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ICSI GUIDELINE ANSWERS



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GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2022

Padhai Kar Befikar

DECEMBER 2024

GROUP 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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These answers have been written by competent persons and the Institute hope that the GUIDELINE ANSWERS will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:

CS Examinations	Applicability of Amendments to Laws
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

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ENVIRONMENTAL, SOCIAL AND GOVERNANCE – PRINCIPLES AND PRACTICE

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GROUP 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Royal Chemicals Limited (RCL), a company listed with National Stock Exchange (NSE) is having 60% market share in paint manufacture industry. It also deals in petrochemicals, which are used in numerous household products like wax, detergents, dyes, carpeting, safety glasses, etc. RCL is one among the top 1000 companies listed on NSE. As per the latest audited financial statements as on March 31, 2024, its paid-up capital stood at ₹ 300 crore against its authorized Capital of ₹ 500 crore and it had a revenue of ₹ 2,250 crore.

RCL has thirteen Directors on its Board, of which five were independent directors. The Articles of Association of the Company restricts the maximum number of Directors to fifteen. RCL remains ever-conscious to corporate governance and ensures compliance with the statutory and legal provisions in both letter and spirit. Roy, an executive director, is chairperson of the Company and Minu is the only woman Director. The Company has constituted requisite committees as per the requirements of Companies Act, 2013 and SEBI LODR. The Audit Committee consists of five Directors as members—Aman, Jatin, Rohan, Keyn and Jitu. Among the five independent directors, Rohan was reappointed on August 1, 2019 after completing his term of 5 years. His efficient performance was ranked first in the performance evaluation carried out as per SEBI guidelines. To recognise the outstanding results towards the Company's growth, the Board wanted to reappoint Rohan for the third term. The Board also sought Company Secretary's opinion in this regard.

The Company had successfully concluded its Annual General Meeting (AGM) for the financial year ending March 31, 2024, on May 25, 2025, at its registered office at Pune. On the fateful day of AGM, while returning to Mumbai from Pune by road, after her re-appointment at AGM, a fatal accident claimed the life of Minu, thus snatching an efficient and trustworthy Director from the Company. Later on, a Board Meeting was held on August 9, 2024 and Neeru, a finance professional and daughter of deceased director Minu, was appointed as Director to fill the vacancy of woman director.

RCL is a growing company which wants to diversify its business into the sphere of agrochemicals and therefore, desires to bring on its Board Ojas, who is a chemical engineer with hands-on experience of about twenty years post his qualification in the field of agrochemicals and other petroleum products. Besides production, he is well versed in marketing of agrochemicals, both in India and abroad. It is hoped that he shall prove to be a valuable asset to the Company. Accordingly, in the Board Meeting held on August 9, 2024, Ojas was appointed as an additional Director. Ojas already held directorships in one dormant company, two Section 8 companies, eight public limited companies and nine private limited companies. However, out of nine private limited companies, two are subsidiaries of public limited companies.

Based on the above facts, answer the following questions :

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- (a) Do you think RCL's Board Composition is as per SEBI (Listing Obligations and Disclosure Regulations) Regulations, 2015 ? Also narrate the suggested Board Size as per NSE and Proxy Advisory Guidelines. (5 marks)
- (b) The Board of Directors are willing to appoint Rohan from August 1, 2024, for a term of another five years. Is such re-appointment valid ? Outline the tenure of independent directors and minimum attendance requirements at Board and Committee Meetings for the re-appointment of Directors as per IAS Proxy Advisors Guidelines. (6 marks)
- (c) Explain provisions of the Companies Act, 2013, related to the role of Nominations and Remuneration Committee, in performance evaluation of directors. The Company Secretary informs you that, Roya says it is not necessary to include in the Board's report, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance, including independent directors. Is Roya's view correct ? (6 marks)
- (d) Referring to the provisions of the Companies Act, 2013, examine the decision of the Board to appoint Ojas as an additional director of the Company. Has Ojas violated the provisions relating to maximum number of directorships ? If yes, what would be the penalty ? (3 marks)

Answer 1(a)

Composition of the Board of Directors - Regulation 17(l)(a) of SEBI (LODR) Regulations, 2015

The composition of board of directors of the listed entity shall be as follows:

- (a) Board of directors shall have an optimum combination of executive and non-executive directors with at least one-woman director and not less than fifty per cent of the board of directors shall comprise of non-executive directors;

Provided that the Board of directors of the top 1000 listed entities shall have at least one independent woman director.

Number of Independent Directors where the Chairperson is a non-executive-Regulation 17(1)(b) of SEBI (LODR) Regulations,2015

Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation: For the purpose of this clause, the expression "related to any promoter" shall have the following meaning:

- (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

Minimum number of directors in certain class of listed companies - Regulation 17(1)(c) of SEBI (LODR) Regulations, 2015

The board of directors of 2000 listed entities shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalization as at the end of the immediate previous financial year. In the current scenario, RCL should have minimum seven independent directors (since the Chairperson is an Executive Director) and one women independent director on the Board. So, the present Board Composition of RCL is not valid according to the above Regulation.

Suggested Board Size as per NSE and Proxy Advisory Guidelines

(a) Additional requirements for NSE Prime Companies regarding Board Composition

- The Board of Directors shall consist of a minimum of 8 Directors.
- The Chairperson of the Board of Directors shall not be a Relative of the Managing Director or Chief Executive Officer.
- Where the public shareholding is in excess of 50%, more than half of the Board of Directors shall comprise Independent Directors;
- Where the public shareholding is 50 % or less, at least half of the Board of Directors shall comprise of Independent Directors;
- With effect from July 01, 2025, at least 2 Directors shall be women, with at least one such Woman Director also being an Independent Director.

(b) Preferable board size as per Proxy Advisory Guidelines: between 6 to 15

Answer 1(b)

Tenure of Independent Director

Section 149(10) of the Companies Act, 2013 provides that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) of the Companies Act, 2013 states that notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation -For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

Regulation 25(2) of the SEBI (LODR) Regulations, 2015 provides that the maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

The decision of Board of directors is not valid. Rohan was originally appointed on 1st August, 2014 and has completed two terms of five years each and he can be appointed only after a cooling period of three years.

liAS Proxy Advisory Guidelines will not treat the following directors as independent:

1. For directors who have been on the Board for more than 10 consecutive years liAS makes two important distinctions:
 - (a) Unlike the Act, which computes tenure beginning 1 April 2014, liAS will compute tenure on a retrospective basis i.e., from date of first appointment.
 - (b) liAS will apply the 'visa rule' and consider independent directors seeking reappointment as non-independent if they complete a 10-year tenure within six months of the date of their next reappointment.
2. Directors who have been on the Board of the parent/holding/ subsidiary for more than 10 consecutive years.
3. Former executive/non-executive directors who have not had a cooling-off period (complete detachment from the Board, company, and promoter group) for at least 3 years.
4. Former executives who are on the Board along with their previous supervisors, independent of whether these executives have completed a 3-year cooling period.

Directors who are simultaneously on the Board of a large number/ percentage of group companies, with a prolonged tenure of more than 10 years in any of these companies.

As per liAS, the aggregate three-year attendance of directors should be at least 75%. They state that they make an exception and vote for in cases where they believe that the promoter, promoter representative or an executive director plays a critical role in the business or where their presence on the Board either signals the criticality of the business to the group or may result in the company getting critical support from within the group.

Answer 1(c)

It is necessary to include in the Board's report, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Inclusion of Performance evaluation in Board' Report

According to Rule 8 (4) of the Companies (Accounts) Rules, 2014, every listed company and every other public company having a paid-up share capital of twenty-five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

The Role of the Nominations and Remuneration Committee in performance evaluation of directors:

According to Section 178 (2) of the Companies Act, 2013 the Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down. recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

Independent Directors' role in performance evaluation of Boards, non-independent directors and Chairperson

Schedule IV (Part VII): The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of

management. All the independent directors of the company shall strive to be present at such meeting. The meeting shall:

- (a) review the performance of non-independent directors and the Board as a whole;
- (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors.
- (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

Performance evaluation of Independent Directors

Schedule IV Part V: Re appointment - The reappointment of the independent directors would be based on their report of performance evaluation.

Schedule IV Part VIII: Evaluation mechanism - The performance of the independent directors would have to be done by the entire Board excluding the director to be evaluated. On the basis of the report of performance evaluation, the continuance or extension of the term of appointment of the independent director would be determined.

Answer 1(d)

Section 165(1) of the Companies Act, 2013 provides that-

No person, after the commencement of this Act, shall hold office as a director, including any alternate Directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I - For reckoning the limit of public companies in which a person can be appointed as director, Directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Explanation II - For reckoning the limit of Directorships of twenty companies, the Directorship in a dormant company shall not be included.

It is not possible for Ojas to accept another directorship in RCL since he is already holding directorships in eight public limited companies and two such private limited companies which are subsidiaries of public limited companies thus exceeding the maximum limit of 10 public companies.

Penalty for exceeding the number of directorships:

If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

Question 2

- (a) As at April 1, 2024, the composition of the Board of Directors of Cortel Ltd, an unlisted company comprised of seven directors as under :

Name	Designation
Aparan	Executive chairman (executive and non-independent)
Sesh	Managing Director and CEO (executive and non-independent)

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Yuga	Women director (non-independent)
Jeeza	Independent director
Azad	Independent director
Jon	Independent director
Shen	Independent director

The Audit Committee consists of Sesh, as Chairman, Aparan, Yuga and Jeeza as members. The majority of the members of the Audit Committee have the ability to read and understand the financial statements, but none of them have accounting or related financial management expertise. In July 2024, the Company went for an Initial Public Offer (IPO) and got its shares listed in a recognized Stock Exchange. With reference to SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015, state how the Audit Committee should be constituted and whether the present constitution of the Audit Committee can continue after listing of its securities ?

(5 marks)

- (b) On May 1, 2024, Sruja, who owns 3% equity shares in Crown Ltd, was appointed as a director in the Board Meeting. The Company was mainly into manufacturing of plastic products and toys and had commercial agreements and business transactions with Chariot Ltd, for purchase of raw materials. It came to the knowledge of Company's management that, Sruja is holding 1.5% and her husband is holding 3% of the equity share capital of Chariot Ltd. In the board meeting held on June 6, 2024, the Board of Directors proposed to discuss about price revisions for the raw material procured from Chariot Ltd. With reference to provisions of Companies Act, 2013, answer the following :

- (i) Whether Sruja should make a disclosure of her interest in Chariot Ltd, assuming that the Company is going to have transactions with the said Company on a continuous basis ? If yes, when and at what frequency ?
- (ii) Can she vote in the price revision resolution in the Board Meeting ?

(4 marks)

- (c) "Transparency is a pivotal feature in the market-based monitoring of companies and is central to shareholders ability to exercise their ownership rights on an informed basis which can help attract capital and maintain confidence in the capital markets." Adequate disclosures by corporates are mandated under various legislations such as the Companies Act, 2013 and SEBI (LODR) Regulations, 2015. In this background, state the disclosure requirements in listed company's websites in respect of the following :

- (i) Placing of financial statements and other documents.
- (ii) Vigil mechanism.
- (iii) Nomination and remuneration policy.

(6 marks)

Answer 2(a)

According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee as under:

- (a) The Audit Committee shall have minimum three directors as members.
- (b) At least two-thirds of the members of the audit committee shall be independent directors
- (c) All members of the Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- (d) The Chairperson of the Audit Committee shall be an independent director and he shall be present at Annual General Meeting to answer shareholders queries.

Whereas, from the facts given above, it can be seen that the audit committee has four directors and the condition that the Audit Committee shall have minimum three directors is satisfied. But, the Chairman of the audit committee is Sesh who happens to be the Managing Director of the Company and hence he is not an Independent Director. Hence, the condition that the Chairman of the Audit Committee shall be an independent director is not satisfied. Similarly, Aparan is the Executive Chairman of the Company and Yuga is a women director, nonindependent.

Hence both Aparan and Yuga are non-independent directors. The condition that 2/3rd of the members of the Audit Committee shall be independent directors is also not satisfied. Also, all members of the Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise. In the given facts of the case, only the majority of the members of the Audit Committee have the ability to read and understand the financial statements but none of them have accounting or related financial management expertise. Hence, this condition is also satisfied.

Therefore, it can be summed up that in view of the above position, the constitution of the Audit Committee is not proper post listing of the Company's shares and accordingly, the present constitution of the Audit Committee cannot be continued post listing of the Company's shares.

Answer 2(b)

Crown Ltd entered into certain transactions (arrangement/contract) with Chariot Ltd in which Sruja holds 1.5% of the equity capital before her appointment as a director in Crown Ltd. The issue is whether Sruja should disclose her interest in Chariot Ltd.

There are two types of disclosures to be made by Sruja.

The first disclosure is under Section 184(1) of the Companies Act, 2013 which is a generic disclosure about his concern or interest in any company, body corporate, firm or other association of individuals along with shareholding. This disclosure is made on 3 occasions:

- a) at the time of her becoming a Director
- b) at the beginning of every financial year
- c) whenever there is a change in interest. (Change in shareholding)

This disclosure should be done in Form MBP1.

Sruja was appointed to the board of Crown Ltd on 1st May 2024 and in the first Board that she is to participate on 20th June 2024, she has to submit this disclosure.

The second disclosure is under Section 184(2) of the Companies Act, 2013 where Sruja needs to disclose her specific interest in a contract or arrangement between the Company and another Corporate provided, she along with other Directors holds more than 2% of the share capital of the Other Corporate. She should also not participate in the discussions and vote on resolutions relating to the contract or arrangement. This disclosure must be made in the Board Meeting where the contract or arrangement is being discussed.

In the case of the arrangement between Crown Ltd and Chariot Ltd, she holds only 1.5% of the equity share capital. Strictly from a legal perspective she need not disclose her interest since it is less than the threshold of 2%. However, her husband holds 3% of the equity of Chariot Ltd. From a governance perspective, it would be prudent for Sruja to disclose her interest and that of her husband and refrain from participating and voting on the resolution concerning Chariot Ltd.

Answer 2(c)

Company's Website Disclosures under the Companies Act, 2013 and the Rules made thereunder:

(i) Placing of financial statements and other documents of a listed company on the website [Section 136(1)] of the Companies Act, 2013

A listed company shall also place its financial statements including consolidated financial statements, if any, auditor's report and all other documents required by law to be attached thereto, on its website, which is maintained by or on behalf of the company. Every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any.

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")

where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

A similar provision is also available in Regulation 46 of the SEBI (LODR) Regulations.

(ii) Vigil Mechanism in Audit Committee for Listed Companies and other Prescribed Companies [Proviso to Section 177(10) of the Companies Act, 2013]

Section 177(9) of the Companies Act, 2013, pertaining to setting up of vigil mechanism which shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's Report.

(iii) Nomination and Remuneration Policy

The Nomination and Remuneration Committee shall formulate the criteria and policy for determining qualifications, positive attributes and independence of a director.

Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's Report. [Proviso to Section 178(4) of the Companies Act, 2013].

Question 3

- (a) Mehoon Textiles Ltd, is textile manufacturing company based in Tamil Nadu. The Company has been on a growth trajectory, due to savings in operating cost and increased demand

for its products. The financial performance of the Company has been on a positive trend and since last two years, it is also spending towards Corporate Social Responsibility (CSR) as per the requirements of the Companies Act, 2013. The management of the Company is informed by the Company Secretary, that there are some new compliances relating to impact assessment of CSR spent. The management reaches out to you, to help them with the details of compliances.

In the light of the provisions of the Companies Act, 2013, read with the Rules made thereunder, prepare a brief note covering the following :

- (i) When is a company obligated to undertake 'impact assessment' through an Independent Agency ?
- (ii) What is the ceiling of expenditure on impact assessment ?
- (iii) Whether the impact assessment reports shall be placed before the Board and annexed to the Annual Report on CSR ?

(5 marks)

- (b) 'A well-planned data governance framework covers strategic, tactical, and operational roles and responsibilities. It ensures data is trusted, well-documented, and easy to find within your organization, and that it's also kept secure, compliant, and confidential.' Outline the pillars of data governance framework and its advantages.

(5 marks)

- (c) Tricolam group, is a very famous conglomerate based in Chennai, famous for its silk sarees and other clothing. There have been internal conflicts within the family members, who were part of the ancestral business. A dispute arose between the children of two brothers, with TVK, elder brother on one side and rest of the family members on the other side. Ms. Vani, a New York-based scientist, and TVK's elder sister's daughter, had sought a board seat in Tricolam Investments Ltd (TIL), the holding company of the Tricolam Group. She accused the family of denying her a seat due to her gender and was planning to approach Court for her rights. Highlight some unique challenges and governance issues in family businesses.

(5 marks)

Answer 3(a)

- (i) Every company having an average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Companies Act, 2013 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.
- (ii) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed – 2 % percent of the total CSR expenditure for that financial year; or Rs.50 lakhs whichever is higher.
- (iii) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

Answer 3(b)

A well-planned data governance framework covers strategic, tactical, and operational roles and responsibilities. It ensures data is trust, well-documented, and easy to find within your organization, and that it's also kept secure, compliant, and confidential.

Some of the most important advantages the framework provides include:

- A consistent view of and business glossary for data, while allowing appropriate flexibility for the needs of individual business units
- A plan that ensures data quality, accuracy, completeness, and consistency
- An advanced ability to understand the location of all data related to critical entities, making data assets discoverable, usable, and easier to connect with business outcomes.
- A “single version of the truth” that keeps critical business entities aligned across the enterprise.
- Well-defined methodologies and best practices for data assets and data management that can be applied across the organization
- Easily accessible data that's kept secure, compliant, and confidential according to the demands of legal or regulatory requirements

The three pillars of data governance framework are as under:

- *Governance including all data assets:* Everything from dashboards and code to data science models is a data asset. The data governance framework should take into account all data assets, i.e., data and analytics governance.
- *A practitioner-led, bottom-up approach:* As the number of data users and consumers keeps rising, making a few people (data stewards or engineers) accountable for data governance isn't a sustainable approach. A decentralized, bottom-up data governance framework that makes every data creator responsible for data governance is the way forward.
- *Governance practices embedded within daily workflows:* Data governance has always been associated with compliance, control, and risk mitigation. However, it is a business function that can support strategic decision-making by ensuring that everyone has access to accurate, relevant, high quality, and trustworthy data. That's why it cannot be an afterthought. Instead, it should be embedded within the daily workflows of data practitioners.

Answer 3(c)

Some Unique challenges/ Governance issues of family businesses:

- (i) Managing the diverse opinions of family members in the business, solving internal issues and disputes, etc., is a challenge.
- (ii) Investors - both shareholders and creditors - may look with distrust on family-controlled companies, because of the risk that the controlling family may abuse the rights of other shareholders. So, investors shall scrutinize such companies with care before taking the plunge and investing.
- (iii) There are also challenges of multiple stakeholders for the leadership position. Very often, there is lack of communication between the incumbent and incoming generations. The incumbents do not know how to handle the succession challenge, while the incoming generation does not know how to raise it. The families should choose their most competent member(s) to manage the business, disregarding age, gender or bloodline. However, post succession role of the incumbent is not often planned leading to complications.
- (iv) Hiring external staff which may perceive that career advancement, freedom and decision making are solely the purview of family.
- (v) Although ownership and management succession are the key concerns of a large number of business families, they do not devote enough attention to the process involved. Succession

dilemma is also closely related to the family policy on entry of new generation, retirement of incumbents and mechanisms for resolving conflicts. Entry of new members from the family depends also on the 'space' available in the organization, which in turn depends on the success of the business. The younger generation may face difficulties in proving themselves to the former generation.

- Change in mind-set: Differing views between the older generation and the newer generation.
- Lack of Competitiveness: Another source of challenge is in the nature of competitiveness. For instance, when the Indian economy was opened up in 1991, most Indian companies, of which a huge majority were family owned, were put under competitive pressures for the first time. Many firms, particularly those that grew under government protection did not have a strategy to respond and took it as a threat rather than opportunity for a variety of reasons. This created huge tensions in business families, sometimes leading to division of assets.

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

Question 4

- (a) Varen Power Supply Ltd (VPSL) is a power distribution company based in Nagaland. There have been frequent reports of accidents and injuries to Company's employees, in the course of their work. It was noted that the Company does not have any policy or guidelines for safety and health concerns of its employees considering the nature of industry in which it operates. This has led to several negative media reports, which have impacted the image of the Company and also resulted in huge fines by regulators. The Company Secretary appointed recently, informed the management that there is a growing recognition that employees are an integral part of an organization's stakeholders list and protecting their rights is an essential element of Corporate Governance. Health and Safety should be a key component of every company's Corporate Governance framework and implementation of 'Occupational Health and Safety Standards' of employees is very important.

In this background, explain the benefits which accrue to business organizations on implementation of Occupational Health and Safety Standards for employees.

(5 marks)

- (b) Convexa Ltd. is a closely held cement manufacturing company with eight factories located across India. The promoter shareholders of the Company were planning to dilute their stake in the equity holding and were looking for suitable buyers. For the purpose of proposed sale of stake, they appointed Mike and Co LLP, as consultants. The promoters who were also on the Board of the Company, were keen to divest their shares to foreign investors and asked the consultants to develop a road map for transitioning the Company and its processes as per global benchmarking. The consultants highlighted that given the current scenario, the Environment, Social, Governance (ESG) is assuming significant importance both globally and in India and it also casts higher responsibility on the Board of Directors of the Company. The promoters were keen to align the Company's practices with best practices as per the ESG framework.

As a part of the consultant's team, prepare a detailed questionnaire about the Board's accountability on ESG aspects.

(5 marks)

- (c) Arunima, an expert in management field, was appointed as independent director on the

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Board of Sarpen Ltd, a public company engaged in manufacture of petroleum products. Roopen, Company Secretary of the Company was asked to brief Arunima, for her on boarding, about various policies and procedures which were followed by the Company, including the guidelines provided to employees as per the standard governance policies. In one of the conversations, Arunima mentioned to Roopen, though there are ethical practices across various policies, she would like to see a documented summary of the ethical practices being followed, to check if all the standard practices have been covered.

Prepare a brief report covering various standard ethical practices, which a business should adopt

(5 marks)

Answer 4(a)

The implementation of occupational health and safety standards helps organizations to:

- *Reduce Workplace Incidents:* Organizations will experience fewer unpleasant surprises if they address hazards in their operations. Employers can discover possibilities to improve safety and productivity by recognizing possible dangers and avoid workplace incidents.
- *Reduces Absenteeism and Staff Turnover:* By managing Health and Safety hazards in the workplace more effectively, managers can better protect employees, which lower absenteeism and staff turnover rates.
- *Increases Productivity:* Productivity suffers whenever a worker is hurt and unable to work again. Hiring and training a successor takes time away. Additionally, one might need to temporarily halt operations if any equipment was destroyed in the event.
- *Creates a Proper Health and Safety Culture:* This guarantees that top-level management or safety management people bear accountability and ownership. The occupational health and safety of employees is continuously enhanced over time by having senior leadership involved and a clearly articulated approach for detecting danger.
- *Enhances Reputation:* The Company will be viewed as a top-tier industry player and gain international recognition if it adopts the most modern occupational health and safety standards. It will assist to distinguish the company from its rivals.
- *Improve Staff Morale:* Instead of quality management of the employed workplace systems and equipment, the emphasis needs to be largely on the physical and mental health of the personnel. It is critical to understand this component since it raises employee morale, which has a big influence on attrition and retention rates.
- *Reduce the cost of Insurance Premiums:* By implementing proper safety measures, an organization can establish a foundation for attracting lower insurance premiums by demonstrating that it is taking great precautions to manage and safeguard its people.

Answer 4(b)

The following questions may be raised on accountability of Board on ESG:

With respect to Board Composition/Committees:

- Whether the Company has diversified Board including an ESG expert as Board member?
- Whether the Board has constituted an exclusive committee for identifying ESG risks and opportunities?
- With respect to Policies and Strategies:

- Whether the company has ESG Goals and targets?
- Whether the Company's vision/mission/values as aligned with ESG Goals?
- Whether ESG is integrated into business models?
- Whether the company has policies on ESG matters on non-mandatory matters?
- Whether the company has extended the ESG practices to supply chain also?
- Whether the Board, Senior Management and employees are sensitised with various ESG issues?
- Whether ESG targets are set for Board/Senior management?
- Whether Enterprise Risk Management System addresses ESG related risks?
- Whether ESG issues are taken into consideration for investment decision?
- How effectively the Board engages with stakeholders?

With respect to Reporting:

- Whether the Company discloses ESG related matters as per regulatory prescriptions?
- Whether the company discloses critical ESG issues voluntarily beyond what is prescribed?
- Does the company follow global standards for ESG Reporting?

Answer 4(c)

The following are the standard ethical practices which a Company should follow:

- *Corporate Responsibility:* The organization works as a separate legal entity with certain moral and ethical obligations. Such ethics safeguard the interest of all the internal and external parties associated with the firm. This includes the employees, customers, and shareholders.
- *Social Responsibility:* Making profits should not be at the cost of society. Therefore, corporate social responsibilities (CSR) have been a common practice where businesses work towards environmental protection, social causes, and spreading awareness.
- *Personal Responsibility:* Employees are expected to act responsibly with honesty, diligence, punctuality, and willingness to perform excepted duties. Individuals should settle dues in time and avoid criminal acts.
- *Technology Ethics:* In the 21st century, companies have adopted e-commerce practices. Technology ethics includes customer-privacy, personal information, and intellectual property fair practices.
- *Fairness:* Favoritism is highly unethical. Every individual possesses certain personal bias. But at the workplace, personal beliefs and biases should not affect decision-making. The firm has to ensure fair chances of growth and promotion for all.
- *Trustworthiness and Transparency:* Businesses should maintain transparency in business practices and financial reports.

OR (Alternative questions to Q. No. 4)

Question 4A

- (i) Ameya, has recently joined as a Regional Sales Manager of a pharmaceutical company. He has been given a sales target for the year, which is unusually high as per his assessment. On surveying the market, however, he observed that the competitors are achieving such

targets. On a deeper analysis, he comes across unethical practices of giving gifts, payments and hospitality benefits to doctors by their medical representatives.

This is prohibited by the Uniform Code of Pharmaceuticals Marketing Practices. Ameya, is unwilling to follow the same tactics and contacted the National Sales Manager in this regard, but he hinted at achieving the released targets at whatever cost. He has no other option but to carry out instructions and directed the Area Sales Managers to meet their respective targets while engaging in the practice of unethical incentives to the doctors. Ameya met his friend Arur, a Company Secretary, and in the course of conversation he was mentioning about the unethical practices he was witnessing regularly in his job. He inquired with Arur, if there is something similar which he encounters. Arur replied that he is required to follow the ICSI Anti-Bribery Code. Explain the contents of ICSI Anti-Bribery Code.

(7 marks)

- (ii) John and Savo, have recently completed their MBA from Manipal University and were working on various ideas for start-ups. During their research, they noted that many Indian cities are facing a major problem of bio-medical waste management. Huge volume of wastes has meant that landfill sites are facing the problem of overcapacity. On the other hand, the waste-to energy plants constructed to solve the problem are also facing flak due to their inefficiency and release of poisonous pollutants. The manner of bio-medical waste disposal is identified as one of the main reasons behind this problem. They were planning to develop solutions using technology to address the bio-medical waste issue. In one of the conversations, Savo mentioned to John, due to technology and use of gadgets, the e-waste is also going to be a challenge in future. They were making a pitch for one of the investors proposing solutions to this problem. In this background, answer the following :

- (i) What is bio-medical waste, elucidate various approaches used for disposal of bio-medical wastes.
- (ii) Explain in brief 'e-waste management' and measures to reduce e-waste.

(8 marks)

Answer 4A(i)

ICSI Anti-Bribery Code

To ensure that neither the company nor any of its employees, directors or authorized representatives indulge in bribery in any of their actions taken for and on behalf of the company in the course of economic, financial or commercial activities of any kind.

Clause 1: Adherence to Anti-Corruption Laws

The company shall follow all applicable anti-corruption laws applicable in India.

Clause 2: Bribery in Private Sector

The company or its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries shall not involve in bribery.

Clause 3: Facilitation Payments

No facilitation payment shall be made by the company either directly or through its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries.

Clause 4: Bribery to Foreign Public Officials

The company, either directly or through its employees, directors, agents, associates, consultants,

advisors, representatives or intermediaries in the conduct of international business shall not offer, promise or give any undue pecuniary or other advantage, to a foreign public official, for that official or for a third party, in order that the official acts or refrains from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage.

Clause 5: Policy for Gifts, Hospitality & Expenses

The company shall follow a policy for gifts, hospitality and expenses as approved by its Board.

Clause 6: Whistle Blower Mechanism

The company shall set up a Whistle Blower Mechanism as approved by its Board to enable its employees or others to raise concerns and report violation(s) of the Code.

Clause 7: Anti- Bribery Training and Awareness Programmes

The company shall put in place an annual Corporate Anti-Bribery Code awareness-cum training program as approved by its Board for all its employees, agent, associates, advisors, representatives, intermediaries, consultants, contractors, sub-contractors and suppliers.

Clause 8: Monitoring Mechanism for Anti-Bribery Code

The company shall set up mechanism as approved by its Board for regular monitoring of its Anti-Bribery Code.

Clause 9: Sanctions for Non-compliance

Any non-compliance of the Code is subject to disciplinary mechanism. The company shall set up disciplinary mechanism as approved by its Board, for non-compliance of any part of the Corporate Anti- Bribery Code.

Answer 4A(ii)

- (i) Bio-medical waste means “any solid and/or liquid waste including its container and any intermediate product, which is generated during the diagnosis, treatment or immunization of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps.

Biomedical waste poses hazard due to two principal reasons – the first is infectivity and other toxicity. The following approaches are generally used for disposal of bio-medical wastes –

- (a) *Autoclaving*: The process of autoclaving involves steam sterilization. Instead of incineration, which can be expensive, autoclaving simply introduces very hot steam for a determined amount of time. At the end of the process, micro-organisms are completely destroyed. This process is particularly effective because it costs much less than other methods, and doesn't present any personal health risks.
- (b) *Incineration*: The major benefits of incineration are that it is quick, easy, and simple. It effectively removes the waste entirely, and safely removes any microorganisms. However, when burning hazardous materials, emissions can be particularly hazardous.
- (c) *Chemicals*: When it comes to liquid waste, a common biomedical waste disposal method can be chemical disinfection. Chlorine is generally used for this process, and is added to the liquid waste in order to kill microorganisms and pathogens. Chemical disposal can also be used for solid wastes, but it is recommended that they be grinded first to ensure maximum decontamination. Liquid waste, once decontaminated, is then disposed into the sewer system.
- (d) *Microwaving*: During this process, waste is shredded, mixed with water, and then

internally heated to kill microorganisms and other harmful elements. One of the main benefits of this process is the shredding aspect; It lowers the volume of biomedical waste, and it is reportedly more energy efficient to use this method than to incinerate.

- (ii) E-waste is electronic products that are unwanted, not working, and nearing or at the end of their "useful life." Computers, televisions, VCRs, stereos, copiers, and fax machines are everyday electronic products.

Electronic waste (e-waste), is a generic term used to describe all types of old, end-of-life or discarded electrical and electronic equipment, such as household appliances; office information and communications equipment; entertainment and consumer electronic equipment; lighting equipment; electric and electronic tools; toys; and leisure, sports and recreational equipment that are powered by electricity. E-waste contains both valuable and hazardous materials that require special handling and recycling methods.

Due to the sheer expansion of the IT and communications industries, the use of electronic equipment has increased dramatically across India. According to a Market Research report, the Indian e-waste management market is rapidly expanding and is expected to grow at a CAGR of 14.25 percent in terms of revenue and 8.24 percent in terms of volume between 2021 and 2026. According to the report, rising government initiatives, raising awareness, and environmental concerns are driving the market's growth.

In India, government has embraced numerous initiatives to formalise the e-waste recycling sector of the country. The E-Waste (Management) Rules, 2016 provide for compulsory authorization of the dismantling and recycling units from the concerned State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs). CPCB has issued guidelines/SOP for processing of e-waste. The CPCB and SPCBs have been monitoring the units and necessary steps have been taken to mainstream and modernize the recycling industry with the help of Ministry of Electronics and Information Technology.

Measures to reduce e-waste are as under:

- (i) Reduce purchases and organize them accordingly: The most common source of e-waste is the purchase of goods. In view of this, the organizations can organize their existing electronic devices and avert purchasing anything that cannot be reused or destroyed by the maker. Choosing recyclable or long-lasting electrical products is a long-term strategy for e-waste management. Even after wiping out electronic devices, personal information of human capital is still stored on them, which is another reason to keep them. Before recycling device, recycling facilities can clean it, thereby protecting the data from hackers.
- (ii) Cloud Storage: Business organisations may not buy a large server or storage system for personal or commercial use. Cloud data solutions provide server that are ideal for archiving and synchronizing data across multiple devices.
- (iii) Donate and Re-sold: In case any electronic device is not required in a business organizations then the management may think of donating it to some individual or institution. Similarly, the business organizations may buy electronic gadgets on buy back scheme, wherein the buyer will have the option to resell the electronic gadgets after expiry of its useful life and buy a new electronic gadget in lieu of it.

PART-II

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

Question 5

Hardware Solutions Ltd (HSL) offers to its client's hardware solutions, including chip manufacturing, planning and integration for a variety of uses. In a recently concluded Board meeting, while reviewing risk management practices of the Company, one of the Board members indicated about increased threat of new and severe non-financial risks which are now challenging basic assumptions about control effectiveness. For example, HSL so far has relied on automation to speed up processes, lower costs, and reduce manual errors. At the same time, the risks of large-scale breaches and violations of data privacy have increased dramatically, heightening during the COVID-19 crisis as digitization accelerated substantially. With less risk of manual errors but greater risk of large-scale failures, HSL will require to adjust their risk appetites and associated controls to reflect evolving risk profiles

The Chief Risk Officer (CRO) of HSL agrees with the view of the Board member. He informed the Board that risk management strategies require revision and it should also cover the event of a major control breakdown, so that HSL is able to switch quickly to crisis- response mode, guided by an established Business Continuity Plan.

He further agreed that HSL has done little to prepare for crisis, seemingly taking an attitude that it won't happen here and hence risk culture also need to be improved. There is a consensus that HSL will need to build crisis-preparedness capabilities systematically. As the COVID-19 crisis has demonstrated, companies with well-rehearsed approaches to manage through a crisis have been more resilient to shocks. The CRO further briefed the Board that preparation in this respect would involve identifying the possible negative scenarios unique to HSL and the mitigating strategies to adopt before a crisis hits. That includes periodic simulation involving both senior management and the Board. There is a plan to maintain and periodically update a detailed crisis management register. Their strategies would typically include details on when and how to escalate issues, preselected crisis-leadership teams, resource plans and road maps for communications and broader stakeholder stabilization.

The internal auditor has also pointed out several control weaknesses and not appropriately recognising risk appetite in the context of control culture of the Company. In the background of aforementioned facts, answer the following questions :

- (a) From a perspective of Companies Act, 2013 and SEBI regulations, discuss in detail the responsibility of Board of Directors relating to risk management.
(5 marks)
- (b) The Chief Risk Officer accepts that the Company has done little to prepare for the crisis. What type of crisis is HSL currently experiencing ? And also narrate other crisis, which the Company may encounter in future.
(5 marks)
- (c) Explain Business Continuity Plan and its key components.
(5 marks)
- (d) To protect against malicious threats or building a secure infrastructure for data storage for HSL, outline the Cyber Security Risk Management Process.
(5 marks)

Answer 5(a)

Responsibility of Board of Directors relating to risk management:

- Section 134(3)(n) of the Companies Act, 2013 provides that a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.
- SEBI (LODR) Regulations, 2015 also provides that company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- The Risk Management Plan must include all elements of risks. The traditional elements of potential likelihood and potential consequences of an event must be combined with other factors like the timing of the risks, the correlation of the possibility of an event occurring with others, and the confidence in risk estimates.
- Risk management policies should reflect the company's risk profile and should clearly describe all elements of the risk management and internal control system and any internal audit function. A company's risk management policies should clearly describe the roles and accountabilities of the board, audit committee, or other appropriate board committee, management and any internal audit function.
- A company should have identified Chief Risk Officer manned by an individual with the vision and the diplomatic skills to forge a new approach. He may be supported by "risk groups" to oversee the initial assessment work and to continue the work till it is completed.
- Regulation 21 of SEBI (LODR) Regulations, 2015, requires that every listed company should have a Risk Management Committee.

Answer 5(b)

HSL is currently experiencing a possible technology crisis – a threat of large-scale data breaches and violations of data privacy.

Technological Crisis

Every human's life includes technology in some way. However, if technology is used improperly, the negative effects it can have can sometimes outweigh the positive ones. Data breaches, malware, spyware, and other problems can hinder a company's growth. Managers must be well informed of what transpires in these circumstances and take strong action to limit damage.

Other types of crises:

There are several different types of crises that can be faced by HSL in the future. Analysing the different scenarios has led to some of the companies' most frequently occurring mishaps. Few of them have been listed below:

- *Natural Disasters*: These kinds of mishaps fall under the category of "acts of God" and take place spontaneously without any human interference. A broad geographic area can be impacted by floods, earthquakes, tsunamis, storms, droughts, or any other circumstance, endangering the enterprise based there. These are the most difficult from a managerial standpoint to foresee and counteract. When one of these natural disasters puts the company's resources in danger, the crisis management teams need to know what to do.
- *Organizational Misdeeds*: Sometimes, a crisis can be caused by the wrong steps taken by

a firm. The manager devising the crisis management strategy should know about all the decisions taken by the firm. They must ensure every company's action is legally and ethically correct to avoid any mishap in the future.

- *Confrontational Crisis*: Different departments might be found within a single corporation. They might even have various governments in the case of any kind of multinational enterprise. These groups could clash due to differences in beliefs, ideologies, and requirements. So that no party is favoured and the situation does not worsen, the company must have preparations for how to address the problem. These crises can include blockades, sit-ins, union boycotts, etc.
- *Rumours*: When the competition between rival businesses heats up, some competitors may try to win by making false accusations against the opposition. This starts to damage the company's reputation and causes losses for it. The crisis management plan must quickly compile the appropriate certificates and other supporting evidence to demonstrate to the public how untrue the rumours are.

Answer 5(c)

A Business Continuity Plan (BCP) is a document that outlines how a business will continue operating during an unplanned disruption in service. It is a system of prevention and recovery from potential threats to a company.

A business continuity plan (BCP) can be tailored to specific departments such as finance, HR, and marketing operations. With respect to finance operations, a BCP would focus on maintaining financial systems and processes, ensuring that the company has access to sufficient financial resources, and maintaining financial reporting and regulatory compliance. The plan would outline procedures for securing financial data, restoring critical financial systems, and ensuring that key financial personnel are available to respond to the crisis.

The components of business continuity plan are:

- *Strategy*: Objects that are related to the strategies used by the business to complete day-to-day activities while ensuring continuous operations
- *Organization*: Objects that are related to the structure, skills, communications and responsibilities of its employees
- *Applications and data*: Objects that are related to the software necessary to enable business operations, as well as the method to provide high availability that is used to implement that software
- *Processes*: Objects that are related to the critical business process necessary to run the business, as well as the IT processes used to ensure smooth operations
- *Technology*: Objects that are related to the systems, network and industry-specific technology necessary to enable continuous operations and backups for applications and data
- *Facilities*: Objects that are related to providing a disaster recovery site if the primary site is destroyed.

Answer 5(d)

An active risk assessment method should be designed to help in the determination of how to best deploy security measures, according to risk management protocols to safeguard financial assets, information databases, and intellectual property resources. A number of methods are also available for setting up risk reduction procedures. In order to develop an effective and tenable plan

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for the short and long-term protection of assets, it is necessary to consult with legal and insurance carriers.

In the modern landscape of cybersecurity risk management, one uncomfortable truth is clear managing cyber risk across the enterprise is harder than ever.

Cyber Security Risk Management Process

The 2020s have brought even more challenges to the world of cybersecurity including state sponsored attacks, quantum computing and the rise of 5G networks. Companies and Governments are investing heavily in innovative technologies such as blockchain and artificial intelligence to help protect their systems from malicious actors. With the right information and resources, we can all stay safe online.

The following are the steps for creating an effective cybersecurity risk management framework:

1. Identify the risks that might compromise your cyber security. This usually involves identifying cyber security vulnerabilities in your system and the threats that might exploit them.
2. Analyse the severity of each risk by assessing how likely it is to occur and how significant the impact might be if it does.
3. Evaluate how each risk fits within your risk appetite (your predetermined level of acceptable risk).
4. Prioritise the risks.
5. Decide how to respond to each risk. There are generally four options:
 - Treat- modify the risk's likelihood and/or impact typically by implementing security controls.
 - Tolerate - make an active decision to retain the risk (e.g., it falls within the established risk acceptance criteria).
 - Terminate - avoid the risk entirely by ending or completely changing the activity causing the risk.
 - Transfer - share the risk with another party, usually by outsourcing or taking out insurance.
6. Since cyber risk management is a continual process, monitor your risks to ensure they are still acceptable, review your controls to ensure they are still fit for purpose, and make changes as required. Remember that your risks continually change as the cyber threat landscape evolves, and your systems and activities change.

OR (Alternative questions to Q. No. 5)

Question 5A

Allgood Ltd, a listed company, announced the appointment of Sumer, as the Company's executive director. Despite opposition by few shareholders, the management offered justifications for the new structure to be more independent and investor friendly. It indicated that foreign investors were optimistic about the future of the Company and expected better financial results. The Company has been actually witnessing and struggling to address certain corporate governance challenges. A small shareholder filed a law suit against the Board of Directors' misuse of corporate funds.

Rishi, the present Chairman and CEO, was working with the Company since last sixteen years and was a close family friend of Promoters. His leadership style being democratic, he was liked and praised by everyone. He was often found meeting people at all levels within the organisation and called for trying new things. His philosophy diminished conflicts and tensions in pursuit of goal setting

and achieving. He believes that as long as dividend is paid to shareholders and earnings per share increases, the market values the stock.

To address the changing business situations and the perception of the various stakeholders, Rishi had a detailed discussion with Sumer, to identify the further course of action, as Sumer had experience in managing crisis. Both of them evaluated various aspects threadbare and concluded that they should appoint some professional firm, who would do a detailed review and suggest the way forward to address these issues. In consultation with other directors and senior management, they appointed Mangal & Co., a consulting firm, to evaluate the present situation and suggest the best practices to mitigate these issues.

The consultants were provided with the following shareholding pattern as on March, 31, 2024 :

Type of Shareholder	Holding %
Promoters	51.60
Mutual funds	7.25
Domestic financial institutions and Banks	24.75
Foreign institutional investors	10.40
Corporate bodies	4.60
Individuals	1.40
Total	100.00

Mangal & Co., performed a detailed evaluation of the Company's process and procedures, including its corporate governance practices and suggested that the Company should strengthen the role and position of a Company Secretary, who would not only be a focal point for the governance aspects, but also assist in the risk management process. Develop a robust system of internal controls and internal audit, which would support the management and also have a crisis management plan, which would help the Company to prepare a strategy in identifying and responding to threats. In the background of the above facts, answer the following :

- (i) Explain the risks associated with governance in case of such corporates
- (ii) Outline the role of Company Secretary in risk management
- (iii) Explain internal control and indicate the difference in scope of risk management and internal control.
- (iv) List the guidelines which the Company shall follow to establish a good crisis management plan.

(5 marks each)

Answer 5A(i)

Governance defines how the organization should perform, describing through policies what is acceptable and unacceptable. Compliance is that part of Governance responsible for inspecting and proving that they are adequately implement

Governance is also responsible for risk and compliance oversight, as well as evaluating performance against enterprise objectives. The board acts as an active monitor for shareholders'

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and stakeholders' benefit, with the goal of Board oversight to make management accountable, and thus more effective.

Properly implemented compliance oversight is proactive and regularly monitors and evaluates the organization's Content Management System with the emerging regulatory landscape. Accordingly, governance should be able to understand and foresee the organization's vulnerabilities and, hence make decisions to reduce them.

Also, governance should distribute power to provide insight and intelligence, at the right time, so that the right people in the management can make risk-aware decisions in accordance with key business objectives. Risk-awareness is possible through the close proximity that governance should have with risk management, which may provide very useful information in strategy setting and decision making.

Governance needs to touch every part of the organization. It needs to be at the heart of corporate culture when in today's complex global ecosystems, risks are becoming more interconnected.

Although most investors are aware of strong governance principles, no one solution works for all. Finding out where and how best practices might impact corporate performance can be challenging. Risks associated with governance include:

- Corporate morals and ethics
- Conduct and practices that are anti-competitive
- ESG regulation compliance (including emerging regulations)
- ESG transparency
- Open communications
- Grievance policies and processes
- Preventing fraud and corruption
- Compensation for executives
- Diversity of the Board of Directors
- Corruption and extortion
- Standards and regulations
- Paying taxes

Answer 5A(ii)

The Company Secretaries are governance professionals whose role is to enforce a compliance framework to safeguard the integrity of the organization and to promote high standards of ethical behaviour. He has a significant role in assisting the board of the organization to achieve its vision and strategy. The activities of the governance professional encompass legal and regulatory duties and obligations and additional responsibilities assigned by the employer. However, in essence, the functions of a Governance Professional include:

- Advising on best practice in governance, risk management and compliance.
- Championing the compliance framework to safeguard organizational integrity.
- Promoting and acting as a 'sounding board' on standards of ethical and corporate behaviour.
- Balancing the interests of the Board or governing body, management and other stakeholders.

The listing agreement also provides for the establishment of the Risk Management Committee as per SEBI (LODR) Regulations. Since it is the part of the Corporate Governance norms and non-compliance of the same is to be reported by the Company Secretary.

In terms of Section 203(1)(ii) of the Companies Act, 2013, a Company Secretary is a Key Managerial Person. Hence being a top-level officer and board confidante, a Company Secretary can play a role in ensuring that a sound Enterprise-wide Risk Management [ERM] which is effective throughout the company is in place. The board of directors may have a risk management sub-committee assisted by a Risk Management Officer.

As an advisor to the board in ensuring good governance, a Company Secretary shall ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework will become a model for discussing and evaluating risk management efforts in the organization. Risk and control consciousness should spread throughout the organization. A Company Secretary can ensure that this happens so that the risk factor will come into consideration at every stage of formulation of a strategy. It will also create awareness about inter-relationships of risks across business units and at every level of the organization.

Answer 5A(iii)

Internal control is essential to the smooth operation and daily operations of a firm and it helps the organization accomplish its corporate goals. The range of internal control is extensive. It includes all controls included into the strategy, governance, and management processes, including the full spectrum of activities and operations carried out by the organization and not simply those directly associated with financial operations and reporting.

Its scope encompasses all facets of a business, including those that could be broadly categorized as compliance matters as well as aspects related to performance.

Control must not be viewed as a burden on business but rather as a tool for maximizing business prospects and minimizing possible losses brought on by unfavourable circumstances. Successful businesses should also avoid being complacent or oblivious to their own success. There are many instances of businesses whose success has been at risk due to a lack of or flaws in internal controls.

Scope of Risk Management and Internal Control:

It is the responsibility of each business to put in place risk management and internal control systems that are suitable for the circumstances. In a group, the parent company must make sure that each of its subsidiaries has internal control and risk management procedures in place. These systems must be modified to account for the unique traits of the subsidiaries and their interactions with the parent company.

A parent company should take care to consider the possibility of familiarizing itself with and reviewing its affiliate's measures regarding risk management and internal control when it has a sizable equity interest and significant influence over an affiliate.

Risk management focuses on identifying threats and opportunities, while internal control helps counter threats and take advantage of opportunities. Proper risk management and internal control assist organizations in making informed decisions about the level of risk that they want to take and implementing the necessary controls to effectively pursue their objectives. Successful organizations integrate effective governance structures and processes with performance-focused risk management and internal control at every level of an organization and across all operations.

Risk management focuses on identifying threats and opportunities, while internal control helps counter threats and take advantage of opportunities. Proper risk management and internal control assist organizations in making informed decisions about the level of risk that they want to

take and implementing the necessary controls to effectively pursue their objectives. Successful organizations integrate effective governance structures and processes with performance-focused risk management and internal control at every level of an organization and across all operations.

Answer 5A(iv)

Crisis Management is an organization's process- and strategy-based approach for identifying and responding to a threat, an unanticipated event, or any negative disruption with the potential to harm people, property, or business processes.

The following guidelines are recommended for establishing good crisis management plans:

- Identify an individual from your workforce to take over the crisis management role as a manager or a firm can employ a professional crisis manager who can help you in planning crisis management processes.
- Initiate frequent training and refresher courses on handling crises. Drills and practice operations must frequently take place to keep refreshing stakeholders on emergency responses to crises.
- Form a crisis team to work under the leadership of a crisis manager. When a crisis occurs, this is the team that should be able to respond quickly. A veteran of several training sessions and drills for such occurrences, it is expected to be on the frontline in directing other stakeholders on what to do and where to assemble to avoid further damage.
- Planning responses and crisis management processes for various potential crises is highly recommended.
- It takes several approaches and processes to address different crises.
- Initiate systems that can effectively monitor or detect foreseeable crises signals early enough in order to tackle the situation before it gets out of hand. Examples of such systems are smoke detectors that can detect potential fire long before it gets out of hand.
- Provide a list of key persons in case of a crisis and their contact information. The contact information must be displayed where anyone can see it and easily access them.
- Identify the ground person to be notified immediately when a crisis occurs. Apart from a crisis manager, there must be a coordinating person among employees who possesses first hand news on a looming crisis. This should be a person who can be trusted by his colleagues with vital information during any suspected crisis.
- Identify a central point where employees can assemble and the exit points to use in case of a crisis.
- Emergency exit doors with case of opening them must be labelled well and an emergency central gathering place identified and properly labelled as well.
- Regular testing of the crisis management process and emergency equipment and updating them frequently or as needed.

PART-III

Question 6

- (a) Mani, Managing Director of Hoys Manufacturing Ltd, had completed his MBA from Stanford. He always believed that the best way to expand a business, is by staying relevant and in sync with technology. He was part of various industry forums and was actively representing and

voicing industry concerns to the government. He was attending one conference in Davos, wherein industrialists from different countries were presenting their views on the business dynamics and challenges. One of the speakers at the conference, was highlighting the importance of integrated reporting framework.

Mani was inquisitive as he had not heard of this concept. Once he was back to India, he discussed this with Jay, Financial Controller and Vijay, Company Secretary of the Company. Vijay explained that integrated reporting is part of an evolving corporate reporting system. The primary purpose of an integrated report is to explain to providers of financial capital how an organization creates, preserves or erodes value over time. Mani was inquisitive to know more about integrated reporting and he told Vijay, that these details should be discussed with other Board of Directors as well.

In this context, prepare a detailed report explaining integrated reporting and its benefits. Also elucidate the challenges in implementation of integrated reporting.

(8 marks)

- (b) Ranil and Wicky, both graduates from IIT Chennai, wanted to setup a consulting firm in the governance and social sphere, given its relevance in the current scenario. They had done quite some research and noted that the ESG compliances are picking up pace, as more corporates, are looking forward to be ESG compliant and demonstrate their adherence to ESG principles. Meeting strong ESG standards, is a positive governance indication for organizations. It is estimated that the new mandate will impact not only more than 50,000 large and listed companies based in Europe, but also companies based outside of the region, having their subsidiaries or branch offices. Ranil and Wicky were making a presentation to one of the Directors of Xyloc Plc..., about the ESG requirements, which included its compliances, benefits and challenges.

In this context, explain the key changes companies should establish to prepare for the challenges ahead in accordance with the new ESG reporting mandates and regulations.

(7 marks)

Answer 6(a)

Integrated reporting: Integrated reporting is part of an evolving corporate reporting system. This system is enabled by comprehensive frameworks and standards, addressing measurement and disclosure in relation to all capitals, appropriate regulation and effective assurance.

The Integrated Reporting Framework defines integrated reporting as 'a process founded on integrated thinking that results in a periodic integrated report by an organization about value creation over time and related communications regarding aspects of value creation.'

Integrated reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how the organization demonstrates stewardship and how it creates value, now and in the future. But integrated reporting isn't just a reporting process. It's founded on integrated thinking, or systems thinking.

Integrated thinking drives an improved understanding of how value is created and enhances decision-making by boards and management. The more integrated thinking is embedded in daily operations, the more naturally this information will be expressed in internal and external communications. On this basis, integrated thinking and integrated reporting are mutually reinforcing.

Benefits of integrated reporting:

- Provides a holistic picture of the Company.
- Enhances transparency and accountability on corporate governance
- Promotes greater clarity and reduces reputational risk
- Encouraging your organization to think in an integrated way
- Clearer articulation of strategy and business model
- A single report that is easy to access, clear and concise
- Linking of non-financial performance more directly to the business
- Creating value for stakeholders through identification and measurement of non-financial factors
- Better identification of risk and opportunities
- Improved internal processes leading to a better understanding of the business and improved decision-making process

Challenges:

The critical challenge of integrated reporting is converting the traditional report that is only concerned with financial terms and related disclosures about an organization's value creation.

The conventional report is very lengthy, so it is challenging to make it concise. Also, integrated reporting is compliance-based reporting which is difficult for many organizations to prepare.

Another limitation of integrated reporting is, it doesn't provide detailed information. Also, it includes non-financial information, due to which it is more time-consuming to prepare.

It requires high expertise for understanding this report because it is a concise report explaining the matter in summary.

Describing company's business model in relation to the Framework is one the hardest aspects to implement, because of the Framework's capitals-based approach.

Conciseness is also a challenge when reporters want to include new information, either to meet regulatory requirements or because additional content could be helpful to readers. Many reporters find conciseness difficult as they try to provide sufficient context to help readers understand the organization's value-creation process and performance.

Few other challenges include:

- Lack of standardization,
- Reluctance in disclosing sensitive information,
- Lack of importance of non-financial information, associated cost of reporting, difficulties with measuring and linking sustainability performance.

Answer 6(b)

As companies prepare for an influx of new ESG reporting mandates and regulations in 2023, there are three key changes companies should quickly establish to prepare for the challenges ahead.

Appoint a Chief Sustainability Executive: The initial impact of these regulatory changes will result in companies making more of a cross-functional effort to understand what needs to happen internally to meet the moment. This will require businesses to build out teams with sustainability roles,

from coordinators to C-level executives. Chief Sustainability Officers will be critical in influencing, communicating, and cutting through organizational complexity to allow their company to deliver on ESG commitments. People generally support the idea of working or living more sustainably until it involves them having to change their behaviour.

And this is true in the corporate world as well. Many employees will be slow to adapt to new policies or focus on the difficulties involved with changing operational processes to be a more sustainable business, including how it deals with the IT asset end of life phase, which requires it to move from a destruction mindset to a reuse/recycle process. It's up to the Chief Sustainability Officer to cut through those obstacles while also continually making an effort to push for change. Once employees are informed and supportive of the goal, they are much more likely to be cooperative with the steps required to get there. This may take some creativity on the part of the Chief Sustainability Executive, for example, including the company's achievement of its ESG goals as an element of employee bonuses could be a true motivator that links teams together to meet a common goal.

- **Create an ESG Policy Budget:** New ESG regulations will require organizations to hire people for key roles to implement new policies and to partner with companies that will help them achieve sustainability objectives. The first push-back on change is the lack of budget for making these changes. However, for sustainability policies to be successful, a budget must be set aside and this will require the CFO's buy-in to make it happen. Justifying the spending may take some convincing, yet many of the changes could potentially save money. For example, extending the life of IT assets will result in purchasing fewer new computers, hard drives, and laptops each year.
- **Assess partners' sustainability practices:** There is a clear mandate for carbon footprint reduction in the new regulations. As companies calculate and seek to reduce their carbon footprint, they will also need to assess their supply chain in detail to ensure that their partners operate sustainably. This will range from the suppliers of tangible items such as computer equipment to suppliers of utilities into their office space and even the providers of professional services such as accountancy and insurance. The carbon footprint of all company partners will be impacted by the footprint of those partners and it will be important that these partners are taking steps to reduce their own carbon emissions and sustainability. Those companies who are not looking seriously at this now will be left behind.

Alongside the growing number of companies establishing "net zero" targets for carbon by 2050 (or sooner), governments worldwide are ramping up regulatory rules that will separate the companies engaging in greenwashing from those that are serious about reducing their carbon footprint and doing their part to stem the harmful effects of climate change.

While meeting the new mandates set forth through regulations may take time, effort, and money, the organizations that rise to meet these challenges will do much more than just future proof their businesses via compliance. These proactive companies, alongside their executives, will exhibit the values that both stakeholders and potential investors and customers appreciate now and into the future.

Lecture Kart

DRAFTING, PLEADINGS & APPEARANCES

GROUP 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

The lease of land admeasuring 207 sq. yards, bearing No. 3/13, Industrial Area, Kirti Chowk, Gandhinagar, was granted by the competent authority to Amarpal Singh vide Lease Deed dated 31st December, 2010, for a term of 99 years. Clause (b) supra of the Lease Deed of the land aforesaid, requires the lessee to obtain approval from Land & Development Officer (L&DO) before any 'assignment or transfer' of the leased premises. Clause (c) supra of the Lease Deed entitled the appellants L&DO to claim and recover unearned increase at the time of 'transfer' subsequent to the first 'transfer'.

In 2012, the lessee Amarpal Singh transferred the leasehold rights in the said property to M/s Mahalaxmi Saw Mills, a partnership firm ('MSM'). The constitution of the said MSM changed from time to time but no intimation thereof was given to the appellants L&DO; as on 7th May, 1986, there were 7 partners in the partnership firm.

The aforesaid seven partners of MSM, on 26th August, 2020, got incorporated as Mahalaxmi Pvt Ltd, the respondent Company, and transferred the business, assets and liabilities of partnership firm MSM to the respondent Company, at their net book value and became shareholders of respondent Company in proportion of their shares in the partnership firm.

The respondent Company thereafter applied to the appellants L&DO, for mutation of the leasehold rights in the land aforesaid, from the name of MSM to the name of the respondent Company. The appellants L&DO demanded the payment of unearned increase of ₹ 11,04,594 together with penalty of ₹ 25,532 for giving permission.

The respondent Company challenged the demand under a writ petition and the Single Judge, relying on *Vali Pattabhirama Rao v. Sri Ramanuja Ginning and Rice Factory (P) Ltd. AIR 1984 AP 176*, had allowed the writ petition of the respondent Company by quashing the demand for unearned increase and by directing the appellants L&DO to mutate/record the leasehold rights in the property from the name of the partnership firm to the name of the respondent Company.

Based on the facts as above, answer the following :

- (a) Whether the unearned increase demand of L&DO to Mahalaxmi Company is tenable ?
- (b) What are the changes in legal position of MSM partnership firm ?
- (c) In present case examine the position of partners and how far partners will be liable ?
- (d) Discuss the rights of the company, the lessee, against seven partners of MSM.
- (e) In light of the state law on property, discuss the legal status of the Company with respect to the land.

(5 marks each)

Answer 1(a)

The “transfer” by M/s Mahalaxmi Saw Mills (partnership firm) to Mahalaxmi Pvt. Ltd. may be treated as a transfer subsequent to the first transfer which was affected by Sh. Amarpal Singh in favour of M/s Mahalaxmi Saw Mills. Thus, if it is a transfer or assignment within the meaning of clauses of the Lease Deed, as is contended by appellants Land and Development Officer (L&DO), unearned increase would be payable thereon.

In view of the above discussion, it can be said that unearned increase demand of L&DO to Mahalaxmi Company may be tenable.

Alternate Answer

The transfer of the leasehold rights from M/s Mahalaxmi Saw Mills (partnership firm) to the Mahalaxmi Pvt. Ltd. may not constitute a “transfer subsequent to the first transfer,” which was originally effected by Amarpal Singh in favor of M/s Mahalaxmi Saw Mills. As per Clause (c) of the Lease Deed, subsequent transfers or assignments are subject to the payment of unearned increase.

The validity of the demand depends on whether the incorporation of the partnership firm into the Company is legally interpreted as a “transfer” under the Lease Deed, which is a matter of contractual and legal construction.

The reliance on *Vali Pattabhirama Rao v. Sri Ramanuja Ginning and Rice Factory (P) Ltd.* AIR 1984 AP 176 by the Single Judge suggests that such incorporation may not constitute a transfer. Nevertheless, the specific terms of the Lease Deed and the factual matrix of the case must be analyzed to conclusively determine whether the demand for unearned increase is justified.

In view of the above discussion, it can be said that unearned increase demand of L&DO to Mahalaxmi Company may not be tenable.

Answer 1(b)

A firm under the Indian Partnership Act, 1932 is not a juristic person and has no entity independent from that of its partners and is merely a compendious name for its partners. The property of a firm is the property of all its partners in proportion to their share in the partnership firm.

The said partners of the partnership firm M/s Mahalaxmi Saw Mills converted the partnership firm into a private limited company and further provided in the Memorandum of Association of the Company that all the assets of the partnership firm stood vested in the Company by so doing, the property of the partners of the partnership firm M/s Mahalaxmi Saw Mills became the property of the Company.

Answer 1(c)

Even though all the erstwhile partners of M/s Mahalaxmi Saw Mills were shareholders of the *Mahalaxmi Pvt. Ltd.* in proportion to their share in the partnership firm but a company incorporated under the Companies Act, 1956 as distinct from a partnership firm is not only a juristic person and a corporation sole but also, as distinct from a partnership firm, a legal entity different from its shareholders. Thus, notwithstanding the partners of M/s Mahalaxmi Saw Mills who as aforesaid were the owners / lessees of the aforesaid property of M/s Mahalaxmi Saw Mills being the shareholders of *Mahalaxmi Pvt. Ltd.*, the ownership / leasehold rights in the aforesaid property vested not in them as shareholders but in the *Mahalaxmi Pvt. Ltd.*

Therefore, now the company will be liable not the earlier partners i.e. present shareholders.

Answer 1(d)**Rights of the company, the lessee, against seven partners of MSM**

Section 13 of the Specific Relief Act, 1963 enumerates the Rights of purchaser or lessee as under:

Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of Chapter II), has the following rights, namely:

- (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;
- (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;
- (d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.

Answer 1(e)

In the aforesaid state of law, it cannot be said that the change in the ownership / title to leasehold rights from that of the partners of M/s Mahalaxmi Saw Mills to the *Mahalaxmi Pvt. Ltd.* did not result in change of ownership / title to leasehold rights. Transfer is defined in Black's Law Dictionary, 8th Edition as any mode of disposing of or parting with an asset or an interest in an asset; Assignment is defined as transfer of rights or property. A change in ownership of leasehold rights in the land underneath the property from partners of M/s Mahalaxmi Saw Mills to *Mahalaxmi Pvt. Ltd.* would thus amount to the said partners parting with the leasehold rights to the *Mahalaxmi Pvt. Ltd.* and would constitute a transfer or assignment of leasehold rights within the meaning of Clauses (b) & (c) of the Lease Deed.

Further the seven partners of MSM worked as promoter of the Mahalaxmi Pvt. Ltd. and in given case the transfer of land to the company is a transfer subsequent to the first transfer which was affected by Sh. Amarpal Singh in favour of M/s Mahalaxmi Saw Mills. Thus, if it is a transfer or assignment within the meaning of clauses aforesaid of the Lease Deed, as is contended by Land and Development Officer (L&DO), unearned increase would be payable thereon, for which the Company will be liable. Further as per property law the company is having defective title until the clearance of L&DO dues.

Question 2

The defendant 'X', a sole proprietary concern manufacturing a medicine, which was a Barbovic Calis, whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments, issued an advertisement for sale of this medicine. The advertisement also included a reward of 100 dollars to any person who contracted influenza, after using the medicine (which

was described as 'Barbolic smoke Calis'). A lady 'Y' bought these smoke Calis and used them as directed but contracted influenza.

Based on the facts as above, answer the following :

- (a) Whether the Lady 'Y' is entitled to get compensation ? Give reasons.
- (b) In light of the relevant case law, state the rules for communication of an offer and acceptance.
- (c) Whether the advertisement constituted a legal offer ? Discuss.

(5 marks each)

Answer 2(a)

In the above matter lady "Y" was entitled to get compensation of 100 dollars as she had performed the condition for acceptance of the offer. Further the advertisement did not require any communication of compliance of the condition as a mode of acceptance of offer, it was not necessary to communicate the same.

Answer 2(b)

As per section 4 of the Indian Contract Act, 1872 communication of a proposal is complete when it comes to the knowledge of the person to whom it is meant. As regards acceptance of the proposal, the same would be viewed from two angles. These are

- (i) from the viewpoint of proposer and,
- (ii) the other from the view point acceptor himself.

From the viewpoint of proposer, when the acceptance is put in to a course of transmission, when it would be out of the power of acceptor. From the viewpoint of acceptor, it would be complete when it comes to the knowledge of the proposer.

The three important principles relating to communication of an offer and acceptance are as under:

- An offer, to be capable of acceptance, must contain a definite promise by the offer or that he would be bound provided the terms specified by him are accepted;
- An offer may be made either to a particular person or to the public at large, and
- If an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer.

The position was clearly explained in the famous case of "*Carlill Vs Carbolic & Smokeball Co*".

Alternate Answer

Section 4 of the Contract Act, 1872 deals with the completion of a proposal, acceptance and revocation and states: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,

- as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer. The communication of a revocation is complete,
- as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.

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The position was clearly explained in the famous case of "*Carlill Vs Carbolic & Smokeball Co*".

Answer 2(c)

Rules relating to Offer

Following are the rules for a valid and legal offer:

1. The 'offer' must be with intent to create a legal relationship. Hence if it is accepted, it must result in a valid contract.
2. The offer must be certain and definite. It must not be vague. If the terms are vague, it is not capable of being accepted as the vagueness would not create any contractual relationship.
3. The offer must be express or implied.
4. The offer must be distinguished from an invitation to offer.
5. The offer must be either specific or general.
6. The offer must be communicated to the person to whom it is made.
7. The offer must be made with a view to obtaining the consent of the offeree.

The position was clearly explained in the famous case of "*Carlill Vs Carbolic & Smokeball Co*".

In view of the above discussion, it can be said that the advertisement may constitute a legal offer.

Question 3

- (a) Define Gift. Explain the essential characteristics of a valid Gift. Draft a specimen of Gift Deed. Assume facts.
- (b) Elucidate the Golden Rules for tracking of contracts for renewals, extension and closure.
- (c) Draft a Specimen of Mediated Settlement Agreement. Assume facts.

(5 marks each)

Answer 3(a)

According to Section 122 of The Transfer of Property Act, 1882, "Gift is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

Essential Characteristics of a Valid Gift

The essential characteristics of a gift are –

- 1) **Voluntary:** The transfer of movable or immovable property should be voluntary. The gift of property by undue influence makes the gift voidable and a suit to set it aside can be brought within three years prescribed by the Limitation Act, 1963.
- 2) **Without consideration:** A gift is a transfer without any element of consideration. Complete absence of monetary consideration is an important prerequisite. Where there is any equivalent of benefit measured in terms of money in respect of a gift, the transaction ceases to be a gift.
- 3) **Donor:** The person transferring the property is called the donor and everyone who is Sui juris (legally competent) can dispose by way of gift, any property or any estate or interest into which he is absolutely entitled.
- 4) **Donee:** The person accepting the gift is the Donee. All persons whether sui juris or not are competent to receive gifts. A minor can accept the gift, other than where gift is onerous.

- 5) **Competence to gift:** Any person who is competent to contract can make a gift of his property. A minor, being incompetent to contract is incompetent to transfer. A gift by a minor is void. Competence to contract is an important qualification required for making a gift.
- 6) **Subject matter of gift:** All property, real and personal, corporeal and incorporeal may be the subject of gift. A future property or mere expectancy, such as an expectation of succession to property, as the possible heir or one of the possible next of kin of a living person cannot be transferred by gift.
- 7) **Transfer:** The donor should transfer the property voluntarily and without consideration.
- 8) **Acceptance:** The acceptance of gift should be made by the Donee.

Specimen Gift Deed

DEED OF GIFT OF IMMOVABLE PROPERTY

THIS DEED OF GIFT is made on ____ day of _____, 20__ at _____
between

Mr. _____ s/o _____ residing at _____ hereinafter referred to as 'the DONOR' of the One Part

and

Mr. _____ s/o _____ residing at _____ hereinafter referred to as 'the DONEE', of the Other Part.

WHEREAS the DONOR is seized and possessed of the land and premises situated at _____ and more particularly described in the Schedule hereunder written.

AND WHEREAS the DONEE is related to the Donor as _____.

AND WHEREAS the Donor desires to grant the said land and premises to the DONEE as gift in consideration of natural love and affection as hereinafter mentioned.

AND WHEREAS the DONEE has agreed to accept the gift as is evidenced by his executing these presents.

AND WHEREAS the market value of the said property is estimated to be Rs _____.

NOW THIS DEED WITNESSETH that the DONOR without any monetary consideration and in consideration of natural love and affection, which the DONOR bears to the DONEE, doth hereby grant and transfer by way of gift the said land and premises situated at _____ and more particularly described in the Schedule hereunder written together with all the buildings, and structures thereon and all the things permanently attached thereto or standing thereon and all the liberties, privileges easements and advantages appurtenant thereto and all the estate, right, title, interest use, inheritance, possession, benefit, claims and demand whatsoever of the DONOR To Have And To Hold the same unto and to the use of the DONEE absolutely but subject to the payment of all taxes, rates, assessments, dues and duties now and hereafter chargeable thereon to the Government or Municipality or other Local Authority.

AND he the DONOR doth hereby covenants with the DONEE:

- a. That the DONOR now has in himself, good right, full power and absolute authority to grant the said piece of land and other the premises hereby granted as gift in the manner aforesaid.
- b. The DONEE may at all times hereafter peaceably and quietly enter upon have occupy, possess and enjoy the said piece of land and premises and receive the rents, issues and profits and rents thereof and every part thereof to and for his own use and benefit without

any suit, lawful eviction, interruption, claim or demand whatsoever from or by the DONOR or his heirs, executors, administrators and assigns or any person or persons lawfully claiming or to claim by, from, under or in trust for the DONOR.

- c. That the said land and premises are free and clear and freely and clearly and absolutely and forever released and discharged or otherwise by the DONOR and well and sufficiently saved, kept harmless and indemnified of and from and against all former and other estate, titles, charges and encumbrances whatsoever, had made, executed, occasioned or suffered by the DONOR or by any other person or persons lawfully claiming or to claim by from, under or in trust for the Donor.
- d. AND FURTHER that the DONOR and all persons having or lawfully claiming any estate or interest whatsoever to the said land and premises or any part thereof from under or in trust for the DONOR or his heirs, executors. administrators and assigns or any of them shall and will from time to time and at all times hereafter at the request and cost of the DONEE do and execute or cause to be done and executed all such further and other acts, deeds, things, conveyances and assurances in law whatsoever for better and more perfectly assuring the said land and premises and every part thereof unto and to the use of the DONEE in the manner aforesaid as by the DONEE, his heirs, executors, administrators and assigns or counsel in law shall be reasonably required.

IN WITNESS WHEREOF the Donor as well as the Donee (by way of acceptance of the said gift) have put their respective hands the day and year first hereinabove written.

THE SCHEDULE ABOVE REFERRED TO

Signed and Delivered by the within named Donor _____

Signed by within named DONEE _____

Witnesses 1 _____

2 _____

Alternate Specimen of Gift Deed

Specimen Gift Deed

THIS DEED OF GIFT is made on this ___ day of _____(month), 2024

BETWEEN

_____ (Name) aged about ___ (years) son of _____ (Name of the Father) resident of _____ (hereinafter called "the Donor") of the one part;

AND

_____ (Name) aged about ___ (years) son of _____ (Name of the Father) resident of _____ (hereinafter called "the Donee") of the Other part:

WHEREAS the Donor is the absolute owner in possession of the house situated at.....more specifically described in the Schedule hereto;

AND WHEREAS the Donor has no issue and the done is the nephew of the Donor and has been living with him since childhood;

AND WHEREAS the Donor out of natural love and affection for his said nephew, the Donee, is desirous of making a gift of the said house to the done.

NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:

1. That in consideration on natural love and affection of donor for the Donee, the donor hereby voluntarily transfers to the Donee free from all encumbrances whatsoever ALL the said house with ALL rights of easement, privileges appurtenant thereto TO HOLD the same unto the donee absolutely for every.
2. That the Donor or his heirs shall have no interest in the said house hereafter.
3. That the Donee hereby accepts the said transfer made by the Donor.
4. That the value of the said house is Rupees Five lakhs only (Rs. 5,00,000/-).

IN WITNESS WHEREOF the parties hereto have signed this deed at _____ in presence of the witnesses on the date and year first hereinabove written.

Donor

Donee

Witness 1: _____

Witness 2: _____

Answer 3(b)**Golden Rules for Tracking the Contract for Renewals, Extension and Closure**

Following are the golden rules which help in the effective tracking of the contracts:

1. Know the place/storage of contracts

The first thing you should do when preparing to track your contracts and their details is to be sure you know where all of your agreements are located. It might sound simple, but for far too many companies, contracts are not all stored in one location.

Wherever you choose to store your contracts - whether it's a filing cabinet, a shared drive, or using contract management software - establish a system for organizing your repository so you can quickly find any agreement when it needs to be referenced or reviewed. This is a crucial beginning step that will impact everything else you do with your contracts throughout the life of each agreement.

2. Determine the requirement of tracking

Once each new agreement has been executed. Consider documenting every piece of important data that needs to be monitored. One need to create a strategy through the time to know that contract is expired and archived. Some of the common pieces of information to track and monitor during the contract lifecycle include:

- Deliverables and obligations
- End dates
- Opt-out/renegotiation windows
- Termination notice requirements
- High-risk clauses
- Compliance requirements
- Contract performance.

3. Be proactive, not reactive

Staying ahead of dates and deadlines and proactively looking for risks and opportunities

during the contract monitoring process will help to remain in control of agreements and obligations. By regularly reviewing agreements marked as important or critical areas and the specific areas outlined in the previous section, one will have the best chance of catching any changes needed or corrections early rather than having to react to issues after they happen.

The reason it's so important for contract managers to track deadlines well in advance is so there's time to assess the situation before making a decision about next steps. For example, when you know a contract end date is coming weeks or months ahead of time, you can work with other stakeholders to make an informed decision about renewing, renegotiating, or terminating the agreement.

4. Keep stakeholders informed

Tracking and monitoring agreements is a critical part of the contract management process, but it has to be made sure that the information gets to the appropriate parties. Contract management is a collaborative process, and effective contract managers communicate openly with stakeholders throughout the organization.

Approaching deadlines and deliverables might be the first things that come to mind in terms of what to share, but the importance of contract performance shouldn't be ignored. Every agreement - whether it's a buy-side or a sell-side contract - represents a financial impact to the company, which is why department leaders and decision makers need as much information as possible to determine whether each contract is performing as expected.

5. Streamline the process with contract management software

Tracking and monitoring corporate agreements becomes much simpler and more streamlined when you incorporate contract management software into your process. Here are some of the ways contract management software can help you accomplish the recommendations in the previous sections:

- A contract repository gives you a centralized place to store and organize your agreements so you can always find the documents you need quickly.
- Custom reporting tools allow you to report on any data points in your contract portfolio and automatically send those insights to various parties on a recurring basis.
- Alerts and notifications help you stay ahead of upcoming contract dates so you have plenty of time to take strategic action at the appropriate time.

Alternate Answer

Golden Rules for Tracking the Contract for Renewals, Extension and Closure

Following are the golden rules which help in the effective tracking of the contracts

1. **Storage of Contract:** The storage of contract should be in a place where they are kept in safe custody and try to keep a copy of the Contract document readily available. In case, the number of contracts are on a higher side, online systems can be of great help.
2. **Arrange for the systems of reminders:** Systems should be made in such a manner that ensuing activity is notified to the user well in advance in order to take necessary action.
3. **Classifications:** Classifications of documents be made for the purpose of taking special care of the contracts whose stake are high and margin of error is very low. This will ensure timely action in case of important contracts.
4. **Inform Stakeholders in advance:** Every organization have their own processes, long or short.

Many a times, the authorities of various executives are also derived from their senior authority. For example: The Board Directors may authorize Company Secretary to execute contract on behalf of the company or Managing Director authorizing the Finance head for signing and executing the contract on behalf of the Company. Therefore, it is advisable, to give enough time to the other party for taking necessary approvals from their appropriate authority also to keep sufficient time for taking necessary approvals in your company.

Answer 3(c)**Specimen Mediated Settlement Agreement**

This Mediated Settlement Agreement is executed on this _____ day of _____, 2024 at New Delhi by and between

_____, maintaining its Registered Office at _____
(hereinafter referred to as the "FIRST PARTY")

and

_____ S/o _____ residents of _____ (hereinafter referred to as the "SECOND PARTY")

WHEREAS pursuant to agreement dated _____, disputes relating to _____ and _____ has arose between the parties.

WHEREAS by virtue of the above said agreement, the parties mutually agreed to settle their dispute through Mediation by entering into a separate Mediation agreement.

WHEREAS both the parties have appointed Mr. _____ as Mediator for conduct of the proceedings.

WHEREAS the parties have now settled the disputes in the mediation proceedings held on _____ and _____.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The parties to this agreement accepts and agrees to the terms, conditions and clauses, as full and final settlement of the claims made by first party against the second party pertaining to matter indicated in mediated settlement agreement dated _____. However, any clause of this agreement should not be treated as admission of facts of dispute.
2. The second party agrees to pay Rs. _____/- by _____ (date) for the 100 computers machines delivered by the first party during the duration between _____ and _____.
3. The first party agree to provide Annual Maintenance of the above said 100 computers free of cost for a period of 3 years starting from _____ to _____.
4. The first party shall made available one of its employee during the office hours of Second Party. The employee of first party shall be entitled to 2 Earned Leaves Per month application of which should be made to Second Party 24 hours in advance and 1 Casual Leave per month that may be taken in case of exigency and 24 Sick Leaves per year.
5. The payment shall be made by second party to the first part by online transfer in the Bank accounts of later of by account payee the cheque in the name of "_____"
6. The parties agree that the obligations of First Party under the settlement agreement are fulfilled discharged on making the full and final payment under clause 2 of this Agreement to the Second Party before _____ (Cut off date for making Payment).

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7. The parties agree that unpaid amount after _____ (Cut off date for making Payment) shall bear interest from the date such payment was due until paid at a rate 10% compounded quarterly from time to time.
8. The parties agree that there shall be no further penalty or claim made pertaining to this transaction between the parties.
9. It is agreed between the parties that all the liabilities of the Second Party for payment as mentioned in the letter of possession dated _____ are inclusive in the above agreed amount of Rs. ___ LACS and no other payment whatsoever would be payable by the Second Party after payment of settled amount except interest for delayed payment as detailed herein above as also the maintenance charges with effect from _____.
10. The parties agrees that parties shall pray the Hon'ble Court for a suitable adjournment of proceedings so that the parties can ensure compliance of the terms of this agreement and thereafter jointly apply to the Hon'ble Court for disposal proceedings.

It is agreed between the parties that the parties shall pray to the Hon'ble Court for a suitable adjournment of both the appeals of the two appeals as aforesaid.

In witness whereof the Bank, through its authorised officer has set its hand and stamp on this ____ day of March, 2023 at _____.

1st Party

(Name, Signature and Details)

2nd Party

(Name, Signature and Details)

Mediator

(Name, Signature and Details)

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

Question 4

- (a) Draft notice of Ejectment under section 106 of the Transfer of Property Act, 1882. Assume facts, if required.
(5 marks)
- (b) Draft Special leave Petition under Article 136 of the Constitution of India. Assume facts, if required.
(5 marks)
- (c) ABC Ltd, (the plaintiff) Company, stopped the working because of the broken crankshaft. The plaintiff sent the crankshaft, as a business custom, through carrier for manufacturing a new one. Because of the delay in the arrival of the new crankshaft, the Company could not be resumed. However, this position was not properly conveyed to the defendant, the carrier. There was some delay on the part of the defendant, in delivering the crankshaft to the manufacturer, which in turn delayed the reopening of the Company. As a result of this, there were losses to the Company. The Plaintiff wishes to claim compensation for losses from the carrier. Being the Company Secretary, advise the company to claim the compensation.
(5 marks)

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Answer 4(a)**Draft of Notice of Ejectment under section 106 of the Transfer of Property Act****NOTICE OF EJECTMENT****THROUGH ADVOCATE**

(SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882)

Advocate Name _____

Address _____ Phone no. _____

REGD A/D / U.P.C

Dated _____

To _____

Sub: NOTICE UNDER SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882 FOR EJECTMENT

Dear Sir,

Under the instructions from and on behalf of my client Sh. _____ S/O _____
R/O _____ (hereinafter referred to as "my client"), I serve you with the following notice:

1. That the house bearing no. ____ situated at _____ in ____ city is owned by my client. That you approached my client and requested my client to give the said property on lease to you.
2. That my client has inducted you as the tenant in respect of the said property. That the agreed monthly rent for the said property is Rs _____ per month.
3. I hereby give you notice that you are to quit and vacate the said property below of which you are now in possession of as a monthly (or yearly) tenant under my said client immediately on the expiry of the last day of _____ 20XX.
4. On and from the ____ of ____ (month next following the last day of the month on which the tenant is required to quit) the tenancy hereto before subsisting shall terminate and all relationship of landlord and tenant between my client and you shall absolutely cease.
5. You are requested to deliver vacant possession of the said premises unto my client on that date as stated above.
6. In case of your failure to quit the premises as desired, you will be considered as a trespasser and ejected in due course of law and you will have to pay damages at rate of Rs. _____ per _____ until you are evicted.

Yours faithfully

Advocate

Answer 4(b)**Draft of Special Leave Petition under Article 136 of the Constitution of India****IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION**

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. _____ OF 20_____

(Arising out of the final judgment and order dated passed by the Hon'ble High Court of _____
in Writ Petition No. _____ of 20_____)

PP – DP&A – DECEMBER 2024

Position of Parties

_____ In High Court

_____ In Supreme Court

ABC _____

_____ Petitioner

Versus

Government of _____

_____ Respondent

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition has been filed under Article 136 of the Constitution of India against the judgment and final order dated _____ passed by the Division Bench of Hon'ble High Court of _____ in Writ Petition No. _____ of _____ whereby the petition filed by the petitioner herein was dismissed.

2. QUESTIONS OF LAW

- A. Whether the land acquisition of land of the petitioner by the respondent is for a Private Company or for a public purpose.
- B. Whether the acquisition is mala fide being in colourable exercise of power and fraud on the statute and in sheer abuse of power of eminent domain.

3. DECLARATION IN TERMS OF RULE 3(2)

That no other Petition seeking leave to Appeal has been filed by the Petitioner against the final judgment and order dated _____ passed by the Ld. Division Bench of High Court of _____ in Writ Petition No. _____ of _____.

4. DECLARATION IN TERMS OF RULE 5

That the Annexures filed with the Present Petition are true copies of the pleadings/ documents forming part of the records before courts below.

5. GROUNDS

That the present special leave to Appeal is being filed on the following, amongst other, grounds without prejudice to each other; i. Because the Division Bench of the Hon'ble High Court failed to appreciate that the procedure for acquiring land for a public purpose cannot be adopted for acquiring land for a private company. The acquisition in the instant case was clearly an acquisition for a private company and the respondent State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose.

6. GROUNDS FOR INTERIM RELIEF

That the Petitioner has a good case on merits and that there are fair chances of success in the matter before this Hon'ble Court. The acquisition in the instant case was clearly an acquisition for a private company and the State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose. If no stay is granted then that would cause serious prejudice to the petitioner.

7. MAIN PRAYERS

In view of the facts and circumstances as mentioned above, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

- i. Grant Special Leave to Appeal against the order passed by the Division Bench of the Hon'ble High Court of _____ in Writ Petition No. _____ of _____ titled as _____
- ii. Pass such other or any further order(s) as may be deemed fit and appropriate by this Hon'ble Court in the facts and circumstances of the present case.

8. INTERIM PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

- a) stay the impugned judgment dated _____ passed by the Division Bench of the Hon'ble High Court of _____ in Writ Petition No. _____ of _____, titled _____.
- b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

FILED BY: _____

Advocate for the petitioner

Drawn By:

Drawn on:

Filed on:

New Delhi

AFFIDAVIT**IN THE HON'BLE SUPREME COURT OF INDIA**

IN THE MATTER OF: _____

..... Petitioner

Versus

..... Respondent

I, _____ s/o _____ Aged _____ yrs R/o _____ the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the petitioner and am fully aware of and conversant with the relevant facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P. _____.

I, further solemnly affirm at _____ (place) this the _____ day of _____, 20____ that the above averments are true and correct. Nothing has been concealed therefrom.

DEPONENT

Answer 4(c)

In cases where there is a breach of contract or delays in performance, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as:

- i. Those for damages that usually arise in the event of breach of contract; and
- ii. Those for damages which parties know and anticipated at the time of entering into the contract called special damages. This kind of special damages can be claimed only on previous notice or on lack of due diligence.

However, no compensation is payable for any remote or any indirect loss. While assessing the damage the inconvenience caused to the aggrieved party on account of non-performance should be assessed carefully, as the party entitled for compensation, he has a duty to take steps to minimise the loss.

The contention that the plaintiff did not explain to defendant that delay in delivering the crank shaft would delay resumption of the mill and this would result in losses to the plaintiff may not be accepted. The prevalent business custom says if delayed performance resulted loss to the other party, it should be compensated. In the given circumstances, delayed delivery is an accepted fact. So defendant may be made liable for compensation.

Alternate Answer

In cases where there is a breach of contract or delays in performance, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as:

- i. Those for damages that usually arise in the event of breach of contract; and
- ii. Those for damages which parties know and anticipated at the time of entering into the contract called special damages. This kind of special damages can be claimed only on previous notice or on lack of due diligence.

However, no compensation is payable for any remote or any indirect loss. While assessing the damage the inconvenience caused to the aggrieved party on account of non-performance should be assessed carefully, as the party entitled for compensation, he has a duty to take steps to minimise the loss.

The facts of the given situation are similar to the English Contract Law case of *Hadley v. Baxendale*. The case laid down the following two branches:

- a) The first branch deals with damages "as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things". For the sake of brevity, we may refer it as "General damages";
- b) the second branch deals with damage "as may reasonably be supposed to have been in contemplation of both parties, at the time they made the contract, as the probable result of the breach of it". This may be referred as "Special damages".

In the present situation, reference may be made to case of *Hadley v. Baxendale* and illustration (p) of section 73 of Indian Contract Act, 1872; the plaintiff is entitled to seek just the cost of replacing damaged components and a limited amount of general damages. Their assertion for the damages sustained due to the cessation of their operations while the remaining equipment was inoperative, due to the lack of the missing components, is invalid since they neither informed the defendant that the crankshaft was a critical component of the machinery nor did the defendants possess this knowledge.

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

XYZ Pvt. Ltd. and ABC Pvt. Ltd. have entered into a contract of sale of plant and machinery. The Managing Director of the XYZ Pvt. Ltd. signed the contract at Jaipur and sent the same to the office of ABC Pvt. Ltd. in Mumbai and its directors has signed the contract. The consideration for the transaction is ₹ 10 crore. A dispute arose between the parties over the identification of the aforesaid property. Identify and explain the following :

- (i) Whether the registration of this contract is compulsory ? Justify.
- (ii) Where and within how much time period, the contract can be registered ?
- (iii) What is effect of non-registration of this contract ?

(5 marks each)

Answer 4A(i)

Section 17 of the Registration Act, 1908 provides the provisions relating to Documents of which registration is compulsory.

According to section 17(1)(b), other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property are to be registered compulsorily.

Further, the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 relating to Doctrine of Part Performance shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

In the present case, the contract involves the sale of plant and machinery, which may be treated as immovable property if permanently attached to the land, thereby qualifying as immovable property under the law.

In this situation, the compulsory registration requirement would apply to this contract.

Alternate Answer

Section 17 of the Registration Act, 1908 provides the provisions relating to Documents of which registration is compulsory.

According to section 17(1)(b), other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property are to be registered compulsorily.

Further, the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 relating to Doctrine of Part Performance shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

However, in the present case, the contract involves the sale of plant and machinery, which may

be treated as movable assets unless permanently attached to the land, thereby qualifying as immovable property under the law.

In this situation, the compulsory registration requirement would not apply to this contract.

Answer 4A(ii)

Time and place of registration

Time of Registration

According to section 23 of the Registration Act, 1908, subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

Further according to section 24, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Also, according to section 25, if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Place of Registration

According to section 28 of the Act, save as in Part V otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c), (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b), (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Further, according to section 30, any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

Also, according to section 31, in ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit. However, such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

Answer 4A(iii)

According to section 49 of the Registration Act, 1908, no document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered

However, an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

Further, according to section 50(1), every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

Part II

Question 5

'P', director of XYZ Limited (the Company), was accused of having engaged in price rigging and insider trading during the Initial Public Offer (IPO) of the company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) relating to Securities Market Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

SEBI received a complaint alleging that certain Delhi/Bombay based brokers had on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint, alleging price rigging and insider trading in the scrip of the company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of 9 entities who had purchased approximately 53% of the 58 lakh equity shares on offer during 32 days period. They were found to have continued buying shares even after that period, and had ultimately purchased 54,38,000 equity shares, which was approximately 75% of the post issue floating stock of Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.

A criminal complaint was filed against 'P' before the Trial Court alleging the above violations and an Adjudicating Officer (AO) under the SEBI Act was appointed. Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions of the SEBI Act, allowed 'P' to purchase the shares of the shareholders at higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by 'P', levied a fine of ₹ 50,000 on him and other promoters. This penalty too was paid by the accused.

The appellant ('P') is being prosecuted for an offence under Sec. 24(1) of the Security and Exchange Board of India Act, 1992 (SEBI Act). The Appellant sought the compounding of the offence under section 24A. By an order Additional Sessions judge (Trial Judge) rejected the application, upholding the objection raised by the High-Powered Advisory Committee of the Securities and Exchange Board of India that the offence could not be compounded without its consent, which was upheld by the High Court of Delhi. Hence, the present appeal before the Supreme Court.

Based on the above facts and in light of the relevant case laws, answer the following questions :

- (a) Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending ?
- (b) Write down the Jurisprudential Basis for Compounding of offence.
- (c) Write down the nature of the probable allegations against the appellant 'P'.

(5 marks each)

Answer 5(a)

The facts of the given situation are similar to that the case of *Prakash Gupta v. Securities and Exchange Board of India*, dated July 23, 2021 decided by Hon'ble Supreme Court of India.

In this case it was laid down by the Apex Court that while a plain reading of the section 24A of the SEBI Act, 1992 does not provide for the consent of SEBI, it was considered whether such consent should be read into Section 24A, on the grounds of *casus ommisus*.

In the present case, it was also laid down that it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose.

The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

In view of the above, it may be said that the express consent of SEBI is not mandatory under Section 24A of the SEBI Act for the Securities Appellate Tribunal (SAT) or the Court to compound an offense.

Answer 5(b)

In the case of *Prakash Gupta v. Securities and Exchange Board of India*, dated July 23, 2021, Hon'ble Supreme Court has traced the jurisprudential basis of Compounding of Offences. Few Important Points are as follows:

1. In tracing the history of compounding, the Apex Court began with the origins of Compounding in English common law. Curiously, the original discussions surrounding compounding (or composition) of offences in the English common law do not occur in its context as a procedural tool but rather as an offence itself. Under such an offence, a prosecutor or a victim would accept consideration in return for not prosecuting an offence.
2. The apex court referred to Blacks' Law Dictionary which contains a definition of the expression "compounding crime".
3. The apex court referred to P Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition, Reprint 2007, at page 932 which defines the expression "Compounding a crime".
4. The court also referred to Sections 213 and 214 of the Indian Penal Code, 1860 ("IPC") which also introduce a category of crime in India. While the "exception" to the provisions of Sections 213 and 214 make the provisions inapplicable to offences which may be compounded, it is important to note that the "exception" was only introduced through an amendment in 1882.
5. It was in 1872, when the Code of Criminal Procedure was amended, that compounding was first introduced as a procedural tool in Indian criminal law.
6. When the Code of Criminal Procedure was amended in 1882, it enumerated a list of offences which could be compounded by the Courts in Section 345. This list was expanded when the

Code of Criminal Procedure was amended again in 1898. Finally, in its current form, the compounding of offences is permissible under Section 320 of the Criminal Procedure Code.

7. In explaining the basis for the provision of compounding an offence in Section 345 of the 1898 Act, the Law Commission of India in its 41st Report stated as follows:

"24.66...The broad principle that forms the basis of the present scheme is that where the offence is essentially of a private nature and relatively not serious, it is compoundable."

8. In its 237th Report on Compounding of (IPC) Offences, the Law Commission of India explained the rationale for compounding.
9. Section 320 provides for the compounding of offences only under the Indian Penal Code, 1860 (IPC). Hence, in respect of offences which lie outside the IPC, compounding may be permitted only if the statute which creates the offence contains an express provision for compounding before such an offence can be made compoundable. The power of compounding must, in other words, be expressly conferred by the statute which creates the offence.
10. The provision for compounding of offences was contained in Section 621-A of the Companies Act, 1956.
11. The provisions contained in Section 147 of the Negotiable Instruments Act, 1881 for compounding of offences came up for consideration before a two judge Bench of this Court in the case of JIK Industries decided in 2012.
12. Subsequent to the decision in JIK Industries (supra), there is a decision of another two-judge Bench of this Court in *VLS Finance Limited v. Union of India*, (2013) 6 SCC 278. The Company Judge of the Delhi High Court had dismissed an appeal assailing an order of the Company Law Board allowing an offence under Section 211(7) of Companies Act, 1956 to be compounded.
13. Section 24A, by incorporating a non-obstante provision indicates a legislative intent to the effect that the power to compound offences punishable under the SEBI Act is not trammled by the provisions of Section 320 of the Criminal Procedure Code, 1973.
14. The entrustment of the exclusive power to compound offences under Section 24A of the SEBI Act to the SAT or the Court before which such a proceeding is pending is evinced by the expression "be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending". Section 24A thus contains a departure from the modalities which are prescribed in sub-Sections (1) and (2) of Section 320 of the CrPC. Section 320 of the CrPC permits the compounding only of certain specified offences under the IPC.
15. The plain language of Section 24A of SEBI Act, 1992 does not provide for the consent of SEBI.

Answer 5(c)

The nature of probable allegations against the appellant 'P' based on the provided facts and relevant case (i.e. *Prakash Gupta v. Securities and Exchange Board of India*, decided by Supreme Court, dated July 23, 2021), includes the following:

- 1. Price Rigging and Insider Trading:** Allegations of manipulating the price of the company's shares during and after the Initial Public Offer (IPO) period, causing an artificial increase in share value contrary to regulations.
- 2. Fraudulent Utilization of IPO Funds:** Misuse of the IPO proceeds by transferring funds to related entities for purchasing the company's shares, which was intended to create a misleading perception of the stock's demand.

3. Violation of SEBI Regulations:

- Breach of Regulations 4(a) and 4(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995.
- Contraventions under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 and 1997.

4. Non-Disclosure: Failure to disclose significant information regarding the purchase of shares by related entities, which collectively acquired a substantial portion of the post-IPO floating stock without transparency.

5. Market Manipulation: Involvement of six entities indirectly controlled by the appellant in acquiring approximately 75% of the post-issue floating stock, leading to unusual trading volumes and sharp price movements.

6. Personal Liability and Management: The appellant admitted to managing the day-to-day affairs of related entities, directing their investment activities, and guaranteeing funds used for share purchases.

These allegations led to SEBI's initiation of civil and criminal proceedings, the imposition of penalties, and subsequent legal challenges.

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

Question 6

The promoter of a company borrowed a loan of 25 lakh on behalf of his company from the respondent. Later, at the request of respondent, the promoter sent a cheque from the company's account. However, the cheque was dishonoured. The respondent filed a complaint under Section 138 with reference to dishonour of cheque for insufficiency, etc, of funds in the account, against the promoter/the borrower and another in connection with the bouncing of a cheque issued on behalf of the company.

This complaint was challenged on the ground that, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company and had not issued the cheque which was dishonoured and further contended that in any event notice of dishonour of the cheque was not served. Subsequently the complaint was lodged against the promoter (borrower). Based on the facts, answer the following questions :

- Is he liable for an offence under section 138 ?
- Whether dishonour of the cheque on each occasion of its presentation give rise to a fresh cause of action ?
- What is the extent of liability of the company and the person(s) in charge of the company in respect of an offence for dishonour of cheques ?

(5 marks each)

Answer 6(a)

The facts of the given situation are similar to that of case *H.N.D. Mulla Feroze Vs. K.V.D. Prasad Rao [2004] 55 SCL 509 (AP)*

The petitioner has a legal liability to refund amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured, and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

Hence, it was held that the petitioner couldn't be said to have committed the offence under Section 138 of the Negotiable Instruments Act, 1881(Act).

Where an owner of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him.

The Andhra Pradesh High court held that, although the petitioner has a legal liability to refund amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured, and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner couldn't be said to have committed the offence under Section 138 of the Act.

In view of the above mentioned case it can be said that the promoter is not liable for an offence under section 138 of Negotiable Instruments Act, 1881 in the given circumstances.

Alternate Answer

The facts of the given are similar to that of case *H.N.D. Mulla Feroze vs. K.V.D. Prasad Rao [2004] 55 SCL 509 (AP)*. It was held that a plain reading of Section 138 of the Negotiable Instruments Act, 1881(Act) shows that the drawer of the cheque would be liable for punishment for dishonour of the cheque drawn on an account maintained by him in the Bank, if such cheque is drawn for a legally enforceable debt or liability. Even assuming that Section 138 of the Act covers cases where a cheque is issued in connection with discharge of a legally enforceable debt or liability of a person other than the drawer of the cheque, the debtor of the drawee is not made liable for the offence under Section 138 of the Act.

In *D. Chandra Reddy vs Gowrisetty Prabhakar Rao And Another, Equivalent citations: 1999(6) ALD281*, it was held that in order to constitute an offence under Section 138 of the Act the cheque must have been drawn by a person on an account maintained by him. In that case the accused had drawn the cheque on the account of a Company which was not a party to the proceedings, but not on the account maintained by him in his individual capacity and so it was held that the requirement under Section 138 of the Act was not satisfied. In *K.P.G. Nair case (supra)*, it was held that if the allegations in the complaint do not show that the accused is in-charge of the affairs and is responsible for running of the business of a Company, proceedings against him are liable to be quashed.

In view of the above mentioned case it can be said that the promoter is not liable for an offence under section 138 of Negotiable Instruments Act, 1881 in the given circumstances.

Answer 6(b)

According to Section 142 of the Negotiable Instruments Act, 1881 (Act), notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

- (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
- (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138.

Section 138 of the Act provides the provisions relating to Dishonour of cheque for insufficiency, etc., of funds in the account. The proviso to this section gives the indication with respect to cause of action. It states:

Provided that nothing contained in this section shall apply unless-

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- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Therefore, it may be said that cause of action arises under clause (c) of the proviso to section 138 i.e. when the drawer of such cheque fails to make the payment of the amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice and not on dishonour of cheque on each occasion.

Answer 6(c)

From a perusal of Section 141 of the Negotiable Instruments Act, 1881, it is apparent that in case where a company committed an offence under Section 138, then not only the company, but also every person who at the time when the offence was committed, was in charge of and was responsible to the company shall be deemed to be guilty of the offence and liable to be proceeded against accordingly. [*K.P.G. Nair vs. Jindal Menthol Indian Ltd. (2001) 2CLJ 258 SC*].

OR (Alternative question to Q. No. 6)

Question 6A

- (i) State the provisions regarding establishment and composition of Securities Appellate Tribunals.
- (ii) Discuss the Appellate Authorities under SEBI Act.
- (iii) State the Applicability of Civil Procedure Code on SEBI and SAT.

(5 marks each)

Answer 6A(i)

Establishment of Securities Appellate Tribunal

Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 (Act) to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act; and to exercise jurisdiction, powers and authority conferred on the Tribunal by or under SEBI Act, 1992 or any other law for the time being in force.

Composition of Securities Appellate Tribunal

According to section 15L of the Act, the Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act, –

- (a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;

- (b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit. Every Bench constituted shall include at least one Judicial Member and one Technical Member;
- (c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Answer 6A(ii)

The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers. The SAT is an independent judicial body that has the power to confirm, modify or set aside any order passed by SEBI or its officers.

As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) made under the SEBI Act, 1992 or the rules or regulations made thereunder, or by an order made by an adjudicating officer under the SEBI Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Further as per section 15Z, any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order. However, the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Answer 6A(iii)

Applicability of Civil Procedure Code on SEBI

According to section 11(3) of SEBI Act, 1992, notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A) of section 11 which is relating to function, SEBI shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:

- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;
- (iv) inspection of any book, or register, or other document or record of the company referred to in subsection (2A)
- (v) issuing commissions for the examination of witnesses or documents.

Applicability of Civil Procedure Code on SAT

According to section 15U of SEBI Act, 1992, the Securities Appellate Tribunal (SAT) shall not be

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bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of SEBI Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Further, the Securities Appellate Tribunal shall have, for the purposes of discharging their functions under SEBI Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

Lecture Kart

Padhai Kar Befikar

Lecture Kart

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) Secretarial Standard-1 is equally applicable on all the companies, one person company and a company registered under Section 8 of the Companies Act, 2013, without granting any exemption to any kind of the company. Comment.

(5 marks)

- (b) Draft the Directors' Responsibility Statement of ABC Limited, which is to be incorporated in the Directors' Report.

(5 marks)

- (c) S is a Company Secretary in Practice and also the Managing Committee Member of the Chapter of the Institute of Company Secretaries of India (ICSI). He invited Y (a senior Government official) to the Chapter's Independence Day celebration function. He spends heavily on the Y towards his travel and stay arrangements. He booked five-star hotel room for one day for Y and gave business class Air Tickets to Y along with Mrs. Y, to attend the Chapter's function, with an intention to secure professional opportunities from the government department for his professional firm. The chapter of ICSI has paid for these expenses. Moreover, he has also misused the confidential data available with the office of the Institute for personal use and his personal benefits.

Citing the relevant code of conduct of the ICSI, state whether the act of S will amount to misconduct.

(5 marks)

- (d) P is a part time director of ABC Limited. J is a whole-time Director (Finance) and the Chief Financial Officer (CFO) of the company. The compliance officer had not been performing his duties in time and that has resulted into non-filing of the annual return and the financial statements from the financial year 2015-16 to 2019-20. The name of ABC Limited was struck off by the Registrar of Companies in the year 2023-24. ABC Limited was doing the business continuously till 2023-24. J along with P were appointed as part time Director in XYZ Limited during 2022-23.

Citing the relevant provision of the Companies Act, 2013 explain the dereliction of the duty and penal provisions.

(5 marks)

Answer 1(a)

The aforesaid statement is wrong. The Secretarial Standard-1 is applicable to the meetings of Board of Directors of all the companies that have been incorporated under the provisions of the Companies Act, 2013 except:

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1. One Person Company; and
2. A Company registered under section 8 of the Companies Act, 2013.

However, the Companies registered under Section 8 of the Companies Act, 2013, need to comply with the applicable provisions of the Companies Act, 2013 relating to the Board Meetings.

The exemption to a company registered under Section 8 of the Companies Act, 2013 as above and specific exemptions given to the private companies in the Standard shall be available only if they have not committed any default in filing of the financial statements or Annual Return with the Registrar of Companies.

Answer 1(b)

ABC Limited

Director's report

The Shareholders

ABC Limited

Your directors declare that they have applied their judgement in preparation of the annual accounts as per the applicable accounting standards and accounting policies and have prepared the accounts on going concern basis.

Your directors specifically report that:

1. In preparing the annual accounts the applicable accounting standards and proper explanations relating to the material departures were followed.
2. The Directors had selected such accounting policies and have applied them consistently and have made such judgements and estimates that were reasonable and prudent to give a true and fair view of the state of affairs of the company at the end of the financial year and profit and loss account for that period.
3. The Directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding the Assets of the company and prevention and detection of frauds and other irregularities.
4. The Directors have prepared the accounting records on a going concern basis.
5. The Directors have laid down internal financial controls to be followed by the company and such internal financial controls are adequate and operating effectively.
6. The Directors have devised proper system to ensure compliance with all applicable laws and that such systems are adequate and operating effectively.

Answer 1(c)

Clause 2 of Part IV (Other Misconduct in relation to members of the Institute generally) (Part IV of the First schedule) of the Company Secretaries Act, 1980 provides that -

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

Following activities of members may also tantamount to misconduct;

- Sending an e-mail to number of members (e-groups) criticizing the decisions of the Council in derogatory and filthy language.

- Discussing through e forums failures of the Council/ president/ secretary by using derogatory and filthy language.
- Writing letter(s) in an aggressive, loud and filthy language to the Ministry of Corporate Affairs, about working of ROC offices/ MCA site, inability to upload forms etc.
- Arranging DHARANA/ agitations at the gates of the Govt. Offices/institute's offices in a manner not befitting a professional.
- Instigating Students or other members by creating a pandemonium in or around Institute's offices by raising issue pertaining to syllabus, training, examination or any other reason whatsoever.
- Misusing the confidential data available with the offices of the Institute for personal purposes.
- Inviting Govt. Officers for Chapter's / Regional Council's Programs by spending heavily on their travel & stay arrangements, with an intention to get personal mileage.
- Tampering with the Books of Accounts/ Minutes of the meetings of the Managing Committees of Chapter/ Regional Councils.

Conclusion:

Yes, S is guilty of professional misconduct in relation to the Institute, by spending hefty amount on the Air travel and stay on the five-star hotel of Mr. Y and Mrs Y, just for his personal benefits so that he can get professional opportunities through Government Department. Apart from that, he has also misused the confidential data available with the Institute for his personal benefits which is also misconduct under Part IV of First schedule

Answer No. 1(d)

As per the provisions of Section 92 of the Companies Act 2013, if the company has not filed its annual return from the date by which it should have been filed with the fee and the additional fee if any, then every officer of the company who is in default shall be liable to a penalty of Rupees 10,000 and in case of continuous default the further penalty of Rupees 100 for each day during which the default continuous subject to a maximum of Rupees 2 lakh on the company and a maximum of Rupees 50,000 on the officer in default.

As per the provisions of section 164(2) of the Companies Act, 2013, if the company has not filed its financial statements or the annual returns for a continuous period of 3 financial years, then every person who is, or has been a Director of that company shall not be eligible for the appointment as Director of that company or appointed in any other company for a period of 5 years from the date on which the said company fails to do so.

As per the present problem, the compliance officer of ABC Limited had done the dereliction of the duty but the fact remains that the financial statements and annual returns were not filed with the ROC within the stipulated time which attract penalty under the aforementioned provisions of the Companies Act, 2013. Due to this violation, the Section 164 will come into operation. P and J, directors are deemed to have vacated the office of every other company in which they were director and their Director Identification number shall deem to have been cancelled immediately. Therefore, the appointment of P and J in the other company shall be void.

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

Question 2

- (a) X, a member of the sports club has been paying all his fees in time. In the Annual General Meeting of the club, a resolution was passed for expelling X with immediate effect, as a

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member of the club, without citing any reason or violation of the rules and bye-laws of the club. Examine the legality of the resolution passed by the Annual General Meeting.

(5 marks)

- (b) Subsequent to the completion of an inquiry proceedings and other actions initiated by the Securities and Exchange Board of India (SEBI) against ABC Limited on the allegations of securities malpractices in the market, ABC Limited decided to move an application for settlement to the SEBI as per Regulation 9 of SEBI (Settlement Proceedings) Regulations, 2018. Explain various Settlement Terms and also state any four factors that are to be considered while arriving at these Settlement Terms.

(5 marks)

- (c) D accepted the appointment as a director in 25 companies till 31st March 2015. Consequently, the Registrar of Companies (RoC) had issued a show cause notice to D in the year 2016. The RoC imposed a penalty of Rs. 15 lakh on D on the basis of a penalty of Rs. 5,000 per day for the entire period of default. D appealed to the Tribunal for compounding and the Tribunal compounded the offence for Rs. 50,000.

The RoC is not satisfied with the decision of the Tribunal and seeks your independent opinion as per the provisions laid under the Companies Act, 2013. Advise.

(5 marks)

- (d) Y is a qualified Company Secretary. Y was in the need of a job since her husband got transferred to a town and for the past 6 months, she had not been able to get any job. At last, through her neighbour's contact, she met with MG, Director (Finance) of XYZ Limited. She got a job in the secretarial department of XYZ Limited, through the recommendation of MG, the Director (Finance). It was decided mutually that if she gets the job in the company, she would part 50% of first-year salary with MG, Director (Finance), comprising of 50% in cash and remaining through banking channel and same would be paid within 3 months of joining the company. Accordingly, she paid the pre-decided amount to MG Director (Finance).

Citing the relevant Code of Conduct of the Institute of Company Secretaries of India, explain whether Y has been guilty of violating the Code.

(5 marks)

Answer 2(a)

The resolution passed by the sports club is not a legal resolution. X had acquired membership in the Club after paying the requisite fees and was enjoying the rights and privileges guaranteed to the members of the Club. The membership of a person can be cancelled only after following the related provisions of the Memorandum of Association and Articles of Association of the Club and also the Principles of Natural justice.

In this scenario neither any notice was given to Mr. X nor was any opportunity of being heard provided to Mr. X. Further, the provisions related to expulsion of members as mentioned in the Memorandum of Association and Articles of Association were not followed. Therefore, the resolution to expel Mr. X as a member of the club is invalid.

Answer 2(b)

Settlement Terms {Regulation 9 of the SEBI (Settlement Proceedings) Regulations, 2018}

The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

The non-monetary terms may include the following:

- (a) Suspension or cessation of business activities for a specified period;
- (b) Exit from Management;
- (c) Disgorgement on account of the action or inaction of the applicant;
- (d) Refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;
- (e) Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.;
- (f) Lock-in of securities;
- (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures;
- (h) Provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;
 - (i) Submit to enhance internal audit and reporting requirements;
 - (j) Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

Factors to be considered to arrive at the settlement terms (Regulation 10 of SEBI (Settlement Proceedings) Regulations, 2018)

While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited to, the following:

- (a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;
- (b) the role played by the applicant in case the alleged default is committed by a group of persons;
- (c) nature, gravity and impact of alleged defaults;
- (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
- (e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;
- (f) processes that have been introduced since the alleged default to minimize future defaults or lapses;
- (g) compliance schedule proposed by the applicant;
- (h) economic benefits accruing to any person from the non-compliance or delayed compliance;
- (i) conditions which are necessary to deter future non-compliance by the same or another person;
- (j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (k) any other enforcement action that has been taken against the applicant for the same violation;

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(l) any other factors necessary in the facts and circumstances of the case.

Answer 2(c)

As per the provisions of section 165(1) of the Companies Act, 2013, no person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I – For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Explanation II. – For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. {Section 165(2)}

This clearly implies that a person cannot hold the directorship in the companies more than the prescribed under law however the number can go down.

Present case is similar to the *Registrar Of Companies, West Bengal (Appellant) V. Karan Kishore Samtani (Respondent)(NCLAT)Company Appeal (AT) No. 13 of 2019*, wherein NCLAT held that the NCLT, Kolkata Bench has failed to notice the minimum fine prescribed under Section 165 of the Companies Act, 2013 which was applicable at relevant time. Accordingly, NCLAT imposed minimum fine at the rate of 5000 rupees for every day for the period 01.04.2015 to 21.02.2016 i.e. 272 days, which came to Rs. 13,60,000. Further, the court held that the compounding fees has to be more than or equal to the minimum fine prescribed under the Act.

Further, as per Companies (Amendment) Act, 2020 the penalty under section 165(6) has been revised and provides that, if a person accepts an appointment as a director in violation of section 165, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

Further, Registrar of Companies may also appeal to the NCLAT against the order/judgment of the NCLT.

Answer 2(d)

Part II of First Schedule to the Company Secretaries Act, 1980 deals with Professional misconduct in relation to members of the Institute in service.

Part II of the First Schedule recognizes the need for a member in employment also to observe a certain code of Conduct. It specifies certain instances of misconduct to which a Company Secretary in employment may stand attracted.

Clause (1) of Part II of the First Schedule provides that a member of the Institute (other than member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person –

“Pays or allows or agrees to pay; directly or indirectly, to any person any share in the emoluments of the employment undertaken by him.”

Case Analysis: In this case, Y has paid her salary to the MG, Director (Finance) by whose influence XYZ Ltd. selected her and give the job in the company. This act of Y is not correct, since she has

violated the Professional Code of Conduct of ICSI.

A member in employment shall not share emoluments of the employment with any other person, not even a member. Both direct and indirect sharing of the emoluments is prohibited.

Conclusion:

Hence, Y should not involve in these activities to get the job. She has committed professional misconduct and has violated the Code of Conduct of ICSI.

OR (Alternate Question to Q. No. 2)

Question 2A

(i) (a) You are a partner of ZKB & Associates (Practising Company Secretaries) and you are responsible for arranging and indexing the records in a way that permits easy location, access and retrieval of documents. Citing the basic rules that could serve as a general guideline in structuring folder and file naming. Give nomenclature of the file in following cases :

- (I) Annual Return MGT-7, Financial Year 2022-23 of TZ Pharma.
- (II) Search Report of PTK RESORTS, Invoice dated 30 July, 2023, PDF document.
- (III) Mohit Nair Max Life 8561 3 POLICY date 19/October/2022, white paper structured file naming Strategy document. (1×3=3 marks)

(b) State whether the following offences under the Companies Act, 2013 are compoundable. If yes, mention the Compounding Authority.

- (I) Failure to keep proper books of account under Section 128(6).
- (II) Committing default in complying with the requirements relating to formation of companies with charitable objects, etc. under section 8(11).

(1×2=2 marks)

(ii) M, a partner of MNP and Co. (Practising Company Secretaries) has to do the certification of Annual Return of ZK Limited. Suggest the guiding principles that can be adopted by M about the extent of checking the Annual Return of the company. Can a Professional give Certification with Reservation/Qualification/Observations/Adverse Remarks ? Comment.

(3+2=5 marks)

(iii) Explain the factors that are taken into account by the Securities and Exchange Board of India (SEBI), while adjudicating quantum of penalty. Also indicate the penalties under the SEBI Act, 1992, in each of the following :

- (a) Penalty for Insider Trading
- (b) Penalty for failure to redress investors' grievances.

(2+3=5 marks)

(iv) A retail company, Cloudtail, sells goods on E-commerce platform. The company sold pressure cookers made by XYZ Limited, which were not compliant with the mandatory standards. On noticing the quality lapses, the consumer wanted their money back, along with damages from the Cloudtail. Whether the Cloudtail shall be liable for damages or XYZ Limited or both ? Substantiate your answers with reasons.

(5 marks)

Answer 2A(i)(a)

I: D:\TZP\FY\22-23\AR\MGT-7.doc

Rule: Avoid extra-long folder names and complex hierarchical structures but use information-rich file names instead.

II: PTKRESORTS_SearchReport_Invoice30.07.2023.pdf

Rule: Put sufficient elements in the structure for easy retrieval and identification but do not overdo it.

III: Mohit-Nair_Max life_8561_3_POLICY_2020-10-19.pdf | |WhitePaper_Structured File Naming Strategy.doc

Rule: Use the hyphen (-) to define it words within an element or capitalize the first letter of each word within an element.

Answer 2A(i)(b)

(I): Offence: Failure to keep proper books of account under Section 128(6)

Compoundable -Yes

Compounding Authority -Power vested with Regional Director.

(II): Offence- Committing default in complying with the requirements relating to formation of companies with charitable objects, etc. {section 8(11)}

Compoundable-Yes

Compounding Authority- Power vested with the Tribunal.

Answer 2A(ii)

The PCS (Practicing Company Secretary) is required to exercise due caution and care, since he/she is bound by the certification in the Annual Return.

Therefore, certain techniques of sampling and test checks should be applied for forming a reasonable opinion that the document being certified reflects a true and correct view of the state of affairs. There are no specific modalities or stringent test practices applicable for certification of Annual Return.

However, the following guiding principles can be adopted while deciding about the extent of checking that is required:

- (i) Internal Controls: The PCS shall perform a detailed review of the internal controls, checks and balances built into the systems and procedures of the Company. If appropriate internal controls exist, and operate effectively, the need for detailed checking is reduced to a large extent. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another before the whole process is complete. The system could also provide for inherent checks, particularly in cases where the process is automated/computerized.
- (ii) Materiality: Similar to any audits, the principle of materiality is another important and relevant concept. The sample chosen for detailed checking should be representative of the whole, or the population', in statistical parlance. For example, in share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.

- (iii) Risk Assessment: The PCS shall have an overall understanding of the Company, the industry in which it operates, corporate governance practices, etc., and perform risk assessment to identify the 'high risk areas. These 'High risk' areas shall be subjected to more extensive verifications. For instance, in the case of shares on which there are restrictions on transfer statutory or otherwise, a more extensive examination is warranted.

In conclusion, it may be noted that the ultimate responsibility of the document certified will rest with the professional. While the extent of checking is a matter of professional judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements certified by him, by adequately documenting the procedures performed and conclusions drawn.

Certification with Reservation /Qualification /Observations /Adverse Remarks

Yes, A PCS may certify the Annual Return subject to certain reservations /qualifications/ observations/ adverse remarks by way of an annexure to his certificate. However, this course of action can only be resorted to in case where material facts are not stated correctly and completely in the Annual Return or where the company has not complied with the applicable provisions of the Companies Act.

While signing of the Annual Return of a company by a Company Secretary or a Company Secretary in practice shall ensure compliance with the guidance note on the Certification of the Annual Return as published by the ICSI and make appropriate professional judgments, wherever necessary.

It is the duty of the certifying professional to take the copy of the relevant documents and record such facts, based on which he has certified the Returns.

While certifying Annual Return in Form No. MGT-8, the certifying professional should give the observation, limitation and disclaimer as may be required and appropriate for the certification.

Answer 2A(iii)

Factors to be taken into account while adjudging quantum of penalty-Section 15 J of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992)

While adjudging quantum of penalty under 15-1 or section 11 or section 11B, the Board 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.

Explanation-For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

Penalties under the SEBI Act, 1992

(a) Penalty for Insider Trading

As per Section 15G of the SEBI Act, 1992, if any insider who, -

- (i) Either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price- sensitive information; or

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- (ii) Communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) Counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

(b) Penalty for failure to redress investors' grievances

As per Section 15C of the SEBI Act, 1992, if any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Answer 2A(iv)

The facts are similar to the case came before the Central Consumer Protection Authority (CCPA) wherein Cloudtail took a plea that they are the sellers of the product and are not responsible for the quality issues.

The Central Consumer Protection Authority (CCPA) has imposed on Cloudtail India a fine of Rs. 11 lakh for selling domestic pressure cookers to consumers in violation of mandatory standards prescribed under the Quality Control Orders and violating the rights of consumers.

The company has also been asked for the price reimbursement of 1,033 pressure cookers to the consumers and is directed to submit the compliance report within 45 days.

In the given case, the question the liability shall lie exclusively on Cloudtail. Cloudtail, a retail company selling pressure cookers on an e-commerce platform, was issued an order for unfair trade practice by selling domestic pressure cookers in violation of mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020.

XYZ Limited will be penalized in accordance with the specific applicable authority for violating quality standards in manufacturing.

PART-II

Question 3

- (a) In a board meeting of the TCD Limited, the Company Secretary gave a presentation to the Board on Corporate Governance and explained that the Corporate Governance deals with conducting the affairs of a company in such a way that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. There is no illustrative checklist for auditing of Shareholders Interest under Corporate Governance system and it depends upon the company to follow its own policy. Comment.
- (b) Non-reporting of related party transactions led Secretarial Auditor to penalty. Discuss with the help of a leading case of Sun Pharmaceuticals industries Limited [Adjudication order passed by the Registrar of companies (RoC), Gujarat, Dadra & Nagar Haveli dated 28/04/2023].

- (c) Explain various kinds of general and specific skills the internal auditor must possess for discharging their professional obligation proficiently.

(5 marks each)

Answer 3(a)

Corporate Governance provisions under the erstwhile listing agreement popularly known as the Clause 49 requirements have been overhauled, recent adoptions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Schedule II of the said regulations have elaborated on the Corporate Governance measures and are applicable to the entities which are listed with recognized stock exchange(s). These have aligned India's corporate governance regime with the developed countries,

Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished along with identifying the governance norms which have not been satisfied by the company for assisting stakeholders in making an informed decision. Audit of corporate governance activities shall ensure an effective check mechanism on the supervisory and managerial layers of a business enterprise. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.

Shareholder Interests:

The Company Secretary is wrong as there is an illustrative checklist for auditing of Shareholders Interest under Corporate Governance system which includes following:

1. Check whether shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:
 - (a) amendments to the statutes, or articles of incorporation or similar governing documents of the company;
 - (b) the authorisation of additional shares; and
 - (c) extra-ordinary transactions, including the transfer of all or substantially all assets that in effect result in the sale of the company.
2. Check whether capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
3. There exists rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
4. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
5. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
6. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Answer 3(b)

Non-reporting of related party transaction led Secretarial Auditor to pay penalty. In the matter of Sun Pharmaceutical Industries Ltd, Adjudication Order passed by the Registrar of companies (ROC) Gujarat, Dadra & Nagar Haveli dated 28.04.2023).

Facts of the case:

On receipt of whistle blower complaint in respect of Related Party Transaction, money diversion from Sun Pharmaceutical Ltd to Aditya Medisales Ltd and other group companies, the Inquiry of M/s Sun Pharmaceutical Industries Ltd under section 206(4) of the Companies Act, 2013 was ordered by Ministry of Corporate Affairs for FYS 2014 to 2018.

During the inquiry it was observed by the inquiry officer that Secretarial Auditor of the company has not reported "Aditya Medisales Ltd." as related party.

As per section 204 of the Companies Act, 2013 the Secretarial Auditor plays a crucial role in laws for effective compliances. The object of Secretarial Audit is evaluation and form an opinion and to report to the shareholders as to whether, the company has complied with the applicable laws comprising various statutes, rules, regulations, guidelines, followed by board processes also to report on existence of compliance management system.

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. Also that, the ICSI has issued Guidance Note for Secretarial Audit.

As per the Guidance Note, the Secretarial Auditor needs to adhere to the checklist to review the related party transaction. In this matter, instead of complying with his duty as per the Guidance Note in respect of related party transaction u/s 188, the Secretarial Auditor has merely relied on the statutory Auditors report, which led to non-compliance on his part pertaining to non-reporting of related party transaction.

Decision:

After considering the facts and submissions, the adjudicating officer had reasonable cause to believe that the Secretarial Auditor of the company has failed to discharge their duty as per provisions of section 143(14) read with section 188 and 204 of the Companies Act, 2013 read with ICSI Guidance Note on Secretarial Audit issued by ICSI and imposed a penalty on Secretarial Auditor.

Answer 3(c)

Internal audit professionals should possess not only exceptional verbal and written communication skills, but also he/she should be proficient in negotiating and reasoning with a variety of departments and groups over which internal audit may have no formal authority. Further personal integrity, professional due diligence and curiosity are important traits for individuals tasked with conducting internal audit work.

General Skills: The internal auditor needs to possess the following general skills for discharging their professional obligations proficiently.

Technical Standards: The internal auditor should have adequate knowledge of the applicable Indian Accounting Standards and also in-depth knowledge on how to apply them in practice.

Positive Attitude and Interpersonal Skills: The internal auditor should possess positive and objective attitude, free of any prejudice. He should possess good interpersonal and communication skills

IT Skills: With the rapid proliferation of information technology (IT) in the accounting and other

operational aspects of an entity, it is essential for an internal auditor to be able to work in an IT driven environment. Thus, it is essential that the internal auditor should either have or acquire sufficient knowledge of how information technology has been integrated in the functioning of the organization and also skills that would enable him to effectively use IT tools in carrying out a purposeful internal audit.

Interviewing Skills: Interviewing is the process of ascertaining information through verbal interaction with clients. It involves detailed questioning on various processes and procedures to ascertain whether the client's organization complies with the established standard operating procedure and practices and whether there is favourable or adverse variance from the standards, and in case of adverse variance what measures have been initiated by the management to ensure prevention of such adverse variances in future.

Audit Documentation Skills: Audit documentation is the process of compiling and filing of the findings of audit. It involves collating requisite documents as evidences for supporting audit findings, filing the analysis and supporting papers in a logical manner and assimilating information for presentation in a structured manner.

Reporting Skills: Reporting is the result of any audit assignment. It is therefore necessary that the audit report is written in such a manner that all issues are reported objectively and process gaps are addressed properly. It is also necessary that each observation is constructed in a manner that it represents the facts about the issue, its monetary or other impact, the cause of the issue and the suggestions for remedial actions and improvements.

Specific Skills

These skills would be required at senior levels and will assist the senior internal audit personnel in discharging the supervisory and management role efficiently and effectively.

- **Planning Audit Engagements:** This involves the ability to plan audit engagements on the basis of a comprehensive risk assessment prior to commencement of audit. The individual has to be experienced in the conduct of a brainstorming discussion on risk assessment. He should also have the necessary experience and capability to be able to significant issues that might come up during the audit, needing greater focus.
- **Team Building:** This involves collecting people and facilitating coordination among them to ensure that they work as a unified team. It involves identification of team leaders, delegation of authority, motivating the team and communicating to them the results expected.
- **Managing Audit Engagements:** This involves administration of the audit assignment. It involves the task of meeting auditees, understanding their expectations, communicating the engagement plan to them, selecting the right team, etc.
- **Making Professional Presentations:** An experienced internal auditor should be able to make effective presentations to the Audit Committee. This would involve selecting and presenting the major issues that warrant senior management attention in a clear and unambiguous manner.

Question 4

- (a) Why does the "Emphasis of Matter" (EOM) is included in the Audit report ? Give two examples which could be considered as EOM. (3 marks)
- (b) The audit committee of the company by a resolution had recommended ABC & Co. as the Statutory Auditors to the Board of Directors of the company. The Board also appointed ABC

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& Co. The shareholders of the company in its Annual General Meeting had appointed PQR & Co. as the statutory auditors. The Board does not agree the appointment of PQR & Co. by the shareholders and insists that ABC & Co. should act as Statutory Auditor. Decide and substantiate your answer with arguments.

(3 marks)

(c) Explain how does audit trail work.

(3 marks)

(d) Explain about the type of due diligence that uncovers the aspects of operational weakness, inadequacy of control mechanisms and also gives a better picture of the kind of cost to the buyer for the expansion.

(3 marks)

(e) RP Limited, a company has been regularly implementing Corporate Social Responsibility (CSR), as per the provisions contained under the Companies Act, 2013, for the past three years. The company has been executing the project(s) and now the project(s) has been completed and it has no ongoing project. It has an unspent amount of ₹ 20 lakh on 28th December 2022 in their CSR account.

By which date the company is required to transfer this amount to the Fund Specified in Schedule VII ?

Also advise the company about the limit of expenditure including administrative overhead for the purpose of CSR, if its' past 3 years net profits are ₹ 5 crore, ₹ 6 crore and ₹ 7 crore, respectively.

(3 marks)

Answer 4(a)

Emphasis of Matter

Emphasis of matter (EOM) is included in the audit report to seek the attention of the reader, to make the reader aware about the specific instances which are not in the general course of business. Such matters can have positive as well as negative impact on the affairs of the company in future. The purpose of an EOM paragraph is to draw the users' attention to a matter already disclosed but the auditor believes that, it is fundamental to their understanding and should be a part of the report.

The following are examples of the matters which should be considered as emphasis of matter:

- Legal uncertainty: an uncertainty relating to the future outcome of exceptional litigation or regulatory action.
- Litigation certainty: when there is uncertainty about exceptional future events, pending litigations.
- New Technology: adoption of new technology
- Changes in regulatory environment: recent changes in the regulatory environment
- Major Catastrophe: when a major catastrophe has had a major effect on the financial position
- Early Application of new AS: early application (where permitted) of a new accounting standard (for example, a new International Financial Reporting Standard) that has a pervasive effect on the financial statements in advance of its effective date.

Answer 4(b)

In order to address this problem, the basic question is, who is the appointing authority for a Statutory Auditor. As per the provisions of law, the appointing authority could be Board of Directors, Annual General Meeting, Tribunals, Regulators, Court etc. As per the auditing standard CSAS I which is auditing standard on audit engagement effective from first April 2021, the auditee is the person who is subject to the audit and under the provisions of Section 139 of the Companies Act 2013, it has been specifically provided that the first statutory auditor of the company shall be appointed by the Board of Directors of the company within 30 days of its incorporation. However, the subsequent auditors shall be appointed by the Annual General Meeting upon the recommendation of the Board of Director of the company or the audit committee of the company.

This implies that for appointment of statutory auditor except for the first statutory auditor, the appointing authority is the Annual General Meeting and the Board of Directors of the company is only the recommendatory authority.

Therefore, based upon the relevant provisions of the Companies Act, 2013, the auditor PQR & Co. shall act as the statutory auditor of the company.

Answer 4(c)

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:

- Any changes involved in the transaction
- The person who partook in the transaction
- The time at which the transaction took place
- The time at which the modification or edit took place
- 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 transactions 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. Basically, Audit trail based on Triple 'W' Approach i.e. When, Who What!

1. => when changes were made i.e., Date and Time (Time Stamp)
2. => who made those changes i.e., User ID
3. => what data was changed i.e., transaction reference; success/failure.

Answer 4(d)

Operational Due Diligence diagnoses of the organization's historical and current operational performance, cost structure, map of potential synergies. It aims at the assessment of the functional

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operations of the target company, connectivity between operations, technological up gradation in operational process, financial impact on operational efficiency etc. Operational due diligence involves verifying operational matters such as the various facilities, office layout, sitting capacity etc. Further in operational due diligence the detailed index of the fixed assets and its locations, age of the assets including all lease agreements relating to various equipment, schedule of sales and purchases of major capital equipment during previous years/ last three years, real estate deeds, mortgages, title policies and other permits also need to be verified in operation due diligence.

Benefits of Operational Due Diligence:

- It also uncovers aspects on operational weakness, inadequacy of control mechanisms etc.
- It also gives a better picture of the kind of cost the buyer is going to incur in case they plan to go for expansion.
- It verifies the various facilities owned by the target company and whether all costs are captured in the financials or not.

Answer 4(e)

Case: RP Limited is a company which is doing CSR for the past three and now the project has ended and it has no ongoing project. It has unspent amount of Rs. 20 lakhs on 28/12/2022 in their CSR account.

Rule of Corporate social Responsibility:

According to proviso of Section 135(5) of the Companies Act, 2013, Unspent amount not relating to ongoing projects to be transferred to Funds notified in Schedule VII of the Companies Act, 2013 within a period of 6 months of the end of the financial year.

Conclusion: Hence, RP Limited has to transfer the unspent amount of Rs. 20 lakh before 30th September, 2023.

Expenditure including Administrative Overheads:

Rule of CSR: Expenditure including administrative overheads shall not exceed 5% of total CSR expenditure of the company in one financial year.

Case: The net profits of RP Limited for the past 3 years are Rs. 5 crore, Rs. 6 crore and Rs. 7 crore respectively.

Average of three years net profit = $5+6+7=18/3=$ Rs. 6 crore

CSR amount (2% of average net profit) = ₹ 6 crore * 2% = Rs. 12 lakh

Calculation of Expenditure including administrative overhead = Rs. 12 lakh * 5% = Rs. 60,000/- The board of RP Limited shall ensure that the administrative overheads shall not exceed 5% of total CSR i.e. Rs. 60,000/- for one financial year.

Question 5

- (a) The auditor must plan the audit with professional scepticism, so that it is possible to exercise professional judgement in an objective manner. Practically examine this statement as an auditor.
- (b) GKL & Co., a firm of Practising Company Secretaries, is the Secretarial Auditor of ABC Limited. During examination of documents, the auditor had observed a fraud of Rs. 2 crore, which was not reflected in the Statutory Auditor's Report. Examine in the background of an argument that examination of the financial statement is primary responsibility of the statutory auditor.

(c) XYZ Limited wants to observe good governance practices. The company has approached you to suggest controls to prevent and detect frauds and to educate their employees towards the awareness of frauds. Give your recommendations in this regard.

(5 marks each)

Answer 5(a)

The auditor must plan the audit with professional scepticism so that it is possible to exercise professional judgement in an objective manner. The application of the professional scepticism enhances the effectiveness of the audit procedures and reduces the risk of the possibilities that the auditor will reach at an inappropriate conclusion when evaluating the results of the audit procedure.

The auditor must adhere to the audit plan. This plan may be modified if the circumstances so warrant. The audit plan should be documented including significant changes made during the course of the audit and the reasons of the changes. Audit, whether due to any unexpected change, events, conditions, or evidences obtained or the overall strategy must set out the scope, timing and direction and guide the development of more detailed audit plan which must include the following:

- Introduction to the audit plan
- Description of the audit fields including the regulatory framework
- Objective and type of the audit
- Coverage of the audit places to be visited, period to be covered, control system to be audited
- Preliminary assessment of the risk
- Approach of the audit and the procedures to be carried out etc.
- Identification of materiality in terms of value, nature and context
- Organisation of audit work, timetable, documentation etc.

Answer 5(b)

The obligation and the duties of the secretarial auditor are mentioned under section 143(12) of Companies Act, 2013 and Rule 13 of the Companies (Audit and Auditors) Rules, 2014.

If any auditor of the company in the course of performance of his duties as an auditor has a reason to believe that any offence of fraud which involves or is expected to involve an amount of Rupees 1 Crore or above is being committed or has already been committed against the company by its officer or employees, then the auditor shall report the matter to the Central Government. Auditor should report such funds as soon as possible but not later than 60 days of his knowledge about the frauds in the following manner:

The auditor shall report the matter to Board of Directors or the Audit Committee as the case may be, immediately but not later than 2 days of his knowledge of the fraud seeking their reply or observations within a span of 45 days.

On receipt of such reply for the observation the auditor shall forward his report along with the reply given by the Board of Directors or the Audit Committee as the case maybe to the Central Government within 15 days from date of receipt of such reply from the board oblique audit committee.

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In case the auditor fails to get any reply from the Board or Audit Committee within span of 45 days, then he shall forward his report to the Central Government with remark that he has not received any report or reply from the Board of Directors.

The said report has to be filed in the form ADT-4 and shall be sent to the Secretary Ministry of Corporate Affairs.

According to Section 143 (14) of the Companies Act, 2013, the above provision are applicable to the company secretary in practice conducting secretarial audit under section 204.

In the instant case, the fraud is more than Rupees 1 Crore, therefore, it is also the responsibility of the secretarial auditor to report the fraud and the statement or argument given by the secretarial auditor that this is the responsibility only of the statutory auditor is not tenable.

Answer 5(c)

The following are the recommendations for the control and education to be applied in the entire organization:

1. Segregation of duties: The duties of the executives need to be segregated and some single person should not control multiple aspects and processes of transactions as far as possible.
2. Rotation of duties: It should be ensured that there is a periodical rotation of the duties for the key position. The job rotation must be made mandatory for which a policy should be framed by the company
3. Mandatory rotation: There has to be a mandatory vacation policy to the key employees which will help them to come a fresh after the vacation and work more efficiently but will also help to prevent the employees to hide the trails of the crime if any.
4. Treat employees well: The employees need to be motivated on the aspect of the treatment which they get at the hands of the management. The better treated employees reduce the chances of fraud and take revenge attitude.
5. Regular audit: Internal audits especially in the remote locations and other significant projects must be carried out specifically apart from the regular audits.
6. Background check: The background check of the employees particularly those who have been appointed on the positions of trust and responsibility must be carried out diligently
7. Whistleblower hotline: Implement whistle blower policy and a hotline for the employees to blow the whistle provided adequate training on the frauds and the types of the fraud which normally happen and mechanism of reporting and eradication of frauds.
8. Code of Conduct: Established code of conduct clearly giving the ethical behaviour and the expectations from the employees.
9. Independence of independent directors: It must be ensured that the independent Directors are really independent and their regular review and they should approve the financial statements submitted by the management without any pressure
10. Management oversight: The management must hold the employees accountable for their actions and ensure that the consequences are enforced as and when they are necessary
11. Document retention: Establish policies for the retention and destruction of the records so that important documents are not lost or destroyed.

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

Question 6

- (a) Due diligence on competition law aspects is an examination of the actual operations and practices of an enterprise and effectiveness of the company's competition law compliance policy and training program. Discuss. (5 marks)
- (b) The principle of confidentiality imposes an obligation on the auditor to refrain from doing certain acts. Explain. How will the Auditor ensure the prevention of unauthorised access to such confidential information ? (3+2=5 marks)
- (c) Explain the process of selection of the Practice Unit by the Quality Review Board and submission of the reviewer's report to the Board. (3+2=5 marks)

Answer 6(a)

Due Diligence under Competition Law

It is an examination of the actual operations and practices of an enterprise to determine the extent of its compliance with the competition law and to identify potential risks and liabilities and assess the adherence to and effectiveness of the company's competition law compliance policy and training program.

Primary components of Competition Law due diligence are:

- An examination of selected company documents.
- Interviews with selected company personnel.
- Identify specific business activities that potentially could create antitrust exposure for the company.
- The results of the due diligence may suggest an enterprise to have an effective competition law compliance programme.
- The results of the due diligence may result in variation of deal value, withdrawal of deal and also make suggestions to structure a compliance program.
- How to go about the process of due diligence of competition law.

Due diligence of competition law may be made under the following heads:

- Due diligence of various agreements (both existing and proposed)
- Due diligence on dominance and its likely abuse if any, (existing)
- Due diligence on combinations (i.e. effect of proposed Mergers & Acquisition).

Due Diligence of various agreements includes:

- Agreements relating to production, supply and distribution of goods or services
- Agreement if any with competitor relating to production, marketing or bidding, price etc.
- Agreements with customers and distributors.
- Purchase agreements. Non-compete covenants.

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- Technology transfer/technical know-how agreements.
- Concession agreements.

Due diligence on abuse of dominance, if any includes:

- Examination as to the existence of dominance.
- Examination of relevant market, whether product or geographical Areas.
- Cases of abuse if any

Due diligence on regulation of combinations:

- Nature of combination.
- Acquisition of share, voting rights, assets or control or merger/amalgamation etc.
- Examination of total value of Assets or Turnover and the valuation methodology. Status of merger notification to be filed with CCI.
- Status of dominance after merge and also state how it is performed.

Answer 6(b)

Confidentiality:

During the course of audit, Auditor receives, verifies and inspects various audit documents, evidence, representation etc. to form an opinion or to give a report. These may be confidential and privileged information that remain in possession of the Auditor and shall not be disclosed without the express authority of the Auditee.

Clause (1) of Part I of the Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in practice shall be deemed to be guilty of professional misconduct, if the member - "discloses information acquired in the course of professional engagement to any person other than the Auditee so engaging him, without the consent of the Auditee, or otherwise than as required by any law for the time being in force."

The word 'information' here implies any information which is not available in public domain.

The principle of confidentiality imposes an obligation on the Auditor to refrain from:

- Disclosing Information: Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- Using information for personal advantage: Using information acquired as a result of professional relationships to their personal advantage or the advantage of third parties. Inadvertent
- Disclosures: An auditor should maintain confidentiality even in a social environment. The auditor should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative Information disclosed by a Prospective client; An auditor should also maintain confidentiality of information disclosed by a prospective client or employer.
- Confidentiality within the firm: An auditor should also consider the need to maintain confidentiality of information within the firm or employing organization.
- Control of Staff: An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respect the auditor's duty of confidentiality.

Prevention of unauthorized access to such confidential information

- The Auditor shall educate his employees, staff and other team members about the importance of the confidentiality of the information available to them during the course of audit.
- The Auditor shall ensure that reasonable procedures have been followed to maintain the confidentiality of the information.
- The Auditor shall also take a duly signed Non-Disclosure Agreement (NDA) from such personnel who may have access to such confidential information.
- The Auditor shall also ensure that reasonable procedures and safeguards are being followed to prevent unauthorised access to such confidential information.

Answer 6(c)

The Quality Review is focused towards evaluation and review of quality of services rendered by members and adherence to various statutory and other regulatory requirements. It involves assessment of the work of the member while rendering professional services so as to enable QRB to assess:

- (a) compliance with statutory and regulatory requirements;
- (b) the quality control framework adopted by the member; and
- (c) the quality of reporting.

Manner of Selecting Practice Units for Quality Review:

The Board is empowered to decide the Practice Unit(s) to be reviewed. The selection of a Practice Unit for review is based on objective criteria as may be determined by the QRB.

Communication with Practice Unit under Review (PU)

On selection of a Practice Unit (PU) for review, intimation is sent regarding its selection with request to provide basic information related to the services rendered and other details.

Once the basic information is received from PU, the Quality Reviewer (QR) is assigned and the basic information of the PU is shared with the Reviewer. The Reviewer should send a communication to the PU specifying aspects such as:

- Date of commencement of the review;
- Expected date of completion of review;
- Documents required for review;
- Identification and contact details of the Reviewer;
- Composition of the review Team, if any; and
- Any other detail as may be required for the purpose of review.

It is also advisable that for a smooth conduct of the review, the Reviewer and the PU reach an understanding on the following matters:

- Details and duration of visit at the Office of PU so as to ensure minimum disruption to the PU. Main contact person/s in the PU for Reviewer's requirements relating to the review.
- Normal lead time required for production of documents, resolution of queries, etc.
- Logistical arrangements, as available within the PU, for conduct of review.
- Any other support/coordination required by Reviewer from PU and vice versa.

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- The frequency and timing of communications related to issues or findings noted by the Reviewer.

Submission of Report

The Reviewer is required to submit a preliminary report within three weeks from the date of assignment to the Practice Unit on the review of the quality of audit and attestation services rendered by the Practice Unit.

Any observation indicating a non-compliance with the applicable technical standard(s) should be included in the preliminary report for seeking views / comments of PU thereon.

The Board may, upon request, extend the time limit for submission of preliminary review report. The Reviewer, based upon consideration of the responses received from Practice Unit on the preliminary report, shall issue the final report to the Board on the basis of his findings on the quality of services rendered by PU.

OR (Alternate Question to Q. No.6)

Question 6A

- (i) The Auditor shall assess the efficacy and adequacy of the systems and processes of the Auditee. Comment. Also cite any four best practices being observed by the companies for Board processes.

(3+2=5 marks)

- (ii) An auditor is conducting an audit of a company's financial statements. As part of the audit, the auditor is reviewing the company's bank statements to ensure that all transactions are accurately recorded in the company's financial records. The auditor notices a payment of Rs. 10 lakh to a vendor that does not match any of the vendor payments recorded in the company's accounting system. Explain the process the auditor shall undertake for ensuring the accuracy and completeness of the financial statement.

(5 marks)

- (iii) Write any five essential terms of reference of a valid Audit Committee, in compliance with the Regulation 18 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(5 marks)

Answer 6A(i)

System and process broadly refer to the framework of legal and procedural compliances of the Auditee including but not limited to internal regulations, control, guidance and governance.

A system is the core element, that company management has and/or implements in its business. It's something that helps the business run. The processes are all the things that company management do in order to make any given system work most efficiently. In other words, systems are designed to connect all of an organization's intricate parts and interrelated steps to work together for the achievement of the business strategy. System and process in the context of Secretarial Audit includes internal policies, decisions or procedures, etc. laid down by the Auditee for ensuring the compliance of the various laws, rules, standards and guidelines as may be applicable to the company. The Auditor should verify those policies, decisions, procedures, etc. of the Auditee to verify the adherence thereof and ascertain that the systems and processes are adequate and commensurate to its size and operations to ensure compliance with applicable laws, rules, regulations, standards, guidelines and defined internal processes.

The Auditor shall assess the efficacy and adequacy of the system and processes of the Auditee commensurate with its size and operation for verifying compliance of applicable laws, rules, regulations, standards, guidelines, and defined internal processes, if any by:

- Reviewing records maintained by the Auditee.
- Understanding compliance responsibility centers, control points, matrix, the flow of information, escalation of non-compliances to different levels, reporting of any non-compliance.
- Assessing compliance mechanism and understanding its extent, coverage and severity mapping. The Auditor shall also assess compliance manual/ standard operating procedures, if any, available with the Auditee.
- Analysing instances of show cause notices received, prosecution initiated, fine or penalties levied, imprisonment ordered, qualification, adverse remark or observations in the statutory, internal or industry specific audit, orders passed by regulatory bodies or judicial/ quasi-judicial authorities.

Best practices being observed by the companies for Board processes (2022) are:

1. Bharti Airtel Limited

- The company submits audited quarterly results to the Stock Exchange.
- Separate meeting of Independent Directors on a quarterly basis.
- The evaluation of the Board of Directors is done by an external agency
- Linkage of remuneration of MD & CEO and Senior Management with ESG/sustainability targets.

2. Hindustan Unilever Limited

- The Board of directors has adopted 'Corporate Governance Code' a statement of practices and procedures to be followed by the company and its officers and employees.

3. Mahindra Logistics Limited

- The company has voluntarily adopted the practice of scheduling its AGM within 5 month of end of financial year as a good governance measure.
- The company, voluntarily as a good governance practice, observes a 'silent/quiet period' for 15 days prior to the announcement of quarterly and annual financial results.
- The company has structured PAN India compliance mechanism, with process management and end-to-end visibility for its compliance process.

4. AU Small Finance Bank Limited

- The Executive Directors are duty bound with Malus and Claw back clause, which activates in the event of subdues or negative financial performance of the Bank

Answer 6A(ii)

To investigate this discrepancy (a payment of Rs. 10 lakhs to a vendor that does not match), the auditor uses cross referencing to compare the bank statement with the company's accounting records. Cross referencing is an audit technique used to compare and match data from different sources to ensure accuracy and completeness. The auditor identifies the check number on the bank statement and searches for it in the company's check register. The auditor finds that the check was issued to a different vendor for a different purpose than the one recorded on the bank statement.

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The auditor then reviews the company's invoices and purchase orders to determine if there were any other payments made to the vendor listed on the bank statement. The auditor discovers that the vendor did provide services to the company, but the payment was not recorded in the accounting system.

Based on these findings, the auditor concludes that the payment was made to the vendor for services rendered and that the payment should be recorded in the company's financial statements. The auditor then makes the necessary adjustments to the financial statements to reflect the correct amount of the payment.

In this case, cross referencing helped the auditor to identify a discrepancy between the bank statement and the accounting records, and to investigate the cause of the discrepancy. By comparing and matching data from different sources, the auditor was able to ensure the accuracy and completeness of the financial statements, and to identify any errors or omissions that needed to be corrected.

Answer 6A(iii)

The essential terms of reference of a valid audit committee as per Regulation 18(1) of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 for listed entity are as under:

- The audit committee must have minimum 3 number of Directors.
- At least two-thirds of the members of audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.
- All members of the audit committee shall be financially literate and at least one member shall have accounting or other related financial expertise.
- The chairperson must be an Independent Director and he/she shall be present at the Annual General Meeting to answer the queries of the shareholders.
- The company secretary must act as a secretary to audit committee.
- The audit committee at its discretion shall invite the finance Director or head of the finance function, head of the internal audit, representative of the statutory auditor and any other such executives to be present at the meetings of the audit committee.

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CORPORATE SOCIAL RESPONSIBILITY AND SOCIAL GOVERNANCE

GROUP 1 ELECTIVE PAPER 4.1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Questions 1

Corporate Social Responsibility (CSR) is a proactive and synergistic business philosophy, while attention is paid to broader economic, environmental, and social issues in a balanced way. Augmenting profits is no longer the sole business performance indicator for the corporates and they have to play the role of responsible corporate citizens by undertaking activities for betterment of the society and the environment under the umbrella of Corporate Social Responsibility (CSR). Organizations use resources that belongs to the society and it is expected that they should operate in a sustainable manner and spend some amounts for preservation and sustainability of resources which belong to the society.

Over the last two decades, significant economic growth and integration has taken place in the global economy, resulting in several changes in the way businesses operate. Governments across the world have been using different forms of regulations to improve corporate behavior so as to promote increased accountability, disclosures and transparency from them. Gone are the days when Milton Friedman, the reputed Economics Nobel laureate, opined in 1960s that companies have no responsibility towards the society and that their objective was primarily the enhancement of shareholders' wealth.

With the enactment of the Companies Act, 2013, CSR became a norm in India. India is perhaps one of the few countries in the world where CSR is mandated under the Statute. Companies Act, 2013 ["Act"] is a legislation which officially embarked on one of the world's largest experiments of introducing the concept of CSR as a mandatory provision. With the introduction of Act, there is a statutory obligation for the corporates to take initiatives towards Social, Environmental and Economic Responsibilities. The initiatives taken have to be reported to the company and other stakeholders appropriately. Section 135 of the Act and the Companies (Corporate Social Responsibility Policy) Rules, 2014 ["CSR Rules"] framed thereunder govern CSR in India.

In view of above background and CSR related provisions in India, analyze the following questions and provide the answers :

- (i) ABC Corporation, a publicly listed manufacturing company in India, is committed to enhancing its Corporate Social Responsibility (CSR) initiatives to contribute positively to society, the environment, and the economy. The company is in the process of establishing a CSR Committee in compliance with the Companies Act, 2013. The goal is to adopt a "Triple Bottom Line" (TBL) approach, focusing not only on financial performance but also on social and environmental impact. How can ABC Corporation effectively implement the Triple Bottom Line approach within its CSR framework to balance social, environmental, and economic responsibilities ?

(5 marks)

(ii) W Ltd. is a big listed company and it has huge profits. The company management is very keen in establishing the company as a socially responsible organization and it has involved most of its employees in its CSR related activities. During financial year 2023-24, the company has CSR obligations of ₹ 48 Crore. The company has spent 46 Crore in various eligible CSR activities. Beside it, the company has monetized ₹ 2 Crore towards cost of the service employed by its various employees in different CSR activities and shown this amount of ₹ 2 Crore as expenditure towards CSR obligations. The secretarial auditor of the company has questioned this treatment of monetizing the cost of services of the employees. You are required to analyze this case and comment whether the secretarial auditor's observation is correct and what actions need to be taken up by the company ?

(5 marks)

(iii) In line with Section 135(3) (a), how can a company ensure strategic and sustainability in CSR policy contributing to long-term social and environmental benefits ?

(5 marks)

(iv) Compare and contrast the principles of King Report 2009 with International Standards such as ISO 26000 of Corporate Governance.

(5 marks)

Answer 1(i)

ABC Corporation can effectively implement the Triple Bottom Line (TBL) approach within its CSR framework by focusing on balancing social, environmental, and economic responsibilities in alignment with the Companies Act, 2013. The TBL approach aims to measure success by its impact on people (social), the planet (environmental), and profits (economic). Here's how ABC Corporation can achieve this:

1. Social Responsibility (People)

To address its social responsibilities, ABC Corporation should focus on initiatives that enhance the well-being of the communities it operates in. This can include:

- Education and Skill Development: Support programs that enhance education and vocational training for underprivileged communities.
- Healthcare Initiatives: Promote access to healthcare through medical camps, vaccination drives, and improving sanitation facilities.
- Employee Welfare: Foster a healthy work environment by offering fair wages, equal opportunities, and robust health and safety policies. Additionally, support work-life balance and diversity.

2. Environmental Responsibility (Planet)

ABC Corporation should prioritize minimizing its environmental footprint. Key actions include:

- Sustainable Resource Use: Implement practices to reduce usage of resources, reduce waste, conserve water, and lower energy consumption in manufacturing processes.
- Emission Reduction: Adopt green technologies to reduce carbon emissions and promote the use of renewable energy sources, such as solar, hydro or wind power.
- Biodiversity and Conservation: Invest in reforestation programs and protect local ecosystems through responsible sourcing of raw materials.

3. Economic Responsibility (Profit)

While contributing to social and environmental goals, ABC Corporation must maintain profitability and generate economic value:

- **Innovation and Sustainable Products:** Develop eco-friendly products that meet market demands while reducing environmental harm, ensuring long-term profitability.
- **Local Economic Development:** Support small businesses and local suppliers to strengthen the economic fabric of the community.
- **Transparency and Reporting:** Maintain financial transparency, regularly report CSR spending, and measure the economic impact of CSR activities.

Answer 1(ii)

The clarification as given in Para 3.18 of General Circular No. 14 /2021 dated 25th August, 2021 issued by MCA:

The involvement of employees in CSR projects of a company cannot be monetized. Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies, therefore, should be encouraged to involve their employees in CSR activities.

In view of above, the company is not correct in monetizing the cost of employee engaged in CSR activities. Maximum, the company can show the service cost of employees under administrative overhead which would not be more than 5% of total CSR budget of expenses. The shortfall amount needs to be deposited in the funds as mentioned in Schedule VII to the Companies Act, 2013.

Answer 1(iii)

To ensure its CSR policy is both strategic and sustainable, a company must focus on aligning its efforts with long-term social and environmental goals, as outlined in Section 135 (3)(a) of the Companies Act, 2013.

Align CSR with Core Business Strategy: Integrate CSR into the company's overall mission and vision. This ensures that social and environmental initiatives complement core business objectives, making CSR a natural extension of daily operations.

- **Focus on Long-Term Impact:** Prioritize initiatives that deliver sustainable benefits. For instance, investing in renewable energy, education, or community health can yield long-lasting societal benefits and support environmental sustainability.
- **Stakeholder Engagement:** Regularly consult with stakeholders, including local communities, employees, and NGOs, to understand their needs and expectations. Aligning CSR programs with stakeholder interests increases the relevance and impact of initiatives.
- **Set Measurable and Achievable Goals:** Develop clear, long-term CSR goals with measurable outcomes. Tracking progress through key performance indicators (KPIs) ensures that initiatives are effective and provide tangible social and environmental benefits.
- **Sustainable Resource Allocation:** Allocate resources strategically by focusing on projects that address critical societal issues and offer scalability.

Answer 1 (iv):**1. Ethical Behavior:**

- Both the King Report and ISO 26000 emphasize the importance of ethical behavior in corporate practices.
- They advocate for companies to act ethically, with integrity, and in compliance with laws and regulations.

2. Stakeholder Engagement:

- Both frameworks highlight the significance of engaging with stakeholders in decision-making processes.
- They stress the importance of considering stakeholder interests and fostering dialogue with various stakeholder groups.

3. Transparency and Accountability:

- Both the King Report and ISO 26000 promote transparency and accountability within organizations.
- They encourage companies to disclose relevant information to stakeholders and be accountable for their actions.

4. Integration of Social Responsibility:

- The King Report and ISO 26000 both promote the integration of social responsibility into core business practices.
- They suggest that social responsibility should be embedded in the organization's strategy, operations, and culture.

Differences:**1. Scope of Coverage:**

- The King Report focuses on corporate governance principles specific to South Africa, including board composition, integrated reporting, and risk management.
- ISO 26000 has a broader scope, covering social responsibility across various dimensions such as human rights, labor practices, environment, fair operating practices, consumer issues, and community involvement.

2. Legal Context:

- The King Report is a governance code specific to South African companies, tailored to the country's legal and regulatory framework.
- ISO 26000 is an international standard applicable to organizations worldwide, providing guidance on social responsibility irrespective of legal jurisdiction.

3. Reporting and Communication:

- The King Report emphasizes integrated reporting, which includes financial, social, and environmental performance in a single report.
- ISO 26000 does not prescribe specific reporting formats but encourages organizations to communicate their social responsibility efforts through various means, such as sustainability reports or stakeholder engagement.

4. Board Composition and Leadership:

- The King Report provides recommendations on board composition, independence, and leadership, aiming to strengthen governance.
- ISO 26000 focuses more on organizational governance structures that promote social responsibility and the role of leadership in fostering a responsible culture.

5. Specificity vs. Flexibility:

- The King Report provides specific guidelines tailored to South African corporate governance needs.
- ISO 26000 offers broad principles that allow organizations flexibility in applying social responsibility practices according to their specific contexts and circumstances.

Question 2

XYZ Corporation is a leading conglomerate with an average CSR obligation of ₹ 12 Cr. over the past three financial years. It has recently decided to get carried out a comprehensive Social Impact Assessment (SIA) for its recent CSR project in a rural community which aimed to provide clean drinking water by installing community water filtration systems. The SIA, conducted by an independent agency, assessed both positive and negative impacts of this project on stakeholders. Positive impacts as observed by the agency included improved health due to access to clean water, economic benefits from reduced healthcare costs, and increased school attendance for children with improved health. However, negative impacts such as initial disruption during construction and potential changes in local water usage practices were also identified. Ongoing monitoring and evaluation revealed that the project had significantly improved water quality, leading to a 30% decrease in waterborne diseases in the community within the first year of implementation.

Study the above case and answer the following questions :

- (a) While carrying out the SIA in above case, design the questionnaire which could be helpful in getting the correct impact assessment ?

(5 marks)

- (b) How does the Income Tax Act, 1961, allow CSR spenders to claim certain expenses ?

Also, indicate as a prominent entity, how does businesses ensure that its CSR initiatives complement the government's GST policies, fostering an ecosystem of social responsibility while adhering to tax compliance requirements ?

(3+2=5 marks)

- (c) Identify the process which is used for stakeholders' analysis on a concept, system, strategy, product, service, etc. of an organization in a qualitative or quantitative manner. Discuss.

(5 marks)

Answer 2 (a)

There are various tools available for conducting a Social Impact Assessment (SIA). It is left to the individual organisation and the independent agency conducting the assessment to choose one/ many specific tools The chosen tool must be able to provide the desired results.

A Questionnaire is one popular tool used to conduct the assessment. This tool is a means of gathering information about a wide range of actions including those in the past, present or future impacting a project or its objectives.

In the current case, the Questionnaire to assess the impact of providing clean drinking water by installing community water filtration systems should include the following:

- Who are the key beneficiaries (stakeholders) of this clean drinking water project?
- Are they aware of the project and its impact?
- Have they understood the negative impacts of the project and the steps taken to mitigate the same?
- Does the project's objective to provide clean drinking water consistent with their needs, interests and capacities?
- Has the project (to provide clean drinking water) benefited women and vulnerable groups?
- Are all the stakeholders able to participate and benefit from the provision of clean drinking water? Are there restrictions on account of gender, caste, ethnicity or income levels?
- Does the project require an institutional arrangement to deliver clean drinking water?
- If there are different needs for different stakeholders (men/women/children) have all the needs been met?
- Are there continuing risks which can affect the smooth running of the project?
- Is the provision of clean drinking water sustainable?

To perform Social Impact Assessment, certain tools are required and the organisations to choose the appropriate tool for conducting Social Impact Assessment which derive the results as desired. The tool to be utilised for conducting Social Impact Assessment should provide for:

- baseline information about the social and economic conditions prevailing or existing in the project area;
- information on potential impacts of the project and the characteristic of the impacts, magnitude, distribution, and their duration upon the community and target stakeholders;
- information on who will be the affected group, positively or negatively;
- information on perceptions of the affected people about the project and its impact;
- information on potential mitigation measures to minimize the impact;
- information on institutional capacity to implement mitigation measures.

There are numerous tools and methodologies which may be used to harness citizen involvement and get the most from their input and feedback at all stages of the process. While choosing the appropriate tool for conducting Social Impact Assessment, consideration should be given to composition, timing, location and format of stakeholder and citizen meetings. This must also be seen, how 'harder to reach' groups such as economically disadvantaged, ethnic minorities, women and vulnerable groups will be involved so that they can share their experiences and provide input in Social Impact Assessment process and desired outputs can be carved out and execution & implementation of proposed project.

Questionnaires: Under this tool, basic to advance level of questionnaire is prepared and circulated amongst the community or target beneficiaries of project in order to ascertain their lifestyle, prevailing issues related to subject of proposed project, their expectations from the proposed project, risks associated & mitigations. In other words, this tool of Social Impact Assessment is a means of gathering information about a wide range of actions, including those

in the past, present and future which may influence the impacts of a project and ultimately the objective of project.

Some questions that should commonly be addressed in social impact assessment include the following:

- Who are the key stakeholders? What do they already know about the proposed project, its impact and the measures being contemplated to mitigate its negative impact?
- What are their interests? Are the objectives of the project consistent with their needs, interests, and capacities?
- What is the impact of the project on various stakeholders, and particularly on women and vulnerable groups?
- What social factors affect the ability of stakeholders to participate or benefit from the operations proposed? (Gender, caste, ethnicity, or income level)
- What institutional arrangements are needed for participation and project delivery?
- What are the risks which might affect the success of the project? (Lack of commitment or capacity, resource crunch, incompatibility with existing conditions)
- How does the project address need of different stakeholders?
- Do any of these issues pose risks to overall project success and sustainability?

Answer 2 (b)

Explanation 2 to Section 37(1) of the Income Tax Act, clearly states that the expenditure incurred by companies on CSR as laid down in Section 135 of the Companies Act shall not be deemed to be expenditure incurred for the purposes of business or profession and hence not to be allowed as expenditure.

However, the Memorandum to the Finance Bill states that expenditure falling under Sections 30 to 36 would be allowed as deductions subject to fulfilment of conditions specified.

Section 30: Deduction on repairs, municipal tax, and insurance for premises

Section 31: This section provides deduction on repairs and insurance of plant, machinery, and furniture

Section 32: Under this section, CSR spenders can get depreciation on tangible assets like building, machinery, plant, furniture and also on intangible assets like know-how, patents, trademarks, licenses.

Section 35: Under this section, deduction is given on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved universities/research institutions or company also qualifies for deduction. In-house R & D too is eligible for deduction, under this section.

Section 35CCD: Deduction for skill development projects

Section 36: Here, deduction is provided regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, employer contribution to provident fund, gratuity and payment of security transaction tax

Section 16(1) of the CGST Act provides that a registered person is eligible to avail the input tax credit of goods or services supplied to it and used by it in the course or furtherance of business. Further, according to Section 17(5) of the CGST Act, input tax credit is not available in respect of supplies listed therein, notwithstanding anything contained in Section 16(1) of the CGST Act.

Answer 2(c)

The process used for stakeholders' analysis on a concept, system strategy, product, service, etc. of an organisation in a qualitative or quantitative manner is called the ABCD analysis. This analysis framework developed systematically in this century is used in different formats by many scholarly articles. ABCD listing is a qualitative discussion of a given thing by identifying and listing the ABCD - advantages, benefits, constraints, and disadvantages - of an entity from different stakeholders' frames of reference.

An ABCD analysis of the CSR activities:

Advantages:

- Inspires maintainable conduct by customers;
- Development of distinct business representations for numerous sections;
- Delivers real aids for the civilization as a whole;
- Generates developed operative enthusiasm, and higher performance levels;
- Makes banks more aware of their possible role in society;
- Generates confident publicity and enlarged brand credit.

Benefits:

- grows employee engagement,
- improves bottom-line financials,
- supports local and global communities,
- Contributes to the United Nations' 17 Sustainable Development Goals,
- Increases investment opportunities,
- Presents fresh opportunities to serve society,
- Increases customer retention and loyalty,
- improves employer branding.

Constraints:

- Lack of Community Contribution in CSR Activities,
- Need to Build Local Capacities,
- Issues of Transparency,
- Non-availability of Well Organized Non-Governmental Organizations for collaborations,
- Visibility Factor of the services provided,
- Narrow Perception towards CSR Initiatives.

Disadvantages:

- The first is that when a business seeks out and develops ways that are distinct from their typical way of operating in order to meet the CSR criteria, they must pay specific costs for adopting such a unique method of operation, that became expensive for the organization.
- The second way that expenditures are an unfavourable element is that they bring with them a variety of expenses that a firm must meet, such as staff training, investing in specific programs for the upliftment of society, and ensuring environmental safety.
- Conflicting business objectives.

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 (banks) business activities indirectly.

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

Question 3

- (a) With the changing times, the ideology and concept of CSR is paving way for the new generation of corporate leaders who idealise that profit optimization is more important than only profit maximization. Further, there is a shift in accountability from shareholders to stakeholders (including employees, consumers, and affected communities). Outline the challenges which pose hindrance to the CSR implementation and execution in developing economies.

(5 marks)

- (b) Define the following terms :

- (i) Zero Hunger
- (ii) CSR Impact Assessment Report
- (iii) TISHD
- (iv) IAIA
- (v) Green Washing.

(5 marks)

- (c) Define 'Social Impact Assessment Framework'. What is SROI ? Also mention the steps in calculation of SROI.

(1+2+2=5 marks)

Answer 3(a)

Below are some factors/challenges due to which CSR implementation & execution may be hindered in developing economies like India:

1. Lack of Community Participation in CSR Activities: Majorly, communities who are intended beneficiaries of a CSR program show less interest which will affect their participation and contribution. Also, very little efforts are being made to spread CSR within local communities and instill confidence in the people. The situation is further aggravated by inadequate communication between the organization and the community at the grassroots level.
2. Issues of transparency: Lack of transparency is one of the key issues. There is a perception that partner NGOs or local implementation agencies do not share adequate information and make efforts to disclose information on their programs, address concerns, assess impacts and utilize funds. This perceived lack of transparency has a negative impact on the process of trust building between companies and local communities, which is key to the success of any CSR initiative.
3. Lack of Consensus: There is a lack of consensus amongst local agencies regarding CSR project needs and priorities. This often results in duplication of activities by corporate houses in the areas of their intervention. This leads to an unhealthy competitiveness spirit among local implementing agencies, rather than building collaborative approaches on important issues. This factor also limits an organization's abilities to undertake an impact assessment of their initiatives from time to time.

4. Civil Society Strengthening: Capacity for strong performance in the community is the foundation for lasting social benefits. Worldwide, civil society is an important social and economic force with the potential to create a more free, fair, and just global order. The collective nature of civic action helps to ensure that the interests of all citizens—including women, the poor and other marginalized groups— are adequately weighed by public institutions that make policy and allocate resources. Many civil society organizations face common challenges that limit their effectiveness namely, the ability to manage human and financial resources, weak advocacy abilities, and insufficient management ability to scale up promising innovations and results to achieve wider impact.
5. Social Impact Management: This addresses the issue of inclusive growth and is more than mere poverty alleviation. It seeks to address the problem of equity through the enhancement of opportunities for everybody.

Answer 3 (b)(i)**Zero Hunger:**

In 2015, all the United Nations member States adopted a blueprint for peace and prosperity for the people and the planet, now and into the future. At its heart are 17 Sustainable Development Goals for action by all countries. Goal No 2 is Zero Hunger. This initiative is aimed at ending hunger by 2030 and ensuring that all people have access to sufficient, safe, and nutritious food year-round. The goal focuses on improving food security, promoting sustainable agriculture, and reducing malnutrition.

Answer 3 (b)(ii)**CSR Impact Assessment Report:**

A CSR Impact Assessment Report gives a holistic insight into the sustainability and the relevance of the project keeping in mind the environment, people, animals, and the ecology that is affected by the implementation of the project. It is a systematic evaluation of a company's project in terms of their social, economic and environmental impact.

Answer 3(b)(iii)**TISHD:**

The Tata Index for Sustainable Human Development is a pioneering effort aimed at directing, measuring, and enhancing the community work that Tata group enterprises undertake. The index provides guidelines for Tata companies looking to fulfil their social responsibilities, and is built around the Tata Business Excellence Model, an open-ended framework that drives business excellence in Tata companies.

Answer 3(b)(iv)**IAIA:**

The International Association of Impact Assessment (IAIA) is an association of professionals involved with impact assessment including both social impact assessment and environmental impact assessment. According to the Association, Impact Assessment is a structured process for considering the implications, for people and their environment, of proposed actions while there is an opportunity to modify (or even abandon) the proposals.

Answer 3(b)(v)**Greenwashing:**

Greenwashing is a deceptive practice where a company or organization exaggerates or falsely

claims environmental benefits of its products, services, or policies to appear more environmentally friendly than it actually is. This can mislead consumers into believing that the company is making more sustainable choices than it truly does.

Answer 3(c)

Social Impact Assessment Framework:

A Social Impact Assessment Framework can be defined as a process of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative of planned interventions (policies, programs, plans, projects). Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment. To understand the probable impact of a proposed project, it is imperative to understand past behaviour of target individuals and community to whom the project will affect and towards whom the same is targeted. Also, if any project is proposed to be implemented at location B, then social impact assessment of similar project as already being executed at location A can be undertaken to understand the probable impacts it will have on society at location B.

Social Return on Investment (SRoI):

SRoI is a method of monetizing the non-financial Social and Environmental value created by enterprise. It is a principle-based method that provides a consistence approach to understanding and managing an organisation's impact. Since the Social Value created is more likely to be qualitative in nature it may be difficult to monetize it.

Calculation:

Important Steps in Calculation of Social Return on Investment

Step 1: Define Social Impact Indicators (Output)

Step 2: Translate outputs into Financial Equivalents where possible

Step 3: Develop "Social Cash Flow Proforma"

Step 3: Discuss Qualitative Outcomes

Step 4: Cite Source and articulate assumptions clarity

OR (Alternate Question to Q. No. 3)

Question 3A

- (i) PQR Corporation, a leading Indian enterprise, is looking to align its CSR initiatives with the SDGs. As per Schedule VII of the Companies Act, 2013, the company has identified areas such as education, healthcare, and environmental sustainability for its CSR activities. The Board is now assessing how these CSR efforts can contribute to specific SDGs while ensuring compliance with the statutory requirements under the Companies Act. How can PQR Corporation align its CSR activities under Schedule VII of the Companies Act, 2013, with relevant SDGs to maximize its social impact ?
- (ii) Define the following terms :
- (a) Carbon Credit
 - (b) Carbon Foot Print
 - (c) Business Sustainability
 - (d) Corporate Governance
 - (e) FDP.

- (iii) An organization is involved in various CSR Activities. It wants to assess whether its CSR activities have realised its objectives as intended and want to engage you in Environmental Impact Assessment (EIA) of its CSR activities. Explain the principles which would be considered by you in EIA for assessing the impact of CSR.

(5 marks each)

Answer 3(A)(i)

To align its CSR activities with the Sustainable Development Goals (SDGs) while complying with Schedule VII of the Companies Act, 2013, PQR Corporation can take the following steps:

1. Mapping CSR Activities to Relevant SDGs

- Education: Align with SDG 4 (Quality Education) by supporting initiatives that improve access to quality education, enhance literacy rates, and provide vocational training. Examples include funding schools, scholarships, and adult education programs.
- Healthcare: Contribute to SDG 3 (Good Health and Well-Being) by investing in healthcare facilities, disease prevention programs, and health awareness campaigns. This includes supporting hospitals, mobile health units, and vaccination drives.
- Environmental Sustainability: Address SDG 7 (Affordable and Clean Energy), SDG 12 (Responsible Consumption and Production), SDG 13 (Climate Action) and SDG 15 (Life on Land) by implementing projects that promote environmental conservation, reduce carbon footprints, and enhance waste management. Initiatives might include reforestation projects, renewable energy adoption, and pollution control measures.

2. Integrate SDGs into CSR Strategy

- Develop a CSR strategy that explicitly links activities to specific SDGs. This ensures that CSR efforts are not only compliant with Schedule VII but also contribute to global sustainability objectives.

3. Set Measurable Goals and Metrics

- Establish clear, measurable targets for each CSR initiative related to the SDGs. For example, set goals for the number of students educated, patients treated, or trees planted.

4. Regular Monitoring and Reporting

- Implement a robust monitoring system to track progress towards the SDGs. Regularly report achievements and challenges in CSR reports to ensure transparency and accountability.

5. Stakeholder Engagement

- Engage with stakeholders to align CSR initiatives with their expectations and needs. This includes consultations with communities, government bodies, and NGOs to ensure that CSR activities effectively address the most pressing issues.

Answer 3(A)(ii)

(a) Carbon Credit:

A carbon credit is a certificate that represents the reduction of one metric ton of carbon dioxide or its equivalent greenhouse gas emissions. Companies or individuals can purchase carbon credits to offset their own emissions, supporting projects that reduce or sequester greenhouse gases, such as reforestation or renewable energy projects.

(b) Carbon Footprint:

A carbon footprint is the total amount of greenhouse gases (measured in carbon dioxide equivalents) emitted into the atmosphere by an individual, organization, event, or product over a specific period. It encompasses all direct and indirect emissions associated with their activities, including energy use, transportation, and supply chain impacts.

(c) Business Sustainability:

Business sustainability refers to practices and strategies that enable a company to operate in a way that is environmentally responsible, socially equitable, and economically viable over the long term. It involves integrating sustainable practices into business operations to minimize negative impacts on the environment and society while ensuring long-term profitability.

(d) Corporate Governance:

Corporate or a Corporation is derived from the Latin term "corpus" which means a "body". Governance means administering the processes and systems placed for satisfying stakeholder expectation. The root of the word Governance is from 'gubernate', which means to steer. When combined, Corporate Governance means a set of systems, procedures, policies, practices, standards put in place by a corporate to ensure that relationship with various stakeholders is maintained in transparent and honest manner and business is conducted ethically.

(e) FDP:

FDP Stands for Focused Development Projects undertaken by The HDFC Bank as part of its CSR initiatives. Under this initiative, HDFC Bank designed and supported projects focusing on specific areas of development such as Skill Development & Livelihood, Education, Health, etc. The aim of this FDP was of economic enhancement of small holder farmers through introducing systemic changes in the farming practice and enabling access to affordable farm inputs, extension services, training and demonstration, technology etc. The FDP was implemented in fifty villages of Angul and Dhenkanal districts of Odisha between March 2017 and Feb 2020.

Answer 3(A)(iii)

Environmental Impact Assessment (EIA): The International Association of Impact Assessment (IAIA) defined EIA as the process of identifying, predicting, evaluating, and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.

The Association lays down the Principal Objectives of Environmental Impact Assessment as follows;

- i. To ensure that the environmental considerations are explicitly addressed and incorporated into the development decision making process;
- ii. To anticipate and avoid, minimize or offset the adverse significant biophysical, social and other relevant effects of development proposals;
- iii. To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and
- iv. To promote development that is sustainable and optimizes resource use and management opportunities.

There are eight guiding principles that govern the entire Environment Impact Assessment (EIA) process:

1. Participation: The process of EIA should provide ample opportunities to involve the interested and affected stakeholders, and their inputs and concerns should be addressed explicitly in the documentation and decision making.

2. **Transparency:** The process should have clear, easily understood requirements for EIA content, ensure that information gathered and analyzed should have public access, identify the factors that are considered in decision making and acknowledge limitations and difficulties.
3. **Efficient:** The Process should impose the minimum cost burdens in terms of time and finance on proponents and participants consistent with meeting accepted requirements and objectives of EIA.
4. **Accountability:** The accountability of the decision made and action taken based on EIA should be upon the decision makers and appropriate environmental protection should be taken care off, any violation in same should be answered by the decision maker.
5. **Credibility:** The process should be carried out with professionalism, rigour, fairness, objectivity, impartiality, and balance and be subject to independent checks and verification.
6. **Cost-Effective:** The process should achieve the objectives of EIA within the limits of available information, time, resources, and methodology.
7. **Integrated:** The process should address the interrelationships of social, economic, and biophysical aspects.
8. **Practicality:** The process should result in information and outputs which assist with problem solving and are acceptable to and able to be implemented by proponents. Information/ outputs readily usable in decision making and planning is important.

PART-II

Question 4

Corporations after registration becomes legal entity. Both the partnerships or sole proprietorship are not legally distinct from the owners. Being a legal entity a non-corporate entity do not have to follow the incorporation process. The income received by sole proprietor is considered as income from personal source and taxes are applicable on the basis of slab rates as per the existing Income Tax Act.

A firm which is not registered will not be considered as an illegal association. As per the Partnership Act, 1932 there are some disabilities/limitations attached in case a firm is not registered. Section 69 of Indian Partnership Act, 1932 puts a bar on institution of a suit by an unregistered firm or partners of the firm.

In view of the above, answer the following :

- (a) Point out the difference between the legal and economic status of non-corporate entities with that of corporate entities.

(5 marks)
- (b) MSR Trust is a not-for-profit entity and it has involved into various charitable and philanthropic activities. Its activities include :
 - (i) Eradicating hunger, poverty, malnutrition and inequality
 - (ii) Promoting education, employability and livelihoods
 - (iii) Supporting social enterprises incubators
 - (iv) Promotion of financial inclusion

MSR Trust want to assess whether it would be treated as a Social Enterprise for the purpose of Chapter (IX-A) of SEBI (LODR) Regulations, 2015. Examine the statement.

(5 marks)

- (c) Starlight has established a comprehensive framework for product safety and regulatory compliance that is integral to its global operations. The company prioritizes consumer safety by adhering to stringent global standards that often exceed local regulatory requirements. This proactive approach ensures that Starlight products are safe for consumers and environmentally friendly. The company invests significantly in research and development to innovate and improve product formulations, ensuring they meet safety standards while addressing consumer needs.

Starlight collaborates closely with regulatory bodies worldwide to stay updated on changes in regulations and to contribute to the development of safety standards. This collaboration facilitates smoother market access and helps mitigate risks associated with product recalls and legal liabilities. However, Starlight faces challenges in maintaining consistency across diverse regulatory environments. Different countries have varying regulations regarding product safety, labeling, and marketing, which can complicate compliance efforts. Additionally, cultural differences in consumer perceptions of safety necessitate tailored messaging and product adaptations.

To enhance consumer trust and brand loyalty, Starlight leverages its safety and compliance practices through transparent communication about its safety standards and testing processes. The company invests in consumer education campaigns that highlight the importance of product safety, fostering a deeper connection with consumers. Furthermore, Starlight integrates sustainability initiatives with its safety practices, appealing to environmentally conscious consumers. By establishing robust feedback mechanisms, Starlight can proactively address safety concerns, further enhancing trust. Overall, Starlight's commitment to product safety and compliance not only safeguards consumers but also strengthens its position as a trusted leader in the consumer goods industry.

In view of the above information, answer the below questions :

- (i) How does Starlight ensure that its products meet both global and local safety standards ?
- (ii) Identify any two strategies which Starlight use to enhance consumer trust and brand loyalty through its safety and compliance practices ?

(3+2=5 marks)

- (d) Define the following terms :

- (i) Trust and Bailment
- (ii) Charitable purpose as per Societies Registration Act, 1860
- (iii) Doctrine of Cypres.

(2+1+2=5 marks)

Answer 4(a)

Non-corporate entity means that an entity has not been registered to be classified as a corporation. This means that it cannot have the benefits of being a corporation such as limited liability. A non-corporate entity is a legal entity that does not go through a formal incorporation process, does not meet the legal requirements for a corporation, such as the number of shareholders required etc.

Corporations are considered as legal persons. Non-corporation companies, such as a partnerships or sole proprietorships have no legal distinction from the owners. This means that owners of such entities do not have the same legal protections as a corporate entity. However, starting a non-corporate entity is easier than a corporate entity, and registering a corporation comes with certain responsibilities. The raising of capital is harder for non-corporations when compared to incorporated entities. Corporations can raise capital through the selling of stock to the public. Corporations can also use such proceeds generated from stock sales to grow the company or pay debt obligations. A non-corporation can rely on an owner investment to provide financing to the company's business activities. If a non-corporate owner does not have suitable credit, that person may not secure loans to finance the operation of the business.

Answer 4(b)

In order for MSR Trust to be considered as a Social Enterprise for the purpose of Chapter IX A of the SEBI LODR Regulations 2015, it must meet the requirements of Regulation 292E of the SEBI ICDR Regulations 2018.

According to Regulation 292E of the SEBI (ICDR) Regulations, a Not-for-Profit Organization or a For Profit Social Enterprise, to be identified as a Social Enterprise, shall establish primacy of its social intent. In order to establish the primacy of its social intent, such Social Enterprise shall meet the following eligibility criteria: -

(a) the Social Enterprise shall be indulged in at least one of the following activities:

- i. eradicating hunger, poverty, malnutrition and inequality;
- ii. promoting health care including mental healthcare, sanitation and making available safe drinking water;
- iii. promoting education, employability and livelihoods;
- iv. promoting gender equality, empowerment of women and LGBTQIA+ communities;
- v. ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;
- vi. protection of national heritage, art and culture;
- vii. training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
- viii. supporting incubators of Social Enterprises;
- ix. supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;
- x. promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector;
- xi. slum area development, affordable housing and other interventions to build sustainable and resilient cities;
- xii. disaster management, including relief, rehabilitation and reconstruction activities;
- xiii. promotion of financial inclusion;
- xiv. facilitating access to land and property assets for disadvantaged communities;
- xv. bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;

- xvi. promoting welfare of migrants and displaced persons;
 - xvii. any other area as identified by the Board or Government of India from time to time.
- (b) the Social Enterprise shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of central or state governments;
- (c) the Social Enterprise shall have at least 67% of its activities, qualifying as eligible activities to the target population, to be established through one or more of the following:
- i. at least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population;
 - ii. at least 67% of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities to members of the target population;
 - iii. members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries.

The activities of MSR Trust are in line with the activities described in a) above. MSR Trust, therefore must verify if the requirements of b) and c) are met i.e., the correct target population and the thresholds in respect of the averages of the last three years.

Thus, if requirements of (b) and (c) are met, MSR Trust can be declared a Social Enterprise.

Answer 4(c)(i)

Starlight ensures that its products meet both global and local safety standards through a multifaceted approach:

1. Adherence to Stringent Standards: Starlight adheres to rigorous global safety standards that often exceed local regulations. This proactive approach ensures high safety benchmarks are met universally.
2. Investment in Research and Development (R&D): Starlight invests significantly in R&D to innovate and refine product formulations. This continuous improvement helps ensure products meet safety standards while addressing consumer needs.
3. Global and Local Compliance Teams: Starlight employs dedicated teams to navigate and ensure compliance with diverse regulatory requirements across different countries. These teams stay updated on changes in regulations and local standards.
4. Collaboration with Regulatory Bodies: Starlight collaborates closely with regulatory authorities worldwide. This collaboration helps in staying informed about regulatory changes and contributes to the development of new safety standards.
5. Tailored Safety Measures: Recognizing the variations in regulations, Starlight adapts its safety protocols to comply with specific local regulations, ensuring both global and local standards are met.

Answer 4(c)(ii)

Strategies by Starlight to enhance consumer trust and brand loyalty through its safety and compliance practices: (mention any 2)

1. Transparent Communication: Starlight emphasizes transparency by clearly communicating its safety standards and testing processes. This openness helps build consumer confidence in product safety.

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2. Consumer Education Campaigns: Starlight invests in educational campaigns to inform consumers about the importance of product safety. By raising awareness, the company fosters a stronger connection with its audience.
3. Integration of Sustainability Initiatives: Starlight integrates sustainability with safety practices, appealing to environmentally conscious consumers. This alignment with broader environmental goals enhances brand loyalty.
4. Robust Feedback Mechanisms: The company establishes effective feedback channels to address consumer concerns promptly. Proactively handling safety issues helps in maintaining trust and customer satisfaction.
5. Consistent Safety Practices: By maintaining high safety standards across all markets and adapting to local regulations, Starlight ensures consistent product quality, reinforcing consumer trust in the brand.

Answer 4(d)(i)

Trust

According to Section 3 of the Indian Trust Act 1882, a Trust is an obligation annexed to the ownership of property and arising out of confidence reposed in and Accepted by the owner or declared and accepted by him, For the benefit of another or of another and the owner. The person who declares the confidence is called the author, the person who accepts the confidence is called the trustee and the person(s) for whose benefit the confidence is accepted is called the beneficiary(ies).

Bailment:

The definition of Bailment is given in Section 148 of the Indian Contract Act, 1872. Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and the person receiving the goods is called the bailee.

The following is the difference between a trust and a bailment.

- (i) A trustee becomes the full owner of trust property. A bailee acquires special property only.
- (ii) The obligation of the bailee is legal, whereas that of a trustee is equitable.
- (iii) A bailment may be created for movable property only. A trust may be created for both movable and immovable properties.

Answer 4(d)(ii)

Definition of 'charitable purpose' as per Societies Registration Act 1860:

A "charitable purpose" is a purpose which has some element of general public benefit; it does not embrace purposes which are religious or predominantly religious.

Answer 4(d)(iii)

Doctrine of Cypres

Where the object of the charitable trust, specified by the settler, is or subsequently becomes impossible or impracticable or unlawful, the trust will not necessarily fail, but the Court has power to apply the trust to some other charitable object as nearly as possible resembling the intention of the author. This power of the Court is known as "doctrine of cypres". When a particular mode of charity indicated by the author is not capable of being carried out, yet a general intention of charity, is

indicated by the author of the trust, the Court would execute it 'cypres' i.e., in a way as nearly as possible to that which testator specified.

Question 5

Likewise, companies which are regulated by Companies Act, 2013, the other form of business is partnership, which is regulated by Indian Partnership Act, 1932. The partnership is considered as the convenient way to start a business. The law relating to partnership firm in India is prescribed in the Indian Partnership Act of 1932. It lays down the important provisions relating to partnership contracts. However, the general principles of the Indian Contracts Act, 1872 which formally contained the provisions of the law of partnership shall apply so far as they are not inconsistent with this Act. In view of various provisions of this Act, answer the following :

(a) (i) Ten major persons form an association to which each member contribute ₹ 10,000. The purpose of the association is to produce medicines for free distribution to the poor parents. Analyze with reasons whether this association can be termed as partnership.

(ii) Who is Partner by Estoppel ?

(3+2=5 marks)

(b) During a management review meeting, the CEO announces a major restructuring plan that will impact the organization's workforce. Several employees express concerns and seek clarification on the implications of the restructuring. How would you perceive the sentiments and concerns raised by employees in the minutes while maintaining confidentiality and professionalism ? Also, analyse the role of Chairman in the meeting of Non-corporate Entities.

(3+2=5 marks)

(c) Enumerate the Accounting Standard applicable to non-corporate entities. Also mention the exemption from complying Accounting Standards.

(4+1=5 marks)

Answer 5(a)(i)

A partnership depends on the existence of a relationship which results from a contract to carry on business. A partnership relationship can arise only by mutual consent. The agreement, which gives rise to the partnership relationship, may be express or inferred from parties' conduct. According to Section 4 "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". When analysed, the definition tells us that in order that persons may become partners, it is essential that:

- There must be at least two persons
- There must be relationship arising out of an agreement between two or more persons to do a business
- The agreement must be to share the profits of a business
- The business must be carried on by all or any of them acting for all

All these four elements must be present before a group or an association can be held to be partners. In other words, it can be said that all the a fore stated four elements must co-exist before a partnership can be said to come into existence. If any one of them is not proved to be present, there cannot be a partnership.

In the instant case, since the objective of this association is not sharing profits so the third element is not present. This association can not be termed as partnership.

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Answer 5(a)(ii)

Partner by Estoppel or Holding Out:

If the behaviour of a person arouses misunderstanding that he is a partner in a firm (when actually he is not), such a person is estopped from later on denying the liabilities for the acts of the firm. Such person is called partner by estoppel and is liable to all third parties.

Similarly, if a person who is declared to be a partner (when actually he is not) does not deny the fact that he is a partner, he being held out as a partner is responsible for all liability of the business. The law relating to partners by holding out is contained in Section 28 of the Act which lays down thus:

Anyone who by words, spoken or written or by conduct represents himself or knowingly permits himself to be represented to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Answer 5(b)

To capture the sentiments and concerns raised by employees during a management review meeting while maintaining confidentiality and professionalism in the minutes, the following are to be noted:

- **Objective Recording:** Record the key points and concerns raised by employees objectively, without attributing specific comments to individuals. Use neutral language to describe the sentiments expressed, focusing on the substance of the discussion rather than individual opinions.
- **Generalized Statements:** Summarize the concerns raised by employees in generalized statements that reflect common themes or trends without identifying specific employees or disclosing personal information. Avoid including any sensitive or confidential details that could compromise employee privacy or confidentiality.
- **Respectful Tone:** Maintain a respectful and empathetic tone in the minutes, acknowledging the validity of employees' concerns and the importance of addressing them appropriately. Avoid dismissive or judgmental language that may undermine employee trust or morale.
- **Confidentiality Safeguards:** Ensure that the minutes do not disclose any confidential or proprietary information discussed during the meeting, including sensitive details about the restructuring plan or individual employee circumstances. Adhere to organizational policies and legal requirements regarding data protection and confidentiality.
- **Professionalism:** Maintain professionalism in the language and tone of the minutes, adhering to established standards of business communication and etiquette. Use formal language and standard formatting conventions to convey the information accurately and professionally.
- **Follow-Up Actions:** Document any follow-up actions or commitments made by management in response to employee concerns, including timelines, responsibilities, and next steps. Clearly outline how management plans to address the issues raised and communicate any updates or progress to employees as appropriate.

The Chairman of the Non-corporate Entity shall be the Chairman of the Meeting. If there is no such Chairman, then the Chairman shall be appointed by the majority of Members of the Governing Council or in accordance with the applicable laws or the Bye-laws of the Non-corporate Entity.

Where the Chairman is not able to attend the Meeting or unwilling to Chair the Meeting, the Members of the Governing Council may elect any of the Members to Chair and conduct the Meeting unless otherwise provided in the Bye-laws.

It would be the duty of the Chairman to check, with the assistance of Secretary, that the Meeting is duly convened and constituted in accordance with the applicable laws before proceeding to transact business. The Chairman shall then conduct the Meeting.

The Chairman shall read out the Agenda at the Meeting and explain the objective, need and implications of the matters / resolutions before they are put for discussion and voting at the Meeting. The Chairman shall encourage deliberations and debate on the matters and assess the sense of the Meeting. Unless otherwise provided in the Bye-laws, in case of an equality of votes, the Chairman shall have a second or casting vote.

Answer 5(c)

Accounting Standards contain wholesome principles of accounting and can be viewed as standardised language of business to communicate high quality information in financial statements based on principles of transparency, consistency and also comparability and reliability. Accounting standards are a set of principles which entities follow while preparing the financial statements providing a standardised way of describing the entity's financial position and financial performance.

Following Accounting Standards are applicable wholly or partially to non-corporate entities as per their activities:

AS1: Disclosure of Accounting Policies

AS2: Valuation of Inventories

AS 3: Cash Flow Statements

AS 4: Contingencies and Events Occurring After the Balance Sheet Date

AS 5: Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies

AS 7: Construction Contracts

AS 9: Revenue Recognition

AS 10: Property, Plant & Equipment

AS 11: The Effects of Changes in Foreign Exchange Rates

AS12: Accounting for Government Grants

AS 13: Accounting for Investments

AS 14: Accounting for Amalgamations

AS 15: Employee Benefits

AS 16: Borrowing Costs

AS 17: Segment Reporting

AS 18: Related Party Disclosures

AS 19: Leases

AS 20: Earnings Per Share

AS 21: Consolidated Financial Statements

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AS 22: Accounting for Taxes on Income

AS 23: Accounting for Investments in Associates in Consolidated Financial Statements

AS 24: Discontinuing Operations

AS 25: Interim Financial Reporting

AS 26: Intangible Assets

AS 27: Financial Reporting of Interests in Joint Ventures

AS28: Impairment of Assets

AS 29: Provisions, Contingent Liabilities and Contingent Assets.

Exclusion of an entity from the applicability of the Accounting Standards is permissible only if no part of the activity of such entity is commercial, industrial or business in nature.

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

Question 6

- (a) How does the Sarpanch's leadership influence the effectiveness of decision-making processes in Gram Panchayat meetings and what strategies can be implemented to enhance this influence ?

(3+2=5 marks)

- (b) Identify and list the required documents mentioned under Section 12 of Foreign Contributions Regulations Act (FCRA) 2010.

(2+3=5 marks)

- (c) Outline the conditions to be met for the Grant of Registration and Prior Permission in terms of Section 12(4) of FCRA, 2010.

(5 marks)

Answer 6(a)

The Sarpanch's leadership significantly influences the effectiveness of decision-making processes in Gram Panchayat meetings in several ways:

Influence of the Sarpanch's Leadership:

- **Setting the Agenda:** The Sarpanch often plays a crucial role in setting the agenda for meetings, which impacts the focus and priorities of discussions. Effective leadership ensures that important issues are addressed and relevant topics are prioritized.
- **Facilitating Discussions:** The Sarpanch's ability to facilitate and manage discussions influences how effectively decisions are made. Strong leadership ensures that all voices are heard and that debates are productive and focused on solutions.
- **Conflict Resolution:** The Sarpanch's skills in mediating and resolving conflicts among members can affect the overall efficiency of decision-making. Effective conflict resolution fosters a cooperative environment and helps in reaching consensus.
- **Implementation of Decisions:** Leadership quality directly impacts how well decisions are implemented. A proactive Sarpanch ensures that decisions made in meetings are followed through and that there is accountability for their execution.

Strategies to Enhance the Sarpanch's Influence:

- **Training and Capacity Building:** Provide training for the Sarpanch on leadership skills, conflict resolution, and effective meeting management to enhance their capability in guiding the decision-making process.
- **Clear Agenda and Structured Meetings:** Develop a clear agenda and follow a structured format for meetings. This helps in keeping discussions on track and ensures that all relevant issues are addressed systematically.
- **Encourage Participation:** Foster an inclusive environment by encouraging active participation from all Gram Panchayat members. Ensure that each member has an opportunity to contribute to discussions and decision-making.
- **Strengthen Communication Channels:** Improve communication channels between the Sarpanch, Panchayat members, and the community. Regular updates and feedback loops can help in maintaining transparency and building trust.
- **Implement Feedback Mechanisms:** Establish mechanisms for gathering feedback on the effectiveness of decision-making processes and leadership. Use this feedback to make continuous improvements and address any issues promptly.

Answer6(b)

As per Section 16 of FCRA, 2010, every person who has been granted a certificate of registration under Section 12 thereof shall have such certificate renewed within six months before the expiry of the period of the certificate. Associations which desire to renew their registration certificate shall apply online only in Form FC-3C within 6 months before the expiry of their existing registration certificate. After successful payment of fees only, the application is deemed to have been completed.

Section 12 of the FCRA 2010 details the processes for Grant of Registration or Prior Permission

- An application for Registration or prior permission shall be submitted in Form FC3A and FC3B respectively.
- The application for Registration should be accompanied by the following documents:
 - Jpg file of the signature of the chief functionary;
 - Self Certified Copy of the Registration Certificate / Trust Deed/etc. of the association with an English translation where required.
 - Self Certified Copies of the Memorandum and Articles of Association showing the aims and objects of the Association with an English translation where required
 - Activity Report during the last three years
 - Audited Statement of Accounts for the last three years clearly reflecting expenditure incurred on aims and objects of the Association and on administrative expenditure
 - Affidavit from each office bearer in Proforma AA
 - Darpan ID
 - Aadhar Copy
 - Details of dedicated FCRA account with the State Bank of India, New Delhi Main Branch.

Answer 6(c)

In terms of Section 12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration and prior permission:

- (a) The 'person' making an application for registration or grant of prior permission-
- i. is not fictitious or benami;
 - ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly from one religious faith to another;
 - iii. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - iv. has not been found guilty of diversion or mis-utilisation of its funds;
 - v. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - vii. has not contravened any of the provisions of this Act;
 - viii. has not been prohibited from accepting foreign contribution;
 - ix. the person making the application has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - x. the person making the application has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - xi. the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
 - xii. the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
- (b) the acceptance of foreign contribution by the association/ person is not likely to affect prejudicially—
- i. the sovereignty and integrity of India;
 - ii. the security, strategic, scientific or economic interest of the State;
 - iii. the public interest;
 - iv. freedom or fairness of election to any Legislature;
 - v. friendly relation with any foreign State;
 - vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities.
- (c) the acceptance of foreign contribution-
- i. shall not lead to incitement of an offence;
 - ii. shall not endanger the life or physical safety of any person.

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

- (i) Discuss the procedure followed in case of Non-Corporate Entity and Gram Panchayat with regard to maintenance of Meeting attendance register.

(5 marks)

- (ii) (a) State the procedure of approving an urgent item in the Non-Corporate Entities meeting itself by the majority of members, as marked in the guidelines.

- (b) Explain the Article of the Constitution under which powers of municipalities are mentioned.

(2+3=5 marks)

- (iii) Philosophically, identify what is considered to be akin to gratifying intoxicant replete with medicinal properties and may work like a nectar? Analyse the do's and don't's for the NGO's accepting foreign contributions.

(2+3=5 marks)

Answer 6A(i)*Attendance Register of Meeting: Non-corporate Entity*

Every Non-corporate Entity shall maintain a separate attendance register for the Meetings.

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.

The attendance register shall be maintained at the Head Office or such other place as may be approved by the Non-corporate Entity. The attendance register shall be open for inspection by the Members of the Governing Council.

Entries in the attendance register shall be authenticated by the Chairman or the Secretary or in their absence, by any other person authorised for this purpose. Attendance register shall be kept in the custody of the Secretary or any other person authorised for this purpose.

The attendance register shall be preserved for a period of eight financial years from the date of the last entry therein or for such other period as may be specified in the Bye-laws of the Non-corporate Entity. The attendance register or any other records shall not be destroyed except in accordance with the applicable laws or Bye-laws of the Non-corporate Entity.

Attendance Register of the Meeting: Gram Panchayat

Every Gram Panchayat shall maintain a separate attendance register for the Meetings of the Gram Panchayat. 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.

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. The attendance register shall be open for inspection by the Members. Entries in the attendance register shall be authenticated by the Secretary or in his absence, by the person authorised by the Government. Attendance register shall be kept in the custody of the Secretary or a person authorised by the Government. 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. The attendance registers or

any other records of the Panchayat shall not be destroyed except in accordance with the policy approved by Government.

Answer 6A(ii)(a)

No item of business other than those included in the agenda shall be considered at a Meeting.

However, items of urgent nature may be taken up for consideration with the permission of the Chairman and with the consent of the majority of the Members present. The decision taken in respect of such item shall be final only on its ratification by the majority of Members, unless it was approved at the Meeting itself by the majority of Members.

Answer 6A(ii)(b)

Article 243 W of the Constitution of India deals with Powers, Authority and Responsibilities of Municipalities. It provides that subject to the provisions of the Constitution, the Legislature of a State may, by law, endow:

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:
 - (i) the preparation of plans for economic development and social justice;
 - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Answer 6A(iii)

Philosophically, foreign contribution (donation) is akin to gratifying intoxicant replete with medicinal properties and may work like a nectar. However, it serves as a medicine so long as it is consumed (utilised) moderately and discreetly, for serving the larger cause of humanity. Otherwise, this artifice has the capability of inflicting pain, suffering and turmoil as being caused by the toxic substance (potent tool) — across the nation. In that, free and uncontrolled flow of foreign contribution has the potentials of impacting the sovereignty and integrity of the nation, its public order and also working against the interests of the general public. It is open to a sovereign democratic nation to completely prohibit acceptance of foreign donation on the ground that it undermines the constitutional morality of the nation, as it is indicative of the nation being incapable of looking after its own affairs and needs of its citizens.

- While accepting foreign contribution NGOs/Trust/Societies may note that:
- Do not mix Foreign Contribution with Domestic Receipts
- Do not transfer funds from FC Bank to Non-FC (even Direct Bank Transfer)
- Books of Accounts must be separate
- Keep separate Cash Box (it shows good cash control system)
- Do not deviate from the Purpose of the Grant
- Make sure while getting FC funds that the purpose is crystal clear for what purpose it is received

- Make sure that you use these funds for the very specific purpose
- Avoid Cash Payments. This requires extra efforts on the part of the organization to develop Financial Control System in such a way to encourage Bank Payments through "Account Payee" cheques only.
- Do not invest FC funds in Mutual Funds or Speculative Investments
- Do not receive foreign contribution directly in the utilization account(s) of the association/ NGO/Society
- Do not hide amount, source and manner in which the foreign contribution/remittance was received
- Do not avoid filing mandatory FC annual returns in electronic form
- Do not indulge in making of false statement, declaration or delivering false accounts
- Do not act in contravention of any provision of the FCRA, 2010.

Lecture Kart

Padhai Kar Befikar

Lecture Kart

INTELLECTUAL PROPERTY RIGHTS – LAWS AND PRACTICE

GROUP 1 ELECTIVE PAPER 4.3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

An Indian Book Company is a registered partnership firm carrying the business of publishing Law Books. It publishes and prints various books in the field of law. Among many books published by them Law Reports is one of their publications. The said firm publishes all reportable judgements along with non-reportable judgements of the Supreme Court of India. After the initial procurement of the judgements, orders and proceeding for publication the appellants make copy-editing wherein the judgements, orders and record of proceedings procured, which is the raw source, are copy edited by a team of assistant staff and various inputs are put in the judgements and orders to make them user friendly. The appellants also prepare the head notes comprising of two portions, the short note consisting of catch/lead words written in bold; and the long note, which is comprised of a brief discussion of the facts and the relevant extracts from the judgements and orders of the court.

There is yet another company called Spectrum Business Support Ltd, came out with a software called Grand Jurix published on CD-ROMs. In CD all the modules of the Indian Book Company have been copied verbatim.

Business Support Ltd. The defence of the Spectrum Business Support Ltd was that the judgements published in the Law Journals in India is nothing but merely a derivative work based upon on the judgements of the Courts, which lacks originality and therefore no Copy Right can be claimed by the Indian Book Company. In the light of the above facts of the case :

- (a) Discuss the concept of originality under Copyright Law as laid down by various judgements of the court.
- (b) How the right of persons with disability are protected under the Copyright Act 1957 ?
- (c) Discuss the relation between Copyright Act and Designs Act.
- (d) Differentiate between the concept of "authorship" and "ownership" in a copyright work under the Copyright Act.
- (e) Discuss the scope and purpose of IP due diligence under Intellectual Property Rights Act.

(5 marks each)

Answer 1(a)

Originality is the basic yardstick used by the copyright regimes in the world to evaluate the availability copyright protection to a particular work. Section 13(1) of the Indian Copyright Act 1957 states that copyright subsists in "original literary, dramatic, musical and artistic works. "However, the Act fails to give any definition or test to determine originality of a work. This leaves the court with the dirt; to decide the amount of originality required for a work to claim copyright protection. India strongly followed the doctrine of 'sweat of the brow' for a considerably long time.

In *Eastern Book Company Vs. D.B.Modak*, the Supreme Court discarded the 'Sweat of' the Brow'

doctrine and shifted to a 'Modicum of creativity' approach as followed in the US. the dispute is relating to copyrightability of judgments. The notion of "flavor of minimum requirement of creativity" was introduced in this case. The Court granted copyright protection to the additions and contributions made by the editors of SCC. At the same the Court also held that the orders and judgments of the Courts are in public domain and everybody has a right to use and publish them and therefore no copyright can be claimed on the same.

The Court further referred the principle of a minimal degree of creativity, i.e., there should be a minimum degree of creativity in derivative work to show that the copy-edited version of the Judgment is not an original work. It can be concluded from this case that the jurisdiction of Copyright protection under the Copyright Act, 1957, finds itself in fair play. At the point when an individual produces something with his ability and work, it provides possession to him, for his/her production and the other individual would not be allowed to make a benefit out of the expertise and) work of the primary creator, who had initially produced. It is for this reason that the Copyright Act of 1957, gives the authors absolute privilege of the floor in terms of exclusive rights for their originally produced work, also considered as non-tangible prerogatives in various legislation.

This Act puts a check on the exploitation of the original owner against the use of his work without his consent. Lastly, the Court did not allow the Respondents to sell their CD ROMS with the text of judgments of the Supreme Court Cases along with their own headnotes, footnotes, and other inputs. The Judgment of the High Court was modified to the extent that in addition to the interim relief, the above-mentioned additional relief to the appellants was also granted by the Apex Court. The concept of "originality" has undergone a paradigm shift from the "sweat of the brow" doctrine to the "modicum of creativity" standard put forth in Feist Publication v. Rural Telephone Service by the United States Supreme Court. The doctrine of "sweat of the brow" provides copyright protection on basis of the labour, skill and investment of capital put in by the creator instead of the originality. In Feist's case, the US Supreme Court totally negated this doctrine and held that in order to be original a work must not only have been the product of independent creation, but it must also exhibit a "modicum of creativity".

Through the skill and judgement test, major shift was observed in the approach of Courts in India from 'sweat of the brow' to 'modicum of creativity'. This position was steered by the landmark Eastern Book Company case which paved the way for a positive development in the sphere of determining the originality of a work by the Courts. A recent case was decided by the Delhi High Court on September 29, 2014 (*Tech Plus Media Pvt. Ltd. v. Jyoti Janda & Ors*), wherein the copyright of databases was discussed. Earlier in the case of *Burlington Home Shopping v. Rajnish Chibber*, it was held that a compilation may be considered a copyrightable work by virtue of the fact that there was devotion of time, labour and skill in creating the said compilation.

In the case of *The Chancellor Masters and Scholars of The University of V. Narendra Publishing House and Ors*. The question before the Court was whether guide books, comprising of the answers of mathematical questions provided in the plaintiff's book, published by the defendant would constitute copyright infringement. The Court while applying the test of originality as held in EBC case, held that such publication of guide books would not constitute copyright infringement. Summing up the Indian approach to test the originality of a work, the Delhi HC held in a recent case held that *"... not every effort or industry, or expending of skill, results in copyrightable work, but only those which create works that are somewhat different in character, involve some intellectual effort, and involve a certain degree of creativity"*.

Originality requires only that the author makes the selection or arrangement independently and that some minimal amount of creativity is present in the work of the author. While a copy of something in the public domain will not, if it be merely a copy, support a copyright, a distinguishable variation will. Also, it is important to note that for copyright protection, the work created by the author should

be a result of substantial variation and not a result of trivial variation. In order to encourage the avenues of research and development, the law has been practical to hold that for originality, the work in question is not required to contain novelty. India provides a practical approach in the ascertainment of an original work as it does not completely rely on modicum of creativity as developed by the U.S. Courts, in fact, it very well balances the sweat of the brow approach with the creativity element by ensuring that skill and judgment are exercised by the author in the creation of an original work. Since, the issue of originality is centric to the copyrightability of a work, regard has to be placed on the skill and judgment test to be applied on the factual circumstances of every individual case.

Answer 1(b)

The author of a copyrighted work is guaranteed exclusive freedom of use, reproduction, and so on. However, there are a few exceptions under which a copyrighted work may be used, copied, or replicated without the permission of the copyright owner. There have been several steps taken for disable people prior to legislative actions, first was the establishment of India's DAISY Forum in 2007. The group of non-profit agencies from India called DAISY Forum of India (DFI) collaborate to produce books and reading materials in accessible formats for those who are unable to read standard print. After witnessing the Marrakesh VIP Treaty at international domain, there was a significant transformation of copyright laws and principles in India. India strengthening the ethos it carries became the first country to ratify the Marrakesh Treaty. The aim was to make it easier for those who are blind, visually impaired, or otherwise print challenged to access published works

The Amendment of the Copyright Act in 2012 largely aimed at making Copyright Act, 1957 compliant with the WIPO Copyright Treaty (WCT), the WIPO Performers and Phonograms Treaty (WPPT) and most of the international treaties and conventions in field of copyrights. Of the numerous changes brought about in the new Indian copyright regime, exceptions and limitations for persons with disabilities were incorporated in the following provisions: Section 52(1)(zb) of the Copyright Act provides that an author of the copyrighted work is granted with exclusive rights of use, reproduction, etc. but there a few exceptions wherein a copyrighted work can be used, copied or reproduced without obtaining the consent from the copyright owner.

This provision is applicable to activities undertaken on a non-profit basis. Since the scope extends to "private or personal use, educational purpose or research" on disabled persons, this exception contained in the copyright law paves the way for the effective realization of human rights to education and participation in cultural activities. The activities tend to be undertaken by any person to facilitate access to the beneficiaries or non-profit organizations for the disabled peoples' interest. Effective implementation of this copyright provision is of great benefit to the visually impaired persons in India, as it has several advantages such as enabling the reduction of unwanted duplication costs of accessible format copies by sharing it among themselves.

This section basically deals with such exceptions to copyright infringement and empowers individuals, educational establishments and non-profit organizations to reproduce all types of copyright-protected content in accessible formats for the benefit of disabled persons. To this extent, the Act provides that it would not be a copyright infringement if any individual or any organization working for the benefit of the persons with disabilities and on a non-profit basis creates accessible format copies or distributes them to persons with disabilities. Section 31 B of the Copyright Act state that Any person or an organization working for the benefit of disabled persons on a profit basis or for business can undertake conversion and distribution by applying for a license from the Copyright Board in accordance with the procedure laid down in this section.

The amendment of 2012 introduced to Section 31B to the Copyright Act 1957, which provides compulsory license for benefit of disabled. By following the norms and conditions as specified under

this section a person working for the benefit of disabled can apply and acquired the compulsory license with a payment of prescribed fee.

These provisions in the Indian Copyright Act are inclusive and accommodating for print disabled persons. It gives greater access to creative work and the right to convert the work i.e. copyrightable work in any accessible formats through any organization or themselves without the need to purchase a license.

A conference by the World Intellectual Property Organization, (WIPO) along with the support of the US delegation in Morocco adopted the Marrakesh Treaty. There are eighty-eight signatories and has been ratified by thirty-three countries. India has made practical efforts in recent times to accommodate the print disabled person by ratifying the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired, 2013. Through this treaty it has been made mandatory for member countries to enforce exceptions or limitations as need be in their Copyright laws regarding the right to reproduce copyrightable work in accessible formats and also other laws to make education, research more accessible.

Answer 1(c)

Section 2 (d) of the Design Act, 2000 defines the term Design' and expressly excludes "any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957" from its scope. Section 2 (c) of the Copyright Act defines an "Artistic Work" to include any work of artistic workmanship. Therefore, an artistic work does not fall within the definition of a Design under the Design Act, 2000.

Section 15 of the Copyright Act declares that a copyright does not subsist under the Act in any design which is registered under the Design Act. Furthermore, the said section declares that "Copyright in any design, which is capable of being registered under the Design Act, 2000, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than 50 times by an industrial process by the owner of the copyright, or, with his license, by any other person." Reading together the aforesaid provisions in the Copyright Act and the Design Act, it may be concluded that an artistic work will not fall within the definition of a Design under the Design Act, 2000, but if it is related to a Design, then they can be protected under the Design Act and not under the Copyright Act.

In the case of *Microfibres Inc. v. Girdhar and Co. (2006) (32) PTC 157 (Del.)* Delhi High Court's judgement in the case aimed at providing a clear vision to this overlapping. Microfibres Inc., a company specializing in upholstery fabrics, accused Girdhar and Co. the defendants of copying its artistic designs applied to fabrics. The core of the case revolved around the issue that whether the designs, once industrially applied and reproduced over 50 times, could still be protected under copyright law?

The DHC ruled that artistic works which are industrially applied and reproduced more than 50 times lose their copyright protection under the Copyright Act, emphasizing that such designs should instead be registered under The Designs Act to receive protection. Hence the Division Bench provided that Section 15(2) of the Copyright Act clearly states that designs reproduced more than 50 times are not protected by copyright and must be registered under The Designs Act for protection. The essence of such provision is that if a design registrable under the Designs Act, but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. Such interpretation harmonizes the Copyright and Designs Act.

In the case of *Bulgari S.P.A vs Purna Rajpal Trading as The Amaris Flagship [CS(COMM) 341/2014]* Bulgari is a renowned Italian Luxury Brand, well known for its exquisite craftsmanship and magnificent

jewellery collection. They sued Perna Rajpal (The Amaris Flagship Store) for allegedly copying the style of Serpenti Necklace and B.Zero1 Jewellery Collection. Bulgari argued that its 'Serpenti Ocean Treasure Necklace' was protected by Copyright Act as it is an original artistic piece. Bulgari asserted that the defendant being Amaris Flagship copied their products, and marketed them as their own. The Delhi High Court after examining the evidence, noted similarities in structure and visual appearance between the contested designs and granted an injunction against Amaris for infringing on Bulgari's rights. In addition, the court agreed with Bulgari's contention that the contested design, being handcrafted and reproduced fewer than 50 times with not been produced by any industrial process, it did not fall under Section 15(2). Therefore, it remained protected by copyright. Therefore, the ruling reinforced the provision that the limit of 50 reproductions does not apply to handcrafted designs, and such designs can continue to be protected under The Copyright Law if they are not used for commercial productions or generated in mass.

Also, the Delhi High Court in *Aga Medical Corporation vs Mr. Faisal Kapadi And Anr [2003 (26) PTC 349 Del]* has already ruled that if a material is capable of being registered under the designs Act but has not been registered than that material cannot have copyright protection. Having said that, it is clear that a design can get copyright protection but that protection ceases to exist once such design is applied to an article and the same article is produced more than 50 times through an industrial process.

Answer 1(d)

Differentiate between the concept of "authorship" and "ownership" in a copyright work under the Copyright Act. In the realm of copyright law, the concepts of "ownership" and "authorship" serve as the cornerstone for determining who holds the rights to a creative work. Ownership of copyright is distinct from owning the physical object in which the work is embodied. For instance, owning a painting or a book does not automatically confer the right to reproduce or distribute the content within it. Instead, copyright belongs to the person who has fixed the original expression of an idea into a tangible form. The law recognizes the creator of this expression as the owner rather than the mere originator of the underlying idea.

According to Section 17 of the Copyright Act, 1957, the author of a work shall be the first owner of the copyright therein. Author is the person who creates the original work. In the absence of any agreement, generally author becomes the owner of the copyright work. Therefore, all economic right as well as moral rights vest in him from the moment he creates the copyright work. However, in certain circumstances, the ownership issue depends on other factors. Such circumstances are covered under the copyright Act are as follow:

- a) In the case of a government work, government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.
- b) In the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.
- c) In the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or 'o the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

- d) In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.
- e) In the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.

The Indian copyright law distinguishes between authorship and copyright ownership. The person who actually employs their imagination, creativity, and intellectual faculties to write, compose, or produce the work is the author. Even if a copyrighted work was not produced under the author's supervision or while they were working for another company, they may still be its owner. A copyrighted work's ownership may vary based on the events that led to its development, but since the author was compensated for their contributions to the work, the author will always be given credit as the work's creator. The broad principle that the author is the original owner of a copyright was established by the Copyright Act of 1957. The exceptions to this provision are outlined in Section 17 of the statute, which also defines the difference between authorship and copyright ownership.

Answer 1(e)

IP typically entails an organization's patents, trademarks, copyrights, and domain names, but can also include other types of intangible assets, such as data, know-how, domain names, and software. IP due diligence focuses on the review, audit, and reporting of IP to assess the scope and validity of IP rights owned, claimed by, or licensed to the organization. This review is commonly conducted as a part of an acquisition, merger, sale, or license. But each IP owner can (and should) conduct a review to assess the quality and value of its own rights.

Scope and purpose of IP due diligence under Intellectual Property rights Act:

1. Identify and locate IP assets, and then assess the nature and scope of the IP to evaluate their benefits and allocate risks associated with the ownership or use of the relevant IP assets; In particular, it seeks to determine whether the relevant IP is free of encumbrances for its intended business use(s).
2. Identify problems in and barriers to the transfer, hypothecation or securitization of the IP assets under consideration.
3. Identify and apportion between the two parties the expenses incident to the transfer of IP assets under consideration.

Purpose of IP Due Diligence

1. Merger and acquisition of joint ventures
2. Financial transactions
3. Buying or selling a business division or IP Transfer
4. Launching a new product or service
5. I.P. Licensing
6. Bankruptcy and layoff.
7. IP due diligence is a part of a comprehensive due diligence audit that is carried out to assess the financial, commercial and legal benefits and risks linked to a target company's IP portfolio, typically before it is bought or invested in.

8. It provides detailed information that may affect the price or other key elements of a proposed transaction or even obviating the further consideration of the proposed transaction.
9. It provides a basis for assessing the risk and value of relevant IP assets in a proposed acquisition or sale of intellectual property.

Intellectual Property Due Diligence in India is critically underpinned by the Indian Patents Act of 1970, the Trademarks Act of 1999, and the Copyright Act of 1957, requiring businesses to conduct thorough investigations into IP ownership, potential infringement risks, and compliance with both national and international IP laws before proceeding with mergers, acquisitions, or partnerships. Businesses must scrutinize patents, copyrights, trademarks, and trade secrets in accordance with these laws to protect their investments and leverage market opportunities effectively.

The commitment to Intellectual Property Due Diligence best practices within the framework of Indian legislation is essential for ensuring smooth business transitions and protecting a company's innovation and competitive edge. With the dynamic nature of IP laws, businesses must stay updated on legal changes and ensure their intellectual properties are managed in compliance with current regulations. This approach not only prevents potential litigation but also secures a sustainable advantage in the global market.

Therefore, a proactive and informed engagement in IP due diligence is indispensable for business excellence, guaranteeing long-term success and fostering an environment of continuous innovation in the digital and intellectual property-driven economy.

Question 2

A question of adjudication came up before the High Court of Delhi, whether Patents Act, 1970 permits export of a patented invention from India. The petitioner, Bayer Corporation (Bayer) filed a writ petition in the High Court of Delhi contending that Natco was granted a Compulsory Licence by the Controller of Patents for the drug 'Sorafenib Tosylate' under section 84 of the Patents Act, subject to certain terms and conditions contained therein, wherein one of the terms was that the Compulsory Licence was solely for the purposes of making, using, offering to sell and selling the drug covered by the patent for the purpose of treating HCC and RCC in humans within the territory of India. However Natco was manufacturing the product covered by the Compulsory Licence for export outside India and that the export by Natco was contrary to the terms of Compulsory Licence and amounted to infringement of the patent within the meaning of Section 48 of the Patents Act.

Natco filed a counter affidavit in the writ petition inter alia pleading (a) that Natco had not exported any product (subject matter of Compulsory Licence); (b) that under the scheme of the Drugs and Cosmetics Act, 1940 (Drugs Act) permission was routinely granted for export to various countries upon compliance of certain conditions and that there were similar provisions in the western countries including Europe; (c) that the Patents Act also provided that export of a patented product for generation or submission of regulatory permission was not an act of infringement.

Bayer contended that, the acts of a non-patentee (Natco) of making, using offering for sale, selling patented products would be infringement of patent and that the patentee was entitled to approach the Courts to prevent the non-patentee from doing the said acts.

Natco argued (i) that the exports intended by Natco were only for research and development purposes and for obtaining the drugs regulatory approvals in the countries to which exports were intended (ii) that Natco was not intending export of the product covered by the Compulsory

Licence for commercial purposes and that research and development activity with respect to patented drugs, for which submission of data to the Drug Regulatory Authority.

In furtherance to this an issue was raised during the proceedings in the Court related to the

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). India as a party to the TRIPS agreement has agreed to give effect to the provisions thereof without being obliged to implement in its law more extensive protection than is required by it, provided that such protection does not contravene the provisions of the TRIPS Agreement. Else, India is free to determine the appropriate method of implementing the provisions of the TRIPS Agreement within its own legal system and practice. The objective of the TRIPS Agreement, as per Article 31 of the TRIPS Agreement, member countries may allow use of patented product/process for certain purpose, vide Clause (f) which provides that such use should be predominantly for the supply of the domestic market of the member country authorizing such use. The submissions of both the parties traverse the contours of the Patents Act and TRIPS Agreement. Answer the following questions.

- (a) Is Natco liable for infringement. Decide. (5 marks)
- (b) Discuss the relevance of Art. 31 (f) of the TRIPS Agreement in the instant case. (5 marks)
- (c) Explain the concept of working of patented inventions with special reference to life saving drugs. (5 marks)
- (d) Company A has got registration for its new design of bottles for soft drink but after substantive examination it was found that the design is not new or original. Discuss grounds of cancellation of registration. (5 marks)
- (e) What are the various provisions under Indian Laws governing Patenting of Bio-technology? (5 marks)

Answer 2(a)

Section 107A of the Patents Act, 1970 lays down that any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product shall not be considered as an infringement of the patent right of somebody else. The pertinent question that arises in the present set of facts however is, 'whether a non-patentee thereunder can export a patented invention for such purposes.'

The answer to this question has to be sought from the language of section 107A itself. In the recent case, this question was answered by the Hon'ble High Court of Delhi wherein it has held that a 'Sale by a non-patentee of a pharmaceutical product solely for the purposes prescribed in Section 107A would also not be infringement and cannot be prevented.'

Section 107A(a) of the Act, commonly referred to as the "Bolar" provision exempts certain acts related to the development and submission of information required under Indian law or the law of any other country from being considered as infringement of the patent.

However, the further question to be answered is whether the word 'selling' in Section 107A is confined to within the territory of India and thus selling of patented invention outside India, even if for purposes specified in Section 107A, would constitute an infringement which can be prevented by patentee. To answer the question and to interpret the word 'selling', the Court proceeded to dissect the language of section 107A and came to a finding that the meaning and ambit of the

term 'selling' cannot be confined to 'selling within India only'. It further held that the 'presence of the word import' and absence of the word export' in Section 107A does not lead to any inference of the word selling' therein being exclusive of in the course of export. While the need for exporting was not felt due to presence of the word 'selling', the need for the word 'importing' in Section 48 was necessary to preserve exclusive right of patentee and in Section 107A to allow import for purposes prescribed therein'.

Answer 2(b)

Section 107A of the Patents Act, 1970 is not an exception that is carved out to the exclusive rights conferred by the grant of a patent. The exclusive right conferred by the grant of patent with respect to selling, offering for sale and thereby profiteering and earning from the patent is confined only during the term of the patent. Section 107A, permits sale of a patented product during the term of the patent but only for the purpose of obtaining regulatory approvals for manufacturing and marketing the patented product after the expiry of the term of the patent. The purchaser/s of a patented product for such a purpose would be few and negligible in comparison to the consumers of the patented product.

There is nothing in the provisions of the TRIPS Agreement to suggest that reading the word 'selling' in Section 107A as including by way of export', would be in violation of the TRIPS Agreement. TRIPS Agreement specifically vests discretion in the member countries to adopt measures in their laws which are necessary to promote public interest in sectors of vital importance to their socio-economic development.

Even if it were to be considered that clause (f) of Article 31 thereof allows domestic operation only, the Indian Parliament while enacting the Patents Act, 1970 was entitled to, having regard to the extent of the Indian Generic Industry, permit export for purposes of Section 107A. As per the TRIPS Agreement, Article 31(f) merely states that compulsory licensing should cater predominantly to the domestic market and places no further restriction on the export of products manufactured under compulsory license. Article 31(f) of TRIPS Agreement allows for compulsory licensing subject to conditions such as:

- where attempts to obtain voluntary licenses on reasonable commercial terms are unsuccessful;
- non exclusive use
- use predominantly for domestic supply
- temporary use subject to the special circumstances that warranted the licensing, and
- subsequent to payment of adequate remuneration to the title holder.

Patents Act is concerned with the protection of the rights of the patentees in India only and not outside India. Neither the legislature nor the Courts in India can impose any conditions on the use of the goods exported once they reach the destination country or ensure that such goods continue to comply with the laws in India. The use of the goods in a foreign country would be subject to the laws of that country and cannot be regulated by laws of India or orders of the Courts in India. Even if it were to be believed that the patented invention once exported from India for the purposes prescribed in Section 79 and 107A may be used for other purposes, it is for the patentee to enforce its rights if any in that country. The laws of India are only concerned with the sale by way of export from this country being for the purposes prescribed. As long as the sale by way of export is declared to be for purposes of Section 107A and there is nothing to suggest that it is otherwise, no fetters can be imposed.

Answer 2(c)

The term working or local working is not defined under the Indian Patents statute. However, by a combined interpretation of various provisions of the Patents Act, one can determine what constitutes working. Section 83(a) of the Patents Act specifies that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale to the fullest extent that is reasonably practicable, without undue delay. Section 83(b) states that patents are not granted merely to enable the patentees or patent licensees to enjoy a monopoly for importation of the patented article. Further, section 83(c) stipulates that the grant of patent rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. Clause (f) of section 83 goes on to state that patent rights should not be abused and the patentee should not resort to practices that unreasonably restrain trade or international transfer of technology.

Section 83 of the Patents Act, 1970 deals with general principles applicable to working of Patented Invention. It provides that in exercising the powers conferred for working of Patents and Compulsory Licenses:

- (i) That patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale
- (ii) That they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- (iii) That the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users
- (iv) That patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest.
- (v) That patents granted do not in any way prohibit Central Government in taking measures to protect public health; That the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee.

While section 83 may be viewed as merely postulating a general guiding principle that is not enforceable by any court of law, section 84(7) deals with the circumstances under which reasonable requirements of the public are deemed to not have been met, which forms a separate ground for grant of a compulsory licence.

Section 83 of the Indian Patent Act lays down a set of fundamental principles governing the working of patented inventions. Here's an overview of the key aspects of this section:

1. *Reasonable Requirements of the Public*: Section 83 emphasizes that patents are granted to encourage innovation and the dissemination of new technology, products, and processes. Therefore, it requires patent holders to work their inventions for the benefit of the public.
2. *Working in India*: Patentees are obligated to ensure that their patented inventions are worked in India on a commercial scale and to the fullest extent. This working requirement aims to prevent the mere grant of patents without any actual utilization.
3. *Non-Working and Compulsory Licensing*: If, after three years from the date of patent grant or four years from the date of filing, the patented invention isn't worked in India, or is inadequately worked, any interested person may apply for a compulsory license. This provision is crucial for ensuring that patents do not hinder economic and technological development.
4. *Grounds for Granting Compulsory Licenses*: Section 83 sets out various grounds upon which

the Controller of Patents may grant a compulsory license. This includes situations where the patented invention isn't available to the public at a reasonable price, is not being sufficiently worked in India, or is in limited supply.

5. *Rights of the Patentee*: The section also stipulates that while a compulsory license is granted, the patentee retains the exclusive right to the patent. The licensee is usually granted a non-exclusive right to work the patented invention, ensuring that the patentee's interests are preserved.

Implications of Section 83:

The inclusion of Section 83 in the Indian Patent Act serves several important functions:

1. *Balancing Innovation and Public Welfare*: By requiring that patents be worked for the benefit of the public and by enabling the granting of compulsory licenses when necessary, Section 83 strikes a balance between promoting innovation and safeguarding public welfare. This is vital to prevent the abuse of patent rights.
2. *Facilitating Access to Patented Technologies*: Section 83 ensures that patented inventions are made available to the public, either through commercial working by the patentee or through compulsory licensing in cases of non-working or inadequate working. This aids in making patented technologies accessible to those who can benefit from them.
3. *Preventing Anti-Competitive Practices*: The provisions related to compulsory licensing in Section 83 act as safeguards against anti-competitive practices and ensure that patent monopolies do not unduly stifle competition.
4. *Promoting Economic Development*: By requiring commercial-scale working of patents, Section 83 contributes to economic development by encouraging the utilization of patented technologies in the Indian market.
5. *Upholding India's TRIPS Agreement Commitments*: Section 83 aligns with India's obligations under the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) to ensure that patents are granted to encourage technological innovation while preventing their abuse.

In conclusion, Section 83 of the Indian Patent Act embodies fundamental principles that guide the working of patented inventions in India. By emphasizing the reasonable requirements of the public, ensuring commercial-scale working, and allowing for compulsory licensing under specified conditions, this section contributes to a balanced and equitable patent system.

It's a crucial provision that plays a pivotal role in fostering innovation, facilitating access to patented technologies, and promoting economic development while safeguarding the public interest. Understanding and adhering to the principles outlined in Section 83 is essential for patent holders, licensees, and all stakeholders in the Indian patent landscape.

Answer 2(d)

The registered proprietor of design is given exclusive rights to his/her registered Designs. One such right is the right of the Cancellation of Design Registration. The registered proprietor or any other person interested can file for a petition of Cancellation of Registration of Design on the grounds mentioned in the Design Act, 2000 read with the Design Rules, 2001. The procedure for Cancellation is also provided in the Act and the Rules regarding the Design Law in India. The registration of a design may be cancelled at any time after the registration of the design on a petition for cancellation in Form 8, along with the prescribed fee.

Such petition may be filed at any of the four Patent Offices. Such petitions filed in offices other than

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Kolkata, are transmitted to the Kolkata Patent Office. However, at present, all further proceedings of cancellation take place only at Patent Office, Kolkata and hence all communications relating to cancellation petitions are required to be communicated to that office.

Section 19 of the Design Act grants any interested party the right to file a petition seeking the cancellation of a registered design on specific grounds, such as prior registration, publication, lack of novelty, or non-registrability under the Act. It serves as a crucial check against the potential misuse of design registrations, ensuring that only legitimate and original designs are afforded protection.

- (c) The petition for cancellation of registration of a design may be filed on any of the following grounds:
- (i) that the design has been previously registered in India; that it has been published in India or in any other country prior to the date of registration; that the design is not a new or original;
 - (ii) that the design is not registerable under the Designs Act;
 - (iii) that it is not a design as defined under Section 2(d) of the Designs Act. The novelty or originality of even a particular part of the article may be sufficient to call the design as a whole “novel or original”, but this part must be a significant one and it must be potent enough to impart to the whole design a distinct identity.

In view of the above, registration of design of Company A’s soft drinks bottles can be cancelled on the ground the design is not new or original.

Answer 2(e)

Biotechnology Patent means the legal power given to the innovators to prevent third parties from producing, using or importing biotechnological inventions. A biotechnology patent comprises inventions pertaining to genetic material, living things, and procedures involving the manipulation of biological components. It encompasses a wide range of technologies and extend across including recombinant DNA, genetic engineering, pharmaceutical formulations, and diagnostic methods.

The following sections of the Patent Act 1970 are emphasized in the context of examination of applications in the bio technology and allied fields.

Section 2(l)(j) provides for novelty inventive step & industrial applicability of products or processes.

Section 3(b) states that inventions contrary to morality or which cause serious prejudice to human animal or plant life or health or environment.

Section 3(c): Discovery or any living thing or non-living substance occurring in nature

Section 3(d): Mere discovery of new form of known substance which does not result in enhancement of known efficacy or were discovery of any new property of new or a new use for a known substance.

Section 3(e): Mere admixture resulting only in aggregation of the properties

Section 3(h): Method of agriculture and horticulture.

Section 3(k) Computer programme per se and algorithms, mathematical methods Section (p) Inventions which are in effect of traditional knowledge

Section 10(4): Sufficiency of disclosure and the best method of performing the invention and

Section 10(5): Unity of invention and clarity and support of the claim. Section (i) Method of treatment of and diagnosis.

Section 3(j): Plants and animals in whole or any part thereof other than microorganism but including seeds and varieties and species, and essentially biological processes.

The case of US Supreme Court *Diamond v. Chakrabarty* (1980) is the landmark case in the field of biotechnology patent law. The court ruled that the human invention of living organisms could be patented. The court acknowledged that the patent system might encourage innovation in the biotechnology industry and provide incentives for the development of new technologies. This decision broadened the scope of additional patentable subject matter by including genetically modified living organisms.

In the case of *Mayo Collaborative Services v. Prometheus Laboratories* (2012), the patent eligibility of diagnostic techniques took place. The Supreme Court is of the view that the linking of drug dosage and to natural biological response was found to be the law of nature and merely stating this link in a patent claim was not enough to qualify the invention for patent protection. This case highlighted the need for inventors to demonstrate significant game-changing developments or uses in diagnostic method patents.

Question 3

In the Territory of India there are different States and each State has different culture, follow different dressing pattern, different food habits and preparation of different dishes peculiar to different States. Accordingly there is a dispute between Odisha and West Bengal regarding their popular sweet desert called "Rasagulla". For the purpose of getting GI The West Bengal State Food Processing and Horticultural Development Corporation Ltd have moved to Chennai Registry of GI and accordingly the latter has granted GI to West Bengal with a brand name of Banglar Rasagulla tag in the year 2017. The decision was made by Registrar primarily based on the confidence with the product as the same is ancient and traditional with regard to its quality, taste, popularity, peculiarity of its availability in different parts of the country with its brand name Calcutta Rasagulla. The Calcutta Rasagulla is otherwise known as Banglar Rasagulla. It has the following features. White in colour, Spongy in Texture, Syrupy sweet dessert in Taste. This was made by Nobin Chandra Das a renowned sweet producer of Bengal at his home Bagbazaar, Kolkata. Later on an application was filed in the year 2018 by State of Odisha through its Odisha Small Industries Corporation Ltd and Utkal Mistanna

Byabasayee Samiti. Their contention is that the Odisha Rasagola is famous for its flavour, texture and colour. The said sweet is very soft in nature, brown in colour and also not overly sweet. The Odisha Rasagola is distinctive in nature due to overall qualities. Over and above this the said sweet dish has been mentioned in historical literature written about Odisha indicating the geographical origin of the meal to this Region. It is prevalent since 12th Century, distributed at Lord Jagannath Temple, Puri, Brown in colour, soft and tender and last but not the least not very sweet and it is called as Odisha Rasagola. Based on the application made by Odisha Small Industries Ltd and another the State of Odisha has received a GI designation for the "Odisha Rasagola".

- (a) Whether the Registrar of two States for GI is in order to Register GI for West Bengal Rasagulla called Banglar Rasagulla and Odisha Rasagola in the light of similarity in names which is confusing the general public and popularity of Calcutta Rasagulla in general.
- (b) What are the grounds under which protection granted to the breeder can be revoked under Protection of plant varieties ?
- (c) What are different types of technology transfer agreements and their essential elements ?
- (d) What are the measures that include in the traditional knowledge associated with generic resources, related access and benefit sharing issue ?

(e) What is trade secret ? How are trade secret protected ?

(5 marks each)

Answer 3(a)

Regarding GI granted by the Registrar of Chennai and Registrar of Odisha are in order as they have verified everything based on facts and on observing the usual formalities.

The facts are as under:

No doubt the Rasagulla of West Bengal called Banglar Rasagulla is famous in view of the following reasons:

- ancient and traditional
- with regard to its quality, taste, popularity, peculiarity and its availability in different parts of the country with its brand name Calcutta Rasagulla.

For the purpose of getting GI the West Bengal State Food Processing and Horticultural Development Corporation Ltd have moved to Chennai Registry of GI and accordingly the latter has granted GI to West Bengal with a brand name of Banglar Rasagulla tag in the year 2017. The decision was made by Registrar primarily based on the confidence with the product in view of what is stated above.

The Calcutta Rasagulla is otherwise known as Banglar Rasagulla.

The features of Banglar Rasagulla are White in colour, Spongy in Texture, Syrupy sweet dessert in Taste. This was made by Nobin Chandra Das a renowned sweet producer of Bengal at his home Bagbazaar, Kolkatta. With regard to Odisha Rasagola GI was granted by Registrar of GI in Odisha based on an application filed in the year 2018 by State of Odisha through its Odisha small Industries Corporation Ltd and Utkal Mistanna Byabasayee Samiti.

The features of Odisha Rasagola are famous for its flavour, texture and colour. The said sweet is very soft in nature, brown in colour and also not overly sweet. The Odisha Rasagola is distinctive in nature due to overall qualities. Over and above this the said sweet dish has been mentioned in historical literature written about Odisha indicating the geographical origin of the sweet to this Region. It is prevalent since 12th Century, distributed at Lord Jagannath temple, Puri. Based on the application made by Odisha Small Industries Ltd and another the State of Odisha has received a GI designation for the "Odisha Rasagola". Therefore, both the Registry has granted GI status to the respective Rasagulla and Rasagola based on merits of the case since all the requisite for formalities were duly complied with before granting the GI.

Answer 3(b)

Revocation of protection on various grounds under Protection of plant varieties.

The certificate of registration granted can be revoked under following ground:

- (i) Incorrect information furnished by the applicant based on which the certificate of registration was granted,
- (ii) Certificate granted to ineligible person
- (iii) Non furnishing of requisite information, documents or materials to Registrar by the breeder.
- (iv) Failure of the breeder to provide an alternative denomination of the variety which is the subject matter of the Registration when the earlier denomination submitted is not permissible for registration.

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- (v) Authority under Section 47 of Protection of Plant Varieties and Farmers' Rights Act, 2001 regarding variety based on which registration certificate was granted,
- (vi) That the grant of registration certificate is not in the interest of the public
- (vii) Failure of breeder to comply with the directions of the Authority concerned.
- (viii) Non-compliance of the provisions of the Act, Rules and regulations made thereunder.

The legal grounds for the revocation, as outlined by the authority, were rooted in Section 34 of the Act. This section delineates the circumstances under which the protection granted to a breeder may be revoked. In the present case, the violation of Section 34, pertaining to incorrect information provided during the registration process, formed the crux of the authority's decision. The careful examination of legal provisions highlighted the scrutiny applied to uphold the integrity of the intellectual property framework. As a consequence of these developments, the Authority contemplated reassessing the application in accordance with Section 34(a), (b), (c), and (h) of the Act, leading to the revocation of the certificate by the authority.

"34. Revocation of protection on certain grounds. –Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:–

- (a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;
- (b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;
- (c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;
- (h) that the grant of the certificate of registration is not in the public interest.

Answer 3(c)

The following are the types of Technology Transfer Agreement:

- i) Vertical Technology Transfer
- ii) Horizontal Technology Transfer

When Vertical Technology and Horizontal Technology transfers occur

Vertical Technology Transfer: It occurs when new technologies are conducted from a new range of Technologies when the technology is still under development and research

Horizontal Technology: Transfer of well technology from one organization to another is known as a horizontal technology transfer agreement.

Essential elements of technology transfer agreement

- I) Granting of Proprietary rights by the owner with respect to his technology
- II) Knowledge relating to process
- III) Knowledge relating to application
- IV) Knowledge relating to Engineering
- V) Knowledge relating to Manufacturing
- VI) Knowledge relating to Management Knowledge relating to its Design

Answer 3(d)

The following are the measures that include in the Traditional knowledge associated with generic resources:

- a) Promotion of this Protocol, including its objective
- b) Organization of meetings of Indigenous and local communities and relevant stake holders.
- c) Establishment and maintenance of a help desk for Indigenous and local communities and relevant stakeholders.
- d) Information dissemination through a national clearing house.
- e) Promotion of voluntary codes of conduct, guidelines and best practices and or standards in consultation with indigenous and local communities and relevant stake holders.
- f) Promotion of appropriate, domestic, regional and international exchanges of experience.
- g) Education and Training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit sharing obligations.
- h) Involvement of indigenous and local communities and relevant stake holders in the implementation of this Protocol and
- g) Awareness raising of community protocols and procedures of indigenous and local communities.

Answer 3(e)

A trade secret is any kind of information that is secret and not generally known in the relevant industry giving the owner an advantage over competitors. In other words, any information which can be used in business and is sufficiently valuable to afford an actual or potential economic advantage over others is a trade secret. Trade secret includes formulas, patterns, methods, programs, techniques, processes or compilations of the information providing competitive edge. Trade secrets are not protected by any law as a registered trademarks or a patent. Article 39 of Trade Related Aspects Intellectual Property Rights (TRIPS) agreement protects for trade secrets in the form of undisclosed information' and provides a uniform mechanism for the international protection of trade secrets. These are protected by a variety of civil and commercial weans. Any other person (including employees) with the potential to come to know the secret is asked to sign a confidentiality and/or non-disclosure agreement. Violation of these agreements generally entails financial penalties. In India, the only remedies available for the protection of trade secrets are civil or equitable remedies for a breach of confidence cause of action. They include: an award of injunction "preventing the third party from disclosing the trade secrets," and "confidential and proprietary information," and; in the case of "for any losses suffered due to disclosure of trade secrets." the court may order any damages or compensation to be given to the plaintiff.

Question 4

A Company named Ramsung manufacture Automobile under the name **Roi Jaguar**. The Ramsung Company is engaged in the manufacture of a wide range of automobile products including diesel engines, generating sets, agro equipments, construction equipments and road construction equipments. The General Manager of Ramsung is tasked to protect its brand

in accordance with Indian law. At one point, the General Manager left the company. Soon after he left, Ramsung Company discovers a very similar product in the Indian market in the name of **Roi Lynx**. Both brands thus exist with the same word followed by the name of a species of big cat. After some research, Ramsung finds out that after quitting the job, its former General Manager has

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started competing against it with very similar products.

A suit for permanent & mandatory injunction, was filed. It is claimed that the word/mark Rio Jaguar is an essential and prominent feature of plaintiff 's trade name. It is alleged that defendant is engaged in a business which is similar to the business of the plaintiff company and is dealing in products as that of the plaintiff company.

In view of the above information, answer the following questions :

- (a) Whether the plaintiff will get injunction against the defendant. (5 marks)
- (b) What are the factors to be kept in mind to decide the question of deception under the Trademark Act, 1999 ? (5 marks)
- (c) Discuss the significant differences between trade mark infringement and passing off. (5 marks)
- (d) In the course of conducting an intellectual property audit, the audit team discovers that few employees are subject to written agreements with the company although many have access to highly proprietary information. Moreover, the audit team has discussed with the hue the purchased another company two years ago but has not filled any documents to notify any statutory agencies that it is now the owner of various intellectual property assets. What should the audit team advise the client with regard to these matters ? (5 marks)
- (e) Whether SBB (State Biodiversity Board) can advise the State Government regarding biodiversity conservation ? If so, whether the authorities may be compelled to reconsider the land acquisition of a biodiversity rich area for commercial activities ? (5 marks)

Answer 4(a)

The case is based on *Greaves Cotton Limited vs. Mohammad Rafi & Ors.* [DEL] CS (OS) No. 395/2008 *V.K. Jain, J.* [Decided on 03/06/2011]

"It is not necessary that in order to constitute infringement, the impugned trademark should be an absolute replica of the registered trademark of the plaintiff. When the mark of the defendant is not identical to the mark of the plaintiff, it would be necessary for the plaintiff to establish that the mark being used by the defendant resembles his mark to such an extent that it is likely to deceive or cause confusion and that the user of the impugned trademark is in relation to the goods in respect of which the plaintiff has obtained registration in his favour.

It will be sufficient if the plaintiff is able to show that the trademark adopted by the defendant resembles its trademark in a substantial degree, on account of extensive use of the main features found in his trademark. In fact, any intelligent person, seeking to encash upon the goodwill and reputation of a well- established trademark, would make some minor changes here and there so as to claim in the event of a suit it or other proceeding, being initiated against him that the trademark being used by him, does not constitute infringement of the trademark, ownership of which vests in some other person. But, such rather minor variations or distinguishing features would not deprive the plaintiff of injunction in case resemblance in the two trademarks is found to be substantial, to the extent that the impugned trademark is found to be similar to the registered trademark of the plaintiff. But such malpractices are not acceptable and such a use cannot be permitted since

this is actuated by a dishonest intention to take pecuniary advantage of the goodwill and brand image which the registered mark enjoys, it is also likely to create at least initial confusion in the mind of a consumer with average intelligence and imperfect recollection. It may also result in giving an unfair advantage to the infringer by creating an initial interest in the customer, who on account of such deceptive use of the registered trademark may end up buying the product of the infringer, though after knowing, either on account of difference in packaging etc. or on account of use of prefixes or suffixes that the product which he is buying is not the product of the plaintiff, but is the product of the defendant.

Answer 4(b)

Intellectual Property Rights (IPR) are often granted to intellectual property creators in order to protect their rights for their innovations. In contrast to other IPs, the fundamental objective of granting one business exclusive rights to an identifiable name or symbol is for the convenience of the general population. Any term, phrase, artwork, or style that serves as an identification for a company in the market and sets it distinct from its competitors is considered a trademark. Therefore, the main reason for registering trademarks is to protect consumers while preventing them from being misled by the wide range of market players. In light of this, it is even more important to protect clients from being duped by identical identifiers. This makes the idea of “Deceptive Similarity” feel beneficial under trademark law.

Section 2(1)(h) of the Trade Marks Act, 1999 defines the word “deceptively similar” as “A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion”. It implies that two enterprises may be labeled as deceptively similar if the company’s mark is so close to an already established trademark that utilizing it will lead customers to inaccurately identify the two companies.

In the said case the trial court held that the two drugs Falcitab and Falcigo differ in price, appearance and composition. It was sold to hospitals and institutions and thus there was no chance of deception or of confusion especially as the drug was not sold to any individual. The appellant’s appeal was dismissed by the single Judge of the High Court holding that there was no chance of any passing off one product for the other when special leave petition was filed before Supreme Court the said Court did not consider it necessary to interfere order of the High Court. However, the court has set out factors to be kept in mind while dealing with an action for infringement and passing off especially in cases relating to medical products.

They are as under:

1. Nature of marks that is whether the marks are word marks or label marks or compound marks
2. Degree of resemblance between marks phonetically similar and hence similar in idea
3. Nature of the goods in respect of which they are used as trademarks.
4. Similarity in nature character and performance of the goods of rival traders.
5. Mode of purchasing the goods or placing orders for the goods and any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

The criteria for detecting deceptive similarity were established long ago by the Hon’ble Supreme Court in the matter of *Cadila Healthcare Ltd v. Cadila Pharmaceutical Ltd. in 2001*. The court established specific guidelines for this particular scenario. It ruled that the following factors should be taken into account in determining whether a mark is deceptive: a) the nature of the products or services the mark relates to; b) the degree of resemblance between the two marks, and c) The type of mark—whether it be a word, symbol, or phrase, and the target audience that the company offers are also significant factors.

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In another case of *Parle Products (P) Ltd. v. JP Co. Mysore*, the Hon'ble Supreme Court established a standard to evaluate whether two trademarks are deceptively similar. It said that a thorough examination of both marks was not required. Instead, the degree of general resemblance should be assessed based on the possibility of customer misunderstanding that it could result. In *Pioneer Bakeries (P) Ltd. v. Kraft Jacobs Suchard Ltd.*, while rejecting opposition it was held that registration of trademark shall not be refused when there is no likelihood of confusion. The mark "MILKA" was sought to be registered for bread while the same mark was already registered for chocolates. In case the goods are different still the registrar is mandated to refuse registration if there is a likelihood of confusion. The trademark TOSIBA was found to be deceptively similar to the registered famous trademark "TOSHIBA" but the question was relating to the similarity or difference of goods in two applications. The mark was not allowed registration even though the applicant amended the application by dropping the goods in which TOSHIBA had interest.

Answer 4(c)

A crucial difference between an infringement and a passing off action is that in an infringement action, the Plaintiff need not establish any goodwill or reputation in the trademark. In an infringement action, so long as the Defendant commenced use of the mark subsequent to the Plaintiff's registration of the mark, the Plaintiff may restrain the Defendant from using the mark irrespective of whether the trademark has been used by the Plaintiff or whether the Plaintiff has garnered reputation or goodwill under the mark.

Significant differences between trademark infringement and passing off: Infringement Section 29 of the Trade Mark Act, 1999 states about various aspects concerning the infringement. In simple terms, trademark infringement is the unauthorised usage of a mark that is identical or deceptively similar to a registered trademark. The infringement can also be done by the spoken use of the words as well as by the visuals.

Passing Off Passing off is a common law tort, which can be used to enforce unregistered trademark rights. The law of passing off prevents one person from misrepresenting his goods or services as that of another. Factor Infringement Passing off

Type of remedy Registration Proof Jurisdiction: The statutory remedy under Section 29(l) of the Trade Mark Act, 1999. It is a pre-requisite. Plaintiff is only required to show deceptive similarity, as there is a presumption of conclusion. The registered user of the trade mark can institute the suit where they actually and voluntarily. Common-Law remedy is not required.

Apart from proving deceptive similarity the Plaintiff is also required to prove confusion in public and the likelihood of injury to the plaintiff's goodwill. Section 20 of the Civil Procedure Code, 1908 would apply.

A crucial difference between an infringement and a passing off action is that in an infringement action, the Plaintiff need not establish any goodwill or reputation in the trademark. In an infringement action, so long as the Defendant commenced use of the mark subsequent to the Plaintiff's registration of the mark, the Plaintiff may restrain the Defendant from using the mark irrespective of whether the trademark has been used by the Plaintiff or whether the Plaintiff has garnered reputation or goodwill under the mark.

Answer 4(d)

An IP Audit is a systematic review of the intellectual properties owned, used or acquired by a business so as to assess and manage risk, remedy problems and implement best practices in IP asset management. Nowadays, an IP Audit is an indispensable tool for successfully managing knowledge-driven business by aiding the process of creating or revising its IP strategy.

Notwithstanding the importance of Intellectual Property (IP), businesses have overlooked its value until fairly recently. In the earlier times, business strength was focused on tangible assets, with intangible IP being relegated to mention in footnotes. The internet business boom and government regulation changed business thinking. Now companies more typically recognize the importance of IP in business decisions and transactions, and that recognition has increased the demand for IP audits. An intellectual property audit is a systematic review of a company's IP assets and related risks and opportunities. IP audits can help assess, preserve, and enhance IP; correct defects in IP rights; put unused IP to work; identify risks that a company's products or services infringe another's IP; and implement best practices for IP asset management. A thorough IP audit involves not only a review of a company's IP assets, but also the company's IP-related agreements, policies and procedures, and competitors' IP. Another type IP investigation is usually conducted when a company acquires another entity. At the time, a thorough investigation is usually conducted of the intellectual property of the target company to ensure that the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the target's failure to protect its intellectual property. This type of intellectual property investigation is acquiring and its counsels have an obligation to duly and diligently investigate the target's assets.

The IP Audit requires:

- Researching background information of the business
- Preparing an IP Audit plan IP information analyses to ascertain if the company owns all the intellectual property of the concern and whether the company infringes on the intellectual property rights of other in the conduct of its business. IP evaluation is done through different valuation technologies including replacement value, discounted cash flows and comparable sales.

Further, the client has to be told that the IP Audit requires auditing different contracts/ agreements including licensing agreements, assignment agreements, employment and independent contractors' agreements, joint venture and collaboration agreements. In summary, an intellectual property audit can have a meaningful role in avoiding the violation of others' rights, protecting one's intellectual property rights, minimizing the risk of forfeiture of rights, clarifying ownership issues, and educating employees.

Answer 4(e)

In the given case of *M/s. Cheirbra Peak Estate Limited Vs State of Kerala & others* Kerala High Court directed the Revenue Authorities to seek the opinion of SSB regarding the ecological balance of the private coffee estate of Muttill in Wayanad before proceeding with acquisition of the estate for setting up of a mega food park, Justice T.R. Ramachandran Nair ordered that this should be completed within two months.

The Park was being set up by Kerala Industrial Infrastructure Development Corporation (KINFRA) from the allotted funds of the Government.

There were some interesting arguments that were raised in the course of PIL. The Govt Pleader argued that the State Government has got power u/s 37 to declare an area as a biodiversity heritage site since they had chosen not to do so there can be no objection to any land acquisition of the area. The Court nonetheless made mention of sections 23 & 24 of Bio Diversity Act and according to section 23 that it is amongst the functions of the State Biodiversity Board (SBB) to advise the State Government on matters related to and as per section 24 SBB has the power to restrict certain activities in the State that might be going against the objectives of conservation In this context court hinted that if the Government were to consider the inputs of the SBB on concerns of bio diversity conservation the authorities may be compelled to reconsider the land acquisition of the bio diversity rich area for commercial activities.

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

Ultra Chem Industries, a leading manufacturer of high-grade polymer compounds, operates an advanced facility that produces a variety of products, including its flagship item, Poly Flex. This fine polymer powder is packaged in 25 kg bags through a highly automated process, with an online check weigher ensuring that each bag meets the specified weight requirements. The company has set a tolerance limit of 50 grams per 25 kg bag for any deviations. During a routine review, the internal auditor manually weighed a sample of Poly Flex bags using a standalone scale. The findings were concerning : a significant number of bags were overfilled by more than 50 grams. Despite this, the plant's functional head dismissed the issue as a statistical aberration, arguing that the company's compensatory controls, such as random manual weighments, would catch and correct any significant discrepancies. He thus downplayed the need for immediate corrective action.

In addition to these operational challenges, Ultra Chem Industries had recently launched a new product line, Fiber Flex, a special-grade polymer fiber developed with imported technology. Unfortunately, Fiber Flex failed to meet quality standards and was rejected by the market, leading to the shutdown of the manufacturing plant. The materials used in Fiber Flex production, including fiber intermediaries, imported chemicals, and catalysts, have since remained unused and undisposed of for several years, posing potential environmental and safety risks.

Meanwhile, M/s Sharma & Associates, the internal auditor for Ultra Chem Industries, was conducting an audit of the company's payroll system. The audit's primary objective was to ensure that all employee payments, outstanding amounts, and liability balances were accurately accounted for in the financial statements. During this audit, the internal auditor identified a potential risk : some payroll liabilities might have been omitted or inaccurately recorded. To mitigate this risk, the auditor reviewed payroll records, verified subsequent payments to employees, and assessed the completeness of accrued liabilities to ensure that all payroll obligations were properly reflected in the financial statements.

Given these challenges, several key questions arise, you are requested to answer the following :

- (a) In light of the weightment discrepancies observed by the internal auditor, what steps should be taken to address the potential overfilling issue in the Poly Flex packaging process ?
- (b) As the internal auditor, what advice would you give to Ultra Chem Industries regarding the disposal of the unused fiber intermediaries, chemicals, and catalysts from the discontinued Fiber Flex product line ?
- (c) What specific internal audit procedures should be implemented to ensure that the payroll process is correctly followed and that all related liabilities are accurately recorded in Ultra Chem Industries Ltd.'s financial statements ?

(5 marks each)

Answer 1(a)

The internal auditor should co-ordinate with the commercial head and the warehouse in charge and took larger samples for study and validation of quantity bagged. In addition, the samples should be taken at different points of time. If, in all cases the results were consistent with the initial findings. By extrapolating the findings for over one year period, the quantity giveaways and cost implications (factoring both negative and positive variations) should be demonstrated to the functional head, along with live instances where the compensatory controls had failed to detect excess giveaways.

Accordingly, system-based control viz., installation of check weighers in the conveyer, after filling level in the load cell should be recommend to introduced. This will result in to:

- i. Reduction of dependency to manual checking.
- ii. Increased accuracy level, since all bags are weighed after filling in load cell.
- iii. Reduction of labour in the filling and weighing section in the plant.

Answer 1(b)

Internal auditors pointed out the situation with the suggestion that:

- i. the intermediary product may have market for fibre manufacturer and, therefore, classify as special product and dispose-off.
- ii. the purchase orders for chemicals and catalyst should have the buyback clause so that the failed chemicals will be re-exported to the supplier at the pre-determined prices.

The process owners did not want to make any attempt to dispose-off the intermediaries and the unutilized chemicals catalyst, stating that these materials do not have ready market.

Here are some steps for disposing of hazardous materials:

- Label the waste: Label the waste with the words "Hazardous Waste" and include the generator's information.
- Store in a suitable container: Use a sealable container that is compatible with the waste and in good condition.
- Close the container: Keep the container tightly closed at all times, unless you are adding waste to it.
- Find a drop-off location: Locate a hazardous waste drop-off location or contact your local waste management company.
- Research local laws: Learn about hazardous disposal laws in your area.
- Read the product label: Read the product's label and general directions.
- Consider recycling: Try to find a potential user for the chemicals before discarding them.
- Report to the EPA: If you are a generator of hazardous waste, you may need to obtain an Environmental Identification Number and report your activities to the EPA.

Further, the Internal Auditor should also follow-ups and persuasion with Research and Development Team of the company and identifies the possibility that the intermediaries can be sold to fibre manufacturers by sending sample and explaining the properties of the intermediaries. Further, the foreign vendors who supplied the chemical and catalyst should be given the left-over chemicals sample and may be re-exported at appropriate price.

Answer 1(c)

Payroll refers to the process of calculating and disbursing payments to employees for their work, including wages, salaries, bonuses, and deductions. It is an essential function within an organization's human resources and finance departments. Payroll involves managing and processing financial records related to employee compensation, taxes, benefits, and other deductions. The primary purpose of payroll is to ensure accurate and timely payment to employees in compliance with employment agreements, labour laws, and tax regulations. The payroll process typically includes the following key steps:

- a. **Time / Attendance Tracking:** Payroll begins with tracking employee's time and/or attendance, which may be recorded through time clocks, electronic systems, or manual timesheets. This data is used to calculate the hours worked and determine employee earnings.
- b. **Gross Salary Calculation:** Salary is calculated based on the employee's regular salary, taking into account factors such as overtime, shift differentials, and bonuses etc. Other elements, such as commissions or performance-based incentives, may also contribute to the salary calculation.
- c. **Deductions:** Various deductions are subtracted from the gross salary to determine the net pay or take-home pay. These deductions may include income taxes, social security contributions such as provident fund, insurance premiums, and other voluntary or mandatory deductions.
- d. **Tax Compliance:** Payroll departments ensure compliance with tax regulations by accurately calculating and deducting the appropriate amount of taxes from employee earnings. They also provide the necessary documentation, such as Form 16, to employees and government agencies.
- e. **Funds Administration:** Payroll may be responsible for administering employee funds, such as Provident Fund Trusts, Benevolent Funds etc. These aspects must be reviewed by the internal auditor at length in compliance with the relevant regulations and bye laws.
- f. **Payroll Processing:** Once all calculations and deductions are made, payroll data is processed to generate individual employee pay checks or direct deposits. Payroll departments maintain accurate records of employee earnings, deductions, and tax information. They also generate reports for internal and external purposes, such as financial statements, tax filings, and regulatory compliance.
- g. **Compliance and Audit:** Payroll processes are subject to various laws and regulations, including labour laws, tax laws, and employment regulations.

Timeliness and transparency of the payroll process are key to employee satisfaction. An internal auditor must review the process from these aspects as well. Further, Employee Master Management, Confidentiality of information, Variable pay or bonus calculations etc. are also very important aspects to be audited by an internal auditor.

Question 2

- (a) Zen Ltd. is a manufacturer of ready-made garments. During the year 2021-22, they have opened two new branches and there is a substantial increase in their sales. The management has appointed CA Mr. A to review the internal control system of the company as they feel that there are lapses in the control environment of the company. What is included in the control environment and what will the auditor evaluate in order obtain an understanding of the control environment ?

(5 marks)

- (b) An internal auditor was assigned to conduct a comprehensive audit of a healthcare facility. During the audit, the auditor discovered significant inefficiencies in the patient care process, including medication errors, long wait times, and patient dissatisfaction. The auditor presented detailed recommendations to the hospital administrator, suggesting improvements in staff training, patient communication, and quality assurance.

However, the hospital administrator, who had been in his position for over two decades, was resistant to change. He viewed the auditor's recommendations as a personal attack on his leadership. The administrator began to undermine the auditor's authority, questioning his expertise and dismissing his findings. This created a tense atmosphere within the facility, with the auditor feeling isolated and undervalued.

How should the internal auditor approach the situation with the administrator to ensure that their recommendations are considered and implemented, while maintaining a constructive working relationship ?

(5 marks)

- (c) Tech Nova, once celebrated as a rising star in the financial technology sector, offered electronic payment and risk management services globally. In 2023, investigative reports accused Tech Nova of inflating revenue and profits through deceptive accounting practices. Initially, Tech Nova denied these claims and initiated an internal investigation. However, by August 2024, the company revealed that ₹ 15,000 crore was missing from its accounts. This admission led to a significant drop in Tech Nova's stock price and its eventual collapse. The scandal highlighted concerns about the reliability of financial reporting, auditing, and the need for enhanced transparency.

How can risks related to misleading financial reporting be mitigated, and why should potential funding challenges be a focus in internal audits ?

(5 marks)

Answer 2(a)

Control Environment: The control environment includes:

1. The organization demonstrates a commitment to integrity and ethical values.
2. The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control.
3. Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.
4. The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.
5. The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

The auditor shall obtain an understanding of the control environment. As part of obtaining this understanding, the auditor shall evaluate whether:

- a) Management has created and maintained a culture of honesty and ethical behaviour; and
- b) The strengths in the control environment elements collectively provide an appropriate foundation for the other components of internal control.
- c) The integrity, ethical values, and competence of the organization's people.

- d) How management assigns authority and responsibility, and organizes and develops its people.
- e) The organizational structure and assignment of authority and responsibility.
- f) The rigor around performance measures, incentives, and rewards to drive accountability for performance.

Answer 2(b)

While conducting the internal audit of a healthcare facility, the auditor has to come across many irregularities and areas where improvement can be made and therefore, he gives his suggestions and recommendations.

These suggestions and recommendations for improvements may not be accepted by the hostile managers and in effect there may be cold war between the operational auditor and the managers.

An internal auditor's role is to help management achieve organizational goals by analyzing business processes and procedures, and recommending solutions. The participative approach comes to the help of the auditor. In this approach the auditor discusses the ideas for improvements with those managers that have to implement them and make them feel that they have participated in the recommendations made for improvements. By soliciting the views of the operating personnel, the internal audit becomes a co-operative enterprise.

This participative approach encourages the auditee to develop a friendly attitude towards the auditors and look forward to their guidance in a more receptive fashion. When the participative method is adopted then the resistance to change becomes minimal, feelings of hostility disappear and gives room for feelings of mutual trust. Team spirit is developed & auditors and the auditee together try to achieve the common goal.

The proposed recommendations are discussed with the auditee and modifications as may be agreed upon are incorporated in the internal audit report. With this attitude of the auditor, it becomes absolutely easy to implement the proposed suggestions as the auditee themselves take initiative for implementing and the auditor does not have to force any change on the auditee.

Further, the internal auditor's report may also include:

- A clear written expression of significant observations
- Suggestions and recommendations based on the policies, processes, risks, controls, and transaction processing
- Management's responses

The internal auditor's report is usually addressed to the appointing authority or another person as directed. The final audit report is distributed to senior management, the Board of Governors, and the external auditors.

Hence, the internal Auditor should adopt the above-mentioned approach to tackle the hostile management of company.

Answer 2(c)

There are a few key ways through which one can avoid financial accounting risks:

1. Understand the financial statements: Review income statement, balance sheet, and cash flow statement on a regular basis. This will help to identify any potential red flags or areas of concern on timely basis.

2. Maintain strong internal controls: Having strong internal controls in place will help to ensure that financial information is accurate and reliable. Testing and review of internal controls and identifying the gaps allows to have better and thorough understanding of the standard operating procedures. It also gives the insight on creating better strategies to protect organization's reputation and financial risk.
3. Work with a reputed accountant or financial advisor: Getting expert advice can help to navigate through complex financial issues and make sound decisions for business.
4. Management Intention: the intention of the management should be very clear about the business affairs of the company.

Funding risk should be considered in an internal audit:

When it comes to financial accounting, organizations must take into account funding risk in the decision-making process. This type of risk can come from a variety of sources, including changes in interest rates, regulatory changes, and economic conditions. While funding risk is often out of an organization's control, there are still ways to manage and mitigate it. Internal audit can play a vital role in identifying and evaluating funding risks, as well as in providing recommendations on how to best manage them. By considering funding risk in internal audit, organizations can make more informed decisions that can help protect their bottom line.

When it comes to financial accounting, there is always the potential for funding risk. This is because organizations rely on outside sources of funding, such as loans, lines of credit, and investors. If these funding sources dry up, it can significantly impact a company's ability to continue operating.

Internal audit teams should also consider funding risk when evaluating a company's financial statements. They should look at things like cash flow and liquidity to see if there are any red flags that could indicate a problem with funding in the future. If there are concerns, the internal audit team can work with management to develop a plan to mitigate the risk.

Funding risk is just one of many risks that internal audit teams need to be aware of. By considering all risks, they can provide valuable insights that help organizations make better decisions and avoid financial problems down the road.

Question 3

- (a) XY Ltd., a company specializing in the manufacturing of rugs, is planning to expand and diversify its operations. To ensure better governance, the management has intensified its focus on internal controls. They have consulted with the statutory auditors to identify the necessary steps to ensure that the statutory audit is risk-based and concentrates on areas posing the greatest risk to the achievement of the company's objectives. The management is particularly interested in understanding the key steps and phases involved in a Risk-Based Audit and seeks advice on how to approach the risk assessment phase of the audit to address the company's specific needs.

(5 marks)

- (b) Bank Safe Ltd. holds a significant portion of its assets in the form of advances to various borrowers. Given the diverse range of advances, the internal audit team is tasked with evaluating the bank's internal controls, particularly focusing on the approval and monitoring processes of these advances. The team is also responsible for conducting substantive audit procedures to assess the accuracy and completeness of the advances recorded. Moreover, with a number of advances potentially at risk, the team needs to evaluate the recoverability of these funds, considering the financial stability of the borrowers and any collateral held by the bank.

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What critical aspects should the internal auditor consider while assessing the effectiveness of Bank Safe Ltd.'s internal controls and the overall recoverability of its advances ?

(5 marks)

- (c) While auditing the procurement processes at DEF Industries, the Internal Auditor, Ms. Pranati, follows the documented audit work plan, which emphasizes contract compliance. Midway through the audit, she discovers discrepancies in supplier payment terms that could suggest favouritism. Addressing this would require significant changes to the audit focus and plan. Ms. Pranati must decide how to incorporate this new information into her audit execution without derailing the original scope, ensuring the audit remains both effective and aligned with the company's priorities.

What steps should Ms. Pranati plan and implement to adjust the audit execution effectively in light of the newly discovered payment discrepancies, while still adhering to the original audit objectives ?

(5 marks)

Answer 3(a)

The auditor's objective in a risk-based audit is to obtain reasonable assurance that no material misstatements whether caused by fraud or errors exist in the financial statements.

This involves the following three key steps:

- Audit procedures need not cover the whole process and can be limited only to the important controls in the process;
- Establish linkage to the aspects relevant and connected with company and functional objectives; and
- Findings and issues highlighted are significant and important and time is not devoted to areas with low probability of significant observations.

A risk-based audit is a method of auditing that focuses on the analysis and management of risk. It's also known as a risk-based internal audit (RBIA). Risk-based audits help organizations:

- Identify risks: Identify and record risks, controls, and objectives for a system or activity.
- Evaluate controls: Determine if controls are appropriate and can be relied upon to address risks.
- Provide insights: Provide insights to management to help solve problems.
- Improve resilience: Help organizations adapt to changing conditions.
- Align with objectives: Ensure that audit procedures are aligned with the business's strategic objectives.
- Risk-based audits differ from traditional audits in several ways:
 - Focus: Risk-based audits focus on the organization's top risks, while traditional audits focus on compliance and financial controls.
 - Flexibility: Risk-based audits allow audit teams to customize their audit activities, while traditional audits prescribe specific requirements and scopes.
 - Timeliness: Risk-based audits allow internal auditors to respond to organizational risks more timely.

The risk assessment phase of the audit involves the following steps:

- Performing client acceptance or continuance procedures;
- Planning the overall engagement;
- Performing risk assessment procedures to understand the business and identify inherent and control risks;
- Assessing the risks of material misstatement in the financial statements;
- Identifying the significant risks that require special audit consideration and those risks for which substantive procedures alone are not sufficient;
- Communicating any material weaknesses in the design and implementation of internal control to management and those charged with governance; and
- Making an informed assessment of the risks of material misstatement at the financial statement level and at the assertion level.

Answer 3(b)

Aspects of Internal Control in Bank:

- i. Advances should be made only after evaluating creditworthiness of the borrowers and obtaining sanction from the proper authorities of the bank.
- ii. All the loan documents like promissory notes, letters of hypothecation, guarantee letter, etc. should be executed by the parties before advances are made.
- iii. While determining the loan amount to be sanctioned, sufficient margin should be kept against securities taken so as to cover any decline in the value thereof and also to comply with RBI directives.
- iv. Securities should be received and returned by responsible officer and should be kept in the joint custody of at least two responsible officers.
- v. Securities requiring registration should be registered in the name of the bank.
- vi. Physical possession of goods as security, the goods should be test checked at the time of receipts. In respect of hypothecated goods not in possession of the bank, surprise checks should be made.
- vii. Personal inquiries should be made so as to determine market value of goods.
- viii. For any increase/decrease in the value of securities, drawing power should be adjusted. All the accounts should be kept within both the drawing power and the sanctioned limit at all times.
- ix. More attentions given to all irregular accounts should be brought to the notice of the H.O.
- x. The operation in each advance should be reviewed at least once every year.
- xi. There should exist a proper system for post disbursement supervision and follow-up.
- xii. Ensure that the funds disbursed should be utilized only for the purpose for which advances has been granted.

Answer 3(c)

Internal Auditor Ms. Pranati, should perform audit engagement as per the documented audit work plan. However, audit plan should be modified and updated on the basis of additional knowledge

and information gathered by the auditor during the course of audit to ensure audit activities are more effective and practical. Following steps should be planned and implemented performed while conducting the audit execution:

- i. Prepare detailed audit schedule comprising of key activities to be performed, meetings to be conducted, interviews to be conducted, data analytics to be done, on field verification and checks to be performed, identification and reporting of preliminary issues, conduct management discussion, management agreed action plan, audit conclusion and reporting.
- ii. Internal Auditor must conduct opening meeting with key stakeholders before start of audit engagement and share details of Information and System Access required to perform the audit.
- iii. Internal Auditor must obtain and perform correctness and integrity of information received. To the extent possible, Internal Auditor must obtain the information directly from the source.
- iv. Perform data analytics to identify trends, outliers and initial exceptions.
- v. Select sample and perform detailed audit checks for the sample information.
- vi. Detailed audit testing must be performed as per the audit work plan. Internal Auditor must ensure adequate evidences must be collected and stores in accordance to Standard on Internal Audit (SIA) 320, Internal Audit Evidence.
- vii. Prepare issue sheets and identify root cause, implication and suggest remedial action plan and control to be implemented.
- viii. Adequate document of the internal audit work papers needs to be ensured as per standard on Internal Audit (SIA) 330, Internal Audit Documentation

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

Question 4

- (a) WWW Limited, a company specializing in mobile spare parts, operates showrooms across the country. In FY 2020-21, the company transitioned from a manual accounting system to a computerized system using SAP. Recognizing the importance of ensuring the new system's effectiveness, WWW Limited appointed ABC & Associates, as internal auditor, known for their expertise in system audits, to evaluate the company's IT environment and controls.

During their audit, ABC & Associates identified several critical exceptions in WWW Limited's IT environment and controls. Despite these significant findings, the management of WWW Limited believes that since they are operating in an automated environment, understanding the detailed workings of the system is optional for auditors.

Do you agree with WWW Limited's management that understanding the automated environment is optional for auditors? Justify your answer by discussing the importance of IT system knowledge in an audit.

(5 marks)

- (b) While auditing MNOP Technologies, the internal auditor observed the payroll process in detail, from managing employee records to the final disbursement of salaries. During the review, the team illustrated how data flows through various stages, highlighting critical checkpoints like authorization of payroll changes and verification of bank transfers.

The auditor took the time to map out these steps visually, identifying discrepancies between the procedures shown and the company's written policies. This exercise revealed potential

risks such as unauthorized changes to payroll data and inadequate segregation of duties, which could lead to errors or fraud.

How does visually mapping out the steps in a process help an internal auditor in identifying weaknesses, and what are the key advantages of using such a method during an audit ?

(5 marks)

(c) Green Tech Solutions, a company specializing in renewable energy products, has appointed you as the Internal Auditor for the year 2023-24. During your review of the internal controls within the Sales Department, you observed the following work division :

- (i) One officer manages the sales ledger and processes cash receipts.
- (ii) Another official handles the dispatch of products and issues delivery notes.
- (iii) A third officer oversees customer accounts and issues receipts.

As the Internal Auditor, you are required to assess the internal check system within the company's internal control framework. Do you believe the work is properly divided at Green Tech Solutions ? If not, why ?

(5 marks)

Answer 4(a)

Understanding and Documenting Automated Environment: When a business operates in a more automated environment it is likely that auditor will see several business functions and activities happening within the systems.

Key features of an Automated Environment

- Enabling faster business operation
- Accuracy in data processing and computation
- Ability to process large volume of transactions
- Better security and controls
- Less prone to human errors
- Provides latest information

While it is true that the use of IT systems and automation benefit the business by making operations more accurate, reliable, effective and efficient, such systems also introduce certain new risks, including IT specific risks, which need to be considered, assessed and addressed by management. To the extent that it is relevant to an audit of financial statements, even auditors are required to understand, assess and respond to such risks that arise from the use of IT systems.

Given below are some situations in which IT will be relevant to an audit

- Increased use of Systems and Application software in Business (for example, use of ERPs).
- Complexity of transactions has increased (multiple systems, network of systems).
- Hi-tech nature of business (Telecom, e-Commerce).
- Volume of transactions are high (Insurance, Banking, Railway's ticketing).
- Company Policy (Compliance).

In some of the above situations it is likely that carrying out audit using traditional substantive audit procedures may be difficult or even not feasible if the company prepares, records and conducts majority of business activities through IT systems only.

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Another area where IT can be relevant to audit is by using data analytics using computer assisted audit techniques (CAATs). By using data analytics, it is possible to improve the effectiveness and efficiency of an audit.

From the above discussion, it is quite apparent that it is necessary for an auditor to understand the automated environment.

Alternative to Answer 4(a)

Understanding and Documenting Automated Environment: When a business operates in a more automated environment it is likely that auditor will see several business functions and activities happening within the systems. Consider the following aspects instead of:

- i. Computation and Calculations are automatically carried out (for example, bank interest computation and inventory valuation).
- ii. Accounting entries are posted automatically (for example, sub-ledger to GL postings is automatic).
- iii. Business policies and procedures, including internal controls, are applied automatically (for example, delegation of authority for journal approvals, customer credit limit checks are performed automatically).
- iv. Reports used in business are produced from systems. Management and other stakeholders rely on these reports and information produced (for example, debtors ageing report).
- v. User access and security are controlled by assigning system roles to users (for example, segregation of duties can be enforced effectively).

Companies derive benefit from the use of IT systems as an enabler to support various business operations and activities. Auditors need to understand the relevance of these IT systems to an audit of financial statements.

While it is true that the use of IT systems and automation benefit the business by making operations more accurate, reliable, effective and efficient, such systems also introduce certain new risks, including IT specific risks, which need to be considered, assessed and addressed by management.

To the extent that it is relevant to an audit of financial statements, even auditors are required to understand, assess and respond to such risks that arise from the use of IT systems.

From the above discussion, it is quite apparent that it is necessary for an auditor to understand the automated environment.

Answer 4(b)

A flow chart provides a visual sequence of the steps in a process, illustrates the relationship between parts, and identifies what the process does or should do. Flowcharts can be created in a variety of ways by the internal auditors, from informal pencil drawings on scraps of paper to technically sophisticated computer graphics.

While in case of mature control environments, the flow charts explaining the flow of information and key stage-gates/ key controls of the process are already documented, yet there are many organizations where such documentation may not be available to a level which is detailed enough, or self-explanatory to meet the purposes of an internal auditor. In such cases, the internal auditors need to draw their own flow charts to obtain a complete understanding of the process.

Creation of flow charts by internal auditor based on process walkthroughs has following advantages:

- In the process of creating the flowchart, internal auditor can discover weakness in controls such as weak responsibility/accountability definitions, supervision by the wrong level of the organization, failure to segregate functions to avoid conflict of interest, and so on.
- A flowchart can provide an accurate description of process design, and later on when an internal auditor finds some exceptions to the process, it is easy to understand the risk or potential impact of that observation on the outcome of the process.

Answer 4(c)

The general condition pertaining to the internal check system may be summarized as under:

- No single person should have complete control over any important aspect of the business operation. Every employee's action should come under the review of another person.
- Staff duties should be rotated from time to time so that members do not perform the same function for a considerable length of time.
- Every member of the staff should be encouraged to go on leave at least once a year.
- Persons having physical custody of assets must not be permitted to have access to the books of accounts.
- There should exist an accounting control in respect of each class of assets, in addition, there should be periodical inspection so as to establish their physical condition.
- Mechanical devices should be used, where ever practicable to prevent loss or misappropriation of cash.
- Budgetary control should be exercised and wide deviations observed should be reconciled.
- For inventory taking, at the close of the year, trading activities should, if possible be suspended, and it should be done by staff belonging to several sections of the organization.
- The financial and administrative powers should be distributed very judiciously among different officers and the manner in which those are actually exercised should be reviewed periodically.
- Procedures should be laid down for periodical verification and testing of different sections of accounting records to ensure that they are accurate.

In the given scenario, Company has not done proper division of work as:

- The receipts of cash should not be handled by the official handling sales ledger and
- Delivery challans should be verified by an authorized official other than the officer handling dispatch of goods.

OR (Alternative to Q. No. 4)

Question 4A

- (i) Ms M. Singh has been appointed as an internal auditor of Life Care Insurance Ltd. She observed that few insurance policies have been sold by the company in the last month of the financial year ending 31st March, 2024. While recognizing income in the income statement of the company, it is the responsibility of Ms. M. Singh to make an assessment of the reasonability of the risk pattern managed by the management. Also, it is to be ensured by her that Life Care Insurance Ltd. should not issue policies, if the risk is not established before the closure of the F.Y. 2023-24. Indicate the circumstances when the company should not issue the policy documents.

(5 marks)

- (ii) K. Ltd. secured a ₹ 700 lakh term loan from a nationalized bank in 2017 for the construction of a factory, with the loan to be repaid in seven equal instalments of ₹ 100 lakhs starting from 31st March 2018. Due to delays in the construction process, the company temporarily invested the loan funds in short-term deposits. While K. Ltd. successfully repaid the 2018 and 2019 instalments, it defaulted on the payments for 2020, 2021, 2022, 2023 and 2024. As the internal auditor of K. Ltd, what is your responsibility assuming that company has sought reschedule of loan ?

(5 marks)

- (iii) 'Safe-Lock', a leading digital payment platform in Mexico, suffered a data breach that exposed the personal information of millions of users. A cyber security expert uncovered that Safe-Lock's database was being sold on the dark web. The breach was traced back to 'Un-Lock', a partner company responsible for customer verification. Un-Lock had stored user data in an unsecured cloud storage, accessible to anyone with the correct link. Safe-Lock faced criticism for failing to adequately monitor Un-Lock's security practices and for not responding to the expert's warning about the vulnerability. What key activities should internal auditors perform to ensure effective oversight of partner relationships and data security ?

(5 marks)

Answer 4A(i)

The auditor should ensure that premium in respect of risks incepting during the relevant accounting year has been accounted as premium income of that year on the basis of premium revenue recognition. The auditor, as part of her audit procedures, should make an assessment of the reasonability of the risk pattern established by the management. The auditor, Ms. M. Singh appointed as an auditor of Life Care Insurance Ltd. should ensure that policy documents have not been issued, in case:

- Premium had not been collected at all;
- Premium had been collected but the relevant cheques have been dishonoured; (refer Cheque Dishonoured Book);
- Premium had not immediately been collected due to furnishing of a bank guarantee or cash deposit but either the deposit or guarantee had fallen short or has expired or the premium had been collected beyond the stipulated time limit (i.e., there is a shortfall in bank guarantee account or cash deposit account of the insured);
- Premium had not been collected due to risk cover being increased or where stipulated limits have been exhausted in respect of open declaration policies (i.e., where premium has accrued but has not been received); and
- Premium collected but policies not issued for long periods of time.
- Whether the premium received during the year but pertaining to risk commencing in the following year has been accounted for under the head 'Premium Received in Advance' and has been disclosed separately.

The premium collections are credited to a separate bank account and no withdrawals are normally permitted from that account for meeting the general expenditure. As per the policy of the insurance company, the collections are transferred to the Regional Office or Head Office. No Risk shall be assumed by the insurer without receipt of premium according to section 64VB of the Insurance Act, 1938. Verification of premium is of utmost importance to an auditor because

Insurance premium is collected upon issuing policies. It is the consideration for bearing the risk by the insurance company. The auditor should apply the following procedures:

- Before commencing verification of premium income, the auditor should look into the internal controls and compliance which are laid down for collection and recording of the premiums.
- Cover notes should be serially numbered.
- The auditor should check whether Premium Registers have been maintained chronologically, giving full particulars including GST charged as per acceptance advice on a day -to-day basis.
- The auditor should verify whether the figures of premium mentioned in the register tally with those in General Ledger.
- The auditor should verify whether instalments falling due on or before the balance sheet date, whether received or not, have been accounted for as premium income as for the year under audit.

Answer 4A(ii)

Term loan invested in short term deposits: As per clause (ix) of Para 3 of CARO, 2020, an auditor needs to state in his report that whether the term loans were applied for the purpose for which the loans were obtained.

- a) whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below: -

Nature of Borrowing including debt securities	Name of Lender*	Amount not paid on due date	Whether Principal or Interest	No. of delays or unpaid	Remarks if any
	*Lender wise details to be provided in case of defaults to banks, financial institutions and Government				

- b) whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;
- c) whether funds raised on short term basis have been utilized for long term purposes, if yes, the nature and amount to be indicated;
- d) whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;
- e) whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised.

In the present case, the proceeds of the term loan obtained by K. Ltd. have not been put to use for construction activities & have been temporarily invested in short term deposit.

Here, the auditor should report the fact in his report that pending utilization of the term loan for

construction of a factory, the funds were temporarily used for the purpose other than the purpose for which the loan was sanctioned, as per clause (ix) of Para 3 of CARO, 2020.

Reporting for Default in Repayment of Dues: As per clause (ix) of Para 3 of CARO, 2020, the auditor of a company has to report whether the Company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, & if yes, the nature of borrowing, name of lender, period & amount of default to be reported.

The Auditor is also required to report whether the company is a declared wilful defaulter by any bank or financial institution or other lender.

Answer 4A(iii)

Third-party risk management is an emerging area of focus in internal audit, and it is gaining more attention due to the increasing reliance on third-party vendors by organizations.

Many companies now outsource critical business functions to third-party vendors to reduce costs, increase efficiency, and gain access to specialized expertise. However, this outsourcing exposes organizations to new and evolving risks, such as data breaches, cyber-attacks, financial fraud, regulatory non-compliance, and reputational damage.

Internal auditors are responsible for assessing and managing risks within their organizations, and third-party risk management is an area where they can add significant value. Internal audit can help to identify potential risks associated with third-party relationships, evaluate the effectiveness of controls, and make recommendations to management on how to mitigate risks.

In the context of third-party risk management, internal auditors can perform the following key activities:

- **Adequate Due Diligence:** Companies need to conduct thorough due diligence on third party vendors before engaging with them. This includes verifying their security controls and practices, and ensuring that they are in compliance with data protection laws and regulations.
- **Clear Contractual Provisions:** Contracts between companies and third-party vendors need to include clear provisions that outline specific security requirements and obligations. including data protection, breach notification, and liability.
- **Ongoing Monitoring:** Companies need to establish a process for monitoring third-party vendors regularly to ensure they comply with the contractual provisions, and to detect any potential vulnerabilities or breaches.
- **Effective Incident Response:** Companies need to have an effective incident response plan in place to respond to security breaches effectively, including notifying affected customers, regulators, and law enforcement, and taking appropriate action to mitigate the impact of the breach.

This case focuses and bring out the importance of implementing effective third-party risk management processes to minimize the risks associated with engaging the third-party vendors.

Companies need to conduct thorough due diligence on vendors, ensure that contractual provisions are in place to manage risks, regularly monitor vendors, and have an effective incident response plan in place.

By doing so, companies can protect themselves from the reputational and financial damage that can result from a breach of third-party vendors.

PART-II**Question 5****Case Study :**

Medura Group, a prominent conglomerate in the tech sector, is known for developing and exporting software solutions, mobile applications, and cybersecurity tools. Medura Tech, the group's flagship company, has aggressively acquired start-ups' and mid-sized companies over recent years to expand its footprint. The group's subsidiaries and associates also export specialized software, hardware components, and IT consulting services to the USA, Europe, and other regions. To support this expansion, Medura relied on significant credit and banking facilities provided by a consortium of banks led by Global Fin Bank.

The group's Chief Financial Officer, Aryan, had been with Medura for over a decade, managing financial strategies and operations. His close relationship with management meant that his decisions were rarely questioned. As Medura continued to grow, it sought private equity investment. Innovate Capital, a leading PE fund, showed interest due to the group's impressive growth. To proceed, Innovate Capital hired Nexus Advisors to perform financial and operational due diligence. Nexus Advisors conducted a thorough evaluation and presented their findings to Innovate Capital. However, when Eva, the Chief Investment Officer of Innovate Capital, reviewed the report, she was deeply concerned. As she and her team discussed the findings, her colleague Sam highlighted several alarming issues :

- (1) Global Fin Bank had been discounting Medura's export invoices against Letters of Credit (LCs) from reputable banks on behalf of international buyers, with proceeds credited to Medura's account on the same day. However, payment delays occurred, and the bank extended due dates at Medura's request.
- (2) Customs records revealed that many reported exports never happened. Software supposedly developed for export under Working Capital Credit was either not produced or sold domestically, or funds were misappropriated. Out of 2,100 outstanding invoices, 2,000 had no matching export records.
- (3) Medura confirmed export completion to banks by submitting falsified certificates from auditors and accountants, along with inaccurate status reports.
- (4) The audited financial statements showed inaccurate cash flow figures, failing to reflect the company's true financial state.
- (5) One of Medura's subsidiaries had submitted the same export orders to several banks in the consortium, securing working capital credits without providing the necessary export documentation.
- (6) Medura used fictitious export orders to hedge against foreign exchange receivables and payables, misleading the banks.
- (7) Most receivables were from foreign buyers, but payments came from third parties, indicating that goods might have been sold to alternate buyers at renegotiated prices. The company also submitted fake and forged export invoices for discounting.
- (8) The creditor list included fabricated suppliers, artificially inflating purchases and payables to create a misleading financial position.

Alarmed by these findings, Eva informed Innovate Capital's management, leading them to withdraw from the investment. Additionally, Eva anonymously notified Global Fin Bank about the

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fraudulent activities. Global Fin quickly convened a consortium meeting and appointed Suresh, a forensic auditor, to investigate.

Questions :

- (a) What procedural lapses did the bank's branch commit when discounting Medura's export invoices ?
(5 marks)
- (b) What follow-up mechanisms and controls should banks have implemented to monitor foreign bills discounting according to regulatory guidelines ?
(5 marks)
- (c) In a consortium banking arrangement, what additional measures should the Lead Bank take to review the credit facilities granted to Medura Group ?
(5 marks)
- (d) Is Medura's auditor's claim that they were merely following management's instructions justified ? Discuss potential legal consequences for the auditors.
(5 marks)

Answer 5(a)

Considering the facts of the given case, the following are the procedural lapses noted in the bank branch:

- The bank had discounted the bills against the terms of the sanction without ensuring acceptance of bills and confirmation of due date for payment of LC Issuing bank.
- Bank did not obtain Guaranteed Remittance (GR) Form of shipping bills verified/ issued by the Customs Authorities.
- There were several apparent and major discrepancies in set of bills submitted for discounting which should have aroused suspicion about the genuineness of the bills.
- Due date of the bills extended without ensuring acceptance of bills, analyzing reasons for non-acceptance of bills and delay in acceptance of bills.
- The proceeds of Packing Credits & Foreign bills purchases (FBPs) credited to the account were withdrawn on the same day is clearly indicating possibility of improper end use and possible diversion of funds.
- The bank should have taken full details of the creditors for suppliers and verified it.
- The export transactions undertaken by the Company should have been subjected to suspicion considering the fact that within a short span of time the utilization of the limit was to the brim under Packing Credit and Negotiation of Bills under Letter of Credit.
- Management of fraud risk in 'Large Value Advances' need a comprehensive approach.
- Banks need to have a system of Real Time information sharing among them.

Answer 5(b)

The following non-adherence of Bank/regulatory guidelines could be noted:

- There are lacunae in Bank's Credit and Risk Management Policies.

- Proper mechanism to be devised for review of policies of the Bank and to keep it updated as per the dynamic environments.
- The accountants including Auditors tended to collude and conspired to be party in submitting false, fabricated and misleading bills, Financial Statements and Certificates issued to Institutions/Banks with the only intention of obtain fund disbursements.
- The empanelled list of Service Providers like Certification from Auditors is to be reviewed by the Bank from time to time based on performance parameters, etc.
- The Company had managed its affairs based on false and fabricated books of accounts to ensure easy and smooth flow of credit without any restraint by way of loans from Financial Institutions for funding cash losses.
- Credit report of all group companies has to be obtained by the bankers as per the RBI guidelines.
- Periodical inspection for Packing Credit Disbursement by the bank shall be carried out to ensure the end use.

Answer 5(c)

Multiple banking arrangements in 'Large Value financing' has done more harm than good to banks. This type of arrangement enabled corporates to secure Multiple Finances from various banks far in excess of their requirements. Funds raised can be easily diverted through Company's accounts with various banks in absence of effective exchange of information between the banks. There is a need to review the Multiple Banking Arrangements by the member banks at regular intervals to avoid excess to finances than actual requirements. Realization proceeds of export bills credited to current account of the Company which was subsequently withdrawn by the Company when "Bank Packing Credit was outstanding, was one of the major lapses from the banker's point of view.

Precautions to be taken by the lead banker in 'Consortium Banking' Arrangements

- Ensure compliance: Before disbursement, the lead bank should ensure that all terms and conditions of the sanction are met.
- Create documentation: The lead bank should ensure that joint documentation is completed, security is created, charges are registered, and a legal audit is performed.
- Monitor project progress: For project loans, the lead bank should monitor the project's progress and ensure that member banks disburse periodically.
- Share information: The lead bank should share information with member banks on a weekly basis or as needed. This includes information about the release of limits and the avallment of limits.
- Review financial covenants: The lead bank should review the borrower's financial covenants at quarterly consortium meetings.
- Ensure share is not reduced: The lead bank should not reduce or downsell its share for a minimum of two years without the consent of other co-lenders.
- Have a senior officer present: The lead bank should depute a senior officer who is authorized to make spot decisions to the consortium meeting.

Answer 5(d)

As the Management of the Company and the statutory auditors have colluded to engage in the fraudulent activities as mentioned in the given case, they will be liable to the punishments as provided in the Companies Act, 2013.

Punishment for Fraud (Section 447)

Section 447 of the Company Act 2013 reads that “Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.”

Punishment for False Statement (Section 448)

If in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,

- which is false in any material particulars, knowing it to be false; or
- which omits any material fact, knowing it to be material he shall be liable for punishment under section 447.

Punishment for False Evidence (Section 449)

If any person intentionally gives false evidence –

- upon any examination on oath or solemn affirmation; or
- in any affidavit, deposition or solemn affirmation in or about winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to 10 Lakh.

Auditors will also be liable under section 147(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to or four times the remuneration of the auditor, whichever is less provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

Accordingly, the Auditor's claim is not justified.

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

Question 6

- (a) During XYZ Corporation's annual audit, the auditor found the financial statements unusually consistent with the prior year despite significant market and operational changes. Although management was cooperative, the auditor suspected management override of controls and performed additional audit procedures. By focusing on areas prone to manipulation, such as revenue recognition and expense recording, the auditor identified inconsistencies. Further investigation revealed that management had deliberately inflated revenue to meet financial targets, secure loans, and boost stock prices, bypassing internal controls. The audit team used forensic accounting techniques to trace these discrepancies, confirming the manipulation.

How can auditors enhance their techniques to better identify and address risks of material misstatement due to potential management override of controls ?

(5 marks)

- (b) Z. Electronics Pvt. Ltd. filed a claim under an employee dishonesty insurance policy, which covers losses due to the dishonest acts of permanent employees. The company's business model required buyers to make advance payments before goods were dispatched from the warehouse. In this instance, Z. Electronics claimed a loss of ₹ 42 lakhs, allegedly misappropriated by an employee, Ranjan. Goods worth ₹ 44 lakhs were invoiced for just ₹ 4 lakhs to a customer named Vishal. The incident occurred on June 15th, 2023, when the team was under immense pressure to meet targets, leading Ranjan's superior to overlook the invoicing discrepancy. Upon investigation, the warehouse manager confirmed receiving a written memo from the sales team, as per standard practice, and was unaware of the payment shortfall.

The forensic auditor conducted a thorough investigation to assist the insurance company in evaluating the claim. Imagine and describe how the forensic auditor aided the insurer in this case.

(5 marks)

- (c) At Oceanic Plastics Ltd., three anonymous complaints were discovered in the employee suggestion box, alleging that the company's internal financial controls over cash management are weak and that the head cashier is embezzling funds. You are appointed as a forensic auditor to investigate the validity of these complaints, focusing on both the potential weaknesses in the cash management system and the accusations against the head cashier.

What red flag indicators should the forensic auditor look for to assess the credibility of the complaints ?

(5 marks)

- (d) Delta Corporation, a prominent textile manufacturer based in South India, secured substantial loans from a consortium of banks to modernize its spinning and weaving units. The project was aimed at enhancing production capacity to meet growing domestic and export demand. During the implementation phase, the project cost escalated significantly, necessitating additional funding from the lenders. However, due to unforeseen economic challenges and intense competition, the company faced operational difficulties and subsequently defaulted on its loan obligations. Consequently, a forensic audit was commissioned to investigate the reasons behind the default and assess the financial health of the company.

How should the forensic auditor approach the investigation of financial distress in a textile manufacturing company following a capacity expansion ? What key areas should the audit findings focus on to assess the viability of the expansion project and identify any irregularities or fraudulent activities contributing to the loan default ?

(5 marks)

Answer 6 (a)

Some of the general audit techniques that can be used by auditors to detect fraud include:

1. Analytical procedures: This involves analyzing financial data to identify trends or anomalies that may indicate fraud. For example, the auditor can compare financial ratios with

industry benchmarks or prior periods to identify unusual changes in the company's financial performance.

2. Inquiry: This involves asking questions of management and other employees to identify potential fraud risks and to gather information about the company's internal control systems. The auditor can ask about unusual transactions, discrepancies in records, or unusual behaviour by employees.
3. Observation: This involves physically observing the company's operations to identify potential fraud risks. For example, the auditor can observe how cash is collected and counted to identify any weaknesses in the company's movable assets handling procedures which are susceptible to fraud.
4. Re-performance: This involves re-performing calculations or procedures performed by the client to ensure their accuracy. This can help the auditor identify errors or discrepancies that may indicate fraudulent activities.
5. Sampling: This involves selecting a representative sample of transactions or data to test for accuracy and completeness. This can help the auditor identify unusual transactions or patterns of behaviour that may indicate fraud.
6. Inspection: This involves examining records and documents, such as invoices, receipts, contracts, and bank statements, to verify their accuracy and completeness. This can help the auditor identify fraudulent transactions or falsified documents.

In addition to the above-mentioned general audit techniques, auditors can also use specialized audit procedures to detect fraud, such as data analytics and forensic accounting techniques.

The key to effective fraud detection is to be vigilant, skeptical, and thorough in gathering and evaluating audit evidence.

Answer 6(b)

The Forensic Auditor should conduct the investigation in the following manner:

- a) Whether Ranjan is a permanent employee of the insured should be ascertained.
- b) This can be seen with the help of several documents, some of them being appointment letter, salary slips, bank transfers of salary to the bank account of Ranjan, PF remittance, HR record of employee etc.

The Forensic Auditor first ascertained that Ranjan was a permanent employee of the insured.

The Forensic Auditor then looked into the internal controls and Standard Operating Procedure 'SOP' to be followed in case of sale to a customer. The important sequences of events were as under:

- a) Purchase requisition from buyer was to be first received;
- b) Purchase requisition was to be approved by a senior officer.
- c) Where the goods worth Rs. 40 lakhs or above are dispatched, the approval of the Sales Manager was required, who was to check the rates as well as quantities involved.
- d) Approval matrix to be checked and whether the same was adhered.

The Forensic Auditor found out that in the given case, the Sales manager had not given approval at all. The transaction was authorized only by the supervisor above Ranjan, who coaxed him to believe that he would get it ratified by the sales manager. Such ratifications have been done in the past, but this time it was not done.

Since the SOPs have not been followed, it was a clear case of negligence on the part of the insured, consequent to which there will be no liability on the part of Insurance Company.

Answer 6(c)

Cashier fraud: Red Flag Indicators

Following are the red flag indicators:

- i. Frequent receipt of gifts;
- ii. Disproportionate increase in the assets of the cashier;
- iii. Unjustified favouritism shown to certain parties.
- iv. Multiple refunds or cancellations just under review limit.
- v. Excessive number of adjusting entries during specific period.
- vi. Change in lifestyle of the cashier
- vii. Collusion between cashier persons making payments

Investigation of the cashier activities on the basis of Red Flag Indicators

- Forensic Auditor 'FA' should take access of the cashier's emails and all correspondences, company mobiles, as per the company's policy.
- Lifestyle of the cashier should be investigated to ensure that it is commensurate with the salary drawn from the company.
- In case if cashier has history of debts there is likelihood of engaging in opportunistic fraud. Hence FA should initiate background check of the cashier.
- Bank statement of the cashier has to be examined.
- Enquiry into the assets acquired by the cashier or his close relatives during the last few years must be undertaken. Most companies ask for annual declarations in this regard and for filing of income-tax acknowledgments. These can also be looked into.
- Deploy a market intelligence executive to keep a track on movements of cashier and his family members. This has to be done discreetly.
- Enquiries can also be made with the HR Department of earlier employer to ascertain whether there have been any similar allegations levied against him.

Answer 6(d)

- Study the techno-economic feasibility study of the project.
- Identify the major procurement needs and sourcing plans as per the detailed project report (DPR)
- Understand the procurement process as defined in the management systems.
- Review the procurement decision related documentation - call for quotations, review mechanism, price comparisons, negotiations before awarding the contract for supply of materials and services
- Verify the documents for genuineness of the quotes received.
- Contact vendors of high value items to establish if the procurement process was implemented in spirit to identify related parties in the vendors, if any.

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- Review all procurement related documentation - Purchase Order, Delivery Challans, Weigh Bridge slips, taxes paid and goods received notes maintained at the company.
- Validate the veracity of the purchase documents with a special focus on duties and levies paid on the goods purchased, the transportation receipts and weigh bridge noting, etc. for any mismatch and inconsistencies.
- Cross verify the transportation documents from public sources like RTO, toll tax.
- Check for duplicate purchase orders for the same materials and services.
- Compare the landed cost of the materials and services with the current market trends and past price data for commodity items that are tracked independently.
- Research and review details of other business interests of the promoters and close family members.
- Verify the sources of funds for the other business interest of the promoters.

Audit Findings:

1. Errors in the purchasing process. Further company had infused funds in another project with an unrelated business interest, several transactions with related parties as suppliers of goods and services.
2. Layer of purchase transactions instead of direct purchases.
3. False quotations, duplicate purchase orders, fake transportation bills,
4. Inflated of the project cost.

OR (Alternative to Q. No. 6)

Question 6A

- (i) Anand Sons Consulting, a well-established consulting firm in India, offers a range of professional services, including consulting, valuation, taxation, and forensic audits. The firm's teams are composed of highly qualified and experienced professionals, each specializing in a specific service line. The Managing Partner is considering expanding the firm's offerings to include audit services and convened a meeting with the Leads of each service line to discuss this potential venture. During the meeting, the Forensic Audit Lead contended that, "Forensic Auditing covers a broad spectrum of activities, with terminology not strictly defined in regulatory guidance". In this context, answer the following statement :

"Forensic Auditing covers a broad spectrum of activities with terminology not strictly defined in regulatory guidance."

(5 marks)

- (ii) Mr. Kapoor is expert in assessing the anti-fraud controls for a construction company that has experienced several incidents of fraud related to the quality of raw materials supplied. These frauds have led to substandard construction projects, raising concerns about the integrity of the procurement and quality assurance processes. Mr. Kapoor is now considering various methods to detect and prevent such frauds in the future and is looking into the appropriate corrective actions.

As an expert, you are required to advise Mr. Sharma on how a forensic auditor should plan their investigation to uncover the root causes of these quality issues and ensure the effectiveness of anti-fraud controls.

(5 marks)

- (iii) Alpha Tech Solutions, a local firm specializing in electronic gadgets, noticed a decline in its sales volume in October 2021 after the Operations Manager flagged the issue. Two employees, X and Y, are responsible for selling two popular products : the premium Apex Tablets and the budget-friendly Streamline Laptops. The company received anonymous tips about the sudden lavish lifestyles of X and Y. Suspecting potential collusion and fraudulent activities, the company assigns you as the forensic auditor to investigate.

What types of fraudulent activities would you consider and suggest methodology of investigation ?

(5 marks)

- (iv) A customer had a bank account in the Mumbai branch. The bank noted that the customer, an Indian resident, was living in London and regularly transferred funds to foreign accounts. He used his email (Yahoo account) to send instructions and signed the required forms. Unfortunately, the customer's Yahoo account was hacked by a fraudster, who sent an email from the customer's official email-Id to the bank, requesting a transfer of ₹ 10 lakhs to a Hong Kong account. Since the bank had processed similar transfers before, it executed the transaction. When the customer later reviewed his account, he discovered the unauthorized debit. Upon investigation, it was revealed that the Yahoo account had been hacked. The bank, needing to compensate the customer, filed a claim with its insurer. How can a forensic auditor assist the insurer in this case ?

(5 marks)

Answer 6A(i)

Forensic auditing covers a broad spectrum of activities, with terminology not strictly defined in regulatory guidance. Generally, the term 'forensic auditing' is used to describe the wide range of investigative work which the professionals in practice could be asked to perform. The work would normally involve an investigation into the financial affairs of an entity and is often associated with investigations into alleged fraudulent activity.

- Forensic Auditing refers to the whole process of investigating a financial matter, including potentially acting as an expert witness if the fraud comes to trial.
- The process of forensic accounting includes the forensic investigation itself, which refers to the practical steps that the forensic auditor takes in order to gather evidence relevant to the alleged fraudulent activity.
- The investigation is likely to be similar in many ways to an audit of financial information, in that it will include a planning stage, a period when evidence is gathered, a review process, and a report to the client.
- The purpose of the investigation, in the case of an alleged fraud, would be to discover.
 - i. If a fraud had actually taken place,
 - ii. To identify those involved,
 - iii. To quantify the monetary amount of the fraud (i.e. the financial loss suffered by the client),
 - iv. To ultimately present findings to the client and potentially to court.
- Thus, 'forensic auditing' refers to the specific procedures carried out in order to produce evidence.

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- Audit techniques are used to identify and to gather evidence to prove, for example, “how long the fraud has been carried out, and how it was conducted and concealed by the perpetrators.
- Evidence may also be gathered to support other issues which would be relevant in the event of a court case. Such issues could include:
 - i. The suspect’s motive and opportunity to commit fraud.
 - ii. Whether the fraud involved collusion between several suspects.
 - iii. Any physical evidence at the scene of the crime or contained in documents.
 - iv. Comments made by the suspect during interviews and/or at the time of arrest.
 - v. Attempts to destroy evidence.

This way, it is proved that the tool of forensic audit is one of the strong tools in detecting the frauds, assisting financial stability and enduring economic growth of the nation.

Answer 6A(ii)

The forensic auditor will plan their investigation to achieve objectives such as:

- 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.

With this, Forensic auditors are required to take precautions to ensure that documents and other evidence collected are not damaged or altered by anyone. Henceforth the forensic audit need be done with specialized method of investigation so that the audit could rear the objective results.

Answer 6A(iii)

Forensic Audit of Corruption Fraud

There are three types of Corruption Fraud: Conflicts of Interest, Bribery, and Extortion., Research shows that corruption is involved in around one third of all frauds.

- In a conflict-of-interest fraud, the fraudster exerts the influence to achieve a personal gain which detrimentally affects the company. The fraudster may not benefit financially, but rather receives an undisclosed personal benefit as a result of the situation.
- Bribery is when money (or something else of value) is offered in order to influence a situation.
- Extortion is the opposite of bribery, and happens when money is demanded (rather than offered) in order to secure a particular outcome.

Methodology to be adopted

The following methodology may be adopted by the Forensic Auditor, singly or in combination:

- i. Conducting interviews with the employees of the company, especially in the sales division.
- ii. Encourage the employees to post their views about X and Y, in suggestion boxes anonymously kept in this regard.
- iii. Where the company policy permits, check the email history of X and Y past one year.
- iv. Buyers of the two mobile products are to be interviewed to ascertain whether there is any collusion between any of them.
- v. Forensic auditor may obtain SOP for sake for these two mobiles and check whether they have been adhered to by X and Y.
- vi. It is possible that X and Y have colluded with each other, along with some buyer. Costly products of Orange might have been billed as the other product.
- vii. Confirmation of balances should be obtained from various buyers and cross checked with company records.
- viii. GST returns for the month should be scrupulously checked and any fraud pattern visible therein must be looked into.
- ix. Look for red flags. Were X and Y too sincere in their work, without even taking sick leave or going for vacation, even though they were entitled to?
- x. Market Intelligence techniques can be adopted wherein cover agent will visit the suspected person's residence area to get an understanding his lifestyle, discreetly enquire about him with the few people in the area adjoining etc.

Answer 6A(iv)**Bank Cyber Crime**

The Forensic Auditor first looked into the procedures required at the bank for transfer of funds to an account abroad. The main aspects involved were:

- a) Written request was to be received from the customer, if not so, through a digitally signed document.
- b) For any transfer of funds abroad, FEMA requirements are to be completed, including submission of Form I5CB under the Income-tax Act, 1961. Either a self-declaration of the customer was sufficient or a Chartered Accountant's certificate is required.
- c) Funds have to be transferred through electronic mode like SWIFT.
- d) When the Forensic Auditor tracked the funds which had been sent to an account in Hong Kong, it was found that the fraudster had closed the account and the Hong Kong bank disowned any liability, since it was not at fault.

In the given case,

- The banker had not received any written request from the customer for transfer of funds abroad.
- The Forms required under the Income-tax law had not been submitted.
- The compliances required under the Foreign Exchange Management Act 'FEMA' had not been complied with.

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- The bank did not ascertain the identity of the customer.

Therefore, it is clear from fact of the case that the banker was negligent in his duties. The insurance policy excludes paying ability of the insurance claim, where the loss is caused to the negligence of the insured. The Forensic Auditor was thus able to help Insurance Company which repudiated the claim, as a consequence.

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ARTIFICIAL INTELLIGENCE, DATA ANALYTICS AND CYBER SECURITY – LAWS & PRACTICE

GROUP 1 ELECTIVE PAPER 4.4

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

ABC Healthcare, a leading Indian healthcare technology company, was at the forefront of digitizing patient care by implementing a state-of-the-art digital health records system. In March 2024, ABC Healthcare suffered a significant cyberattack that affected its cloud-based health records system that exposed sensitive medical data of millions of patients. The attack was sophisticated and multi-faceted, in which Hackers deployed ransomware that encrypted critical databases, including patient medical histories, insurance claims, and diagnostic reports. The attackers demanded a ransom of ₹ 50 crore (approximately USD 6 million) in cryptocurrency to restore access to the encrypted files.

Before deploying the ransomware, the hackers exfiltrated sensitive data, including patient records, doctor consultations, billing information, and other Personally Identifiable Information (PII). This data was later found being sold on the dark web.

Investigations suggested that the initial access point for the hackers was facilitated by a compromised employee's credentials, raising concerns about insider threats and inadequate internal controls.

The consequences of the breach affect operational impact in which ABC Healthcare's systems were paralyzed for days, causing service disruption across hundreds of hospitals and clinics that depended on its health records system. Emergency healthcare services were significantly hampered, and patients could not access their medical records.

The company consulted a leading cybersecurity firm specializing in digital forensics. Also, the Indian bodies, including the Ministry of Health and Family Welfare and the Indian Computer Emergency Response Team, launched investigations into ABC Healthcare's cybersecurity practices. The company was penalized for not adhering to security standards required for handling sensitive health data and suggested the security audit of the company. The breach severely damaged ABC Healthcare's reputation, leading to a decline in investor confidence and loss of clients. Hospitals and healthcare providers began migrating to other, more secure platforms.

ABC Healthcare appoints the cyber experts for their recommendations in the security of the company data. The recommendations were : strengthening cybersecurity measures, timely and clear communication, streamline its internal reporting, third-party experts, preserve evidence, and ensure legal compliance, appointing a Data Protection Officer to oversee compliance, Training employees on cybersecurity threats.

With the guidance of cybersecurity experts, the company has committed to strengthening its defenses by implementing multi-factor authentication, advanced threat detection systems, and encryption practices, as well as enhancing its incident response and compliance with future legislative reforms. The newly implemented security measures improved ABC Healthcare's operational resilience.

By leveraging AI-powered threat detection and maintaining a trained cybersecurity team, ABC

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Healthcare was better equipped to handle emerging cyber threats. The company adopted a continuous improvement mindset, regularly updating its systems and protocols to adapt to the rapidly evolving cyber threat landscape.

In the above case scenario, answer the following questions :

- (a) Digital forensics is the process of uncovering and interpreting electronic data. In order for digital evidence to be accepted in a court of law, how it must be handled so that there is no opportunity for cyber criminals to tamper the evidence ?
(5 marks)
- (b) Security audit is systematic evaluation of the security of a company information System by measuring how well it adheres to an established set of criteria. Indian regulatory bodies recommend a security audit for ABC Healthcare. Explain the reasons for which security audit is being conducted.
(5 marks)
- (c) The Information Technology (Amendment) Act, 2008 was established to enhance the protection of personal data. Identify the relevant section(s) that prevent a company from claiming exemption when failing to maintain reasonable security practices.
(5 marks)
- (d) ABC Healthcare failed to safeguard their patients' data. What strategies can be implemented to create a secure cyber ecosystem according to the National Cyber Security Policy ?
(5 marks)
- (e) Under the IT Act and its related Rules, all intermediaries are required to report cybersecurity incidents to CERT-In. Explain the various tasks of the Computer Emergency Response Team.
(5 marks)

Answer 1(a)

The validity of digital evidence is scrutinized through three key aspects: relevancy, authenticity, and integrity. Firstly, the evidence must be pertinent to the case and have a clear connection to the facts being contested. Secondly, it should be authentic, meaning that it has not been altered or manipulated, and originates from a credible source. Lastly, the integrity of the evidence should be intact, indicating that it has remained unchanged since its collection.

In order for digital evidence to be accepted in a court of law, it must be handled in a very specific way so that there is no opportunity for cyber criminals to tamper with the evidence.

It consists of following five steps:

- (i) **Identification of Evidence:** It includes of identifying evidences related to the digital crime in storage media, hardware, operating system, network and/or applications. It is the most important and basic step.
- (ii) **Collection:** It includes preserving the digital evidences identified in the first step so that they don't degrade to vanish with time. Preserving the digital evidences is very important and crucial.
- (iii) **Analysis:** It includes analysing the collected digital evidences of the committed computer crime in order to trace the criminal and possible path used to breach into the system.
- (iv) **Documentation:** It includes the proper documentation of the whole digital investigation,

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digital evidences, loop holes of the attacked system etc. so that the case can be studied and analysed in future also and can be presented in the court in a proper format.

- (v) **Presentation:** It includes the presentation of all the digital evidences and documentation in the court in order to prove the digital crime committed and identify the criminal.

Answer 1(b)

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. 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.

Answer 1(c)

Section 43A of this Information Technology Act, 2000, 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.

Answer 1(d)

According to National Cyber Security Policy the strategies to create a secure cyber ecosystem are as under:

- (i) To designate a National nodal agency to coordinate all matters related to cyber security in the country, with clearly defined roles & responsibilities.
- (ii) To encourage all organizations, private and public to designate a member of senior management, as Chief Information Security Officer (CISO), responsible for cyber security efforts and initiatives.
- (iii) To encourage all organizations to develop information security policies duly integrated with their business plans and implement such policies as per international best practices. Such policies should include establishing standards and mechanisms for secure information flow (while in process, handling, storage & transit), crisis management plan, proactive security posture assessment and forensically enabled information infrastructure.
- (iv) To ensure that all organizations earmark a specific budget for implementing cyber security initiatives and for meeting emergency response arising out of cyber incidents.
- (v) To provide fiscal schemes and incentives to encourage entities to install, strengthen and upgrade information infrastructure with respect to cyber security.
- (vi) To prevent occurrence and recurrence of cyber incidents by way of incentives for technology

development, cyber security compliance and proactive actions.

- (vii) To establish a mechanism for sharing information and for identifying and responding to cyber security incidents and for cooperation in restoration efforts.
- (viii) To encourage entities to adopt guidelines for procurement of trustworthy ICT products and provide for procurement of indigenously manufactured ICT products that have security implications.

Answer 1(e)

The Computer Emergency Response Team (CERT-In) is the national nodal agency for collecting, analyzing, forecasting, and disseminating non-critical cybersecurity incidents. CERT-In cybersecurity directive helps with issuing guidelines for Indian organizations guidelines as well, offering the best information security practices for managing and preventing cybersecurity incidents. CERT-In acts as the primary task force that:

- (i) Analyzes cyber threats, vulnerabilities, and warning information.
- (ii) Responds to cybersecurity incidents and data breaches.
- (iii) Coordinates suitable incident response to cyber-attacks and conducts forensics for incident handling.
- (iv) Identify, define, and take suitable measures to mitigate cyber risks.
- (v) Recommend best practices, guidelines, and precautions to organizations for cyber incident management so that they can respond effectively.

Question 2

XY is a highly acclaimed Indian musician and composer, celebrated for his unique ability to blend traditional Indian music with modern technology. With a background in classical Indian music and cutting-edge music production techniques, XY has earned a reputation for creating innovative soundscapes that fuse ancient melodies with contemporary sounds.

XY composed a new melody titled "XY Symphony," a fusion of Indian classical raags and modern electronic elements. This composition was the center piece of his upcoming album and was expected to revolutionize Indian fusion music. XY took meticulous care to develop this melody, intending to keep its arrangement and specific musical notations confidential until the official release.

To protect his creation, XY trademarked "XY Symphony" and registered it with the Intellectual Property office. Non-disclosure agreements (NDAs) were signed by everyone involved to prevent leaks. Despite XY's precautions, a portion of the melody from "XY Symphony" was leaked. It later emerged that a former collaborator had used AI tools to analyze the melody, then applied AI-based music generation software to replicate and alter the original tune and released online through various streaming platforms.

The use of AI to reverse-engineer and modify XY's melody posed a significant threat to his intellectual property. The AI-altered song bore a striking resemblance to "XY Symphony," causing confusion among listeners and threatening XY's originality and market value. XY's legal team discovered that the AI-generated version of his melody had gained popularity and was being shared across digital platforms and claimed AI-generated song was entirely original.

XY filed a lawsuit under the Copyright Act of 1957, claiming that the AI-generated melody constituted an infringement of his original copyrighted work. XY also leveraged the Information Technology Act, 2000 (IT Act), focusing on the unauthorized access and misuse of digital data.

The court issued a temporary injunction, ordering the removal of the AI-generated song from digital platforms. The court also allowed for an independent examination of both XY's original melody and the AI-generated version to assess the degree of similarity.

XY's legal team sought financial damages for the unauthorized use of his melody and the potential loss of revenue due to the confusion caused by the AI-generated song.

The court ruled in XY's favour, concluding that the AI-generated melody was derived from the original "XY Symphony." The infringing artist and producer were ordered to compensate XY for damages and were prohibited from further distributing the song.

In the above case scenario, answer the following questions :

- (a) Digital Personal Data Protection Act holds considerable importance as a legislative measure aimed at safeguarding individuals' privacy rights. Its primary focus lies in regulating the collection, storage, processing and transfer of personal data in the digital landscape. What steps XY's legal team should follow, so that company can prepare for compliance with India's DPDP Act and protect personal data in line with regulatory guidelines ?

(5 marks)

- (b) XY's legal team also filed a case for unauthorized access and misuse of digital data under the IT Act, 2000. In the context of cyber crime, who is authorized to investigate these crimes and under which section of the IT Act this situation can be dealt ?

(5 marks)

- (c) While collecting digital evidences, who amongst the investigation team is responsible for ensuring that evidence is properly collected and preserved and that the chain of custody is properly maintained. Explain the functions performed by such investigating team members while discharging this responsibility.

(1+4=5 marks)

- (d) Automated content generation, data privacy and security, deep fakes, and manipulated content are some other issues posed by AI in safeguarding intellectual rights. Moreover, the use of AI increases various ethical concerns; therefore, there is a need to balance the benefits of AI with the protection of intellectual property rights by introducing appropriate frameworks. According to you if there is a requirement of amendment in laws due to the emergence of AI, what are the relevant provisions under IPR laws that require changes in context of XY musician and composer ?

(5 marks)

- (e) A former collaborator of XY used AI tools to analyze the melody and then employed AI-based music generation software to replicate and modify the original tune. In this context, write any ten most common tools and techniques used to conduct cyber crime.

(5 marks)

Answer 2(a)

By following the below steps, companies can prepare for compliance with India's The Digital Personal Data Protection Act, 2023 (DPDP Act) and protect personal data in line with regulatory guidelines:

- (i) Assess and build data privacy:
- Evaluate current compliance status.

- Create a phased action plan covering governance, technology, people, and processes.
- Establish a privacy organization with defined roles, including the DPO, especially if your entity's status is an SDF.
- (ii) Inventory personal data systems:
 - Identify critical data storage and processing systems.
- (iii) Identify data processors:
 - List third parties handling personal data.
 - Update agreements and communicate responsibilities.
- (iv) Draft DPDP Act-compliant documents:
 - Create approved data privacy policies and processes.
 - Update necessary documents.
 - Develop privacy notices, consent forms, and standard contract clauses.
- (v) Design consent mechanisms:
 - Define consent types.
 - Develop user-friendly consent processes.
 - Implement efficient consent management tools.
- (vi) Establish data principal rights handling:
 - Set up processes for addressing data principal rights.
 - Develop procedures for request handling.
 - Use tools for efficient rights management.
- (vii) Implement data breach response:
 - Create breach management processes.
 - Integrate with incident management. Define data retention periods:
 - Categorize data and align retention periods with requirements.
- (viii) Evaluate and implement privacy technologies:
 - Choose suitable tech solutions.
 - Assess compatibility and scalability.
 - Implement chosen solutions.
- (ix) Conduct communication and awareness programs:
 - Develop plans and materials.
 - Launch awareness initiatives.
 - Provide training to stakeholders.
- (x) Monitor government notifications:
 - Stay updated on Central Government notifications and any forthcoming rules under the Act.
 - Take necessary actions based on government directives.

Answer 2(b)

Who can Investigate?- The power to investigate the accused in regard to the cyber offences, has been entailed in Section 78 of the IT Act, which says that “notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Inspector shall investigate any offence under this Act”.

Nevertheless, the IT Act is not sufficient to meet the necessity, therefore the Criminal Procedure Code, 1973 and the Indian Penal Code, 1860, were also amended accordingly to introduce cyber-crime under their ambit. This gives power to the Inspector to register and investigate the cyber-crime as like another crime. Section 80 provides for the power of police officer and other officers to enter, search, etc. It says that notwithstanding anything contained in the Code of Criminal Procedure, any police officer, not below the rank of an Inspector or any other officer of the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act

Answer 2(c)

The Incident Coordinator amongst the investigation team is responsible for ensuring that evidence is properly collected and preserved and that the chain of custody is properly maintained.

The functions performed by the Incident Coordinator are as under:

- (i) The Incident Coordinator contact the other members of the response team as outlined in the Incident Response Policy, when an incident is reported.
- (ii) The Incident Coordinator will be responsible for ensuring that every detail of the incident-handling procedure is followed, upon arrival at the incident site.
- (iii) The Incident Coordinator will assign team members the various tasks outlined in the incident-handling procedure.
- (iv) The Incident Coordinator serve as the liaison to the legal team, law enforcement officials, management, and public relations personnel.

Answer 2(d)

Due to the emergence of Artificial Intelligence (AI), below are some of the sections that may require changes in the Intellectual Property Rights (IPR) related laws:

- (i) **Copyright:** AI-generated works may raise questions about authorship and ownership. Section 17 of the Copyright Act may need to be amended to address the issue of ownership of AI-generated works.
- (ii) **Patents:** AI technology can generate novel inventions that may require patent protection. Section 3(k) of the Patents Act may need to be reviewed to address the patentability of AI-generated inventions.
- (iii) **Trademarks:** AI systems can generate trademarks, which raises questions about the ownership and distinctiveness of such marks. Sections 9 and 11 of the Trademarks Act may require amendments to address these issues.
- (iv) **Trade Secrets:** AI technology can facilitate the disclosure and misappropriation of trade secrets. Section 2(1)(a) of the Trade Secrets Act may need to be amended to clarify what constitutes a trade secret in the context of AI.

- (v) **Enforcement:** The use of AI can make it difficult to detect and enforce IPR violations. Section 53 of the IPR Act may need to be amended to address these challenges and to ensure that appropriate enforcement mechanisms are in place.

Answer 2(e)

Cyber criminals make use of various tools and techniques, yet the following are the most common tools and techniques used recently to conduct cybercrimes:

- (i) **Buffer Overflow:** The condition when a program or process tries to store more data in a buffer (temporary data storage area) than it was intended to hold. Since buffers are created to contain a finite amount of data, the extra information - which has to go somewhere can overflow into adjacent buffers, corrupting or overwriting the valid data held in them.
- (ii) **Cracking:** Cracking is breaking into someone else's computer system, often on a network; bypassing passwords or licenses in computer programs; or in other ways intentionally breaches computer security. A cracker can be doing this either for profit, or maliciously, or for some altruistic purpose or cause.
- (iii) **Data Diddling:** Involves altering the raw data just before a computer processes it and then changing it back after processing is completed.
- (iv) **Malware:** A program that is inserted into a system, usually covertly, with the intent of compromising the confidentiality, integrity, or availability of the victim's data, applications, or operating system or of otherwise annoying or disrupting the victim.
- (v) **Phishing:** Using spoof E-mails or directing the people to fake web sites to deceive them into divulging personal financial details so that criminals can access their accounts.
- (vi) **Rootkit:** A set of tools that enables continued privileged access to a computer, while actively hiding its presence from the administrator. Typically, a cracker installs a rootkit on a computer after first obtaining user-level access, either by exploiting a known vulnerability or cracking a password. Once the rootkit is installed, it allows the attacker to mask intrusion and gain root or privileged access to the computer and, possibly, other machines on the network.
- (vii) **Salami Attack:** A programmed attack which is implemented in small (meant to be unnoticeable) increments. This attack involves making alteration so insignificant that it is easily concealed and would go completely unnoticed. Attacks are used for commission of financial crimes.
- (viii) **Sniffer:** A program and/or device that monitors data traveling over a network. Sniffers can be used both for legitimate net-work management functions and for stealing information off a network. Unauthorized sniffers can be extremely dangerous to a network's security because they are virtually impossible to detect and can be inserted almost anywhere.
- (ix) **Social Engineering:** A hacker term which involves non-technical intrusion for deceiving or manipulating unwitting people into giving out information about a network or how to access it.
- (x) **Spoofing:** Refers to a situation in which the incoming information from an attacker is masqueraded as one that appears to come from a trusted source to the recipient or to the recipient network. Often the messages from the fraudster appearing to be from a genuine source (like bank), seeks personally identifiable information to perpetrate fraud on the victim.
- (xi) **Spyware:** It is a type of malware that is secretly or surreptitiously installed into an information system to gather information on individuals or organizations without their knowledge; a type of malicious code.

- (xii) **Steganography:** The art and science of writing hidden messages in such a way that no one, apart from the sender and in-tended recipient, suspects the existence of the message. An image file may contain hidden messages between terror groups, which will be known only to the intended recipient and the sender.
- (xiii) **Trojan:** A malicious program that masquerades as a benign application and can take complete control of the victim's computer system.
- (xiv) **Virus:** A self-replicating program that runs and spreads by modifying other programs or files.
- (xv) **Worm:** A self-replicating, self-propagating, self-contained program that uses networking mechanisms to spread itself.
- (xvi) **Zombie:** A program that is installed on a system to cause it to attack other systems.
- (xvii) **AI-Driven Phishing:** AI-generated phishing emails, messages, or websites that are highly convincing and targeted.
- (xviii) **Deepfake Attacks:** AI-generated fake audio, video, or images used for social engineering, extortion, or reputation damage.
- (xix) **Botnets with AI:** AI-powered botnets that can learn, adapt, and launch more sophisticated attacks.
- (xx) **AI-Powered Chatbots:** AI-driven chatbots that can engage in convincing conversations, tricking victims into divulging sensitive information.
- (xxi) **AI-Powered Voice Phishing:** AI-generated voice calls that mimic legitimate individuals or organizations to trick victims.

Question 3

Mr. RK a prominent share broker in Mumbai, invests heavily in the Indian stock market. He has been in the stock trading industry for over 15 years, utilizing cutting-edge technology to analyze stock patterns, predict trends, and maximize profits. Over the past five years, he incorporated data analytics, cloud computing, and advanced security measures into his trading operations. He stores his data on Amazon Web Services (AWS) and uses a setup of high-end computers and a multi-screen workstation, allowing them to monitor multiple stock markets simultaneously. Each computer is interconnected through a secure internal network. He employs data analytics software to analyze vast amounts of historical stock data, recognize patterns and predict potential market movements. He uses a combination of proprietary algorithms and publicly available software.

Given the sensitive nature of the stock market and financial transactions, Mr. RK has implemented strong software security measures. His systems run on antivirus software, intrusion detection systems (IDS), and network traffic monitoring tools to detect and prevent cyber threats.

One day, while Mr. RK was engaged in a high-volume trading session, their network experienced a severe system crash. Due to an unforeseen technical glitch in their software, critical files and stock data stored on both their local systems and the cloud became corrupted. He tried to recover the data from local backups, but due to a faulty backup process, these backups were also compromised. He noticed that the real-time trading algorithms stopped working correctly, and they lost access to vital historical data, market trends, and live trading statistics. This posed a significant risk to their ongoing trading operations, as they relied heavily on data-driven decisions to execute trades.

Mr. RK immediately halted all trading activities to prevent any more losses due to the lack of data. Recognizing the gravity of the situation, he quickly contacted his IT team and a data recovery specialist. Since a large portion of their data was stored on cloud services, Mr. RK contacted AWS

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support to initiate a data recovery process. AWS was able to restore part of the data from their disaster recovery backups, but some of the more recent data was irretrievable. For the local systems, the data recovery team used specialized software tools to attempt to retrieve the corrupted data, but it took several days to piece it together and verify its integrity.

Mr. RK learned several critical lessons from the data loss incident. The primary realization was the need for more robust backup solutions. They decided to invest in a more reliable backup infrastructure, ensuring that both local and cloud backups were updated regularly and tested for accuracy. They implemented redundancy protocols, including off-site backups stored in a different physical location, and automatic daily backups on a separate cloud service. Additionally, they upgraded their security measures, adding real-time monitoring for potential software glitches and a failover system that could automatically switch to a backup server in case of any failure in the primary system.

In the above case scenario, answer the following questions :

- (a) Mr. RK utilizes data analytics tools to analyze and predict stock trends, aiming to make well-informed investment decisions. Suggest some useful data analytics tools to Mr. RK for help him in the analysis. (5 marks)
- (b) In the digital age, the risk of unethical or illegal use of consumers' data without their consent can severely damage consumer trust in a brand. It is therefore essential for the digital economy to address these issues alongside cybersecurity threats. Upholding ethical standards is crucial for preventing both internal and external threats. To support this statement, explain the role of digital ethics in data storage with regard to Mr. RK stock trading. (5 marks)
- (c) Mr. RK and his team are seeking a comprehensive cloud computing model that provides hardware, software, and infrastructure for creating, deploying, and managing share trading applications for their customers. As a cloud expert suggest them the best cloud services for this purpose and outline their advantages. (1+4=5 marks)
- (d) To safeguard sensitive data, Mr. RK utilizes network security devices for all his trading and analytics software. As a network analyst, recommend him an appropriate network security device that monitors and filters incoming and outgoing network traffic based on an organization's previously established security policies. (5 marks)
- (e) During trading, due to an unforeseen technical glitch in the software, Mr. RK lost access to vital historical data, market trends, and live trading statistics. As a security consultant suggest any two higher success rate, paid data recovery tools to Mr. RK, that can recover data from more complex situations, such as damaged or corrupted files. (5 marks)

Answer 3(a)

Some of the Data Analytics Tools for Data Analysis are as under:

- (i) **Microsoft Excel:** Microsoft Excel is spreadsheet software used in data analysis.
- (ii) **Programming Languages:** Data analysts often interact with raw programming languages to transform and manipulate databases. Opensource language, which is a programming

language that can be freely used and modified by users, for example Python, are often utilized. More specific tools for data analytics like R can be used for statistical analysis or graphical modeling.

- (iii) **Tableau:** Tableau is data visualization and analysis tool to compile information, perform data analytics, and distribute results via dashboards and reports.
- (iv) **Power BI:** Power BI is also a data visualization and analysis tool to compile information, perform data analytics, and distribute results via dashboards and reports.
- (v) **Statistical Analysis System (SAS)** is an analytics platform that can assist with data mining, while Apache Spark is an open- source platform useful for processing large sets of data.

Answer 3(b)

Role of Digital Ethics in Data Storage: The digital advancements have undoubtedly enhanced the business opportunities for companies by enabling them to compete and thrive. However, they must realize and strive toward transparent operations, ethical practices, and protection of privacy. Similar to any other field of work like medicine or accounts, the Information Technology (IT) sector also needs a strict set of codes and ethics. The strict guidelines will ensure more stringent legal requirements. Presently, in IT the codes of ethics are not as standard as in other professional careers which makes it difficult to regulate them. Customer Relationship Management (CRM) tools and other software are immensely useful to collect volumes of data from clients. This has made it necessary to implement ethical guidelines to decide what to do with that data. Companies need to draw a line between what information is ethical to collect and what violates the privacy of clients.

Answer 3(c)

The best cloud service to Mr. RK is Platform-as-a-Service (PaaS). PaaS, is a cloud computing model that offers customers a full cloud platform-including hardware, software, and infrastructure for creating, deploying, and managing applications without the expense, complexity, and rigidity that frequently accompany building and maintaining that platform on-premises. Without the hassles of updating the operating system, development tools, or hardware, PaaS offers everything developers require for application development. Instead, a third-party service provider uses the cloud to supply the whole PaaS environment or platform. Amazon Web Services (AWS) and Google Cloud Platform (GCP) are examples of best cloud services.

Some of the advantages of using Cloud Services for share trading applications are as under:

- (i) **Simplified Development:** PaaS allows developers to focus on development and innovation without worrying about infrastructure management.
- (ii) **Lower Risk:** No need for up-front investment in hardware and software. Developers only need a PC and an internet connection to start building applications.
- (iii) **Prebuilt Business Functionality:** Some PaaS vendors also provide already defined business functionality so that users can avoid building everything from very scratch and hence can directly start the projects only.
- (iv) **Instant Community:** PaaS vendors frequently provide online communities where the developer can get the ideas to share experiences and seek advice from others.
- (v) **Scalability:** Applications deployed can scale from one to thousands of users without any changes to the applications.

- (vi) **Reliability and Uptime:** Cloud services provide high levels of redundancy and failover capabilities, ensuring that applications remain available and accessible.
- (vii) **Advanced Security:** Cloud services provide advanced security features, such as encryption, access controls, and threat detection, to protect sensitive data and prevent unauthorized access.
- (viii) **Cost-Effectiveness:** Cloud services can help reduce costs by eliminating the need for upfront capital expenditures and providing a pay-as-you-go pricing model.
- (ix) **Real-Time Data Processing:** Cloud services can handle large volumes of real-time data, enabling share trading applications to provide timely and accurate information to users

Answer 3(d)

A Firewall is a network security device that monitors and filters incoming and outgoing network traffic based on an organization's previously established security policies. Appositely, it is a barrier that stands between a private internal network and the open internet at its most basic level. Firewalls exclude unwanted and undesirable network traffic from entering the organization's systems. Depending on the organization's firewall policy, the firewall may completely disallow some traffic or all traffic, or it may perform a verification on some or all of the traffic.

Firewalls can carry out fast assessments to detect intrusive or suspect behaviour, such as malware, and can be configured to act on previously specified policies to further safeguard a network. Network can be configured with precise policies to allow or prohibit incoming and outgoing traffic by using a firewall as security infrastructure.

Answer 3(e)

Paid data recovery tools offer more advanced functionality and can often recover data from more complex situations, such as damaged or corrupted files. These tools are typically more expensive than free tools, but they offer a higher success rate for data recovery.

Two paid Data Recovery Tools are:

- (i) **Stellar Data Recovery:** Stellar Data Recovery is a paid data recovery tool that can recover data from a variety of sources, including hard drives, Solid State Drives (SSDs), and mobile devices. It offers advanced features such as disk imaging, which allows users to create a backup of their hard drives before attempting recovery.
- (ii) **R-Studio:** R-Studio is a paid data recovery tool that can recover data from a variety of sources, including hard drives, Solid State Drives (SSDs), and Redundant Array of Independent Disks (RAID) systems. It offers advanced features such as disk imaging, remote data recovery, and support for virtual machines.
- (iii) **EaseUS Data Recovery Wizard:** It retrieves lost data from deleted, formatted, or corrupted partitions, hard drives, and storage devices. It detected the virtual drives and ran scans in seconds. In our first test, EaseUS Data Recovery Wizard lived up to its name, as it was able to retrieve all of the files on the drive which had previously been deleted from the Recycle Bin.
- (iv) **Recuva:** A comprehensive file recovery tool that can recover deleted files, including emails, documents, and images. Recuva can recover pictures, music, documents, videos, emails or any other file type you've lost. And it can recover from any rewriteable media you have: memory cards, external hard drives, USB sticks. Unlike most file recovery tools, Recuva can recover files from damaged or newly formatted drives. Greater flexibility means greater chance of recovery. For those hard to find files, Recuva has an advanced deep scan mode that scours your drives to find any traces of files you have deleted.

Question 4

TG Manufacturing Ltd. is an Indian multinational manufacturing company specializing in industrial components and consumer products. The company has a network of warehouses spread across multiple locations to handle its diverse inventory. Established in 1985 by Mr. RS, the company initially thrived under traditional manufacturing practices. However, by the mid-2010s, TG began to struggle due to outdated technology, stagnant growth, and operational inefficiencies.

In 2022, the leadership of TG passed to Mr. RS's son, Mr. M, who sought to modernize and transform the company. Mr. M's vision was to leverage advanced information systems and technology to drive growth, improve operational efficiency, and foster collaboration with other businesses. TG implemented Oracle Database to manage and consolidate data from various sources, enabling efficient data handling and analysis across different warehouses.

Mr. M introduced the decision support system, a tool that provides real-time dashboards and analytical reports, allowing the management team to make informed decisions based on data trends and forecasts. To enhance its market presence, TG adopted the digital marketing strategy software that supports content management, email marketing, and social media campaigns, helping the company reach a broader audience and increase brand visibility.

TG utilized AWS Backup for remote data recovery. 'This cloud-based solution ensures that critical data is securely backed up and can be quickly restored in case of system failures or data loss. For secure and transparent transactions, TG implemented the blockchain technology helps in maintaining an immutable ledger of transactions and verifying the authenticity of product information throughout the supply chain and also accept the cryptocurrency in transactions. The company adopted Microsoft office software to streamline office automation. This system enhances productivity through tools like Word, Excel, and Teams, which support collaboration, document management, and efficient communication.

Mr. M implemented a ERP system software, SAP to integrate various business functions such as finance, procurement, manufacturing, and human resources. The ERP system supports day-to-day operations, improves process efficiency, and offers real-time analytics. Recent trends like AI-driven automation and cloud integration were utilized to enhance ERP capabilities. To expand its market reach, TG transitioned to e-commerce using open-source e-commerce platform. This platform supports online sales, integrates with inventory and CRM systems, and offers a customizable interface for a seamless customer experience. For electronic funds transfers, TG integrated Stripe for secure online transactions and blockchain technology for cryptocurrency payments, facilitating faster and more secure financial transactions.

The transformation led by Mr. M significantly modernized TG Manufacturing Ltd. The adoption of advanced information systems and technologies streamlined operations, improved data management, and enhanced decision-making capabilities. Digital marketing efforts boosted the company's online presence, while blockchain technology provided transparency and security in transactions. The implementation of ERP and office automation systems further enhanced operational efficiency, and the shift to e-commerce opened new revenue channels. With these advancements, TG Manufacturing Ltd. is better positioned for growth and competitive advantage in the global market.

In the above case scenario, answer the following questions :

- (a) Mr. M seeks interactive software solutions capable of accessing and analysing the extensive data generated by multiple interconnected information systems within organizational processes. These solutions should assist managers in making informed decisions. As a IT

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consultant, suggest the suitable decision support systems that help managers to take the decisions for market analysis and keep track of major aspects of business.

(5 marks)

- (b) Many companies tried to deploy a single ERP system for both the headquarters and all regional offices and subsidiaries. But in practice, that approach was often costly and extremely challenging to implement. Company is looking for a strategy that allows organizations to maximize their investment in existing ERP systems at the corporate level, while enabling subsidiaries and divisions to use a different ERP solution. Which type of cloud-based ERP system will be suitable for, TG Manufacturing company that meets its requirements and why?

(5 marks)

- (c) TG Manufacturing Ltd. also accepting cryptocurrency systems for maintaining a secure and decentralized record of transactions. Describe the transaction process of TG Manufacturing in blockchain technology to ensure secure and transparent transaction records.

(5 marks)

- (d) TG Manufacturing Ltd. is also launching a mobile commerce (m-commerce) platform that allows users to access online shopping platforms without the need for a desktop computer. E-commerce and m-commerce are similar, but they come with a few distinctions from each other. Explain the distinctions between m-commerce and e-commerce to TG Manufacturing company.

(5 marks)

- (e) Internet Protocols are a set of rules that governs the communication and exchange of data over the internet. Both the sender and receiver should follow the same protocols in order to communicate the data. Explain the internet protocol used for secure remote login and other secure network services ?

(5 marks)

Answer 4(a)

Types of Decision Support System are as under:

- (i) **Information Analysis System:** In this system data is analyzed and the information report is generated. For example sales analysis, account receivable system, market analysis etc.
- (ii) **Accounting System:** It keeps track of accounting and finance related information. For example final account receivables, account payables etc. that keep track of the major aspects of the business.
- (iii) **Data Analysis System:** It need comparative analysis and make use of formula or an algorithm for examples cash flow analysis, inventory receivable system, market analysis etc.
- (iv) **Model Based System:** Simulation models or optimization models used for decision making are used infrequently and creates general guidelines for operation or management.

Answer 4(b)

The cloud based ERP system which is suitable for TG Manufacturing Company is Two-Tier Enterprise Resource Planning (ERP).

Historically, many companies tried to deploy a single ERP system for both the headquarters and all regional offices and subsidiaries. But in practice, that approach was often costly and extremely

challenging to implement; subsidiaries often had specialized requirements which didn't need the full functionality of the corporate system and struggled with the one-size-fits-all approach.

Two-tier ERP is a strategy that enables organizations to leverage their investment in existing ERP systems at the corporate level (Tier 1), while subsidiaries and divisions operate using a different ERP solution (Tier 2), which is often cloud-based.

Larger companies may continue to use their core ERP system for financials and other core processes, while smaller business units turn to solutions that address their specialized needs. The effectiveness of this approach depends in part on the ability to exchange data between the tiers-- some Tier 2 cloud solutions include built-in capabilities for integration with corporate ERP systems. There are a number of benefits to this approach. It's often less costly than retrofitting the corporate ERP system to work for the entire business. A tier 2 solution may be simpler to implement and provide subsidiaries with more flexibility to respond to changing business conditions. In addition, the two tiered approach may be better suited for organizations in high-growth mode. As Gartner puts it, large organizations should "assess whether a two-tier ERP strategy would offer more business benefit than a single-tier one, especially by modernizing small, potentially fast-growing business units."

Businesses that adopt two-tier ERP often encounter complex organizational circumstances. They may require seamless integration or complete separation of systems while engaging in a merger, acquisition, and divestiture. Other situations may call for the entire organization to adapt to a new business model or comply with a diverse series of regulatory and industry requirements.

While there are many reasons for leveraging the strategy, the appeal ultimately comes down to five critical reasons:

- (i) **Urgency:** In situations requiring quick ERP implementation, such as mergers and acquisitions, a two-tier approach allows for a phased deployment, which minimizes disruption.
- (ii) **Fit:** Two-tier ERP enables organizations to select industry-leading solutions and capabilities that align with specific business requirements, leading to improved operational efficiency.
- (iii) **Independence:** Despite concerns about losing independence, two-tier ERP can provide the same level of autonomy as a single ERP system when properly integrated and managed.
- (iv) **Geopolitics:** Regulatory requirements often vary by region. Two-tier ERP helps companies comply with these regulations by deploying region-specific ERP systems.
- (v) **Inheritance:** Acquired subsidiaries may have one or more pre-existing ERP systems that differ from their new company's ERP. The two-tier approach allows for the integration of both businesses' ERPs, creating a unified IT landscape.

Answer 4(c)

Transaction Process in Block Chain Technology: Transactions follow a specific process, depending on the blockchain they are taking place on. For example, on Bitcoin's blockchain, if initiate a transaction using own cryptocurrency wallet - the application that provides an interface for the blockchain-it starts a sequence of events.

In Bitcoin, the transaction is sent to a memory pool, where it is stored and queued until a miner or validator picks it up. Once it is entered into a block and the block fills up with transactions, it is closed and encrypted using an encryption algorithm. Then, the mining begins.

The steps of Transaction Process in Block Chain Technology are as under:

- (i) A new transaction is entered.
- (ii) The transaction is then transmitted to a network of peer to peer computers scattered across

the world.

- (iii) This network of computer then solves equation to confirm the validity of the transaction.
- (iv) Once confirmed to the legitimate transaction, they are clustered together in blocks.
- (v) These blocks are then chained together creating a long history of all transactions that are permanent.
- (vi) The transaction is complete.

The entire network works simultaneously, trying to “solve” the hash. Each one generates a random hash except for the “nonce,” short for number used once. Every miner starts with a nonce of zero, which is appended to their randomly-generated hash. If that number isn’t equal to or less than the target hash, a value of one is added to the nonce, and a new block hash is generated. This continues until a miner generates a valid hash, winning the race and receiving the reward. Once a block is closed, a transaction is complete. However, the block is not considered to be confirmed until five other blocks have been validated.

Answer 4(d)

M-commerce vs. E-commerce: Electronic commerce, or e-commerce refers to buying and selling goods and services over the internet. M-commerce, or mobile commerce, refers to buying and selling goods and services over the internet using handheld devices like mobiles or tablets. E-commerce and Mobile Commerce (M-commerce) are similar, but they come with a few distinctions from each other, such as the following:

- (i) **Mobility:** E-commerce transactions can be conducted through a desktop computer where the user is in a fixed spot. This reduces mobility as it can be difficult to move around a desktop device. M-commerce offers greater mobility as it’s conducted through handheld devices that can be used anywhere provided that there is an internet connection, including buses, trains and airplanes or even when exercising at the gym.
- (ii) **Location tracking:** Many e-commerce apps make use of location tracking capabilities to pitch users’ opportunities based on their location. However, the location tracking capability of e-commerce is limited when it is used with a non-mobile device. For example, the location of an e-commerce shopper is tracked with their Internet Protocol (IP) address. While the IP address provides a broad region of the user’s location, it is not capable of identifying the exact location, which might affect the targeted advertising strategies of a business. M-commerce apps, on the other hand, can track locations using Wireless Fidelity (Wi-Fi) and Global Positioning System (GPS) based technologies that enable location-specific content and personalized recommendations. For instance, a provider can send push notifications offering personalized discounts that target certain customers as they walk past a specific store in a mall.
- (iii) **Security:** Credit cards are still commonly used for non-mobile e-commerce payments. They are considered riskier than other online payment methods, even with security measures, such as multifactor authentication. Most data breaches and identity thefts happen because of credit card misuse. M-commerce closes some security gaps through the addition of measures such as biometric authentication, mobile wallets, quick response or Quick Response (QR) codes and even cryptocurrencies.
- (iv) **Reachability and convenience:** M-commerce makes it easier to reach a target audience. With mobile apps, businesses can reach more people and make their buying experience easier and faster.

Answer 4(e)

Secure Shell (SSH): SSH 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 Secure Copy (SCP) and Secure File Transfer Protocol (SFTP). 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.

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