
- (b) Elucidate the types of exposures risks to be encountered by the Company.
- (c) Discuss the efficacy of the Internal Financial Control System of Newgen Technologies Limited.
- (d) Briefly explain the political risk to be encountered by Newgen Technologies Limited.

(8 marks)

- (ii) Modern advancements in technology provide fraudsters a variety of chances nowadays.

Even though technological advancements might facilitate fraud risk management for businesses, it is a fact that these advancements also provide opportunities for con artists. Fraud charges may cause businesses to loose clients due to reputational damage. In order to challenge the brunt of frauds, explain the 'fraud risk management processes' that a company may adopt to effectively manage its fraud risks.

(6 marks)

(iii) In the context of Risk Management, answer the following questions :

- (1) Which of the following is not an Internal Risk ?
  - (a) Economic factors such as price fluctuations, changes in consumer preference, inflation.
  - (b) Technological factors, unforeseen changes in the techniques of production or distribution resulting into technological obsolescence etc.
  - (c) Physical factors such as fire in the factory, damages to goods in transit.
  - (d) Human factors such as strikes and lock-outs by trade unions; negligence and dishonesty of employees, accidents or deaths in the factory.
- (2) Which one of the following would LEAST likely be included as a source of market risk ?
  - (a) Natural Disasters.
  - (b) Recessions
  - (c) Political Turmoil
  - (d) None of the above
- (3) Corporate Governance Risk is not intended to identify deficiencies that can damage the following important existential aspects of the company :
  - (a) Reputation
  - (b) Existence
  - (c) Sales Growth
  - (d) Continuity.

(2×3=6 marks)

#### Answer 5(a)

The news that cyber risks top the list of concerns for Indian organizations, according to ABC's 2023 Global Risk Survey – India edition, is a critical issue demanding immediate attention. Here are some key comments on this development:

A Call to Action for Cybersecurity:

- This finding underscores the urgent need for Indian organizations, regardless of size or industry, to prioritize robust cybersecurity measures. Cyber threats are constantly evolving, and effective defenses are no longer optional.

Potential Reasons for Heightened Cyber Risks:

- India's booming digital economy presents a larger attack surface for cybercriminals. As more businesses and individuals move online, the potential targets for cyber-attacks increase.
- The shift to remote work due to the pandemic might have exposed vulnerabilities in some organizations' cybersecurity postures.

Building a More Secure Digital Future:

- To address these challenges, India needs a multi-pronged approach:
  - Investment in security solutions: Firewalls, intrusion detection systems, data encryption, and employee training are crucial.

- Collaboration between stakeholders: Public-private partnerships and information sharing can strengthen national cyber defenses.
- Promoting cyber awareness: Public education campaigns and integrating cybersecurity into school curriculums can empower individuals to protect themselves online.

#### Additional Considerations:

- The PwC report likely highlights other significant threats faced by Indian organizations. Understanding these alongside cyber risks provides a more holistic view of the national risk landscape.
- The report may also offer insights into how Indian organizations plan to mitigate these risks. This information can be valuable for businesses seeking to strengthen their own cybersecurity posture.

Overall, the dominance of cyber risks is a wake-up call for India. By prioritizing cybersecurity, fostering collaboration, and promoting cyber awareness, India can build a more resilient and secure digital environment for businesses and individuals alike.

### Answer 5(b)

The statement that India can build a more resilient digital environment by prioritizing cybersecurity, fostering collaboration, and promoting cyber awareness is absolutely true. Here's a breakdown of why these factors are crucial and how they can be implemented:

#### *Prioritizing Cybersecurity:*

*Investing in Defense:* Organizations of all sizes need to invest in cybersecurity solutions like firewalls, intrusion detection systems, and data encryption to prevent unauthorized access and data breaches.

*Focus on People:* Regular training programs for employees on cyber best practices like password hygiene and phishing email identification are essential. Human error is a major vulnerability, and awareness training can significantly reduce risks.

*Incident Response Planning:* Having a well-defined response plan ensures organizations can effectively mitigate damage and recover quickly from cyber-attacks. This includes assigning roles, communication protocols, and data recovery procedures.

#### *Fostering Collaboration:*

*Public Private Partnerships:* Collaboration between government agencies, cybersecurity experts, and private businesses allows for a comprehensive approach. Sharing best practices, threat intelligence, and resources can benefit all stakeholders.

*Information Sharing:* Open communication about cyber threats and attack methods among organizations allows them to stay informed and prepare for potential attacks. This can be facilitated through industry forums or government initiatives.

*Sector-Specific Initiatives:* Collaboration within specific industries allows businesses to address common challenges unique to their sector. Sharing best practices and developing industry specific security protocols can enhance overall resilience.

#### *Promoting Cyber Awareness:*

*Public Awareness Campaigns:* Government and industry bodies can launch campaigns to educate individuals about cyber threats, online safety practices, and how to identify and avoid scams.

*School Curriculums:* Integrating cybersecurity awareness into school curriculums equips younger



generations with the knowledge and skills to navigate the digital world safely. This fosters responsible digital citizenship.

*Community Outreach Programs:* Workshops and outreach programs can educate small businesses and individuals who may not have access to dedicated cybersecurity resources. This can bridge the digital divide and raise overall awareness.

*Benefits of a Resilient Digital Environment:*

*Protects Critical Infrastructure:* Robust cybersecurity safeguards essential infrastructure like power grids and financial systems from cyber-attacks that could cause widespread disruption.

*Enhanced Business Continuity:* Effective cyber defense minimizes downtime and data loss for businesses, ensuring operational continuity and minimizing financial losses.

*Increased Trust in Digital Transactions:* A secure digital environment fosters trust among users, encouraging them to participate more actively in the digital economy. This can accelerate financial inclusion and e-commerce growth.

*Challenges and Considerations:*

*Resource Constraints:* Small and medium-sized businesses may lack the resources to invest in sophisticated cybersecurity solutions. Government initiatives or industry partnerships can help address this gap.

*Skilled Workforce Shortage:* The cybersecurity industry faces a global shortage of skilled professionals. India needs to invest in training programs and attract talent to create a robust cybersecurity workforce.

*Balancing Security with Innovation:* Overly stringent regulations can hinder innovation. Striking a balance between security and fostering a dynamic digital ecosystem is crucial.

*Conclusion:*

Prioritizing cybersecurity, fostering collaboration, and promoting cyber awareness are essential for building a resilient digital environment in India. By implementing these strategies and addressing the challenges involved, India can create a secure and trusted digital space that fosters innovation, protects critical infrastructure and empowers individuals and businesses to thrive in the digital age.

### **Answer 5(c)**

*Indian Enterprises and AI-powered Risk Assessment*

The use of Artificial Intelligence (AI) and Machine Learning (ML) for automated risk assessment is gaining traction among Indian enterprises. This trend presents both opportunities and challenges.

Opportunities of AI-powered Risk Assessment:

- **Enhanced Efficiency:** Automating risk assessment processes with AI and ML can significantly improve efficiency. These technologies can analyze vast amounts of data much faster than traditional methods, allowing for quicker identification and prioritization of risks.
- **Improved Accuracy:** Machine learning algorithms can identify complex patterns and relationships in data that humans might miss. This can lead to more accurate risk assessments, reducing the likelihood of overlooking potential threats.
- **Real-time Monitoring:** AI algorithms can continuously monitor data streams for potential risks, enabling proactive mitigation strategies. This is particularly valuable in the dynamic world of cyber threats and financial markets.

- **Data-driven Decision Making:** AI can analyze historical data and identify trends that can inform better risk management decisions. This data-driven approach can lead to more strategic allocation of resources to address the most critical risks.

#### *Challenges of AI-powered Risk Assessment:*

- **Data Quality:** The effectiveness of AI models heavily relies on the quality of data used to train them. Inaccurate or incomplete data can lead to biased and unreliable risk assessments. Indian enterprises need to ensure robust data collection and management practices.
- **Explainability and Transparency:** AI models can sometimes be like black boxes, making it difficult to understand how they arrive at their risk assessments. This lack of transparency can be problematic for regulators and stakeholders who need to understand the rationale behind risk decisions.
- **Human Expertise Remains Crucial:** While AI can automate many tasks, human expertise is still essential for interpreting risk assessments, making judgment calls, and developing mitigation strategies. AI should be seen as a tool to augment human decision making, not replace it.
- **Talent Gap:** Implementing and maintaining AI-powered risk assessment systems requires skilled data scientists and AI specialists. India may face a talent gap in these areas that needs to be addressed through targeted training programs.

#### *Current Landscape and Future Outlook:*

- While AI adoption for risk assessment in India is on the rise, it's still in its early stages. Many organizations are still exploring and experimenting with these technologies.
- As AI and ML technologies continue to evolve, we can expect them to play an increasingly important role in risk management for Indian enterprises across various sectors like banking, finance, insurance, and healthcare.

#### *The Path Forward:*

- Indian enterprises should carefully consider the opportunities and challenges associated with AI-powered risk assessment before implementation.
- Investing in data quality, building explainable AI models, and fostering a culture of collaboration between humans and AI are crucial for success.
- Collaboration between government, industry, and academia can support the development of a talent pool skilled in AI and risk management.

**Conclusion:** AI-powered risk assessment offers significant advantages for Indian enterprises. By addressing the challenges and adopting these technologies strategically, Indian companies can enhance their risk management capabilities, improve decision-making, and build a more resilient business environment.

#### **Answer 5(d)**

As per Regulation 21 of SEBI (LODR) Regulations, 2015, it is mandatory for certain listed companies to have a Risk Management Committee (RMC). Here's a breakdown of the key points:

#### *Regulation 21 and Applicability:*

- **Clause 1:** The Board of Directors of a listed company shall constitute a Risk Management Committee.
- **Clause 5:** The applicability of this regulation is based on market capitalization:

- Top 1000 Listed Entities: (As per market capitalization at the end of the immediate preceding financial year) – This applicability has been revised from the top 100 and top 500 in previous amendments.
- 'High value debt listed entity' (HVDLE): HVDLEs is a listed entity which has listed its non-convertible debt securities and have an outstanding value of listed non-convertible debt securities of Rs. 500 crore and above.

Role and Responsibilities of the Risk Management Committee:

The specific responsibilities of the RMC are defined by the Board of Directors, but generally include:

- Identifying Risks: The committee is responsible for identifying and analyzing potential risks faced by the company, including financial risks, operational risks, compliance risks, and strategic risks.
- Risk Mitigation Strategies: The RMC develops and recommends strategies to mitigate identified risks. This may involve implementing controls, diversifying operations, or purchasing insurance.
- Monitoring and Review: The committee regularly monitors the effectiveness of risk management strategies and recommends adjustments as needed.
- Overseeing Risk Management Framework: The RMC oversees the implementation and effectiveness of the company's overall risk management framework.

Composition of the Risk Management Committee:

- Majority: A majority of the committee members should be directors of the company.
- Independent Directors: In the case of companies with outstanding SR Equity shares, at least two-thirds of the committee members must be independent directors. Independent directors are those who have no material financial or other relationships with the company or its promoters.
- Senior Management: Senior executives from relevant departments within the company may also be included in the committee.

Additional Points:

- The Board of Directors has the authority to define the powers and functions of the Risk Management Committee (RMC).
- The RMC can seek information from any employee within the company to fulfill its responsibilities.
- The committee can also obtain external legal or other professional advice if necessary.

Conclusion: The presence of a Risk Management Committee mandated by SEBI (LODR) regulations ensures that listed companies have a structured approach to identifying, assessing, and mitigating risks. This promotes good corporate governance, protects investor interests, and fosters a more stable and sustainable business environment.

**OR (Alternative questions to Q. No. 5)**

**Answer 5(A)(i)(a)**

SWOT Analysis of Newgen Technologies Limited (NTL) is as follows:

*Strength:*

- i) Specialization in the software development for their clients.



- ii) Providing unique solutions to the clients.
- iii) IT professional employed with the company.
- iv) Sound Internal Control system
- v) A major portion of revenue comes from fixed price projects which allow it the flexibility to determine the resources it deploys and use software tools to deliver services.

**Weakness:**

- i) Derives a major portion of its revenues from customers discretionary spending which is linked to their business outlook.
- ii) Three-fourth of the revenue of is from traditional services.
- iii) Dependence on the people.

**Opportunity:**

More focus on software led services which coincide with newer areas such as digital and cloud.

**Threat:**

- i) Restrictive visa policy by USA may affect the work of sunshine Ltd. and threaten the prospect of global mobility of people as distributed software development requires free movement of people.
- ii) Appreciation of the rupee against any major currency results in the revenue denominated in that currency to appear lesser in reported terms.
- iii) Clients cutting their budgets on such services and shifting their focus on newer areas such as digital and cloud.

**Answer 5A(i)(b)**

The types of exposures risks to be encountered by Newgen Technologies Limited are discussed as below:

**Transaction Exposure** – It measures the effect of an exchange rate change on outstanding obligations that existed before exchange rates changed but were settled after the exchange rate changes. Thus, it deals with cash flows that result from existing contractual obligations. For example, in the case of NTL if services are exported to USA for \$10,00,000 due in one month and if the dollar depreciates relative to the rupee, a cash loss occurs. Conversely, if the dollar appreciates relative to the rupee, a cash gain occurs.

Further, domestic ratings agency ICRA has highlighted that the appreciation in the rupee is aggravating the troubles of the Indian IT sector, which is already hit by a change in the market landscape and compressing revenue growth.

**Economic Exposure** – It refers to the extent to which the economic value of a company can decline due to changes in exchange rate. ICRA has said that despite an 8.1 per cent growth in USO revenue, IT players have registered a growth of only three per cent in the second quarter of the current fiscal, due to the rupee appreciation of four per cent during the quarter. It also pointed out that IT Services players profitability also remains sensitive to rupee depreciation vis-a-vis major currencies such as USO, GBP and Euro and the same too will have an impact.

**Answer 5A(i)(c)**

The Internal Financial Control System of the NTL is more or less efficient. The reasons are given as below:

- Recording and providing reliable financial and operation information.
- Safeguarding assets.
- Ensuring compliance with corporate policies.
- Well defined delegation of power.
- Efficient ERP system.
- Internal audit by one of the big audit firm.
- Periodic audit by specialized third party consultants.

And, finally Audit Committee found internal financial control adequate which shows that NTL has a good Internal Financial Control System.

**Answer 5A(i)(d)**

The Political risk is that of toughening of visa policies by present US Government. The new directive rescinds the previous guidance, which gave "deference" to previously approved visas as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. This may affect the free movement of IT people from India across USA thereby also affecting the work of NTL.

**Answer 5A(ii)**

Fraud Risk Management Processes:

*Identifying Risks*

For a corporation to effectively manage its fraud risk, it is absolutely essential to identify risks. It is important to determine which workers and departments are most likely to perpetrate fraud and what strategies they might take. Risk identification calls for employee brainstorming. Prioritizing the risks comes next after risk identification. Prioritizing risks is crucial when there isn't enough time or money to mitigate the effects of current risks. As a business's tackle hazards that require prompt attention and stop losses.

*Assessing Risks*

Based on several examples, organizations should recognize problems and develop appropriate solutions in order to resolve them. Although this is a good and legitimate technique to handle problems, businesses need to go above and above. They should start by attempting to identify the causes of the hazards. The root causes of the risk should be addressed. They should also consider how those risks might impact the company.

*Responding to Risks*

After recognizing and evaluating the risks, companies should take the best action they can. They must develop risk-mitigation plans and choose who will be in charge of carrying them out. Additionally, they should take the appropriate steps to stop the risks from happening again. Additionally, businesses should consider what to do in the event that same risks recur in the future.

*Monitoring and reviewing risks*

The process of managing fraud risk is ongoing. Risk assessment is therefore never carried out. To

be able to adjust simply and swiftly to changing situations and environments, businesses need to continuously monitor and analyze their fraud risk management. Additionally, new dangers could materialize at any time, so businesses should be ready for them as soon as possible.

#### *Reporting risks*

Companies can reduce the risk of losing important information and receiving questionable findings by adopting an effective fraud risk management strategy. When reporting concerns, one should act objectively, take concrete steps, and offer advice on how to reduce the likelihood of fraud.

#### **Answer 5(A)(iii)**

- (1) Correct Option – Option – A – Economic factors such as price fluctuations, changes in consumer preference, inflation.
- (2) Correct Option – Option – D – None of the above.
- (3) Correct Option – Option – C – Sales Growth.

### **PART-III**

#### **Question 6**

- (a) A manufacturing Company based at Chennai wanted to assess its sustainability performance, identify areas for improvement and take action to enhance its sustainability with a view to improve its reputation and brand image, foster innovation and competitiveness. The Company is proposing to publish an annual sustainability report that would be made available to stakeholders including employees, customers, shareholders and the wider community.

In this regard, the Company proposed to conduct a comprehensive sustainability audit. The scope of the audit would include the Company's operations, supply chain and product life cycle. The audit would focus on the Company's impacts on the environment, energy and resource use, waste generation, greenhouse emissions as well as its social and ethical responsibilities.

You are a part of a reputed firm of Company Secretaries, based at Chennai, having a core team of subject matter professionals, with skills and knowledge, to provide innovative sustainability audit services that meet varied needs across a wide range of industries. As a Company Secretary, capacitated to conduct sustainability audit of organizations, you have been assigned to conduct a sustainability audit of the said manufacturing company.

In this regard, you are asked to prepare a sustainability audit process flow briefing the manner in which such an audit may be conducted.

(7 marks)

- (b) Companies with high ESG [Environmental, Social, Governance] scores appear sustainable, boast fewer liabilities, build positive brand reputations and maintain strong relationships with their clients and stakeholders that eventually have an advantage to attract talent, impressing customers and raising capital.

Enumerate the key benefits, small to mid-sized companies can gain by starting an ESG program in respect of the following :

- (i) Competitive Advantage
- (ii) Cost Reduction



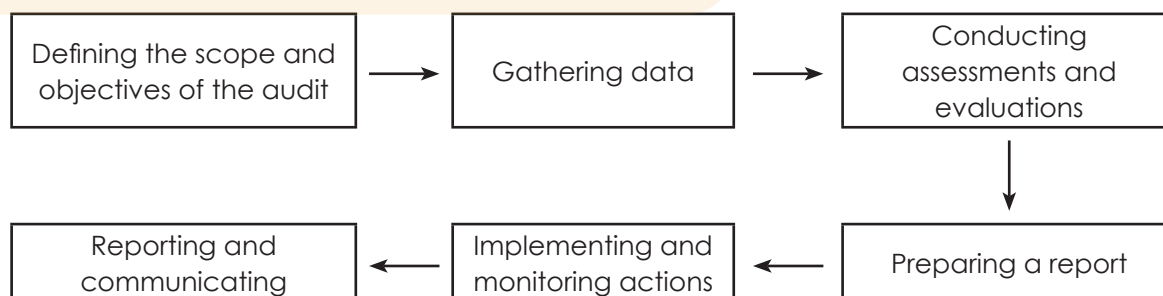
(iii) More Attractive to Lenders and Investors

(iv) Supply Chain Prospects.

(8 marks)

### Answer 6

(a) Sustainability Audit Process Flow involves the following:



A sustainability audit may be conducted in the following manner:

- (i) *Defining the scope and objectives of the audit*: This involves determining what aspects of the organization's operations will be included in the audit and what sustainability goals the audit is intended to achieve.
- (ii) *Gathering Data*: This involves collecting data on the organization's environmental, social, and economic impacts, as well as reviewing policies, procedures, and practices related to sustainability. This may include analyzing data from existing sustainability reports, conducting surveys of employees and stakeholders, and reviewing internal documents and data.
- (iii) *Conducting assessments and evaluations*: This involves evaluating the data collected and analyzing the organization's sustainability performance. This step typically includes benchmarking the organization's performance against industry standards and best practices, and identifying areas for improvement.
- (iv) *Preparing a report*: This involves summarizing the findings of the audit and presenting recommendations for improvement. The report should be clear, concise, and actionable, and should be designed to engage and inform stakeholders.
- (v) *Implementing and monitoring actions*: This involves taking action on the recommendations made in the report, and monitoring progress over time to ensure that sustainability goals are met. This may involve developing and implementing new sustainability policies and procedures, investing in new technologies or processes, and engaging with stakeholders to drive sustainability improvements.
- (vi) *Reporting and communicating*: Report on the findings of the sustainability audit, including the results of the performance assessment, areas for improvement, and the action plan. Communicate the results to stakeholders, including employees, customers, shareholders, and the wider community.

The specific details of how to conduct a sustainability audit will depend on the size and complexity of the organization, as well as its specific sustainability goals. It may be necessary to engage external experts or consultants to assist with certain aspects of the audit, such as data collection and analysis, or to provide expert advice on sustainability best practices.

**Answer 6(b)**

Key Benefits of ESG Program:

The key benefits, small to mid-sized companies, can gain by starting an ESG program are as below:

- (i) *Competitive Advantage*: Having an ESG program in place helps boost brand recognition and even promotes brand loyalty. Today's consumers and clients are increasingly aware of ethical spending and care more about what a company does to support sustainability. Small to mid-sized companies that have taken steps to meet sustainability concerns (having an ESG program) have been known to attract more customers and clients who seek to do business with companies addressing these issues.

Small to mid-size companies can create value by having an ESG program. In the past, it was harder to track and be consistent when it came to ESG data and took extra resources. Today ESG data management is simpler with software programs that allow for the ability to consolidate information such as tracking greenhouse gas emissions (GHG), energy data, utility data sync, waste management etc.

- (ii) *Cost Reduction*: By implementing an ESG program, small to mid-sized companies can track key metrics like energy consumption, water consumption, waste shipping/treatment costs, and raw material usage. This tracking ability is a prerequisite for companies to plan programs to improve efficiency, which leads to reduced costs associated with energy and water usage and waste transport. In addition to improving cost management, ESG programs also allow for operational efficiency, less exposure to fines/penalties, better risk management, and improved innovations.
- (iii) *More Attractive to Lenders and Investors*: Attracting the attention of investors and lenders is one of the biggest advantages of having an ESG program. It seems no matter where you look for ESG benefits, the top thing that comes up is that investors and lenders are gaining interest in companies with an ESG program in place over those without. Study (opens in a new tab) has shown companies that made ESG a priority stand out to both investors and lenders because they tend to outperform their competition.
- (iv) *Supply Chain Prospect*: Much like investors are paying more attention to ESG, many companies are looking for supply chain partners that embrace sustainability efforts. For example, many retail stores are making decisions not to stock products made by companies considered to have poor ESG performance.

Companies' supply chains have an effect on the environment, people, and society, so companies that take their ESG goals seriously find it to be in their best interest to partner with suppliers who share the same vision. Multiple large companies have already made the move to implementing ESG, making it more beneficial for them to partner with suppliers that have an ESG program in place, as well as easier to attract partners who insist on better ESG performance as a condition for partnership.

Arguably, these considerations carry even more weight for small to mid-sized companies. A larger company can potentially replace lost supply chain partners more easily than smaller competitors can, so those smaller companies need to be especially mindful of the ESG criteria that many companies are looking for in their choice of partnerships.

# Lecture Kart

**DRAFTING, PLEADINGS & APPEARANCES****GROUP 1 PAPER 2****Time allowed : 3 hours****Maximum marks : 100****NOTE :** Answer All Questions.**PART-I****Question 1**

XYZ Ltd., a multinational conglomerate operating across various sectors, faces a critical decision regarding a strategic partnership proposal with a promising tech start-up. With 12 directors on the board, the urgency of the matter, coupled with the diverse locations of its board members, poses a challenge in convening an in-person meeting. Consequently, the company seeks an alternative method to pass the resolution.

W acted as a director on the Board of Directors of XYZ Ltd. between 2016 and 2018. He is also a shareholder in the said company, owning approximately 25.66% equity shares, and drew a salary of ₹ 2.50 lakh per month. The Commissioner of Central Goods and Service Taxes, based on the information received indicating that XYZ Ltd. was availing Input Tax Credit (ITC) against fake/ineligible invoices, commenced an investigation under section 67 of the Central Goods and Services Tax Act, 2017, against XYZ Ltd. W, as per the commissioner's statement, admitted to the fact that he had acted as a director of the company between 2016 and 2018, and since then, he has been working in the company in the capacity of a mentor/advisor. Furthermore, W also stated to the CGST Department that, in his capacity as the mentor/advisor to the company, he received ₹ 30 Lakh in the concerned FY i.e., 2019-2020, from the company. According to W, this money was given as he had been providing "strategic guidance" to the Company. The bank accounts of W have also been attached to the CGST Department.

XYZ Ltd. enters into a contract with B, a logistics provider, to deliver a shipment of newly manufactured electronic gadgets to various retail stores across the country. The contract specifies a delivery deadline crucial for the upcoming Deepawali season sales. However, due to B's negligence, the delivery is delayed by two weeks, causing significant financial losses to XYZ Ltd. As a result of the delay, XYZ Ltd. misses the peak sales window, leading to decreased revenue and tarnished brand reputation. The company is contemplating seeking legal remedy for the loss caused.

The Ministry of Road Transport and Highways of India has announced a significant infrastructure project for the construction of Megha Highway. This highway project aims to connect various cities and towns, boosting transportation and economic development in the region. To execute this project, the ministry has initiated a tendering process inviting bids from qualified construction firms. XYZ Ltd., which is also engaged in construction activity, is contemplating participating in the tendering process for construction of the Megha Highway. As a major player in the construction industry, XYZ Ltd. sees this project as a lucrative opportunity to showcase its expertise, expand its portfolio, and contribute to the nation's infrastructure development. XYZ Ltd. wants to enter into e-contracts across the country for the sale of their various products. The company's counsel is considering the fact that conventional contract law may not be sufficient to address all the issues arising in electronic contracts. The Information Technology Act (IT Act) addresses some of the peculiar issues arising in the formation and authentication of electronic contracts. The Indian Evidence Act, 1872, deals with the presumption as to e-records, providing electronic records as evidence in disputed matters (Sections : 85A, 85B, 88A, 85C).

Based on the facts of above case study, answer following questions :



PP – DP&A – JUNE 2024

- (a) You are required to guide XYZ Ltd. on the alternative method under the Companies Act, 2013, to pass the resolution for the strategic partnership with the tech start-up. What requirements will the company have to fulfil ?
- (b) W has approached you to seek your opinion on the matter of attaching his bank accounts. Write an opinion.
- (c) Advise XYZ Ltd. on the remedies available to them under the Indian Contract Act, 1872 for the loss caused.
- (d) What considerations XYZ Ltd. should take into account, while preparing a tender document for the Megha Highway project ?
- (e) What prohibitions must specifically be included in e-contracts ? Furthermore, how shall the limitation of liability of XYZ Ltd. be addressed under e-contracts ?

(5 marks each)

### Answer 1(a)

XYZ Ltd. can opt for passing resolutions through circulation as per the provisions of section 175 of the Companies Act, 2013 as an alternate way to approve the strategic partnership with the tech start-up. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/ post or through electronic means including e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution.

A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting.

Further, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

### Answer 1(b)

Date: .....

On the basis of the reference received from W, the following question has been framed for legal opinion:

Question: Whether the attachment of Bank Account of director is sustainable merely on the ground of allegation against Company.

1. Section 83 of the Central Goods and Services Act, 2017.

#### Provisional attachment to protect revenue in certain cases

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

or Alternate paragraph to above paragraph

- (1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally,

any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

(2) The Delhi High Court in the case of *Roshni Sana Jaiswal v. Commissioner of Central Taxes GST Delhi (East)* W.P.(C) NO. 2348 OF 2021 CM NO. 6860 OF 2021 has inter alia decided as under:

The petitioner claimed, in her voluntary statement, that she was paid Rs. 1.50 crores in the FY 2019-2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

### Analysis

In view the above quoted provisions and the case decided by the Hon'ble High Court of Delhi, attachment of the petitioner's bank accounts may be unsustainable.

Disclaimer: The opinions expressed herein are given to you solely for your use and may not be relied upon by any other person or entity or for any purpose whatsoever without our prior written consent. The opinions herein are provided as legal opinions only, and not as representations of fact. The opinions expressed herein are as of the date of this letter and we have no obligation to update these opinions for any period following the date of this letter.

I advice accordingly.

Sincerely yours,

(P)

(Name & Signature)

### Answer 1(c)

According to section 73 of Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him, which naturally arose in the natural course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

- No compensation shall be given to any remote and indirect loss or damage sustained by reason of breach.
- Compensation in regard to failure to discharge obligation which resembles those created by the contract.
- An obligation resembling those created by contract has been incurred and has not been discharged, any person affected by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.
- Compensation for loss or damage which naturally arose in the usual course of things from such breach.

- Compensations to be recovered for loss or damage which the parties knew or which would have naturally arisen in the usual course, to be likely to result from the breach of it.

“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may reasonably and fairly be considered as arising naturally, i.e., according to usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.”

XYZ Ltd. is advised to take action for the loss caused in accordance with above mentioned provision and case law.

### Answer 1(d)

Considerations to be taken into account while preparing the Tender document are as under:

1. Name and address of the organisation: The name and address of the organisation be mentioned on the initial page of the document.
2. Subject of the document: The subject of the tender documents to be mentioned in clear and comprehensive manner in order to attract the attention of the Bidder.
3. Index of the tender document: The index of the documents can make the document convenient for the prospective bidder.
4. Important dates and necessary information: The information such as Tender Publication Date, Last date and time for sending Pre-Bid Queries in writing, Cost of Tender, Earnest Money Deposit, Pre-Bid Meeting date, time & venue, Last Date & address of Submission of Bids, Date, time & Venue of opening of Technical Bids and Financial Bids, contact details etc. should be provided in the tender document.
5. Disclaimer Clause: A disclaimer clause with respect to reservations or observation on the tender documents should be placed in the tender document.
6. Job Description: The job description in details should be mentioned in the tender document in order to acquaint prospective bidders with the requirements attached with the Job and evaluate and prepare their bids accordingly.
7. Division of tender documents in parts: The tender document be preferably prepared asking for Bid submissions in two parts i.e. Technical Bid and Financial Bids.
8. Fees and Deposits: The tender document should mention the fees and deposits commensurating the nature and quantum of work. The cost of the tender document may be required from the prospective bidder. Further, the provisions relating to Earned Money Deposit (EMD) and Security Deposit are also to be placed in the tender document.
9. Conditions for forfeitures of EMD: The clause providing for the circumstances in which EMD may be forfeited to be mentioned in the tender document. The general conditions in which EMD be forfeited are as under:
  - i. If the bidder withdraws its bid;
  - ii. the selected bidder delays or does not accept the Purchase / Work Order;
  - iii. the selected bidder fails to supply goods / services as per the terms of the Tender or fails to execute Purchase / Work Order.
10. Pre Bid Meeting: Pre Bid Meetings be conducted in order to provide any clarification sought on the tender.



11. Scope of Work: The scope of work in details be mentioned in the tender documents.
12. Mention of Technical and administrative requirements: The technical and administrative requirement be mentioned comprehensively in order to prevent the halt in the Job at the later stage. The document should be clear and specific with respect to technical and administrative requirements for performing the Job.
13. Eligibility Criteria: Essential Requirements are to be mentioned in the tender document.
14. Necessary forms and documents: Formats such as of Technical Bids, Financial bids, past experience of the bidder, Tender Acceptance Letter, Standard Terms and Condition of Agreement may be mentioned in the tender document. Further, a list of document required to be attached in the tender document may also be provided in the document.

### Answer 1(e)

#### Prohibitions must be included in e-contracts

The contract must specifically prohibit the following:

- i. Using “deep-link”, “page-scrape”, “robot”, “spider” etc. to access, acquire, copy or monitor any portion of the service.
- ii. Reproducing the navigational structure or presentation of the service.
- iii. Circumventing the navigational structure or presentation of the service.
- iv. Attempting to gain unauthorized access to any portion or feature of the service.
- v. Harvesting or collecting user names, email addresses or other member identification information.
- vi. Probing, scanning or testing the vulnerability of the service.
- vii. Tracing information relating to other users.
- viii. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.
- ix. Using the service for any unlawful purpose.

#### Limitation of liability of XYZ Ltd.

The contract must clearly mention that 'XYZ Ltd' (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

- i. Access delays or interruptions to the 'XYZ Ltd' web site.
- ii. The loss of registration or processing of an order.
- iii. The unauthorized use of the customer's account.
- iv. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to 'XYZ Ltd' staff.
- v. Errors taking place with regard to the processing of the customer's orders.
- vi. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the 'XYZ Ltd' website.
- vii. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the 'XYZ Ltd's services.

- viii. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the website.
- ix. Changes in or cessation of the 'XYZ Ltd' services.
- x. Customer's failure to keep his account information, passwords etc secure and confidential

**Question 2**

- (a) Bharathi, by a deed of gift made over certain property to her daughter, Narmadha, and directing her to pay an annuity to the donor's brother, Ram, as she had promised her brother Ram before gifting the said property. On the same day, Narmadha executed a deed, in writing, in favour of the donor's brother (Uncle) agreeing to pay the annuity. Afterwards, Narmadha declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. Is the contention of Narmadha tenable ?

(5 marks)

- (b) In a simple mortgage, the security for the debt is two-fold. Elucidate and cite case law, if any.

(5 marks)

- (c) Amalgamation is basically a merger of two or more companies into one another company and the shareholders of each merging company becomes the shareholders in that another company. It may be either by :

- (i) the transfer of two or more companies into one another new company, or
- (ii) the transfer of one or more companies into one existing company.

In light of the above, when a transferor company stands dissolved due to amalgamation, explain the status of legal proceedings pending before the court, in which the transferor company was a party.

(5 marks)

**Answer 2(a)**

The facts of the given situation are similar to the facts of the case *Chinnaya v. Ramaya*, (1882) 4 Mad. 137. In this case, a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donor's brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donor's brother agreeing to pay the annuity. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

In view of this case, it can be said that the contention of Narmada is not tenable. In the cited case, the Court held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration. Unlike under English law, in India, privity of consideration is not strictly applicable. It means that consideration may be paid by parties or any other person.

**Answer 2(b)**

In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property may be sold and the proceeds applied in payment of the mortgaged money.

This is true that in a simple mortgage, the security for the debt is two-fold:

- (a) the personal obligation; and
- (b) The property.

In *Ram Narayan Singh v. Adhindra Nath*, AIR (1916) PC 119 the Court held that the fact that some immovable property has been mentioned as security for its repayment does not displace the personal liability of mortgagor to repay the loan with interest.

### Answer 2(c)

Amalgamation means merging of two corporations, destroying both in the process and creating an entirely new entity i.e. a new financial organization. This emergence allows the newly formed company to inherit the assets and liabilities of its constituent parties to incorporate within as a sort of successor to both of them being bigger and better than both as well.

In case of *Speed line Agencies Vs. T Stanes & Co. Ltd* - Supreme Court has decided that, in amalgamation, all proceedings in which Transferor Company was a party be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. The above would be so with effect from the effective date.

In other words, when a transferor company stands dissolved (with or without winding up) due to amalgamation, its right under the decree for eviction devolves on the transferee company.

### Question 3

- (a) A competent jurisdictional authority has issued a show cause notice to Abdul Rehman. He has sought your advice for replying the same. What are the points that he must consider while replying to the show cause notice ?

(5 marks)

- (b) X, with the intention of disposing of his old stock of outdated machines, requested Y to place them in his shop for sale. Y handed over a blank cheque to X to be used only upon his instructions, after sold out of all those machines. However, since the machines were outdated and faulty, they could not be sold. Despite this, X lodged the cheque in the bank, which was subsequently dishonoured. Y received a notice under section 138 of the Negotiable Instruments Act, 1881, from X's advocate, demanding payment. You are required to draft a reply to the above notice, assuming the necessary facts.

(5 marks)

- (c) Draft a resolution for approval and adoption of CSR policy.

(5 marks)

### Answer 3(a)

Where a Court sends a Show Cause Notice, the person to whom such notice is given must give it the highest priority. The show cause notice must not be taken lightly and its seriousness should be understood. The reason being that by sending a reply to the show cause notice, he/she can avoid criminal charges put on him and also the liabilities which arise from them.

Accordingly, Abdul Rehman must consider the following points while writing the reply to the show cause notice:

1. A proper explanation has to be provided at the earliest.



2. It should be kept as brief as possible.
3. It must be written in such a manner that the Court is satisfied with the fact that he/she is aware of the gravity of the situation.
4. It must give a reasonable excuse.

Any individual must draft his/her reply in such a way that if any layman would read it he should find the same as reasonable. Moreover, always sound humble in your reply and also sound sorry for the same. Lastly, be always very careful to file the reply within the specified time limit mentioned in the notice. In case of *Meenakshi v. State of Haryana*, Considering the chain of facts and highlighting the reply filed by the petitioner to the notice under Section 340, the Court clarified that there was nothing illegal in it and did not amount to miscarriage of justice at all, for the opportunity of being heard was given to the petitioner as she was allowed to file reply to the show-cause notice. It is the non-acceptance of the forgiveness sought that has led to the filing of the complaint in the Court. Inderjit Singh, J accordingly held that there is no merit in the case and accordingly, dismissed the petition.

### Answer 3(b)

Reply to Legal Notice under Section 138 of Negotiable Instruments Act, 1881

Name of the Advocate XXXXX

Advocate, New Delhi – XXXXXX

Date: 10.04.2024

To,

Sh ..... Advocate

....., Delhi High Court

New Delhi – xxxxxx

**SUB: REPLY TO YOUR LEGAL NOTICE U/S 138 NEGOTIABLE INSTRUMENT ACT, 1881 DATED .....**

Dear Sir

Your legal notice dated ..... has been placed before me by my client Mr. Y at Connaught Place, New Delhi-xxxxxx and I, the undersigned, have been instructed to reply to your said notice by my client on his behalf as under:

- A. That, at the outset you are being informed that the notice under reply, you have sent on behalf of your above said client, contains false and frivolous facts provided by your said client against my client, thereby your notice under reply deserves to be withdrawn, with unconditional apology by your client, because the claim made by you is without any basis and is based upon concocted facts, as no claim is made out against my client and in favour of your client.
- B. That, in fact, my client did not place any order for supply of machines whatsoever, as alleged by you. But, with a view to dispose off your old stock of outdated machines, you requested my client to place them at his shop for sale. Keeping in view old relations my client agreed to your client's proposal, which was subject to the condition that payment would be made only after those machines were sold out. However, those machines were not only outdated, but were also mechanically faulty, because of which till date they are lying with my client, which your client is at liberty to take back with two days' prior notice. It is pertinent to mention here that the cheque in question was handed over by my client

blank and the same was to be used only upon instructions of my client, after he could sell out your all those machines.

- C. That, however, your client has cheated my client by misusing that cheque which is not in the handwriting of my client. As a matter of fact, your client has committed fraud in the matter and, consequently, is liable to be proceeded under the relevant provisions of law.
- D. That, therefore, it is denied that the cheque in question was issued by my client to your client in discharge of any liability. Rather, your client has misused that blank cheque with ulterior motives, after forging the same.

#### Reply on merits

1. That the contents of para 1 of your legal notice are wrong and denied and whatsoever is stated above is reiterated. It is denied that my client purchased from you client any machines whatsoever. Rather, my client helped your client to keep your machines in his godown/shop for disposal. Therefore, it is denied that the cheque in question was issued in discharge of any liability towards my client, as alleged in this para.
2. That the contents of para 2 are denied for want of knowledge. However, it is reiterated that my client never issued any cheque, in the manner as alleged by you.
3. That, in reply to para 3 of your legal notice, what is stated above is reiterated. It is submitted that your client was not entitled to use that cheque for encashment and deposit the same in his bank.
4. That the contents of para's 4 & 5 are denied for want of knowledge. However, it is reiterated that any cheque was issued in discharge of any liability towards my client to your client.
5. That the contents of para 6 need no comments. However, it is denied that my client committed any offence whatsoever.

In view of aforesaid facts and circumstances, you are being advised to further advise your client to withdraw the said notice under reply and further advise him not to drag my client in any frivolous litigation, failing which my client shall be constrained to contest the same, besides proceeding against your client under the relevant provisions of law, at the costs, risks and consequences of your client only. Copy kept for future record and reference.

Yours Sincerely,

Advocate

#### Answer 3(c)

##### Resolution for Approval and Adoption of CSR Policy

**"RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve and adopt a CSR Policy.

**RESOLVED FURTHER THAT** the CSR Policy be and is hereby approved and signed by Mr./Ms. ...., Director.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of policy on the website of the company."

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

- (a) Explain the conditions which are required to be fulfilled under section 70 of the Indian Contract Act, 1872 for a court to allow compensation under the principle of *Quantum meruit*.

(5 marks)

- (b) What do you understand by Alternate Dispute Resolution (ADR) Mechanisms ? Elucidate its different types.

(5 marks)

- (c) As per The Company Secretaries Auditing Standard (CSAS-3), how the auditor should deal, if, after accepting the audit engagement, the appointing authority imposes a limitation on the scope of the audit.

(5 marks)

**OR (Alternative question to Q. No. 4)****Question 4A**

- (i) Whether the licence as defined under The Indian Easements Act, 1882, is transferable ?

(5 marks)

- (i) While forming an opinion, comment on "reliance put by opinion giver on the certificates of public official" while understanding the facts of a case.

(5 marks)

- (ii) Explain E-stamping. Enumerate its benefits.

(5 marks)

**Answer 4(a)**

Compensation under *quantum meruit* is awarded for the services rendered by the contractor when the payment thereof is not fixed by the contract. *Quantum meruit* is a right which arises outside a construction contract. A *quantum meruit* claim arises, where work is done or services rendered by the contractor for the employer or owner, in circumstances which entitle the party doing the work or rendering the services to receive a reasonable additional remuneration, the situation being one where either there is no contract or there is a contract but the particular situation is not covered under that contract.

The three conditions under section 70 of Indian Contract Act, 1872 are as follows:

1. The first condition is that the claimant should either lawfully do something for another person or deliver something to him.
2. The second condition is that while doing or delivering something, the claimant must not be acting gratuitously; and
3. Thirdly, the person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.



**Answer 4(b)**

Alternate Dispute Resolution (ADR) is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone.

ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved.

It provides the opportunity to “expand the pie” through creative, collaborative bargaining, and fulfil the interests driving their demands.

The following are types of Alternate Dispute Resolutions(ADR):

**Arbitration**

The dispute is submitted to an arbitral tribunal which makes a decision (an “award”) on the dispute that is mostly binding on the parties. It is less formal than a trial, and the rules of evidence are often relaxed. Generally, there is no right to appeal an arbitrator's decision. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

**Conciliation**

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. Conciliation is a less formal form of arbitration. The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

**Mediation**

In mediation, an impartial person called a “Mediator” helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**Answer 4(c)**

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

- a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be nonmaterial, the Auditor shall modify the opinion; or
- b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

**OR (Alternate question to Q. No. 4)****Answer 4A(i)**

A Licence is defined under Section of 52 of the Indian Easements Act, 1882, which reads as under:

“Where one person grants to another, or to a definite number of other persons, right to do, or

continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful and such right does not amount to an easement or an interest in property, the right is called Licence".

Licence is a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement.

A licence is notionally created where a person is granted the right to use the premises without becoming entitled to the exclusive possession of them or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no legal interest. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control.

A licence is a personal right given to the licensee and, therefore, Section 56 of the Easements Act, 1882 provides that licence cannot be transferred by the licensee or exercised by his servants and agents.

#### **Answer 4A(ii)**

Usually, opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business. They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions. These opinions customarily are based on certificates of public officials in the various jurisdictions involved. The principal certificate among them is the certified copy of the Articles of Incorporation, together with amendments. This certification represents conclusive evidence of the formation of the corporation and *prima facie* evidence of its existence for all purposes.

Certain certificates may be required from various state agencies. For example, in loans backed by mortgage of immovable property, certificates showing the title to the property may be required. Many states have implemented websites on which such information can be accessed at any time. The information on any particular website can only be relied upon as current to the extent specified by the state agency responsible for that website.

Because certificates of public officials will normally bear a date before the delivery of the opinion, the opinion giver must decide what additional verification, if any, is necessary for purposes of the opinion. Additional verification may or may not be necessary depending upon the facts and circumstances of the case. In general, customary practice does not require that every certificate be updated. Opinion recipients routinely accept opinions that in part are based on certificates of a reasonably recent date.

#### **Answer 4A(iii)**

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA). E-Stamping is a computer based procedure and a secure manner for the state to pay non-judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system.

E-stamping is beneficial for varied reasons such as E-stamps are less time-consuming; They are very easily accessible; They save cost; e-Stamp Certificate generated is tamper proof; e-Stamp Certificate generated has a Unique Identification Number; they are Easily accessible, they are Secure and user friendly.

**PART-II****Question 5**

Sharma, a resident of Delhi, filed a revision petition before the Delhi High Court challenging an order passed by the subordinate court in a property dispute case. The order had gone against him, as instead of filing appeal before appellate court, he sought relief under section 115 of the Civil Procedure Code (CPC).

Sharma has been embroiled in a property dispute for several years. Frustrated by the delays and complexities of the traditional court system, he seeks a more efficient resolution to his case. Upon hearing about the e-Courts Project, Mr. Sharma decides to explore its services. The e-Courts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts. The e-Courts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

Furthermore, Sharma had advanced a sum of ₹ 5 Lakh to Mr. T on 1st November 2023, with an agreed rate of interest @12 percent per annum and repayment within three months. He recovered ₹ 5 Lakh with in time from T but could not recover the agreed interest even after repeated reminders. He wants to file suit against T for recovery of interest.

Based on the facts of the above case study, answer the following questions :

- (a) The e-Courts Project, initiated and based on the National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the judiciary, aims to transform the Indian judiciary through ICT enablement of courts. State the objective of the e-Courts mission project. What services are available to litigants through the e-Courts Project ?
- (b) What are the grounds upon which the High Court can intervene in revision proceedings ? Whether it can interfere, if it differs from the conclusions of the subordinate court on questions of fact or law ?
- (c) Sharma approaches you seeking guidance on filing a suit against T. Advise him on the necessary facts to include in the suit for the recovery of interest from T.

(5 marks each)

**Answer 5(a)**

The e-Courts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

The objective of the e-court mission project are:

- To provide efficient & time-bound citizen centric services delivery as detailed in e-Court Project Litigant's Charter.
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.



PP – DP&A – JUNE 2024

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The website [https://ecourts.gov.in/ecourts\\_home/index1.php](https://ecourts.gov.in/ecourts_home/index1.php) provides the updated data with respect to High Court Complexes' /District and Taluka Court Complexes' Pending cases, disposed cases and cases listed as on date. The parties can search the status of the cases, caveats and courts orders online.

The services of the Supreme Courts are also available on the website <https://main.sci.gov.in/>. The services *inter alia* includes:

1. Cause List
2. Latest Updates
3. Latest Judgments
4. Listing notices
5. E-SCR(Supreme Court of India reportable judgments)
6. Online Appearances
7. Live Streaming of Cases
8. Physical Hearing (Hybrid Options).

### Answer 5(b)

Section 115 of the Code of Civil Procedure, 1908(CPC) empowers the High Court to satisfy itself upon three matters, viz.,

- (a) that the order of the subordinate court is within its jurisdiction;
- (b) that the case is one in which the court ought to exercise jurisdiction; and
- (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity.

If the High Court is not satisfied upon those three matters, it can interfere with the order of the subordinate courts.

If the High Court is satisfied upon those three matters, it does not interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where, there is a willful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

Further, as per section 115(1) of CPC, the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto along with the satisfaction of the Court on above mentioned three matters.

In view of the above, it can be said that if appeal does not lie from the order the court can interfere with the decision of subordinate court. But if "the appeal lies from the order", the court should not interfere with the decision of subordinate court.

### Answer 5(c)

Necessary facts to include in the suit for the recovery of Interest from T are as follows:

- (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out.
- (2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil

Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state –

- (a) the rate at which interest is claimed;
- (b) the date from which it is claimed;
- (c) the date to which it is calculated;
- (d) the total amount of interest claimed to the date of calculation; and
- (e) the daily rate at which interest accrues after that date.

**Attempt all parts of either Q. No. 6 or Q No. 6A**

**Question 6**

(a) Sudharshini approaches the National Company Law Tribunal in some matter and submits a document in Tamil. The Registry of the NCLT refuses to accept the document as it is in Tamil. Is the refusal of the Registry tenable ? Explain.

(5 marks)

(b) The registered office of Poornabodha Limited is located in the city of Udupi in Karnataka. In a matter pertaining to the removal of a director, a notice was despatched by the company from a post office in Hassan in Karnataka. A shareholder has contended that the notice is not valid. Explain if the contention of the shareholder is correct.

(5 marks)

(c) Explain the nature of offences, which can be compounded under the Companies Act, 2013. Specify the jurisdiction for compounding such offences.

(5 marks)

**OR (Alternative question to Q. No. 6)**

**Question 6A**

(i) Examine the role of Adjudicating Officers under the SEBI Act, 1992 to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA, 1956 are not been complied with.

(5 marks)

(ii) Explain the objectives of the ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020.

(5 marks)

(iii) Explain Appellate Authorities under the Competition Act, 2002.

(5 marks)

**Answer 6(a)**

According to rule 27 of NCLT Rules, 2016, a document other than English language intended to be used in any proceeding before National Company Law Tribunal(NCLT) shall be received by the

PP – DP&A – JUNE 2024

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Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

Appeal or petition or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into NCLT.

In view of the above, it can be said that refusal of the Registry is tenable.

### **Answer 6(b)**

For the removal of a director, the following requirements are to be adhered to:

- A special notice shall be required of any resolution, to remove a director.
- On receipt of notice of a resolution to remove a director under section 169 of the Companies Act, 2013 the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

In the given situation the requirements are fulfilled but the notice is not sent from the place, where registered office is situated (Udipi in Karnataka) but was sent from some other place (Hassan in Karnataka).

The facts of the given situation are similar to the case of *Manmohan Singh Kohli (Capt.) v. Venture India Properties P. Ltd.*

In this case, it was decided that the dispatch of notice is not bad in law because it is sent from some other post office which is not situated near to the company's registered or working office.

In view of the above, it can be said that the contention of the shareholder of Poornabodha Limited is not correct.

### **Answer 6(c)**

#### **Nature of Offence which can be compounded**

According to Section 441 of the Companies Act 2013, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine may be compounded by National Company Law Tribunal or Regional Director or any officer authorised by the Central Government. Therefore, offences which are punishable with fine only or with imprisonment or fine or both, can be compounded.

#### **Jurisdiction for Compounding of Offence**

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the fine does not exceed Rs. 25 lakhs, the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the offence is punishable with fine exceeding Rs 25 lakhs, the same can be compounded by the National Company Law Tribunal.



**Alternate answer to above paragraph****Jurisdiction for Compounding of Offence**

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the fine does not exceed Rs. 25 lakhs, the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the offence is punishable with fine exceeding Rs 25 lakhs, the same can be compounded by the National Company Law Tribunal.

Further, offence punishable with imprisonment or fine/ with imprisonment or fine or with both shall be compoundable with the permission of Special Court.

**OR (Alternate question to Q. No. 6)****Answer 6A(i)**

According to section 15J of SEBI Act, 1992, while adjudging quantum of penalty under 15-I or section 11 or section 11B, the Securities and Exchange Board of India (SEBI) or the adjudicating officer shall have due regard to the following factors, namely :

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

In the case of *SEBI v. Bhavesh Pabari*, a full bench of the Hon'ble Supreme Court held that an Adjudicating Officer (AO) has the right and discretion to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA are not complied with.

The decision broadened the application of Section 15J of the SEBI Act, 1992 and highlighted that the three reasons listed therein must only be regarded as illustrative and not exhaustive in nature, hence allowing the AO to assess the punishment after a consideration of all aggravating and mitigating factors. This decision has evolved considerably over the years, to now recognise the ability of AOs to not impose penalties at all, even in cases where a non-compliance is identified, but is not significant enough to merit a penalty.

**Answer 6A(ii)**

The objective of issuing the ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020 is to:

- (a) Provide the rules of etiquette and decorum for appearance before the courts, statutory bodies and quasi-judicial bodies such as NCLT, NCLAT, SEBI, CCI, etc.
- (b) Ensure respect for authority and to maintain dignity of the profession of company secretaries.
- (c) Prevent company secretaries from contemptuous behaviour to the judicial authorities.
- (d) Guide company secretaries as to which attire is considered unsuitable, unconventional or inappropriate and interfering with the orderly administration of justice.
- (e) Project a professional image amongst the regulators and build a brand for the profession of Company Secretaries.

**Answer 6A(iii)****Appellate Authorities under the Competition Act, 2002**

The following are the appellate authorities under the Competition Act, 2002:

1. **National Company Law Appellate Tribunal (NCLAT):** The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.
2. **High Courts:** High Courts have jurisdiction to hear appeals against the orders of the CCI or the DG. Appeals to High Courts are filed under Article 226 of the Constitution of India, which allows for the judicial review of decisions taken by administrative bodies. The appellate authorities play a critical role in ensuring the effective implementation of the Competition Act, 2002, and providing a mechanism for parties to challenge orders passed by the CCI or the DG. These authorities help ensure that competition is promoted and sustained in the market, consumer interests are protected, and anti-competitive practices are prevented.
3. **Supreme Court of India:** The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

**Alternate Answer****Appellate Authorities under the Competition Act, 2002**

The following are the appellate authorities under the Competition Act, 2002:

1. **National Company Law Appellate Tribunal (NCLAT):** The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.
2. **Supreme Court of India:** The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

# COMPLIANCE MANAGEMENT, AUDIT AND DUE DILIGENCE

## GROUP 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

### PART-I

#### Question 1

- (a) Citing the relevant rules as per the Preservation Policy specified in the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) [SEBI (LODR)] Regulations, 2015, indicate the date up to which each of the following records should be preserved :
- (i) Last entry was done on 30th September 2018 in Corporate Social Responsibility records,
  - (ii) Event completed on 31st August 2020 in Insurance records, Policies and claims.
  - (iii) Last transaction took place on 30th June 2019 on Payroll records of the employee,
  - (iv) Event completed on 20th September 2022 regarding Proof of sending drafts minutes of the Board/Committee and its delivery, and
  - (v) Personal file of all live employees. Employee retired on 30th April 2022.

(1×5=5 marks)

- (b) The Board of A-to-Z Ltd., a listed entity incorporated under the Companies Act, 2013 asked you as a Practicing Company Secretary (PCS) to present through a power point presentation the process for setting up of Compliance Framework in the Secretarial Department of the company. Prepare one slide indicating various stages required in this regard.

(5 marks)

- (c) XYZ Ltd., a listed company incorporated under the Companies Act, 2013 is engaged in manufacturing of electronics items. The company has undertaken a programme for development of local vendors for outsourcing of some critical components. The Managing Director (MD) of the company called a meeting on finalization of assessment criteria of the vendors. The meeting was attended by Directors of concerned departments of Production, Quality control, and Purchase departments. During the meeting the Director (Quality) briefed on the functional uses of some critical parts saying that the vendors having the quality products with precision should be given preference over the vendors capable of supplying mass products and having old technology of production. On the other hand, the Director (Production) raised the doubts on the capability of local vendors to supply quality products with precision and proposed to compromise the quality with cheaper mass products in order to meet the targets of final product for next two years till some vendors are developed.

The MD of the company asked V, a Practicing Company Secretary (PCS), to submit him a note on the cited situation and how to resolve such situations suggesting a checklist for any six transparency traits for the company. Submit it.

(5 marks)

- (d) 24 × 7 & Co. is recently set up professional firm of Company Secretaries on 10th June 2023. P, the managing partner of the firm wants to understand that whether they can given advertisement in Urban Clap, Justdial or any other aggregator of similar category to get



more professional opportunity to render its various services. Explain various provisions, the restrictions imposed and the consequences as per the Institute of Company Secretaries of India (ICSI) (Guidelines for Advertisement by Company Secretaries), 2020 in this regard.

(5 marks)

### Answer 1(a)

Regulation 9 and 30(8) of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 states about Preservation of documents in regards to the Company.

#### (i) In Corporate Social Responsibility Records.

Last entry was done on 30/9/2018.

Rule: Preserve up to 8 years after completion of the transaction.

Ans: Preserve up to 30/9/2026.

#### (ii) Insurance records, Policies and claims. Event completed on 31/8/2020.

Rule: Preserve up to Minimum period of 3 years after the completion of event.

Ans: Preserve up to 31/8/2023.

#### (iii) Payroll records of the employee.

Last transaction take place on 30/6/2019.

Rule: Preserve up to Minimum 8 years after the completion of relevant transaction. Ans: Preserve up to 30/6/2027.

#### (iv) Proof of sending drafts minutes of the Board/ Committee and its delivery.

Event completed on 20/9/2022

Rule: Preserve up to Minimum period of 3 years after the completion of event.

Ans: Preserve up to 20/9/2025.

#### (v) Personal file of all live employees.

Employee retired on 30/4/2022.

Rule: Preserve shall be Permanent in nature.

Ans: Company has to preserve it permanently.

### Answer 1(b)

| Process for Setting up of Compliance Framework  |  |   |  |  |
|---|--|---|--|--|
| Stage-1   | Stage-2  | Stage-3   | Stage-4  | Stage-5  |
| Identification of Compliance Obligations Applicability of the various Act, Rules, Regulations, Policies and | Preparation of Compliance Chart Setting-up role and responsibilities of Senior Management, Legal | Assessment of Historical Compliance Status<br>Assessment of File /Report/Return Statements/<br>Internal Auditor | Assessment of Compliance Risk Identification of Possible situations of non-compliance and development of strategy for Risk | Compliance/ Action Reporting Report of Internal Auditor/ Independent agency/ Regulator with the possible |

|   |                                     |                                |   |   |
|---|-------------------------------------|--------------------------------|---|---|
| Procedures covering Industry Specific Sector Specific, Specific Activity, Specific Entity, Specific State Law, Local Laws | Department, and Compliance Executor | /Independent agency/ Regulator | Mitigation/ Risk Monitoring/ Risk Reporting | consequence such as disqualification/ suspension/ lock out/licence cancellation |
|---|-------------------------------------|--------------------------------|---|---|

Answer 1(c)

The mentioned situation in the given question is regarding Conflicting values which is one of common causes of loss of ethics and values.

Note by Practicing Company Secretary:

**Conflicting Values:** Ethical dilemmas may occur because of conflicting values between two or more people in an organization. One Director may value product quality over quantity while another may value thriftiness. These officers may discuss changing to a cheaper supplier for a material used in production because of the potential to save money. However, the first manager may object because he knows the cheaper material will produce a product of lesser quality, which is not good for customers. Without a culture of shared values, the least ethical choice may be approved.

**Resolving Ethical Dilemma:** Think about outcomes if you find yourself in a situation when this approach doesn't work, you can resolve a right versus right dilemma by finding the highest "right." Kidder wrote that there are three ways to intake the best choice when faced with these types of dilemmas:

| Resolving Ethical Dilemma  |   |  |
|--|---|--|
| <b>Ends-based:</b> Select the option that generates the most good for the most people. | <b>Rule-based:</b> Choose as if you're creating a universal standard. Follow the standard that you want others to follow. | <b>Care-based:</b> Choose as if you were the one most affected by your decision. Once you've identified an ethical right versus right dilemma, lay out your options according to these three principles. One approach will immediately present itself as the "most right". |

Transparency Checklist traits

Organisation for Economic Co-operation and Development (OECD) has also described various principles on "Corporate Governance" one of these Principle includes Disclosure and Transparency, which states "The Corporate Governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company."

An Organization Transparency checklist includes the below mentioned traits:

- 1) Board meetings (Dates, times and locations of Board meetings are conveyed at least one week in advance of the meetings);
- 2) Financial disclosure statements (Non-profits should consider posting their audited financial statements on their website);
- 3) Freedom of information legislation (Rules that guarantee access to data held by the state;

establish a “right-to-know” legal process where requests can be made for government-held information);

- 4) Budgetary reviews;
- 5) Annual audits;
- 6) Annual Reports (Posted on the organization's website for easy access);
- 7) Strategic plans and priorities;
- 8) Board of Directors and names of key staff as well as their contact information (Posted on the organization's website);
- 9) Straight talking leadership;
- 10) Open culture and operations (many voices on behalf of the organization);
- 11) Disclosed partnerships;
- 12) Frank, open communications including the good and bad;
- 13) Core values & Code of conduct.

In view of above V, the Practicing Company Secretary (PCS), should submit the note giving above details.

### **Answer 1(d)**

The Company Secretary or a firm of Company Secretaries shall not list his/her service(s) on any aggregator website such as Sulekha, Olx, UrbanClap, Justdial, Quikr or any other aggregator of similar category.

### **ICSI (Guidelines for Advertisement by Company Secretaries), 2020**

These will be applicable to all advertisements by members of the Institute rendering any advisory, consultancy or representation services whether holding Certificate of Practice issued by the Council of the Institute or otherwise.

### **Advertisement Restrictions imposed**

The Advertisement shall:

- (i) not be in violation of provisions of Company Secretaries Act, 1980;
- (ii) not be false or misleading;
- (iii) not claim superiority over any or all other Company Secretaries;
- (iv) not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
- (v) not contain fabricated or false testimonials or endorsements concerning the Company Secretary;
- (vi) not refer the Company Secretaries in the terms such as “specialists” or “experts”; *Explanation:* The advertisements shall not be self-laudatory and not include the words such as “best,” “better” or “cheapest;”
- (vii) not represent that the quality of the professional services to be performed is greater than the quality of professional services performed by other professionals. Statements comparing one professional's services to that of another are not allowed;
- (viii) not constitute a guarantee, warranty, or prediction regarding the outcome of any professional assignment;



- (ix) in no way indicate that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of the desired outcome;
- (x) not contain any reference to past successes or results which indicates a guarantee, warranty or prediction of result of future professional assignments;
- (xi) not be designed for "pleasing customers," which might mislead or eventually harm customers or third parties;
- (xii) not contain any humorous slogans.

**Conclusion:** Any non-compliance or violation of these Guidelines, as may be in force from time to time, in any manner whatsoever shall be deemed to be a professional misconduct and the concerned member shall be liable to disciplinary action under the Company Secretaries Act, 1980. Hence, they cannot list his / her services on any website as there is Restriction put down by ICSI.

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

**Question 2**

- (a) The Compounding order for an offence under the Companies Act, 2013 in case of VVC Ltd. was issued by the compounding authority for offences by the company and the Directors of the Company as Officer in Default. The Company VVC Ltd. has paid the compounding fee. However, one of the Directors who is also a party to the compounding as officer in default feels that compounding fee is high and he would like to go for an appeal against the Order of Compounding Authority. Evaluate whether the aforesaid Director of VVC Ltd. will be allowed to make an appeal against the high compounding fee, imposed on him by the Compounding Authority.
- (b) The rules notified by MCA Notification G.S.R. dated 9th November, 2023, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships. Elucidate.
- (c) There is a prescribed procedure for holding of Inquiry as per Rule 4 of the Securities and Exchange Board of India (SEBI) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 followed by order of the Board. Elucidate.
- (d) SS is a practising company secretary and partner of SS & Associates (PCS firm) having experience of more than 15 years. K is her employee who is also company secretary and working with them from the past 5 years. SS was not well and so she was not visiting office and hence since the last date was approaching, K signed the Secretarial Audit Report of AD company on behalf of the firm. Whether this action done by K is appropriate as per the legal framework governing company secretaries? Explain the purpose and due care to be taken in this regard.

(5 marks each)

**OR (Alternate Question to Q. No. 2)**

**Question 2A**

- (i) M, a Practising Company Secretary has been offered for conducting the Secretarial Audit of TR Ltd. in the current year. Last year, it was done by PL & Associates (PCS firm), a firm of Practising Company Secretary. M has talked on the telephone with PL and Associates (PCS firm) to confirm that no other company secretary other than him has been appointed. Subsequently, M has prepared his Secretarial Audit Report as per the applicable provisions. Now PL & Associates (PCS firm) has made a complaint before council of the Institute of

Company Secretaries of India (ICSI) that it is professional misconduct on part of M. Explain who is correct M or PL & Associates (PCS firm) based upon the legal framework governing Company Secretaries. Will your answer be different, if M has been appointed for issuing certificates as contemplated as per the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) [SEBI (LODR)] Regulations, 2015.

(5 marks)

- (ii) State the case details of Punjab National Bank which was based on Values, Ethics and Professional Conduct and due to which Reserve Bank of India has to discontinue the practice of LOUs/FLCs for trade credits for Import into India.

(5 marks)

- (iii) The Registrar of Companies (ROC) *suo moto* on internal investigation conducted after suspicion on the information contained in some documents and returns filed by BPK Ltd. under the Companies Act, 2013 found that the certifying professional has furnished wrong/false/misleading information or omission of material facts to the Government under his signature. What actions can be taken by the Regulator under Companies (Registration Offices and Fees) Rules, 2014 against certifying professional in this regard ?

(5 marks)

- (iv) Dr. Ltd. is a listed entity incorporated on 11th January 2018 under the Companies Act, 2013 having its registered office at a State X in the country. The company has a paid-up capital of INR 100 crore and turnover of other INR 500 crore during last three preceding financial years. The company at present has thirteen lakh shareholders. B, one of its shareholders inspected the companies' records at the registered office and found that register of members is not properly maintained and accordingly complained to the Registrar of Companies (ROC). During the course of inquiry, it was noticed that the register of member was found to be incomplete. Based on the above fact and citing a leading case you are required to explain as to who is responsible for maintaining a register of its member and related provisions as per the Companies Act, 2013.

(5 marks)

**(Attempt all parts of either Q. No. 2 or Q. No. 2A)**

### Answer 2(a)

**No appeal against order of composition:** A person having agreed to the composition of offence is not entitled to challenge the said proceeding by filing an appeal [SV Bagi vs. State of Karnataka (1992) 87 STC 138]

**No penalty or prosecution after compounding:** In *PP Varkey vs. STO* (1999) 114 STC 224 (Bom HC DB), it was held that once an offence is compounded, penalty or prosecution proceeding cannot be taken for same offence.

**No challenge to the compounding Order:** In *S Visvanathan vs. state of Kerala* (1993) 113 STC 182 (Ker HC DB), it was held that once the matter is compounded, neither department nor assessee can challenge the compound order. The department cannot reopen the matter on the reason that actual suppression was much higher.

In view of the reasons and case Laws cited above the director will not be allowed to make an appeal.

**Answer 2(b)**

**The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (MCA Notification G.S.R dated November 09, 2023):** The Ministry of Corporate Affairs (MCA) has notified "the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023" which has come into force on the date of its publication in the Official Gazette. The provisions of these rules shall specifically apply to all the Limited Liability Partnerships (LLPs). The aforesaid rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships and such individual to make a declaration in Form No. LLP BEN-1. This marks a significant step towards transparency and accountability in LLPs. It establishes clear procedures for identifying, declaring, and managing significant beneficial ownership, ensuring compliance with the Companies Act, 2013. LLPs must promptly adapt to these rules to avoid legal implications and contribute to a more robust corporate governance framework.

Following are the important provisions mentioned in rules:

1. The provisions of these rules shall specifically apply to all the LLPs. (Rule 2)
2. Aforesaid rules mentioned various definitions viz, control; majority stake; significant beneficial owner; significant influence; ultimate holding company etc. (Rule 3)
3. Duty of the reporting limited liability partnership to take necessary actions in identifying the significant beneficial owner and causing such individual to file Form No. LLP BEN-1. (Rule 4)
4. Upon receipt of declaration, the reporting limited liability partnership shall file a return in Form No. LLP BEN-2 with the Registrar. (Rule 6)
5. The Limited Liability Partnership shall maintain a register of significant beneficial owners in Form No. LLP BEN-3 and keep it open for inspection during the business hours for such reasonable time as mentioned in the rules. (Rule 7)
6. Rules specified Form No. LLP BEN-4 for notice seeking information about significant beneficial owners. (Rule 8)
7. Provisions related to the filing of application to the Tribunal under certain circumstances. (Rule 9)
8. Provisions related to non-applicability of aforesaid rules to the certain entities. (Rule 10)

**Answer 2(c)**

The procedure of holding inquiry as per Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 is as under:

- (1) The Board or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him. [Rule 4(1)]
- (2) Every notice to any such person shall indicate the nature of offence alleged to have been committed by him. [Rule 4(2)]
- (3) If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative. [Rule 4(3)]
- (4) On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been



committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place. [Rule 4(4)]

- (5) The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearings may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872. [Rule 4(5)]
- (6) Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub- rules (3), (4) and (5) may, at the request of the person concerned, be waived.
- (7) While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry. [Rule 4(6)]
- (8) If any person fails, neglects or refuses to appear before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so. [Rule 4(7)]

#### Order of the Board or the adjudicating officer (Rule 5)

If, upon consideration of the evidence produced before the Board or the adjudicating officer, the Board or the adjudicating officer is satisfied that the person has become liable to penalty under any of the specified sections, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant section.

#### Answer 2(d)

**Rule:** As per Clause 11 of (Professional misconduct in relation to Company Secretaries in Practice) (Part I of the First Schedule to the Company Secretaries Act, 1980), Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct if any, "allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto."

**Analysis:** It is not permissible for a Company Secretary in Practice (PCS) to allow any person to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary or any other statement related thereto. The purpose is not to allow a member to have his judgment and expertise substituted by the judgment of any tether person who is not a member in practice or his partner in the firm. If a document has to be certified by SS (Company Secretary in Practice) herself. It is not possible to have the certification done by the K irrespective of the fact that he is an employee who has been associated with the checking up of various details furnished in the Annual Return.

**Conclusion:** PCS who is not a partner of another PCS cannot sign on behalf of such other PCS on Annual Returns or Secretarial Audit Report or any other certificates. Hence it is the Professional misconduct done by SS under Clause 11 of Part I of First Schedule to the Company Secretaries Act, 1980.

**Purpose:** It is not permissible for a Company Secretary in Practice to allow any person to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary or any other statement related thereto. The purpose is not to allow a member to have his judgment and expertise substituted by the judgment of any other person who is not a member in practice or his partner in the firm.

**Due care:** In e-governance era, a PCS on many occasions attaches his Digital Signature to various forms/statements. Due care has to be taken that such Digital Signature is attached only by the PCS himself. It would be the exclusive duty and obligation of PCS to prevent any unauthorized use of his Digital Signature. PCS is not expected to part with the password of his Digital Signature.

**Or (Alternate Question to Q. No. 2)**

**Answer 2A(i)**

**Code of Conduct:** Clause (8) of Part I of First Schedule to the Company Secretaries Act, 1980- Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if "he accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing."

**Explanation:** It is expressly clarified that the communication mentioned in this clause does not mean that no-objection or consent of the previous incumbent is a prerequisite of accepting the said assignment.

In regard to certification of Annual Return under Section 92 of the Companies Act, 2013 and for all exclusive attestation assignments, it is incumbent on the Company Secretary, to ascertain if any other Company Secretary had been appointed previously by the company concerned for certification of Annual Return or for issuance of compliance certificate, as the case may be. The appointee shall take positive steps to ascertain if anyone has been engaged earlier, for the same year, for the certification work.

In respect of the following, it shall be mandatory to send a prior written communication to the earlier incumbent:

- (i) Signing / Certification of Annual Return.
- (ii) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013.
- (iii) Issuance of Certificate of Securities Transfers.
- (iv) Certificate of reconciliation of capital, updating of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/Cir-16/2002 dated December 31, 2002.
- (v) Conduct of Internal Audit of Operations of the Depository Participants.
- (vi) Certification of Corporate Governance under SEBI (LODR) Regulation, 2015.

**Case Analysis:**

M (PCS) have been held guilty of professional misconduct under this clause for having accepted and commenced the certification of Annual Return of a Company without first communication with the PL & Associates (PCS Firm) earlier incumbent in writing. It has been concluded that mere oral Conversation is not sufficient to comply with the requirements of clause (8) of Part I of First Schedule to the Company Secretaries Act, 1980, but the delivery of the message to the addressee of the same is essential. Oral communication is no communication as far as this clause is concerned.

It shall be mandatory to send a prior written communication to the earlier incumbent, for the issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013.

**Conclusion:** Hence M (PCS) has done Professional Misconduct under Clause (8) part I of first Schedule to the Company Secretaries Act, 1980. PL & Associates (PCS firm) is correct as proper procedure was not followed by M (PCS)

If M (PCS) has been appointed for Issuing certificates as contemplated as per SEBI (LODR) Regulations,

2015, then it will not be mandatory, although desirable to send a prior written communication to the earlier incumbent. Hence, in that case there will not be Professional misconduct done by M (PCS).

### Answer 2A(ii)

#### Punjab National Bank Case

**Facts of the Case:** Punjab National Bank (PNB) is one of the largest public sector banks in India. The scam of INR 11,300 Crores in the Punjab National Bank scam have come into the limelight. The PNB scam and irregularities, forgery commenced in the year 2011 and continued for six long years with the knowledge of a few banking officials of PNB. It is a case where Letter of Undertaking (LOU) from Punjab National Bank was taken by Nirav Modi without having a sanctioned credit limit or collaterals. The dispute mainly started due to illegal LOUs issued to Nirav Modi by few PNB banking officials.

#### Chronology of the case

- (i) Punjab National Bank filed an FIR against Nirav Modi, Mehul Choksi and other charged with criminal conspiracy and cheating amounting to the tune INR 11,300 Crores.
- (ii) Central Bureau of Investigation (CBI) was handed over the investigation into the matter.
- (iii) The Enforcement Directorate (ED) had registered a money laundering case against Nirav Modi and others under the provisions of PMLA based on the FIR registered by CBI under Sections 120- B r/w 420 of IPC, 1860 read with Section 13(2) read with 13(1)(d) of PC Act, 1988.
- (iv) The Enforcement Directorate seized some movable assets like diamond, gold and jewellery worth INR 56.74 billion from the house of Nirav Modi and his office. CBI after an investigation into the matter arrested two employees of Punjab National Bank and detained one representative of Nirav Modi Group. Simultaneously, Government of India suspended passport of Nirav Modi and Mehul Choksi for the involvement in the PNB Scam.
- (v) Subsequently, the Central Bureau of Investigation arrested the Chief Financial Officer (CFO) and two Senior Executives of Nirav Modi firm. It also sealed the Nirav Modi's Assets.
- (vi) The Magistrate Court issued first bailable arrest warrant against Nirav Modi and Mehul Choksi. Enforcement Directorate on the same day filed a petition before the Special Court, Mumbai for seeking issuance of a Non- Bailable Warrant (NBW) against Nirav Modi and his firm.
- (vii) Enforcement Directorate moves before the Special Court to issue extradition proceeding against Nirav Modi.
- (viii) Government of India sent a letter requesting the UK authorities to initiate extradition proceedings against Nirav Modi.
- (ix) Government of UK took action on the request of the Government of India and the Westminster Court, London issued an arrest warrant against Nirav Modi. He was arrested in London by Scotland Yard Officers and produced before the Westminster Court. The accused Nirav Modi was sent to Her Majesty's Prison (HMP), Wandsworth till 29<sup>th</sup> March, 2019.
- (x) The Westminster Court rejected the bail petition of the accused /fugitive offender – Nirav Modi on the ground that he may not appear before the Court on the fixed dates for further hearing of the matter. (29<sup>th</sup> March, 2019)
- (xi) After the plea made by Enforcement Directorate, Nirav Modi has been declared as Fugitive Offender by the Mumbai Court under the Fugitive Offender Act, 2018. Nirav Modi is currently in Wandsworth Prison in London, from which he is fighting for extradition charges.



**Action taken by RBI after detection of PNB fraud;**

- (i) Reserve Bank of India discontinued the practice of LOUs/ FLCs for trade credits for imports into India.
- (ii) RBI also ordered all the banks to reconcile transactions in Nostro accounts on a real-time basis so that unrecorded and illegal transactions can be identified immediately.

**Answer 2A(iii)**

A wrong signing/e-certification leads to the threat to the company, its authorised person and to the certifying professional. The action taken by the Regulator is as follows:

In the case of certification of any form, document, application or return under the act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the Central Government till a final decision is taken in this regard.

As per MCA circular no. 10/2014 dated 07.05.2014, where any instance of filing of documents, application or return or form etc., containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules, 15 days' notice may be given for the purpose.

The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action under section 447 and 448 of the Companies Act, 2013, wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

The E-Governance cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action under section 448 and 449 of the Companies Act, 2013, wherever prima facie cases have been made out.

The E-Governance cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Governance Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary, E-Governance Division on or before 7<sup>th</sup> of every month.

**Answer 2A(iv)**

The Company Secretary is also responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents. Many issues are implicated relating to document storage, including the span of time the records need to be retained, ensuring the documents are stored in a safe place, whether documents are backed up, either in hard copy or electronically, and their timely access.

As per the provisions of the Companies Act, 2013, every company limited by shares shall from the date of its registration, maintain a register of its members in Form No. MGT-1. The penalty can accordingly be imposed on the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend

to one thousand rupees for every day, after the first during which the failure continues for non-compliance of section 88 of the Companies Act, 2013.

**Case Law:** In the matter of *M/s. SDU Holdings Private Limited*, the Registrar of Companies, Bangalore, has passed an adjudication order by imposing of penalty, for violation of provisions of section 88 of the Companies Act, 2013. During the course of enquiry pursuant to section 206 of the Companies Act, 2013, the inspection officer persuaded the statutory registers maintained by the company and noticed that the register Form No. MGT-1 maintained by the company is incomplete. Taking on account of default, the adjudication officer gave reasonable opportunity to being heard to the company and every officer in default by way of giving personal hearing notice. Consequently, the Adjudicating Officer, after having considered the facts and circumstances of the case and also the submissions made by the company and its director during the personal hearing, decided to impose the penalty on the company and its directors for non-compliance of section 88 of the Companies Act, 2013.

## PART-II

### Question 3

- (a) You have been appointed as the Auditor for the purpose of Insider Trading Audit of the GTK Limited. Define insider trading and enumerate the considerations you shall take during Insider Trading Audit.

Also indicate Trading window closure period as per Insider Trading Regulation prescribed by Securities Exchange Board of India (Prohibition of Insider Trading) Regulation, 2015 in each of the followings :

- (i) Quarter closes on 30th June, 2023 and financial results declared on 18th July 2023.
- (ii) Quarter closes on 30th September, 2023 and financial results declared on 20th October, 2023.

(3+2=5 marks)

- (b) In a training programme exclusively being conducted for the Peer Reviewers, you are asked as a Practicing Company Secretary (PCS) to explain them the guidelines for reporting of Peer Review including componets of Reviewer's report and on the qualification in the Review report, if applicable. Explain.

(5 marks)

- (c) State the relevant provisions in each of the following as per the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) [SEBI (LODR)] (Second Amendment) Regulations, 2023 notified as on 14th June, 2023.

- (i) How the vacancies to be filled in respect of Key Managerial Personnel ?
- (ii) Disclosure of Cyber securities Breach
- (iii) Special rights to shareholders
- (iv) Submission of Financial Results for newly listed entity

(2+1+1+1=5 marks)

### Answer 3(a)

Insider trading essentially denotes dealing in a company's securities on the basis of confidential information, relating to the company, which is not published or not known to the public (known as 'unpublished price-sensitive information'), used to make personal profits or avoid loss.

The Insider Trading Audit includes the compliances requirements (event based /continuous disclosures) under the SEBI (Prohibition of Insider Trading) Regulations, 2015 which includes:

- (i) Initial disclosures of trades which is to be made by only the promoters, key managerial personnel, directors internally;
- (ii) Continual disclosures which is to be made by every promoter, employee or director in case value of trade exceed monetary threshold of ten lakh rupees over a calendar quarter; company accordingly notify stock exchanges within 2 trading days;
- (iii) Submission of trading plans;
- (iv) Appointment of compliance officer;
- (v) Pre-clearance for trading;
- (vi) Codes of fair disclosure and conduct;
- (vii) Role of the designate person;
- (viii) Manner of dealing with UPSI (Unpublished Price Sensitive Information).

SEBI (Prohibition of Insider Trading) Regulations, 2015 says that Trading window shall be closed from end of every Quarter till 48 hours after the declaration of financial results.

- (i) Trading window will be closed from 30<sup>th</sup> June, 2023 to 20<sup>th</sup> July, 2023 because result was declared on 18<sup>th</sup> July, 2023.
- (ii) Trading window will be closed from 30<sup>th</sup> September, 2023 to 22<sup>nd</sup> October, 2023 as the results were declared on 20<sup>th</sup> October, 2023.

### **Answer 3(b)**

#### **Guidelines for Peer Review**

Guidelines for Peer Review contains provisions for the report of Peer Reviewer. It has been provided that at the end of an on-site review, the Reviewer shall, before making his report to the Board, communicate a preliminary report to the Practice Unit, in case the Reviewer observes any deficiency in the systems and procedures of the Practice Unit. The Reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.

#### **The basic components of a Reviewer's Report are as under:**

- (i) Scope of Peer Review;
- (ii) Reference to the quality control standards;
- (iii) A statement indicating that the quality control is the responsibility of the reviewed firm; Limitations if any on the review conducted;
- (iv) A reference to the preliminary report;
- (v) Description of why modified report is required, instead of clean report.

#### **Situations when a reviewer can qualify the report:**

- (i) Non-compliance with quality control policies and procedures;
- (ii) Any deficiency found in quality control procedures;
- (iii) Non-adherence to ICSI Auditing Standards, Guidance Notes, Manuals, References and advisories issued by the Institute;



- (iv) No internal control systems prevail in the Practice Unit;
- (v) Current and permanent files were not maintained as per standards laid down;
- (vi) Adequate training programmes were not organized for the staff.

In arriving at this conclusion, the Reviewer shall be expected to examine the materiality of the non-compliance or deficiency, the number of occasions when such non-compliance was noticed and its overall impact on the quality of professional service rendered by the Practice Unit.

### Answer 3(c)

**(i) Vacancies to be filled in respect of certain Key Managerial Personnel [Regulation 26A of (SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015]:**

Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

Any vacancy in the office of the Chief Financial Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

Provided that where the listed entity is required to obtain approval of regulatory, government or statutory authorities to fill up such vacancy, then the vacancy shall be filled up by the listed entity at the earliest and in any case not later than six months from the date of vacancy.

The listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

**(ii) Disclosure of Cyber Security Breaches: Regulation 27(2)(ba) of (SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015:**

Details of Cyber security Incidents of Breaches or loss of data or documents shall be disclosed along with quarterly compliance report on Corporate Governance.

**(iii) Special rights to shareholders:**

As per newly inserted Regulation 31B, any special right granted to the shareholders of a listed entity shall be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every five years starting from the date of grant of such special right.

**(iv) Submission of financial Results for newly listed entity:**

As per newly inserted Regulation 33(3(j)), the listed entity shall subsequent to the listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the prescribed timeline specified:

- for submission of Quarterly results i.e. 45 days from end of each quarter; or
- for Annual Financial Results i.e. 60 days from the end of the financial year; or
- within 21 days from the date of its listing, whichever is later. [Insertion: Regulation 33(3)(j)]

### Question 4

- (a) Explain the general categories of assertions that companies make during substantive auditing.

(3 marks)

- (b) What are the Preconditions of accepting/continuing any Audit engagement ?  
(3 marks)
- (c) One of the functions of the Internal Audit is to review the Management's expectations and achievements. Elucidate.  
(3 marks)
- (d) An incorrect or clear misinterpretation of the facts is one of the causes of misstatement. Elucidate with example.  
(3 marks)
- (e) Explain FCRA Due diligence.  
(3 marks)

#### Answer 4(a)

Following are the steps elucidating how substantive auditing works in case a company makes assertions:

A company's management team makes implicit or explicit claims about their financial situation, and these auditing assertions get presented to an auditor. There are five general categories of assertions that companies make during audits, which are:

- (i) **Occurrence or existence:** This assertion states that financial statements listing assets, liabilities and shareholder equity exist when the accounting period is over.
- (ii) **Disclosure and presentation:** This is an assertion that the financial statements will include and present all financial information and financial disclosures in a clear manner that auditors can easily understand.
- (iii) **Obligations and rights:** This assertion states that the company has usage rights or ownership of all the assets listed in the financial statements and that all liabilities belong to the company, not a third party.
- (iv) **Accuracy or valuation:** This assertion states that all the calculations in the financial statements are accurate, classified appropriately and based on a proper valuation of balances, liabilities and assets.
- (v) **Completeness:** An assertion that the financial statements include and present all the required items, transactions and inventory, including third parties with temporary possession.

#### Answer 4(b)

##### Preconditions of acceptance/continuing of any Audit engagement:

The auditor, in order to establish whether the preconditions for accepting professional assignment are present, the auditor should check that:

- (a) Whether the reporting framework as required in the preparation, performance of audit, review of the secretarial/ non-financial statements is acceptable; and
- (b) Whether the management is in agreement to acknowledge and understands its responsibility relating to:
  - (i) Preparation of the secretarial/non-financial statements in accordance with the applicable reporting framework, including their fair presentation;
  - (ii) Development of internal control/systems/procedure to enable the preparation of

secretarial/non-financial statements which are free from material misstatement, whether due to fraud or error; and

(iii) Providing:

- (a) Access to all information of which management is aware that is relevant to the preparation/audit/review etc. of the secretarial/non-financial statements such as records, documentation and other matters;
- (b) Additional information that the auditor may request from management for the relevant purpose; and
- (c) Unrestricted access to persons within the company from whom the auditor determines it necessary to obtain audit evidence.

#### Answer 4(c)

The first step in conducting assessment of the Internal Audit function involve reviewing the management's expectations and achievements. This may also include remediation measures for better results, if necessary, and should be reported to the Board/Audit Committee.

Performance measure ensure high standards for audit strategy execution and reporting. It also helps organizations align their audit strategy with their overall business strategy, thereby linking the audit's performance to the organizations mission and objective. This ensures that concern stakeholder audit needs are fulfilled. Key benchmark of performance assessments is mentioned below:

- i. Effectiveness of Audit in covering key areas;
- ii. Feedback of audit findings during audit;
- iii. Duration and timeliness of the audit;
- iv. Accuracy of audit findings;
- v. Value of the audit recommendation;
- vi. Value added by the internal audit function.

#### Answer 4(d)

"Misstatement" means any information or statement which is false, incorrect, incomplete, misleading or misrepresents, omits or suppresses a material fact.

Misstatement means when any written statement is found to be false, incorrect, incomplete, misleading, or which misrepresents or omits or suppresses any material fact from the given meaning of the stated sentence or paragraph or otherwise from the whole document, which in turn fails to portray a clear, true and fair meaning of the titled subject and ultimately purpose of the given statement is not attained or understood in its correct sense.

#### Causes of misstatement may include:

- (a) An inaccuracy in gathering or processing data or information;
- (b) An omission of a disclosure;
- (c) An incorrect or clear misinterpretation of the facts; or
- (d) Management's judgments that the Auditor considers unreasonable.

**Example:** XYZ an Auditee company has stated in its Annual Report that company has complied with all applicable regulations of SEBI during the Financial Years whereas the material non-compliances were not reported which impacts the Goodwill of the company, which can mislead the investors.



**Answer 4(e)**

The Foreign Contribution (Regulations) Act, 2010, the Foreign Contribution (Regulation) Rules, 2011 (FCRA Rules, 2011), and Foreign Contribution (Regulation) Amendment Rules, 2015 (FCRA Amendment Rules, 2015) were respectively enacted to regulate the inflow of foreign funds received by Non-Governmental Organizations (NGOs). The FCRA, 2010 replaces the erstwhile Foreign Contribution (Regulation) Act, 1976.

The FCRA legislation state that an organization cannot receive funding from a foreign source, unless it is registered under the Foreign Currency (Regulations) Act, 2010 or has obtained special government approval for a specific project. Also, the registered NGOs need to comply with various post-registration requirements, as detailed in the provisions of the Act and its rules of enforcement.

NGOs in India are categorized under three legal categories: society, trust, and a limited company. These may be founded for a specific cultural, economic, educational, religious, or social purpose. These organizations are heavily regulated by respective state and government agencies.

The Income Tax Department (IT Department) and Ministry of Home Affairs regulate registration and require all NGOs to file annual tax returns and submit audited account statements to their respective agencies. All types of NGOs are treated equally under the Income Tax Act, 1961.

The most important reporting requirement under the FCRA is the submission of annual returns. All NGOs are required to submit their annual returns to the Ministry of Home Affairs (MHA) within nine months from the closure of the previous financial year.

**Question 5**

- (a) The Secretarial auditor should identify and report all events/actions having major bearing on company's affairs in pursuance of applicable laws, rules, regulations, guideline and standards etc. Elucidate.

(5 marks)

- (b) KPJ Ltd. is a manufacturing company that makes parts of Industrial Machinery. The Company has recently undergone change in Management and the new CFO has expressed concern about the accuracy of financial statements prepared by the previous management team. The Company has engaged the B (Independent Auditor) to perform an audit of its financial statements. Explain the Audit techniques used by B which shall help him to identify the potential risk or concerns in the financial statements.

(5 marks)

- (c) J has been appointed as Corporate Social Responsibility (CSR) Auditor for the PS Ltd. He has to guide his team regarding the methodology for CSR Audit. Give any two points in this regard. Also prepare a checklist indicating any six points for the provisions of CSR under the Companies Act, 2013.

(5 marks)

**Answer 5(a)**

An event/action may be considered as having major bearing on Company's affairs includes the following situations:

1. The Auditor shall assess and identify the material action or events having bearing on the Auditee's affairs in pursuance of the applicable laws, act, rules, regulations, guidelines, standards, etc. and report accordingly.

2. The identification of the corporate actions of events having bearing on the Auditee's affairs in terms of applicable laws, act, rules, regulations, guidelines, standards, etc. is a subjective matter and need to be concluded keeping in mind various parameters. Such parameters may include the following:
  - a. The consideration involved in the transaction as a percentage of the consolidated turnover, net worth or profit;
  - b. The transaction whether or not in the ordinary course of business;
  - c. The transaction representing a significant shift from the company's strategy;
  - d. The omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date.
3. Further, following are indicative actions and/or events may be considered to have a bearing on the Auditee's affairs:
  - a. Future plans of Merger or Amalgamation.
  - b. Revision in Rating(s).
  - c. Fraud/ defaults by promoter or key managerial personnel or by listed entity.
  - d. Arrest of key managerial personal or promoter.
  - e. Agreements [viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/ contract(s) with media companies]], which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
  - f. Corporate Debt Restructuring.
4. The Auditor shall disclose the material non-compliances and transactions as observed during the course of Audit.

**Conclusion:** The Secretarial Auditor shall identify and report all events/actions having major bearing on the Company's Affairs.

### Answer 5(b)

Audit techniques are the methods and procedures used by auditors to obtain sufficient and appropriate audit evidence to support audit opinion. Here are some common audit techniques used by auditors. Following are the key Audit Techniques can be used by the Auditors:

1. **Examination of Record:** This technique is commonly used by the auditors, the inspection of books and documents is made to verify the validity of data.
2. **Inquiry:** The auditor can also use the technique of inquiry. He can get the information from resource persons inside or outside the enterprise.
3. **Sampling:** Auditor can select few items from whole accounting information. This technique enables the auditor to obtain and evaluate the evidence of some characteristics of the whole class. It is helpful in forming the conclusion.
4. **Confirmation:** To ensure the accuracy of the data auditor can collect the information from the debtor. Confirmation is response to an inquiry to prove certain data recorded in the books.
5. **Compliance:** To check the arithmetical accuracy of accounting record, the balancing accounts can be compared with the vouchers to test the reliability of data.

6. **Compliance Test:** These tests are designed to check the effectiveness and compliance of internal control. In obtaining the audit evidence, auditor is concerned with the existence of effective internal control.
7. **Use of Computer Techniques:** There are large number of audit techniques like audit software, test packs and mapping which can be used by the auditor to test the accuracy of the data.
8. **Substantive Test:** There are designed to obtain evidence that data produced by accounting system is accurate or not. It has two kinds:
  - a) Test of detail transaction.
  - b) Test of significant ratios and trends.
9. **Dependence on Experts and Auditors:** The auditor has to rely on the internal and other auditors to complete his work. He has also to rely on other experts like lawyers, engineers and doctors for their expert opinion about the business.
10. **Analytical Review:** It consists of studying significant ratios, trends and investigating different changes. This review procedure is based on the expectations of relationship among the past and present data. These are just a few of the many audit techniques that auditors may use to obtain sufficient and appropriate audit evidence. The selection of techniques depends on the auditor's judgment and the nature of the entity being audited.

**Conclusion:** The Auditor can use a combination of audit techniques to obtain sufficient and appropriate evidence to support the audit opinion. The auditor's use of analytical procedures, sampling, and computer-assisted audit techniques helped to identify any potential risks or concerns in the financial statements, which allowed the company to address these issues and improve its financial reporting process. The auditor has to open communication with the company's management team and informs them of any finding or concerns. At the conclusion of the audit, the auditor issues an audit opinion based on the evidence obtained through the various audit techniques used.

#### Answer 5(c)

##### Methodology for Corporate Social Responsibility (CSR) Audit:

1. Review of CSR policy, CSR committee, governance structure, strategy, projects, partner identification and selection process, monitoring, evaluation and reporting.
2. Interact with beneficiaries, project team, management and other stake holders.
3. Review of beneficiary identification and selection process, budget allocation, outcomes monitoring and reporting.
4. Review of CSR expenditure, project's direct expenditure, overheads and administrative expenses, traceability and genuineness of expenditure, per beneficiary cost, reasons for inability to spend 2% of profits.

##### Checklist for Corporate Social Responsibility (CSR) provisions under the Companies Act, 2013:

1. Check if the constitution of CSR Committee is applicable to company.
2. If yes, whether the company has constituted CSR committee of the board consisting of three or more directors, out of which at least one director is an independent director. In case where a company is not required to appoint an Independent director under sub-section (4) of 149, it shall have in its CSR Committee two or more directors.
3. Whether the company has CSR policy approved by the CSR Committee.
4. Whether the CSR committee has recommended list of CSR projects or programme within the purview of schedule VII.



5. Whether the monitoring process of such projects or programme has been established by the company.
6. The composition of CSR committee is disclosed in the board's report.
7. Check whether the CSR activities were under taken as per CSR policy and projects, programs or activities exclude activities undertaken in pursuance of its normal course of business.
8. Corporate Social Responsibility committee has recommended the amount of expenditure to be incurred on the activities referred in the Corporate Social Responsibility policy.
9. The company has instituted a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
10. The company has disclosed the contents of the policy in board's report and at its website, if any.
11. The board's report includes an annual report on CSR containing prescribed particulars.
12. In case the company does not spend the specified amount (i.e. at least two percent of the average net profits made during the three immediately preceding financial years), Board's report specifies the reason for not spending the amount.
13. Check if the net profits of the company are in accordance with the provisions section 198 of the Companies Act, 2013 or not.
14. In case the company has built CSR capacities of their own personnel, check whether the expenditure including expenditure on administrative overheads shall not exceed five percent of total CSR expenditure of the company in one financial year.
15. The company has complied with all other requirement of the CSR Rules.

**Attempt all parts of either Q. No. 6 or Q No. 6A**

**Question 6**

- (a) Peer Review not only identifies the area where a practicing member may require guidance in improving the quality of his/her performance but also it provides adherence to various regulatory requirements. Elucidate and give the benefits of Peer Reviews.  
(5 marks)
- (b) How would Secretarial Auditor go for the "Verification of Corporate Conduct" of XYZ Ltd. and how does he ensure that the Compliance of laws has been done effectively ?  
(5 marks)
- (c) JKL Ltd. uses accounting software for maintaining books of accounts during the financial year 2023-24. Citing the relevant feature, the aforesaid software essentially should have in accordance with the notification of the Ministry of Corporate Affairs, explain how does it work and indicate it's any four benefits.  
(5 marks)

**OR (Alternate Question to Q. No. 6)**

**Question 6A**

- (i) CSAS-2 PARA 5 requires collections of evidence before forming the opinion. Audit evidence is obtained using a variety of Techniques. Discuss the various Techniques used for obtaining Audit evidences.

(5 marks)

- (ii) "Due Diligence" is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation with a certain standard of care to ensure that information is accurate and to uncover information that may affect the outcome of the transaction." Elucidate.

(5 marks)

- (iii) KK Pvt. Ltd. was formed in the year 2016 with a paid-up capital of INR 2 crore. The company is manufacturing solar panel and other electronic parts and supply to the public sector company. In the year 2020, the company raised the paid-up capital to INR 10 crore and turnover during 2019-20 was INR 90 crore and Bank Loan including overdraft limit was INR 50 crore. During the year 2021-22 the company decided to expand the business especially Solar Panel manufacturing business and for this company took loan of INR 60 crore from the Banks and established another unit. Turnover of the company is increased to INR 180 crore during the financial year 2021-22.

D has been the duly appointed the Company Secretary of the company since 2016. D in one of the meetings on 10th May 2022 held with the MD and the CFO of the company, briefed that Internal Audit has to be conducted by the company but the MD was of the view that the KK Pvt. Ltd. was a private company and there was no need of conducting Internal Audit.

Citing the relevant provisions of the Companies Act, 2013 examine whether KK Pvt. Ltd. was required to conduct the Internal Audit. If yes, by whom ?

(5 marks)

**(Attempt all parts of either Q. No. 6 or Q. No. 6A)**

**Answer 6(a)**

Peer Review mainly considers examination of the systems and approach of a Practice Unit (PU) by another member of the Institute with the objective of identifying the areas, where the member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards.

The focus lies on the promotion of continuing quality improvement in an atmosphere of openness and mutual trust that contributes to enhancing transparency and comparability. Good practice is valued and mutual learning is encouraged in a dynamic and motivating process, from which both the Practice Unit and the Reviewer get benefit.

**The main objectives of Peer Review:** The main objectives of Peer Review is to ensure that while rendering Professional Services, the members in practice would:

- (a) comply with the Technical Standards laid down by the Institute; and
- (b) have in place proper systems (including documentation systems) for maintaining the quality of services they perform. Peer Review is directed towards enhancement of quality of professional services by providing guidance to members to improve their performance and adhere to various statutory and other regulatory requirements.

**Significant Benefits of Peer Review:** There are significant benefits which a Practice Unit will obtain in undergoing a Peer Review:

- (i) A successful Peer Review will provide comfort to the Practice Unit that it has adhered to various statutory, documentary and other regulatory requirements.
- (ii) If deficiencies are noticed and corrective measures suggested, the Practice Unit will have an opportunity to correct the deficiencies and thereby enhance professional competence.

- (iii) If a Peer Review Certificate is issued to the Practice Unit it enhances credibility of the Practice Unit in the eyes of the general public.
- (iv) Since a Chinese Wall exists between the Peer Review Process and the Disciplinary Proceedings. The Practice Unit will benefit from Peer Review without any apprehension of any disciplinary proceedings being initiated against for any deficiencies noticed on its part.
- (v) Clients of the Practice Unit will benefit from knowing that their Practice Unit is periodically reviewed by the ICSI.
- (vi) Furthermore, the benefits of getting Peer Reviewed Units can be seen by Guidelines Issued by Council of the Institute from time to time.

**Conclusion:** Peer Review identifies the areas through review of professional services engagement records, where a practicing member may require guidance in improving the quality of his/her performance and adherence to various regulatory requirements.

### Answer 6(b)

For Verification of Corporate Conduct of XYZ Ltd., the Secretarial Auditor will do the following steps:

- (i) **Identification of Events/Corporate Actions:** The Auditor shall identify events/ corporate actions that took place during the audit period. The identification shall be made by reviewing the website of the regulators, website of the Auditee, statutory records including books and papers, interaction with the Management and in any other appropriate manner.
- (ii) **Events/Corporate Action:** A corporate action is an event initiated by a company that brings or could bring an actual change to the working of the company, following are the events / Corporate actions:
  - Investment made during the period under audit,
  - Change in the borrowing limits,
  - Issuance of the securities-equity or debt,
  - Appointment of the KMPs, etc., as approved by its board of directors and/or shareholders.

An action-based event may be defined as any activity that amends the functioning of an organization and impacts its stakeholders, including Shareholders, both common and preferred, as well as Lenders. These events are generally approved by the company's board of directors or shareholders of the company, some of the examples are given below for reference:

- Events/ actions altering the Charter documents of the company;
  - Changes in the Capital structure of the company;
  - Change in the Affairs/ Management of the company;
  - Change in the Licensing or permission for the business operation of the company;
  - Casual Vacancy of statutory auditor / director / KMP;
  - Borrowing in excess of limits specified in Section 180 of the Companies Act, 2013.
- (iii) **Identification of Events/Corporate Actions:** The Auditor is expected to identify the Corporate Actions from which a compliance requirement may arise. Corporate actions may primarily be identified from the following:



- Financial statements;
- Agenda and Notes on Agenda of Board/ Committee/ Members' Meetings;
- Minutes of the Board/ Committees/ Members' Meetings;
- Reporting and Filing to the regulators;
- Annual Report;
- Statutory Disclosures on website of the company, website of the Ministry of Corporate Affairs and on any other platform such as Stock Exchange;
- Third party sources which may include registrar and transfer agents, banks, financial auditor, stakeholders etc.

(iv) **Verification of Compliance:** The Auditor shall verify all event and calendar-based compliances from the Records of the Auditee, database or website of the regulators and other relevant sources. The Auditor shall use systematic and comprehensive audit checklists for carrying out the audit and verifying the compliance requirements.

The Auditor shall compile and validate the checklists for use in the audit process on the basis of information gathered about the Auditee and scope of the audit. It is a useful tool to ensure that no compliance point is missed or omitted while conducting the audit.

The audit checklist should provide structure and continuity to an audit. Audit checklists should be reviewed and updated from time to time to meet the scope of audit and its effectiveness.

The Auditor should verify the compliances of applicable laws and rules based on the information gathered by the Auditor.

**Conclusion:** Hence by following these methods, the Auditor can not only verify but also ensure its compliance as per the Regulations.

#### **Answer 6(c)**

The Ministry of Corporate Affairs through its notification issued on 24<sup>th</sup> March, 2021, relating to Audit Trail and the same is applicable on all companies (except proprietorship concerns, Partnership firms and Limited Liability Partnership).

According to the above notification, businesses that fall under the purview of MCA and use accounting software for maintaining books of accounts should have an audit trail feature. The accounting software used by such businesses should create an edit log of each and every transaction with changes made in the books of accounts. The software should capture the date details when such changes (edits) are made and ensure the edit trail cannot be disabled.

Rule 3 of the (Manner of Books of Account to be Kept in Electronic Mode) of the Companies (Accounts) Rules, 2014, specifies that for the financial year commencing on or after the 1<sup>st</sup> day of April, 2023, every company which uses accounting software for maintaining books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

In view of above JKL Ltd. should use the accounting software for maintaining books of accounts having an audit trail feature.

**Audit Trail:** Audit trails must have a few key details to provide comprehensive information about a transaction. To get these details at an enterprise level, however, a certain audit trail framework must be set up. Every access made to the accounts and records of the company should be tracked.

Every edit made to any information must be recorded with the name of the person who did it and the time it was done. If any information was deleted, that also should be recorded.

Following are the key financial details to track as part of the audit trail:

- (i) Any changes involved in the transaction.
- (ii) The person who partook in the transaction.
- (iii) The time at which the transaction took place.
- (iv) The time at which the modification or edit took place.
- (v) Example of audit trail.

Accounting software provides the ideal example for audit trails. Once you enter a transaction in the software, the software will maintain a record of it. Any further edits made to the details, such as a change in the amount or change in the name against which the entry is made, will also be tracked by the software along with the user who made the changes and the time it was changed. Even if some transaction were to be deleted, the software will track that as well and keep the record of everything since the original entry was made. This means that every transaction can be checked from its entry to its deletion. This eliminates the chance of anyone making fraudulent changes that cannot be traced and reduces the stress on business owners.

#### Benefits of an audit trail

The MCA audit trail system has several benefits, including:

1. **Increased transparency:** The audit trail system provides a detailed record of all transactions, making it easier for regulators and stakeholders to monitor the activities of companies and to detect any irregularities.
2. **Improved accuracy:** By requiring companies to maintain accurate electronic records, the audit trail system helps to prevent errors and omissions in financial reporting.
3. **Greater accountability:** The audit trail system holds companies and their employees accountable for their actions by providing a detailed record of all changes made to electronic records.
4. **Enhanced regulatory compliance:** The audit trail system helps to ensure that companies comply with various laws and regulations related to corporate governance and financial reporting.
5. **Foolproof:** There is also the advantage of proving that the company books are clean and in a healthy state which gives a big boost in the valuation of the company as well as generating funds through loans or by raising capital.

**Or (Alternate Question to Q. No. 6)**

#### Answer 6A(i)

##### Collection and Verification of Audit evidence (CSAS-2 PARA 5)

The Auditor shall verify compliance with applicable laws, acts rules, regulations and standards. Deviation, if any, shall be recorded. The Auditor shall satisfy himself about compliance of Auditee with the applicable laws, rules and regulations. If any deviation is observed then the appropriate noting of the same shall be made. The Auditor shall obtain complete, relevant and necessary to support the opinion.

Audit evidence is obtained using a variety of techniques such as the following:

1. **Documents/Records Scrutiny:** This is predominating mode of obtaining Audit evidence and involves scrutiny of a wide variety of documents e.g. board resolutions agenda and minutes, notice registers, records, procedure manuals, reports, etc. In auditing, it is often not possible, due to limited resources, to check every document or record. The Auditor wherever necessary, may choose to sample a statistical representative number of documented results, such as monitoring big data or incident reports. An appropriate sampling method will manage any uncertainty to an acceptable level.
2. **Testing, Interviews and Analysis:** The Auditor should determine whether the controls identified during the preliminary review are operating properly and in manner described by the Auditee. Fieldwork typically consists of interviewing the staff of the Auditee whether formally or informally, reviewing procedure manuals and processes, testing and analyzing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings, which the Auditor should consider while preparing the audit report.
3. **Questionnaires:** This involves seeking information from relevant persons within the Auditee through issue of formal questionnaires to elicit further information and gather relevant audit evidence.
4. **Third Party Confirmation:** It is a type of inquiry and involves obtaining, independently of the Auditee, a reply from a third party with regard to some particular information- for example Registrar and Transfer Agents or other third party agencies.
5. **Analytical Procedures:** Involves comparing data, or investigating fluctuations or relationships that appear inconsistent in various records.

#### Answer 6A(ii)

"Due Diligence" refers to investigation into the affairs of an entity prior to its acquisition, restructuring, fund raising or other similar transaction. Due Diligence is not restricted to check the facts but also to evaluate, interpret and communicate the facts so as to ensure that prospective investors make an informed investment decision.

It is process of gathering information about the target company, its business and the environment in which it operates.

**Characteristics:** A Due Diligence is an interactive process that includes:

- (i) Inquiring financial and operational data.
- (ii) Analysing financial and operational data.
- (iii) Interpreting financial and operational data.
- (iv) Assessment of risks and opportunities.

As a part of the business strategy, the Companies before making any relationship with the other party conduct the background checks of the client, customer, supplier etc. to ensure that the parties to the transaction have disclosed the information as required to proceed with the transaction and is a process to completely understand a business capability and its past performance.

After the conduct of the due diligence, a due diligence report prepared to provide information and insight on various aspects such as the risks of a transaction, the value at which a transaction should be undertaken, the warranties and indemnities that needs to be obtained from vendor etc.

In any transaction, the seller does investigation of a buyer to ensure that the buyer has adequate resources to complete the transaction, as well as other business aspect covering the technical and



human resource, cultural, taxation etc. which would affect the company after entering into the transaction.

**Key Points Describing Due Diligence:**

- It is not limited to accounting analysis but has a business-oriented approach;
- Its analysis the information on the basis of the actual facts;
- Considers the industry of the target company;
- Examines the business affairs having a significant impact on the prospects of the business;
- Explores significant business practices and business models;
- Examination of relevant aspects of the past, present and near future of the business;
- Assesses the advantages and risks associated with a particular transaction

**Conclusion:** While exploring any business opportunity, it is the foremost requirement for a corporate to investigate and evaluate the potential and risk associated with such business. The due diligence covers the activities relating to pre-transaction, during the transaction and post transaction exercise with all relevant aspects of the past, present, and predictable future of the any business.

**Answer 6A(iii)**

The concept of the Internal Audit has been recognized as a statutory exercise under Section 138 of the Companies Act, 2013 and has been made mandatory. As per Rule 13 of Companies (Accounts) Rule, 2014 every private company having:

- (i) Turnover of two hundred crores rupees or more during the preceding financial year; or
- (ii) Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crores rupees or more at any point of time during the preceding financial year.

Shall be required to appoint an Internal Auditor who may be either an individual or a partnership firm or a body corporate.

In the case of KK Pvt. Ltd., the turnover was of Rs.180 crore and total outstanding loan was to the tune of Rs.110 crore (i.e. 50 crore + 60 crore) during the financial year 2021 -22.

As the KK Pvt. Ltd. is having outstanding loan exceeding the limit of Rs.100 crore during the year 2021-22 therefore the contention of D is correct and a company is required to go for Internal Audit for the year 2022-23 which might be conducted by appointed an Internal Auditor who might be either an individual or a partnership firm or a body corporate.

# Lecture Kart

# CORPORATE SOCIAL RESPONSIBILITY AND SOCIAL GOVERNANCE

## GROUP 1 PAPER 4.1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART A

#### Question 1

ABC Limited is one of the largest engineering, procurement and construction (EPC) company. It is a New Delhi headquartered company with over ten thousand employees and has site offices in all major cities in North India. Company has a highly motivated management team and professionally qualified board. Philosophy and vision of the company is :

- To promote and expand new functional areas in infrastructure sector;
- To adopt sustainable manufacturing practices in all its operations;
- To engage with all stakeholders including society at large; and
- To operate in an economically, socially and environmentally sustainable manner, while recognizing the interest all of its stakeholders.

ABC Limited imbibes on the philosophy of '**Sarva loka hitam**' – meaning working for the well-being of all its stakeholders. The company also follows the principle of Utilitarianism : i.e., "greatest good for the greatest number of people". Through its operations, it is also striving for adoption of the green sustainability principles, so as to protect the environment. According to Section 135 of the Companies Act, 2013, it is mandatory for prescribed class of companies to contribute at least two percent of the average net profits of the company during the three immediately preceding financial years. To pursue its Corporate Social Responsibility Policy, Corporate Social Responsibility Committee has been constituted by the Board of Directors of the Company.

The Company has decided to carry out the following CSR activities, namely :

- (i) Construction of old age homes for senior citizens;
- (ii) Setting up homes and hostels for women employees;
- (iii) Running Guashala in its factory premises/project sites;
- (iv) Running full day kitchens (Bhandara) for food to poor people residing near the factory premises;
- (v) Organizing free sugar and eye check-up camps;
- (vi) Contribution to the Swach Bharat Kosh setup by the Central Government for the promotion of sanitation and making available safe drinking water;
- (vii) Sponsoring the investor education programmes for the employees of its clients;
- (viii) Sponsoring the training programmes to promote rural sports;

- (ix) Contribution to the Prime Minister's National Relief Fund;
- (x) Contributing for construction of roads particularly in rural area;
- (xi) Construction of toilets in schools; and
- (xii) Construction of Yoga centres for local community.

Company is incurring more than ₹ 10 crore since last few years on such social welfare and philanthropic programmes. However, company's statutory auditors have raised issues of non-compliance pertaining to CSR policy, CSR Committee composition and CSR expenditure. You, as a practicing Company Secretary, have been invited as an Advisor and have been asked to answer the following questions :

- (i) Which of the above activities are not eligible for CSR expenditures ? Apart from the above activities, mention any three more activities which are not eligible for CSR expenditures.

(5 marks)

- (ii) What is the minimum amount of CSR expenditure required to constitute a CSR committee mandatorily ? What are the CSR committee constitution provisions enunciated in the Company Act, 2013 ?

(5 marks)

- (iii) Can the CSR amount be utilized by a company for creation or acquisition of a capital asset ? Advise along with regulatory provisions.

(5 marks)

- (iv) Advise how to deal with Excess Spending so as to comply with the provisions of Companies Act, 2013 ?

(5 marks)

### Answer 1(i)

Corporate Social Responsibility is defined under Rule 2(d) of the Companies (Corporate Social Responsibility Policy) Rules 2014. As per the said rule, the following activities, benefitting to the employees of the company, given in the question are not eligible for CSR expenditure:

- (i) Setting up homes and hostels for women employees.

While the said provision excludes only employees of the company, the employees of the "client" should also be excluded. Hence, the following activity is also not eligible for CSR expenditure:

- (ii) Sponsoring the investor education programmes for the employees of its clients.

Following activities are also not considered as CSR activities:

- (i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020- 21, 2021-22, 2022-23 subject to the conditions that such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

- (ii) any activity undertaken by the company outside India except for training of Indian sports



personnel representing any State or Union territory at national level or India at international level;

- (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- (iv) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (v) activities carried out for fulfilment of any other statutory obligations under any law in force in India.

### Answer 1(ii)

Section 135(9) of the Companies Act states that where the amount to be spent by a company under section 135(5) does not exceed fifty lakh rupees, the requirement under section 135 (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

The minimum amount of CSR expenditure required by the Company should exceed fifty lakh rupees to constitute a CSR committee mandatorily.

According to Rule 5(1) of the Companies (Corporate Social Responsibility Policy) Rules 2014, a company shall constitute CSR Committee as under:

- a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to subsection (4) of section 149 of the Act, shall have its CSR Committee without such director;
- a private company having only two directors on its board shall constitute its CSR Committee with two directors;
- with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of subsection (1) of section 380 of the Act and another person shall be nominated by the foreign company.

### Answer 1(iii)

Yes, as per Section 7(4) of Companies (Corporate Social Responsibility Policy) Rules the CSR amount may be utilised by a company for creation or acquisition of a capital asset.

Such capital asset shall be held by anyone of the following:

- a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
- b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- c) a public authority:

If any capital asset has been created by a company prior to the commencement of the CSR Amendment Rules, 2021 then the company shall comply with the requirements of this rule within a period of one hundred and eighty days from such commencement and such period may be extended for a further period of not more than ninety days with the approval of the Board based on reasonable justification.

**Answer 1(iv)**

Section 135(5) of the Companies Act says that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount spent against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

Rule 7(3) of CSR Rules prescribes that the set-off can be claimed up to immediately succeeding three financial years subject to the condition that:

- the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of rule 7(2) of CSR Rules,
- the Board of the company shall pass a resolution to that effect.

**Surplus arising out of CSR Projects**

As per Rule 7(2) of Companies (Corporate Social Responsibility Policy) Rules, any surplus arising out of the CSR activities shall not form part of the business profit of a company and:

- It shall be ploughed back into the same project; OR
- It shall be transferred to the Unspent CSR Account, and shall be spent in pursuance of CSR Policy and annual action plan of the company; OR
- It shall be transferred to a fund specified in Schedule VII to the Act, within a period of six months of the expiry of the financial year.

Further as per Rule 7(3)(i) of Companies (Corporate Social Responsibility Policy) Rules, such surplus amount ploughed back into the same project shall not be included in calculation of excess amount by the company, if any, for claiming set off in succeeding three financial years.

**Question 2**

(a) *In reference to Impact Assessment of CSR Activities, answer the following :*

- (i) Who can conduct the impact assessment ?
- (ii) Can a company prescribe the frequency at which impact assessment is to be carried out for the project(s) ?
- (iii) If impact assessment is done voluntarily, whether cost incurred on the same will qualify as CSR expenditure.
- (iv) If a company has obligation of spending ₹ 10 crore or more in three immediately preceding financial years, but company has spent partial amount only (whose average is less than ₹ 10 crore) or if company has not spent at all, whether impact assessment still needs to be done ?
- (v) Whether the impact assessment needs to be done for an ongoing project in respect of which an outlay of ₹ 1 crore or more has been made in the financial year but the project is not yet completed ?

(1×5=5 marks)

- (b) As CEO of a CSR consulting firm, you are assigned the task of assessing the impact of an organisation's CSR activities on People's way of life, their culture, their community, their political and their health and well-being. You are required to explain the process for executing this task.

(5 marks)

(c) Analyze whether the under given expenditure qualifies for CSR expenses :

- (i) Payment of salary/wages to employees/workers, including contract labour, during the lockdown period.
- (ii) Payment of ex-gratia to temporary/casual/daily wage workers
- (iii) Spending of CSR funds for COVID19 related activities
- (iv) Contribution made to 'PM CARES Fund'
- (v) Donations to IIM [A] for conservation of buildings and renovation of classrooms.

(1×5=5 marks)

### Answer 2(a)

- (i) Rule 8(3) of the Companies (CSR Policy) Rules, 2014 requires that the impact assessment be conducted by an independent agency. The Board has the prerogative to decide on the eligibility criteria for selection of the independent agency for impact assessment.
- (ii) As per Rule 8(3) of Companies (Corporate Social Responsibility Policy) Rules if average CSR obligation of a company for immediately preceding three financial years is Rs. 10 crore or more and it has CSR projects which have outlays of Rs. 1 crore or more and which have been completed not less than one year, impact assessment is to be done for such projects.

Rule 8(3) of CSR Rules is silent about the maximum timeline within which impact assessment is to be done by companies for such completed projects and it also does not say that impact assessment is to be done in the immediate next financial year in which the above-referred projects get completed. Moreover, the timeline within which a CSR project will have its impact may vary from project to project. Rule 8(3) of CSR Rules prescribes one year as a minimum benchmark post completion of project after which impact assessment should be done for that project. However, for some projects longer post completion period may be needed, for the impact assessment to be effective.

Hence, it is the responsibility of the company to get the impact assessment done within a reasonable period of time considering the nature of project. Accordingly, a company may prescribe the frequency at which impact assessment is to be carried out for the completed project(s).

- (iii) The provisions regarding impact assessment given in rule 8(3)(a), (b) and (c) of Companies (Corporate Social Responsibility Policy) Rules are to be read together and harmoniously and therefore, if impact assessment is done voluntarily, the cost of the same will not qualify towards CSR expenditure.
- (iv) As per Rule 8(3) (a) of Companies (Corporate Social Responsibility Policy) Rules every company having average CSR obligation of ten crore rupees or more in pursuance of sub-section (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study. As given in present case, if the outlay in any project is not more than Rs.10 Crore or company not spent on CSR at all, then in such case Impact Assessment is not mandatory. Further, if company has not spent at all, there is no question of impact assessment.
- (v) Impact assessment is required to be done only after project is completed. If the project is on going or not yet completed, even if the outlay has exceeded 1 crore, impact assessment is not mandatory in that financial year. The Impact Assessment should be conducted for those



projects, which have completed one year or for on-going projects (period more than three years)

### Answer 2(b)

The impact of an organisation's CSR activities on people's way of life, their culture, their community, their political beliefs, their health and their well-being can be assessed through Social Impact Assessment (SIA).

Social Impact Assessment is a process for the identification, analysis, assessment, management and monitoring of the social impacts of a project, both positive and negative, long-term or short-term, identifiable or non-identifiable. The social impacts of a project are the direct and indirect impacts that affect people and their communities at all stages of the project lifecycle.

Social Impact Assessment must cover the following specific areas to identify impacts and mitigation measures:

- Community and stakeholder engagement
- Workforce management
- Housing and accommodation
- Local business and industry content
- Health and community well-being.

Social Impact Assessment (SIA) is a process that provides a framework for prioritizing, gathering, analysing and incorporating social information and participation into the design and delivery of developmental interventions. It ensures that development interventions are:

- Informed and take into account the key relevant social issues
- Incorporate a participation strategy for involving a wide range of stakeholders.

Social Impact Assessment process is an iterative, logical and cyclical process that helps to identify both direct and indirect impacts of proposed project while at the same time providing direction and guidance for policy decision making.

The process begins with the description of proposed project which presents the nature of proposed project, the scale of the project, project phasing, funding sources, expected profit, total number of jobs to be generated and site layout. This is followed by the scoping exercise which assesses the relevant social issues and uses it as the basis for the establishment of spatial and contextual boundaries for the proposed project.

The final stages of the process involve the establishment of baseline data based on present socio-economic characteristics, assessment and evaluation cumulative social effects, formulation of alternatives and development of mitigation plan and course of actions.

### Answer 2(c)

- (i) Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.
- (ii) If any ex-gratia payment is made to temporary/ casual workers/ daily wage workers over

and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a one- time exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

- (iii) Ministry of Corporate Affairs vide general circular No. 10/2020 dated 23rd March, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.
- (iv) Contribution made to 'PM CARES Fund' shall qualify as CSR expenditure under item no. 1 of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020- CSR-MCA dated 28th March, 2020.
- (v) Donations to IIM [A] for conservation of buildings and renovation of classrooms relates to CSR activities under Schedule VII as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility.

**Attempt all parts of either Q. No. 3 or Q. No. 3A**

### Question 3

- (a) The National Guidelines on Responsible Business Conduct states in its core principle that the businesses should conduct and govern themselves with integrity, and in manner that is Ethical, Transparent and Accountable. CSR is an initiative with the basic aim to include responsibility for the Company's actions and encourage a positive impact through its activities on the environment, consumers, employees, communities, stakeholders and society at large. India is at the forefront mandatory CSR prescription and has stipulated a 2% minimum spending on CSR activities by business above a certain threshold. This prescription made in the Companies Act, 2013 is equally applicable to Insurance companies. Further, the Insurance Act, 1938 stipulates Rural and Social Sector Obligations to be fulfilled by the insurers in the form of sale of certain number of policies as well as certain amount of premium to some identified sections of the society.

Keeping in perspective of the above, outline the need of CSR in the Insurance Sector. Also draw out the criteria to be kept in mind that need to be followed by insurance companies so as to assure their sustainability in the competitive framework.

(5 marks)

- (b) Mention any 5 indicative alignment SDG's along with relevant principles in the NGRBC.

(5 marks)

- (c) Identify the forms of Corporate Social Responsibility Initiatives along with the examples.

(5 marks)

**OR (Alternate Question to Q. No. 3)**

### Question 3A

- (i) ABC Gramin Bank is a regional rural bank (RRB) sponsored by XYZ Bank, a public sector bank with the stake of Central Government and State Government of Uttar Pradesh. It has carried

out several CSR activities. However, the board of the ABC Gramin Bank is not sure whether CSR provisions as enunciated under Companies Act, 2013 are applicable to the bank or not. You, as a practicing company secretary, have been invited to advise the bank and answer the following questions : Whether CSR provisions are applicable to ABC Gramin Bank ? What are the legal requirements as per RBI regulations relating to donations by public sector banks ?

(5 marks)

- (ii) What are Inbound and Outbound activities ? Give three examples of Inbound and two Outbound CSR activities by banks.

(5 marks)

- (iii) Following CSR activities/initiatives have been undertaken by which CPSE, Identify :

- (a) Unnati
- (b) Pahal
- (c) Unique Home for Girls
- (d) Say No to Plastic
- (e) Read to Lead.

(1×5=5 marks)

**Attempt all parts of either Q. No. 3 or Q. No. 3A**

### Answer 3(a)

As we are aware that making profit only should not be the objective of any business. Focus should be laid on wellbeing of the society as that indirectly affects the profits therefore CSR is the DNA of business which incorporated would be beneficial to the business ensuring sustainable development. It is important for insurers to highlight the essential responsibility they play in economic and societal development. CSR determines implemented in good times and in bad will develop the industry's reputation and strengthen stakeholder relationships.

An insurance company can undertake following possible ways specific to corporate social responsibility in order to be sustainable in the competitive scenario.

- a. Paying Valid Claims Efficiently:** The yardstick to judge insurance company's efficiency is as to how quick the claim settlement is made. The less time consumption and fairness with which an insurer handles claims show the maturity of the company and may lead to great satisfaction of the client.
- b. Risk Minimization:** Insurers should focus to minimise risks both internally in their operations and externally for their clients and other stakeholders. Though external risk minimization is a difficult task, but insurers should try to minimise the same by reducing claims cost and frequency for clients and insured's will thus be incentivized to reduce the likelihood and severity of loss in order to lower their premiums. Insurers should, and often do, consider offering discounted premiums to insured's that take preventative measures.
- c. Strategic Philanthropy:** Strategic philanthropy involves associating with charities or similar non-profit organizations in the community. This type of corporate giving cannot only impact the community but also other stakeholders in the business. Insurers can also take part in disaster relief activities. Companies can provide substantial financial support to the victims of different catastrophes. Life insurance companies can relax the norms to ensure faster and



easier claim settlement for the victims of disasters.

- d. Corporate Governance:** Initiatives Insurers should take initiative in designing and formulating some codes of conduct and ethics, some guidelines comprising the basic principles that should guide the activity of top and middle managers.
- e. Environmental Initiatives:** The companies can make financial investments in the environmental projects including energy conservation, environmental risk management and recycling operations of different natural resources.
- f. Legal initiatives:** The firm can perform numerous activities in order to improve the laws in the countries in which the corporation operates, to adapt them to the new trends of different markets, provide necessary assistance to the area regulation and supervision authorities, as well as to state authorities on different themes.
- g. Recognition for Human Rights:** Corporations develop a means to hold themselves accountable and to provide for remediation through grievance or other mechanisms. Companies should show enthusiasm for observing voluntary human rights codes of conduct usually operate in a business with the potential to considerably impact human rights.

Answer 3(b)

The National Guidelines on Responsible Business Conduct Principles are as under:

- Principle 1: Businesses should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable.
- Principle 2: Businesses should provide goods and service in a manner that is sustainable and safe.
- Principle 3: Businesses should respect and promote the well-being of all employees, including those in their value chains.
- Principle 4: Businesses should respect the interests of and be responsive to all its stakeholders.
- Principle 5: Businesses should respect and promote human rights.
- Principle 6: Businesses should respect and make efforts to protect and restore the environment.
- Principle 7: Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
- Principle 8: Businesses should promote inclusive growth and equitable development.
- Principle 9: Businesses should engage with and provide value to their consumers in a responsible manner.

National Guidelines on Responsible Business Conduct (NGRBC) presents the Sustainable Development Goals mapped against the NGRBC Principles, as follows:

| SDGs                               | NGRBC Principles(P) Mapped |
|------------------------------------|----------------------------|
| Goal 1: no poverty                 | P3, P4, P8                 |
| Goal 2: zero hunger                | P2, P6, P7, P8, P9         |
| Goal 3: good health and well-being | P3, P6, P8                 |
| Goal 4: quality education          | P3, P8, P9                 |

|   |                    |
|---|--------------------|
| Goal 5: gender equality                         | P3, P4, P5, P8     |
| Goal 6: clean water and sanitation              | P2, P6, P8         |
| Goal 7: affordable and clean energy             | P2, P6, P7         |
| Goal 8: decent work and economic growth         | P2, P3, P5, P8     |
| Goal 9: industry, innovation and infrastructure | P3, P4, P8         |
| Goal 10: reduced inequalities                   | P2, P6, P7         |
| Goal 11: sustainable cities and communities     | P3, P4, P7, P8     |
| Goal 12: responsible consumption and production | P2, P6, P9         |
| Goal 13: climate action                         | P2, P6, P7, P8     |
| Goal 14: life below water                       | P2, P6, P7, P8, P9 |
| Goal 15: life on land                           | P2, P6, P7, P8, P9 |
| Goal 16: peace, justice and strong institutions | P1, P3, P4, P5, P8 |
| Goal 17: partnerships for the goals             | P1, P7, P8         |

**Answer 3(c)**

CSR initiatives may be of four types. They are as under:

1. Environmental activities focus on preservation of natural resources for example, conducting & organising educational & training programs for farmers to spread awareness about use of organic material for farm production instead of using chemical fertilizers to safeguard the quality of soil.
2. Philanthropic activities focus on donating to causes and sections of society which is not directly related to business activities. For example, donating food and other material to flood affected areas, donation of PPE kits during COVID times etc.
3. Ethical activities are more focused to honest and fair business practices. It involves conducting business in most true and fair manner along with complying with all applicable rules and regulations in true letter & spirit.
4. Economic activities primarily target to promote and assist in fiscal growth of all above goals.

Examples:

*Starbucks:* it has long been known for its keen sense of corporate social responsibility and commitment to sustainability and community welfare. According to its 2020 Global Social Impact Report, these milestones include reaching 100% of ethically sourced coffee, creating a global network of farmers and providing them with 100 million trees by 2025, pioneering green building throughout its stores, contributing millions of hours of community service, and creating a ground breaking college program for its employees. Here the company is fulfilling its CSR responsibility through environmental & ethical services.

*Home Depot:* as part of its annual reporting on ESG, Home Depot highlighted its achievements on focusing on its employees, operating sustainably, and strengthening its communities. In fiscal year

2020, it invested over \$2 billion in increased salaries and benefits to enhance its employee well-being. It also reduced energy consumption by 14% from the year prior and are on track to reduce company-wide emissions by 40% by 2030.

*General Motors:* In 2021, General Motors was placed on the Bloomberg General Equality Index for a fourth consecutive year as well as being placed in Diversity Inc.'s top 50 companies for diversity for a sixth consecutive year. In addition, it has planned for a \$35 billion investment from 2020 to 2025 in electric vehicles and aims for 100% renewable electricity at U.S. sites by 2025.

**OR (Alternate Question to Q. No. 3)**

**Answer 3A(i)**

Since the Regional Rural Banks comes under the purview of Nationalized Banks and are not incorporated as a company under the Companies Act, 2013, hence they are not covered under section 135 of the Act & accordingly, the requirement to spend 2% of net profits on CSR activities remains voluntary for such banks. However, they are allowed to spend a maximum of 1% of net profits through donations as specified by the Reserve Bank of India (RBI).

In terms of Circular issued by RBI in this regard donations by Banks are capped at 1% of the published net profit. Donations are plain contribution as opposed to CSR which is a collaborative and monitored exercise. The said circular set the following guiding principles for donations by banks in India:

- i) The profit-making banks may make donations during a financial year aggregating upto 1% of the published profit of the banks for the previous year. In some cases, banks create funds for specific purposes to encourage research and development in fields related to banking. The Board of the banks may determine the amount of contribution to be made to such funds. The contribution made to such funds in a year will be reckoned for computation of the 1% ceiling.
- ii) The donations out of the research and development funds should normally be made for setting up professional chairs, granting fellowships/ scholarships for studies and research at universities and approved institutions and for commissioning special projects for investigation, analysis and research for areas pertaining to banking, finance, statistics, management, and economics, etc.
- iii) The donations to Prime Minister's National Relief Fund and subscriptions / contributions to professional bodies / institutions related to banking industry like Indian Banks' Association, National Institute of Bank Management, Indian Institute of Banking and Finance, Institute of Banking Personnel Selection and Foreign Exchange Dealers' Association of India may be excluded from the limit indicated in para (i) above.
- iv) Loss-making banks can make donations totalling Rs.5 lakh only in a financial year including donations to exempted entities / funds indicated in para (iii) above.
- v) Unutilised portion of the limit of 1% should not be carried forward to the next year.
- vi) The banks may continue to submit annual review of donations to their Boards of Directors.

**Answer 3A(ii)**

The CSR activities can be divided into two types as inbound activities and outbound activities. Inbound activities are those activities which are performed using CSR funds with an objective and strategy of helping the organizations business activities indirectly. Whereas activities with indirect business benefits are called outbound activities.



PP – CSR&SG – JUNE 2024

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*Examples of Inbound Activities:*

- (1) Online application and virtual assistance.
- (2) Solar ATM to reduce green gas emission.
- (3) Online banking saving time and cost.

*Examples of Outbound Activities:*

- (1) Improve our governance system by emphasizing ethics, openness, and accountability.
- (2) Mitigation of poverty.

**Answer 3A(iii)**

- (a) Unnati: SBI Life Insurance Co. Ltd.
- (b) Pahal: Max Life Insurance Co. Ltd.
- (c) Unique Home for Girls: SBI Life Insurance Co. Ltd
- (d) Say No to Plastics: Excide Life Insurance Co. Ltd.
- (e) Read to Lead: ICICI Bank.

**PART B**

**Question 4**

Foreign Contribution (Regulation) Act, 2010 (FCRA) is the law that governs foreign funding in India. FCRA has the primary objective of regulating the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary and political associations, academic and other institutions as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. In view of applicable provisions of FCRA, answer the following questions :

- (a) Can capital assets purchased with the help of foreign contributions be acquired in the name of the office bearers of the association ? Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities ?  
(5 marks)
- (b) Whether interest earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not ? Can the fee paid by the foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA ?  
(5 marks)
- (c) Identify the key reporting obligations of society under the Societies Registration Act, 1860.  
(5 marks)
- (d) M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continues the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death, fact about his death was known to them at the time of delivery. Afterwards the firm became insolvent and failed to pay the price of furniture to JR Limited. Explain with reasons, whether P's private estate is liable for the price of furniture purchased by the firm ? Does it make any difference, if JR Limited supplied the furniture to the firm believing that all the three partners are alive ?  
(5 marks)

**Answer 4(a)**

No. Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.

No. The association should utilize such funds for the welfare purpose or activities for which it is received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilized for self-sustaining activities, not meant for commercial purposes.

**Answer 4(b)**

Yes. The interest earned out of such deposit should be shown as second/ subsequent foreign contribution receipt in the annual return during the year in which it is earned.

Foreign delegates/participants paying "delegate/participation Fees" in foreign currency for participation in a conference/seminar which is utilized for the purpose of meeting the expenditure of hosting the conference/seminar and is not treated as foreign contribution and as such no permission under FCRA is required.

**Answer 4(c)**

Annual list of managing body/governing body to be filed once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the societies is held, or, if it rules do not provide for an annual general meeting, in the months of January, list shall be filed with the Registrar.

names, addresses and occupations of the governors, council, director, committee, or other governing body then entrusted with the management of the affairs of the society shall be filed with the Registrar.

**Answer 4(d)**

According to Section 35 of the Indian Partnership Act, 1932, where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Further, in order that the estate of the deceased partner may be absolved from liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealings with the firm.

In the given question, JR Limited has supplied furniture to the partnership firm, after P's death. The firm did not give notice about P's death to public or people dealing with the firm. Afterwards, the firm became insolvent and could not pay JR Limited.

In the light of the facts of the case and provisions of law:

- Since the delivery of furniture was made after P's death, his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representatives of the deceased partner. This is because there was no debt due in respect of the goods in P's lifetime.
- It will not make any difference even if JR Limited supplied furniture to the firm believing that all the three partners are alive, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so the estate of the deceased partner may be absolved from liability for the future obligations of the firm.

**Question 5**

- (a) Non-Corporate Entities (NCEs), i.e. proprietorship, partnerships, plays crucial role in economic growth. NCEs play crucial role in some sectors and one of which is retail.

About more than half of the industrial units are NCEs particularly in rural and semi-urban areas, these are prominently contributing in retail, manufacturing, trade and service industries. Most micro and small enterprises are NCEs and act as growth engines of economy and supports the society. Based upon the above, who are Sole Proprietors? Give examples. What are the benefits of establishing a Sole Proprietorship as compared to the Partnership Firm and what are its Limitations ?

(5 marks)

- (b) What is the ICSI Model Code for meetings of NCEs with regard to Notice of an Adjourned Meeting and Modifications/Cancellation of Resolutions ?

(5 marks)

- (c) What is Trust and how it is created ? Is Trust Deed a mandatory pre-requisite for creation of a Trust ? Elucidate.

(5 marks)

**Answer 5(a)**

A sole proprietorship business is established and managed by a single person. This type of business form is best suitable for individuals wishing to start a business with less investment. Generally, it does not require any registration as such. The control of the business is solely in the hands of the single proprietor/owner who invests in the business. He bears all the losses of the business and enjoys all the profits. The sole proprietor can appoint persons for conducting the business, but the ownership will rest solely with him.

Many local businesses such as grocery stores, parlours, boutiques, retail stores, etc., can be established as a sole proprietorship firm. Even small traders and manufacturers can establish a sole proprietorship firm.

*Benefits of Sole Proprietorship:*

*Less compliance:* The sole proprietorship business can be started easily by just one person. There is minimum compliance that is required to be adhered to get it incorporated. This form of business is economical as it is relatively less expensive to start than a company or LLP. In case of a registered partnership firm, there are more compliance requirements as compared to a firm.

*Control of the business:* The sole proprietor will have complete control over the business. He will look after all the aspects of the business. Since only one person is running the business, secrecy can be maintained. Whereas in partnership firm all partners can participate in management activities, decision making, and have the right to control the business

*Quick decision making:* The sole proprietor takes all decisions of the business. The decision-making rests with a single person. Thus, the decisions can be taken quickly and immediately without the need for consulting anyone. Whereas in partnership firm all the decisions are taken by the partners together, and partners are also liable for the acts and decisions taken by other partners.

*Profit sharing:* The sole proprietor has unlimited liability and enjoys all profits of the business. In case of partnership firm, profits are shared amongst all the partners equally, or in the decided profit-sharing ratio.



*Limitations:*

*Unlimited liability:* There is an unlimited liability on the sole proprietor. He is personally liable for all the transactions he enters in the business. If any loss occurs, he will have to bear the whole loss out of his personal estate. All the partners share the liability arising out of the acts of the firm.

*No perpetual succession:* There is no perpetual succession which means it can come to an end if something happens to the sole person taking care of the business. It can shut down at any time. This makes the business unreliable and difficult to gain public trust for entering into agreements or contracts to expand the business.

*Difficult to raise funds:* Since a single person manages the business, it is not easy to raise capital. The capital of the business is from the investments put in by the sole proprietor. The sole proprietorship firm has no separate legal entity status from the owner. As it can come to an end at any time and there is no separate entity, it is difficult to obtain funds from third parties.

**Answer 5(b)***Notice of Adjourned Meetings*

Notice of an adjourned Meeting shall be given to all Members including those who did not attend the Meeting on the originally convened date.

If the date of the adjourned Meeting is decided at the Meeting itself where all the Members are present, the Notice should be given forthwith at the Meeting.

Notice of every Meeting so adjourned shall be affixed on the Notice Board of the Non-corporate Entity.

*Modifications/ Cancellations of Resolutions*

No resolution of the Governing Council shall be modified or cancelled except through a resolution duly passed at a subsequent Meeting by a majority or such higher number of the total Members of the Governing Council as prescribed and permitted under the applicable laws.

Such modification or cancellation of a resolution shall be done within the time prescribed, if any, in the Bye- laws of the Non-corporate Entity.

**Answer 5(c)**

According to Section 3 of Indian Trusts Act 1882 trust is (i) an obligation annexed to the ownership of property and (ii) arising out of confidence reposed in and (iii) accepted by the owner or declared and accepted by him, (iv) for the benefit of another or of another and the owner.

Section 6 lays down provisions for creating a trust. It provides that subject to the provisions of Section 5 a trust is created when the author of the trust indicates with reasonable certainty by any words or acts: (a) an intention on his part to create thereby a trust; (b) the purpose of the trust; (c) the beneficiary, and (d) the trust property; transfer the trust property to the trustee except where a trust is declared by Will or the author of the trust is himself to be the trustee.

For creating a trust, the author of the trust should indicate with reasonable certainty the following:

- (1) Certainty in words: The words used to create a trust must be clear and certain so as to explain a clear intention to create a trust. Recommendatory words like "I hope" "I wish" are not sufficient.
- (2) Certainty in the object of the trust: The beneficiary, for whose benefit the trust is created, must be shown clearly.

- (3) Certainty in the subject-matter of the trust: The subject matter of the trust must be clear, i.e., the property, in respect of which a trust is created, must be shown clearly. Purpose of the trust should be certain

If the trust instrument is lacking in first and third certainties, no trust is created but if the second certainty is absent, resulting trust will be created in favour of the author of the trust.

No. A trust may be declared either orally or through an instrument in writing. In regard to a private trust for immovable properties, a written trust deed is pre-requisite.

**Attempt all parts of either Q. No. 6 or Q. No. 6A**

**Question 6**

- (a) According to Regulation 292G of the SEBI (ICDR) Regulations, a Social Enterprise may raise funds through several means; including (i) issuance of Zero Coupon Zero Principal Instruments (ii) donations through Mutual Fund; (iii) issuance of equity shares on the main board (iv) issuance of debt securities; but certain social enterprises are not eligible for raising funds. Explain.

(5 marks)

- (b) Social sustainability involves the creation of policies that mitigate social inequality and promote equal opportunities for all humans to live a high quality of life, regardless of their socio-economic or cultural backgrounds. Building socially sustainable communities and institutions requires the executive bodies to factor equity, diversity, human rights, social cohesion, and labour rights into all decision-making processes and value chains. In reference to above, explain 5 different examples of social governance in an organisation.

(5 marks)

- (c) The 73rd amendment brought the establishment of Panchayati Raj Institutions (PRI) laying down three tier system, i.e. Gram Sabha, Block Level and Zila Panchayat with certain provisions for reservations for SC/ST and others. Further, 74th amendment to constitution improved the municipality system by trifurcating the municipalities, i.e. Nagar Panchayat, Municipal Council and Municipal Corporation. The secretary on the direction of Pradhan/Sarpanch summons the meeting.

Based upon the above, answer the following questions :

- (i) What are the functions of Gram Panchayat Secretary ?  
(ii) What are the legal provisions relating to Governance of Municipalities with reference to the Matters listed in the Twelfth Schedule ?

(2+3=5 marks)

**OR (Alternate to Q. No. 6)**

**Question 6A**

- (i) You are a practising Company Secretary. One of your NPO client enquired with you for registration with Social Stock Exchange (SSE). Explain the minimum requirements to be met by this NPO for registration with SSE.

(5 marks)

- (ii) Social Governance has evolved over time in response to changing societal and business needs. Explain. How can human rights be enforced by the companies ?

(5 marks)

(iii) Write short notes on :

- (a) Provisions relating to serving of Notice of Meeting of Gram Panchayat.
- (b) Provisions relating to Attendance of Meeting.

(3+2=5 marks each)

**Attempt all parts of either Q. No. 6or Q. No. 6A**

**Answer 6(a)**

According to Regulation 292H of the SEBI (ICDR) Regulations, a Social Enterprise shall not be eligible to register or raise funds through a Social Stock Exchange or Stock Exchange, as the case may be:

- (a) if the Social Enterprise, any of its promoters, promoter group or directors or selling shareholders or trustees are debarred from accessing the securities market by the Board;
- (b) if any of the promoters or directors or trustees of the Social Enterprise is a promoter or director of any other company or Social Enterprise which has been debarred from accessing the securities market by the Board;
- (c) if the Social Enterprise or any of its promoters or directors or trustees is a wilful defaulter or a fraudulent borrower;
- (d) if any of its promoters or directors or trustees is a fugitive economic offender;
- (e) if the Social Enterprise or any of its promoters or directors or trustees has been debarred from carrying out its activities or raising funds by the Ministry of Home Affairs or any other ministry of the Central Government or State Government or Charitable Commissioner or any other statutory body.

Explanation: The restrictions under clauses (a) and (b) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by the Board and the period of debarment is already over as on the date of filing of application for registration with the Social Stock Exchange or filing of draft fund-raising document or draft offer document, as may be applicable, with the Social Stock Exchange or the Stock Exchange or the Board.

**Answer 6(b)**

Social factors can range from employee treatment to boycotts to labour violations to product recalls. These issues are diverse, qualitative, and can often impact all of a company's stakeholders at once, from workers and customers to suppliers and local communities. The ability to maintain healthy, positive, fair, and ethical relationships with these stakeholders is critical to the success of a company.

*Some examples of social governance practices include:*

- Diversity, equity, & inclusion
- Customer satisfaction
- Data protection & privacy
- Employee engagement
- Community relations
- Wage equality
- Labour standards



- Human rights
- Working & safety conditions
- Training & workforce development
- Ethical supply chain practices.

Examples of Social Governance are:

- Human Right Policy
- Labour welfare programme and amenities
- Equal Employment Opportunities
- Environmental and Societal Impact Assessment
- Reporting on Environmental and Social Performance

Few more examples of social governance are given below for better understanding of the is concept

- Participatory budgeting: Participatory budgeting is a social governance approach that involves citizens in the decision-making process for how public funds are spent. This approach aims to increase transparency, accountability, and citizen engagement in local governance.
- Community-based health interventions: Community-based health interventions involve engaging communities in the design, implementation, and evaluation of health programs. This approach aims to address social determinants of health and promote health equity by involving community members in decision-making and program delivery.
- Open data initiatives: Open data initiatives involve making government data publicly available and accessible to citizens. This approach aims to increase transparency, accountability, and citizen participation in governance by enabling citizens to access and analyse government data.
- Multistakeholder partnerships: Multistakeholder partnerships involve collaborating across different sectors and stakeholders to address complex social challenges. This approach aims to promote innovation, inclusiveness, and sustainability by bringing together diverse perspectives and expertise.
- Social impact bonds: Social impact bonds involve private investors providing upfront funding for social programs and receiving financial returns based on the social outcomes achieved. This approach aims to promote innovation and accountability in social service delivery by tying funding to performance outcomes

### **Answer 6(c)**

#### *(i) Functions of Gram Panchayat Secretary*

The Secretary of a Gram Panchayat is expected to perform the following functions:

- a. Take necessary steps to execute and implement the resolutions passed by the Panchayat at its Meetings.
- b. Communicate the decisions concerning persons of respective Panchayat area to them. Convene Meetings of Gram Panchayat and its Committees.
- c. Attend every Meeting of the Gram Panchayat including the Gram Sabha Meetings.
- d. Write the proceeding of every Meeting in the Minutes Book either in physical or electronic form.

- e. Place all the correspondence received by him, especially various schemes of the Government and instructions issued by the Government, before the Sarpanch and also for the information of all the Members during the meeting.
  - f. Receive all correspondence on behalf of the Gram Panchayat and take appropriate action on the same.
  - g. Finalise, in consultation with the Sarpanch, the Agenda and Notes on Agenda of every Meeting.
  - h. Maintain all the registers and records prescribed under the applicable laws.
  - i. Report to the Block Development Officer for any vacancy in the office of the Sarpanch/ Up Sarpanch or a Member.
  - j. Be responsible for the safe custody of Panchayat funds, assets and the records maintained by the Gram Panchayat.
  - k. Report to the Block Development Officer about any illegal act or misconduct or misuse or abuse of powers, any infringement of the legal provisions by the Sarpanch or Up-Sarpanch or the members of the Gram Panchayat, as soon as the same come to his knowledge.
  - l. Comply with the instruction issued by the Government from time to time.
  - m. Maintain cordial relations with the elected representatives of Gram Panchayat.
- (ii) The legal provisions relating to Governance of Municipalities with reference to the Matters listed in the Twelfth Schedule of the Indian Constitution are as under:
- (a) Urban planning, including town planning;
  - (b) Regulation of land-use and construction of buildings;
  - (c) Planning for economic and social development;
  - (d) Roads and bridges;
  - (e) Water supply for domestic, industrial and commercial purposes;
  - (f) Public health, sanitation, conservancy and solid waste management;
  - (g) Fire services;
  - (h) Urban forestry, protection of the environment and promotion of ecological aspects
  - (i) Safeguarding the interests of weaker sections of society, including the handicapped & mentally retarded;
  - (j) Slum improvement and upgradation;
  - (k) Urban poverty alleviation;
  - (l) Provision of urban amenities and facilities, such as parks, gardens, playgrounds;
  - (m) Promotion of cultural, educational and aesthetic aspects;
  - (n) Burials and burial grounds; cremations, cremation grounds and electric crematoriums;
  - (o) Cattle pounds; prevention of cruelty to animals;
  - (p) Vital statistics, including registration of births and deaths;

- (q) Public amenities, including street lighting, parking lots, bus stops and public conveniences;
- (r) Regulation of slaughterhouses and tanneries.

**OR (Alternate to Q. No. 6)**

**Answer 6 A(i)**

Not-for-Profit Organization (NPO) desirous of registration on Social Stock Exchange (SSE) in terms of Regulation 292F(I) of ICDR Regulations, shall fulfil the following criteria:

1. Entities must be registered in India as one of the below:
  - a. a charitable trust registered under the public trust statute of the relevant state;
  - b. a charitable trust registered under the Societies Registration Act, 1860;
  - c. a charitable trust registered under the Indian Trusts Act, 1882;
  - d. a company incorporated under section 8 of the Companies Act, 2013.
2. Registration certificate valid at least for next 12 months at the time of seeking registration with SSE.
3. Disclose if NPO is owned and/or controlled by government or private.
4. Registration Certificate under section 12A/12AA/12AB to be valid for at least the next 12 months.
5. NPO should not have any notice or ongoing scrutiny by Income Tax.
6. The entity should have a valid IT PAN.
7. Entity to ensure valid Section 80G registration.
8. Age of the NPO should be minimum 3 years.
9. Annual spending in the past financial year should be at least Rs. 50 lacs.
10. Funding in the past financial year should be at least Rs. 10 lacs.

**Answer 6 A(ii)**

Here are some key stages in the evolution of social governance:

- Early stage: In the early days of capitalism, businesses were primarily focused on generating profits and did not consider their social and environmental impact. There were few regulations or social expectations governing corporate behaviour.
- Emergence of corporate social responsibility (CSR): In the mid-20th century, the concept of CSR emerged, which called on businesses to take responsibility for their impact on society and the environment. This Social Governance led to the development of codes of conduct, reporting standards, and other mechanisms to promote corporate responsibility.
- Focus on stakeholder engagement: In the 1990s and 2000s, there was a growing recognition of the importance of stakeholder engagement in corporate governance. This led to the development of stakeholder theory, which put forth that businesses should be accountable not only to shareholders, but also to a wide range of stakeholders, including employees, customers, suppliers, and communities at large.
- Integration with sustainability: In recent years, social governance has become increasingly integrated with sustainability. Businesses are recognizing that social issues are an integral part



of sustainable development, and are adopting social governance practices as part of their broader sustainability strategies.

- Focus on systemic issues: More recently, there has been a growing focus on systemic issues, such as income inequality, climate change, and human rights abuses. Companies are being called upon to play a more active role in addressing these issues, and social governance is evolving to address these complex challenges

Companies can address human rights and their development through the following given below:

- a) Human rights policies: Companies can develop and implement policies that promote human rights, including respect for labour rights, protection of workers' health and safety, and respect for the rights of indigenous peoples and other marginalized groups.
- b) Due diligence: Companies can conduct human rights due diligence to identify and assess any human rights risks associated with their operations, supply chains, and business relationships. This can involve engaging with stakeholders, conducting impact assessments, and developing action plans to address any identified risks.
- c) Supplier standards: Companies can establish standards for their suppliers to ensure that they respect human rights and meet labour and environmental standards. This can involve conducting regular audits and assessments of supplier practices and taking action to address any non-compliance.
- d) Community engagement: Companies can engage with local communities to understand their human rights concerns and identify opportunities to support human rights development. This can involve establishing community partnerships, providing education and training programs, and supporting local economic development.
- e) Reporting and transparency: Companies can report on their human rights performance and disclose information about their human rights policies, practices, and impacts. This can involve publishing human rights reports, engaging with stakeholders, and participating in industry initiatives to promote transparency and accountability.

Companies that prioritize human rights and their development can benefit from improved reputation, brand loyalty, and stakeholder engagement.

### Answer 6A(iii)

(a) *Serving Notice of the meeting of the Gram Panchayat*

- (a) Notice of the meeting of the Gram Panchayat shall be served at least five clear days before the date of the meeting.
- (b) If a majority of the Members agree to convene a special meeting, the Notice thereof may be given at a shorter period of time than that stated above but at least 24 hours before the meeting.
- (c) Where the Meetings of the Gram Panchayat are held on pre-determined dates, such Meetings may be convened without any separate Notice, unless the applicable laws require for separate notice for each meeting.
- (d) Notice shall specify the serial number, date, day, time and full address of the venue of the Meeting.
- (e) Notice of the meeting of the Gram Panchayat shall be issued by the Secretary or by such other officer as prescribed by the Government for this purpose and in their absence, the Sarpanch or any other member, authorised by the Panchayat for this purpose may issue the notice of the Meeting.

- (f) Notice shall contain the contact details and authority of the person issuing the Notice.
- (g) Notice in writing of every Meeting shall be given to every Member and such officer as may be prescribed by the Government, by hand or by post or by e-mail.
- (h) Wherever the presence of a Patwari or other Tehsil level functionaries of the State Government or of a Panchayati Raj Institution, is required or desired by the Gram Panchayat at its meeting, the Notice of such meeting shall also be sent to them. The notice shall also be sent to such officer as may be prescribed by the Government.
- (i) In order to facilitate effective and timely communication, the Notice of a Meeting may be given through SMS or other software used by the Panchayat, followed by a copy of the written Notice as stated above.
- (j) The Notice shall also be affixed on the Notice Board of the Gram Panchayat. In case of pre-determined dates a general notice specifying day, interval, time and full address of the venue of the Meetings shall be kept affixed during such period.
- (k) The Notice should preferably be sent either on the letter-head of the person issuing the Notice or on the letter head of the Gram Panchayat, if any.
- (l) Notice shall be sent at the registered address of the Member or such other address, if any, provided by the Member for the purpose.
- (m) The Gram Panchayat shall maintain proof of sending Notice and its delivery.
- (n) In case of delivery of Notice by hand, the signature of the recipient will be obtained in a register maintained for this purpose and be kept as record of proof of delivery.
- (o) In case of Notice sent through e-mail, the proof of delivery may be maintained by way of the soft copy.
- (p) Proof of sending Notice and its delivery shall be preserved for a period of five years or such higher period as may be decided by the Gram Panchayat.

*(b) Attendance of Meeting*

- (a) Every Gram Panchayat shall maintain a separate attendance register for the Meetings of the Gram Panchayat.
- (b) The attendance register shall contain the following particulars: Serial number and date of the Meeting; place of the Meeting; time of the Meeting; name and signature of the Members, the Secretary and of other person(s) attending the Meeting by invitation.
- (c) The attendance register shall be maintained at the Office of the Gram Panchayat or such other place as may be approved by the Gram Panchayat.
- (d) The attendance register shall be open for inspection by the Members.
- (e) Entries in the attendance register shall be authenticated by the Secretary or in his absence, by the person authorised by the Government.
- (f) Attendance register shall be kept in the custody of the Secretary or a person authorised by the Government.
- (g) The attendance register shall be preserved for a period of at least five years from the date of the last entry therein or for such other higher period as may be specified by the Government.

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## INTERNAL AND FORENSIC AUDIT

### GROUP 1 ELECTIVE PAPER 4.2

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

#### PART-I

##### Question 1

- (a) Headquartered in Mumbai, Armaments System Limited (ASL) was incorporated on 1st April, 2016, as a Public Limited Company, to be the manufacturing base for guided missile systems and allied equipment for defense sector forces. Company is equipped with the latest plant and machinery, apart from access to updated techniques supported by Standard Operating Procedure (SOP). The company's revenue increased from ₹ 250 crore to ₹ 600 crore in a period of three years through a combination of internal growth and acquisitions. The Company required additional internal auditing expertise and resources to meet new and changing compliance and internal control requirements. Accordingly, SAR & Co. Chartered Accountants is appointed to evaluate the effectiveness and adequacy of the following processes : procurement, risk management, and internal controls.

The main objectives to be achieved for procurement process were – (i) Ensuring compliance with international trade as more than 60% of required raw material is being imported. (ii) Identifying opportunities for cost savings and (iii) Identifying potential fraud, corruption and conflict of interest areas. While carrying out the risk assessment, internal audit team observed that management would not be alerted if there was either undue preference being given to a specific vendor or an unreasonable demand being placed on any one vendor. Further on many instances, purchases were made from dealers instead of manufacturers leading to extra cost for the company. Internal audit team thought that these types of circumstances are exceptional in nature. Audit team carried out the internal audit, keeping audit objectives in mind and randomly collected the following documents for verification and including them as samples in proposed audit report.

- Purchase Invoices issued by ABC Ltd.
- Purchase Orders give to TAB Ltd.
- Transfer documents from store to production department.
- Transfer documents from production room to finished goods store.

Audit team leader asked the audit team members to ensure that all the documents collected for internal audit purpose are clear and understandable.

Considering the above facts, answer the following :

- (i) If you are a part of audit team, how will you ensure that audit documentation collected meet the criteria set out by Audit team leader ?  
(3 marks)
- (ii) Classify the documents collected into different categories according to their origin and availability.  
(2 marks)



(iii) What kind of information should be included in the audit documentation for exceptional circumstances encountered during internal audit ?

(3 marks)

(b) RST Ltd. (a manufacturing company engaged in the business of various types of yarns) appointed KSB & Co. Chartered Accountants, as internal auditors of the company for the F.Y. 2024-2025. Statutory auditors wanted to have a meeting with Internal auditors to discuss some significant matters and areas where internal auditors should concentrate and the type of documentation that should be made by internal auditors so that it can be reviewed by statutory auditors in case serious lapses are pointed out by internal auditors. Management of RST Ltd. objected to this by saying that statutory auditors are not concerned anyway with the work performed by KSB & Co. How should statutory auditors deal with this situation ?

(7 marks)

Answer 1(a)(i)

Clarity and understanding

- As a preparer of audit documentation, step back and read your work objectively. Would it be clear to another auditor?
- Working papers should be clear and understandable without supplementary oral explanations.
- With the information the working papers reveal, a reviewer should be able to readily determine their purpose, the nature and scope of the work done and the preparer's conclusions.

Completeness and Accuracy

As a reviewer of documentation, if you have to ask the audit staff basic questions about the audit, the documentation probably does not really serve the purpose. Work papers should be complete, accurate, and support observations, testing, conclusions, and recommendations. They should also show the nature and scope of the work performed appropriately indexing and cross linking with the sample supporting documents obtained.

Answer 1(a)(ii)

|   |
|---|
| Classification of the documents collected   |
| Purchase Invoices issued by ABC Ltd. - Documents which have their origin in the hands of the third party and held by the organization - More reliable.  |
| Purchase Orders give to TAB Ltd. - Documents which have their origin in the hands of the organization and held by the third party - Reliable.   |
| Transfer documents from store to production department and Transfer documents from production room to finished goods store - Documents which have the origin in the hands of the organization and held by the organization -Reliable only if the internal control is effective and approved as per the delegation of authority. |

Answer 1(a)(iii)

Where in exceptional circumstances, new or additional audit procedures are performed or new conclusions are reached, the following should be documented:

1. The circumstances encountered;

2. The new or additional audit procedures performed, audit evidence obtained, and conclusions reached, and their effect on the internal auditor's report; and
3. When and by whom the resulting changes to audit documentation were made and reviewed.

**Answer 1(b)**

As per CARO 2020 Rule 3(xiv), the statutory auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:

- Whether the company has an internal audit system commensurate with the size and nature of its business.
- Whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor.

The aspects that a statutory auditor needs to consider while reporting whether the reports of the Internal Auditors for the period under audit were duly considered by him / her are given below:

- i. Internal audit is completed as per the plan and the reports are made available sufficiently in time. In case required, a meeting with internal auditor to discuss the observations to independently evaluate the impact of the observations on the financial statements has been done.
- ii. All internal audit observations having a financial impact are considered by the management and control deficiencies pointed out by the internal auditors are rectified.
- iii. Impact of the control deficiencies, if any, pointed by the internal auditors on internal financial controls over financial reporting (IFCoFR) have been assessed by auditor.
- iv. Since Statutory auditor is vested with the right to receive the full-fledged internal audit reports (including draft audit reports) together with annexures and not merely the executive summary / power point presentations, whether the same were made available when requested.

**Question 2**

- (a) Perth Teach Ltd. (PTL,) started the business of manufacturing of cycles and cycle parts in Ludhiana in year 2016 and achieved good success since then. It manufactures and exports cycles of all categories of sports. PTL. provides job work services also for auto components manufacturing companies. The company keeps launching of new products to expand its reach. Internal audit team has worked brilliantly over the last two financial years and has ensured that non-compliances are very rare and controls are operating effectively. Documents of internal auditor includes the details of controls implemented at various levels as below :

| Sr No. | Controls Implemented  | Control Classification/ Type |
|--------|---|------------------------------|
| 1      | Segregation of duties, Background verification, Internal audits, Data Validation, monitoring quality controls | Preventive                   |
| 2      | Firewalls, Computer and server backups, reconciliations, audit trail, obtaining feedback                      | Detective                    |
| 3      | Prior approvals, financial reporting, physical verification, data verification                                | Input                        |
| 4      | Review of exception reports, Authorization procedure, financial statements, rotation of jobs                  | Output                       |

You are required to explain why internal controls should exist in an organization and comment whether the above table represents the correct classification of controls.

(5 marks)

- (b) A company has 25 branches in India. Draft an audit plan to monitor sales activities and receivables.

The total sales of the company in India is ₹ 200 crore and outside India ₹100 crore.

- (a) What would be the possible control weaknesses in sales activities ?  
(b) What should be the control feature in an activity of this kind ?

(5 marks)

- (c) The annual procurement of raw material by a company is 200 MT of steel and 100 MT of copper. The copper is used in winding for starter motors made by the company.

The management gets the winding done by a third party. The Board is of the opinion that the copper consumption is not as per the Bill of Material and is excessive. Draft an internal audit program to detect anomalies if any in the copper consumption.

(5 marks)

Answer 2(a)

Organizations are required to establish and maintain a system of internal controls sufficient to assure that

- i. transactions are executed in accordance with management's authorization;
- ii. access to assets is permitted only with the proper authorization; and
- iii. the accounting records reflect the existing assets.

Correct Classification of Controls as below:

| Sr. No. | Controls Implemented  | Control Classification/Type |
|---------|---|-----------------------------|
| 1       | Segregation of duties, rotation of jobs, background verification, Prior approvals, Firewalls, Computer and server backups | Preventive                  |
| 2       | Internal audits, reconciliations, financial reporting, financial statements, physical verification                        | Detective                   |
| 3       | Data Validation, audit trail, Authorization procedure, data verification  | Input                       |
| 4       | Review of exception reports, monitoring quality controls, obtaining feedback.   | Output                      |

Answer 2(b)

Audit Plan

| Area                                   | Verification Needed  |
|--|--|
| 1. Dispatches from factory to branches | Reconcile delivery challans with inward store entries at branches. |



|                         |   |
|-------------------------|---|
| 2. Dispatches at branch | Verify store entries with e-way bills   |
| 3. Invoicing            | (i) Verify purchase order raised by customers<br>(ii) Verify e-way bills with invoices raised along with consignment note for transportation of goods in case of domestic sales<br>(iii) Verify the contents of bill of entry in case of exports<br>(iv) Verify the custom clearance<br>(v) Verify the adequate transit insurance in both domestic and export sales |
| 4. Receivables          | (i) Verify receipts with invoices.<br>(ii) Verify bank entries with customer details.<br>(iii) Verification of genuineness of Credit Notes for Sales returns<br>(iv) Verify age of receivables.<br>(v) Carry out Balance confirmation exercises.  |

**Possible control weaknesses:**

1. Goods dispatched but not billed.
2. Goods dispatched more but invoice raised for less (both quantity and value)
3. Payment not received against bills.
4. Excess credit to customer.
5. Unauthorised Credit Notes reversing revenue and misappropriating money
6. Teeming and Lading
7. Payment received but not recorded in books
8. Receipts not recorded in account of correct customers

**Control features:**

1. Inventory should be properly controlled and physically verified.
2. Regular reconciliation of invoices with e-way bills, weightment slip and consignment notes.
3. Follow up on receivables and ensuring age of outstanding as well as amount in the credit limit.
4. Journal entries passed in the books should be scrutinised using Data Analytics

**Answer 2(c)**

| AREA                           | VERIFY   |
|--------------------------------|--|
| Copper issued from store in Kg | Check the amount of copper issued from store           |
| No. of starter motors issued   | Check the number of starter motors issued for winding. |

PP – I&amp;FA – JUNE 2024

|  |  |
|--|--|
| Entry in job work register   | Verify the entries in job work register for material unused.                   |
| Amount of copper required by Bill of Material                          | Note the requirement as per Bill of Material.                                  |
| No. of starter motors returned with winding.                           | Verify with job work register and security register.                           |
| Normal Loss in the process of winding                                  | Verify normal loss in the process of winding as per past trends                |
| Reconcile total weight of copper issued with number of starter motors. | No. of starter motors X weight of copper per motor vs weight of copper issued. |
| Return of Scrap Copper   | Verify the scrap (normal loss) of copper has been returned by job worker.      |

The internal audit should verify the following:

Report on variance of copper issued vs returned.

### Question 3

(a) Axum Bank Ltd. (ABL) is operating in major cities of India since the year 2009 with customer satisfaction score of 9 out of 10. Reason for such a good score is that bank is leader in implementing latest technologies for customer services and advancement of its operations. Information technology department of ABL has implemented the following two technology tools.

- NPL EWS, an early Non-performing Loans (NPL) warning system. It is an enterprise software application that allows banks to predict NPLs with high accuracy. For this, the software combines AI, machine learning, and behavior analytics on banking and dynamic external data.
- Finance-key for simplifying treasury operations. Finance-key automates and centralizes treasury operations management. The software provides a dynamic dashboard for liquidity, payments, and compliance management. It delivers selfservice reporting and real-time visibility into banking data, automating payment and treasury work flows.

One of the Big Four Accounting firms is rendering internal audit services to the bank and also uses advanced audit tools to achieve the desired audit objective. In its last meeting with audit team leader, audit team discussed the new technical advancements implemented by the client ABL and invited suggestions on what impact these technologies will have on internal audit function.

You are also a part of internal audit team and have been asked to discuss areas where audit team should focus in these circumstances.

(5 marks)

(b) Established over three decades ago in 1985 by the visionary Ravinder Singh, TANN stands tall as a quality driven FMCG company. Its brand has evolved into a household name, synonymous with Bread & Bakery excellence, particularly dominating the markets of North India. Based in Jalandhar, its Head Office is the heartbeat of its operations, overseeing a network of 10 cutting-edge manufacturing plants strategically spread across North and Central India.

TANN management has received a notice from State Pollution Control Department for submitting a compliance report on water and waste management systems implemented by

the company. For compiling and submitting the required data, Raj who has worked as a head of preventive maintenance department (Machinery and pollution control equipment's) of the company for last three years has been entrusted the task. Considering his capability and experience in the said department, he has been asked to do audit environmental compliance of the company. Environmental audit will also help company to identify potential environmental risks (mainly water pollution) that may arise from their operations. For controlling water pollution, water treatment plant has been installed (supplied by firm owned by son of Raj). Raj was hesitant to carry out the entrusted task and requested management to assign the responsibility to some other person.

(i) In your opinion why Raj was hesitant to accept the given role ?

(ii) How should TANN make sure that such type of situations does not arise in the future ?

(1+4 marks)

- (c) Vertical Bank Ltd. (VBL) is an Indian private sector bank headquartered in New Delhi. It offers services across these verticals : corporate and institutional banking, commercial banking, branch and business banking, retail assets, development banking and financial inclusion, treasury and financial market operations. Share price of VBL has taken a hit in last quarter due to increase in provision of non-performing assets. VBL, as a part of good corporate governance, has implemented internal audit function on early identification, proper classification and provisioning of non-performing assets. RBI guidelines are getting updated/ changed on regular basis and to ensure compliance of the same, a separate department has been set up with persons having requisite knowledge and expertise. For the FY 2023-2024, Singh & Associates, Chartered Accountants have been appointed as statutory auditors and auditors will be commencing audit from 15.04.2024. Management of the Bank has asked internal audit team to check the classification and provisioning of NPAs at its end so that statutory auditors do not give any adverse report in the form of memorandum of changes. The following information has been extracted for internal audit team :

| Classification                                  | NPA Amount (Rs in Lakhs) | Provision Made (Rs in Lakhs) |
|---|--------------------------|------------------------------|
| Standard (other than Comm. Real estate and SME) | 10000.00                 | 25.00                        |
| Standard (Comm. Real estate)                    | 500.00                   | 2.50                         |
| Sub-standard                                    | 3500.00                  | 350.00                       |
| Doubtful (Secured and 18 months category)       | 1000.00                  | 250.00                       |
| Doubtful (Unsecured and 18 months category)     | 500.00                   | 250.00                       |

Considering above, answer the following :

(i) Whether the provision calculated is correct ? If not, calculate the correct provision to be made on NPAs.

(ii) What features of banking operations make internal audit of banks challenging ?

### Answer 3(a)

Some areas that internal audit should focus on when auditing the use of latest technologies in systems:



- (i) **Security and Privacy:** With the use of latest technologies, there is an increased risk of cyber threats and data breaches. Internal audit should ensure that the systems are secure and that appropriate measures are in place to protect sensitive data. This includes an assessment of the security protocols, encryption, access controls, and other security measures.
- (ii) **Governance and Management:** Internal audit should review the governance structure in place to ensure that there are adequate controls and oversight of the technology initiatives. This should include an assessment of the roles and responsibilities of key stakeholders, including the board, senior management, and the IT team. Additionally, internal audit should review the policies and procedures.
- (iii) **System Development Life Cycle:** Internal audit should ensure that appropriate controls are in place throughout the system development life cycle, from design to implementation to maintenance. This includes an assessment of the testing and validation procedures, as well as the change management process.
- (iv) **Business Continuity and Disaster Recovery:** Internal audit should ensure that appropriate measures are in place to ensure business continuity in the event of a system outage or disaster. This includes an assessment of the backup and recovery procedures, as well as the disaster recovery plan.
- (v) **Compliance:** Internal audit should ensure that the use of latest technologies is compliant with applicable laws and regulations. This includes an assessment of the data protection laws, industry- specific regulations, and other compliance requirements.

In summary, internal audit should focus on security and privacy, governance and management, system development life cycle, business continuity and disaster recovery, and compliance when auditing the use of latest technologies in systems. By doing so, internal audit can help to ensure that the risks associated with the use of these technologies are effectively managed and that the organization is able to leverage the benefits of these emerging technologies.

### **Answer 3(b)**

One of the significant challenges of internal audit is managing the conflict of interest. In large business houses, Internal auditors are employees of the company, and they are expected to report on the operations of the business objectively. However, auditors may be hesitant to report negative findings if it could jeopardise their job security or relationship with their colleagues.

In this case also, one of the significant challenges of internal auditor is managing the conflict of interest. Mr. Raj was hesitant to accept the given role because of Conflict of interest.

Organizations can take the following precautions to avoid conflicts of interest in internal audit:

- (i) **Develop and communicate clear policies:** Organizations should establish clear policies and procedures to identify and address potential conflicts of interest. These policies should outline the steps to be taken when conflicts arise, including recusal, disclosure, or seeking a second opinion.
- (ii) **Ensure auditor independence:** Organizations should ensure that internal auditors have the necessary independence to conduct the audit objectively. This can be achieved by appointing auditors who are free from any conflicts of interest and establishing clear lines of reporting and accountability for auditors.
- (iii) **Rotate auditors:** One way to reduce conflicts of interest is to rotate auditors between different departments or functions. This can help to reduce the risk of auditors becoming too close to the business units they are auditing and enhance the objectivity of the audit process.

- (iv) Encourage open communication: Organizations should encourage open communication between auditors and management. This can help to ensure that any potential conflicts of interest are identified and addressed promptly.
- (v) Foster a culture of transparency: A culture of transparency can help to reduce conflicts of interest by promoting openness and accountability. Organizations should establish clear channels for reporting conflicts of interest and provide support to auditors who raise concerns.

**Answer 3(c)**

| Classification   | NPA Amount<br>(Rs. in Lakhs) | Correct Provision<br>Made (Rs. in Lakhs) |
|--|------------------------------|--|
| Standard (other than Comm. Real estate and SME)<br>(0.40%) | 10000.00                     | 40.00                                    |
| Standard (Comm. Real estate) (1%)                          | 500.00                       | 5.00                                     |
| Sub-standard (15 %)  | 3500.00                      | 525.00                                   |
| Doubtful (Secured and 18 months category) (40%)            | 1000.00                      | 400.00                                   |
| Doubtful (Unsecured and 18 months category) (100%)         | 500.00                       | 500.00                                   |

Features of Banking Operations that make internal audit of banks challenging

- Voluminous and complexity of transactions,
- Wide geographical spread of banking network,
- Diversified and large range of products and services offered,
- Extensive use of technology,
- Strict vigilance and compliance.

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

**Question 4**

- (a) The internal auditor carried out a confirmation of balance exercise with all suppliers. There were 568 suppliers, and the results were as follows :

|                                 |     |
|---------------------------------|-----|
| Positive confirmation           | 200 |
| Discrepancies noted by supplier | 100 |
| No response                     | 268 |

One of the suppliers asked for a refund of ₹ 1,45,314 based on the confirmation letter. What actions should the internal auditor take ?

(4 marks)

- (b) In the course of internal audit, the following factors came to the light regarding GST of the ABC Trust :
- (1) The institution has exempt income of ₹ 2 crore. No invoices have been raised. No GST liability exists on this.

(2) There is non-exempt income of ₹ 3 crore which is received. GST invoices have been raised and GST has been paid on them.

(3) There is also non-exempt income of ₹ 4 crore which has not been received or billed. No GST has been paid on this amount even though GST(@ 18% is payable on the same. No invoices have been raised.

What action should the internal auditor report recommend in his report, and what corrective action should be recommended ?

(5 marks)

(c) Tele Mfg. Ltd. has a raw material consumption of ₹ 50 Crore per annum. It maintains a store consumption record. During the course of audit, the following facts came to light.

There has been an adverse material variance of ₹ 3 Crore and the reason for the same are :

(i) Usage variance ₹ 1 Crore

(ii) Price variance ₹ 2 Crore

Draft an internal audit report to the Board, highlighting these facts. You may assume the reasons for the variance which should be highlighted in the report.

(6 marks)

**OR (Alternate to Q. No. 4)**

**Question 4A**

(a) The Management of ABC Private Limited has appointed AAA and Co. (Chartered Accountant firm) as an internal auditor of the company who is also a statutory auditor of the ABC Private Limited. Is the appointment of AAA and Co. as an internal auditor of the ABC Private Limited is valid ?

(2 marks)

(b) Forex Ltd. has appointed CA Ravi as its internal auditor in the current financial year for a period of three years. Till last year internal auditor used to give detailed observations to the concerned departments for comments before preparation of the final internal audit.

Management has requested the new internal auditor that besides carrying out internal audit, how can internally audit function be a helpful tool to the management.

CA Ravi has not worked on this type of scope of work and was in dilemma to handle the concerns of the management.

Can you guide CA Ravi in understanding the concern by listing down some areas where internal audit function (as an effective tool) can help management ?

(5 marks)

(c) ABSOLUTE HEALTH, a hospital network offering end-to-end healthcare services, has pioneered the quality revolution in the field of healthcare delivery in the country, making quality healthcare affordable and accessible to everyone. Today, ABSOLUTE HEALTH stands among the top 10 hospitals in India with top-notch healthcare delivery systems, evidence-based medicine, high-end facilities and quality-oriented practices. Beyond healthcare delivery, ABSOLUTE HEALTH also has a clear-cut focus on academics with 23 different academic programs under its academic wing. ABSOLUTE HEALTH touches upon all aspects of wellness and healthcare, with a fine fusion of cardinal principles of holistic care and hospitality with



the three-pronged approach of courtesy, compassion, and competence. As a part of good corporate governance, management has implemented strong internal controls over cash disbursements (pertaining to lower-level staff salaries, purchases up to ₹ 10000, propriety aspect while doing purchases, proper recording and classification of payments etc.) Analysis of SAP generated report for the last month indicates the following :

- Instances of payment of personal credit card bills of two employees working in accounts department.
- Charging personal expenses on company card bills.

Matter was taken up by the internal audit department of the company and one of the team members have been asked to prepare checklist for identifying the control system working and its weakness in disbursement area before starting the actual audit. You are required to assist the audit team member in preparing cash disbursement checklist or questionnaire for the said area.

(8 marks)

#### Answer 4(a)

The supplier should be asked for-

1. Copy of supply invoices, e-way bills, e-invoices and consignment notes and compared it with P.O or agreement
2. Statement of account to reconcile with the books of the company.
3. Copies of delivery challans, e-way bills

The accounts department will be asked to report on-

1. Payments made to supplier and entries bill approved.
2. Reconciliation of statement of account as provided by supplier and as per our books
3. The internal auditor will also verify store inventory entries.

After this verification the internal auditor may recommend payment.

#### Answer 4(b)

The following are to be brought out in the internal audit report.

1. The bifurcation of income of the Trust as exempt Rs. 2 Crores with respect to which no invoices have been raised.
2. Non-exempt income of Rs 3 Crores with respect to which GST invoices has been raised and GST paid.
3. Non-exempt income of Rs 4 Crores with respect to which No GST invoices has been raised and No GST paid.
4. The control systems are not working as no invoices are raised if income is not realized. The invoices should be raised as per the accounting policy of the Trust and due GST has to be paid on the basis of Time of Supply provisions.
5. There should be a complete revamp of the system so that all income is accounted for.
6. Invoices should be raised for all income whether exempt, received or taxable.
7. Also, the Trust needs to claim Income Tax exemption for which proper invoices and accounting documents are necessary.

PP – I&FA – JUNE 2024

### Answer 4(c)

The draft internal audit report would be as follows:

The Board of Directors  
Tele Manufacturing Ltd.  
(Place)

(Date)

Internal Audit Report on Material Consumption

Period covered (Date ---- to ---- Date)

1. It was noted that the adverse material consumption variance of raw material was Rs. 3 Crores (Usage Variance Rs. 1 crore and Price Variance Rs. 2 crore) more than the budget.
2. The reasons for the same were an increase in usage due to:
  - Substandard material quality
  - Machine breakdown
  - Erratic power supply
  - Worker's not being very properly trained
  - Machines being old and absence of precision CNC equipment, added to the increased consumption.
3. The price of raw material was impacted by the war in the Middle East as well as Ukraine. The government imposed a countervailing duty on the material. All these factors led to an increase in the cost of raw materials.

Remedial Measures suggested;

- a. Proper procurement planning should be done so that material can be purchased at the best price in economic qualities.
- b. Workers should be properly trained.
- c. Effective power back-ups
- d. A machine maintenance schedule should be drawn.
- e. A phased program of purchase of new CNC machine may be drawn up.

Sd/-

.XT

Internal auditor

**OR (Alternate to Q. No. 4)**

### Answer 4A(a)

As per section 138 of the Companies Act, 2013, the internal auditor shall either be a Chartered Accountant or a Cost Accountant (whether engaged in the practice or not), or such other Professional as may be decided by the Board to conduct an internal audit of the functions and activities of the company.

As per Section 144 of the Companies Act, 2013 An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include inter-alia Internal Audit (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company).

The internal auditor may or may not be an employee of the company. However, Statutory Auditor shall not be appointed as internal auditor of the company.

Therefore, the appointment of AAA and Co. (Chartered Accounting firm) as an internal auditor of ABC Private Limited is not valid as AAA and Co. is also a statutory auditor of ABC Private Limited.

**Answer 4A(b)**

Internal Audit has become an important management tool for the following reasons:

1. Internal audit (IA) examines and assesses organisation's records and financial information, workflows, systems, and processes. Through the internal audit function, IA team will identify issues like compliance concerns, complete risk assessments, investigate internal or external fraud, and sometimes identify data inaccuracies in financial reporting.
2. Internal Auditing is a specialized service to look into the standards of efficiency of business operation.
3. Internal Auditing can evaluate various problems independently in terms of overall management control and suggest improvement.
4. Internal Audit's independent appraisal and review can ensure the reliability and promptness of MIS and the management reporting on the basis of which the top management can take firm decisions.
5. Internal Audit system makes sure the internal control system including accounting control system in an organization is effective.
6. Internal Audit ensures the adequacy, reliability and accuracy of financial and operational data by conducting appraisal and review from an independent angle.
7. Internal Audit is an integral part of "Management by System".
8. Internal Audit can break through the power ego and personality factors and possible conflicts of interest within the organization.
9. It ensures compliance of accounting procedures and accounting policies.
10. Internal Auditor can be of valuable assistance to management in acquiring new business, in promoting new products and in launching new projects for expansion or diversification of business.

**Answer 4A(c)**

Handling personal expenses on a corporate card can lead to complications, but it's important to have a clear policy and procedure in place to address such situations.

|    | CASH DISBURSEMENTS  | YES | NO | NOT SURE | N/A |
|----|---|-----|----|----------|-----|
| 1. | Are the following duties performed by separate individuals? <ul style="list-style-type: none"><li>● Preparing vouchers/checks</li><li>● Approving vouchers/authorizing disbursements</li><li>● Reconciling disbursement</li><li>● Maintaining custody of cash</li></ul> |     |    |          |     |



|     |  |  |  |  |  |
|-----|--|--|--|--|--|
| 2.  | Are disbursements made only from authorized expenditure accounts, trust funds, revolving funds or bank accounts and, except for petty cash payments, paid only through online vouchers, pre- numbered warrants/ checks, and/ or journal entries?                   |  |  |  |  |
| 3.  | Are controls in place to ensure that all disbursements are reasonable, necessary and made in accordance with state and federal regulations and County policies (as defined in the MAPP, MOUs, County Administrative Code, letter orders, OMB Circular A-87, etc.)? |  |  |  |  |
| 4.  | Are cash advances prohibited except as authorized under special circumstances by the Board of Supervisors?   |  |  |  |  |
| 5.  | Are all disbursements supported by properly approved, original vendor invoices, employee claims, and/or contractor invoices and, if appropriate, contracts, purchase orders and receiving reports?   |  |  |  |  |
| 6.  | Are controls in place to ensure that only authorized personnel approve vouchers and sign warrants/checks?  |  |  |  |  |
| 7.  | Do voucher approvers or check/warrant signers review the supporting documentation before approving the voucher or signing the check?   |  |  |  |  |
| 8.  | Is periodically surprise physical cash verification conduct or not?  |  |  |  |  |
| 9.  | Are adequate controls maintained over unused, returned and voided checks/warrants and signature stamps, plates and files?  |  |  |  |  |
| 10. | Are all disbursements properly recorded, classified and summarized in a cash disbursements journal?  |  |  |  |  |

PART-II

Question 5

Royals India Ltd. (RIL) is an Indian sports equipment manufacturer based in Delhi. RIL makes equipment for multiple sports, among them basketball, football, volleyball, handball, cricket, tennis, rackets, table tennis and roller skating as well as fitness equipment. Company has four subsidiaries outside India and regular sale/purchase transactions takes place between RIL and its subsidiaries. One of its subsidiaries, based in Unites States of America, handles retail sales also in USA. The main raw material used for manufacturing equipment is wood which is supplied by Fair Supply Ltd. (FSL) based in Tamil Nadu. Besides this, other raw material like rubber, latex, cotton, wires for badminton racket etc. are procured from various other vendors as per requirement and using Non-PO route basis.

Analysis of last three years' procurement data shows that major quantity of badminton wires has

been supplied by only one company TAR Ltd. (a distributor of different types of badminton wires). Total business obtained by TAR Ltd. from RIL in last three years has increased from 25 crore to ₹ 100 crore. Board of Directors came to know of this and are suspicious as to why same company is getting repeated orders. Their suspicion got confirmed when one whistleblower raised issue that payments to TAR Ltd. is being made on priority basis and that too with little credit period as against normal credit period of 30 days availed from other suppliers. Possibility of collusive bidding also cannot be ignored in this case. As per consensus, forensic auditor was appointed to investigate in detail the purchases made from TAR Ltd. to identify any fraudulent purchases and review the procurement process in detail to identify the risk associated with procurement process.

For the same period of three years, supplies of various sports equipments's manufactured to US subsidiary amounts to ₹ 750 crore. Analysis of consolidated financial statements for said three years show that the operating margin earned by US subsidiary on same products is more than the margin earned by RIL. Internal Auditors also included the same fact in their audit report and advised the company to check its pricing policy for the future. Management is of the view that no change in pricing is required. In the meantime, Income Tax department after analyzing the exports of same type of goods by other companies has initiated scrutiny for its financial dealings with its subsidiary.

Considering the facts above, answer the following :

- (i) What will be the objectives of the forensic auditor appointed in this case ?

(5 marks)

- (ii) How will forensic auditor find out existence of collusive bidding, if any ?

(3 marks)

- (iii) What areas will be the areas of risk which a forensic auditor can consider reporting to the management ?

(5 marks)

- (iv) Independent forensic auditor appointed by Income Tax Department to identify siphoning of funds to its offshore entity to evade taxes. What areas will forensic auditor look for to identify siphoning of funds through transactions with US subsidiary ?

(7 marks)

### Answer 5(i)

Main information in the case given is suspicion got confirmed by the whistle blower which is the starting point of any forensic audit. As per Association of Certified Fraud Examiners Report to the Nation 2024, 43% of Fraud were detected by Tip.

The forensic auditor will plan his investigation to achieve objectives such as:

- Obtain the whistleblower complaint and any supporting documentation, including emails, financial records, and other relevant evidence.
- Ensure the whistleblower's confidentiality and protection from retaliation, in accordance with company policies and relevant laws.
- Analyze the specific allegations outlined in the complaint to understand the nature and scope of the suspected misconduct.
- Identify what fraud, if any, is being carried out
- Determine the time period during which the fraud has occurred

- Discover how the fraud was concealed
- Identify the perpetrators of the fraud
- Quantify the loss suffered due to the fraud
- Gather relevant evidence that is admissible in the court
- Suggest measures that can prevent such frauds in the company in future.

Further after understanding the possible type of fraud that has been carried out and how it has been committed, the auditor is required to support the evidence collected with adequacy, enough to prove the identity of the fraudster(s) in court, reveal the details of the fraud scheme, and document the amount of financial loss suffered and the parties affected by the fraud.

### **Answer 5(ii)**

In order to find out collusive bidding, one need to undertake the following activities:

- Identify and interview all complainants and confidential sources to obtain further detail.
- Do due diligence background checks on the winning and losing bidders to identify, for example, undisclosed common ownership, employees or other affiliations, or prior involvement in other collusive bidding schemes.
- Obtain the bidding documents, including, if possible, bidding documents from similar prior projects (to identify bid rotation)
- Do a forensic analysis of the bids, looking for unusual bid patterns.
- Review bid securities submitted by the winning and losing bidders. Note such securities issued by the same bank on the same day to different bidders.
- Critical examine those securities that appear to be forged (this information can be used to induce the responsible party to cooperate in the investigation).
- Exercise audit rights on the winning bidder; look for evidence of collusion, for example emails between bidders setting bid prices, etc.
- Interview the winning bidder based on the evidence obtained in the investigation.
- Analyze the purchase contracts entered into in the last 5 years to comprehend since when contracts started getting awarded to related concerns.
- A disk imaging of the procurement/ committee head and his team members should be performed. The emails and other communications need to be reviewed to identify any red flags.
- Identify vendors who have been blacklisted or discontinued in the last 5 years and contact them to understand the reason for blacklisting or discontinuation.
- Are there any conflict-of-interest angle needs to be checked, i.e. any relationship exists between purchase committee members and the UBOs of the companies to whom contracts were awarded?

### **Answer 5(iii)**

Following scope items are generally review by the forensic auditor and can consider reporting to management in case of procurement by non-PO route:

- Review to ensure that expenses are approved as per company policy or delegation of authority.



- Review of terms agreed with the vendors.
- Review of process to ensure desired receipt of goods/services and invoice accuracy.
- Review of process to ensure compliance to agreed terms and SLAs before processing the invoice and payment, and appropriateness of supporting evidence. This also includes review of levy of any interest, penalty or liquidated damages as per the agreed terms.
- Review of accounting controls with respect to the expense booking and payment processing.
- Review process of tracking due date for payments, and reconciliation of prepaid expenses (advance moneys paid).
- Review of segregation of duties with respect to the expense approval, receipt of goods/ services, accounting and payment processing.

### Answer 5(iv)

There are several ways in which a company can siphon off funds, including:

**Over-invoicing:** A company may inflate the cost of goods or services purchased to receive a higher amount of money from the purchaser. The excess amount paid is then siphoned off for personal gain.

**Under-invoicing:** A company may undervalue goods or services sold to reduce the amount of tax payable. The difference between the actual value and the undervalued amount is then siphoned off.

**Ghost employees:** A company may create fake employees and pay them a salary, but in reality, the money is siphoned off by the company's management.

**Round-tripping:** A company may create fictitious transactions with a third party to show an increase in revenue. The third party then returns the money, and the company's management siphons off the amount.

**Transfer pricing:** A company may manipulate prices when transferring goods or services between its subsidiaries to reduce tax payable. The difference in prices is then siphoned off.

**Misappropriation of funds:** A company's management may directly take money from the company's accounts for personal use, without any legitimate reason or business purpose.

**Offshore entities:** A company may transfer funds to an offshore entity to evade taxes or hide illegal activities. The money is then siphoned off by the company's management.

**Attempt all parts of either Q. No. 6 or Q. No. 6A**

### Question 6

In 2008, driven by a passion for the world of data, Vishal and Vikas founded Excellent Data Ltd. (EDL). Today, after over 15 years, EDL is more than an organization; it's a tight-knit community of enthusiasts united by one thing—the passion to tackle real-world challenges with data. Growth story of Data science, data analytics in future is going to be big and keeping this aspect in mind, EDL management is considering acquiring other companies in the same field to increase its reach, competitiveness, diversification and customer base. Investment in and acquisition of companies engaged in providing AI services is also on the cards. The following companies were shortlisted for considering the acquisition :

- (i) Latest Technologies Ltd. (engaged in Master Data Management, Data lineage/Metadata, Data Archival, Data masking, Data quality and Data Security).
- (ii) CBF Technologies (engaged in providing AI solutions).

PP – I&FA – JUNE 2024

EDL knows that these types of decisions have long term impacts on the company, so decided to have forensic audit conducted of the proposed companies to be acquired from a qualified professional. Accordingly, EDL has approached you to help them by conducting thorough investigation and highlighting the important aspects to be considered. (Approval for investigation has been taken from the stakeholders of both the proposed companies). Considering your experience and reputation of business investigations, management has instructed you to keep the following things in mind while submitting the report :

- Considering the presence of porposed acquiree's in African countries, money laundering activities possibility cannot be ruled out. Assurance required that no such possibility exists by examining the relationship between company and shell companies, if any.
- Go beyond the conventional financial measures to consider qualitative factors relevant for evaluating the performance and prospects of the company.
- Include in the report, statement to show the trend as well as changes that have taken place in the financial position of the company.
- Mention separately cash generated from business only.

Considering the above information, answer the following :

(i) What should be the methodology to find out money laundering activities using shell companies ?

(6 marks)

(ii) What factors other than conventional financial measures will be reported ?

(6 marks)

(iii) What type of ratios will be used to show the trend as well as changes that have taken place in the financial position of the company ?

(4 marks)

(iv) From which document will you be able to retrieve the cash generated from business operations and how will you analyze the same ?

(4 marks)

**OR (Alternate to Q. No. 6)**

#### Question 6A

(a) RTQ Ltd. has decided to introduce a system of employee verification. The background to this is that in a sister concern, a group of employees had jointly committed a fraud in assets consisting of stock and cash to the tune of ₹ 50 lakh through collusion. You are an expert forensic auditor and have been asked to elaborate the steps for employee verification. Detail the steps to be taken for the same.

(5 marks)

(b) A company XYZ Ltd. intends to appoint A, who was earlier convicted of fraud as internal auditor. Comment.

(3 marks)

(c) ABC Club has the following categories of members :

|     | PARTICULARS       | COUNT | Maximum Limit |
|-----|-------------------|-------|---------------|
| (a) | Honorary          | 200   | NA            |
| (b) | Permanent         | 1400  | 1600          |
| (c) | Members' children | 2400  | NA            |
| (d) | Corporate         | 100   | 125           |
| (e) | Temporary         | 500   | 600           |

The Permanent Membership is in great demand and there is a waiting list of 20 years for members after application. The limit of 1600 members includes honorary members. For members' children, there is no waiting list and on attaining the age of 21, membership is automatic.

The management is of the view that there is a fraud in this area. You have been asked to verify the records of members' children.

- (i) What steps will you take as a forensic auditor to verify ?
- (ii) What methodology will you adopt ?
- (iii) What will be the limitations of your report ?
- (iv) What action will you recommend against the employees involved in fraudulent activities ?

(3 marks each)

#### Answer 6(i)

Detection of shell companies involve examining the relationships between entities and identifying suspicious patterns.

- Identify the Key Entities: The first step is to identify the key entities that have to be analyzed. These could be companies, individuals, or any other relevant entities.
- Collect Data: Collect data on the identified entities from various sources, including public records, corporate filings, social media, and other online sources.
- Build a Chart: Build a chart representing the relationships between the entities.
- Analyze the Chart: Use link analysis techniques to identify suspicious patterns in the chart. Look for entities that are linked to multiple other entities or that have unusual patterns of connections.
- Look for Red Flags: Look for red flags that may indicate the presence of a shell company, such as a company with no employees or physical location, a company with a history of frequent name changes or ownership changes, or a company that is linked to other suspicious entities.
- Investigate further: If auditor identifies a suspicious entity, investigate further to gather more information and verify the findings. He may need to conduct additional research or consult with experts in the field to determine whether the entity is a shell company.
- Risk Assessment: Financial institutions should conduct a risk assessment of their customers and transactions to identify high-risk customers and transactions. This helps to allocate resources and prioritize investigations on high-risk transactions.



- Watch list Screening: Watch list screening involves comparing customer names against government and international watch lists of known criminals, terrorists, and politically exposed persons (PEPs). This helps to identify high-risk customers and transactions and prevent money laundering activities.
- Data Analytics: Financial institutions can use data analytics to identify patterns and trends in customer transactions, enabling them to identify potential money laundering activities.

Overall, fraud detection techniques in money laundering require a combination of technological solutions, human expertise, and regulatory frameworks to be effective in detecting and preventing criminal activities.

### Answer 6(ii)

Comprehensive business analysis, however, calls for going beyond the conventional financial measures to consider qualitative factors relevant for evaluating the performance and prospects of a company. The American Association of Individual Investors (AAII) has summarized these factors as follows:

1. Are the company's revenues tied to one key customer? If so, the company's performance may decline dramatically if the customer goes elsewhere. On the other hand, if the relationship is firmly entrenched, this might actually stabilize sales.
2. To what extent are the company's revenues tied to one key product? Companies that rely on a single product may be more efficient and focused, but a lack of diversification increases risk. If revenues come from several different products, the overall bottom line will be less affected by a drop in the demand for any one product.
3. To what extent does the company rely on a single supplier? Depending on a single supplier may lead to unanticipated shortages, which investors and potential creditors should consider.
4. What percentage of the company's business is generated overseas? Companies with a large percentage of overseas business are often able to realize higher growth and larger profit margins. However, firms with large overseas operations find that the value of their operations depends in large part on the value of the local currency. Thus, fluctuations in currency markets create additional risks for firms with large overseas operations.
5. Competition. Generally, increased competition lowers prices and profit margins. In forecasting future performance, it is important to assess both the likely actions of the current competition and the likelihood of new competitors in the future.
6. Future prospects. Does the company invest heavily in research and development? If so, its future prospects may depend critically on the success of new products in the pipeline. For example, the market's assessment of a computer company depends on how next year's products are shaping up. Likewise, investors in pharmaceutical companies are interested in knowing whether the company has developed any potential blockbuster drugs that are doing well in the required tests.
7. Legal and regulatory environment. Changes in laws and regulations have important implications for many industries. For example, when forecasting the future of tobacco companies, it is crucial to factor in the effects of proposed regulations and pending or likely lawsuits. Likewise, when assessing banks, telecommunications firms, and electric utilities, analysts need to forecast both the extent to which these industries will be regulated in the years ahead, and the ability of individual firms to respond to changes in regulation.

**Answer 6(iii)**

The under-mentioned ratios will show the trend as well as changes that have taken place in the financial position of the company:

It's essential to compare ratios with industry benchmarks, historical performance, and peer companies to evaluate performance effectively and identify areas for improvement.

- Sales to Average Inventories held.
- Sales to Fixed Assets.
- Equity to Fixed Assets.
- Current Assets to Current Liabilities.
- Quick Assets (the current assets that are readily realizable) to Quick Liabilities.
- Equity to Long Term Loans & Interest coverage ratio.
- Sales to Book Debts.
- Return on Capital Employed.

**Answer 6(iv)**

The cash-flow statement shows the movement of cash in a business. The cash-flow statement has three components: cash flows from operating activities, from financing activities and from investing activities. The statement also mentions the current cash holding of the business.

What need to check in the data is whether flows from operating activities are positive or not. If they are positive, it means that the company is able to generate cash from its operations. If they are negative, it means that the company is losing money. While it may show profits in its P&L statement, negative flows from operations should ring an alarm.

Cash flows from financing activities show the money raised for the company's operations or the money paid towards debt repayment. The former will be a positive number on the statement, while the latter will be a negative number.

Cash flows from investing activities capture the cash used in investments. For instance, a business that has generated surplus cash may park it in a bank fixed deposit. Next year it may withdraw cash from that FD. The former will be a negative number on the statement, while the latter will be a positive number.

**OR (Alternate to Q. No. 6)****Answer 6A(a)**

The following steps are to be undertaken for employee verification.

1. Temporarily suspend employees suspected of involvement in the collusion fraud to prevent further tampering with evidence and mitigate additional losses.
2. Secure and preserve all relevant documents, emails, financial records, and any other evidence related to the fraud to prevent destruction and tampering of evidence.
3. Limit access to sensitive systems and areas to prevent destruction or manipulation of evidence.
4. Verify academic records where possible check Digi locker details.
5. Do a search for professional qualifications.

6. Ask an external agency to verify previous employer details.
7. Verify social media posts of employee and living beyond means is also a reason for fraudulent earning.
8. Scrutinize financial records, including bank statements, transaction logs, and accounting ledgers, to trace unauthorized transactions and identify patterns of fraud.
9. Conduct a comprehensive audit of stock to determine the extent of the discrepancy and identify the specific items involved.
10. Verify from police records

**Answer 6A(b)**

1. Internal auditors play a crucial role in ensuring the integrity of financial records, compliance with regulations, and the effectiveness of internal controls. Trust and integrity are fundamental to this role.
2. Stakeholders, including investors, clients, and employees, may perceive the appointment negatively, questioning the company's judgment and commitment to ethical practices.
3. A person convicted of fraud would be liable to commit the same offence again.
4. The moral fibre of such a person is suspect.
5. Mr. A may be assumed to have contact with other criminals and reduce the likelihood of proper business control.
6. Everyone deserves a second chance, the role of an internal auditor is critical and requires the highest standards of trust and integrity.
7. Appointing a person previously convicted of fraud as IA is fraught with risks and can significantly undermine the effectiveness of the company's internal controls and stakeholder trust.
8. It is advisable to seek candidates with unblemished records who can uphold the ethical standards and responsibilities of the position.

**Answer 6A(c)(i)**

The following steps are taken for verification of membership.

1. Define the audit scope, set objectives of audit and identify key stakeholders who will provide the information and obtain ABC Club's top management's support to assist the forensic audit.
2. Understand and document the policy and procedures of the club for accepting the membership application with supporting documents.
3. Creating a hypothesis based on available data, testing the hypothesis.
4. For the period under review verify Aadhaar Card, DOB proof and address proof of all children applicants and match it with Parent's membership.
5. Verify whether children are actually belongs to member or child purported to relative of member.
6. Verify the Children's membership records is in line with the eligibility criteria for membership.
7. Review all correspondence relating to children's membership approval or rejection and disputes if any.
8. Speak with club officials, accountants, and program coordinators to clarify any ambiguities and gather insights into potential issues.



9. Interview a sample of club members and, if appropriate, their children to validate records.

**Answer 6A(c)(ii)**

1. 100% verification of all applications with supporting original documents during period under review.
2. Evidence to be obtained regarding relationship of children and member.
3. All signatures of parents to be verified with the dates when they became members and also verify from photographs and signature verify with authorized government documents. More emphasis to be given on rejected application/ death of the member. A list to be maintained.
4. Check and verify from CCTV camera or functions video and photographs.
5. Laboratory analysis of physical and electronic evidence.
6. Creating a hypothesis based on available data, testing the hypothesis, Identifying the fraudsters involved. Interviewing and interrogation.

**Answer 6A(c)(iii)****Limitations of the Report**

1. Data is dependent on authenticity of documents and absence of digital records led to significant time in verification.
2. If there was lack of support to forensic audit from the concerned persons in charge of maintenance of membership records.
3. If the club's records are incomplete, missing, or not properly maintained, it can hinder the verification process.
4. Where photocopies of original documents are relied upon, the report will have a disclaimer.
5. All documents including electronic records are to be seen and verify with evidence.
6. Digital forensics that auditor focuses on identifying, acquiring, processing, analyzing, and reporting on data stored electronically.
7. Establish and maintain the chain of custody.

**Answer 6A(c)(iv)**

1. Employees involved in fraudulent activities will be subject to legal action under Indian Penal Code.
2. Temporary suspension of employees suspected of involvement in fraud pending further investigation.
3. Ensure that all relevant documents, emails, financial records, and other data are secured and preserved to prevent alteration or destruction.
4. Launch a thorough internal investigation to gather all relevant facts and evidence. This should include reviewing records, conducting interviews, and analysing data.
5. Standing orders of the club will be used to deny promotions and if possible, dismissal from service.
6. An employee may be held personally responsible, without any limitation of liability, for all or any of the liability if he or she was knowingly party to the fraudulent carrying on of business.
7. Discussion and interviews with employees.

## INTELLECTUAL PROPERTY RIGHTS – LAW & PRACTICE

### GROUP 1 PAPER 4.3

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

#### PART- I

##### Question 1

Rice Pharmaceutical is a renowned MNC, holding many patents worldwide. One of the famous drug of this company is its anticancer drug which is marketed in the name of Glivec. The company holds patent on alpha crystalline form of this drug in 35 country around the world which was about to expire. The company came up with the new form of this drug as beta crystalline salt form of the free base Imatinib. This drug is administered to cancer patients who are suffering from chronic myeloid leukemia. Though the said drug does not cure the disease but still it controls cellular action. As such the cancer becomes manageable to some extent for many patients.

It filed a patent application in India claiming that Beta form has many advantages over the Alpha form including more beneficial flow properties, improved thermodynamic stability (better storage of drug) lower hygroscopicity (longer shelf life) and notably a 30% increase in bioavailability (absorption into blood stream). It further claimed that the aforesaid properties make the invented product "new" (and superior) as it stores better and is easier to process. At the time of filing of patent application by Rice Pharmaceuticals Alpha crystalline was manufactured by six pharma company in India as generic version as affordable prices.

The Assistant Controller of Patents rejected the application for the grant of patent to Rice pharmaceuticals on the grounds that the said drug is pre existing version of Alpha form with no superior efficacy therefore it is not novel. As per Sec. 3(d) of the Patent's Act 2005 no significant improvement has been made.

Against this order Rice pharma filed Writ Petitions before Madras High Court contesting that sec.3(d) of the Indian Patents Act is not in accordance with TRIPS agreement, is vague, arbitrary and against the Article 14 of the Constitution. The Court held that sec.3(d) is not unconstitutional as its goal is to give residents convenient access to life saving drug. As such it cannot be regarded as ambiguous and arbitrary.

There are certain issues which arise here. They are whether the Appellant's product satisfies the tests and thus qualifies as "invention" within the meaning of Clauses (j) and (ja) of section 2(1) can its patentability still be questioned and denied on the ground that sec 3(d) puts it out of the category of "Invention". Rice Pharmaceutical filed appeal in Supreme Court of India against this order.

The court came up with the concept of superior efficacy in the case of pharma patent. The court held that in case of chemicals and especially pharmaceuticals, if the product for which patent protection is claimed is a new form of a known substance with known efficacy, then the subject product must pass. In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* (PTC (suppl) (I) 731 (SC)), Supreme Court held that the object of patent law is to encourage scientific research, new technology and industrial progress. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of monopoly, passes into

the public domain. The fundamental principle of patent law is that a patent is granted only for an invention which must have novelty and utility.

Section 3(d) was amended to make it even more constructive than before. The test of enhanced efficacy in case of chemical substances, especially medicine, should receive a narrow and strict interpretation. A subject matter in order to get a patent under the Patents Act, 1970 has to pass the test of invention and patentability, both being distinct concepts. Section 3(d) provides a bar that incremental inventions of chemical and pharmaceutical substances need to pass extra threshold of enhanced efficacy in order to be patentable.

Normally, the patent-eligibility examination should precede and the patentability examination should follow. But in the case of Section 3(d), the patentability examination is conducted right at the beginning and under the garb of a patent-eligibility examination. Section 3(d) of the Patents Act, 1970 is construed as a refinement of patentability criteria to cater for "evergreening" – a specific problem inherent in pharmaceutical innovations. More specifically, the "enhanced efficacy" criterion can be seen as refinement of "non-obviousness" principles, i.e. most forms of existing pharmaceutical substances are deemed obvious, unless they demonstrate increased "efficacy." At some level, section 3(d) could also be said to embody a utility test, i.e. unless the new form has significantly enhanced utility over and above what existed before in the art, it is not patentable. Efficacy need not be quantified in terms of numerical value to determine whether the product is efficacious because it is not possible to have a standard numerical value for efficacy for all products including pharmaceutical products.

Questions :

- (a) A new test of enhanced efficacy for claims that covers incremental changes to existing is a threshold to get patent. Explain.
- (b) Explain the meaning and scope of the term "Invention".
- (c) There are certain requirements to be fulfilled for an invention to get patent. Discuss.
- (d) Explain the significance of PCT.
- (e) Discuss the importance of patent search before filing a patent application.

(5 marks each)

#### Answer 1(a)

**A new test of enhanced efficacy for claims that covers incremental changes to existing is a threshold to get patent.**

"Enhanced efficacy", refers to the parameters for proving enhanced therapeutic efficacy. Especially in case of medicines it should receive a narrow and a strict interpretation. To support this interpretation, the following needs to be reckoned:

- (i) the explanation to section 3(d) of the Patents Act, 1970 which requires derivatives to "differ significantly in properties with regard to efficacy", so that not all advantageous and beneficial parameters would amount to enhancement of efficacy; and
- (ii) the main text of section 3(d) which states "enhancement of known efficacy". The new form of a known substance has to have significant advantageous and beneficial properties over known substance in order to pass the bar of enhanced therapeutic efficacy under section 3(d).

However, just because the word efficacy has to be given a strict interpretation under section 3(d) that



does not in any way mean that it bars all incremental inventions of chemical and pharmaceutical substances. Essentially section 3(d) provides a bar that incremental inventions of chemical and pharmaceutical substances need to pass in order to be patentable. 'Enhanced efficacy' involves not only an external patentability test of nonobviousness/ inventive step, but also another external patentability test of utility, i.e., enhanced utility over the prior art.

Thus, Section 3(d) is a confusing mix-up where a patent-eligibility provision involves two patentability tests (of non-obviousness and utility). Normally, the patent-eligibility examination should precede and the patentability examination should follow. But in the case of Section 3(d), the patentability examination is conducted right at the beginning and under the garb of a patent-eligibility examination. Section 3(d) of the Patents Act, 1970 may be construed as a refinement of patentability criteria to cater for "ever greening" – a specific problem inherent in pharmaceutical innovations. More specifically, the "enhanced efficacy" criterion can be seen as refinement of "non-obviousness" principles, i.e., most forms of existing pharmaceutical substances are deemed obvious, unless they demonstrate increased "efficacy."

At some level, section 3(d) could also be said to embody a utility test, i.e. unless the new form has significantly enhanced utility over and above what existed before in the art, it is not patentable. Efficacy need not be quantified in terms of numerical value to determine whether the product is efficacious because it is not possible to have a standard numerical value for efficacy for all products including pharmaceutical products.

### Answer 1(b)

According to Section 2(1)(j) of the Patents Act, 1970, "invention" means a new product or process involving an inventive step and capable of industrial application. Further as per Section 2(1)(ja) of the Act "Inventive step" is a feature of an invention that involves technical advancement 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. Section 2(1)(ac) of the Act provides that "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry.

In Invention, claims define the contours of rights, if and when a patent is granted for an invention. Claims shall define clearly the scope of the invention with conciseness, precision and accuracy, so that others may know the exact boundary into which they should not trespass.

Each claim is evaluated on its own merit and, therefore, if one of the claims is objected, it does not mean that the rest of the claims are invalid. It is therefore important to make claims on all aspects of the invention to ensure that the applicant gets the widest possible protection. Having many claims, where each claim has a different scope, allows the applicant to have a legal title to different aspects of the invention. A good drafting may begin with broad claims and develops towards claims that are narrower in scope.

Terms of the claim which confuse the scope of the invention, or claim that are not specific (e.g., any novel matter) should be avoided. However, in case of chemicals and especially pharmaceuticals, if the product for which patent protection is claimed is a new form of a known substance with known efficacy, then the subject product must pass, in addition to clauses (j) and (ja) of section 2(1), the test of enhanced efficacy as provided in section 3(d) read with its explanation.

In *Bishwanath Prasad Radhe Shyam v. Hindustan Metal Industries* (PTC (suppl) (1) 73 I (SC)), the Supreme Court held that the object of patent law is to encourage scientific research, new technology and industrial progress. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of monopoly, passes into the public domain.

The fundamental principle of patent law is that a patent is granted only for an invention which must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was, already known before the date of the patent.

### Answer 1(c)

A subject matter in order to get a patent under the Patents Act, 1970 has to pass the test of invention and patentability, both being distinct concepts. In order for a subject matter to pass the test of invention it must satisfy the following conditions as laid down under Section 2(1) (j) and Section 2(1)(ja) of the Act:

- i. It must be "new";
- ii. It must be "capable of being made or used in an industry"
- iii. It must have inventive step
  - a. entails technical advance over existing knowledge;
  - b. has an economic significance; and
  - c. makes the invention not obvious to a person skilled in the art.

As per Section 2(1)(l) of the Patents Act, 1970, "New invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art. Once a product or a process has passed the test of invention, it also has to pass the test of patentability.

A subject matter passes the test of patentability, if it has not been specifically excluded from patentability under the Act. Section 3 and Section 4 of the Act list down subject matters, which are not patentable.

The basic criteria for patentability of an invention in India are as follows:

- **Absolute novelty** – the invention should be new and not disclosed to the public anywhere in the world in any form or through any medium.
- **Inventive step/non-obviousness** – the invention should not be obvious to a person skilled in the art in the relevant area of technology and should involve an inventive feature which is distinctive in nature from the previous inventions made in the same field. Industrial application – the new product or process should be capable of being made or used in an industry and it should have economic significance.

### Answer 1(d)

#### *Significance of PCT*

The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui

Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply. Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The procedure under the PCT has numerous advantages for applications, patent offices and the general public which are as under:

- i. applicants have up to 18 months more than if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, appoint local patent agents in each foreign country, prepare the necessary translations and pay national fees;
- ii. applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase;
- iii. on the basis of the international search report and the written opinion, applicants can evaluate with reasonable probability the chances of their invention being patented;
- iv. applicants have the possibility, during the optional international preliminary examination, to amend the international application and thus put it in order before processing by the various patent offices;
- v. the search and examination work of patent offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to designated offices together with the international application;
- vi. applicants are able to access fast-track examination procedures in the national phase in Contracting States that have PCT-Patent Prosecution Highway (PCT-PPH) agreements or similar arrangements;
- vii. since each international application is published with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention; and
- viii. for applicants, international publication on PATENTSCOPE puts the world on notice of their applications, which can be an effective means of advertising and looking for potential licensees. Ultimately, the PCT: brings the world within reach; streamlines the process of fulfilling diverse formality requirements; postpones the major costs associated with international patent protection; provides a strong basis for patenting decisions; and is used by the world's major corporations, research institutions and universities in seeking international patent protection.



**Answer 1(e)***Importance of patent search before filing a patent application*

Filing a patent is an expensive process. Besides the official fees, the fees of the patent attorney or agent also need to be considered. Imagine spending money on trying to get a patent, only to find out that your invention was never patentable. A patent search avoids this situation. Besides financial reasons, there are several other compelling reasons for conducting a search before filing a patent application in India or globally. A patent search might help a person to improve his concept and he may assess the novelty and utility of his innovation by looking for related patents, and he can make any necessary adjustments.

Advantages of doing patent search:

1. A patentability assessment can help you understand whether your invention is patentable and if so, how far can it be protected. For example, computer programs, per se, are non-patentable but computer programs that are manifested in a useful way can be patented.
2. A patent search can help a company, researcher or an institution, around 30% of R&D budget, as the search will identify already existing patents, which in turn will help them not invest money developing that specific invention.
3. A patent search reveals the prior art in your field of invention. This will come in handy when drafting the patent specification. The knowledge of prior art will help you determine if your invention has any value addition over the prior arts. This will reduce the chances of rejection by the Patent Office.
4. If your invention has no value addition then understanding the prior art will help you refine your invention so as to make it patentable.
5. The patent search can also reveal certain companies who are keen on obtaining patents in the field of technology relating to your invention. In such cases, it gives you the lead on which companies to contact for licensing of your invention.
6. Ordinarily, every Applicant wants his patent to become commercial and therefore a source of finances. A patent search not only reveals inventions similar to your invention but also the commercial value of the invention in the economy. Based on this you can determine the commercial value of your invention.
7. A patent search helps in submitting a patent application for your work. You may validate whether your work is original by conducting a patent search to see what others in your sector are up to. This is the initial phase of submitting a patent application.
8. Another important reason for conducting a patent search is that while applying for a patent, the applicant needs to describe his entire invention. Even if his patent gets rejected, his application would be considered prior art, open for all to see. This means that competitors can get free access to his hard work. A patent search helps avoid such a situation. Even if your invention is not patentable according to law, you can use it as a trade secret and gain revenue.
9. A patent search may help one to go through and find an opportunity to improve the already existing.
10. Gain insights into future competitor product launches; determining which countries are being considered for manufacturing or marketing products.
11. Gain insights into future competitor product launches; determining which countries are being considered for manufacturing or marketing products.

**Question 2**

Manshing is running a photocopy shop which was established in the year 1997 in the name and style of Maheswari Photocopy Services (defendant in this case). The said shop is located at the premises of Indian Institute of Technology, Delhi. There are many students visiting this shop more frequently as the shop serves main source of course materials by way of xerox copies from various books both national and international published by different publishers. As such some Professors and Associate Professors of the said IIT creates course packs which contained excerpts from books written by other various authors of different publishing houses. The pages were xeroxed, bound and given to students at a nominal rate of Re. 0.50 paise per page.

Oxford University Press Cambridge University Press (UK), Taylor & Francis Group (UK), Cambridge University Press India Ltd. and Taylor & Francis Books India P. Ltd. came to know about this course pack, they sued the defendant for the infringement of Copyright for distributing copies of their published books without proper authorization. The plaintiffs instituted this suit for the relief of permanent injunction restraining the two defendants from infringing the copyright of the plaintiffs in their publication by photocopying reproduction and distribution of copies of plaintiffs' publication on a large scale and circulating the same and by sale of unauthorised compilations of substantial extracts from the plaintiffs publications by compiling them into course packs/anthologies for sale.

Maheswari Photocopy Services received support from academics, activists, and students alike in response to the law suit and several petitions were submitted to be impleaded as defendants including the Society for Promoting Educational Access and Knowledge (SPEAK) and the Association of Students for Equal Access to Knowledge (ASEAK).

A temporary injunction prohibiting defendant from selling the cloned course packages was issued by the Court. The defendant contended that no violations of copyright is committed by them as the reproduction is for educational reasons. They mentioned that Copyright specially in literary work is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creation. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public.

Questions :

- (a) Comment on the case with the help of decided cases.
- (b) What are the powers of Government of India to extent copyright to foreign works.
- (c) Software piracy has assumed enormous proportions in various jurisdictions, it has thrown up serious challenges. Discuss.
- (d) Besides traditional remedies the non-traditional form of remedies have assumed more popularity nowadays. Explain.
- (e) Copyright do not protect ideas but the particular expression of ideas. Explain.

(5 marks each)

**Answer 2(a)**

In this case both Indian Institute of Technology and Maheswari Photocopy Services were sued for the infringement of Copy Rights in the year 2012 by Oxford University Press Cambridge University Press (UK), Taylor & Francis Group (UK), Cambridge University Press India Ltd and Taylor & Francis Books India P. Ltd. for distributing copies of their published books without proper authorization.



The Plaintiffs instituted this suit for the relief of permanent injunction restraining the two defendants from infringing the copyright of the plaintiffs in their publication by photocopying reproduction and distribution of copies of plaintiffs' publication on a large scale and circulating the same and by sale of unauthorized compilations of substantial extracts from the plaintiffs publications by compiling them into course packs/anthologies for sale.

Maheswari Photocopy Services received a lot of support from academics, activists, and students alike in response to the law suit and several petitions were submitted to be impleaded as defendants including the Society for Promoting Educational Access and knowledge (SPEAK) and the Association of students for Equal Access to knowledge (ASEAK).

In 2012 a temporary injunction prohibiting Maheswari Photocopy Services from selling the cloned course packages was issued by the Delhi High Court. Additionally the Court ordered a Local Commissioner to visit the shop's location without warning and seize any allegedly infringing copies of the plaintiffs works that were produced thereafter after making an inventory of them.

The law suit was dismissed in 2016 and lifted the injunction, allowing Maheswari Photocopy Services to resume selling the course bundles. In that year a two judges bench overturned the earlier ruling and permitted the case trial to proceed, ruling that copyright laws are meant to balance public and private interests but in recent years, the public interest has been eroded due to lobbying.

In Delhi University Photocopy case, the Court held that Copyright specially in literary work is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creation. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public.

Exceptions within the law make provisions for the copying of chapters within books for the purpose of education. Section 52(1)(a), the 'fair use' exception, allows any fair dealing with a copyrighted work – literary, dramatic, musical or artistic – for the purpose of research and private study. Section 52(2)(i) allows the reproduction of any copyrighted work, during the course of education instruction.

Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public. It is hereby concluded that the action of the defendant No 2 Educational Institution making a master photocopy of the relevant portion (prescribed in the syllabus) of the books of the plaintiffs purchased by defendant No.2 Educational Institution and kept in its library and making further photocopies does not tantamount to copyright violation.

Under Indian Copyright Act, 1957 Section 52(1)(a) allows any fair use and dealing with a copyrighted matters like in a literary, dramatic, musical or artistic work. Such fair use, dealing and practice allows the scholars and pupils to make a Xerox copy of the required data from the books for the purpose of research and private study which are not easily available to general public or are that expensive in monetary aspect that just could not be purchased by middle class or a normal class people. In *Lenz v. Universal Music Corp.* case Stephanie Lenz has uploaded a video of her child dancing on the song LET'S GO CRAZY on Youtube. Universal Music Corp. sent YouTube a takedown notice pursuant to the Digital Millennium Copyright Act claiming that Lenz's video violated their copyright in the "Let's Go Crazy" song. Lenz claimed fair use of the copyrighted material and sued Universal for misrepresentation of a DMCA claim. In a decision rejecting a motion to dismiss the claim, the district court held that Universal must consider fair use when filing a takedown notice, but noted that to prevail a plaintiff would need to show bad faith by a rights holder. Section 52(1)(i) defines the exception of infringement of copyrighted materials where there is a reproduction of any literary, dramatic, musical or of any artistic work by :- By any teacher or pupil in the course of instruction, As part of the question to be answered in an examination In answers to such questions. The word 'instruction' in section 52 (1)(i) do not confine in a lecture room or classroom, thus the



scope of this provision is not limited to reproduction of a work by a teacher in the course of a lecture but also includes reproduction for the purpose of making and issuing course packs. The term 'teacher' in Section 52 (1)(i) is not limited to an individual teacher but includes the whole educational institution.

Copyright is a statutory right granted under the Copyright Act of 1957 and photocopying fragments from books and making it available to the students enrolled in university, clearly for educational purpose, did not amount to copyright infringement. The 'course packs' photocopied by the Service shop has immunity against the statutory right as an exception stated under Section 52. The court also held that 'reproduce the work' u/section- 14(a) (i) includes photocopy as well. Thus the supply of copies enjoys immunity. Copyright, especially in literary works, is thus not an inevitable, divine, or natural right that copyright confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public.

The photocopied course packs did not affect the market of the Copyrighted material as it was freely available in the Library of the university for the use of the students. Therefore the books did not face any competition. The purpose of copyright infringement outweighs the infringement itself. The test of fairness is qualitative and not quantitative. The course pack was provided only to the students with Universities ID and not to the general public. It did not count to be a copyright infringement because the book is made available to the students through library, which make them accessible to the copyrighted material and make copies of it for academic use without infringing copyright protection. Analysis of The Judgement. The judgement that circle arounds the Section 52 of the Copyright Act, 1957, permitting the reproduction of works through copying or photocopying as well for educational and academic purpose only is held legal.

The doctrine of Fair dealing, gives an exhaustive approach and anything not falling under that would directly amount to copyright infringement. The statutory interpretation of the case arises questions on how to determine the threshold of Fair dealing and if providing limitless use under this doctrine still keep the intention a bona fide one and not change to mala fide ? Analysing this question the court completely deviated from the universal four factor test of Fair use and constructed another one for itself.

The determinants used while testing the threshold of Fair Dealing are: purpose, nature, percentage of work and its effect on the market. The new interpretation of this doctrine narrowed down the protection granted under the copyright which can be easily override limitless under the veil of educational purposes. The academics including the teachers or professors to students are given the limitless power to use the copyrighted material without any limitation and to any extend until it serves the purpose.

The new balance of rights and exception in this judgement sounds absurd for various reasons. The limitless use of copyrighted material seems like a very grey area to decide where the learning use actually ends. Furthermore this interpretation makes very hard to understand the difference of bona fide and mala fide fair use of the copyrighted works.

The undefined line between this right and exception makes the purpose of copyright protection ab initio. The fact that the very protection does exists but is subsequently suspended against the right of fair users. The judges proposes the absence of absolute copyright protection and that this protection is merely a statutory right. Implying there's no infringement as the right is not absolute.

**Answer 2(b)**

The Copyright Act applies only to works first published in India, irrespective of the nationality of the author. However, Section 40 of the Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country.

The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that too on a reciprocal basis, i.e., the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright in India to the foreign work, will not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

**Answer 2(c)**

*Infringement of copy rights vested in Software*

**Software Piracy:** Software piracy is the act of using, sharing, or reproducing a software product without the express consent of its creator, Software piracy is theft, the taking of another person's original concept and work.

**Software counterfeiting:** The unlicensed and unauthorized copying and sale of software in a configuration that is almost identical to the original product.

**End User Piracy:** End users (including residential and business users) who are running unlicensed software on their computers or who have installed more copies of the programme than what is allowed by their licence agreements, such as a business with one licence who has five PCs running the software. Under licensing is a type of end user piracy that the Business Software Alliance takes very seriously (BSA).

**Pirated Hard desk:** Before selling a PC, computer sellers pre-install illicit copies of software. Some vendors install a single lawfully obtained copy on numerous machines. Normally these computers are offered for sale without any kind of licence information or discs.

**Internet Piracy:** Software is made available for download on the internet by third parties either for free or at a cost. Pirates frequently utilise the internet for advertising purpose to entice customers.

**Software piracy, involving unauthorized copying and use of software, poses significant global challenges:**

**Economic Impact**

- Revenue Loss: Billions lost annually, impacting innovation and job security.

**Legal Challenges**

- Enforcement: Varying effectiveness of laws and enforcement across regions.
- Jurisdictional Issues: Difficulty in legal actions due to global distribution.

**Technological Challenges**

- Detection: Difficulty in detecting and preventing piracy.
- Cybersecurity: Risks of malware in pirated software.

**Social and Ethical Considerations**

- Cultural Acceptance: Varying levels of social acceptance and necessity.
- Ethical Issues: Undermines intellectual property rights and fairness.

**International Cooperation**

- Global Standards: Need for harmonized laws and practices.
- Collaborative Efforts: Governments and organizations must work together.

**Countermeasures**

- Legal Actions: Lawsuits and criminal charges as deterrents.
- Technological Solutions: Advanced DRM, licensing, and SaaS models.
- Education and Awareness: Informing about risks and legal issues.

Addressing software piracy requires robust legal frameworks, technological advancements, and international collaboration.

**Answer 2(d)**

Besides traditional remedies the non-traditional forms of remedies like, Anton Piller Order, have assumed more popularity now-a-days. The first use of such order was made by Templeman J, in *EMI v. Pandit*, (1975) 1 ALL E R 418, to protect the offending evidences from being destroyed. However, it was only after the case of *Anton Piller KG v. Manufacturing Process*, (1976) 1 ALL ER 779.418, that it gained recognition and popularity.

The statutes governing intellectual property in India like Copyright Act, 1957, Trade Marks Act, 1999; Patents Act, 1970 (as amended), Designs Act, 2000 etc. stipulate the rights that are available to the intellectual property owner, besides containing a sound mechanism to prevent the infringement of intellectual property rights.

The remedies available for protection of IPR are broadly classified into civil and criminal remedies. The orders in line of Anton Piller order are made under the head of civil remedies. The application of Anton Piller order in India is still in a nascent stage. There are not many case-laws debating over the aspects of Anton Piller order. One of the earliest case that dealt with the concept of Anton Piller order, though cursorily was *National Garments v. National Apparels*, (1990) PTC 98. The purpose of Anton Piller order is the preservation of evidences. The application of Anton Piller order in India is still in nascent stage and lot many questions are still left unanswered.

**Answer 2(e)**

Section 13 of the Copyright Act provides that copyright shall subsist throughout India in certain classes of works which are enumerated in the section. Copyright subsists throughout India in the following classes of works: – Original literary, dramatic, musical and artistic works; – Cinematograph films; and – Sound recordings.

In *Macmillan and Company Limited v. K. and J. Cooper*, AIR 1924 PC 75, it was held that the word 'original' does not mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thought; and in the case of literary work, with the expression of thought in print or writing.

The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work-that it should originate from the author.

What is the precise amount of the knowledge, labour, judgement or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it within the meaning of the Copyright Act cannot be defined in precise terms. In every case it must depend largely on the special facts of that case, and must in each case be very much a question of degree.



In *Camlin Private Limited v. National Pencil Industries*, (2002) Del, Delhi High Court held that copyright subsists only in an original literary work. But it is not necessary that the work should be the expression of the original or inventive thought, for Copyright Act are not concerned with the originality of ideas, but with the expression of thought, and in the case of a literary work, with the expression of thought in print or writing. Originality for the purpose of copyright law relates to the expression of thought, but such expression need not be original or novel. The essential requirement is that the work must not be copied from another work but must originate from the author.

### Question 3

A registrable trademark must be able to differentiate between the products or services of one person and those of another. In the age of technology the proprietor of a registered trade mark has to take some safeguards to protect his rights.

A domain name is a unique name that identifies a website. It was intended to provide specific address on the internet. The internet has however developed from a mere means of communication to a mode of carrying on commercial activity. Domain names are more than just addresses, since they can be selected by the "addressee" and are usually closely associated with a particular service or product. The value of domain names cannot be under estimated. Recent statistics indicate that most expensive domain names [Cars.com) and (Voice.com) were sold at a price of \$872 million and as well as \$30 million in 2019. It is common-place for traders to have their electronic mail address and use the same in respect of their goods/services as trade name. In other words, the domain name is being used as a trade name or trademark. The Registrar subject to the usual criteria of the Act, permits domain names to be registered as trademarks if otherwise registerable. Elements of the domain name such as ".com" or ".co.in" are considered to be totally non-distinctive, much in the same way as "Ltd" and "Plc" :

Questions :

- (a) "The trademark law has been stretched to the extent that it may cover the arena of internet. Explain with the help of decided cases.
- (b) The Supreme Court pointed out that "where common marks are included in the common trademarks, more regard is to be paid to the parts not common and the proper course is to look at the marks as a whole". Discuss.
- (c) A trademark shall not be refused registration, if the mark has in fact acquired a distinctive character. Explain.
- (d) How unregistered trademarks are protected under Trademark Act ?
- (e) Registrar may permit the registration of trademarks which are identical or similar in respect of the same or similar goods or services, irrespective of the fact that any such trademark is already registered or not. Explain.

(5 marks each)

### Answer 3(a)

"The trademark law has been stretched to the extent that it may cover the arena of internet and domain names may be protected just like the trademarks. The trade mark law in India is a 'first-to-file' system that requires no evidence of prior use of the mark. A trademark application can be filed on a 'proposed to be used or intent-to-use' basis or based on use of the mark.

The term 'use' under the Trade Marks Act, 1999 has acquired a broad meaning and does not necessarily mean the physical presence of the goods in India. Presence of the trade mark on the

Internet and publication in international magazines and journals having circulation in India are also considered as use in India.

Cybersquatting is the act of registering a domain, name that is same as, or confusingly similar to the trademark of another with the intention of selling (at a profit) the domain name to the trademark owner. As long as a cyber squatter owns the domain name, the trade mark owner cannot register his own trademark as a domain name.

Thereby, a cyber squatter breaches the right of the trade mark owner to utilize his own trademark, it is a relevant to note that there is nothing wrong with the practice of reserving a domain because name. Often cyber squatters register words or phrases they hope that will someday be sought after by new companies or new businesses. Such speculative domain name registration (read, speculative cybersquatting) is very much legitimate.

In India, the scope of trademark law has similarly expanded to address issues arising from the use of trademarks on the internet. Several landmark cases illustrate how Indian courts have adapted trademark principles to the digital realm, covering domain names, keyword advertising, and online brand protection.

#### 1. Tata Sons Ltd. v. Manu Kosuri & Ors. (2001)

- Background: Tata Sons Ltd., owner of the trademark "TATA," sued Manu Kosuri for registering domain names like "tatainfotech.com," "tatanel.com," etc.
- Decision: The Delhi High Court held that the defendant's registration of domain names containing "TATA" was in bad faith and amounted to trademark infringement and passing off. The court recognized that domain names are crucial in the digital age and should be protected under trademark law.

#### 2. Yahoo!, Inc. v. Akash Arora & Anr. (1999)

- Background: Yahoo! Inc. filed a case against Akash Arora, who had registered the domain name "yahooindia.com."
- Decision: The Delhi High Court ruled in favor of Yahoo!, stating that the use of "yahooindia.com" was likely to cause confusion among internet users and constituted passing off. The court emphasized the importance of protecting well-known trademarks on the internet.

#### 3. Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd. (2004)

- Background: Satyam Infoway, owner of the "Sify" trademark, sued Sifynet Solutions for using the domain names "siffynet.net" and "siffynet.com."
- Decision: The Supreme Court of India ruled that the use of similar domain names by Sifynet Solutions constituted passing off. The court held that domain names have evolved to serve not only as addresses but also as identifiers akin to trademarks, deserving protection under trademark law.

#### 4. Tata Sons Ltd. v. Mr. Hameed and Anr. (2008)

- Background: Tata Sons filed a suit against Mr. Hameed, who had registered domain names like "tatagroups.com."
- Decision: The Delhi High Court ordered the transfer of the domain names to Tata Sons, reiterating that unauthorized use of a famous trademark in a domain name constitutes infringement and passing off. The court acknowledged the need to protect trademarks in cyberspace to prevent misuse and confusion.

**5. Consim Info Pvt. Ltd. v. Google India Pvt. Ltd. & Ors. (2010)**

- Background: Consim Info, owner of the trademark "BharatMatrimony," sued Google and competitors for using "BharatMatrimony" as a keyword in Google AdWords.
- Decision: The Madras High Court initially granted an interim injunction restraining competitors from using "BharatMatrimony" as a keyword. However, it later vacated the injunction, suggesting that the issue of keyword advertising and trademark infringement required deeper examination. The case highlighted the complexities of applying traditional trademark principles to modern digital advertising practices.

**Implications and Broader Impact**

These cases demonstrate how Indian courts have adapted trademark law to the internet, focusing on:

1. Domain Names: Recognizing domain names as crucial business identifiers and protecting them from misuse.
2. Passing Off: Extending the principle of passing off to prevent confusion and protect brand integrity online.
3. Keyword Advertising: Addressing the challenges posed by online advertising practices and the use of trademarks as keywords.

In summary, Indian courts have progressively extended trademark protection to cover the digital arena, ensuring that trademarks remain effective in indicating the origin of goods and services and preventing consumer confusion in the online environment.

**Answer 3(b)**

In Dyechem Ltd. v. Cadbury (India) Ltd. the Supreme Court seems to have departed from the principles laid down by the Court in earlier cases. It was observed that 'where common marks are included in the common trademarks, more regard is to be paid to the parts not common and the proper course is to look at the marks as a whole but at the same time not to disregard the parts which are common'.

Commenting on these observations the Supreme Court held in the instant case that the principle applied in Dyechem was not correct for the reason that the 'dissimilarities have to be more important than the phonetic similarity in the use of the words Pkinnik and Picnic.

The Court disagreed with the view that 'the principle of phonetic similarity has to be jettisoned when the manner in which the competing words are written is different and the conclusion so arrived at is clearly contrary to the binding precedent of this court in Amritdhara case where the phonetic similarity was applied by judging the two competing marks'. The Court held that the decision in Dyechem did not lay down the law correctly.

**Answer 3(c)**

Section 9(1) to (3) of the Act lists the absolute grounds for refusal of registration. Section 9(1) prohibits the registration of those trademarks- (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person; (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or services; or (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practice of the trade.



However, a trade mark shall not be refused registration, if the mark has in fact acquired a distinctive character as a result of the use made of it or is a well known trade mark before the date of application for registration.

In *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd.*, AIR 2002 SC 117, the Supreme Court observed. "the name has acquired a distinctiveness and a secondary meaning in the business or trade circles. People have come associate the name "Mahindra" with a certain standard of goods and services.

Any attempt by another person to use the name in business and trade circles is likely to and in probability will create an impression of a connection with the plaintiffs' group of companies. Such user may also affect the plaintiff prejudicially in its business and trading activities.

### Answer 3(d)

The question in *Whirlpool* case was whether or not the respondents, who are not the registered owners of the "whirlpool" trademark regarding washing machines, can continue their action for passing off against the registered proprietor of a trademark?

Under Section 27(2) of Trade Marks Act, 1999 an action for passing off against registered user of trade mark is maintainable at the instance of a prior user of the same, similar or identical mark. Since such a remedy is available against the registered user of a trade mark, an interim injunction restraining him to use the mark can also be granted to make the remedy effective.

The Supreme Court in *Whirlpool Corporation* observed that the trademark was previous to the appellants since 1937 that too in 65 countries where they have been in business. Whereas appellants had just applied for the trademark in 1986. The concept and principle on which passing off action is grounded is that a man is not to sell his own goods under the pretence that they are the goods of another man.

Applying this principle and the reasons already stated we have *prima facie* come to the conclusion that the appellants have acquired reputation & goodwill in respect of its goods bearing trade mark 'WHIRLPOOL' in this country. Even though the appellants have no connection with the respondents, they are using the mark 'WHIRLPOOL' for their products.

*Prima facie* it appears to us that buyers are likely to be deceived or confused as to the origin and source of the goods. They will believe that the product is manufactured by the respondents, an impression not founded in truth. The limitation will pass off as genuine. No one can be permitted to trade by deceiving or misleading the purchasers or to unauthorisedly divert to itself the reputation and goodwill of others.

### Answer 3(e)

To all the relative grounds of refusal, the Trade Marks Act, 1999 allows one exception in Section 12. As per Section 12 in the case of honest concurrent use, or of other special circumstances which make it proper so to do, the Registrar may permit the registration of trademarks which are identical or similar in respect of the same or similar goods or services, irrespective of the fact that any such trade mark is already registered or not.

This is done so if in the opinion of the Registrar it is proper so to do in favour of more than one proprietor of trade mark. In such an event the Registrar is empowered to impose such conditions and limitations, as he deems fit. The provisions establish the superiority of trade mark rights acquired by use.

**Question 4**

Tea industry is India's oldest industry in the organised manufacturing sector. The history of Darjeeling tea dates back to the 1840's, when India was a British colony. Before the arrival of the British, the forests of the region were known as Darjeeling today was inhabited by the Lepcha tribes. In 1828, while visiting this region located in the backdrop of the snow- clad Himalayan range, a young British called Captain Lyoyd discovered the possibility of converting the region into a hill station or a sanitarium. In 1839, Darjeeling was handed over to Dr. A. Campbell, a civil surgeon, who got transferred from Kathmandu to Darjeeling to become the first Superintendent of the Darjeeling district, a position which he held for the next twenty two years. In 1841, Dr. Campbell brought the seeds of China variety of tea from Kumaon hills of North India and planted them near his residence in his Beech wood garden in Darjeeling, 2134 meters above the mean sea level. Seeing the success of Dr. Campbell's experimental tea nursery, the British Government decided to put out tea nurseries in the region in the year 1847. Even after the Indian independence from British rule in 1947, the British ownership continued in many tea gardens of Darjeeling. By the end of the 1970's, most of the tea gardens of Darjeeling were in the hands of Indian owners.

It supplies around 30% of world's Favourite hot drink. India is not only the world's largest consumer of Tea but also exports sizeable portion of its production. Tea leaves are grown in different hill areas and among them Darjeeling Tea offers distinctive characteristics with regard to its quality and flavour. As such Darjeeling Tea has global reputation for more than a century. There are two main reasons for the same and they are exceptional and distinctive taste due to geographical origin and processing. Darjeeling tea is cultivated, grown and produced in tea gardens in a well known geographical area — Darjeeling district of West Bengal State for over one and half centuries. An adequate legal protection is necessary for the protection of legitimate right holders of Darjeeling tea from the dishonest business practices of various commercial entities.

Questions :

- (a) Discuss how the rights of legitimate right holders of Darjeeling tea can be protected.
- (b) Discuss prohibition of Registration of certain layout designs under Layout – Designs of Integrated Circuits of IPR.
- (c) What are the Farmers' Rights under the Act for Protection of Plant Varities ?
- (d) What are the advantages and disadvantages of 'Trade Secret' ?
- (e) Discuss the interrelations between biodiversity and Traditional knowledge.

(5 marks each)

**Answer 4(a)**

The term "Geographical indication" is defined in section 2(1)(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 as: "Geographical Indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be." In the case of Darjeeling Tea, the key features which make it eligible to be granted registration and thus protected under the GI Act, 1999 are:

- i) It offers distinctive characteristics of quality and flavor.

- ii) It has a global reputation for more than a century.
- iii) It has been cultivated, grown and produced in tea gardens in a well-known geographical area – the Darjeeling district in the Indian state of West Bengal for over one and a half centuries.
- iv) It has the tea gardens which are located in the district of Darjeeling at elevations of over 2000 metres above sea level.

#### **Answer 4(b)**

Prohibition of registration of certain lay outs designs.

As per section 7 of the Act a layout design – Which is not original – Which has been commercially exploited anywhere in India or in a convention country – Which is not inherently distinctive – Which is not inherently capable of being distinguishable from any other registered lay out design, shall not be registered as a layout design.

Provided that a layout design which has been commercially exploited for not more than two years from the date on which the application for its registration has been filed either in India or in a convention country shall be treated as not having been commercially exploited for the purpose of this sub section.

A lay out design shall be considered to be original if it is the result of its creator's own intellectual efforts and is not commonly known to the creators of lay out design and manufacturers of semi-conductor integrated circuits at the time of its creation. Where an original layout design has been created in execution of a commission or a contract of employment the right of registration to such layout design under this Act shall belong to the person who commissioned the work or to the employer.

#### **Answer 4(c)**

##### **Provisions regarding Farmers' Rights under Plant varieties and Farmers Rights Act, 2001**

- i) A farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act.
- ii) The farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (A) of subsection (I) of section 18.
- iii) A farmer who is engaged in the conservation of genetic resources of land races and wild relative of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund. Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act.
- iv) A farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act. Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act. *Explanation – For the purpose of clause (iv) “branded seed” means any seed put in a package or any other container or labelled in a manner indicating that such seed is of a variety protected under this Act.*

Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization of farmers as the case may be, the



expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions the farmer or the group of farmers as the case may be may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of variety and after providing opportunity to file an opposition in the prescribed manner and after opportunities to the part is may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers as the case may be.

#### **Answer 4(d)**

The advantages of 'Trade Secret' are as under:

- trade secret protection is not limited in time (patents last in general for up to 20 years). It may continue indefinitely as long as the secret is not revealed to the public;
- trade secrets involve no registration costs (though keeping the information confidential may entail high costs in certain cases);
- trade secrets have immediate effect; and
- trade secret protection does not require compliance with formalities or public disclosure.

The disadvantages of 'Trade Secret' are as under:

- Reverse Engineering- Others may be able to inspect and dissect it. Trade secret protection does not provide the exclusive right to exclude third parties from making commercial use of it. Only patents and utility models can provide this type of protection.
- A trade secret may be patented by someone else who developed the relevant information by legitimate means, for example, inventions developed independently by others.
- Once the secret is made public, anyone may have access to it and use it at will. The more people know about the trade secret, the more difficult it will be to keep it secret. Trade secret protection is effective only against illicit acquisition, use or disclosure of the confidential information.
- A trade secret is more difficult to enforce than a patent. Often, it is quite difficult to prove the violation of trade secrets. The level of protection granted to trade secrets varies significantly from country to country, but is generally considered weak, particularly when compared with the protection granted by a patent.

#### **Answer 4(e)**

##### **Interrelation between biodiversity and traditional knowledge.**

Biological resources and related traditional knowledge are often of great commercial value to business corporations in developing commercial products. Corporations often want to acquire IPRs related to biological resources and traditional knowledge as a way of maximizing their income generation.

Traditional communities is a broad term that refers to communities whose way of life is largely shaped by generations of their ancestors. They are distinct from urban or fast changing societies and life styles, maintaining a shared body of cultural, environmental, economic and family customs that are based on traditional occupations, knowledge, values and social hierarchies.

Traditional community livelihoods are usually based on natural resources. Traditional communities could include farming or fishing communities, forest dwelling communities, and indigenous people nomadic communities. Traditional knowledge associated with biological resources is an intangible component of the resources itself. Traditional knowledge has the potential of being translated into commercial benefits by providing leads for development of useful products and process.

PP – IPRL&P – JUNE 2024

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The valuable leads provided by Traditional knowledge save time, money and investment of modern bio tech industries into any research and product and product development. Hence a share of benefits must accrue to creators and holders of Traditional knowledge. Only new knowledge can be patented. Patents only apply to inventions and not to existing knowledge.

But if the knowledge is held in oral form then many IPR regimes do not consider oral knowledge as proof of previous documentation and therefore such knowledge is in danger of being patented. Biological resources and related traditional knowledge are often of great commercial value to business corporations in developing commercial products. Corporations often want to acquire IPRs related to biological resources and traditional knowledge as a way of maximizing their income generation.

Lecture Kart

Lecture Kart

## ARTIFICIAL INTELLIGENCE, DATA ANALYTICS AND CYBER SECURITY- LAWS & PRACTICE

### GROUP 1 PAPER 4.4

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

#### Question 1

##### **Deposit Insurance and Credit Guarantee Corporation-DICGC**

Deposit Insurance and Credit Guarantee Corporation (DICGC) is a wholly-owned subsidiary of the Reserve Bank of India (RBI). It provides deposit insurance that works as a protection cover for bank deposit holders when the bank fails to pay its depositors.

The functions of the DICGC are governed by the provisions of 'The Deposit Insurance and Credit Guarantee Corporation Act, 1961' (DICGC Act) and 'The Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961' framed by the Reserve Bank of India in exercise of the powers conferred by sub-section (3) of Section 50 of the said Act.

The authorized capital of the Corporation is ₹ 50 crores, which is fully issued and subscribed by the Reserve Bank of India (RBI). 'The management of the Corporation vests with its Board of Directors, of which a Deputy Governor of the RBI is the Chairman. As per the DICGC Act, the Board shall consist of, besides the Chairman, (i) one Officer (normally in the rank of Executive Director) of the RBI, (ii) one Officer from the Central Government, (iii) five Directors nominated by the Central Government in consultation with the RBI, three of whom are persons having special knowledge of commercial banking, insurance, commerce, industry or finance and two of whom shall be persons having special knowledge of, or experience in cooperative banking or co-operative movement and none of the directors should be an employee of the Central Government, or the RBI or the Corporation or a director or an employee of a banking company or a co-operative bank, or otherwise actively connected with a banking company or a co-operative bank, and (iv) four Directors, nominated by the Central Government in consultation with the RBI, having special knowledge or practical experience in respect of accountancy, agriculture and rural economy, banking, co-operation, economics, finance, law or small scale industry or any other matter which may be considered to be useful to the Corporation.

The Head Office of the Corporation is at Mumbai. An Executive Director is in overall charge of its day-to-day operations. It has four Departments, viz. Accounts, Deposit Insurance, Credit Guarantee and Administration, under the supervision of other Senior Officers. The Corporation had four branches, situated at Kolkata, Chennai, Nagpur and New Delhi. Out of these, the branches situated at Kolkata, Chennai and Nagpur were closed with effect from November 30, 2000, since almost all the banks have opted out of the Credit Guarantee Schemes, and most of the pending claims have been settled. While major items of work of these three branches were taken over by the Head Office of the Corporation, some residual items of work are vested with the DICGC Cells specially created in the Rural Planning & Credit Department of the Reserve Bank of India at the respective centres.

The preamble of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 states that it is an Act to provide for the establishment of a corporation for the purpose of insurance of deposits



and guaranteeing of credit facilities and for other matters connected therewith or incidental thereto.

The Agency insures all kinds of deposit accounts of a bank, such as savings, current, recurring, and fixed deposits up to a limit of ₹ 5 lakh per account holder per bank. In case an individual's deposit amount exceeds ₹ 5 lakh in a single bank, only ₹ 5 lakh, including the principal and interest, will be paid by DICGC if the bank becomes bankrupt.

DICGC protects depositors' money kept in all Commercial and Foreign Banks Located in India; Central, State, and Urban Co-operative Banks; Regional Rural Banks; and Local Banks, provided that the bank has opted for DICGC cover.

The agency's operations are performed as per The Deposit Insurance and Credit Guarantee Corporation Act, 1961 and The Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961, framed by RBI under the provisions of sub-section (3) of Section 50 of the act. The act states that the establishment of this corporation is with the aim of insuring deposits' guaranteeing credit facilities, and other related matters.

The following account are not covered under DICGC :

- Deposits of state or Central governments.
- Deposits from Foreign Governments.
- State land development banks depositing with the state co-operative bank.
- Inter-bank deposits.
- Funds that are due on account of India and deposits received outside India.
- Funds exempted by the corporation with the previous approval from RBI.

When banks register with DICGC, the agency grants a printed certificate to the bank that displays information regarding the protection offered by DICGC to depositors of the insured bank.

On the basis of the above facts, answer the following questions :

- (a) Which banks are insured by the DICGC ? When is DICGC liable to Pay ?
- (b) Can the DICGC withdraw deposit insurance coverage from any bank ?
- (c) Does the DICGC insure just the principal on an account or both principal and accrued interest ? Whether the DICGC directly deal with the depositors of failed banks ?
- (d) Can deposit insurance be increased by depositing funds into several different accounts all at the same bank ? Who pays the cost of deposits insurance ? Whether the bank can deduct the amount of dues payable by the depositor ?

(5 marks each)

### Question 1

TechCorp is a leading player in the IT industry, providing a range of software solutions and digital services to clients worldwide, recognized the need to bolster its cybersecurity defences and comply with the provisions of the IT Act 2000. Facing challenges posed by manual audit procedures and the dynamic nature of cyber threats, TechCorp partnered with a prominent AI solutions provider specializing in cybersecurity. Together, they deployed an AI-driven security audit platform tailored to the organization's infrastructure and regulatory requirements. The platform utilized machine learning algorithms to analyse network traffic, identify anomalous behavior, and detect potential security breaches in real-time. Additionally, NLP capabilities enabled the platform to interpret

regulatory texts, extract relevant compliance mandates from the IT Act 2000, and align audit findings with legal requirements.

TechCorp encounters several challenges in ensuring compliance with relevant cybersecurity regulations. The cybersecurity legal framework is intricate, with multiple regulations and standards to adhere to, including industry-specific guidelines and international norms. The company must adapt its cybersecurity practices to mitigate emerging cyber threats, such as ransomware attacks, data breaches, and insider threats. Allocating sufficient resources, including budget, personnel, and technology, poses a challenge for TechCorp to implement robust cyber security measures effectively.

To address these challenges and enhance cyber security compliance, TechCorp conducting a risk assessment thorough assessment of cyber security risks and vulnerabilities across the organization's digital infrastructure, including networks, systems, and applications. Engaging legal experts to conduct a comprehensive review of cyber security-related laws, regulations, and industry standards applicable to TechCorp's operations, identifying gaps and areas for improvement.

TechCorp uses AI-powered audit platform, which can detect the threat automatically by continuously monitored network activities and system logs to identify suspicious patterns indicative of cyber threats, such as malware infections, unauthorized access attempts, and data exfiltration. Through semantic analysis and regulatory mapping algorithms, the platform correlated audit findings with specific provisions of the IT Act 2000, facilitating regulatory compliance assessments and audit reporting.

Deploying robust security controls and technologies, such as multi-factor authentication, and intrusion detection systems, to fortify the company's cyber defences and mitigate potential threats 'TechCorp organizing cyber security training sessions and awareness campaigns to educate employees about best practices, security protocols, and their roles in safeguarding sensitive information.

By proactively addressing cyber security challenges and enhancing compliance efforts. TechCorp achieves the strengthened cyber security posture enables the company to better withstand cyber threats and minimize the impact of potential security incidents. Demonstrating a commitment to cyber security compliance fosters trust among customers, partners, and stakeholders, enhancing the company's reputation and competitive advantage in the market.

In an increasingly digitized and interconnected business environment, cyber security compliance is imperative for organizations to safeguard their assets, protect customer data, and mitigate risks effectively. By embracing a proactive approach to cyber security assessment and compliance, TechCorp demonstrates its commitment to maintaining the highest standards of security and resilience in the face of evolving cyber threats and regulatory requirements.

In the above case scenario, answer the following questions :

- (a) The use of Artificial Intelligence is increasing in the field of cyber security day by day. Give any five benefits of Artificial Intelligence in cyber security.
- (b) For TechCorp, what are security errors that users generally commit and steal sensitive information ? Also advice the solution to these challenges.
- (c) TechCorp organizes a training on IT Act, 2000 to sensitize their employees for disclosure of information and for data protection and privacy. State the related sections corresponding to these penalties.
- (d) State any five points that need to be followed to prevent data loss prior to disclosure to forensic experts.

- (e) Security audits are often used to determine compliance with regulations such as Information Technology Act, 2000. Elucidate the statement with reference to significance of Security Audit.

(5 marks each)

### Answer 1(a)

Benefits of Artificial Intelligence (AI) in Cyber Security:

- (i) *Threat Assessment*: Threats are identified using conventional security techniques like signatures, this method may work well for risks that have already been encountered, but it is ineffective for hazards that haven't yet been discovered. Around ninety per cent of attacks may be distinguished using signature technique. AI can boost recognition percentages up to ninety-five, but one will experience a huge data of "false-positives" if someone replaces traditional techniques with it. The optimal method integrates traditional methods with AI. It could increase the location rate up to hundred per cent and reduce false positives. By combining some behavior assessment techniques, institutions can additionally employ AI to enhance the risk-chasing approach.
- (ii) *Improvements in Threat Detection*: Significantly better detection systems rates could well be obtained by combining conventional security mechanisms (i.e. utilizing the database of all recorded security concerns till date) and employing automation to identify new risks.
- (iii) *Detecting Frauds*: Fraudulent purchases and actions may be recognized and stopped in a timely manner by seeing patterns and identifying breaches from the expected baseline behavior. "Anomaly detection" is one of the most well-known uses of machine learning since it is a commonly used technique.
- (iv) *Detecting Malwares*: In most cases, hackers deliberately design malwares, which once made, automates the creation of successive version that evade detection. Machine learning techniques are used to improve traditional signature-based malware identification algorithms in order to identify and stop the transmission of certain possible malware copies and variations.
- (v) *Protection of Passwords*: Passwords have long been one of the privacy concerns of organizations. In fact, passwords are usually the primary connection involving our identities and the conduct of online fraudsters. Although biometric authentication has been considered a viable answer, it's not currently the easiest practical answer to apply in this case. With the use of AI, it might change over a period of time. Developers are implementing AI to strengthen authentication process and get rid of any flaws. A good illustration of this is Apple's face identification software. This technique, called 'Face ID', uses infrared sensors that detect a user's facial characteristics. The Apple AI algorithm then develops a complex representation of the user's face to aid in the identification of significant resemblance.
- (vi) *Secure Network Automation*: The creation of security policies and organizational network structure are two fundamental elements of cybersecurity. Admittedly, these demand a great deal of effort and attention from people to attain and manage

### Answer 1(b)

Some of the security errors that users generally commit and steal sensitive information are as follows:

- (i) Using weak password or store it incorrectly
- (ii) Using outdated Softwares



- (iii) Careless Handling of Personal Data
- (iv) Granting Anauthorised Access
- (v) Little to No Awareness of Social Engineering

Accordingly, TechCorp for security should use a technology and training-based strategy to prevent cyber- attacks.

Some examples of security controls are integrated strategy, including multi-factor identification, email gateways, reputable antivirus software, employee training, and others, to prevent such social engineering attacks.

### Answer 1(c)

The important provisions under the Information Technology Act, 2000 (IT Act, 2000) for data protection and privacy mainly include Section 43A, Section 72 and Section 72A.

Section 43A of this Act directs that all body corporates, which are in possession of data and information of their consumers in their computer source, will implement 'reasonable security practices to prevent the unauthorized access to the personal data of their consumers. This section further entails that failure to protect the sensitive personal data of the individuals during the processing period by the company will make company liable to compensate the aggrieved person, whose personal data is so compromised.

The penalty under Section 72 of IT Act, 2000 for the disclosure of information was restricted only to those who are legally authorized to secure access to an electronic record and document under the Act, and hence Section 72-A has been incorporated in 14<sup>th</sup> (Amendment) Act, 2005, which provides liabilities of intermediaries and other persons for breach of privacy and confidentiality under lawful contract. Section 72-A reads as, 'save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract; has secured access to any material containing personal information about another person; with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain; discloses; without the consent of the person concerned, or in breach of a lawful contract; such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.

Apart from Sections 43A and 72A, there are some other provisions as well which though not specifically but in one way or other tackle the challenges of data protection and data privacy. The provisions are:

- (i) Section 66 - Computer Related Offences.
- (ii) Section 66A - Punishment for sending offensive messages through communication service, etc.
- (iii) Section 66B - Punishment for dishonestly receiving stolen computer resource or communication device.
- (iv) Section 66C - Punishment for identity theft.
- (v) Section 66D - Punishment for cheating by personation by using computer resource.
- (vi) Section 66E - Punishment for violation of privacy.
- (vii) Section 66F - Punishment for cyber terrorism.
- (viii) Section 67 - Punishment for publishing or transmitting obscene material in electronic form.

- (ix) Section 67A - Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form.
- (x) Section 67B - Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.
- (xi) Section 67C - Preservation and Retention of information by intermediaries.
- (xii) Section 69 - Power to issue directions for interception or monitoring or decryption of any information through any computer resource.
- (xiii) Section 69A - Power to issue directions for blocking for public access of any information through any computer resource.
- (xiv) Section 69B - Power to authorize to monitor and collect traffic data or information through any computer resource for cyber security.
- (xv) Section 79 - Exemption from liability of intermediary in certain cases.
- (xvi) Section 84A - Modes or methods for encryption.
- (xvii) Section 84B - Punishment for abetment of offences.
- (xviii) Section 84C - Punishment for attempt to commit offences

**Answer 1(d)**

Following are the critical steps that need to be followed to prevent loss of data before bringing to the forensic experts. Time is highly important in preserving digital evidence.

- (i) *Do not change the current state of the device:* If the device is OFF, it must be kept OFF and if the device is ON, it must be kept ON. Call a forensics expert before doing anything.
- (ii) *Power down the device:* In the case of mobile phones, if it is not charged, do not charge it. In case, the mobile phone is ON power it down to prevent any data wiping or data overwriting due to automatic booting.
- (iii) *Do not leave the device in an open area or unsecured place:* Ensure that the device is not left unattended in an open area or unsecured area. You need to document things like- where the device is, who has access to the device, and when it is move.
- (iv) *Do not plug any external storage media in the device:* Memory cards, USB thumb drives, or any other storage media that you might have, should not be plugged into the device.
- (v) *Do not copy anything to or from the device:* Copying anything to or from the device will cause changes in the slack space of the memory.
- (vi) *Take a picture of the piece of the evidence:* Ensure to take the picture of the evidence from all the sides. If it is a mobile phone, capture pictures from all the sides, to ensure the device has not tampered till the time forensic experts arrive.
- (vii) *Make sure you know the PIN/ Password Pattern of the device:* It is very important for you to know the login credentials of the device and share it with the forensic experts, for them to carry their job seamlessly.
- (viii) *Do not open anything like pictures, applications, or files on the device:* Opening any application, file, or picture on the device may cause losing the data or memory being overwritten.
- (ix) *Do not trust anyone without forensics training:* Only a certified Forensics expert should be allowed to investigate or view the files on the original device. Untrained Persons may cause the deletion of data or the corruption of important information.

- (x) *Make sure you do not shut down the computer, if required Hibernate it:* Since the digital evidence can be extracted from both the disk drives and the volatile memory. Hibernation mode will preserve the contents of the volatile memory until the next system boot.

### Answer 1(e)

The audit is conducted to reflect the true and fair value of certain concern. Security audit is a systematic evaluation of the security of a company's information system by measuring how well it adheres to an established set of criteria. A thorough audit typically assesses the security of the system's physical configuration and environment, software, information handling processes and user practices. To be precise, security audits will help protect critical data, identify security loopholes, create new security policies and track the effectiveness of security strategies. Security Audit majorly specifies how organizations have dealt with the information and data available in the organization.

There are several reasons to do a security audit and collectively include these six goals:

- (i) Identify security problems and gaps, as well as system weaknesses.
- (ii) Establish a security baseline that future audits can be compared with.
- (iii) Comply with internal organization security policies.
- (iv) Comply with external regulatory requirements.
- (v) Determine if security training is adequate.
- (vi) Identify unnecessary resources.

### Question 2

Mr. A is working as a CEO in a leading financial institution. On weekends, he spends time with family and on his hobbies like photography, singing and reading books. He is also active on various social media platforms and uploads their activities on the platforms.

Last month, he participated in a professional photography exhibition and presented his photographs to viewers and got appreciation and won award for that. After some time, he found some threat posts on his social media platforms and he becomes a victim of online harassment and cyberbullying. The perpetrator continuously posts defamatory content and threats against Mr. A, causing significant distress and reputational damage.

IT Analyst of Mr. A's Company discovers a data breach compromising sensitive customer information, including banking credentials and personal details. 'The breach exposes thousands of customers to identity theft and financial fraud raising concerns about data protection and cyber security. The aim of the Mr. A's organization is to prevent any data breach incident before any malware is able to access network server or before vulnerabilities in the software are exploited by hackers.

One day Mr. A found that his copyrighted images being used without authorization on various websites and social media platforms. Despite his efforts to request the removal of infringing content, the unauthorized use persists, leading to financial losses and infringement of his intellectual property rights.

His wife is an active social worker and she post the social work activities governed by her on the social media like Facebook and Instagram. She is a shopping lover and lost her credit card last week in the market and forgot to take action on missing credit cards. Recently she received a series of obscene messages from an unknown number. The accused also sent emails to her and created a fake account on Facebook containing morphed and offensive images of her. She receives a message from the bank about the deduction of some amount against online purchasing. An online



marketplace experiences a surge in fraudulent transactions, with perpetrators using her stolen credit card information to make unauthorized purchases. The fraudulent activities result in financial losses for both the e-commerce platform and affected her with mental stress. She suggests to the e-commerce platform for the need of apply robust cyber security measures and fraud detection mechanisms.

Legal experts analyze each scenario of Mr. A's Family in light of relevant Indian cyber laws, judicial precedents, and established legal principles to determine the appropriate legal recourse and potential liabilities for the parties involved. Based on the specific facts and circumstances of each case, strategies are developed to address the legal challenges, protect the rights of victims, and ensure compliance with regulatory requirements. Through litigation, negotiation, or alternative dispute resolution mechanisms, legal professionals work towards achieving favorable outcomes for their clients, whether it involves obtaining compensation for damages, securing injunctions, or prosecuting cybercrime offenders.

In the above case scenario, answer the following questions :

- (a) What are the various legal provisions of IPC under which the court can take judgement against accused who sent emails to Mr. A's wife and created her fake account on Facebook that contain the morphed and offensive images ?

(5 marks)

- (b) On a complaint filed by Mr. A for the alleged identity theft committed by a cyber criminal named X, a police inspector was appointed to investigate cyber offence. The police inspector sent the laptop to Mr. A to the forensic lab for further analysis and investigation. The forensic lab used sophisticated methods to analyse the information contained in these hard drives, email accounts, social networking sites, and other digital archives to retrieve and assess any information that can serve as a viable evidence to prove that X committed cyber crime. Which field of technology will be used as investigative techniques to identify and store evidence from a computer ? Also state its types.

(5 marks)

- (c) Mr. A's wife lost her cards in the shopping mall. After this incident, she wants to switch to online e-commerce that enables users to access online shopping platforms without the use of a desktop computer, through wireless handheld devices. What are the three basic functions can be used to categorize M-commerce ?

(5 marks)

- (d) Software security is a type of proactive security and it is based on the principle "prevention is better than cure". Proactive security typically necessitates additional software and hardware designed for spotting threats before they turn into serious incidents. In this context, what can be the various benefits of proactive security for an organization ?

(5 marks)

- (e) Mr. A's wife decides to use the digital currency for the payment in the purpose to prevent any type of fraud in the payment. Advise her various pros and cons of using the digital currency.

(5 marks)

### Answer 2(a)

The following legal provisions under the Indian Penal Code, 1860 (IPC) apply in the given factual situation:

- (i) Section 292 and Section 293: Section 292 and 293 of IPC prohibit publication and sale of obscene books, pamphlets, paper, writing, drawing, painting, etc. which shall be deemed to be 'lascivious or appeals to the prurient interests', which can include obscene advertisements. The purpose of this section was to address the sale of obscene materials, however, in this digital age, it has evolved to deal with various cybercrimes as well. Both these provisions also regulate the manner in which obscene material or sexually explicit acts or exploits of children are published or transmitted electronically. The penalty for such acts is imprisonment up to 2 years and fine up to Rs. 2,000, respectively. The punishment for any of the above crimes may be up to five years of imprisonment and a fine of up to Rs. 5,000 for repeat (second-time) offenders.
- (ii) Section 354C: In this provision, cybercrime is defined as taking or publishing pictures of a woman engaging in a private act without her consent. In this section, voyeurism is discussed exclusively since it includes watching a woman's sexual actions as a crime. In the absence of the essential elements of this section, Section 292 of the IPC and Section 66E of the IT Act are broad enough to include offences of an equivalent nature. Depending on the offence, first-time offenders can face up to 3 years in prison, and second-time offenders can serve up to 7 years in prison.
- (iii) Section 354D: Stalking, including physical and cyber stalking, is described and punished in this section. As per this section, the act of any man following and contacting a woman to foster personal interaction despite indication of disinterest or monitoring the use by a woman of the internet, email or any other form of electronic communication amounts to the offence of stalking. This offence is punished by imprisonment of up to 3 years for the first offence and up to 5 years for the second offence, along with a fine in both cases.

In the case of *Kalandi Charan Lenka vs. the State of Odisha (2017)* before the Orissa High Court, the victim received a series of obscene messages from an unknown number. The accused also sent emails to the victim and created a fake account on Facebook containing morphed and offensive images of her. The Orissa High Court, therefore, found the accused prima facie guilty of cyberstalking on various charges under the IT Act and Section 354D of IPC.

### Answer 2(b)

In general parlance, computer forensics is a field of technology that uses investigative techniques to identify and store evidence from a computer device. Often, computer forensics is used to uncover evidence that could be used in a court of law. Computer forensics also encompasses areas outside of investigations. Sometimes professionals in this field might be called upon to recover lost data from drives that have failed, servers that have crashed or operating systems that have been reformatted.

Different Types of Computer Forensics are

- (i) *Disk Forensics*: It deals with extracting raw data from the primary or secondary storage of the device by searching active, modified, or deleted files.
- (ii) *Network Forensics*: It is a sub-branch of Computer Forensics that involves monitoring and analyzing the computer network traffic.
- (iii) *Database Forensics*: It deals with the study and examination of databases and their related metadata.
- (iv) *Malware Forensics*: It deals with the identification of suspicious code and studying viruses, worms, etc.
- (v) *Email Forensics*: It deals with emails and their recovery and analysis, including deleted emails, calendars, and contacts.

- (vi) *Memory Forensics*: Deals with collecting data from system memory (system registers, cache, RAM) in raw form and then analysing it for further investigation.
- (vii) *Mobile Phone Forensics*: It mainly deals with the examination and analysis of phones and smartphones and helps to retrieve contacts, call logs, incoming, and outgoing SMS, etc., and other data present in it.

**Answer 2(c)**

M-commerce (Mobile Commerce) is the buying and selling of goods and services through wireless handheld devices such as smartphones and tablets. M-commerce is categorized based on the following three basic functions:

- (i) *Mobile shopping*: enables customers to buy a product using a mobile device with an application such as Amazon or a web app. A subcategory of mobile shopping is app commerce, which is a transaction that takes place over a native app.
- (ii) *Mobile banking* is online banking designed for handheld technology. It enables customers to access accounts and brokerage services, conduct financial transactions, pay bills and make stock trades. This is typically done through a secure, dedicated app provided by the banking institution. Mobile banking services may use SMS or chatbots and other conversational app platforms to send out alerts and track account activities. For example, the WhatsApp chatbot lets customers view their account balance, transfer funds, review loans and conduct other transactions in real time through WhatsApp.
- (iii) *Mobile payments* are an alternative to traditional payment methods, such as cash, cheque, credit and debit cards. They enable users to buy products in person using a mobile device. Digital wallets, such as Apple Pay, let customers buy products without swiping a card or paying with cash. Mobile payment apps, such as PayPal, Venmo and Xoom serve the same purpose and are popular options. Mobile consumers also use QR codes to pay for things on their mobile phones. With mobile payments, users send money directly to the recipient's cell phone number or bank account.

**Answer 2(d)**

Some benefits of proactive security for an organization are as below:

- (i) It helps an organization to save money and maintain its brand value by preventing attacks before they occur.
- (ii) It prevents breach of sensitive data and malicious attacks.
- (iii) It enables early identification of vulnerabilities before they are discovered by potential attackers.
- (iv) It enables organizations to stay compliant by constantly monitoring the data.
- (v) It prevents potential crises and reduces the stress of facing any malicious attack so that management and employees can focus on growth and expansion.

**Answer 2(e)**

Pros and Cons of Digital Currencies:

| Sr. No. | Pros                      | Cons                               |
|---------|---------------------------|------------------------------------|
| (i)     | Faster transaction times. | Can be difficult to store and use. |



|       |   |   |
|-------|---|---|
| (ii)  | Do not require physical manufacturing.                  | Can be hacked.                                      |
| (iii) | Lower transaction costs.                                | Can have volatile prices that result in lost value. |
| (iv)  | Make it easier to implement monetary and fiscal policy. | May not allow for irrevocability of Transactions.   |
| (v)   | Offers greater privacy than other forms of currency     | Still has limited acceptability                     |

### Question 3

In today's digital era, online banking has become an integral part of the banking sector, offering convenience and accessibility to customers worldwide. However, with the increasing reliance on Internet based services, ensuring the security of online banking platforms has become

a paramount concern for banks and financial institutions. The online banking platform utilizes internet and related technologies to facilitate seamless transactions and user transactions. This includes the use of secure protocols to encrypt data transmission between user and banking servers. This infrastructure and protocols are employed to guarantee high availability and reliability of banking services, minimize downtime and service disruptions.

Software security is also a critical aspect of the online banking platform, encompassing various measures to protect against security threats and vulnerabilities. Secure coding practices are followed during the development phase to minimize the risk of common security flaws such as SQL injection, cross-site scripting (XSS), and buffer overflows. Regular code reviews, vulnerability assessments, and penetration testing are conducted to identify and address security issues proactively. Additionally, the platform incorporates mechanisms for user authentication, session management, and access control to prevent unauthorized access to sensitive resources and functionalities. To increase the security in customer's data some platform can use that asymmetric encryption algorithms such as RSA to establish secure communication channels. Digital certificate issued by Certifying Authorities (CA) are used to verify the authenticity of the banking servers and protect against the man in middle attack.

The IT Security team of XYZ Bank discovers suspicious activity on its computer network, indicating a potential data breach. Bank's IT security team initiates a forensic investigation to identify the source of the breach, recover lost data, and ensure compliance with relevant regulations and ethical standards. The key issues are related with Data Recovery Procedures and data protection in which implementing ethical data recovery procedures to retrieve lost or compromised data, while preserving the integrity of digital evidence. Ensuring proper

precautions are taken during the gathering of digital evidence to maintain its admissibility in legal proceedings and prevent contamination or tampering. Now Bank Employing computer forensics software tools and forensic toolkits to recover deleted or hidden files, analyze system artifacts and cross-validate findings in computer evidence-related cases.

In this regard, the forensic team at XYZ Bank follows established protocols for data recovery and evidence handling, ensuring compliance with legal and ethical standards throughout the investigation. By conducting a thorough time-line analysis of computer files, the team enabling prompt remediation and risk mitigation measures. Advanced forensic tools and software are utilized to recover deleted files, analyze system artifacts, and corroborate findings, strengthening

PP – AIDACS – JUNE 2024

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the integrity of digital evidence presented in legal proceedings. The investigation also highlights the importance of data protection and privacy regulations in safeguarding sensitive information and maintaining customer trust and compliance with regulatory requirements.

In the above case scenario, answer the following questions :

- (a) What guidelines does XYZ Bank's IT security team follow to initiate a computer forensic analysis upon discovering suspicious activity on its computer network ?

(5 marks)

- (b) When dealing with a massive amount of data, often companies suffer data loss which needs to get recovered. It is important to choose a backup solution that addresses a wide range of restore and recovery needs and reduces data recovery steps. As a member of IT security team, explain the various types of data recovery that may be needed for any financial organization ?

(5 marks)

- (c) Secure Protocols usually make use of cryptography and encryption techniques to secure and encrypt data, which can only be decrypted by using special algorithm, logical key, formula or a combination of them. What are the various commonly used secure protocols that can be used in data transmission of XYZ Bank services ?

(5 marks)

- (d) Certification Authorities (CA) such as VeriSign are organizations that issue digital certificates to applicants whose identity, they are willing to vouch for. Each certificate is linked to the certificate of the CA that signed it. As an IT expert explain the various responsibilities of Certification Authorities.

(5 marks)

- (e) Software Security refers to the practice of developing and engineering the software in a manner which keeps it secure from external malicious attacks, while also ensuring that in case of any such attack, the software does not malfunction and continues to operate. As an IT engineer in Bank, explain any 5 software security goals to be achieved.

(5 marks)

### Answer 3(a)

There are a few widely accepted guidelines for computer forensic analysis:

- (i) A computer forensic examiner is impartial. The job is to analyze the media and report their findings with no presumption of guilt or innocence.
- (ii) The media used in computer forensic examinations must be sterilised before each use.
- (iii) A true image (bit stream) of the original media must be made and used for the analysis.
- (iv) The integrity of the original media must be maintained throughout the entire investigation.

Before the Investigation:

- (i) For the sake of the first argument, you must have skilled technicians in-house and a top-notch lab with the right equipment, the right computer forensic tools, and so on.
- (ii) District attorneys may require more documentation on the chain of evidence handling.

**Answer 3(b)**

Various types of data recovery that may be needed for any financial organization are as follows:

- (i) *File Restore*: A file restore is exactly what it sounds like—the process of replacing a lost file or files from a backup to its primary location. With Special Investigation Resource and Intelligence System (SIRIS), an administrator can mount a recovery point, view the protected system's file structure, locate the necessary files, and restore them back to the primary system. If you only need to retrieve a file or a small number of files, this is the ideal restore type.
- (ii) *Volume Restore*: When you perform a volume restore on SIRIS, the contents of the chosen recovery point are shared as an iSCSI (Internet Small Computer Systems Interface) target. This restore type retrieves files and folders with permissions intact and is used to restore large numbers of files when a bare metal restore is not necessary (i.e., the physical server is intact and operating correctly).
- (iii) *Bare metal Restores*: This is the process of restoring an entire system image (the protected machine's data, applications, settings, and operating system) from a backup to a new physical server. "Bare metal" refers to the new system's unused, unconfirmed hardware. Bare metal restore is used when a primary server fails, is damaged, or is otherwise rendered inoperable.
- (iv) *Local virtualization*: Local virtualization is a feature of Business Continuity and Disaster Recovery (BCDR) solutions that offers fast recovery of business operations. Local virtualization uses hypervisor technology to boot a virtual server from a snapshot on the backup device. This enables businesses to continue normal business operations while the primary server is restored (using one of the methods above). Local virtualization nearly eliminates costly business downtime. Sometimes, this functionality is known as Instant Virtualization.
- (v) *Cloud virtualization*: Cloud virtualization refers to the process outlined above, but in the cloud rather than on a local backup device. Some BCDR solutions can create a tertiary cloud copy of backup server images. In the event that both the primary and backup servers are inoperable, say because of a fire or flood, business operations can be continued on the cloud backup server image.

**Answer 3(c)**

Commonly used secure protocols are as follows:

- (i) *Secure Sockets Layer (SSL) Protocol* is designed to facilitate secure data transfer between a web browser and a web server, while guarding the confidentiality and authenticity of information. It is very popular as most web browsers support SSL protocol. It is found between the application layer and transport layer.
- (ii) *Secure File Transfer Protocol (SFTP)* refers to File Transfer Protocol (FTP) over Secure Shell (SSH) as it encrypts both commands and data while in transmission. SFTP acts as an extension to SSH and encrypts files and data then sends them over a secure shell data stream. This protocol is used to remotely connect to other systems while executing commands from the command line.
- (iii) *Transport Layer Security (TLS) Protocol* generates a master key for encryption of data using a pseudo-random algorithm. The encrypted data is then transmitted from the client to server, ensuring data protection. It encrypts communication between web browser and web server.
- (iv) *Hyper Text Transfer Protocol Secure (HTTPS)*: HTTPS is an extension of the Hypertext Transfer Protocol (HTTP). It is used for secure communication over a computer network with the SSL/TLS protocol for encryption and authentication. So, generally, a website has an HTTP protocol



but if the website is such that it receives sensitive information such as credit card details, debit card details, OTP, etc. then it additionally requires installation of an SSL certificate to make the website more secure. Therefore, before entering any sensitive information on a website, we should check if the link is HTTPS or not. If it is not HTTPS, then it may not be secure enough to share sensitive information.

- (v) **SSH:** SSH (Secure Shell) is a protocol used for secure remote login and other secure network services. It provides a secure and encrypted way to remotely access and manage servers, network devices, and other computer systems. SSH uses public-key cryptography to authenticate the user and encrypt the data being transmitted, making it much more secure than traditional remote login protocols such as Telnet. SSH also allows for secure file transfers using the SCP (Secure Copy) and SFTP (Secure File Transfer Protocol) protocols. It is widely used in Unix-based operating systems and is also available for Windows. It is commonly used by system administrators, developers, and other technical users to remotely access and manage servers and other network devices.

### Answer 3(d)

Certification Authorities such as VeriSign are organizations that issue digital certificates to applicants whose identity, they are willing to vouch for. Each certificate is linked to the certificate of the CA that signed it.

A Certification Authority has the following responsibilities:

- (i) Publishing the criteria for granting, revoking, and managing certificates;
- (ii) Granting certificates to applications who meet the published criteria;
- (iii) Managing certificates;
- (iv) Storing VeriSign's root keys in an exceptionally secure manner;
- (v) Verifying evidence submitted by applicants;
- (vi) Providing tools for enrolment;
- (vii) Accepting the liability associated with these responsibilities;
- (viii) Time-stamping digital signatures.

### Answer 3(e)

Software security seeks to achieve the following goals:

- (i) *Prevention of malicious attacks:* The main goal of software security is to prevent attacks in this age of Internet, where data breach spreads like wildfire.
- (ii) *Timely threat detection:* It aims to detect and prevent possible breach of security in time.
- (iii) *Effective Monitoring:* Real time monitoring is an effective tool to avoid attacks before they happen and prevent damage.
- (iv) *Privacy and Confidentiality:* Developers must address this issue effectively as software run on machine which has the ability to track or access information stored on the software. Therefore, a machine may be able to access information which the software may attempt to hide.
- (v) *Anonymity:* This is an important concern which requires the developers to consider what may happen to any data which is collected by a program and whether the same has been adequately protected.

- (vi) *Authentication*: Most software require user to log into the system through Login ID and Password. It is essential for security as it is relevant to understand who can be trusted and who cannot be trusted.
- (vii) *Integrity*: Software should enable maintenance of integrity of data, i.e. the ability to remain the same, to ensure that data is not manipulated during transmission from sender to receiver.

#### Question 4

ABC Corporation, a multinational company known for its innovative products and services, is using the advanced data analytics tools for massive amount of data on current market trends and understand the customer preferences, and using MIS to track sales, inventory and related business information for streamline its operations. The company recently implemented an ERP system for enhanced collaboration between customers and vendors, inventory management, pricing strategies, marketing campaigns and support services. The company migrated its operational data on the cloud for enhanced accessibility and scalability. The company facing the challenges in the efficiently managing its operations, while ensuring seamless customer experiences. However, unforeseen challenges have arisen, prompting the need for a comprehensive approach to data management and recovery.

The Company employs a decision support system tool to analyse sales data, market trend and customer behaviour, purchasing pattern and also helps in making informed decision. By analyzing the purchase patterns, it can predict demand for specific products and adjust inventory levels accordingly, reducing stockouts and optimizing resources. ABC automates routine administrative tasks such as email communication, document management, and scheduling. This streamlines internal processes, improves collaboration among employees, and enhances overall operational efficiency like automated email responses and document templates save time for customer service representatives, enabling them to focus on addressing customer inquiries promptly. During routine operations, ABC Corporation face difficulties in recovering internet usage data from network logs, browsing histories and cloud services to trace the activities of the attackers and understand the breach methods. The lack of comprehensive internet data recovery tools hindered the company ability to uncover critical information about the cyber-attack. In the solution of this problem the company invested in robust internet data recovery tools to retrieve and analyse the Internet data usage for investigation purposes. The company leveraged advanced forensic techniques to trace the attack activities online and gain insight in to the breach methods. ABC Corporation also engages forensic experts to gather evidence related to the data breach and identify potential vulnerabilities in its systems. It must follow stringent protocols for evidence collection, preservation, and chain of custody to ensure admissibility in legal proceedings. Meanwhile, the company takes proactive measures to strengthen cyber security defences, including regular vulnerability assessments, employee training on data security best practices, and implementation of encryption protocols.

As part of the investigation, ABC Corporation seeks to recover internet usage data to trace the source of the data breach. It collaborates with internet service providers and utilizes specialized tools to retrieve relevant information while adhering to legal and ethical guidelines governing data collection and privacy rights. The company recognizes the importance of transparency and consent in accessing user data and ensures compliance with applicable regulations.

ABC Corporation evaluates the effectiveness of its MIS, ERP, and cloud computing systems in facilitating data management and decision-making processes. It identifies areas for improvement, such as enhancing data governance practices, integrating advanced analytics capabilities, and implementing robust disaster recovery plans. The company remains committed to leveraging technology responsibly and ethically to drive business growth while safeguarding data integrity and security.

PP – AIDACS – JUNE 2024

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In the above case scenario, answer the following questions :

- (a) When dealing with a massive amount of data, often companies suffer data loss which needs to get recovered. For the purpose of data recovery, what are some common scenarios where data recovery procedures would be necessary ? (5 marks)
- (b) List out the benefits of migrating operational data to the cloud for create infrastructure as a service for ABC Corporation. (5 marks)
- (c) Decision Support Systems (DSS) are interactive software-based systems intended to help managers in decision-making by accessing large volumes of information generated from various related information. Mention any five key attributes of DSS that help the managers of ABC Corporation to take decision. (5 marks)
- (d) A management information system (MIS) is a computerized database of financial information organized and programmed in such a way that it produces regular reports on operations for every level of management in a company. Explain the importance of MIS in ABC Corporation in providing support services. (5 marks)
- (e) ABC Corporation uses data protection practices to demonstrate to their customers and users that they can be trusted with their personal data. State some of the challenges that ABC Corporation may face when protecting user privacy. (5 marks)

#### Answer 4(a)

The common scenarios where data recovery procedures would be necessary:

- (i) There has been an operating system failure or some critical operating system files have been damaged, causing the device to not be able to boot up properly. In this case, a simple solution would be to use a Live USB to boot up from another operating system so that you can access the data from the storage medium.
- (ii) There has been a hard disk failure and there is physical damage to the storage medium. In this case, you may be able to repair the hardware, but the storage medium is often beyond repair and the focus is more on a one-time recovery in an attempt to salvage any data you can. This will often require the services of a specialized data recovery company.
- (iii) Files have been deleted from a storage medium. When an operating system "deletes" files, oftentimes the data is not immediately removed from the drive. This allows tools such as file carvers to recover this data.

#### Answer 4(b)

Several factors, when considered collectively, make cloud infrastructure for ABC Corporation seem like a good fit:

- (i) **Pay-as-you-Go:** Unlike traditional IT, IaaS does not require any upfront, capital expenditures, and end users are only billed for what they use.



- (ii) *Speed*: With IaaS, users can provision small or vast amounts of resources in a matter of minutes, testing new ideas quickly or scaling proven ones even quicker.
- (iii) *Availability*: Through things like multizone regions, the availability and resiliency of cloud applications can exceed traditional approaches.
- (iv) *Scale*: With seemingly limitless capacity and the ability to scale resources either automatically or with some supervision, it's simple to go from one instance of an application or workload to many.
- (v) *Latency and Performance*: Given the broad geographic footprint of most IaaS providers, it's easy to put apps and services closer to your users, reducing latency and improving performance.

**Answer 4(c)**

The Various key attributes of Decision Support System (DSS) are:

- (i) Decision Support System is adaptable and flexible as per the requirement of business and managers.
- (ii) Interactivity is one of the main attributes of decision support system wherein it interacts with all the spheres of business and all level managers to improve the efficiency of business.
- (iii) Decision support system is curated the way that it very easy to use and understand.
- (iv) Decision support system is efficient and effective based of the information being fed into it.
- (v) DSS are completely controlled by the decision-makers.
- (vi) Development of DSS is easy and non-complex.
- (vii) DSS can be extended to whole organization for more efficient performance with ease.
- (viii) DSS support for modeling and analysis.
- (ix) Data access is one of the main attributes of decision support system.
- (x) DDS is Standalone, integrated, and Web-based.

**Answer 4(d)**

The Management Information System (MIS) department plays an important role in providing support services within an organization, such as the following:

- (i) *Governance*: Governance involves systems and controls over employees' use of computing systems. The MIS department defines, manages, and enforces the rules covering how and whether employees can access the company's technologies and network infrastructure. The MIS department is responsible for IT security and enforcing codes of conduct related to computer systems use.
- (ii) *Infrastructure*: An organization's IT infrastructure is comprised of the technology systems that support the business' day-to-day functioning. For example, phones, desktop and laptop computers, servers, application software and cloud computing. The MIS department provides internal help desk and support services, assisting employees and troubleshooting issues related to the infrastructure.
- (iii) *Data management*: Data management involves provisioning and managing systems that enable employees to access and update critical business data. The MIS department is responsible for ensuring the availability and security of the organization's data management systems.

**Answer 4(e)**

Some of the challenges businesses face when protecting user privacy:

- (i) *Communication*: Organizations sometimes struggle to communicate clearly to their users what personal data they are collecting and how they use it.
- (ii) *Cybercrime*: Attackers target both individual users and organizations that collect and store data about those users. In addition, as more aspects of a business become Internet-connected, the attack surface increases.
- (iii) *Data breaches*: A data breach can lead to a massive violation of user privacy if personal details are leaked, and attackers continue to refine the techniques they use to cause these breaches.
- (iv) *Insider threats*: Internal employees or contractors might inappropriately access data if it is not adequately protected.

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