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ICSI GUIDELINE ANSWERS



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GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2017

Padhai Kar Befikar

DECEMBER 2024

MODULE 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

December Session

June Session

Applicability of Amendments to Laws

upto 31 May of that Calendar year

upto 30 November of previous Calendar Year

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GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

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MODULE 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Diwanji & Co., a listed company has thirteen Directors. Out of thirteen directors, ten directors have given their general consent, at the beginning of the financial year. i.e., in the month of April, to give Notes on items of Agenda, which are in the nature of Unpublished Price Sensitive Information (UPSI) at short notice. In the month of August, two new Directors were appointed.

In light of the above facts, answer the following questions :

- Decide how to obtain consent from newly appointed Directors ? What if they dissent or do not give consent ?
- If four out of fifteen Directors are interested in the Resolution, who will be the deciding Authority, for passing the Resolution by circulation ?
- If, out of the Board strength of fifteen Directors, eight Directors communicate their assent to the draft of the resolution, shall the Resolution be considered as passed ? Answer discussing the approval procedure of passing the Resolution.
- The Board of Directors decides to hold the meeting of the Board through video conferencing company seeks your advice on the process of conducting Board meeting through video conferencing.

Answer 1(a)

Normally the Notes on each item of business included in the Agenda of a Board Meeting shall be given to the Directors atleast seven days before the date of the Meeting (or a longer period if specified in the Articles). On items of business which are in the nature of Unpublished Price Sensitive Information (UPSI), the Notes may be given at a shorter period of time than stated above with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

In the present case, if two new Directors are appointed, consent from the new Director to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained individually. If both of the new Directors give their consent, no fresh consent from the Board would be needed.

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However, in case, any new Director dissents or does not give his consent, fresh consent should be taken from the majority of the enlarged Board.

Answer 1(b)

The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration only at a Meeting of the Board.

However, Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

In the present case, for the purpose of reckoning the 1/3rd number, the total number of Directors should be taken as 15 and not 11 (15-4 Interested Directors). Thus, if 5 Directors (1/3rd of 15), (which number may include Interested Directors), require the Resolution under circulation to be decided at a Meeting only, the Resolution by circulation should not be proceeded with. However, this does not mean that the Interested Directors shall be entitled to participate and vote when the said item of business is taken up at a Meeting of the Board.

Answer 1(c)

The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote of the particular Director(s).

The Resolution, if passed, shall be deemed to have been passed on the earlier of:

- (a) the last date specified for signifying assent or dissent by the Directors, or
- (b) the date on which assent has been received from the required majority,

Provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board only, shall not be one third or more of the total number of Directors;

and shall be effective from that date, if no other effective date is specified in such Resolution.

The Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e- mail or any other electronic means. In case a Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the said Director has abstained from voting. If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

In the present case, the majority of the Directors have signified their assent. However, the Resolution shall not be considered as passed until the stipulated last date has expired, or, if ahead of the said date, three more Directors have also signified their assent/dissent so that the possibility of 1/3rd asking for a physical Meeting is no longer possible.

Answer 1(d)

Section 173(2) of Companies Act, 2013 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio-visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio-visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio-visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure availability of proper video conferencing for effective participation of the directors and other authorized participants at the Board meeting;
 - (c) to record proceedings and prepare the minutes of the meeting; and to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism
 - (d) to ensure that participants are able to hear and see the other participants clearly during the course of the meeting.
 - (e) to ensure that no persons other than the concerned director are attending or having access to the proceedings of the meeting. Provided a director who is differently abled may make a request to the Board to allow a person to accompany him/her.
3. (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
(b) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year.
4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audiovisual means shall state, for the record, the following namely:
 - a) name;
 - b) the location from where he is participating;
 - c) that he has received the agenda and all the relevant material for the meeting; and
 - d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b).
5. After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

A director participating in a meeting through video conferencing or other audio-visual

means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

6. With respect to every meeting conducted through video conferencing or other audiovisual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
7. Where Statutory Registers are to be signed by the Directors, the same shall be deemed to have been signed by the Directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

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

Question 2

- (a) NPF Ltd. had an average net profit of ₹ 10 crore, consecutively in last three financial years. Complying the section 135 of Companies Act, 2013, company ensured to spend ₹ 20 lakh per annum on CSR activities. NPF Ltd ended up spending as below :
 - (i) 1st Financial year – The company made contributions to the funds for the welfare of scheduled castes, tribes, other backward classes, minorities and women ₹ 20 lakh;
 - (ii) 2nd Financial year – The company made contributions to technology incubators located in academic institutions ₹ 15 lakh; and
 - (iii) 3rd Financial year – The company made expenses in Slum area development ₹ 10 lakh.

Company seeks exemption for Constitution of Social Responsibility Committee. Advise the company.
- (b) Mr. X is the Chairman and CEO of Lee Logistic Company. The company is interested to introduce good practices to enhance Board effectiveness, for which they appointed you as their Company secretary. They seek your advice whether separation of role of Chairman and Chief Executive Officer will be a good practice to enhance Board effectiveness ? Advise them.
- (c) What are the provisions for Governance of Group Entities and Subsidiaries ?

(5 marks each)

Answer 2(a)

Section 135 (1) read with rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates that every company which fulfils any of the following criteria during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director-

- Companies having net worth of rupees five hundred crore or more, or
- Companies having turnover of rupees one thousand crore or more or
- Companies having a net profit of rupees five crore or more.

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

In the present case the amount spent by NPF Ltd. In each of the last three preceding years was less than 50 lakhs. Hence constitution of the Corporate Social Responsibility Committee shall not be applicable for any of these years. Functions of such committee shall be discharged by the Board of Directors of NPF Ltd.

Answer 2(b)

The Chairman's role includes

- demonstrating ethical leadership;
- setting a board agenda which is primarily focused on strategy, performance, value creation and accountability, and ensuring that issues relevant to these areas are reserved for board decision;
- ensuring a timely flow of high-quality supporting information; regularly considering succession planning and the composition of the board.
- Ensuring effective communication with shareholders.

As per Section 2(18) of the Companies Act, 2013 "Chief Executive Officer" means an officer of a company, who has been designated as such by it.

Chief Executive Officer's main responsibilities include:

- developing and implementing high-level strategies;
- making major corporate decisions;
- managing the overall operations and resources of a company, and
- acting as the main point of communication between the board of directors and the corporate operations.

He is involved with every aspect of the company's performance. The CEO is supported and advised by a skilled board and CEO is ultimately accountable to the board for his actions. The most important skill of a CEO is to think strategically.

Separation of Role: It is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

The benefits of separation of roles of Chairman and CEO can be:

1. Better Communication to Management: A separate chairman provides a more effective channel for the board to express its views on management
2. Guidance: A separate chairman can provide the CEO with guidance and feedback on his/her performance
3. Shareholders' interest: The chairman can focus on shareholder interests, while the CEO manages the company
4. Governance: A separate chairman allows the board to more effectively fulfill its regulatory requirements
5. Long-Term Outlook: Separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability

6. Succession Planning: A separate chairman can more effectively concentrate on corporate succession plans.

Answer 2(c)

Group companies create a complex organizational structure resulting in a complicated governance environment. Boards have a fiduciary duty to work in the best interests of the company. The holding company often nominates its director or officers as directors on the subsidiary company. It is difficult for the board of the subsidiary to act in its own interest alone. Subsidiaries may be categorized in terms of level of investment, strategic importance and risk to the group and appropriate governance mechanism established. To protect the interests of shareholders of holding company and minority shareholders of subsidiary certain provisions have been put in place both by the Companies Act, 2013 and SEBI (LODR).

Board: At least one independent director on the board of directors of the listed company shall be a director on the board of directors of any unlisted material subsidiaries including foreign companies. The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed company. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. Significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent (10%) of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year. (Regulation 24).

Consolidated Financial Statements: If a company has one or more subsidiaries, associate companies or Joint Ventures, it shall prepare a consolidated financial statement of the company and of all the subsidiaries, associate companies and joint venture in the same form and manner as that of its own. In addition to the standalone financial statements of the holding company, a consolidated financial Statement of holding company is to be published to disclose details about subsidiary, associate Companies and Joint ventures. (Sec 129) The Balance sheet of holding company shall specifically disclose investments in the subsidiaries. The Profit and Loss account of Holding company shall disclose (a) Dividends from subsidiary Companies and (b) Provisions for losses of subsidiary Companies. (Schedule III) The holding Company is required to:

- (a) Place separate audited accounts in respect of each of its subsidiary on its website and
- (b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the Company who asks for it. (Section 136)

On the other hand, the balance sheet of subsidiary company should disclose shares held by its holding company or its ultimate holding Company, or subsidiaries and associates of the holding company and the ultimate holding Company. (Schedule III)

Audit and Audit Committee: The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity. Besides audited annual consolidated statements, at least eighty percent of the quarterly consolidated financial results, of each of the consolidated revenue, assets and profits, respectively, shall have been audited or subjected to limited review.

(Regulation 33) The audit committee of the listed company shall also review the financial statements, of subsidiaries in particular, the investments made by the unlisted subsidiary.

(Regulation 24) The board of a holding company can authorize anyone to Inspection of books of account of any subsidiary company. (Section 128)

Material Subsidiary: The listed company shall not dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting. Exception has been granted for divestment under a scheme of arrangement duly approved by a court/ tribunal (Regulation 24).

Selling, disposing and leasing of assets amounting to more than twenty percent (20%) of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/ disposal/ lease is made under a scheme of arrangement duly approved by a Court/ Tribunal (Regulation 24).

Every listed entity's material unlisted subsidiary incorporated in India shall undertake secretarial audit and shall annex the report with its annual report. (Regulation 24A).

This will help improve compliance of group as a whole. The policy on material subsidiary shall be disclosed in the company's web site and in the annual report of the company or a web link provided in the annual report. These regulations ensure that shareholders of the holding company can monitor subsidiaries whose performance affects the performance of their company even if they are unlisted.

OR (Alternative question to Q. No. 2)

Question 2A

- (i) Discuss the role of Independent Directors in better Corporate Governance. Can Independent directors be made liable for their act and duties ?
- (ii) You have been appointed as a Secretary of a Company, incorporated a fortnight ago. What would be the agenda for the first meeting of the Board of Directors ?
- (iii) The Caux Round Table's (CRT) Stakeholders Management Guidelines supplement the CRT Principles, for Responsible Business with more specific standards, for engaging with key stakeholder constituencies. Who are these stakeholders and what are the guidelines for each stakeholder ?

(5 marks each)

Answer 2A(i)

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and ensure that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interests of all stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where

necessary recommend removal of executive directors, key managerial personnel and senior management;

- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

Liability of Independent Directors

Section 149(12) of the Companies Act, 2013 provides that an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

Regulation 25(5) of SEBI (LODR) Regulations, 2015 provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations.

Also Regulation 25(10) provides that with effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

Answer 2A(ii)

List of items of business for the Agenda for the First Meeting of the Board of the company

- (1) To appoint the Chairman of the Meeting.
- (2) To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
- (3) To take note of the Memorandum and Articles of Association of the company, as registered.
- (4) To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarized copy of lease / rent agreement in the name of the company.
- (5) To note the first Directors of the company.
- (6) To read and record the Notices of disclosure of interest given by the Directors.
- (7) To consider appointment of Additional Directors.
- (8) To consider appointment of the Chairman of the Board.
- (9) To consider appointment of the first Auditors.
- (10) To adopt the Common Seal of the company, if any.
- (11) To appoint Bankers and to open bank accounts of the company.
- (12) To authorise printing of share certificates and correspondence with the depositories, if any.
- (13) To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
- (14) To approve and ratify preliminary expenses and preliminary agreements.
- (15) To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

Answer 2A(iii)

The Caux Round Table's (CRT) Stakeholder Management Guidelines supplement the CRT Principles for Responsible Business with more specific standards for engaging with key stakeholder constituencies. The key stakeholder constituencies are those who contribute to the success and sustainability of business enterprise. Customers provide cash flow by purchasing goods and services; employees produce the goods and services sold; owners and other investors provide funds for the business; suppliers provide vital resources; competitors provide efficient markets; communities provide social capital and operational security for the business; and the environment provides natural resources and other essential conditions. In turn, key stakeholders are dependent on business for their well-being and prosperity. They are the beneficiaries of ethical business practices.

1. **Customers:** A responsible business treats its customers with respect and dignity. Business therefore has a responsibility to:
 - (a) Provide customers with the highest quality products and services consistent with their requirements.
 - (b) Treat customers fairly in all aspects of business transactions, including providing a high level of service and remedies for product or service problems or dissatisfaction.
 - (c) Ensure that the health and safety of customers are protected.
 - (d) Protect customers from harmful environmental impacts of products and services.
 - (e) Respect the human rights, dignity and the culture of customers in the way products and services are offered, marketed, and advertised.
2. **Employees:** A responsible business treats every employee with dignity and respects their interests. Business therefore has a responsibility to:
 - (a) Provide jobs and compensation that contribute to improved living standards
 - (b) Provide working conditions that protect each employee's health and safety.
 - (c) Provide working conditions that enhance each employee's well-being as citizens, family members, and capable and caring individuals
 - (d) Be open and honest with employees in sharing information, limited only by legal and competitive constraints. e) Listen to employees and act in good faith on employee complaints and issues.
 - (e) Avoid discriminatory practices and provide equal treatment, opportunity and pay in areas such as gender, age, race, and religion.
 - (f) Support the employment of differently-abled people in places of work where they can be productive.
 - (g) Encourage and assist all employees in developing relevant skills and knowledge.
 - (h) Be sensitive to the impacts of unemployment and work with governments, employee groups and other agencies in addressing any employee dislocations.
 - (i) Ensure that all executive compensation and incentives further the achievement of long-term wealth creation, reward prudent risk management, and discourage excessive risk taking.
 - (j) Avoid illicit or abusive child labor practices.
3. **Shareholders:** A responsible business acts with care and loyalty towards its shareholders and in good faith for the best interests of the corporation. Business therefore has a responsibility to:

- (a) Apply professional and diligent management in order to secure fair, sustainable and competitive returns on shareholder investments.
 - (b) Disclose relevant information to shareholders, subject only to legal requirements and competitive constraints.
 - (c) Conserve, protect, and increase shareholder wealth.
 - (d) Respect shareholder views, complaints, and formal resolutions.
4. **Suppliers:** A responsible business treats its suppliers and subcontractors with fairness, truthfulness and mutual respect. Business therefore has a responsibility to:
- (a) Pursue fairness and truthfulness in supplier and subcontractor relationships, including pricing, licensing, and payment in accordance with agreed terms of trade.
 - (b) Ensure that business supplier and subcontractor activities are free from coercion and threats.
 - (c) Foster long-term stability in the supplier relationships in return for value, quality, competitiveness and reliability.
 - (d) Share information with suppliers and integrate them into business planning.
 - (e) Seek, encourage and prefer suppliers and subcontractors whose employment practices respect human rights and dignity.
 - (f) Seek, encourage and prefer suppliers and subcontractors whose environmental practices meet best practice standards.
5. **Competitors:** A responsible business engages in fair competition which is a basic requirement for increasing the wealth of nations and ultimately for making possible the just distribution of goods and services. Business therefore has a responsibility to:
- (a) Foster open markets for trade and investment.
 - (b) Promote competitive behavior that is socially and environmentally responsible and demonstrates mutual respect among competitors.
 - (c) Not participate in anti-competitive or collusive arrangements or tolerate questionable payments or favors to secure competitive advantage.
 - (d) Respect both tangible and intellectual property rights.
 - (e) Refuse to acquire commercial information through dishonest or unethical means, such as industrial espionage.
6. **Communities:** As a global corporate citizen, a responsible business actively contributes to good public policy and to human rights in the communities in which it operates. Business therefore has a responsibility to:
- (a) Respect human rights and democratic institutions, and promote them wherever practicable.
 - (b) Recognize government's legitimate obligation to society at large and support public policies and practices that promote social capital.
 - (c) Promote harmonious relations between business and other segments of society.
 - (d) Collaborate with community initiatives seeking to raise standards of health, education, workplace safety and economic well-being.

- (e) Promote sustainable development in order to preserve and enhance the physical environment while conserving the earth's resources.
- (f) Support peace, security and the rule of law.
- (g) Respect social diversity including local cultures and minority communities.
- (h) Be a good Corporate Citizen through ongoing community investment and support for employee participation in community and civic affairs.

Question 3

- (a) What are the disqualifications under 'Fit and Proper' criteria for the appointment of Directors in Banks ?
- (b) What are the types of Directors according to Companies Act, 2013 ?
- (c) "Post issue disclosures are transparency building measures." Discuss the statement with reference to SEBI (LODR) Regulations.
- (d) What are the punitive powers of National Financial Reporting Authority (NFRA), where professional and other misconduct is proved ?
- (e) What are the Provisions under SEBI (LODR) Regulations, regarding constitution of Risk Management Committee ?

(3 marks each)

Answer 3(a)

The Nomination and Remuneration Committee of the Bank shall determine the 'fit and proper' status of the proposed candidates seeking election as a Director:

Disqualifications

In addition to 'Disqualifications of Directors' as prescribed in Section 22 of the SBI Act, 1955 / Clause 10 of Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/80:

- a. The candidate should not be a member of the Board of any bank or the Reserve Bank or a Financial Institution (FI) or an Insurance Company or a Non-operative Financial Holding Company (NOFHC) holding any other bank.
- b. A person connected with hire purchase, financing, money lending, investment, leasing and other para banking activities shall not be considered for appointment as elected director on the board of a PSB. However, investors in such entities would not be disqualified if they do not enjoy any managerial control.
- c. No person may be elected/ re-elected on the Board of a bank if he/she has served as director in the past on the board of any bank/FI/RBI/Insurance Company under any category for six years, whether continuously or intermittently.
- d. The candidate should not be engaging in the business of stock broking.
- e. The candidate should not be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies.
- f. The candidate should not be acting as a partner of a Chartered Accountant firm which is currently engaged as a Statutory Central Auditor of any nationalised bank or State Bank of India.
- g. The candidate should not be acting as a partner of a Chartered Accountant firm which is

currently engaged as Statutory Branch Auditor or Concurrent Auditor of the bank in which nomination for election is filed.

Answer 3(b)

Types of Directors under Companies Act, 2013 are:

i) Executive Director/ Whole time Director/ Managing Director

Executive directors are usually Wholetime Directors in the employment of the company and paid a salary, so are protected by employment law. They undertake both strategic and operational responsibilities for the Company. A Managing Director (who is also a Wholetime Director) is entrusted with substantial powers of management of the affairs of the Company.

ii) Non-Executive Director

Non-executive directors are not in the employment of the company. They are the members of the Board, who normally do not take part in the day-to-day implementation of the company policy. They are generally appointed to provide the company with the benefits of professional expertise and outside perspective to the board. They may be Independent or non-Independent Directors.

iii) Woman Director

The Companies Act, 2013 in India recognized the importance of gender diversity and provides for mandatory appointment of at least one-woman director on the Board of listed and certain other specified class of companies. SEBI has mandated that the top 1000 listed companies must have atleast one Independent Woman Director.

iv) Resident Director

Section 149 (3) of the Companies Act, 2013 provides that every company shall have at least one director who stays in India for a total period of not less than 182 during the financial year. In case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

v) Independent Director

Independent Directors play a pivotal role in maintaining a transparent working environment in the corporate regime. Independent Directors constitute such category of Directors who are expected to have impartial and objective judgment for the proper functioning of the company. "Independent director" means an independent director referred to in sub-section (6) of section 149.

vi) Nominee Director

It means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government or any other person to represent its interests. They are not considered as Independent Directors.

vii) Small Shareholder Director

"Small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed. A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a Small Shareholders' Director elected by the small shareholders. A listed company may also, suo moto, opt to have a Director representing small shareholders.

Answer 3(c)

The lead manager(s) shall ensure that an advertisement giving details relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of dispatch of refund orders, as applicable, or instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.

The above details shall also be placed on the website of the stock exchanges.

The lead manager(s) shall submit a final post-issue report along with a due diligence certificate as per specified formats within seven days of finalisation of the basis of allotment or within seven days of refund of money in case of failure of issue.

Answer 3(d)

Where professional or other misconduct is proved, NFRA (National Financial Reporting Authority) have the power to make order for

- (a) imposing penalty of –
 - (i) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (ii) not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms.
- (b) debaring the member or the firm from –
 - (i) being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
 - (ii) performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years

Answer 3(e)

SEBI (LODR) Regulations: Regulation 21 of the SEBI (LODR) Regulations, 2015 deals with the Risk Management Committee and provides as under:

- (1) The board of directors shall constitute a Risk Management Committee.
- (2) The Risk Management Committee shall have a minimum of three members.
- (3) The majority of members of Risk Management Committee shall consist of members of the board of directors including atleast one independent Director⁴ and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.
- (4) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- (5) The risk management committee shall meet at least twice in a year. Between two consecutive meetings not more than 210 days shall elapse.

- (6) The quorum for a Risk Management Committee shall be two or one third of the members whichever is higher including atleast one member from the Board of Directors.
- (7) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security.
- (8) The provisions of this regulation shall be applicable to top 1000 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year as also to a high value debt listed entity.

PART-II

Question 4

- (a) XYZ Ltd. wants to expand its business operations into a volatile region of the world. The company seeks your advice about risk management strategy they can opt to mitigate the risk, and minimize or eliminate unacceptable risks associated with its operations.
- (b) Paymoney Ltd. is recently established payment bank which provides UPI services to the common man. The company desired to draft Fraud Risk Management policy, hence seeks your advice on the following :
 - (i) The criminal and civil legal provisions on Fraud in India; and
 - (ii) The components required to be incorporated in the draft policy.
- (c) Enterprise risk management consists of eight interrelated components which are derived from the way management run an enterprise and are integrated with the management process. Elaborate.
- (d) 'One can't manage what one can't measure.' In the light of this statement, discuss how a company can measure and manage the Strategic Risk.

(5 marks each)

Answer 4(a)

The risk mitigation step involves development of mitigation plans, designed to manage, eliminate, or reduce risk to an acceptable level. It would be advised to XYZ Ltd. that once they have identified and assessed the risk, the strategies to manage the risk fall into one or more of the following categories:

- i) **Transfer Risk:** Normally in projects, assignments or multifaceted exercises, execution is fraught with risks. Different agencies work together and these agencies take care to transfer risk in their areas to another agency which is better equipped to take care of the risk for a consideration. Here the concept of core competence comes in and whenever a particular agency, individual or a firm finds that it is dealing in an area where it does not have the core competence to deal with, it seeks the help of another agency which has the specific core competence so as to transfer its own risk to the other agency. The risk may be in the form of loss of reputation or sub quality performance and this risk is taken care of through transfer.
- ii) **Tolerate Risk or Risk Retention:** It is retention of the risk. It is accepting the loss when it occurs. True self- insurance falls in this category. Risk retention is a viable strategy for small risks where the cost of insuring against the risk would be greater over time than the total losses sustained. All risks that are not avoided, reduced or transferred are retained by default. This includes risks

that are so large or catastrophic that they either cannot be insured against or the premiums would be infeasible.

War is an example since most property and risks are not insured against war, so the loss attributed by war is retained by the insured. Also, any amount of potential loss (risk) over the amount insured is retained risk. This may also be acceptable if the chance of a very large loss is small or if the cost to insure for greater coverage amount is so great it would hinder the goals of the organization too much.

- iii) **Reduce Risk:** By far the greater number of risks will belong to this category. The purpose of treatment is not necessarily to obviate the risk, but more likely to contain the risk to an acceptable level. Internal controls are actions instigated from within the organization (although their effects may be felt outside of the organization) which are designed to contain risk to acceptable levels. Outsourcing could be an example of risk reduction if the outsourcer can demonstrate higher capability at managing or reducing risks. In this case companies outsource only some of their departmental needs. *For example*, a company may outsource only its software development, the manufacturing of hard goods, or customer support needs to another company, while handling the business management itself. This way, the company can concentrate more on business development without having to worry as much about the manufacturing process. Modern software development methodologies reduce risk by developing and delivering software incrementally. Earlier methodologies suffered from the fact that they only delivered software in the final phase of development; any problems encountered in initial phases meant costly rework and often jeopardized the whole project.
- iv) **Avoid Risk:** This method results in complete elimination of exposure to loss due to a specific risk. It can be established by either avoiding to undertake the risky project or discontinuance of an activity to avoid risk. This means that no risky projects are undertaken. Alternatively, a project may be abandoned midway to mitigate the risk while handling a project. It is not performing an activity which could carry risk. An example would be not buying a property or business in order to not take on the liability that comes with it. Another would be not flying in order to not take the risk that the airplane was to be hijacked. Avoidance may seem the answer to all risks, but avoiding risks also means losing out on the potential gain that accepting (retaining) the risk may have allowed. Not entering a business to avoid the risk of loss also avoids the possibility of earning profits.
- v) **Combine Risk:** When the business faces two or three risks, the overall risk is reduced by combination. This strategy is suitable mainly in the areas of financial risk. Different financial instruments say, shares and debentures are taken in a single portfolio to reduce the risk.
- vi) **Sharing Risk:** Insurance is a method of sharing risk for a consideration. For example, by paying insurance premium the company shares the risk with other companies and the insurance companies themselves share their risk by doing re-insurance.
- vii) **Hedging Risk:** Exposure of funds to fluctuations in foreign exchange rates, prices etc., bring about financial risks resulting in losses or gains. The downside risk is often taken care by hedging.

Answer 4(b)

- (i) Fraud is an act or omission which is intended to cause wrongful gain to one person and wrongful loss to the other, either by way of concealment of facts or otherwise.

Under Criminal Law Section 25 of the Indian Penal Code, 1860 defines the word, "Fraudulently", which means, a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Further according to section 17 of the Indian Contract Act, 1872, 'fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance (intentional active or passive acquiescence), or by his agent with intent to deceive or to induce a person to enter into a contract.

1. The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;
2. The active concealment of a fact by a person having knowledge or belief of the fact;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.

The Companies Act 2013 has also explained fraud. Explanation to Section 447 defines "fraud", which reads as under: "fraud" in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

A definition of fraud has been suggested in the context of electronic banking in the Report of RBI Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds, which reads as under: "A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank".

- (ii) It may be advised to Paymoney Ltd. that Fraud Risk Management policy should include the following:
- **Defining fraud:** This shall cover activities which the company would consider as fraudulent.
 - **Defining Role & responsibilities:** The policy may define the responsibilities of the officers who shall be involved in effective prevention, detection, monitoring & investigation of fraud. The company may also consider constituting a committee or operational structure that shall ensure an effective implementation of anti-fraud strategy of the company. This shall ensure effective investigation in fraud cases and prompt as well as accurate reporting of fraud cases to appropriate regulatory and law enforcement authorities.
 - **Communication channel:** Encourage employees to report suspicious cases of fraud/misconduct. Any person with knowledge of suspected or confirmed incident of fraud/misconduct must report the case immediately through effective and efficient communication channel or mechanism.
 - **Disciplinary action:** After due investigations, disciplinary action against the fraudster may be considered as per the company's policy.
 - **Reviewing the policy:** The employees should educate their team members on the importance of complying with Company's policies & procedures and identifying/reporting of suspicious activity, where a situation arises. Based on the developments, the policy should be reviewed on periodical basis.

Answer 4(c)

Enterprise risk management consists of eight interrelated components. These are derived from the way management runs an enterprise and are integrated with the management process. These components are:

- (a) *Internal Environment*: The internal environment encompasses the tone of an organization, and sets the basis for how risk is viewed and addressed by an entity's people, including 'risk management philosophy and risk appetite, integrity and ethical values, and the environment in which they operate.
- (b) *Objective Setting*: Objectives must exist before management can identify potential events affecting their achievement. Enterprise risk management ensures that management has in place a process to set objectives and that the chosen objectives support and align with the entity's mission and are consistent with its risk appetite.
- (c) *Event Identification*: Internal and external events affecting achievement of an entity's objectives must be identified, distinguishing between risks and opportunities. Opportunities are channeled back to management's strategy or objective-setting processes.
- (d) *Risk Assessment*: Risks are analyzed, considering likelihood and impact, as a basis for determining how they should be managed. Risks are assessed on an inherent and a residual basis.
- (e) *Risk Response*: Management selects risk responses –avoiding, accepting, reducing, or sharing risk – developing a set of actions to align risks with the entity's risk tolerances and risk appetite.
- (f) *Control Activities*: Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.
- (g) *Information and Communication*: Relevant information is identified, captured, and communicated in a form and timeframe that enable people to carry out their responsibilities. Effective communication also occurs in a broader sense, flowing down, across, and up the entity.
- (h) *Monitoring*: The entirety of enterprise risk management is monitored and modifications made as necessary. Monitoring is accomplished through ongoing management activities, separate evaluations, or both.
- (i) Enterprise risk management is not strictly a serial process, where one component affects only the next. It is a multidirectional, iterative process in which almost any component can and does influence another.

Answer 4(d)

Strategic Risk Management is the process of identifying, quantifying and mitigating any risk that affects or is inherent in a company's business strategy, strategic objectives and strategy execution.

In order to understand how to manage strategic risk, its necessary to start examining how to measure it. A key tenet of ERM is measuring risk with the same yardsticks used to measure results. In this way, companies can calculate how much inherent risk their initiatives contain.

Strategic risk can be measured with two key metrics:

1. Economic capital is the amount of equity required to cover unexpected losses based on a predetermined solvency standard. Typically, this standard is derived from the company's target debt rating. Economic capital is a common currency with which any risk can be quantified. Importantly, it applies the same methodology and assumptions used in determining enterprise value, making it ideal for strategic risk.

2. Risk-adjusted return on capital (RAROC) is the anticipated after-tax return on an initiative divided by its economic capital. If RAROC exceeds the company's cost of capital, the initiative is viable and will add value. If RAROC is less than the cost of capital, it will destroy value.

Managing strategic risk involves five steps which must be integrated within the strategic planning and execution process in order to be effective:

1. **Define business strategy and objectives.** There are several frameworks that companies commonly use to plan out strategy, from simple SWOT analysis to the more nuanced and holistic Balanced Scorecard. The one thing that these frameworks have in common, however, is their failure to address risk. It is crucial, then, that companies take additional steps to integrate risk at the planning stage.
2. **Establish key performance indicators (KPIs) to measure results.** The best KPIs offer hints as to the levers the company can pull to improve them. Thus, overall sales make a poor KPI, while sales per customer lets the company drill down for answers.
3. **Identify risks that can drive variability in performance.** These are the unknowns, such as future customer demand, regulatory changes, technological changes, employee attrition that will determine results.
4. **Establish key risk indicators (KRIs) and tolerance levels for critical risks.** Whereas KPIs measure historical performance, KRIs are forward-looking leading indicators intended to anticipate potential roadblocks. Tolerance levels serve as triggers for action.
5. **Provide integrated reporting and monitoring.** Finally, companies must monitor results and KRIs on a continuous basis in order to mitigate risks or grasp unexpected opportunities as they arise.

PART-III

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

Question 5

- (a) 'Internal check is a system under which the accounting methods and details of an establishment are so laid out that the accounts and procedures are not under the absolute and independent control of any person.' Elaborate discussing essential features of Internal Check.
(5 marks)
- (b) Discuss the differences between Internal Control and Internal Audit.
(5 marks)
- (c) The essential requirements for success of a business are the implementation of organizational objectives, plans and philosophy. With this end in view, what may be considered as the elements of internal control ?
(5 marks)
- (d) 'Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.' Discuss the main aspects of Internal Auditing.
(5 marks)

Answer 5(a)

The essential features of internal check are given hereunder:

1. There should be proper division of work and responsibilities.
2. The duties of each person should be properly defined so as to fix definite responsibilities of each individual.
3. Possibilities of giving absolute control to anybody should not be left out unchecked.
4. Too much confidence on a person should be avoided.
5. The duties of staff should be rotated and one person should not be allowed to occupy a particular area of operation for long.
6. Necessary safeguards should be provided so as to avoid collusion of thoughts which quite often leads to commission of fraud.
7. The person handling cash, stock, securities should be given compulsory leave so as to prevent his having uninterrupted control.
8. Physical inventory of fixed assets and stocks should be taken periodically.
9. Assets should be protected from unauthorized use.
10. To prevent loss or misappropriation of cash, mechanical devices such as the automatic cash register, should be employed.
11. The financial and administrative powers should be distributed very judiciously among different officers and the manner in which these are actually exercised should be reviewed periodically.
12. Accounting procedures should be laid down for periodical verification and testing of different sections of accounting records to ensure that they are accurate.

Answer 5(b)

Difference between Internal Control and Internal Audit:

Basis	Internal Control	Internal Audit
Meaning	Internal Control means the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.	Internal auditing means an audit on behalf of management to ensure the adequacy and effectiveness of internal controls, accuracy and timeliness of financial and other records and reports and adherence to the laid down policies and procedures by each unit of the organization.
Verification	It is a self-balancing mechanism implemented by the management, so as to ensure that the entire work process is divisible in parts, so that not a single person may have the access to complete the entire process.	The entire work process / system is checked and reviewed by the internal auditor.

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Basis	Internal Control	Internal Audit
Reporting	It is a mechanism introduced by the management.	Internal auditor submits its report to the management.
What it is?	It is a system introduced by the management.	It is an activity done by the internal Auditor
When it is done?	Internal Control is a policy decision by the management and is a continuous process.	Its periodicity may be yearly or half yearly or quarterly, as decided by the management.
Purpose	Formulation and circulation of management principles and policies and effective and speedy execution thereof with the help of internal checking and internal audit activities.	Detecting and reporting errors and frauds and irregularities regarding assets committed, if any detection and prevention activity.
Scope	Wider in scope than internal check and internal audit as specified above.	Limited to a continuous internal system of checking financial and non-financial operations and reporting to internal top management.

Answer 5(c)

The essential requirements for the success of a business are the implementation of organizational objectives, plans and philosophy. With this end in view the following may be considered as the elements of internal control.

- i) **Segregation of duties:** The division of an operation into a series of sub-operations undertaken by different people, allows for internal checks to take place. Such a control merely reduces the chance of error or irregularity occurring, but it does not eliminate the risk. It reduces the risk of intentional manipulation and error and increases the element of checking. Function which should be separated includes those of authorization, execution, custody, recording and in the case of a computer-based accounting system- systems development and daily operations.
- ii) **Organizational structure:** The structure or pattern of an organization will mean system of arrangements and relations as between various levels of personnel for carrying out of plans and policies towards achievement of objectives for which the business stands. Enterprises should have a plan of their organization, defining and allocating responsibilities and identifying lines of reporting for all aspects of the enterprise's operations, including the controls. The delegation of authority and responsibility should be clearly specified. It is important that critical operations are provided with the appropriate status and communications within the organizations. A common cause of irregularity is imbalance between responsibility, status and remuneration.
- iii) **Objectives and Policy Statements:** Objectives are the aims, goals, purposes or accomplishments which the top management lay down and expect the staff members to achieve. The functional segments of the company should comply with the policies, plans, procedures, external laws and regulations and the work should be performed in a coordinated manner. Policies and procedures give an indication as to the nature of personnel behavior in their

functioning and reflect the attitude of management. Functions of different staff members should be integrated in a manner that is complementary and each acts as check on the other. For instance, wage sheets should be prepared and checked by different set of staff and their disbursement should be in the presence of a responsible official.

- iv) **Authorization and approval:** All transactions should require authorization or approval by an appropriate responsible person. The limits of these authorizations should be specified. While designing procedures, provision should be made for proper authorization, to establish full accountability for the actions taken.
- v) **Personnel:** There should be procedures to ensure that personnel have capabilities commensurate with their responsibilities. In fact, the proper functioning of any system depends on the competence and integrity of those operating it. The qualifications, selection and training as well as the innate personal characteristics of the personnel involved are important features to be considered in setting up any control system.
- vi) **Management:** Management is responsible for establishing, monitoring and reviewing the systems of internal control. In practice, management may delegate the reviewing function to internal auditor. It is, thus, the duty of internal auditor to provide management with reassurance concerning the efficiency and effectiveness of internal controls.
- vii) **Records and Reports:** The accounting and other records should be maintained accurately and adequately so as to assist the management in formulating present and future events in decision making and planning. In order to make reporting effective, it should be timely, tailor-made and present all facts concerning problem areas, assessments etc.
- viii) **Accounting Controls:** These are the controls within the recording function which check that the transactions to be recorded and processed have been authorized, and that they are all included and that they are correctly recorded and accurately processed. Such controls include checking the arithmetical accuracy of the records, the maintenance and checking of totals, reconciliations, control accounts and trial balances, and accounting for documents.
- ix) **Protection of assets:** These are concerned mainly with the custody of assets and involve procedures and security measures designed to ensure that access to assets is limited to authorized personnel. These include both direct access and indirect access via documentation. These controls assume importance in the case of valuable, portable, exchangeable or desirable assets.
- x) **Supervision:** Any system of internal control should include the supervision by responsible officials of day-to-day transactions and the recording thereof. The supervisory role undertaken by staff should be allocated to those with proper training and suitability to such a function.

Answer 5(d)

The following are the main aspects of internal auditing:

1. Review, appraisal and evaluation of the soundness, adequacy and application of financial, accounting and other operating controls.
2. Ascertaining the adequacy and reliability of management information and control systems.
3. Ascertaining the achievement of management objectives and compliance with established plans, policies and procedures.
4. Ensuring proper safeguards for assets - their utilization and accounting thereof.
5. Detection and prevention of fraud and error.

6. Ascertaining the integrity of management data in an organization.
7. Identifying the areas of cost reduction, coupled with increased production, improved productivity and improved systems.
8. Ascertaining the quality of performance and undertaking 'value for money' exercises.
9. Compliance with statutory laws and rules including adherence to the Companies (Auditors' Report) Order, 2003 to avoid adverse comments from the statutory auditors.
10. Undertaking special reviews and assignments directed by management to ensure economical and efficient use of resources.
11. To provide for a channel of communicating new ideas to the top management.

OR (Alternative question to Q. No. 5)

Question 5A

- (i) "Triple Bottom Line is an approach that has transcended the academic paradigm and percolated well into the business practices." Discuss the utility of the approach with some instances in real corporate world.
- (ii) What are the Guiding Principles of Integrated Reporting ?

(5 marks)

(5 marks)

- (iii) As a CFO of Bright Zone Ltd., describe the contents of the Compliance Certificate to be provided to the Board of Directors, under the regulation 17(8) of SEBI (LODR) Regulations.

(5 marks)

- (iv) Define 'fugitive economic offender' and write measures that can be taken under Fugitive Economic Offenders Act, 2018, for attachment of property and what are the provisions regarding confiscation of property, once a person is declared as a fugitive economic offender ?

(5 marks)

Answer 5A(i)

Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporates. Coined in 1997 by John Ellington, the concept of TBL is based on the premise that business entities have more to do than just make profits for the owners of capital. "People, Planet and Profit" is used to succinctly define the triple bottom lines. "People" (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporation conducts its business. "Planet" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment.

A TBL (Triple Bottom Line) company endeavours to benefit the natural order as much as possible or at the least do no harm and curtails environmental impact. Profit is the bottom line shared by all commerce.

Therefore, the company can work for any issues addressing to the needs in any manner.

People issues faced by the organisation include	The planet concerns include-
<ul style="list-style-type: none"> ● Health ● Safety ● Diversity ● Ethnicity ● Education and literacy ● Prevention of child labour ● Differently-abled. 	<ul style="list-style-type: none"> ● Climate change ● Energy ● Water ● Biodiversity and land use ● Chemicals, toxics and heavy metals ● Air pollution ● Waste management ● Ozone layer depletion ● Ocean and fisheries ● Afforestation.

The Profit Bottom Line includes:

- Creating Employment
- Generating Innovation
- Paying Taxes
- Wealth Creation

The need to apply the concept of TBL is caused due to –

- (a) Increased consumer sensitivity to corporate social behaviour
- (b) Growing demands for transparency from shareholders/stakeholders
- (c) Increased environmental regulation
- (d) Legal costs of compliances and defaults
- (e) Concerns over global warming
- (f) Increased social awareness
- (g) Awareness about and willingness for respecting human rights
- (h) Media's attention to social issues
- (i) Growing corporate participation in social upliftment.

Case Studies on Triple Bottom Line Reporting:

- Tata Steel: A Company that also makes Steel & Continuous Reporting on Triple Bottom Line
- ITC: Continuous Reporting on Triple Bottom Line

Answer 5A(ii)

An Integrated Report aims to provide insights about the resources and relationships used and affected by an organization – collectively called the capitals. This report, the framework for which has been developed by The International Integrated Reporting Council ('IIRC') seeks to explain how an organisation interacts with the external environment and the capitals to create value over the short, medium and long term. The following Guiding Principles underpin the preparation of an integrated report, specifying the content of the report and how information is to be presented.

- **Strategic focus and future orientation:** An integrated report should provide insight into the organization's strategy and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on the capitals
- **Connectivity of information:** An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time
- **Stakeholder relationships:** An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests
- **Materiality:** An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term
- **Conciseness:** An integrated report should be concise
- **Reliability and completeness:** An integrated report should include all material matters, both positive and negative, in a balanced way and without material error
- **Consistency and comparability:** The information in an integrated report should be presented:
 - (a) On a basis that is consistent over time; and
 - (b) In a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.

Answer 5(iii)

The following compliance certificate shall be furnished by Chief Executive Officer and Chief Financial Officer:

- A) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
 - 1. These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - 2. These statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B) There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the company's code of conduct.
- C) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D) They have indicated to the auditors and the Audit committee:
 - 1. Significant changes in internal control over financial reporting during the year;
 - 2. Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

3. Instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

Answer 5(iv)

According to Fugitive Economic Offenders Act, 2018, "Fugitive Economic Offender" means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who–

- (i) has left India so as to avoid criminal prosecution; or
- (ii) being abroad, refuses to return to India to face criminal prosecution;

Attachment of the property of a fugitive economic offender and proceeds of crime (Section 5)

- (1) The Director or any other officer authorised by the Director, not below the rank of Deputy Director, may, with the permission of the Special Court, attach any property mentioned in the application under section 4 by an order in writing in such manner as may be prescribed.
- (2) Notwithstanding anything contained in sub-section (1) or section 4, the Director or any other officer, not below the rank of Deputy Director, authorised by the Director, may, by an order in writing, at any time prior to the filing of the application under section 4, attach any property–
 - (a) for which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender; and
 - (b) which is being or is likely to be dealt with in a manner which may result in the property being unavailable for confiscation:

Provided that the Director or any other officer who provisionally attaches any property under this subsection shall, within a period of thirty days from the date of such attachment, file an application under section 4 before the Special Court.

- (3) The attachment of any property under this section shall continue for a period of one hundred and eighty days from the date of order of attachment or such other period as may be extended by the Special Court before the expiry of such period.

Confiscation (Section 12)

If the alleged person is found to be a fugitive economic offender, then the special court may confiscate all the properties which are acquired from the proceeds of crime, Benami Property.

All the rights of this confiscated property shall solely vest with the central government. The central government has all the right to dispose of these properties after 90 days of confiscation.

PART-IV

Question 6

- (a) Companies displaying a 'clear commitment to ethical conduct' consistently outperform than those which do not commit to ethical conduct. In view of this statement, discuss the advantages of Business Ethics.
- (b) What are the distinctive elements of Global Reporting Initiative (GRI) Standards ?

(5 marks each)

Answer 6(a)

A company that adheres to ethical values and dedicatedly takes care of its employees is rewarded with equally loyal and dedicated employees.

1. **Attracting and retaining talent** People aspire to join organizations that have high ethical values. Such companies are able to attract the best talent. The ethical climate matters a lot to the employees. Ethical organizations create an environment that is trustworthy, making employees willing to rely on company's policies, ability to take decisions and act on those decisions. In such a work environment, employees can expect to be treated with respect, and will have consideration for their colleagues and superiors as well. Thus, company's policies cultivate teamwork, promote productivity and support employee-growth.

Retaining talented people is as big a challenge for the company as getting them in the first place. Work is a means to an end for the employees and not an end in itself. The relationship with their employer must be a win- win situation in which their loyalty should not be taken for granted. Talented people will invest their energy and talent only in organizations with values and beliefs that matches their own. In order to achieve this equation, managers need to build culture, compensation and benefit packages, and career paths that reflect and foster certain shared values and beliefs.

2. **Investor Loyalty:** Investors are concerned about ethics, social responsibility and reputation of the company in which they invest. Investors are becoming more and more aware that an ethical climate provides a foundation for efficiency, productivity and profits. Relationship with any stakeholder, including investors, based on dependability, trust and commitment results in sustained loyalty.
3. **Customer satisfaction:** Customer satisfaction is a vital factor of a successful business strategy. Repeated purchases/orders and an enduring relationship with mutual respect is essential for the success of the company. The name of a company should evoke trust and respect among customers for enduring success. This is achieved by a company only when it adopts ethical practices. When a company with a belief in high ethical values is perceived as such, the crisis or mishaps along the way are tolerated by the customers as minor aberrations. Such companies are also guided by their ethics to survive a critical situation. Preferred values are identified and it is ensured that organizational behavior is aligned to those values. An organization with a strong ethical environment places its customers' interests as foremost. Ethical conduct towards customers builds a strong competitive position for the company. It promotes a strong public image too.
4. **Regulators:** Regulators eye companies functioning ethically as responsible citizens. The regulator need not always monitor the functioning of an ethically sound company. Any organisation that acts within the confines of business ethics not only earns profit but also gains reputation publicly.

To summarise, companies that are responsive to employees' needs have lower turnover in staff.

- Shareholders invest their money into a company and expect a certain level of return from that money in the form of dividends and/or capital growth.
- Customers pay for goods, give their loyalty and enhance a company's reputation in return for goods or services that meet their needs.
- Employees provide their time, *skills* and energy in return for salary, bonus, career progression and experience.

Answer 6(b)

The Global Reporting Initiative (GRI) Standards represent global best practices for reporting publicly on a range of economic, environmental and social impacts. Sustainability reporting based on the Standards provides information about an organization's positive or negative contributions to sustainable development. A sustainability report is a report published by a company or organization about the economic, environmental and social impacts caused by its everyday activities. A sustainability report also presents the organization's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy.

GRI Sustainability Reporting Standards (GRI Standards) help businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues. Some of the distinctive elements of the GRI Standards –and the activity that *creates* them – include:

- **Multi-stakeholder input:** The approach is based on multi-stakeholder engagement, representing the best combination of technical expertise and diversity of experience to address the needs of all report makers and users. This approach enables to produce universally-applicable reporting guidance. All elements of the Reporting Framework are created and improved using a consensus- seeking approach, and considering the widest possible range of stakeholder interests which includes business, civil society, labor, accounting, investors, academics, governments and sustainability reporting practitioners. The
- **A record of use and endorsement:** Of the world's largest 250 corporations, 92% report on their sustainability performance and 74% of these use GRI's Standards to do so. With over 23,000 GRI Reports recorded in the database, sustainability reporting using the GRI Standards continues to grow. New audiences for sustainability information, like investors and regulators, are now calling for more and better performance data. Annual growth in the number of reporters is expected to continue, as the initiative works towards more reporters and better reporting.
- **Governmental references and activities:** Enabling policy is a key aspect of overall strategy and GRI work with governments, international organizations and capital markets to further this agenda. As a result, 35 countries use GRI in their sustainability policies and look for guidance as the world most widely used sustainability reporting standards. In addition, GRI have long-standing collaborations with over 20 international organizations such as the UNGC, OECD and the UN Working Group on Business & Human Rights.
- **Independence:** The creation of the Global Sustainability Standards Board in 2014, and related governance structure changes, have strengthened the independence of the standards. The funding approach also ensures independence. GRI is a stichting – in Dutch, a non-profit foundation – with a business model that aims for a degree of self-sufficiency. Funding is secured from diverse sources; governments, companies, foundations, partner organizations and supporters.
- **Shared development costs:** The expense of developing GRI's reporting guidance is shared among many users and contributors. For companies and organizations, this negates the cost of developing in-house or sector-based reporting frameworks.

Lecture Kart

ADVANCE TAX LAWS

MODULE 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

(a) Vineet Enterprises, registered under GST law in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the following information relating to the supplies made for the month of April, 2024 :

- (i) Supply of a heavy machinery to Public Sector Undertaking located and registered in Pune. Total contract value (inclusive of GST) ₹ 5,90,000 and Payment due in April, 2024 is ₹ 30,000 (exclusive of GST).
- (ii) Supply of taxable goods to Delhi office of Central Housing Bank, a society established by Government of India under the Societies Registration Act, 1860. Total contract value (inclusive of GST) ₹ 6,49,000 and Payment due in April, 2024 is ₹ 51,000 (exclusive of GST).
- (iii) Interior decoration of Virag Bhawan located in Delhi. Service contract is entered into with the Government of Madhya Pradesh (registered only in Madhya Pradesh). Total contract value (inclusive of GST) ₹ 7,39,000 and Payment due in April, 2024 is ₹ 5,39,000 (exclusive of GST).

You are required to determine amount of TDS, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

(5 marks)

(b) Gold Life Insurance Company Limited has collected premium from policy subscribers. It does not intimate the amount allocated for investment to subscribers of the policy at the time of supply of insurance services. The company has provided the following details in relation to its receipts :

S. No.	Particular	Amount in ₹
(i)	Variable insurance policies–Premium collected (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts)	30,00,000

(ii)	Life micro-insurance policies where insured amount does not exceed ₹ 2,00,000	10,00,000
(iii)	Renewal premium	90,00,000
(iv)	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by Gold Life Insurance Company Limited in terms of rule 32(4) of the CGST Rules, 2017.

(5 marks)

- (c) Kumbhat Farms Pvt. Ltd. (KFPL), registered under the normal GST provisions, furnishes the following details of various outward supplies related to the month of January, 2024 :

S. No.	Particulars	Amount (Rs.)
(i)	Charges received for seeds testing	2,00,000
(ii)	Charges for warehousing of sago chips	1,20,000
(iii)	Supply of farm labour	2,40,000
(iv)	Rent for vacant land leased for stud farm	3,20,000
(v)	Commission received for sale of turmeric	90,000

You are required to determine the value of taxable supply made by KFPL for the above tax period.

(5 marks)

- (d) GST Audit by tax Authorities can be done under section 65 of CGST Act, 2017 read with rule 101 of CGST Rule, 2017.

Write a brief note on the salient features of such audit.

(5 marks)

Answer 1(a)

(i) Supply of a heavy machinery to Public Sector Undertaking (PSU) located in Pune

Being an inter-State supply of goods, supply of heavy machinery to PSU in Pune is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows: = Rs.5,90,000 x 100 / 118 = Rs. 5,00,000. Since the total value of supply under the contract exceeds Rs.2,50,000, PSU in Pune and place of supply and place of registration of recipient are not in different states, the recipient is required to deduct tax @ 2% of Rs. 30,000, i.e. Rs. 600.

(ii) Supply of taxable goods to Delhi office of Central Housing Bank, a society established by Government of India under the Societies Registration Act, 1860

Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST@ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows: = Rs.6,49,000 x 100 / 118 = Rs. 5,50,000. Since the total value of supply under the contract exceeds Rs. 2,50,000, Central Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of Rs. 51,000, i.e. Rs. 1,020.

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(iii) Interior decoration of Virag Bhawan located in Delhi

Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient. Section 12(3) of the IGST Act, 2017, inter alia, stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Virag Bhawan shall be Delhi.

Since the location of the supplier (Vineet Enterprises) and the place of supply is Delhi and the State of registration of the recipient i.e. Government of Madhya Pradesh is Madhya Pradesh, no tax is liable to be deducted in the given case.

Answer 1(b)

As per rule 32(4), the value of supply of services in relation to life insurance business shall be determined as below:

- i. the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service.
- ii. in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- iii. in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- iv. in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by Gold Life Insurance Company Limited will be computed as under:

Computation of value of supply for Gold Life Insurance Company Limited

Particulars	Amount in Rs.
(i) Variable insurance policies (Gross premium - Amount allocated towards investment) (Rs. 30,00,000 - Rs. 24,00,000). [Since the insurance company has provided separate receipt for premium allocated for investment, it is assumed that such allocation is informed to the insured at the time of provisioning of service.]	6,00,000
(ii) Life micro-insurance policies (Exempt vide entry 36 of Notification No. 12/2017-CT (Rate))	Nil
(iii) Renewal premium 12.5% of Rs. 90,00,000	11,25,000
(iv) Single premium on annuity policy 10% of Rs. 1,00,00,000	10,00,000
Total value of supply	27,25,000

Alternative Answer 1(b)

As per rule 32(4), the value of supply of services in relation to life insurance business shall be determined as below:

- i. the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service.
- ii. in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- iii. in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- iv. in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by Gold Life Insurance Company Limited will be computed as under:

Computation of value of supply for Gold Life Insurance Company Limited

Particulars	Amount in Rs.
(i) Variable insurance policies [The question specifies that it was not intimating to subscriber at the time of supply, accordingly rule 32(4)(c) will apply i.e. 25% of 30 lacs]	7,50,000
(ii) Life micro-insurance policies (Exempt vide entry 36 of Notification No. 12/2017-CT (Rate))	Nil
(iii) Renewal premium 12.5% of Rs. 90,00,000	11,25,000
(iv) Single premium on annuity policy 10% of Rs. 1,00,00,000	10,00,000
Total value of supply	28,75,000

Answer 1(c)

Determination of Value of Taxable Supply made by KFPL for the month of January, 2024

Particulars	Amount in Rs.
(i) Charges received for seeds testing [exempted under s. no. 54 (a) of Notification No. 12/2017 CT (Rate)]	Nil
(ii) Charges for warehousing of sago chips [Sago Chips being processed out of agricultural produce are not exempted]	1,20,000
(iii) Supply of farm labour [exempted under s.no. 54 (b) of Notification No. 12/2017 CT (Rate)]	Nil
(iv) Rent for vacant land leased for stud farm [Such services in relation to rearing of horses is not exempted]	3,20,000
(v) Commission received for sale of turmeric [exempted under s.no. 54 (g) of Notification No. 12/2017 CT (Rate)]	Nil
Value of taxable supply	4,40,000

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Answer 1(d)**Departmental GST Audit by tax Authorities (u/s 65 of CGST Act 2017 read with rule 101 of CGST Rule 2017)**

- The audit shall be at the place of business of registered person or in tax office.
- Shall be conducted by the Commissioner or any officer authorized (CA/CMA) by him.
- The registered person shall be informed by way of a notice of 15 working days prior to the conduct of audit in FORM GST ADT-01.
- The audit by tax authorities shall be completed within a period of 3 months from the date of commencement of the audit, and such period is further extendable for a period of 6 months by commissioner for the reasons to be recorded in writing.
- The proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, rights and obligations and the reasons for such findings in FORM GST ADT-02.
- Where the audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74

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

- (a) Shyam Ltd., a registered person, is engaged in the business of spices. It provides following details in relation to GST paid on inward supplies procured by it during the month of March, 2024 :

S. No.	Particulars	GST Paid (Rs.)
(i)	Raw spices purchase for the purpose of sale to customers	80,000
(ii)	Raw spices purchase for the purpose of used for personal use of directors	20,000
(iii)	Electric machinery purchased for being used in the manufacturing process	35,000
(iv)	Motor bus purchased, to be used only for transportation of the factory employee	55,000
(v)	Payment made to contractor for construction of staff quarter	2,00,000

Determine the amount of ITC that can be availed by Shyam Ltd. for the month of March, 2024 by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

(5 marks)

- (b) Determine place of supply (with correct legal provision) under the following independent cases having regard to the provision of the GST Law :

- (i) Ram, registered in Bengaluru has availed land-line services from popular telecom company. The telephone is installed in residential premises in Jaipur and the billing address is of office of Ram in Bengaluru.
- (ii) Suresh of Kota (Rajasthan) purchases a pre-paid card of mobile from a selling agent in Delhi of a company registered in Mumbai.
- (iii) A person from Mumbai goes to Kullu-Manali and avails of some services (linked to account) from one of the branch of his Public Sector Bank in Manali.
- (iv) Ankit, an architect (New Delhi), provides interior decorator services to Harshit of New York in relation to his immovable property located in Pune.
- (v) Sunil residing in Delhi travelling with Indian Airlines is provided with the movie- on-demand service as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight.

(5 marks)

- (c) Ganga Polymer Limited (GPL), registered under normal GST provisions in the State of Kerala, instructed local transporter M/s Bharat Transporters to deliver certain taxable goods to Mahavir Enterprises located in the State of Kerala on 22nd March, 2024. The value of the goods is ₹ 6,80,000 which are chargeable to CGST and SGST @ 9% each.

While the goods were in transit, Proper Officer intercepted the goods and the truck in which goods were being transported, under section 68 of the CGST Act, 2017. However, the driver of the truck failed to tender any document in relation to the goods in movement. The Proper Officer, after conducting the physical verification of the goods and the truck, decided to seize the goods and the truck, and issued a notice under section 129(3) specifying the penalty payable by GPL, after giving it an opportunity of being heard.

Compute the amount of penalty payable under the CGST Act, 2017, if GPL does not come forward for the payment of penalty.

Further, discuss the suitable course of action for Bharat Transporters, if it intends to get its truck released.

Ignore the amount of penalty payable under the SGST, Act.

(5 marks)

- (d) Enumerate the various aspects for which Advance Ruling can be sought under GST law. Also discuss whether Mr. L who is a registered supplier in Kerala can seek advance ruling from the Authority for Advance Ruling (AAR) relating to place of supply ?

(5 marks)

Answer 2(a)

Particulars	Amount in Rs.
(i) Purchase of raw spices which are sold to customers (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.)	80,000
(ii) Purchase of raw spices for personal use of directors (ITC is not available on goods used for personal consumption.)	Nil

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(iii) Electric machinery purchased for being used in the manufacturing process (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course of furtherance of his business.)	35,000
(iv) Motor vehicle used for transportation of employee (ITC on motor vehicles for transportation of persons with seating capacity upto 13 person (including the driver) is blocked u/s 17(5). In the given case, since the supplier is in the business of spices, ITC on motor bus use for transportation of the employee is blocked credit assuming the seating capacity is not more than 13 person)	Nil
(v) Payment made to contractor for construction of staff quarter [ITC is Blocked u/s 17(5) for works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service)	Nil
Total ITC	1,15,000

Alternative Answer 2(a)

Particulars	Amount in Rs.
(i) Purchase of raw spices which are sold to customers (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.)	80,000
(ii) Purchase of raw spices for personal use of directors (ITC is not available on goods used for personal consumption.)	Nil
(iii) Electric machinery purchased for being used in the manufacturing process (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course of furtherance of his business.)	35,000
(iv) Motor vehicle used for transportation of employee (ITC on motor vehicles for transportation of persons with seating capacity upto 13 person (including the driver) is blocked. In the given case, it is assumed that the motor bus is having a capacity of more than 13 persons, the ITC thereon is available.	55,000
(v) Payment made to contractor for construction of staff quarter [ITC is not available for works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service)	Nil
Total ITC	1,70,000

Answer 2(b)

- (i) As per section 12(11) of the IGST Act, 2017, the place of supply of telecommunication services by way of fixed telecommunication line shall be the location where the telecommunication line is installed for receipt of services. In this case though the billing address is in Bengaluru but the place of supply of services shall be Jaipur- where the telephone is installed.
- (ii) As per section 12(11) of the IGST Act, 2017, in case where mobile connection for telecommunication is provided on pre-payment basis through a voucher or any other means through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, the place of supply will be the address of the selling agent or re-seller or distributor as per record of the supplier at the time of supply. Thus, in this case the place of supply will be Delhi.
- (iii) As per section 12(12) of the IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services. Accordingly, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.
- (iv) As per section 13(4) of the IGST Act, 2017, the place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of **architects or interior decorators**, shall be the place where the immovable property is located or intended to be located.

Accordingly, the place of supply of services supplied directly in relation to an immovable property shall be the place where the immovable property is located i.e. Pune.

- (v) As per section 12(10) of IGST Act. 2017, the place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Accordingly, the place of supply with respect to movie-on-demand service as on board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight shall be first scheduled point of departure of that conveyance for the journey i.e. Bangkok

Answer 2(c)**Penalty leviable u/s 129(1)(b) of the CGST Act, 2017**

As per section 129(1)(b), when owner of goods does not come forward for the payment of penalty, detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents are released on payment of penalty equal to higher of the following:

- i. 50% of value of goods or
- ii. 200% of the tax payable on such goods.

In view of the same, the amount of penalty payable under the CGST Act if GPL does not come forward for the payment of penalty is as follows:

- (i) 50% of value of goods i.e. Rs. 3,40,000 (50% of Rs. 6,80,000)] or
- (ii) 200% of the tax payable on such goods i.e. Rs.1,22,400 (200% of Rs. 6,80,000 x 9%)] whichever is higher, i.e. Rs. 3,40,000.

As per section 129(6), Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt

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of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3)

However, as per first proviso to section 129(6), conveyance shall be released on payment by the transporter the penalty as mentioned in the order or Rs. 1 lakh, whichever is lower.

In the given case, since the owner GPL has failed to come forward to make payment of penalty, penalty of Rs. 3,40,000 under the CGST Act shall be levied. Further, the transporter of goods can get its truck (without goods) released upon payment of the lower of the following under the CGST Act:

- (i) Penalty as mentioned in the order i.e. Rs. 3,40,000 or
- (ii) Rs. 1,00,000

Whichever is lower

Hence, Bharat Transporters can get its truck released upon payment of ₹ 1,00,000.

Answer 2(d)

Advance Ruling can be sought for the following questions:

- a) classification of any goods or services or both;
- b) applicability of a notification issued under the provisions of this Act;
- c) determination of time and value of supply of goods or services or both;
- d) admissibility of input tax credit of tax paid or deemed to have been paid;
- e) determination of the liability to pay tax on any goods or services or both;
- f) whether applicant is required to be registered;
- g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

No, L cannot obtain advance ruling for issue related to place of supply.

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Mahaveer Cosmetics Limited has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Rajkumar, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 58,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 62,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Rajkumar. The goods are transported to Rajkumar in Delhi, in a single conveyance owned by Hari Om Transporters.

You are required to advise Mahaveer Cosmetics Limited with regard to issuance of e-way bill(s).

(5 marks)

- (ii) Classic Merchant Private Limited is engaged in a procured business in Kota. He has furnished the following items procured by them in the month of February 2024 :

S. No.	Particular	GST Paid (Rs.)
(a)	Input used for the manufacture of the final product	1,50,000
(b)	Food and Beverages procured from Sweet Caterers for employees under statutory obligation	60,000
(c)	Goods used for providing services during warranty period	15,000
(d)	Goods used for setting up Telecommunication Towers being immovable property	1,00,000
(e)	Inputs stolen from the factory store	40,000

From the above information, examine each of the above items and compute the amount of input tax credit available to Classic Merchant Private Limited for the month of February, 2024. Correct reasoning should form part of your answer.

(5 marks)

- (iii) Find out the Time of Supply for the purpose of payment of tax in each of the following independent cases of forward charges basis in accordance with provisions of CGST Act, 2017 :

S. No.	Date of actual provision of service	Date of Invoice, Bill or Challan as the case may be	Date on which payment received
(a)	10.11.2023	30.11.2023	15.11.2023
(b)	10.11.2023	30.11.2023	06.11.2023 (Part) and 09.11.2023 (remaining)
(c)	10.11.2023	12.12.2023	30.04.2023
(d)	10.11.2023	12.12.2023	05.11.2023 (Part) and 25.12.2023 (remaining)
(e)	10.11.2023	22.12.2023	12.12.2023

Brief relevant legal provision should form part of your answer.

(5 marks)

- (iv) When can provisional refund be granted under GST law. Also explain the procedure for grant of provisional refund.

(5 marks)

Answer 2A(i)

Separate E-way bill for separate invoices - subsequently consolidated away bill can be prepared if goods transported in one conveyance:

Rule 138 (1) of the CGST Rules, 2017 provide that the e-way bill is required to be generated for each consignment having value exceeding the prescribed threshold.

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Here, Mahaveer Cosmetics Limited is dispatching the goods from two different locations. As there are two separate consignments involved, it would be required to prepare two separate e-way bills since each invoice value exceeds 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

However, Rule 138(6) provides that after e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** may be generated by him on the said common portal prior to the movement of goods.

Answer 2A(ii)**Computation of Input tax credit available with Classic Merchant Private Limited**

S. No.	Particular	Amount in Rs.
a.	Input used for the manufacture of the final product Since used in course of business hence, input tax credit shall be available.	1,50,000
b.	Food and Beverages procured from Sweet Caterers for employees under statutory obligation As per Section 17(5)(b), no Input tax credit is available in respect of food and beverages except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or if provision of such goods or services is obligatory for an employer to provide to its employees under any law for the time being in force. Since in this case food and beverages are provided to employees under statutory obligation, Hence, input tax credit is available.	60,000
c.	Goods used for providing services during warranty period Since used in course of business hence, input tax credit shall be available.	15,000
d.	Goods used for setting up Telecommunication Towers being immovable property. As per Section 17(5)(d), goods received by taxable person for construction of an immovable property (other than Plant and Machinery) on his own account including when such goods used in course or furtherance of business shall be considered as ineligible input and no credit shall be allowed of tax paid on such goods. Since Telecommunication tower is an immovable property, hence, no input tax credit shall be allowed in respect of goods used for setting it up.	Nil

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e.	Inputs stolen from the factory store As per Section 17(5)(h), goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples are considered as ineligible input and credit of GST paid on such goods cannot be taken.	Nil
	Total Input tax credit available	2,25,000

Note: In the recent judgment in the matter of Bharti Airtel Ltd vs. Commissioner of Central Excise, Pune (2024), the Supreme Court conclusively held that telecommunication towers cannot be construed as being immovable property. It applied tests of permanency, intendment, functionality and marketability and held that telecom towers are movable. Therefore, in case the answer has been solved by availing ITC on telecom tower mentioning valid justification is also correct.

Answer 2A(iii)

Time of Supply in each of the following independent cases in accordance with provisions of CGST Act, 2017:

S. No.	Date of actual provision of service	Date of Invoice, or Bill or challan	Date of Receipt of Payment	Time of Supply	Remarks
a.	10.11.2023	30.11.2023	15.11.2023	15.11.2023	Invoice issued within 30 days but payment received before invoice.
b.	10.11.2023	30.11.2023	06.11.2023 (Part) and 09.11.2023 (remaining)	06.11.2023 and 09.11.2023 for the respective amount	Invoice issued within 30 days however, the advance has been received in two installments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as time of supply. As per Explanation The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
c.	10.11.2023	12.12.2023	30.04.2023	30.04.2023	Since, payment is received prior to the provisioning of service, the date of such receipt shall be the time of supply.
d.	10.11.2023	12.12.2023	05.11.2023 (Part) and 25.12.2023 (remaining)	05.11.2023 and 10.11.2023 for the respective amount	Part payment received as advance before the completion of service, so the date of receipt shall be the time of supply for such part. For remaining, Invoice is not issued within 30 days, so date of provisioning of service shall be the time of supply.

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e.	10.11.2023	22.12.2023	12.12.2023	10.11.2023	Invoice not issued within 30 days, so time of supply shall be the date of provision of service
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Answer 2A(iv)**Provisional refund of 90% of the amount claimed in case of zero-rated supply of goods or services or both [Section 54(6)]:**

The proper officer may,

- in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council.
- refund on a provisional basis, 90% of the total amount so claimed.
- in such manner and subject to such conditions, limitations and safeguards as may be prescribed, and
- thereafter make an order under Section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

The remaining 10% can be refunded later after due verification of documents furnished by the applicant.

Grant of provisional refund [Rule 91]:

1. Conditions for grant of Provisional Refund [Rule 91(1)]: The provisional refund in accordance with the provisions of Section 54(6) shall be granted subject to the condition that the person claiming refund has during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds 2.5 crore.
2. Sanction of Provisional Refund [Rule 91(2)]: The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under Rule 91(1) is due to the applicant in accordance with the provisions of Section 54(6), shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement under Rule 90(1)/(2).

However, the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer.
3. E-payment of provisional refund [Rule 91(3)]: The proper officer shall issue a payment order in (FORM GST RFD-05 for the amount sanctioned under Rule 91(2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice. However, the payment order in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.
4. Disbursement of refund [Rule 91(4)]: The Central Government shall disburse the refund based on the consolidated payment advice issued as above.

Question 3

- (a) Secure Private Limited, a registered supplier has made following taxable supplies to its customer Rajesh in the quarter ending 30th June, 2024 :

Date	Invoice No.	Particulars	Invoice value (including GST) (in Rs.)
6th April, 2024	102	Pencil box (5 sets)	1,20,000
11th May, 2024	200	Poster colours (5 packets)	60,000
20th May, 2024	230	Crayon colours (2 packets)	50,000
5th June, 2024	255	Chart paper (4 in number)	90,000
22nd June, 2024	300	Notebooks (10 in numbers)	70,000

Goods in respect of Invoice No. 102, 230 and 300 have been returned by Rajesh. You are required to advise Secure Private Limited with discussing the legal provision under GST law whether it can issue consolidated credit note against all the three invoices ?

(4 marks)

- (b) Padma Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 60,000 in the month of May, 2024. It has not deposited the said amount collected as GST with the Government.

You are required to brief to Padma Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of CGST Act, 2017.

(4 marks)

- (c) Long Life Hospital, Gurgaon has its own restaurant in the basement of hospital premises

“Annapurna Bhawan”, which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. “Annapurna Bhawan” also supplies food to other patients (who are not admitted) or their attendants or visitors. The food is prepared by the employees of the hospital and nothing is outsourced to any third-party vendors.

Long Life Hospital is of the view that all services provided by a clinical establishment are exempt from GST and thus, it is not liable to pay any tax.

You are required to test the correctness of the view taken by Long Life Hospital in the context of CGST Act, 2017.

(4 marks)

- (d) Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.

(4 marks)

- (e) Meze Restaurant (A unit of Anand Private Limited) has opted for composition scheme in the current financial year 2024-25. Explain the records which are not to be maintained by a supplier opting for composition levy though required to be maintained by a normal taxpayer as enumerated in rule 56 of CGST Rules, 2017.

(4 marks)

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Answer 3(a)

Where one or more tax invoice has been issued for supply of any goods and / or services and

- a) the taxable value/ tax charges in that tax invoice is found to exceed the taxable value/ tax payable in respect of such supply, or
- b) where the goods supplied are returned by the recipient, or
- c) where goods and/ or services supplied are found to be deficient,

The registered person, who has supplied such goods and/ or services, may issue to the recipient one or more credit notes for supplies made in a financial year containing prescribed particulars.

Thus, one (consolidated) or more credit notes can be issued in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

Hence, in view of the above-mentioned provisions, Secure Private Limited can issue a consolidated credit note for the goods returned in respect of all the three invoices.

Answer 3(b)

It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. For any such amount not so paid, proper officer may issue Show Cause Notice (SCN) for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 of CGST Act, 2017 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Answer 3(c)

Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable.

Thus, it is exempt from GST.

However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In view of the same, GST is not applicable on the food supplied by "Annapurna Bhawan" to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

Answer 3(d)

If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

- i. conduct audit of the registered person; or
- ii. direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.
- iii. exercise the powers of inspection, search and seizure with respect to the registered person, or
- iv. proceed to determine the tax and other dues of the registered person under Sections 73 or 74 or section 74A of the Act.

Answer 3(e)

Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4), but are required to be maintained by a normal tax payer:

- i. Stock of goods: Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- ii. Details of tax: Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Question 4

- (a) Rajat Pvt. Ltd. have imported a machine from U.K. and furnished following particulars in relation to such import :

S. No.	Particulars	Amount
(i)	F.O.B. cost of the machine	20,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	Rs. 20,000
(vi)	Insurance paid to the insurer in India	Rs. 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other Particulars :

- (a) Inter-bank exchange rate as arrived at by the authorized dealer : ₹ 72.60 per U.K. Pound
- (b) CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹ 70.20 per U.K. Pound.

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- (c) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

Compute assessable value of goods for customs purpose of Rajat Pvt. Ltd.

(5 marks)

- (b) Briefly explain the following with reference to the provisions of the Customs Act, 1962 :

- (i) Remission of duty on imported goods lost
(ii) Special exemption and General exemption.

(2+3=5 marks)

Answer 4(a)

Computation of assessable value of goods for customs purpose for Rajat Pvt. Ltd.

Particulars	UK Pounds
FOB cost of Machine	20,000
Add: Engineering and Design charges (paid to a firm in UK)	500
Add: License fee relating to imported goods payable by the buyer as a condition of sale (20% on 20,000 UKP)	4,000
	24,500
	Value in Rs.
Sub-Total (24,500 UKP * Rs. 70.20)	17,19,900
As per explanation to section 14(1) of the customs act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.	
Add: Material and components supplied by the buyer free of cost	20,000
FOB value as per customs	17,39,900
Add: Air Freight (since air freight is ascertainable and is lower than 20% of FOB value, actual sum to be considered. [3000 x 70.20 = Rs. 2,10,600])	2,10,600
Add: Insurance paid to the insurer in India	6,000
Buying commission paid by the buyer to his agent in UK	-
Buying commission shall not be considered (Rule 10(1)(a)(i) of the CVR)	
Importer paid Rs. 5000 towards demurrage charges for delay in clearing the machine from the airport. Only ship demurrage charges or chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay on clearing the machine from the airport will not be includible in the assessable value.	-
CIF Value / Assessable Value	19,56,500

Answer 4(b)

- (i) Remission of duty on imported goods lost: Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.
- (ii) Special Exemption: As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100. This type of exemption is called as ad hoc exemption. Order under section 25(2) is not required to be published in the Official Gazette.

General Exemption: As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

PART-II**Question 5**

- (a) Mrs. Vasudha purchased a residential house from her friend on 12th May, 2023 for ₹ 45 lakh. The stamp duty valuation of the house on this date was ₹ 52 lakh. She sold this house property on 12th March, 2024 for ₹ 55 lakh. Determine the tax liability of Mrs. Vasudha, under various heads of Income in respect of these transactions in the Assessment Year 2024-25.
- (b) Sunshine Limited charged depreciation on its fixed assets at the rates specified in the Income Tax Rules in its accounts consistently. The assessing officer of Income Tax disallowed the same and considered depreciation computed at the rates prescribed in the Companies Act, for the purpose of computation of 'Book Profits' u/s 115JB of the Income Tax Act, 1961.

Examine the correctness of the action of the assessing officer for Assessment Year 2024-25.

(3 marks)

- (c) Explain the meaning of the term 'International transaction', as envisaged by section 92B of the Income-tax Act, 1961, in the context of transfer pricing provisions.

(3 marks)

- (d) What is the legislative objective of bringing into existence the provisions relating to transfer pricing in relation to International transactions? Discuss.

(3 marks)

- (e) Kandhari Seeds Pvt. Ltd., has credited the following amounts in the books as share application

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amount :

S. No.	Name	Residential Status	Amount (Rs.)
1.	A	Resident	5 lakh
2.	B	Resident	10 lakh
3.	C	Non-resident	22 lakh

The case was taken for scrutiny u/s 143(3) of the Income-tax Act, 1961. The assessee was able to offer explanation about the source and creditworthiness of A, but not B and C. Can an addition be made under section 68 of the Income-tax Act, 1961, in respect of amounts received from B and C with reference to Assessment Year 2024-25 ?

(3 marks)

Answer 5(a)**Asset acquired for less than stamp duty valuation**

Where an immovable property has been acquired from any person for a consideration which is less than Stamp duty Valuation and the difference exceeds 10% of consideration or Rs 50,000 (whichever is higher), the difference will be taxed as income from other sources under section 56(2) (x) of the Income Tax Act, 1961. Accordingly, Rs 7 lakhs (Rs 52 lakhs - Rs 45 lakhs) will be assessed as income from other sources in the hands of Mrs. Vasudha for the PY 2024-25.

Now, the actual cost of the house will be treated as Rs. 52 lakhs. Subsequently, when the house is sold, the cost of acquisition will be treated as Rs 52 lakhs. Thus, for the sale made on 12th March, 2024, Rs. 3 lakhs (Rs 55 lakhs - Rs 52 lakhs) will be assessed as short-term capital gains for the PY 2024-25.

Her total Income shall be 10 lakhs [7 lakhs + 3 lakhs] for AY 2024-25 and tax liability under old system shall be Rs. 1,17,000 and u/s 115BAC shall be Rs. 62,400

Answer 5(b)

In computation of book profit u/s 115JB of the Income Tax Act, 1961 'the Act', only those additions and deductions given u/s 115JB should be applied. Any other provisions of the Income Tax Act should not be applied in computation of book profit. All other adjustments under the act shall be considered only in computation of total income.

The assessing officer cannot re-compute depreciation as per Companies Act, since the company has been consistently applying Income Tax Rates, in its books also.

However, depreciation on account of revaluation of assets can be disallowed in accordance with section 115JB of the Act.

Answer 5(c)

Meaning of "International transaction": Section 92B

"International transaction" means a transaction between

- two or more associated enterprises, either or both of whom are non-residents,
- in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction

- having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

Answer 5(d)

The presence of multinational enterprises in India and their ability to allocate profits in different jurisdictions by controlling prices in intra-group transactions prompted the Government to set up an Expert Group to examine the issues relating to transfer pricing. There is a possibility that two or more entities belonging to the same multinational group can fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue.

The increasing participation of multinational groups in economic activities in India has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, which may lead to erosion of tax revenue.

Therefore, transfer pricing provisions have been brought in by the Finance Act, 2001 with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

Answer 5(e)

Unexplained cash credit

Section 68(1) of the Income Tax Act, 1961 provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

2nd proviso to section 68 further provides that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless:

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Since, Assesses has not offered satisfactory explanation about the source & credit worthiness with respect to B&C, hence addition can be made in respect of unexplained cash credit from both B & from C.

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

- (a) Chirag, aged 51 years, a resident individual furnishes the following particulars of income earned by him in India and Country PQR for the previous year 2023-24. India does not have a double taxation avoidance agreement (DTAA) with Country PQR.

Particulars	Amount (Rs.)
Income from profession carried on in Mumbai	7,50,000
Agricultural Income in Country PQR	1,30,000
Dividend from a company incorporated in Country PQR (gross)	85,000
Royalty income from a literary book from Country PQR (gross) (It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year)	6,25,000
Expenses incurred for earning royalty	75,000
Business loss in Country PQR	1,10,000

The domestic tax laws of Country PQR does not permit set-off of business loss against any other income. The rate of income-tax in Country PQR is 16%. Compute total income and net tax liability of Chirag in India for A.Y. 2024-25, assuming that he satisfies all conditions for the purpose of section 91 and he opted out of the default tax regime under section 115BAC.

(5 marks)

- (b) In the context of tax treaties, what is the need for Mutual Agreement Procedure (MAP) ? Outline the steps involved in MAP application process.

(5 marks)

- (c) Tippu Yarns Ltd. (TYL), is an Indian company, engaged in numerous activities, including international transactions, during the financial year 2023-24.

During the year, it sold to ER Inc. (ER) of USA, 20,000 refrigerators, each for a price of ₹ 1.30 lakh. Identical pieces were (22,000 refrigerators) sold to other buyers in the USA at ₹ 1.50 lakh per unit. ER holds 28% shares in TYL. Goods are sold to ER on CNF basis, while it is sold to other buyers on CIF basis. Marine insurance is ₹ 5,000 per unit.

While the other buyers availed 2 months credit for making the payment, ER was given only 1 month time for making the trade payments. Cost of capital may be taken at 12% and supply may be assumed to be uniform throughout the year.

Determine the arm's length price (ALP) per unit as per transfer pricing regulations using cost plus method and the addition, if any, to be made to the income of TYL, for the AY 2024-25. If the primary adjustment is proposed to be made by TYL *suo motu* at the time of filing of return of income (ROI), what is the time limit for repatriation of excess funds ?

(5 marks)

Answer 6(a)

Computation of total income of Chirag for A.Y.2024-25
(Normal provisions of the Income Tax Act, 1961)

Particulars	Amount in Rs.	Amount in Rs.
Profits and Gains of Business or Profession		
Income from profession carried on in Mumbai (India)	7,50,000	
Royalty income from a literary book in Country PQR (after deducting expenses of Rs. 75,000)	5,50,000	
	13,00,000	
Less: Business loss in Country PQR	(1,10,000)	11,90,000
Income from Other Sources		
Agricultural income in Country PQR [Not exempt u/s 10(1)]	1,30,000	
Dividend received from a company incorporated in Country PQR	85,000	2,15,000
Gross Total Income		14,05,000
Less: Deduction under Chapter VIA		
Under section 80QOB -Royalty income of a resident from a literary book		(3,00,000)
Total Income		11,05,000

Note - Since adjusted total income (i.e., Rs. 14,05,000) does not exceed Rs. 20 lakhs, AMT would not be attracted in this case.

Computation of net tax liability of Chirag for A.Y.2024-25

Particulars	Amount in Rs.	Amount in Rs.
Tax on total income @ slab rate [30% of Rs. 1,05,000 plus Rs. 1,12,500]		1,44,000
Add: Health and education cess @4%		5,760
Tax Liability		1,49,760
Calculation of Rebate under section 91		
Average rate of tax in India [i.e., Rs. 1,49,760 / Rs. 11,05,000 X 100]	13.5529%	
Average rate of tax in Country PQR	16%	
Doubly taxed income pertaining to Country PQR		
Agricultural Income	1,30,000	

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Royalty Income [Rs. 625000-Rs. 75000 (Expenses) – Rs. 300000 (deduction u/s 80QOB)]	2,50,000	
Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount		
Dividend income	85,000	
Less: Business Loss set off	(1,10,000)	
	3,55,000	
Rebate under section 91 on Rs. 3,55,000 @ 13.5529% [being the lower of average Indian tax rate (13.5529%) and foreign tax rate (16%)]		(48,113)
Net tax liability		1,01,647
Net tax liability (Rounded off)		1,01,650

Answer 6(b)**Need for MAP**

- Double Taxation Avoidance Agreements ('tax treaties') are available for capturing and curtailing juridical double taxation.
- Tax treaties generally do not cover instances of economic double taxation.
- MAP provides relief in cases of economic double taxation.
- MAP also provides relief in cases where automatic relief, such as tax credits, tax exemption, etc. are not available.

Steps involved in the MAP application process

- Brief facts and background of the case must be summarized.
- Contentions of Indian Revenue must be summarized in the application.
- The net tax and interest impact only by virtue of transfer pricing adjustment is computed.
- The note of transactions only relating to one country (in one application), e.g., USA, UK, etc.
- All documents including tax returns, TP study, notices, submissions, orders, etc. must be furnished.
- Relevant judicial precedence and their applicability to taxpayer's case must be demonstrated.

Answer 6(c)

Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

Here, ER holds 28% in TYL. Hence, they are associated enterprises and transfer pricing provisions will apply.

Determination of ALP as per Cost Plus Method

Particulars	Amounts in Rs.
Price per unit to unrelated buyers	1,50,000
Less:	
Marine Insurance borne by TYL for others buyers	(5000)
Lessor credit period allowed to ER as compared to unrelated buyers (130000*12%*1/12)	(1300)
ALP per unit	1,43,700
Price charged to TYL	1,30,000
Increase to be made per unit	13,700
Total increase to be made (20,000*13700) Primary adjustment	27,40,00,000

Where the primary adjustment is made suo motu by TYL, the repatriation has to be made within 90 days from the due date for filing the ROI u/s 139(1) of the Income tax Act, 1961.

OR (Alternate question to Q. No. 6)

Question 6A

(i) Miles Inc., a company incorporated in US, is engaged in development of infrastructure and providing consultancy in the same field. During the Financial Year 2023-24, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of company's assets situated in India. It provides the following additional information pertaining to Financial Year 2023-24.

(a) Fees for technical services received from Government of India : ₹ 5,55,000.

The Government of India utilised such technical services for a development project carried out by it in Nepal.

(b) Interest received from M/s Lalit Enterprises, a unit located in International

Financial Services Centre (IFSC) in respect of monies borrowed by M/s Lalit Enterprises : ₹ 18,400 (Date of loan 20th November, 2023).

(c) On 26th August, 2023, Miles Inc. sold 5,500 equity shares held by it in an Indian Company for ₹ 90 per share. These shares were bought by Miles Inc. on 28th June, 2009 for ₹ 65 per share. Both the purchase and sale of shares were affected through a recognized stock exchange in India. Fair Market Value of these shares on 31-01-2018 was ₹ 70 per share.

You are required to decide the resident status of the Miles Inc., and compute the total income for the assessment year 2024-25 by briefly explaining the relevant provisions of the Income-tax Act, 1961.

(5 marks)

(ii) In respect of the following transactions undertaken by a taxpayer during the Financial Year 2023-24, state whether they are instances of tax planning, tax management or tax evasion :

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- (a) Setting up of a warehouse to avail tax benefit u/s 35AD
- (b) Payment of medical insurance premium of ₹ 45,000 for a parent, aged 76
- (c) Collecting PAN Details of contractors to whom TDS as per section 194C is to be made
- (d) Recording in the books of account, salary payment to J, who is not actually employed by the assessee
- (e) Helping the buyers to link their PAN and Aadhaar, so as the have lower TDS burden.

(1 mark each = 5 marks)

(iii) Explain in brief the meaning assigned to the following terms in the context of provisions contained under the International Taxation :

- (a) Comparable Uncontrolled Transaction
- (b) Tax Information Exchange Agreement
- (c) Controlled Foreign Company
- (d) Border Tax Adjustments (BTAs).

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

Answer 6A(i)

Miles Inc. is a company incorporated in US. It would be resident in India, if its Place of Effective Management (POEM) is in India in that year.

As per the POEM guidelines, the decisions made by a shareholder for sale of all or substantially all of the company's assets, or the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. are decisions typically affecting the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective. Therefore, such decisions are not relevant for determination of a company's place of effective management.

Therefore, the POEM of Miles Inc. is not in India and hence, it is a non-resident for A.Y.2024-25.

Taxability of Income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to it in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

Computation of Total Income of Miles Inc. for A.Y. 2024-25

Particulars	Amount in Rs.
Fees for technical services received from Government of India [As per section 9(1)(vii) any Fees for Technical Services (FTS) would be deemed to accrue or arise in India if they are payable by Government of India. Since FTS is received from Government of India, it is deemed to have accrued or arisen in India irrespective of that fact that it is utilized for a project outside India)	5,55,000
Interest received from M/s Lalit Enterprises, a unit located in IFSC for monies borrowed by it on 20th November 2023 [As per section 10(15)(ix), interest payable to Miles Inc., a non- resident, by M/s Lalit Enterprises, a unit located in an IFSC, in respect of monies borrowed by it on or after 01.09.2019 is exempt from income-tax]	Nil

Long term capital gains	1,10,000
Sale consideration (5500 * Rs. 90) = Rs. 4,95,000	
Less: Cost of acquisition, being higher (a) or (b) i.e. Rs.3,85,000	
(a) Actual cost i.e., (5500 * Rs.65) Rs.3,57,500	
(b) lower of Rs. 3,85,000	
• Rs. 3,85,000 (5,500*Rs.70), being fair market value on 31.1.2018 and	
• Rs.4,95,000 (5,500*Rs.90) being full value of consideration	
Long-term capital gains, is taxable @10% u/s 112A in excess of Rs. 1,00,000]	
Total Income	6,65,000

Answer 6A(ii)

Tax planning/Tax evasion/Tax Management

- Setting up of a warehouse to avail tax benefit u/s 35AD - **[Tax planning]**
- Payment of medical insurance premium of Rs 45,000 for a parent, aged 76. - **[Tax planning]**
- Collecting PAN Details of contractors to whom TDS as per section 194C is to be made. - **[Tax management]**
- Recording in the books of account, salary payment to J, who is not actually employed by the assessee - **[Tax evasion]**
- Helping the buyers to link their PAN and Aadhaar, so as the have lower TDS burden - **[Tax management]**

Answer 6A(iii)

- Comparable Uncontrolled Transaction:** An uncontrolled comparable transaction is a transaction between two or more enterprises that are not associated enterprises with respect to each other and is similar in terms of functions performed, assets used and risk assumed with respect to a transaction between two related enterprises.
- Tax Information Exchange Agreement:** Tax Information Exchange Agreement is a bilateral or multilateral agreement which gives legal authority to the contracting states to exchange tax related information by tax jurisdictions with the counterparts which was otherwise not possible.
- Controlled Foreign Company:** A controlled foreign company is a corporate entity that is registered and conducts business in a different jurisdiction or country than the residency of the controlling owners.
- Border tax adjustments (BTAs):** BTAs are a mechanism through which a "tax neutral" setting for international trade and economic competition can be established. The government accomplishes tax neutrality by rebating taxes on exports and applying taxes to imports. The General Agreement on Tariffs and Trade (GATT), which defines the scope of international BTAs, only recognizes consumption taxes or those taxes applied directly to goods and services, as eligible for BTAs. Value Added taxes are STA-eligible; corporate income taxes are not.

DRAFTING, PLEADINGS & APPEARANCES

MODULE 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

- (a) Draft a Specimen Deed of Sale by a Certificated Guardian (Appointed by the Court) of a Hindu Minor. Assume requisite data, if required.
- (b) "The Power of Legislature to delegate its legislative power is not prohibited in the Constitution." Discuss.
- (c) Draft a Notice to dissolve Partnership by mutual agreement between the partners. Assume facts.
- (d) Draft a specimen agreement on behalf of a firm M/s XYZ, to hypothecate goods to secure fixed loan from ABC Bank. Assume facts.

(5 marks each)

Answer 1(a)

Deed of Sale by a Certificated Guardian of a Hindu Minor

THE DEED OF SALE made on the ___ day of _____, 20___

BETWEEN

AB of, etc. (vendor) of one part

AND

CD of, etc. (purchaser) of the other part.

WHEREAS by an order made by the District Judge of _____ in Case No ___ of under Act VIII of 1890 (cause title) the said AB was appointed certificated guardian of XY who was then and is still now a minor under the age of 21 years.

AND WHEREAS by an order dated ___ the ___ day of _____, 20___ made by the District Judge of _____ in Misc. Judicial Case No. ___ of _____ the said AB was authorized to sell the lands, hereditament and tenement belonging solely and exclusively to the said minor on terms thereunder contained which property is fully mentioned and described in the Schedule hereto.

AND WHEREAS the said order is still in full force and virtue.

AND WHEREAS in pursuance of the said order the said AB as such certificated guardian has contracted with the said CD for absolute sale of the said property at and for the sum of Rs. _____.

NOW THE INDENTURE WITNESSETH that for the consideration as aforesaid and in exercise of the powers, authorities and liberties conferred upon and vested under and by virtue of the hereinbefore recited order dated _____ and all other powers and authorities enabling him in that behalf the said AB do hereby grant, convey, sell, transfer, assign and assure as certificated guardian of the said minor the said property and every part whereof unto and to the use of the said CD, To Have and To Hold the same absolutely and for ever.

AND THIS INDENTURE FURTHER WITNESSETH that the said AB do hereby covenant with the said CD that the said AB has not hereto before done, executed, performed or knowingly suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may in any way be encumbered or prejudiced in title or estate or the said AB may be hindered or prevented from granting, transferring, conveying, selling, assigning or assuring the same in the manner hereinbefore indicated.

The Schedule above referred to

IN WITNESS WHEREOF the parties have set their hands to the Deed of sale on the ____ of _____, 20__ in the presence of the witnesses.

Signed, sealed and delivered

Witness 1: _____ AB

Witness 2: _____ CD

Answer 1(b)

Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.

There are number of judicial pronouncements by the courts where they have justified delegated legislation. For e.g., In *Delhi Laws Act case*, AIR 1961 SC 332; *Vasantlal Magan Bhai v. State of Bombay*, AIR 1961 SC 4; *S. Avtar Singh v. State of Jammu and Kashmir*, AIR 1977 J&K 4.

While commenting on indispensability of delegated legislation Justice Krishna Iyer observed in the case of *Arvinder Singh v. State of Punjab*, AIR A1979 SC 321, that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislature may not get off to a start if they must directly and comprehensively handle legislative business in their plenitude, proliferation and particularization. Delegation of some part of legislative power becomes a compulsive necessity for viability.

There are risks inherent in the process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may

- a) not lay down any policy at all;
- b) declare its policy in vague and general terms;
- c) not set down any standard for the guidance of the executive;
- d) confer an arbitrary power to the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation.

Delegation is permissible so long as the Legislature does not abdicate its law making role in favour of the executive. When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power.

A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be reported to as a subsidiary or ancillary measure. (*Edward Mills Co. Ltd. v. State of Ajmer*, (1955) 1. SC.R. 735)

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Answer 1(c)

Notice

It is pleasure to have very long business partnership named "XX, ZZ and sons" between "XX" With "ZZ". We both enjoyed this agreed partnership in terms of profit, growth, goodwill and our friendship. Now we are in good positions and having capital to manage separate businesses as discussed in our last meeting. Our partnership goes long even more than our agreement. It was just because of your goodness and competency. We are having some issues because of our employees. The same have been resolved in the last meeting. Before we get into any further misunderstandings, we have decided to proceed to terminate the partnership agreement as defined in our first agreement. Which clearly define the terms and conditions for termination of assets, capital, employees and goodwill.

All debts dues have settled and today this is to notify to all that the partnership between partnership named "XX, ZZ and sons" between "XX." With "ZZ" has been dissolved on mutual agreement.

Dated:

S/d

"XX"

S/d

ZZ

Answer 1(d)

A specimen Agreement to Hypothecate Goods to secure Fixed loan

The Manager
ABC Bank

Sir/Madam

In consideration of your Bank advancing to me/us on loan the sum of Rs_____, I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at ____% per annum subject to a maximum of____% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank. I/We declare to be my/our absolute property, and to be stored in my/our godowns at_____. I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall I/We do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided

that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of _____ per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/ us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorised by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/ us under lien to the Bank under this agreement and or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a pawnee under the Indian Contract Act and failing payment of the amount under this loan on _____, to sell and realise the said goods and promissory notes or bazaar chits. No notice to me/us of such sale shall be necessary, and I/ We hereby agree to waive any such notice. I/We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by the Bank and the charges and expenses incurred in connection with such realisation, and I/ We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession.

I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan. It shall be optional for, but not obligatory on the Bank, to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons may be or become indebted or liable to the bank on any account.

Schedule of securities referred to in the agreement _____

Schedule of instalments for the repayment of the loan amount _____

Yours faithfully,

For M/s XYZ (_____)

Authorised Signatory,

Place: _____

Dated: _____

Accepted by:

(_____)

The Manager

ABC Bank

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Alternate Answer 1**A specimen Agreement to Hypothecate Goods to secure Fixed loan**

THIS DEED OF HYPOTHECATION is executed at _____ on this the ____ day of _____, 20____
between

M/s XYZ a partnership firm comprising Mr _____, Mr _____
and Mr _____ partners, having its main business place at _____
_____ and branches at _____,
_____ and _____ (hereinafter called "the
Borrower" which expression shall unless the context admits otherwise, include the partners, their
heirs, executors, administrators, representatives and assigns of the one part).

AND

ABC Bank having its Registered Office at _____ acting through its Bank
Manager, _____ Branch, (hereinafter called "the Creditor", which expression shall, unless the
context admits otherwise, include its representatives) of the other part.

WHEREAS

The BORROWER has placed an order for the purchase of, a _____, namely _____),
{valued at Rs. _____ (Rupees _____), (Details of the same are set out in the
schedule 'A' hereunder) (hereinafter referred to as the Goods), with the _____,
namely _____, having its office at _____, and has remitted an amount of Rs. (Rupees
_____ only), with the said as advance towards the sale consideration.

The BORROWER has approached the CREDITOR for a loan of Rs. _____ (Rupees _____
only), for the payment of the balance price of the schedule 'A' mentioned goods. The CREDITOR
and BORROWER have agreed that the CREDITOR shall finance the purchase of the schedule 'A'
mentioned goods, on the condition that the BORROWER hypothecates the schedule mentioned
goods with the CREDITOR as security for the due repayment of the said loan. The parties have
agreed to reduce their agreement to writing.

**NOW THEREFORE IN CONSIDERATION OF THE MUTUAL OBLIGATIONS AND UNDERTAKINGS CONTAINED
HEREIN THIS AGREEMENT WITNESSETH AS FOLLOWS:**

Payment by the CREDITOR

The CREDITOR shall pay to the said manufacturer, on behalf of the BORROWER, a sum of Rs. _____
/-. (Rupees _____), towards the balance price of the said asset and shall retain possession
of the original invoice of the said asset till the debt is fully discharged by the BORROWER.

Hypothecation

The BORROWER hereby hypothecates and creates a charge on the asset more fully described in
the schedule 'A' hereunder to and in favour of the CREDITOR as security for the repayment of the
loan with interest.

Obligations of the BORROWER

The BORROWER hereby undertakes to repay the loan amount within a period of _____ months
commencing from _____ along with interest. The BORROWER shall pay interest at the rate of
_____ on the principal per month, at Rs. _____ /-. (Rupees _____ only). The Interest and
principal are payable in monthly instalments as per schedule-B hereto.

Rights of the CREDITOR

If the BORROWER defaults in payment of the amount as per schedule-B hereto then such defaulted instalment will carry interest as if the defaulted instalment is the principal, until it is paid. If the BORROWER fails to pay any _____ instalment then the CREDITOR shall be entitled to claim the principal and interest amount due, and the same shall become payable forthwith, on the CREDITOR calling upon the BORROWER to make payment of such defaulted principal amount.

The BORROWER shall not remove or take the said goods, outside the State without prior intimation to the CREDITOR.

The BORROWER agrees and undertakes to insure the goods against all hazards, and shall produce the relevant receipts, and other documents, whenever called upon by the CREDITOR so to do.

Any dispute arising under this Deed or any matter incidental thereto, shall be submitted to arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 and the venue of the arbitration shall be at _____.

IN WITNESS WHEREOF the parties hereto affixed their signatures on the day month and year mentioned hereinabove

SCHEDULE 'A'

(Describe the Goods)

SCHEDULE-B

(Describe the payment schedule)

CREDITOR

BORROWER

WITNESSES

- 1.
- 2.

Alternate Answer 2**A specimen Agreement to Hypothecate Goods to secure Fixed loan****DEED OF HYPOTHECATION**

This Deed of Hypothecation is made at _____ on this the _____ day of _____, 20__, by and between:

1. M/s XYZ, a partnership firm having its registered office at _____ (hereinafter referred to as the "BORROWER," which term shall, unless repugnant to the context, mean and include its partners, successors, and assigns),

AND

2. ABC Bank, a banking company registered under the Banking Regulation Act, 1949, and having its registered office at _____ (hereinafter referred to as the "BANK," which term shall, unless repugnant to the context, mean and include its successors and assigns).

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WHEREAS:

1. The BORROWER has applied to the BANK for a fixed loan of Rs. _____ (Rupees _____ only) to meet its financial requirements, and the BANK has agreed to grant the said loan on the terms and conditions set forth in this Agreement.
2. As security for the repayment of the loan, the BORROWER has agreed to hypothecate its goods, assets, and movable properties, as specified in Schedule 'A' hereunder, in favor of the BANK.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Loan Amount

The BANK agrees to advance a sum of Rs. _____ (Rupees _____ only) to the BORROWER, subject to the terms of this Agreement and the loan sanction letter issued by the BANK.

2. Hypothecation

The BORROWER hereby hypothecates in favor of the BANK, as security for the repayment of the loan, all its movable goods and assets listed in Schedule 'A,' together with all accretions, replacements, and substitutions thereof, whether presently existing or acquired in the future.

3. Obligations of the BORROWER

- (a) The BORROWER shall repay the loan in _____ monthly installments as per the repayment schedule detailed in Schedule 'B,' along with interest at the rate of _____% per annum.
- (b) The BORROWER shall not create any further charge, lien, or encumbrance on the hypothecated goods without the prior written consent of the BANK.
- (c) The BORROWER shall ensure that the hypothecated goods remain in its possession and are not sold, transferred, or disposed of without the BANK's prior written consent.
- (d) The BORROWER shall submit a monthly stock statement of the hypothecated goods and maintain proper records for inspection by the BANK at any reasonable time.

4. Rights of the BANK

- (a) The BANK shall have the right to inspect the hypothecated goods and verify the records maintained by the BORROWER.
- (b) In the event of default by the BORROWER in repayment of the loan or interest, the BANK shall have the right to take possession of the hypothecated goods and sell them to recover the outstanding dues.
- (c) The BANK may, at its discretion, convert the floating charge created by this Agreement into a fixed charge by giving prior written notice to the BORROWER.

5. Insurance

The BORROWER shall insure the hypothecated goods against all risks, including fire, theft, and natural calamities, in the joint names of the BORROWER and the BANK, and deposit the policy documents with the BANK.

6. Arbitration

Any dispute arising out of this Agreement shall be resolved through arbitration under the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be _____.

7. Miscellaneous

(a) The hypothecation created under this Agreement shall be deemed to be continuing security for the loan until full repayment of all dues to the BANK.

(b) Any amendment to this Agreement shall be made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month, and year first above written.

SCHEDULE 'A'

(Description of hypothecated goods)

SCHEDULE 'B'

(Repayment schedule)

Signed and Delivered By:

For M/s XYZ (BORROWER)

Authorized Signatory

For ABC Bank (BANK)

Authorized Signatory

WITNESSES:

1. _____

2. _____

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

Question 2

Write short notes on the following :

- (a) Order VI, Rule 2 of Code of Civil Procedure, 1908.
- (b) Minutes and General Contents of Minutes under SS-2.
- (c) Patent Assignment.
- (d) Appellate Authorities under Telecom Regulatory Authority of India.

(4 marks each)

Answer 2(a)

The fundamental rule of pleadings is contained in provisions of Order 6 Rule 2 of the Code of Civil Procedure, 1908 which enjoins:

- "Every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defense as the case may be, but not the evidence by which they are to be proved.
- Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively
 - Each allegation being, so far as is convenient, contained in a separate paragraph.

- Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Answer 2(b)

Minutes and General Contents of Minutes under SS-2

Meaning of Minutes

According to Secretarial Standard 2(SS-2), "Minutes" means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

General Contents of Minutes under SS-2

Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement of the Meeting.

Minutes of Annual General Meeting shall also state the serial number of the Meeting.

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of Quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

Answer 2(c)

Patent is a right, granted by the Government under the Patents Act, 1970(Act) to the grantee, of exclusive privileges of making or selling a new invention or process protected under the patent. The Act confers upon the patentee the right to safeguard his property in the patent and sue the person who infringes upon his patent right. After a complete specification in pursuance of an application for a patent has been accepted and on the request of the applicant, the Controller shall cause the patent to be sealed with the seal of the Patent Office under Section 43 of the Patents Act, 1970. Section 48 of the Act, confers upon the Patentee where the subject matter of the patent is a product, the exclusive right to prevent third parties who do not have his consent from the act of making, using, offering for sale, selling or importing for those purposes that product in India. Where the subject matter of the patent is a process, the patentee is given exclusive right to prevent third parties who do not have his consent from the act of using that process and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India provided that the product obtained is not a product in respect of which no patent shall be granted under this Act.

Section 68 of the Act makes provision with regard to the assignment of patents. The Section lays down:

"An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and duly executed."

Section 69 of the Act provides the provisions for Registration of assignments, transmissions, etc. Section 69(1) prescribes that where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

Section 70 of the Act provides the provisions relating to Power of registered grantee or proprietor to deal with patent. It states:

“Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.”

Answer 2(d)

According to section 14 of the Telecom Regulatory Authority of India Act, 1997(Act), the Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to

- (a) adjudicate any dispute–
 - (i) between a licensor and a licensee;
 - (ii) between two or more service providers;
 - (iii) between a service provider and a group of consumers.

However, the appellate powers are subject to the proviso to section 14(a).

- (b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.
- (c) exercise jurisdiction, powers and authority conferred on–
 - (i) the Appellate Tribunal under the Information Technology Act, 2000; and
 - (ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008.

Further section 18 of the Act provides the provisions relating to Appeal to Supreme Court. It states:

- (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.
- (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.
- (3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against. However, the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

OR (Alternative question to Q. No. 2)

Question 2A

Explain the following :

- (i) The Liability of Members in Memorandum of Association of the Companies Act, 2013.
- (ii) Appeal to the Securities Appellate Tribunal.

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- (iii) Appointment, Duties and Powers of Chairman of the Company.
- (iv) Role of Company Secretary in Practice, under the Real Estate (Regulation and Development) Act, 2016.

(4 marks each)

Answer 2A(i)

Sec 2(22) of the Companies Act, 2013(Act) defines a “company limited by shares” as a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

Also, Sec 2(21) defines a “company limited by guarantee” as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Further as per Sec 4(1)(d) of the Act, the memorandum of the company shall state the liability of members of the company, whether limited or unlimited, and also state,-

- i) In the case of a company limited by shares that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- ii) In the case of a company limited by guarantee, the amount up to which each member undertakes to contribute -
 - (a) to the assets of the company in the event of its being wound - up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
 - (b) To the costs, charges and expenses of winding - up and for adjustment of the rights of the contributors among themselves.

In view of the above provisions, it is clear that the liability of the members of the company is limited as per its memorandum of association.

Answer 2A(ii)

Section 15T of the SEBI Act, 1992 provides the provisions relating to Appeal to the Securities Appellate Tribunal. It provides that:

- (1) Save as provided in sub-section (2), any person aggrieved,-
 - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
 - (b) by an order made by an adjudicating officer under this Act,
 - (c) 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 according to section 15T(3), every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the SEBI/Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Further under section 15T(4), on receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

And under section 15T(5), the Securities Appellate Tribunal shall send a copy of every order made by it to the SEBI/Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

Also under section 15T(6), the appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Answer 2A(iii)

Appointment, Duties, and Powers of the Chairman of a Company

The Chairman of a company holds a key leadership role in governance, ensuring the smooth functioning of board meetings and promoting effective decision-making. Their appointment, duties, and powers includes the following:

1. Appointment of the Chairman

(i) Appointment by the Board:

- The Board of Directors may elect one of its members as the Chairman of the Board.
- The AoA of the company may prescribe specific procedures or qualifications for the appointment.

(ii) Chairman for Meetings:

- As per SS-1, if no Chairman is elected, the directors present at a board meeting may elect one of themselves to act as Chairman for that meeting.
- As per SS-2, the Chairman of the Board shall take the Chair and conduct the General Meeting(s). If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the Chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

(iii) Role of AoA:

- The Articles of Association may define whether the Chairman is a permanent appointee or elected for specific meetings or terms.

(iv) Dual Role:

- The Chairman may also serve as the Managing Director or CEO unless restricted otherwise.

2. Duties of the Chairman

(i) Role in Meetings:

- **Preside over Meetings:** Ensure that board and general meetings are conducted in an orderly manner.
- **Facilitate Effective Discussions:** Guide discussions to ensure that all directors contribute to decision-making.
- **Decisive Voting:** Exercise a casting vote in case of a tie, if permitted by the AoA.
- **Explanation of objective of resolution in General Meeting(s):** As per SS-2, the Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.
- **Ordering a Poll in General Meeting(s):** As per SS-2, the Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.
- **Appointment of Scrutinizer:** As per SS-2, the Chairman shall appoint such number of scrutinisers as he deems necessary.
- **Declaration of results in General Meetings(s):** As per SS-2, the scrutiniser(s) shall submit his report within three days from the date of the Meeting to the Chairman or a person authorised by him, who shall countersign the same and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.
- **Recording and Signing of Minutes Meeting(s):** As per SS-1, Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting. As per SS-2, the Chairman shall ensure that the proceedings of the General Meeting(s) are correctly recorded. Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting. The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

(ii) Governance Responsibilities:

- Ensure compliance with the provisions of the Companies Act, 2013, and other applicable laws.
- Uphold the principles of transparency, fairness, and accountability in board processes.

(iii) Agenda Setting:

- Collaborate with the Company Secretary to finalize the agenda for board meetings, ensuring that all material items are included as per SS-1.

(iv) Promoting Compliance and Ethics:

- Ensure adherence to company policies, governance standards, and ethical practices.

- Oversee the implementation of board resolutions.
- (v) **Stakeholder Communication:**
 - Represent the company in engagements with stakeholders, regulators, and other entities, if so authorized.
- (vi) **Conflict Resolution:**
 - Mediate conflicts among directors and ensure a collaborative approach to decision-making.

3. Powers of the Chairman

- (i) **Meeting Management:**
 - SS-1 grants the Chairman the authority to regulate the proceedings of the meeting, including maintaining order and ensuring compliance with statutory requirements.
 - Adjourn meetings if necessary, as per applicable laws and AoA.
- (ii) **Casting Vote:**
 - The Chairman may have the authority to cast a second or casting vote in case of equality of votes, provided the AoA permits it.
- (iii) **Oversight Functions:**
 - Monitor the implementation of decisions taken at the board and shareholders' meetings.
- (iv) **Delegated Powers:**
 - The Board may delegate specific powers to the Chairman through resolutions, including signing documents, approving budgets, or representing the company in legal matters.

Alternate Answer

Meetings of the Board: The Chairman of the company shall be the Chairman of the Board or its Committee, as the case may be, or the Chairman appointed or elected for a Meeting. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board. The procedure for appointment and powers and duties of a chairman may be prescribed in the Articles of the company.

Appointment of Chairman: For a Meeting to be properly constituted, the Chairman of the Board or a validly elected person should be in the chair. The Companies Act, 2013(Act) does not provide for appointment of a Chairman of the Meeting but the Model Articles provide that the Board may elect a Chairman of its Meetings and determine the period for which he is to hold office. While appointing such person, the Board may stipulate a time period for the person to continue as Chairman of the Board. At the end of such period, the Board may either re-appoint the person or appoint any other Director as Chairman of the Board. It is considered a good practice for every company to have a chairman who would be the Chairman for Meetings of the Board of Directors as well as general meetings of the company.

Election of Chairman in the absence of elected chairman: The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman is unable to attend the Meeting the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles. If no Chairman is elected by the Board,

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or if at any Meeting, the Chairman is not present within five minutes after the time appointed for holding the Meeting, the Directors present may choose one of their number to be Chairman of the Meeting.

Role of Chairman: The Chairman shall ensure that the required Quorum is present throughout the meeting and at the end of discussion on each agenda item, the Chairman shall announce the summary of the decision taken thereon. The main function of the Chairman is to preside over and conduct the Meeting in an orderly manner.

Interested Chairman should vacate the Chair: If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the Chair after that item of business has been transacted.

Answer 2A (iv)

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016(Act) a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be. Hence a Company Secretary holding certificate of practice can –

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

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

Question 3

- (a) Enumerate the objects of a trust, as contemplated in the Indian Trusts Act, 1882.
- (b) Ramesh and Shailesh entered into a deed of mortgage on 15 May 2024, for mortgaging a residential property situated in Mangalore. The loan amount is ₹ 50 lakh. The terms of the agreement inter-alia include that Ramesh by the said agreement transfers this property to Shailesh on the following conditions :
 - (i) If Ramesh repays the loan amount, the property should be re-transferred to Ramesh by Shailesh and
 - (ii) If Ramesh makes default in repayment, the property is retained by Shailesh.

Explain the nature of the above mortgage.
- (c) "Supreme Court of India is the highest level of Court of Indian Juridical System." Discuss.
- (d) Explain the important aspects of Drafting the resolutions.

(4 marks each)

Answer 3(a)

Section 4 of the Indian Trusts Act, 1882 provides that the object of the trust must be lawful. The purpose of the trust is lawful unless it is:

- (i) forbidden by law, or
- (ii) is of such a nature that, if permitted, it would defeat the provisions of any law, or

- (iii) is fraudulent, or
- (iv) involves or implies injury to the person or property of another, or
- (v) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Answer 3(b)

The above is in the nature of an English mortgage. Here, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will retransfer it to the mortgagor upon payment of the mortgaged money as agreed.

The mortgage between Ramesh and Shailesh satisfies all the above requirements. Hence, it is an English mortgage.

Answer 3(c)

Supreme Court of India is the highest level of court of Indian juridical system. It plays the role of the guardian of the Constitution of India.

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This court is also an appellate court.

Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.

Advisory jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

Answer 3 (d)

All resolutions, no matter how simple they are, should be drafted in clear and distinct terms since resolutions embody the decisions of the meetings. The following points should be remembered while drafting resolutions. Both for Board and general meetings:

- (a) All essential facts are included in the resolution e.g., the resolution for reappointment of a managing director should indicate that the re-appointment is subject to the approval of the Central Government if approval of the Central Government is required and should also cover the period of appointment, terms and conditions of such appointment.
- (b) Surplus and meaningless words or phrases should not be included in resolutions.
- (c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialed by the chairman for the purpose of identification.
- (d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules-pursuant to which they are being passed.

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- (e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.
- (f) A resolution must indicate when it will become effective.
- (g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
- (h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.
- (i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.
- (j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

Question 3(A)

Distinguish between the following :

- (i) Promissory Note and Bill of Exchange.
- (ii) Firm and One Person Company.
- (iii) Prohibition Writ and Certiorari Writ.
- (iv) Signature and Attestation Clause.

(4 marks each)

Answer 3A(i)

Promissory Note

Promissory note is one of the negotiable instruments recognized under the Negotiable Instruments Act, 1881. A “promissory note” is defined by Section 4 of the Negotiable Instruments Act, 1881 as “an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument”.

A written, unconditional order by one party (the drawer) to another (the drawee) to pay a certain sum, either immediately (a sight bill) or on a fixed date (a term bill), for payment of goods and/or services received. The drawee accepts the bill by signing it, thus converting it into a post-dated check and a binding contract.

It also includes a note promising the payment of any sum of money out of a particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen. Requisites of a promissory note as per the Negotiable Instruments Act, 1881 are the following:

- (a) the document must contain an unconditional undertaking to pay;
- (b) the undertaking must be to pay money only;
- (c) the money to be paid must be certain;
- (d) it must be payable to or to the order of a certain person or to bearer;
- (e) the document must be signed by the maker.

Bill of Exchange

According to Section 2(2), "bill of exchange" means a bill of exchange as defined in the Negotiable Instruments Act, 1881 and includes also a Hundi and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person or, or to draw upon any other person for, any sum of money. The Negotiable Instruments Act, defines a "bill of exchange" as an instrument in writing, containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Under Section 2(3) of the Indian Stamp Act, 1899 a "bill of exchange payable on demand" includes:

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or in the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;
- (b) an order for the payment of any sum of money weekly, monthly or at any other said period; and
- (c) a letter of credit, that is to say, any instrument by which one person authorises any other person to give credit to the person in whose favour it is drawn. It may be noted that a bill of exchange payable on demand includes even a letter of credit, as per above definition.

Thus, the definition in the Indian Stamp Act includes many instruments which could not be classed as 'bills of exchange' within the definition given by the Negotiable Instruments Act, 1881.

Alternate Answer

The following are the important points of distinction between a bill of exchange and a promissory note:

- (a) A promissory note is a two-party instrument, with a maker (debtor) and a payee (creditor). In a bill there are three parties—drawer, drawee and payee, though any two out of the three capacities may be filled by one and the same person. In a bill of exchange, the drawer is the maker who orders the drawee to pay the bill to a person called the payee or to his order. When the drawee accepts the bill he is called the acceptor.
- (b) A promissory note cannot be made payable to the maker himself, while in a bill of exchange, the drawer and payee may be the same person.
- (c) A promissory note contains an unconditional promise by the maker to pay to the payee or his order; in a bill of exchange there is an unconditional order to the drawee to pay according to the directions of the drawer.
- (d) A promissory note is presented for payment without any prior acceptance by the maker. A bill of exchange payable after sight must be accepted by the drawee or someone else on his behalf before it can be presented for payment.
- (e) The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.
- (f) Foreign bill must be protested for dishonour but no such protest is necessary in the case of a note.
- (g) When a bill of exchange is dishonoured, due notice of dishonour is to be given by the holder to the drawer and the intermediate endorsee, but no such notice need to be given in the case of a promissory note.

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- (h) A bill can be drawn payable to bearer provided it is not payable on demand. A promissory note cannot be made payable to bearer, even if it is made payable otherwise than on demand.

Answer 3A(ii)

Distinction between Firm and One Person Company

Basis	One Person Company(OPC)	Firm
Governing Law	OPC is regulated by the Companies Act, 2013.	Firm is governed and regulated by the Indian Partnership Act, 1932.
Registration requirements	Registration of OPC is compulsory	Registration of Firm is not compulsory
Name	The name of OPC is required to be approved by the Ministry of Corporate Affairs and 'OPC' is also to be added with the name of the company.	The name of the firm may be decided by the Partners.
Separate Legal Status	OPC is Separate Legal entity	Firm is not a Separate Legal Entity
Extent of Liability	OPC has Limited Liability	Firm has Unlimited liability
Perpetual Succession	OPC has Perpetual succession	Firm has no perpetual succession
Credibility for obtaining finance	Credit may be obtained on the basis of credit record of the OPC	Credit may be obtained on the basis of credit record of the partners
Minimum number of Owners	One Person Company has one shareholder	Minimum two number of partners
Requirement of DIN	Every director is required to obtain Director Identification Number (DIN)	No partner of a firm is required to get DIN

Answer 3A(iii)

Prohibition Writ

The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law.

The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.

Certiorari Writ

The writ of certiorari is available to any person whenever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

Answer 3A(iv)

After attestation clause, signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf. For example, if the deed is executed by the company or co-operative society then the person authorised in this behalf by and under the articles of association or rules and regulations or by resolution as the case may be should sign the document and seal of the company/society should be so affixed, thereto by mentioning the same.

In India, the Deed of Transfer is not required to be signed by the transferee even though the transferee is mentioned as party in the document. All conditions and covenants are binding upon him without his executing the conveyance, if he consents to it by entering into the lease granted under the conveyance. However, in case the deed contains any special covenant by the transferee or any reservation is made by the transferee then it is always proper to have the deed signed by the transferee also.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of will. In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should have been present at the same time. There is no particular form of attestation but it should appear clearly that witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. If both the parties sign in the same line then the transferor may sign on the right and the transferee on the left and witnesses may sign below the signatures.

It is essential that the attesting witness should have put his signature, *amino attestandi*, intending for the purpose of attesting that he has seen the executant sign or has received from him, a personal acknowledgement of his signature.

Question 4

- (a) The Companies Act, 2013, recognizes an interesting concept of entrenchment. Explain.
- (b) Briefly explain the various stages of writing a Legal Opinion.
- (c) Write down the conditions, under which you will suggest a company to bring a suit for specific performance.
- (d) Elucidate the term "Court Craft".

(4 marks each)

Answer 4(a)

The Companies Act 2013(Act), recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining

100% consent of members). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

According to section 5(3) of the Act, the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Further according to section 5(4) of the Act, the provisions for entrenchment referred to in subsection (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Further, according to section 5(5) read with the rule 10 of The Companies (Incorporation) Rules, 2014, where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in *Form No.INC.2 or SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Answer 4(b)

Drafting a legal opinion involves a systematic and methodical process to ensure clarity, accuracy, and utility. The process can be broken into three primary stages: preparation, analysis, and drafting.

I. Preparation Stage

This stage involves setting the foundation for an effective legal opinion by understanding the context and requirements.

1. Understanding the Instructions:

- Carefully read the instructions provided by the client or instructing solicitor.
- Identify the legal issue(s) and the client's objectives.

2. Familiarizing with Relevant Facts:

- Analyze the factual matrix provided.
- Verify if additional facts or clarifications are required for completeness.

3. Legal Research:

- Conduct thorough research on the applicable statutes, precedents, and principles of law relevant to the case.
- Identify authoritative sources and note conflicting judgments, if any.

II. Analysis Stage

This stage involves synthesizing the facts and law to develop a coherent structure for the opinion.

1. Issue Identification and Framing:

- Frame the legal issues concisely and clearly.
- Segregate primary issues from ancillary ones.

2. Application of Law to Facts:

- Apply the relevant legal principles to the specific facts of the case.
- Evaluate potential outcomes and identify the strengths and weaknesses of the client's position.

3. Structuring the Advice:

- Develop a logical framework to address each issue sequentially.
- Prioritize the most critical issues and ensure comprehensive coverage of all pertinent aspects.

III. Drafting Stage

This stage translates the analysis into a written document tailored for clarity and precision.

1. Introduction:

Provide a brief overview of the case, the issues to be addressed, and the scope of the opinion.

2. Main Body:

- Discuss each issue in a structured manner, starting with the most significant ones.
- For each issue:
 - State the relevant facts.
 - Apply the legal principles.
 - Provide a reasoned conclusion.

3. Advice and Recommendations:

- Offer clear, actionable advice to the client based on the analysis.
- Address potential outcomes and include a percentage of success if appropriate.
- Suggest next steps or measures to strengthen the case, such as gathering additional evidence or initiating negotiations.

4. Conclusion:

- Summarize the key points of advice succinctly.
- Reiterate the recommended course of action.

Answer 4(c)

CONDITIONS FOR SUGGESTING A SUIT FOR SPECIFIC PERFORMANCE

Specific performance is an equitable remedy requiring a party to fulfill their contractual obligations. It is often used when damages are inadequate to compensate for the breach. As an equitable remedy, it is granted at the court's discretion and subject to specific conditions.

Conditions under which specific performance may be suggested:

1. Existence of a Valid and Enforceable Contract: The contract must be clear, lawful, and binding.
2. Inadequacy of Monetary Damages: When damages cannot adequately compensate the injured party, such as in cases involving unique assets like land or intellectual property.

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3. Performance by the Plaintiff: The plaintiff must demonstrate that they have performed or are willing to perform their contractual obligations.
4. Clear and Definite Terms: The contract must be unambiguous and capable of being enforced.
5. Irreparable Harm: The breach must result in harm that cannot be rectified by monetary compensation.
6. Feasibility of Performance: The remedy must be practical and enforceable by the court.
7. Absence of Defenses: The contract must not be void or voidable due to fraud, mistake, or undue influence.

For instance, in *Babulal v. Hazari Lal Kishori Lal (AIR 1982 SC 818)*, the Supreme Court highlighted the discretionary nature of specific performance and emphasized that it depends on the enforceability of the contract and the adequacy of damages.

By these conditions, a company may consider seeking specific performance in cases involving unique contractual rights, irreplaceable assets, or when it is essential to protect the expectation interest of the contract.

Answer 4(d)

Court Craft

Companies Secretaries act as an authorized representative before various Tribunals/ quasi-judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi-judicial body.

Art of advocacy is very important to convince the judge with proper interpretation. The court craft is learned when we enter the practicing side of the profession.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing in negotiation and in meeting, client seminars and public lectures.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact on success in professional life.

Question 5

- (a) Faizam was a shareholder in Sky Scrapers Limited. Faizam died after executing a will under which Rahim, a son of Faizam, was to inherit all his properties including the shares held by him.

The Articles of Association of Sky Scrapers Limited vested, with the Board of Directors, absolute discretion in regard to registration of transfer of shares. The Board of Directors refused to register the transmission of the shares to Rahim on the ground that Rahim is an undesirable person.

- (i) What are the documents Rahim has to submit for transmission of shares in his name ?
- (ii) Is the refusal to register the transmission of shares, by the Board of Directors of the company, correct ? Give reasons for your answer.
- (iii) What are the remedies available to Rahim ?

(8 marks)

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- (b) 'A caveat petition is a precautionary measure, which is undertaken by people, usually when they are having a very strong apprehension that some case is going to be filed in the Court regarding their interest in any.' Enumerate and draft a specimen of Caveat Petition.

(8 marks)

Answer 5(a)

(i) Documents to be submitted for transmission of Shares: Considering that the deceased shareholder has created a will wherein his shares of the company has been bequeathed in favour of his son Rahim, the process of transmission will be governed by the provisions of Section 56 of the Companies Act, 2013 read with the Indian Succession Act, 1925 and accordingly, Rahim needs to submit with the Company, a formal written request for transmission of shares (*typically available with the company's RTA in case of dematerialised shares or as a simple letter*) along with the following documents to allow the company to verify his legal rights for the transmission of shares:

- a. A certified copy of the Death Certificate of the deceased shareholder, issued by a competent authority (like the local municipal corporation).
- b. Copy of the Probate of Will, as issued by the relevant court (*i.e., a legal document confirming the authenticity of the Will*) along with the certified copy of the Will clearly mentioning the shareholder's intention of transferring the shares to the named beneficiary (transferee).
- c. Identity and Address Proofs of the deceased shareholder.
- d. Identity and address proof of the transferee (as per the Will).
- e. Affidavit of the Transferee confirming that the Will is the last valid testament of the deceased based on which he is staking claim for the being the rightful beneficiary of the deceased shareholder's estate.
- f. NOC from Other Legal Heirs, if the Will names a specific transferee but there are other legal heirs (e.g., spouse, children), may be required, affirming that they do not object to the transmission of the shares as per the Will.
- g. Original Share Certificate(s): The original share certificate(s) of the deceased shareholder, if available. If the shares are held in physical form, the original certificates need to be submitted. If the share certificates are lost or destroyed, an Indemnity Bond (on a non-judicial stamp paper) may be required, declaring the loss of the certificate and indemnifying the company against any future claims. If the shares are in dematerialized (demat) form, the details of the demat account of the transferee will need to be provided along with a demat request form for the transfer of shares.
- h. Bank Account Details of the transferee, for updation of details related to dividend payments or for future corporate actions.
- i. Any other documents that may be requested by the company as per the company's internal procedures.

(ii) Refusal to Register the shares: section 56(2) of the Companies Act, 2013 provides that "Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. Also, Article 23(i) of Table-F of Schedule I of the Companies Act, 2013 provides that on the death of a member, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

If Rahim has submitted the requisite documents for transmission of shares, then by operation of

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law, he is entitled to the transmission of shares in his name and accordingly, the refusal to register transmission of shares by the Board, on the grounds of him being undesirable in the judgement of the Board is not correct.

(iii) Remedies available in case of unjust refusal to register the transmission of shares: In the event of refusal to register the transmission of shares in the name of Rahim, despite submission of the requisite documents, the available remedies are provided for in Section 58 of the Companies Act, 2013. As per Section 58 (4) if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

Section 58 (5) provides that the Tribunal, while dealing with an appeal made as aforesaid, may, after hearing the parties, either dismiss the appeal, or by order:

- (a) direct that the transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Further, Section 58(6) provides that if a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Rahim has the above mentioned remedies in the given situation.

Answer 5(b)

Caveat Petition

(Section 148A of the Civil Procedure Code, 1908)

A Caveat is a Latin term which means, 'let a person beware' originated in the mid 16th century. In law, it may be understood as a notice, especially in probate, that certain actions may not be taken without informing the person who gave the notice. It may simply be understood as a warning. In the Civil Procedure Code of 1908 (hereinafter, the Code/CPC) it was inserted under section 148A by the recommendations of the Law Commission of India's 54th Report and was inserted by the CPC (Amendment) Act 104 of 1976, whereby an application can be filed by a person who seeks to be heard before a decision is made in a matter where he might be affected by a judgment or order. This petition is essentially a notice to the court and other parties involved, informing them that the person filing the caveat wishes to be heard before any order or judgment is passed.

[Court Name]

Caveat Petition under Section 148A of the Civil Procedure Code, 1908

CAVEAT APPLICATION NO. _____ OF _____

IN PROPOSED ORIGINAL APPLICATION NO. _____ IN THE MATTER OF:

1. Name of the Caveator (Petitioner/ Applicant)

[Full name, address, and contact details of the caveator]

2. Name of the Caveatee (Opposite Party)

[Full name, address, and contact details of the opposite party]

MOST RESPECTFULLY SHOWETH:

- (A) **Introduction:** The **Caveator**, whose details are mentioned above, respectfully submits this caveat under Section 148A of the Civil Procedure Code, 1908, to inform this Hon'ble Court and the opposite party that the caveator seeks to be heard before any order is passed in the matter.
- (B) **DETAILS OF THE PROPOSED APPLICATION OR PROCEEDING:**
- Provide a brief description of the nature of the application or legal proceeding in which the caveator wishes to intervene.
 - *If possible, provide details of the case number, the court before which it is being heard, or any other relevant details.*
- (C) **FACTS OF THE CASE:**
- Briefly describe the facts and the nature of the matter that is likely to affect the caveator.
 - Mention whether the caveator is already a party to the case, or will be affected by an order or judgment in an impending matter.
- (D) **GROUND FORS FOR CAVEAT:**
- State the grounds for seeking to be heard before any order is passed.
 - Mention any specific interest that the caveator has in the case or proceeding, which makes it necessary for the caveator to be heard before a decision is made.
- (E) **REQUEST:** The caveator respectfully prays that the Hon'ble Court be pleased to:
- Register this caveat and issue notice to the opposite party;
 - Provide the caveator with the opportunity to be heard before any order is passed; and
 - Pass any such other order(s) that this Hon'ble Court may deem fit and proper in the interest of justice.

Verification:

I, *[Name of the Caveator]*, the petitioner herein, do hereby declare that the contents of this Caveat Petition are true to my knowledge and belief. I further declare that the caveator is filing this petition under Section 148A of the CPC and understands the implications of this provision.

Date:

Place:

Signature of the Caveator

[Name and details of the Caveator]

Question 6

- (a) ABC Ltd. called an Annual General Meeting on 17th December 2019. As the quorum was not present on that day, the meeting was adjourned and the adjourned meeting held on 8th July, 2024. No other AGM was held in 2024. Can the company be prosecuted for not holding AGM in every year? Discuss. (6 marks)
- (b) Draft a Family Settlement Deed. Assume facts, if required. (6 marks)
- (c) Hrishiksha, Vidyamurthy, Ragupraveera and Vidyadheesha proposes to register a Limited

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Liability Partnership (LLP) to publish books and historical literature. Draft the following clauses of an LLP agreement, as requested by them :

- (a) Maintenance of Books of Accounts
- (b) Extent of liability of the LLP
- (c) Common Seal
- (d) Arbitration.

(4 marks)

Answer 6(a)

Section 96 of the Companies Act, 2013 (Act) prescribes that every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. Further, the 3rd proviso to Section 96(1) provides that the Registrar of Companies may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Further, Sec 99 of the Act, inter alia provides that if any default is made in holding a meeting of the company in accordance with section 96, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Accordingly, the company was required to hold at least one Annual General Meeting each year and the failure to do so has resulted in default on part of the company as well as every officer of the company who is in default and therefore the company and its officers in defaults are liable to be prosecuted in accordance with Section 99 of the Companies Act, 2013.

Answer 6(b)

Family Settlement Deed

This Deed of Family Settlement is executed on this ___ day of _____, 20___

BETWEEN

A B S/o MN aged ___ years, occupation _____ R/o _____ (Hereinafter called as the first party)

AND

CD S/o XM aged ___ years, occupation _____ R/o _____ (Hereinafter called as the second party)

WHEREAS

- (1) The first party has started and carried out the business and undertaking described in Schedule 'C' by his own initiative and efforts with his own capital and funds.
- (2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'D' and the second party shall hold the share in business and properties described in Schedule 'E'.

- (3) The movable and immovable properties, which is also described in Schedule 'C' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'E' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'D' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'D'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this ____ day of _____ in the year _____ at _____.

1. Signature of the 1st Party

2. Signature of the 2nd Party

Witnesses

1. _____ (Name, designation and address)

2. _____ (Name, designation and address)

Answer 6(c)

(a) Maintenance of Books of Accounts

Books of Accounts of the limited liability partnership (LLP) shall be kept at the registered office of the LLP for reference, access, inspection and having copies of by all the partners.

The accounting year of the LLP shall be the Financial Year, i.e., from 1st April of the year to 31st March of the subsequent year. The first accounting year shall be from the date of commencement of the LLP till 31st March of the subsequent year.

(b) Extent of liability of the LLP

The LLP is not bound by anything done by a partner in dealing with a person if:

- 1) the partner in fact has no authority to act for the LLP in doing a particular act
- 2) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

(c) Common Seal

The LLP shall have a common seal to be affixed on documents as defined by partners under the signature of any of the Designated Partners.

(d) Arbitration

All disputes between the partners or between the Partners and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this LLP Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

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NOTES

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