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GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2022

JUNE 2025

GROUP 1

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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(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.

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

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

CONTENTS

Group 1

		Page No.
1.	Environmental, Social and Governance (ESG) – Principles & Practice	1
2.	Drafting, Pleadings & Appearances	25
3.	Compliance Management, Audit & Due Diligence	54
4.	**Elective 1**	
4.1	CSR & Social Governance	82
4.2	Internal and Forensic Audit	108
4.3	Intellectual Property Rights – Law & Practice	137
4.4	Artificial Intelligence, Data Analytics and Cyber Security – Laws & Practice	154

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ENVIRONMENTAL, SOCIAL AND GOVERNANCE – PRINCIPLES AND PRACTICE

GROUP 1 PAPER 1

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART- I

Question 1

Alchema Infratech Ltd, is a leading Execution, Procurement and Construction (EPC) company specializing in construction of national highways, expressways, railway tracks and other civil infrastructure projects and has a paid-up share capital of ₹ 500 crore. The Company has its registered office in New Delhi and has been a key player in infrastructure projects across India. AGP & Co LLP, Chartered Accountants are the statutory auditors of the Company and have two more years of tenure as per the provisions of the Companies Act, 2013.

Presently, the Company has Kukur and Kusam on its Board of Directors as independent directors. The Company was planning to appoint another independent director to strengthen its governance practices. Meyil, a director of the Company had a good rapport with Praneyi, and wanted to appoint him as an independent director, given his expertise and understanding of finance. Praneyi was working as a Senior Audit Manager with AGP & Co LLP during the financial year 2019-20 and was well acquainted with the Company's processes and its management.

Since last five years, Praneyi was working as an independent consultant with few corporates providing them advisory services. He was delighted to be on the Board of Alchema, when Meyil reached out to him with his request. Upon Praneyi's consent, Meyil asked Huma, the Company secretary to convene a board meeting to appoint Praneyi as an independent director. As it was annual return filing season, Huma was busy with completing the compliance requirements. While sending notices, she did not send the copy of requisition to Meyil. As Articles of the Company does not provide for procedure of conducting the meeting, the meeting was convened on a public holiday at 6 p.m. at Meyil's residence in Chandigarh.

Sufil, another director on the Board of the Company, raised the following objections pointing out procedural irregularities :

- Notice did not contain the serial number of the meeting
- Notice was served through courier rather than mail/registered post
- Meeting was convened on public holiday, after working hours, and
- Meeting was held in Chandigarh which is located in a State different from the State of Company's registered office.

Meanwhile, as the year end filings were being completed, Suma, a Senior Assistant working under Huma, wanted to send communication to all the teams regarding information required for preparation of annual report, as a yearly activity. Huma saw this communication and told Suma that collation of information for preparation is not a one-time activity, its an ongoing project.

In the background of above facts answer the following questions :

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(a) With reference to the provisions of the Companies Act, 2013 / Secretarial Standards, examine the validity of objections raised by Sufil regarding the notice of board meeting.

(b) Outline the provisions under the Companies Act, 2013 regarding restrictions on employment and voting rights of independent directors and their relatives. Comment whether Praneyi is eligible to be appointed as an independent director.

(c) 'It is considered a good practice to designate an independent director as a lead independent director.' Elucidate the concept of lead independent director and his/her role in the Company.

(d) Is preparation of annual report an ongoing project throughout the year ? Discuss the activities which secretarial department should follow in preparation of annual report.

(5 marks each)

Answer 1(a)

As per SS-1, any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

In case an oral requisition is received from a Director for convening a Meeting and a written requisition does not follow, such requisition should be put in writing forthwith by the Company Secretary or the person authorised by the Board in this behalf, and placed before the Chairman/Managing Director/ Whole-time Director, as the case may be, with a copy to the Director concerned who has requisitioned such Meeting.

(i) Numbering of meetings: As per para 1.2.1 of SS-1, every Meeting shall have a serial number. Hence, objection is valid.

(ii) Delivery of Notice: As per para 1.3.1 of SS-1, notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means. Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means.

As the courier is not specified in SS-1, and nothing is specified by the Directors regarding a particular means of delivery of Notice. Hence, objection is valid.

(iii) Board Meeting on Public Holiday: As per para 1.2 of SS-1, the Board Meeting may be convened on any day including the public holiday, unless the Articles provide otherwise. Hence, objection is not valid.

(iv) Time of Meeting: As per para 1.2.2 of SS-1, a meeting may be held at any time. However, this should be practically construed to mean a convenient time. As detailed deliberations are expected to take place in Board Meetings, it is desirable to have Meetings during working hours, though the Meeting may continue beyond working hours. Hence, in view of this, objection is valid.

(v) Venue of Meeting: A Meeting may be held at the Registered Office of the company or at any other place, including a remote place. A Meeting may be held in India or abroad. In case the Articles provide for a specific place or city in which the Meetings should be held, the Meetings should be held only at that place or city. If a Meeting of the Board is held elsewhere, contrary to such clause in the Articles, none of the decisions taken by the Board at such Meeting can be put into operation in any manner.

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As the Articles of the company are silent. Therefore, meeting can be held at any place. Hence, objection is not valid.

Answer 1(b)

Section 149(6) of the Companies Act, 2013 provides that an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,-

who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of-

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;

As Praneyi has been employee in Statutory Auditors' firm in FY 2019-20, i.e. prior to previous five years, hence Praneyi is eligible to be appointed as independent director.

Answer 1(c)

Appointment of Lead Independent Director

Internationally, it is considered a good practice to designate an independent director as a lead independent director or senior independent director. The lead independent director is a highly versatile intermediary between the chair, the board and the board's stakeholders. The lead independent director must keep a keen eye on whether the chair is performing their role to the board's satisfaction without losing objectivity or independence. They monitor the relationship between the chair and the CEO, and ensure that it is a well-functioning working relationship without becoming too close or powerful. The lead independent director also coordinates the activities of other non- employee directors and advises the chairman on issues ranging from the schedule of board meetings to recommending retention of advisors and consultants to the management.

Role of the lead independent director

- Acts as the principal liaison between the independent directors of the Board and the Chairman of the Board;
- Develops the agenda for and preside at executive sessions of the Board's independent directors;

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- Advises the Chairman of the Board as to an appropriate schedule for Board meetings, seeking to ensure that the independent directors can perform their duties responsibly while not interfering with the flow of Company operations;
- Approves with the Chairman of the Board the agenda for Board and Board Committee meetings and the need for special meetings of the Board;
- Advises the Chairman of the Board as to the quality, quantity and timeliness of the information submitted by the Company's management that is necessary or appropriate for the independent directors to effectively and responsibly perform their duties;
- Recommends to the Board the retention of advisors and consultants who report directly to the Board;
- Interviews, along with the chair of the Nominating and Corporate Governance Committee, all Board candidates, and make recommendations to the Nominating and Corporate Governance Committee;
- Assists the Board and Company officers in better ensuring compliance with and implementation of the Governance Guidelines;
- Serves as Chairman of the Board when the Chairman is not present; and
- Serves as a liaison for consultation and communication with shareholders.

Answer 1(d)

The Board's Report is prepared by Secretarial Department under the supervision and guidance of Company Secretary. It is of utmost importance for Company Secretary of a company that when new financial year begins, he sends to all branches of business, finance, accounts etc. The Board's Report is prepared by Secretarial Department under the supervision and guidance of Company Secretary. It is of utmost importance for Company Secretary of a company that when new financial year begins, he sends to all branches of business, finance, accounts etc.

A detailed "To Do List" that these branches of business must follow during the financial year. It should also consist of instruction that as and when any significant event or happening takes place that potentially has bearing on company's business, operations, future viability, profits etc., it must be reported forthwith. This will enable to make timely disclosure of events according to the timelines as mentioned u/r 30 of SEBI (LODR), 2015. Else, a noting will go to the AGM folder for reference when the Annual Report is being finalized.

Getting regular inputs and collecting them in AGM folder is important for ensuring preparation of an exhaustive and complete Board's Report without missing any reportable event. Every CS should inculcate the habit and remember that preparation of Annual Report / Board's Report is an ongoing project throughout the year. When the year is about to close or soon thereafter, a reminder should also go.

Alternative Answer to Q. No. 1(d)

Preparation of an Annual Report

The annual report is a comprehensive report provided by most public companies to disclose their corporate activities over the past year. The report is typically issued to shareholders and other stakeholders who use it to evaluate the firm's performance including both operating and financial highlights - Notes to Financial Statements, Financial Highlights, Income Statement, Statement of Cash flow, Information on Corporate Governance, Statement of Financial Position, and Management Discussion and Analysis.

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Components to Annual Report

An annual report is interactive in nature to its shareholders. It generally starts with the board's message to shareholders in form of dedicated report. Their message intends to brief the shareholders about the key performance angles of the current year. It also demonstrates the growth prospects relative to its industry landscape in order to get shareholders' attention to the company's potential for excellence. Annual reports also give an account of corporate activities, legal highlights and corporate governance arena. In addition, the management discussion and analysis report emphasizes management commentary on risks and concerns of the business.

Financial statements give financial details of the current year and the past year by showcasing year-on-year comparisons easier for a shareholder. In addition, the notes to financial statements describe the technical anomalies and assumptions taken in preparing the financial statements.

The annual report also present changes in accounting policies, financial disclosure, capital projects, and other information/disclosures relevant to shareholders.

As per Regulation 34 of the SEBI (LODR), Regulations, 2015, the listed entity shall submit to the stock exchange and publish on its website-

(a) A copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;

(b) In the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting. Such annual report shall contain the following:

  (a) Audited financial statements i.e. balance sheet, profit and loss account etc, and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;

  (b) Consolidated financial statements audited by its statutory auditors;

  (c) Cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;

  (d) Directors Report;

  (e) Management discussion and analysis report - either as a part of directors report or addition thereto;

  (f) For the top one thousand listed entities based on market capitalization, a Business Responsibility and Sustainability Report on the environmental, social and governance disclosures, in the format as may be specified by the Board from time to time.

In this regard, SEBI through its Circular dated July 12, 2023 (Circular No.SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122) came out with BRSR Core and Updated BRSR. The Circular mentioned that listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the guide path.

Provided further that the remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the Business Responsibility and Sustainability Report or may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be.

Explanation-1: For the purpose of this clause:

(i) Business Responsibility and Sustainability Report Core shall comprise of such key performance indicators as may be specified by the Board from time to time;

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(ii) "value chain" for the listed entities shall be specified by the Board from time to time.

Further it is provided that the annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of SEBI (LODR) Regulations, 2015.

Additional Disclosures under SEBI (LODR) Regulations, 2015

Related Party Disclosure

Management Discussion and Analysis

Corporate Governance

Declaration signed by the CEO on Code of Conduct

Compliance Certificate

Demat suspense account/unclaimed suspense

Question 2

(a) Ratin recently completed his MBA from London School of Economics and joined family business. Ratin's father Kesha Bhai was the Managing Director of Ratloi Chemicals Ltd, a chemical manufacturing company and he wanted Ratin to take over the business. As a part of this transition, Ratin was trying to understand the industry and its prospects. Coming from a wider academic exposure, Ratin wanted to build a sustainable ecosystem for his business which also caters to the environmental requirements. He was planning to appoint consultants to do an Environmental, Social and Governance (ESG) study for his chemicals business and transition of the business towards ESG investing. Ratin briefed the Board of Directors about the ESG investing and its impact on the business. Some of the directors were skeptical and asked Ratin to explain, if there will be any challenges.

In this background, outline the challenges faced by ESG investments.

(5 marks)

(b) Prekshak Ltd, a cosmetics manufacturing company was rapidly expanding its business operations and was planning to go for an IPO in couple of months. The Company presently had more than 1000 shareholders and was expecting the numbers to go up drastically after the IPO. One of the merchant bankers and advisors for the IPO, informed the Company's management that it had not constituted a Stakeholders Relationship Committee (SRC) and is liable to penalty under the Companies Act, 2013.

In context of above facts, prepare a brief note covering the requirements for constituting Stakeholders Relationship Committee and the role of such committee.

(5 marks)

(c) Gran, a Senior Partner of GSP & Co., Practicing Company Secretaries, was explaining to his trainees about the importance and relevance of annual reports. He told them that an annual report is a comprehensive document provided by public companies to disclose their corporate activities in the past year. It is typically issued to shareholder and other stakeholders who use it to evaluate the performance including both operating and financial highlights. One of the trainees had a doubt regarding the manner in which annual reports are sent to the shareholders and also about monitoring the funds raised by companies through IPOs. Gran explained that the Directors of the company are responsible for monitoring the utilisation of funds.

Indicate the manner of sending the annual reports under SEBI (LODR) regulations by listed

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entities to the shareholders and outline the legal/regulatory provisions regarding submission of Statement of Deviations /Variations in annual report to the stock exchanges.

(5 marks)

Answer 2(a)

There are many challenges that ESG investments currently face in India. Some of them are as listed below:

- **Absence of quality data**: Concrete data about a company's social, environmental, or governance performance is often procured through an analyst or a fund manager. An organization's sustainability report can also provide details on such information.

  Other documents where additional data on ESG can be found in annual reports, news articles, media releases, etc. For investors, finding concrete data on ESG of any company can be tedious and often inaccurate. Thus, the credibility of available information continues to be a hindrance in the growth of ESG investments in India.

- **Absence of measurement standards**: The Indian market currently lacks standardisation around ESG investing. Investors often use different names such as impact investing, sustainable investing, socially responsible investing, and also responsible investing. For further growth of this form of investing, there is a need for standardization in data collection, measurement standards, and methodology used while reporting.

- **Traditional mindset**: Many investors and fund managers find ESG to be an additional expense that is not essential. This aspect too curbs the growth of ESG investing in India.

- **Limited track record of ESG funds**: In India, ESG funds have started emerging in the past 2-3 years. Hence, there is also a lack of track record of ESG funds which may put off many investors from exploring this investing option.

- **Lack of awareness**: ESG investing is slowly gaining popularity among investors, but there's not much awareness among many about this aspect. More and more investors need to be made aware of the benefits of ESG investing to broaden the market horizon of the same.

Answer 2(b)

Constitution of Stakeholders Relationship Committee –According to Section 178(5) of the Companies Act, 2013, the Board of Directors of a company which consists of more than one thousand shareholders, debenture holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

As the company has more than one thousand shareholders, hence required to constitute the committee.

Constitution of Stakeholders Relationship Committee - Regulation 20(1) of SEBI (LODR) Regulations, 2015.

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

Role of the Stakeholders Relationship Committee as specified in Part D of the Schedule II (Regulation 20) is as under:

(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non- receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.

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(2) Review of measures taken for effective exercise of voting rights by shareholders.

(3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

(4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

Answer 2(c)

Statement of deviation(s) or variation(s)

As per Regulation 32 of SEBI (LODR) Regulations, 2015, the listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc.:

(a) Indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

The listed entity shall furnish an explanation for the variation specified above, in the directors' report in the annual report.

According to Regulation 36 of SEBI (LODR) the listed entity shall send the annual report in the following manner to the shareholders:

(a) Soft copies of full annual report to all those shareholder(s) who have registered their email address (es) either with the listed entity or with any depository.

(b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;

(c) Hard copies of full annual reports to those shareholders, who request for the same.

The listed entity shall send annual report to the holders of securities, not less than twenty-one days before the annual general meeting.

Question 3

(a) Kenda, a Practising Company Secretary was addressing one of the professional forums about corporate governance and regulatory aspects. He emphasized that the corporate sector, not only in India, but the world over, has been through several progressive changes, over the last few decades. These changes, however, have constantly been overpowered by widespread controversial corporate scandals. These scandals, not only adversely impact the reputation of the corporates, but also hamper the interest of various investors and stakeholders of the company. Those inside the organization are definitely better positioned to prevent these wrong happenings and thus even increasing need for whistle blower policy.

Enumerate the need for a whistle blower policy in the best interests of the company and its stakeholders.

(5 marks)

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(b) Decisions, whether to vote for or against various resolutions by shareholders at the annual general meetings, are increasingly being driven by what the proxy advisors recommend. Also, voting is largely done by the custodians on behalf of the institutional investors, based on recommendations of the proxy advisors. Institutional investors who are the shareholders of various companies, cannot keep track of the policies and performance of all such companies. This has created the demand for proxy advisory firm's services.

Enumerate the role and functions of Proxy Advisory Firms.

(5 marks)

(c) Managers at all levels and in all functional areas face ethical issues. In fact, there is seldom a decision wherein an ethical dimension is not involved. Matters of right and wrong, just and unjust, fair and unfair arise frequently. In order to deal with these issues, managers need some guidelines. Organisations formulate both business and non-business guidelines in the form of a code of conduct or code of ethics. It is a corporate code of conduct that helps its members to promote high standards of ethics and practice.

In this backdrop, explain the similarities and distinction between Code of Conduct and Code of Ethics.

(5 marks)

Answer 3(a)

The corporate sector not only in India but the world over has been through several progressive changes over the last few decades. These changes, however, have constantly been overpowered by widespread controversial corporate scandals. These scandals not only adversely impact the reputation of the company but also hamper the interest of various investors and stakeholders of the company. Those inside the organization are definitely better positioned to prevent these wrong happenings and thus the even increasing need for whistle blower policy.

The need for whistle blower policy is for the following reasons -

- **To promote transparency** -An effective whistle blowing policy facilitates a transparency among employees.
- **Prevent victimization of whistle blowers** - A robust whistle blowing mechanism protects anyone who exposes alleged wrongdoing in the institutions and projects.
- **To promote an open enterprise culture** - Effective protection of whistle-blowers will support an open enterprise culture where employees not only have confidence in reporting but are also aware of the reporting procedures.
- **Reduce corruption**- Strengthening whistle blowing mechanism will helps to prevent misuse of power by public servants and thus curb corruption.
- **To uphold rule of law and democracy** - Strengthening of the whistle blower protection mechanism will helps in upholding the principles of democracy and ensure public participation in governance.
- **To create a better work environment**- Whistle blowing helps in rectifying even the smallest incidents of wrongdoing, thereby instilling similar responsibilities in others and creating a better environment for all.

Answer 3(b)

Proxy Advisory Firms are independent research outfits that weigh all the pros and cons of any decision and thus provide research and voting recommendations for their clients.

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Proxy advisory firms put out detailed reports that advise shareholders on how they can safeguard their interests. They also provide independent voting recommendations. In return, they charge fees from institutional investors for their services.

Some of the functions of proxy advisory firms are given below:

- The major task is proxy advisory i.e. advising on the intricate matters of the company.
- They aid shareholders in exercising their voting rights in the company in significant decisions like the appointment of the directors, changes in the policies of the company, etc.
- They provide a report that is basically a scorecard or rating on the corporate governance of the entity.
- They also conduct the Environmental, Social, and Governance (ESG) analysis. ESG analysis is done to study all the factors (environmental, social, and governance) of the company to calculate all the prospective growth opportunities and threats. It helps the company and shareholders to prepare accordingly.
- They monitor risks and protect the interests of the investors.
- They ensure participation of investors in corporate decision making.

Answer 3(c)

Difference between a Code of ethics and Code of conduct

The terms "Code of Ethics" and "Code of Conduct" are often mistakenly used interchangeably. They are, in fact, two unique documents. Codes of ethics, which govern decision-making, and codes of conduct, which govern actions, represent two common ways that companies self-regulate.

Both are used in an attempt to regulate behaviour in very different ways. Ethical standards generally are wide- ranging and non-specific, designed to provide a set of values or decision-making approaches that enable employees to make independent judgments about the most appropriate course of action. Conduct standards generally require little judgment; you obey or incur a penalty, and the code provides a fairly clear set of expectations about which actions are required, acceptable or prohibited.

Violation of code of ethics may not lead to action against the employee but violation of code of conduct may lead to disciplinary action.

Similarities:

Both a Code of Ethics and a Code of Conduct are similar as they are used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others in appropriate. In both cases, the organization's desire is to obtain a narrow range of acceptable behaviours from employees.

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

Question 4

(a) Anaya a Senior Company Secretary, has been invited for a panel discussion on the topic 'Investment trends in India and the role of institutional investors.' During the discussions, it was highlighted that domestic and foreign institutional investors are pivotal sources of capital and also provide the volume of trades for the markets to thrive. Institutional investors have access to securities and markets of all kinds including few private investment options, which

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is typically not open for the retail investors, such as institutional real estate, or private stock placements. As a governance influencer, Anaya explained the importance of the institutional investors in the economic spectrum.

Narrate the role and importance of institutional investors.

(5 marks)

(b) Mrugan Ltd, a luxury products manufacturing company was planning to raise funds by way of an IPO in next year. As a part of preparation, they appointed Trika Consultants, as advisors to IPO. Trika reviewed the existing board processes, procedures and provided recommendations to the management for their consideration. Sri Mrugan, the Managing Director of the Company, sought further clarification on one of the recommendations regarding separation of role of Chairman and Chief Executive Officer (CEO). Trika provided a brief note stating, it is perceived that separating the roles of Chairman and CEO increases the effectiveness of a company's Board and 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.

State the provisions of the Companies Act, 2013 that provides for the separation of roles of Chairman and the CEO. Also indicate the circumstances wherein such provisions do not apply.

(5 marks)

(c) Prayak and Pragna were IIT pass-outs and were planning to have a start-up which addresses the waste management issues. They spent couple of months visiting various organisations and government agencies, as part of their research. They made a pitch to one of the investors about their project and explained to them that waste management refers to various schemes to manage and dispose of wastes. It can be by discarding, destroying, processing, recycling, reusing, or controlling wastes. The prime objective of waste management is to reduce the number of unusable materials and to avert potential health and environmental hazards. The investor asked them what are the various sources of wastes which they have identified and plan to address through their start-up.

In this context, briefly explain the various sources of waste generation.

(5 marks)

Answer to 4(a)

Domestic and foreign institutional investors are pivotal sources of capital and also provide the volume of trades for the markets to thrive.

Institutional investors often provide not only money but also advice, networking, and other assistance (smart money) to the companies raising funds. Besides, they allow retail investors to invest in capital markets thus getting better returns than the bank deposit would grant them without need to gain expertise in financial markets and with reduced risk exposure. This means not only better opportunities to save money but also much higher chances of the income since the money managed by fund experts is working better.

Importance of institutional investors

- **Important Sources of Capital** - Institutional Investors are a very important source of capital in the economy. They provide large chunks of capital to companies that fulfil their requirements without having to depend on a large number of small investors. Often before an IPO, investment banks ask institutional investors to buy the shares in order to ensure that the IPO is well subscribed. It reduces their dependency on retail investors.

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- **Benefits to Individual Investors-** Institutional Investors have just pooled investment vehicles wherein a number of investors pool their money to form a large size entity that can invest on their behalf. Since not all investors are able to take positions in securities that require large capital commitments, they can enjoy those benefits through institutional investors. Also, they have their own teams of highly qualified personnel that study the securities and track the markets. They have professional management at every level. Individual Investors who lack all these skills get the benefit of highly knowledgeable expert management of their money.
- **Preferential Treatment**- Since Institutional Investors can influence the market because of their large size of investments, they get preferential treatment in terms of lower transaction costs, fast execution of their orders, etc. This saves time and money and ultimately benefits the investors who are a part of the investment pool.

Answer 4(b)

Provisions of the Companies Act, 2013 that provides for the separation of roles of Chairman and the CEO.

First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder. It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,

- the articles of such a company provide otherwise;
- the company does not carry multiple businesses.

Circumstances as to when the provisions of the Companies Act, 2013 do not apply for the separation of roles of Chairman and the CEO.

Second proviso to sub-section (1) of Section 203 of the Companies Act, 2013 provide that above proviso does not apply to public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed one or more Chief Executive Officer for each such businesses. For the purposes of this, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

Answer 4(c)

Various sources of waste generation are:

- **Domestic Waste**: The waste materials produced from our households in our daily activities are called domestic waste. These include:
  (a) Kitchen waste like vegetables, fruits, and other food waste.
  (b) Sewage-human excreta and waste from bathrooms and kitchens.
  (c) Garbage-newspapers, rags, hair, house dust.
  (d) Others-plastic bags, bottles, tins, etc.
- **Industrial Wastes**: All Industries generate waste materials. The wastes typically comprise of ashes, rubbish, building material wastes, toxic wastes, metal containers, plastic containers, paints, oils, and other complex synthetic materials.

(a) Mining operations leave tailings (rocks of little or no value) as waste.

(b) Metallurgical industries release waste like slag and scrap metal.

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(c) Paper and pulp mills release effluents containing wood chips, bits of bark, cellulose fibres, and a number of chemicals.

(d) Oil refineries and petrochemical units release a mixture of wastes containing hydrocarbons, organic acids, and Sulphur compounds.

(e) Food processing units such as dairy, breweries, and meatpacking units release organic wastes.

- **Agricultural Wastes**: Modern methods employed in agriculture and the use of a variety of chemicals have contributed to the production of large quantities of agricultural waste. Agricultural wastes include crop residues like husk and straws, farm animal waste, and chemicals like pesticides, rodenticides, fungicides, herbicides, and fertilizers. These wastes can enter the water table as runoff from agricultural fields. Chemicals used in agriculture are toxic in nature.
- **Commercial Wastes**: Substantial waste is generated from commercial establishments such as restaurants, hotels, markets, offices, printing shops, auto repair shops, medical institutions, and hospitals.

OR (Alternative questions to Q. No. 4)

Question 4A

(i) Mahan, a Company Secretary was working with Tirmurthy Ltd, a textile manufacturing company, for last 10 years. The Company was owned by promoters and their family members. Due to personal reasons, he wanted to relocate to Bangalore and was looking for a suitable profile. Mahan got an offer from Teino Technologies Ltd, as Company Secretary and Compliance Officer. Mahan reaches out to you, a Senior Company Secretary for an advise. He was apprehensive as he was now moving to a professionally managed company, whereas he was associated with a promoter driven company for quite some time.

Advise Mahan.

(ii) 'Company secretaries can assist organisations in building their climate governance infrastructures.' Explain.

(iii) Manidweep Resorts Ltd, a group of luxury hotels, had properties across all the major locations in India. Company's management was planning to expand operations to other countries for global footprint and raise funds from investors. Consultants were appointed to evaluate the present operations and provide recommendations to enhance its scalability and governance aspects. One of the key concerns raised by the consultants was data security, as there were no existing policies and procedures for data governance. In this context, highlight why is data security a serious concern for the Company and suggest the best practices for data security.

(5 marks each)

Answer 4A(i)

The most glaring characteristic of a family owned business is that all the key managerial of positions in such businesses are held by family members. Non-family members may of course be employees of the company, but the decision-making power usually vests with the members of the family. Professionalisation of a family business is of supreme importance for its long-term sustainability. In absence of professionalism, a family business may get frequently weighed down with conflicts due to lack of clarity and systematic work processes, role confusion and informal organisation structure.

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Poor accountability and improper operations control severely interrupts efficiency of business. The business also fails to attract and retain good external talent. Family businesses are generally operated with the ethos of "Family First".

Business decisions are taken while keeping the family's wellbeing in focus. With changing preferences of the next-generation successors, it is possible to balance the family's philosophy, culture and personal needs with business performance, profit and transparency.

However, a visible change can be observed in the family businesses in India. Old family business houses are changing to "professionally managed" companies. The younger successors have a broad vision and global aspirations.

They prefer working with modern management techniques, build competent teams, and create transparent systems and processes. Instead of getting stalled in family conflicts, disputes, and non-productive practices, the younger generation prefers to create a professional work culture. Further, family values also get ingrained in organisation values. In an organisation, the values are decided by a group of people running a firm over a period of time but in a family business, the family value also gets transferred to the organisation. Further the way a family business is managed is very relevant from a country perspective and is based on that respective country's culture and values.

Hence, Mahan can smoothly move to professionally managed company from family managed company, without any apprehensions.

Answer 4A(ii)

Company secretaries can assist organisations in building their climate governance infrastructures, including putting in place structures, policies and procedures for managing climate-related risks and opportunities. They can also help by improving the boards' and management's understanding of their roles and responsibilities in creating a good culture for effective climate governance.

Some practical ways in which company secretaries can assist with climate governance are:

- ensure climate-change related oversight roles and responsibilities are incorporated in board and subcommittees' mandates.
- advise the board to set up a dedicated subcommittee to manage climate change issues if their impacts are financially material to the company.
- ensure climate-change elements are embedded in the board and corporate culture and values.
- ensure the board is well informed of the latest climate-related trends through continuous training.
- help the board understand how management identifies, assesses and manages climate-related risks and opportunities.
- assist in capacity building by advising the board and the nomination committee to consider including climate-related expertise in their composition, and
- ensure that management takes up its role in assessing and managing climate-related issues.

Answer 4A(iii)

Data security in hospitality sector is one of the major concerns in view of the nature of the data collected by companies operating within hospitality. Hotels, motels, resorts, and rented apartment complexes all gather and electronically store a range of sensitive personal guest data, such as names, phone numbers, addresses, and credit card details.

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From the perspective of cybercriminals, hospitality appears to offer an ideal target vector for conducting crimes such as identity theft and credit card fraud due to the existence of multiple databases and devices containing both Payment Card Information (PCI) and Personally Identifiable Information (PII). In view of this, it is important to look at the following data security concerns in the hospitality sector.

(a) **Complex Ownership Structures:** Hospitality sector often have complex ownership structures in which there's a franchisor, an individual owner or group of owners, and a management company that acts as the operator. Each of these groups may use different computer systems to store information, and the information can also frequently move across those systems. Hackers can gain access to the systems of an individual operating company through easily guessed passwords, and the attack easily proliferated through the entire corporate network, with the result that customers had their information compromised.

(b) **Payment through Cards**: The nature of the hospitality industry is such that it is extremely reliant on cards as a form of payment. Cybercriminals use this reliance on cards to infect point-of-sale (POS) systems with malware that steals credit and debit card information by scraping the data.

(c) **High Staff Turnover:** The risk is that the hospitality industry involves lots of seasonal work in which people might move on after only a few months, or they might be transferred The high level of turnover and high degree of staff movement between different locations makes it a real challenge to maintain teams of well-trained staff who can protect sensitive data.

(d) **Insider Threats:** It involves employees selling data of customer to third parties without the knowledge of the organization that employs them. This data could be potentially lucrative when it ends up in the hands of those who know how to use it to gain a competitive advantage.

Best practices for companies in the hospitality sector to protect data include:

- Always encrypt payment card information.
- Operate a continuous training program in cybersecurity to maintain a well-trained workforce.
- Always adhere to relevant regulations, such as PCI DSS.
- Use cybersecurity measures such as firewalls, network monitoring, anti-malware, and traffic filtering to protect against common threats.
- Conduct tests against your organization's cybersecurity defenses in which you mirror the behavior of an actual hacker.
- Know where the data is and enforce the principle of least privileges to limit access to sensitive information.

PART–II

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

Question 5

Himagiri Foods Ltd., a well-established food retail chain in Chennai having turnover more than ₹ 1000 crore, operates both online and offline through more than 200 outlets, including restaurants and sweet shops across India. The operations of the Company have been growing considerably over the last few years. The management is trying to corporatise its style of functioning and planning to implement processes and controls for better operations. One of the major issues which the

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Company faces is managing the quality of raw materials and storage of finished items, considering the short shelf life of its products. Recently, the Company faced a major crisis due to non-compliance with legal and quality standards. An inspection was conducted by government agencies in five locations across Chennai, wherein several lapses were noted. The government survey conducted by the state's food and labour departments uncovered several violations, including :

- Adulteration and failed quality tests of sweets and milk products
- Employment of child labour
- Non-registration with authorities under Labour laws, Provident Fund and ESI
- Failure to maintain testing laboratory
- Failure to adhere housekeeping norms relating to display and maintenance of records etc. under FSSAI regulations.

Print and electronic media have caught attention of the public. Many clips and reels of the inspection coverage were being circulated on social media and many food influencers have called for boycotting the Company's products.

The Company has paid huge fines and lost reputation in the market. Company's management has been forced to shut several outlets. These infractions have resulted in huge financial loss, significant media backlash, and reputational damage impacting its market position and customer trust.

Company's management has called for a high-level management meeting to design a strategy to address the present crisis. One of the senior managers from Finance team indicated that the crisis arose due to lack of risk management. The Company should appoint a professional who would provide a robust list of potential risks that can have an impact on the business. Once such risks are identified, controls can be designed to address them.

Renu, a Company Secretary and risk management professional has been appointed by the Company to provide a comprehensive risk management plan. In the background of above facts, answer the following :

(i) Outline the actions which the Company should take for effective risk detection.

(ii) Briefly explain risk analysis and steps involved.

(iii) Explain 'reputation risk' and outline the principles to manage reputation risk.

(iv) Enumerate the need and essential features of crisis management.

(5 marks each)

Answer 5(i)

Taking an inventory of the potential project risks that can have an impact on project delivery is the first step in the risk identification process. For effective risk management throughout the project, this stage is essential. Project managers' uncertainty is decreased by the outputs of the risk identification process, which are used as an input for risk analysis. Throughout the course of a project, this iterative process must be continuously repeated. To ensure that all potential dangers are found, the procedure must be rigorous. The following actions should be taken as part of an efficient risk detection process:

- **Creating a systematic process** - The risk identification process should begin with project objectives and success factors.
- **Gathering information from various sources** - Reliable and high-quality information is essential for effective risk management.

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- **Applying risk identification tools and techniques** - The choice of the best suitable techniques will depend on the types of risks and activities, as well as organizational maturity.
- **Documenting the risks** - Identified risks should be documented in a risk register and a risk breakdown structure, along with its causes and consequences.
- **Documenting the risk identification process-** To improve and ease the risk identification process for future projects, the approach, participants, and scope of the process should be recorded.
- **Assessing the process' effectiveness** - To improve it for future use, the effectiveness of the chosen process should be critically assessed after the project is completed.

Answer 5(ii)

The analysis of the risk, which comes after the identification of the risk factors, aids in the detection and management of prospective issues that could jeopardise important business efforts or projects.

To do a risk analysis, first list the potential dangers and then calculate the likelihood that they'll come to pass. The analysis ought to be impartial and sector-specific. The scenario-based analysis may be used inside the industry, taking into account potential outcomes and alternative strategies for achieving the specified goal.

The risk analysis includes the following two process:

Identify Threats: Identification of current and potential hazards is the first stage in risk analysis. These might originate from a wide range of sources. For example, they might be:

- Human - Illness, death, injury, or other loss of a key individual.
- Operational - Disruption to supplies and operations, loss of access to essential assets, or failures in distribution.
- Reputational - Loss of customer or employee confidence, or damage to market reputation.
- Procedural- Failures of accountability, internal systems, or controls, or from fraud.
- Project - Going over budget, taking too long on key tasks, or experiencing issues with product or service quality.
- Financial - Business failure, stock market fluctuations, interest rate changes, or non-availability of funding.
- Technical - Advances in technology, or from technical failure.
- Natural - Weather, natural disasters, or disease.
- Political- Changes in tax, public opinion, government policy, or foreign influence.
- Structural - Dangerous chemicals, poor lighting, falling boxes, or any situation where staff, products, or technology can be harmed.

Estimate Risk: After threats have been identified, it is necessary to determine their likelihood of materialising as well as their potential impact. Making the best assessment of the likelihood that the event will occur and multiplying it by how much it will cost to get things back on track are two methods of doing this. "Risk Value is the product of Event Probability and Event Cost".

Answer 5(iii)

Reputation Risk as the risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt-holders, market analysts, other relevant parties or regulators that can

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adversely affect a bank's ability to maintain existing, or establish new, business relationships and continued access to sources of funding (e.g. through the interbank or securitisation markets).

Loss of Reputation has long lasting damages like:

- It destroys the Brand Value.
- Steep downtrend in Share Value.
- Ruined of Strategic Relationship
- Regulatory relationship is damaged which leads to stringent norms.
- Recruitment to fetch qualified staff as well the retention of the old employees becomes difficult.

For managing the reputation risk, the following principles are worth noting:

- Integration of risk while formulating business strategy.
- Effective board oversight.
- Image building through effective communication.
- Promoting compliance culture to have good governance.
- Persistently following up the Corporate Values.
- Due care, interaction and feedback from the stakeholders.
- Strong internal checks and controls Peer review and evaluating the company's performance.
- Quality report/ newsletter publications.
- Cultural alignments.

Answer 5(iv)

Need for Crisis Management

- Crisis Management prepares the individuals to face unexpected developments and adverse conditions in the organization with courage and determination.
- Employees adjust well to the sudden changes in the organization.
- Employees can understand and analyze the causes of crisis and cope with it in the best possible way.
- Crisis Management helps the managers to devise strategies to come out of uncertain conditions and also decide on the future course of action.
- Crisis Management helps the managers to feel the early signs of crisis, warn the employees against the aftermaths and take necessary precautions for the same.

Essential features of Crisis Management

- Crisis Management includes activities and processes which help the managers as well as employees to analyze and understand events which might lead to crisis and uncertainty in the organization.
- Crisis Management enables the managers and employees to respond effectively to changes in the organization culture.
- It consists of effective coordination amongst the departments to overcome emergency situations.

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- Employees at the time of crisis must communicate effectively with each other and try their level best to overcome tough times.

OR (Alternative questions to Q. No. 5)

Question 5A

Buland Investments Ltd, is a Jaipur-based Non-Banking Finance Company (NBFC) and has more than 300 branches/customer service points (CSP) across India. Company mainly offers housing loans, loans against property, and personal loans to all segments of society including salaried employees, professionals and businessmen. The Company has a paid-up capital of ₹ 100 crore, public deposits of ₹ 250 crore and borrowings of ₹ 80 crore (₹ 40 crore each from public and private sector banks). Most of its operations in online mode with customers applying online and uploading their KYC and other financial documents through a secured web portal.

Though the Company is on a growth trajectory, it still does not have robust policies and procedures which guide its operations. Recoverability from the customers, loan defaulters is a challenge on operational front. From a corporate perspective, adhering to Reserve Bank of India (RBI) Digital Lending norms and Cyber Security Frameworks are key challenges for the Company. It has hired few IT professionals to develop an inhouse IT security team. However, despite these efforts, the Company suffered a major cyber-attack recently, leading to theft of sensitive KYC data of large number of customers. RBI has imposed huge penalties and suspended the Company's operations. The media coverage of the incident has further damaged the Company's reputation, causing panic among customers, depositors and investors.

In this context, answer the following questions :

(i) Explain Cyber Security Measures.

(ii) Few investors commented, the Company should have a Disaster Recovery Plan (DRP). Indicate the elements of DRP.

(iii) Describe compliance risks and the mitigation strategy which the Company should adopt.

(iv) Discuss the relationship between Business Continuity Plan, Crisis Management and DRP, with an example.

(5 marks each)

Answer 5A(i)

As defined by the International Telecommunication Union Cyber security measures are classified as: legal, technical, organizational, capacity building, and cooperation aspects.

- Legal measures aim to provide legislations and an implementable regulatory framework to protect the cyber space.
- Technical measures consider the technological tools (software and hardware) to prevent, detect, mitigate, and respond to cyber-attacks.
- Organizational measures are important for the proper implementation of any type of national initiative or policy.
- Capacity building measures aim to enhance knowledge and know-how in order to promote cyber security.
- Cooperation measures aim to establish partnership between different stakeholders to increase cyber resilience of the organizations against cyber threats.

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Answer 5A(ii)

One way your organization can prepare and protect itself from disasters is to create and implement a disaster recovery plan (DRP). Organizations should create a disaster recovery plan that can address any type of disaster. The plan should be easy to follow and understand, and be customized to meet the unique needs of the organization. Typical elements in a disaster recovery plan include the following:

Create a disaster recovery team: The team will be responsible for developing, implementing, and maintaining the DRP. A DRP should identify the team members, define each member's responsibilities, and provide their contact information. The DRP should also identify who should be contacted in the event of a disaster or emergency. All employees should be informed of and understand the DRP and their responsibility if a disaster occurs.

Identify and assess disaster risks: Your disaster recovery team should identify and assess the risks to your organization. This step should include items related to natural disasters, man-made emergencies, and technology related incidents. This will assist the team in identifying the recovery strategies and resources required to recover from disasters within a predetermined and acceptable timeframe.

Determine critical applications, documents, and resources: The organization must evaluate its business processes to determine which are critical to the operations of the organization. The plan should focus on short-term survivability, such as generating cash flows and revenues, rather than on a long term solution of restoring the organization's full functioning capacity. However, the organization must recognize that there are some processes that should not be delayed if possible. One example of a critical process is the processing of payroll.

Specify backup and off-site storage procedures: These procedures should identify what to back up, by whom, how to perform the backup, location of backup and how frequently backups should occur. All critical applications, equipment, and documents should be backed up. Documents that you should consider backing up are the latest financial statements, tax returns, a current list of employees and their contact information, inventory records, customer and vendor listings. Critical supplies required for daily operations, such as checks and purchase orders, as well as a copy of the DRP, should be stored at an off-site location.

Test and maintain the DRP: Disaster recovery planning is a continual process as risks of disasters and emergencies are always changing. It is recommended that the organization routinely test the DRP to evaluate the procedures documented in the plan for effectiveness and appropriateness. The recovery team should regularly update the DRP to accommodate for changes in business processes, technology, and evolving disaster risks.

In summary, an organization must develop a recovery team to create a disaster recovery plan that includes identifying and assessing disaster risks, determining critical applications, and specifying backup procedures. Other procedures may be included in the plan based on the organization. The recovery team and organization must then implement the DRP and follow through on the plan procedures. The DRP should be continually tested and maintained to consistently prepare the organization for evolving disasters and emergencies.

Answer 5A(iii)

Compliance risk is an organization's potential exposure to legal penalties, financial forfeiture and material loss, resulting from its failure to act in accordance with industry laws and regulations, internal policies or prescribed best practices. Compliance risk is also known as integrity risk.

Description: Inadequate compliance systems and processes can pose reputation risk for the Company. This could expose the Company to legal consequences, resulting in financial losses and penalties.

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Mitigation strategy:

- Invest in IT-enabled compliance systems and processes .
- Ensure all functions and units are aware of the laws and regulations to comply with Ensure adequate monitoring mechanism towards compliance.
- Communicate periodically to reiterate the importance of compliance.

Answer 5A(iv)

The relationship between business continuity planning and crisis management is that a BCP provides the overarching framework for maintaining business operations during and after a disruptive event, while a CMP provides specific guidance for managing a crisis. Both BCP and CMP are essential components of a comprehensive risk management program, and they work together to ensure that an organization can continue to operate and recover from a disruptive event.

For example, a multinational corporation is facing a financial crisis, caused by a sudden drop in demand for its products or a significant financial loss. The senior finance manager of the company is responsible for overseeing the company's financial response to the crisis and ensuring that the company's operations are maintained. The senior finance manager immediately activates the company's business continuity plan (BCP), which outlines the procedures and strategies that the company will use to maintain its critical operations and services during the crisis.

The BCP provides a roadmap for the senior finance manager and the crisis management team to follow, and it helps to ensure that the company's financial response is organized and effective. The senior finance manager also assembles the company's crisis management team, which includes representatives from various departments, to respond to the crisis.

The crisis management team uses the BCP to assess the situation and determine the best course of action. They quickly identify the critical financial systems and services that are most likely to be impacted by the crisis and prioritize their efforts to protect those systems and services. The senior finance manager also works closely with the company's legal and regulatory teams to ensure that the company follows all relevant laws and regulations as it responds to the crisis.

They also work with the company's public relations team to manage the company's image and reputation during the crisis. In this scenario, the senior finance manager plays a crucial role in ensuring that the company's financial operations are maintained during the crisis, and that the company's response is organized and effective.

The BCP and crisis management plan provide a framework for the senior finance manager and the crisis management team to follow, and they help to ensure that the company's response is as effective as possible. It is concluded that in a crisis, the BCP provides a roadmap for the crisis management team to follow, and the DRP provides a roadmap for the recovery process. The BCP and DRP work together to ensure that the company can maintain its critical operations and services during the crisis and quickly recover from the disaster. The crisis management process helps to ensure that the company's response to the crisis is organized and effective, and that the BCP and DRP are implemented as effectively as possible.

PART-III

Question 6

(a) Raksha Hydro Ltd, a power generation company appointed Kunal, Company Secretary, as its Compliance Officer. Company's management requested Kunal to revisit various legal and regulatory compliances, both mandatory and recommendatory for the Company and prepare a detailed report with issues/concerns and recommendations. Kunal performed an

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elaborate review of the documents/filings and also spoke to his friends and colleagues in the industry. He furnished a detailed report to the management stating the Company was largely compliant with applicable laws and regulations. However, he suggested that the management should consider getting a Sustainability Audit done for the Company.

He went on to explain that sustainable development is a relatively new concept and gained momentum in the late 1980s. In 2010, UN described business sustainability as 'Conducting operation in a manner that meets existing needs, without compromising the ability of future generations to meet their needs and has regard to the impacts that the business operations have on the life of the community in which it operates and includes environmental, social and governance issues."

Reporting on sustainability paved the way for emergence of sustainability audit. The concept of sustainability audit has evolved over the years as society's understanding of sustainability has expanded and as organizations have become increasingly aware of their impact on the environment and society besides their bottom-line. The wave of financial mishaps in the early 2000s, the 2007-2009 global financial crisis, and subsequent regulatory responses have stimulated considerable interest in business sustainability, corporate governance, ethical, and corporate accountability. Businesses and professional organizations worldwide have also responded by developing a business sustainability framework consisting of five overriding dimensions of economic, governance, social, ethical, and environmental performance as an improvement over the "People, Planet and Profits" agenda. Management thanked Kunal for his efforts and asked him to take up the project of getting a sustainability audit done for the Company.

In background of the above, answer the following :

(i) Indicate the criteria to be met, for an activity or program to be considered as sustainable.

(3 marks)

(ii) Explain the structured framework of sustainability audit.

(5 marks)

(b) 'Integrated reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates.' Explain integrated reporting and the content elements of an integrated report.

(7 marks)

Answer 6(a)(i)

A program or an activity is considered sustainable if it meets all of the following criteria:

- Creates economic value
- Increases public wealth with mechanisms for its proper distribution
- Socially justified
- Environmentally sound
- Ethically conducted
- Conforms to all applicable laws, rules, and regulations

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Answer 6(a)(ii)

A sustainability audit typically follows a structured framework that includes the following steps:

Planning and Preparation: This involves defining the scope and objectives of the audit, identifying stakeholders, and preparing a plan for conducting the audit.

Data Collection and Analysis: This involves gathering data on the organization's environmental, social, and economic impacts, as well as reviewing policies, procedures, and practices related to sustainability.

Assessment and Evaluation: This involves evaluating the data collected and analyzing the organization's sustainability performance. This step typically includes benchmarking the organization's performance against industry standards and best practices.

Report Generation: This involves summarizing the findings of the audit and presenting recommendations for improvement.

Implementation and Monitoring: This involves taking action on the recommendations made in the report and monitoring progress to ensure that sustainability goals are met over time.

Different organizations may use slightly different frameworks for sustainability audits, but the basic steps are generally consistent across different approaches. The choice of framework often depends on the organization's specific sustainability goals and the resources available for conducting the audit.

Answer 6(b)

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

Integrated reporting isn't just a reporting process. It's founded on integrated thinking, or systems thinking. Integrated thinking drives an improved understanding of how value is created and enhances decision-making by boards and management.

The more integrated thinking is embedded in daily operations, the more naturally this information will be expressed in internal and external communications. On this basis, integrated thinking and integrated reporting are mutually reinforcing.

An integrated report is a concise communication about an organisation's strategy, governance, performance and prospects. Integrated reporting is consistent with developments in financial and other reporting, but an integrated report also differs from other reports and communications in a number of ways.

In particular, it focuses on the ability of an organization to create value in the short, medium and long term, and in so doing it - has a combined emphasis on conciseness, strategic focus and future orientation, the connectivity of information and the capitals and their interdependencies; Emphasizes the importance of integrated thinking within the organization.

Integrated reporting promotes a more cohesive and efficient approach to corporate reporting and aims to improve the quality of information available to providers of financial capital to enable a more efficient and productive allocation of capital.

Content elements of integrated report

The content of an organization's integrated report will depend on the individual circumstances of the organization. The Content Elements are therefore stated in the form of questions rather than

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as checklists of specific disclosures. Accordingly, judgement needs to be exercised in applying the Guiding Principles to determine what information is reported, as well as how it is reported.

- **Organizational overview and external environment** - What does the organization do and what are the circumstances under which it operates?
- **Governance** - How does the organization's governance structure support its ability to create value in the short, medium and long term?
- **Business model** - What is the organization's business model?
- **Risks and opportunities** - What are the specific risks and opportunities that affect the organization's ability to create value over the short, medium and long term, and how is the organization dealing with them?
- **Strategy and resource allocation** - Where does the organization want to go and how does it intend to get there?
- **Performance** - To what extent has the organization achieved its strategic objectives for the period and what are its outcomes in terms of effects on the capitals?
- **Outlook** - What challenges and uncertainties is the organization likely to encounter in pursuing its strategy, and what are the potential implications for its business model and future performance?
- **Basis of presentation** - How does the organization determine what matters to include in the integrated report and how are such matters quantified or evaluated?

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DRAFTING, PLEADINGS & APPEARANCES

GROUP 1 PAPER 2

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART-I

Question 1

Global Traders Ltd., an Indian importing company based in Delhi, enters into a contract with Asia Tech Electronics, a South Korean exporter, for the import of electronic components worth USD 500,000. Since the two companies are engaging in business for the first time and are unfamiliar with each other, Asia Tech Electronics insists on a secure mode of payment to mitigate the risk of non-payment after dispatching the goods.

To address this concern, Global Traders Ltd. approaches Secure Bank India to issue a Letter of Credit (LC) in favor of Asia Tech Electronics. Secure Bank India issues an irrevocable, confirmed, standby revolving LC, naming Korea Trust Bank, located in Seoul, as the advising and confirming bank. The LC specifies that payment will be made upon submission of the following documents :

- A bill of lading evidencing shipment of the goods from Seoul to Mumbai.
- Commercial invoice specifying the details of the goods shipped.
- Insurance certificate covering the shipped goods.
- Certificate of origin confirming that the goods are manufactured in South Korea.

Asia Tech Electronics ships the goods and submits the required documents to Korea Trust Bank. However, upon inspection, Korea Trust Bank notices that the insurance certificate submitted only covers 80% of the shipment value, whereas the LC required insurance coverage for 100% of the shipment value. Additionally, the bill of lading is dated two days after the last permissible shipment date mentioned in the LC.

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

(a) What type of Letter of Credit has been issued by Secure Bank India in this case ? Explain the characteristics that lead to your conclusion.

(b) If Asia Tech Electronics wants to correct the discrepancies and ensure payment, what possible actions can it take? What role does the confirming bank play in such situations?

(c) Suppose Korea Trust Bank refuses payment due to the discrepancies, but Secure Bank India agrees to honor the LC despite them, discuss whether Secure Bank India is obligated to pay Asia Tech Electronics under the terms of the LC.

(d) Explain the advantages of using a Letter of Credit in international trade for both the importer (Global Traders Ltd.) and the exporter (Asia Tech Electronics) in this scenario.

(e) Draft a letter of credit on the above problem.

(5 marks each)

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Answer 1(a)

The Type of Letter of Credit (LC) issued by Secure Bank India is Irrevocable, Confirmed, Standby, and Revolving.

The following characteristics may lead to this conclusion:

- Irrevocable: Cannot be altered without consent from all parties. The parties ensures all terms are acceptable before finalization.
- Confirmed: Provides an additional guarantee of payment. The concerned party assesses the creditworthiness of the confirming bank.
- Standby: Acts as a secondary payment guarantee, reflecting prudent financial management.
- Revolving: Allows repeated transactions under the same LC terms, reducing administrative costs. The parties ensures proper monitoring and record-keeping for such recurring obligations.

Answer 1(b)

(i) Actions Asia Tech Electronics Can Take:

Asia Tech. Electronics may inter alia take the following Corrective Actions:

- **Amend the LC:** The officials of Asia Tech. Electronics may facilitate discussions with the bank and exporter for an amendment, ensuring compliance with company risk policies.
- **Provide Correct Documents:** The exporter may resubmit documents. The Company Secretary ensures timelines are met and no further non-compliance occurs.
- **Engage with Confirming Bank:** The Company Secretary plays a key role in correspondence with Korea Trust Bank, ensuring all regulatory requirements are met.
- **Seek a Waiver:** Request Global Traders Ltd. to instruct Secure Bank India to waive the discrepancies (less insurance and late shipment date).

(ii) Role of the Confirming Bank (Korea Trust Bank):

- **Examine Documents:** Ensure that documents strictly comply with LC terms.
- **Payment Decision:** Make payment only if terms are fully complied with or if the applicant agrees to accept discrepancies.
- **Communication:** Relay discrepancies to both the issuing bank and the exporter promptly.
- **Provide Security:** If compliant, it guarantees payment irrespective of the issuing bank's position.

Alternate Answer

Corrective Actions by Asia Tech Electronics and Role of Confirming Bank

In the given scenario, Asia Tech Electronics, the exporter, is facing discrepancies in two submitted documents under a Letter of Credit (LC):

(i) the insurance certificate only covers 80% of the shipment value instead of the required 100%, and

(ii) the bill of lading is dated two days after the last permissible shipment date under the LC.

These discrepancies may result in the documents being deemed non-compliant, and Secure Bank India (the issuing bank) may refuse payment. To correct these and ensure realization of payment, the following actions are possible:

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1. Corrective Actions by Asia Tech Electronics:

(i) Request for Amendment of the Letter of Credit:

Asia Tech Electronics can request Global Traders Ltd. (the applicant/buyer) to approach Secure Bank India (the issuing bank) for an amendment of the LC. The required amendments would be:

- Relaxation of the insurance coverage condition from 100% to 80%.
- Extension of the latest permissible shipment date to include the actual date of shipment.

Such amendments must be agreed upon by all parties, including the confirming bank (Korea Trust Bank), to be valid.

(ii) Resubmission of Compliant Documents (if possible):

If alternative documents that meet the original LC terms exist (e.g., an insurance certificate with 100% coverage), Asia Tech can resubmit those documents within the LC presentation period. This avoids the need for amendment.

(iii) Waiver of Discrepancies by the Applicant:

Asia Tech can request Global Traders Ltd. to waive the discrepancies. If the buyer agrees to accept the documents despite the non-compliance and instructs Secure Bank India accordingly, the payment may still be processed.

2. Role of the Confirming Bank (Korea Trust Bank):

The confirming bank plays a crucial role in such situations. Its functions include:

(i) Independent Undertaking to Pay:

As the confirming bank, Korea Trust Bank has added its own undertaking to pay Asia Tech Electronics upon proper presentation of documents in compliance with LC terms. If the documents are discrepant, it is not obligated to pay unless the discrepancies are cured or waived.

(ii) Document Examination:

The confirming bank examines the documents strictly in accordance with the LC terms. It must inform Asia Tech promptly about any discrepancies found, as it did in this case.

(iii) Advising on Discrepancy Resolution:

While the confirming bank is not a party to the sale contract, it may assist the exporter by advising on possible steps—such as amendment requests, resubmission, or waiver routes—and facilitate communication with the issuing bank.

(iv) Liaison with Issuing Bank:

The confirming bank acts as an intermediary and may forward amended or substituted documents to the issuing bank and follow up for payment.

Answer 1(c)

Obligation of Secure Bank India despite Discrepancies is as follows:

Discrepancies allow the confirming bank to refuse payment. However, Secure Bank India may still honor the Letter of Credit (LC) if Global Traders Ltd. consents. The official of the company should ensure that the Board approval is obtained for any waivers, protecting the company's interests and avoiding disputes.

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Therefore, Secure Bank India may pay despite discrepancies, if:

1. Asia Tech agrees to accept the waiver;
2. Secure Bank communicates the waiver decision clearly to Korea Trust Bank and the exporter.

Answer 1(d)

Advantages of Using a Letter of Credit in the given scenario

- For Importer (Global Traders Ltd.):
  - Reduces risks associated with international trade.
  - Protects the company from potential legal liabilities.
  - The officials should ensure due diligence is carried out before entering into binding commitments.
- For Exporter (Asia Tech Electronics):
  - Provides assurance of payment, improving the exporter's cash flow management.
  - The official's oversight ensures compliance with all LC terms, fostering strong international business relationships.

Answer 1(e)

Letter of Credit

Dated: _____

To: _____ (Name of Beneficiary)

_____ (Address)

Irrevocable Revolving Standby Letter of Credit no_____

At the request of _____(Name & Address of Applicant) ("Applicant"), we, _____, (Name and address of issuing Bank) ("Issuing Bank") issue this irrevocable, revolving, standby Letter of Credit ("Letter of Credit") in favour of _____ (Name and Address of Beneficiary) (the "Beneficiary") for _____ (the "Face Value") (and such additional value as provided herein) covering amounts owed to the Beneficiary under the Agreement or for which the Beneficiary otherwise has the rights under this Letter of Credit to draw down amounts, all on the following terms and conditions:

1. **Definition in this Letter of Credit:**

   "Advising Bank" means the bank whose details are provided by Beneficiary at the time of opening of this Letter of Credit, or any other bank as notified by Beneficiary from time to time, in each case, for the purpose of advising this Letter of Credit to Beneficiary.

   "Agreement" means the agreement titled _____ dated _____, executed between the Beneficiary (including its successors and permitted assigns), and the Applicant (including its successors and permitted assigns).

   "Banking Day" means a day on which commercial banks are open for general commercial business in the city of Delhi, India.

2. **Terms and Conditions:**

   (a) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that this Letter of Credit shall cover a Face Value.

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(b) This Letter of Credit (L/C) shall also cover requests against partial payment and/or multiple drawings.

(c) Subject to the terms of this Letter of Credit, the Beneficiary may request partial and/or multiple drawings under this Letter of Credit by submitting a Demand to the Issuing Bank at its counters in Delhi in relation to each such drawing.

(d) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, on the day of receipt by it of a Demand, it will honour the claim without demur and pay to the Beneficiary the amount requested in that Demand.

(e) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, following any payment pursuant to a Demand, it shall automatically and immediately thereafter reinstate the value of this Letter of Credit by the amount paid in order to restore this Letter of Credit to the Face Value. The Issuing Bank shall notify the Beneficiary immediately after any reinstatement of this Letter of Credit to the Face Value.

(f) This Standby Irrevocable Revolving Letter of Credit (L/C) is available for negotiation directly with the issuing Bank/Branch or through Beneficiary's Banker without recourse to the Applicant.

(g) The issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that if the payment pursuant to any demand is not made at sight, interest @ _____(Name of Issuing Bank) Base Rate + …..% p.a. would be payable from the date of such demand till the date of actual payment.

(h) This Letter of Credit shall not be discharged by any change in the Issuing Bank's constitution, constitution of Beneficiary or that of the Applicant or change in applicable Indian laws.

(i) Opening, renewal, reinstatement, amendment, negotiation, and any other charges, if any, related to this Letter of Credit levied by the Issuing Bank shall be paid by the Applicant. Failure of the Applicant to make such payments shall not affect the Issuing Bank's obligations under this Letter of Credit and the Beneficiary shall be paid the money due to it under this Letter of Credit without any deduction.

(j) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, if at least _____ (decided period) days prior to expiry of this Letter of Credit, Applicant fails to replace or renew such Letter of Credit with another letter of credit then, Beneficiary shall be entitled to draw down the full value of this Letter of Credit as security for payment of amounts payable by the Applicant.

(k) The Issuing Bank shall allow Beneficiary to assign this Letter of Credit for the benefit of Beneficiary's lenders or Beneficiary's successors and permitted assigns.

(l) The Issuing Bank undertakes not to amend any of the terms and conditions of this letter of credit (L/C) without prior consent of Beneficiary during the validity of this Letter of Credit (L/C).

(m) The issuing Bank certifies that the officer signing this L/C is authorised for this purpose and shall remain binding upon the issuing bank.

(n) The Issuing Bank shall forward and submit this Letter of Credit to the Advising Bank for advising of this Letter of Credit to Beneficiary.

(o) All bank charges including negotiation, handling, amendment, renewal, interest

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charges and any other charges shall be borne by the opener of Letter of Credit (L/C) i.e. by the Applicant.

(p) Payment against this Letter of Credit (L/C) shall be made to the beneficiary immediately on presentation of a copy of any of the documents such as Invoices/Provisional invoices/Debit notes/ Statement of claim / Demand Letter/ Claim letter etc. at any time within the validity period of the Letter of Credit (L/C).

3. Term, Extension and Expiry:

(a) Terms: -

(i) This Letter of Credit is issued on the date above with an initial term of _____ (mention the term) calendar months.

(ii) The Issuing Bank shall renew this Letter of Credit no later than _____ days before the expiry of this Letter of Credit for a further period of _____ calendar months or in the event of no further extension of the Agreement, for a further period of ____ days from the End Date.

(iii) This Letter of Credit shall terminate on the date notified by the Beneficiary in writing to the Issuing Bank, giving not less than _____ Banking Days' notice of such termination.

(b) Expiry:-

(i) Without prejudice to Clause 3.b (ii) of this Letter of Credit, the Issuing Bank will be released from its obligations under this Letter of Credit at the close of business on the Expiry Date as per Clause 3.a (iii) of this Letter of Credit.

(ii) On expiry of this Letter of Credit the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under this Letter of Credit that remains unpaid. If a Demand has been received by the Issuing Bank not later than the Expiry Date, the Issuing Bank's obligation to pay hereunder shall be deemed accrued notwithstanding that the due date for payment may fall after the Expiry Date.

(iii) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary shall return the original of this Letter of Credit to the Issuing Bank.

4. Payments: -

(a) All payments denominated in US$ under this Letter of Credit shall be paid in INR by converting the amount due at the Exchange Rate or in US$ on request of the Beneficiary.

(b) All payments under this Letter of Credit shall be made for full value in immediately available funds (without any set-off, withholding or deduction) and shall be made on the day of receipt of a Demand to the account of the Beneficiary as set out in the Demand through RTGS or Telegraphic Transfer.

5. Delivery of Demand and Supporting Documents: -

(a) Delivery: -

(i) Each Demand must be in writing, and may be given in person, by post, fax or by electronic communication and must be received by the Issuing Bank at its address as follows:

_____ (Insert Details)

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(ii) For the purposes of this Letter of Credit, electronic communication with electronic signature shall be treated as a communication that has been validly given in writing.

(b) Supporting Documents: -

Each Demand shall be duly supported by a copy of invoice and / or debit notes under the Agreement against which the payment is claimed.

6. **Governing Law**

This Letter of Credit shall be governed by and construed in accordance with the laws of India.

7. **Jurisdiction**

The courts and tribunals at _____ (Name of State) shall have exclusive jurisdiction over the subject matter of this Letter of Credit.

Yours faithfully [Issuing Bank] By:

Question 2

Rahul, a resident of NCR, has decided to purchase a residential flat in a newly developed real estate project. He has selected a property in Gurugram, developed by a reputed builder, ELF Builders Ltd. After several rounds of negotiations, both parties have agreed on the terms and Rahul is now in the process of finalizing the sale deed for the transfer of property. Rahul consults his lawyer, Aarti Singh, to ensure that the sale deed, as well as all related documents, are drafted in accordance with the law and protect his interests. Aarti Singh explains him the laws relating to drafting and conveyancing, which are critical in real estate transactions. She explains that proper drafting and conveyancing not only ensure the legality of the transaction but also minimize future disputes. She reviews the sale deed, pointing out key areas where special attention is needed, including the description of the property, the parties involved, and the specific terms of the transfer.

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

(a) What is the legal significance of drafting a sale deed in real estate transactions and what clauses should be included in it ?

(b) What do you understand by the process of conveyancing of property transactions and what steps are involved in it ?

(c) What is the importance of stamp duty and registration of transfer of property and how do they impact the validity of the sale deed ?

(5 marks each)

Answer 2(a)

A sale deed is the legal document that facilitates the transfer of ownership of immovable property from one party to another. It is a vital instrument in real estate transactions, as it represents the final agreement between the buyer and the seller, confirming the transfer of the property's title.

The legal significance of a sale deed is paramount because it:

1. **Confirms Ownership Transfer:** It legally confirms the transfer of ownership from the seller to the buyer and is essential for recording the change in property records.
2. **Prevents Future Disputes:** A well-drafted sale deed serves as evidence of the transaction, protecting the rights of the parties involved and preventing future disputes related to ownership.

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3. **Ensures Enforceability:** Without a legally executed sale deed, the buyer cannot claim ownership of the property in legal proceedings. The document must meet all statutory requirements to be enforceable in a court of law.

The clauses that should be included in the sale deed *inter alia* are:

1. **Parties Involved:** The full names and addresses of the buyer and seller should be clearly stated.
2. **Description of the Property:** The property being transferred should be described in detail, including the address, plot number, boundaries, and area. Any additional details such as land title and survey number should be mentioned.
3. **Consideration:** The total sale price, the mode of payment (whether in cash, cheque, bank transfer, etc.), and any advance payment made by the buyer should be clearly mentioned.
4. **Date of Transfer:** The specific date on which the ownership of the property will be transferred should be indicated.
5. **Title Guarantee:** The seller must guarantee that they are the rightful owner of the property and have the legal right to sell it. The sale deed should state that the property is free from encumbrances.
6. **Covenants and Warranties:** The agreement should include representations and warranties made by the seller, such as that the property is not mortgaged and there are no disputes.
7. **Execution and Registration:** The sale deed should be signed by both parties and witnessed by at least two people. It must be registered at the local sub-registrar's office as per the Registration Act, 1908 to be legally valid.
8. **Terms and Conditions:** Details of any agreements, including payment schedules and other stipulations.
9. **Indemnity Clause:** A provision protecting the buyer from any future liabilities or encumbrances.
10. **Default and Termination Clause:** Remedies available in case of breach of terms.

Answer 2(b)

Conveyancing refers to the legal process of transferring the ownership of property from one party to another. This process ensures that the buyer gets a clear and marketable title to the property and the seller is legally relieved of any obligations related to the property.

In property transactions, conveyancing typically involves the following steps:

1. **Preparation of Documents:** Once the title search is verified, the relevant legal documents are drafted. This includes the sale deed and other related documents such as a no-objection certificate (NOC), Possession Letter as well as documents proving payment of stamp duty.
2. **Payment of Stamp Duty:** In accordance with the Stamp Act, 1899, stamp duty must be paid on the sale deed based on the value of the property or the sale price, whichever is higher. The document is only legally valid after the stamp duty is paid and the document is properly executed.
3. **Registration of the Sale Deed:** The sale deed must be registered at the sub-registrar's office under the Registration Act, 1908. Both parties, along with two witnesses, must be present for registration. Registration makes the transfer of ownership legally valid and ensures the buyer's rights are recorded.
4. **Transfer of Possession:** After the sale deed is registered, the possession of the property is

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transferred to the buyer. This is a crucial step, as the buyer can physically take possession of the property only after the legal transfer has been completed.

5. **Post-Transaction Formalities:** After conveyancing is completed, the buyer will ensure that the property is updated in the records of the local municipal or revenue office to reflect the new ownership.

Answer 2(c)

Stamp duty and registration are critical components of the property transaction process. These two elements ensure the legal validity of the sale deed and safeguard the rights of both parties involved in the transaction. The importance of Stamp Duty and Registration include the following:

1. **Importance of Stamp Duty:**
   - **Legal Requirement:** As per the Indian Stamp Act, 1899, any document that involves the transfer of property such as a sale deed must be executed with the payment of stamp duty. Stamp duty is a mandatory tax paid to the State Government for making the transfer legally valid. Stamp duty is a state subject, meaning the rates and procedures for payment vary from state to state.
   - **Impact on Validity:** A sale deed executed without the proper payment of stamp duty is not legally valid and cannot be admitted as evidence in court. It cannot be enforced in a legal dispute and the transaction will be considered incomplete.
   - **Calculation of Stamp Duty:** The amount of stamp duty depends on the value of the property or the sale price, whichever is higher. In addition to this, there may be additional charges such as registration fees.
2. **Importance of Registration:**
   - **Legal Requirement:** Under the Registration Act, 1908, it is compulsory to register sale deeds involving immovable property valued above ₹100 to be registered with the sub-registrar's office in the jurisdiction where the property is located. This step is necessary for the transfer of title to be legally recognized.
   - **Impact on Validity:** Registration of the sale deed is a critical step in ensuring that the transaction is legally binding and enforceable. Without registration, the buyer's ownership rights are not fully protected, and the property title cannot be claimed in court if disputes arise.
   - **Importance:** Registration serves as public notice of the transfer and creates a permanent record of ownership. It helps avoid fraudulent claims of ownership by third parties and ensures that the buyer's title is safeguarded.

   By taking the reference of the given case, it may be said that failure to pay the appropriate stamp duty or to register the sale deed may have serious legal consequences. Even though the transaction may be agreed upon between the buyer and the seller, it would not be legally binding without these two requirements.

Question 3

(a) Ashok Verma, a 30-year old businessman, was arrested on March 1, 2024, in Delhi under Section 420 (Cheating) and Section 406 (Criminal Breach of Trust) of the Indian Penal Code, 1860. The complaint was filed by a business associate, alleging that Ashok fraudulently took ₹ 10 lakhs for a joint business venture and failed to return the amount despite repeated assurances.

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After spending seven days in judicial custody, Ashok applied for bail before the Sessions Court. The court granted bail on March 8, 2024, with the condition that he furnishes a bail bond of ₹ 50,000 with one surety of the same amount. The court also directed him to cooperate with the investigation and not leave the city without prior permission. In view of the above facts, answer the questions given below :

(i) Prepare a specimen bail bond that Ashok is required to submit before the court.

(ii) In view of the above problem, what are the key points to be kept in mind before drafting of an affidavit in evidence ?

(2+3=5 marks)

(b) XYZ Constructions Private Ltd., a reputed infrastructure company, has been awarded a contract by the National Highway Authority of India (NHAI) for the construction of a six-lane highway. As per the contract terms, XYZ Constructions is required to provide a Performance Bank Guarantee (PBG) amounting to ₹ 10 crore in favor of NHAI to ensure fulfilment of its contractual obligations.

The contract states that the Performance Bank Guarantee :

- Must be issued by a scheduled bank in India.
- Should remain valid for 36 months from the date of issue, with a claim period of 6 months beyond the expiry date.
- Should be irrevocable and unconditional.
- Should be encashed on-demand by NHAI without requiring any justification. Being a Company Secretary, draft a Sample Bank Guarantee.

(5 marks)

(c) ABC Corporation, a leading entity in the industry, had long relied on General Power of Attorney (GPA) to facilitate smooth operations across various legal and administrative matters. The company entrusted designated attorneys-in-fact with the authority to act on its behalf, ensuring efficiency in transactions, legal representations, and critical decision- making processes. However, over a period of time, certain gaps in oversight and governance began to emerge, bringing unforeseen risks and challenges to light. Define General Power Attorney (GPA) and Draft a GPA for ABC Corporation.

(1+4=5 marks)

Answer 3(a)

(i) SPECIMEN BAIL BOND FOR ATTENDANCE BEFORE COURT

I, _____(name), of _____(place), having been arrested or detained without warrant by the Officer in charge of police station (or having been brought before the Court of _____), charged with the offence of _____, and required to give security for my attendance before such Officer of Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupee _____.

Dated, this day ____ of _____, 2024.

(ii) The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

(1) The best evidence is that of a person who was personally involved in the whole

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transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.

(2) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in evidence.

(3) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence. It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence.

(4) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.

(5) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

(6) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.

(7) At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.

It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) cannot be relied upon and tendered as an evidence.

Evidence means and includes–

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

Answer 3(b)

Sample Bank Guarantee

To

_____

_____

_____

(Name & Address of the Authority

to which Bank Guarantee is to be addressed)

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Dear Sir,

Subject: Performance Bank Guarantee in respect of Purchase Order No. _____ dated _____ issued to M/s. _____

THIS DEED OF GUARANTEE is executed on this ___ day of June, 2025 by **[Name of the Bank]**, a banking company incorporated under the laws of India and having its registered/branch office at _____ _____ (hereinafter referred to as the **"Bank"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns), in favor of **[Name of the Authority/Purchaser]**, (hereinafter referred to as the **"Purchaser"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, administrators and assigns).

WHEREAS, the Purchaser has awarded a Contract, by way of Purchase Order No. _____ dated _____ (hereinafter referred to as the "Contract"), to **M/s.** _____, a company having its registered/head office at _____ (hereinafter referred to as the **"Contractor"**, which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors, and assigns), for the execution of work pertaining to ____ _____ (brief description of work), for a contract value of INR _____ (Indian Rupees _____ Only).

AND WHEREAS, under the terms of the Contract, the Contractor is required to furnish a Performance Bank Guarantee amounting to _____ percent of the contract value, equivalent to INR _____ (Indian Rupees _____ Only), for the due and faithful performance of its obligations under the Contract.

NOW THEREFORE, in consideration of the foregoing and at the request of the Contractor, we, the Bank, hereby irrevocably and unconditionally guarantee and undertake to pay the Purchaser, on its first written demand and without any demur, protest or reference to the Contractor, any sum or sums not exceeding INR _____ (Indian Rupees _____ Only), against any loss or damage caused to or suffered by the Purchaser by reason of any breach by the Contractor of any of the terms and conditions contained in the Contract.

Any such demand made by the Purchaser on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. The Bank shall not require the Purchaser to justify its invocation of this Guarantee or to prove or show grounds or reasons for such demand.

We, the Bank, further agree that:

1. This Guarantee shall remain in full force and effect for a period of **36 (Thirty-Six) months** from the date of issue i.e., until _____ and shall be further valid for a **claim period of six (6) months thereafter**, i.e., up to _____.
2. The Bank shall not revoke this Guarantee during its currency without the prior written consent of the Purchaser.
3. This Guarantee shall not be affected by any change in the constitution of the Bank or of the Contractor or of the Purchaser.
4. The liability of the Bank under this Guarantee is restricted to the Guaranteed Amount and this Guarantee shall remain in full force until the expiry of the validity and claim period as mentioned above, unless a demand or claim is made in writing on or before _____ (date falling 6 months after expiry), in which event the same shall be enforceable notwithstanding the expiry of the Guarantee.
5. The Purchaser's written demand shall be sufficient to invoke this Guarantee, and the Bank shall honour the same without any demur, counterclaim, deduction or set-off.

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Notwithstanding anything contained herein:

i) The Bank's liability under this Guarantee shall not exceed INR _____ (Indian Rupees _____ Only);

ii) This Guarantee shall remain valid until _____ (36 months from the date of issue);

iii) The Bank shall be liable to honor any claim received in writing on or before _____ (date falling 6 months after expiry of validity), after which this Guarantee shall automatically stand discharged.

IN WITNESS WHEREOF, the Bank has caused this Guarantee to be executed by its duly authorized officer on the day, month and year first above written.

Signature:

Name:

Designation with Bank Stamp(Scheduled Bank):

Official Address:

Witness

1. Signature: 2.Witness:

Name: Name :

Answer 3(c)

Definition of General Power of Attorney (GPA)

A General Power of Attorney (GPA) is a legal document that authorizes one or more persons (referred to as the "Attorney-in-Fact" or "Agent") to act on behalf of the principal in a broad range of matters, including financial transactions, legal matters, and administrative functions. The GPA grants extensive powers to the attorney-in-fact, enabling them to manage the principal's affairs without requiring specific consent for each action.

GENERAL POWER OF ATTORNEY

This General Power of Attorney is made and executed on this ___ day of _____, 20___, by ABC Corporation, a company incorporated under the laws of [Country/State], having its registered office at [Address], hereinafter referred to as the "Principal" (which expression shall include its successors and assigns), in favor of [Name of Attorney-in-Fact], residing at/registered office at [Address], hereinafter referred to as the "Attorney-in-Fact."

WHEREAS

1. The principal is engaged in various business activities and requires representation in legal, administrative, and financial matters.
2. The principal desires to appoint the Attorney-in-Fact to act on its behalf to ensure smooth operations and decision-making.

NOW, THEREFORE, THIS DEED WITNESSETH AS FOLLOWS:

1. **Appointment and Authority**

   The principal hereby appoints the Attorney-in-Fact to act on its behalf and exercise the following powers:

   a) To represent the principal before all government bodies, regulatory authorities, courts, and tribunals.

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b) To execute contracts, agreements, leases, and other legal documents necessary for the business operations.

c) To open, operate, and manage bank accounts, sign cheques, and authorize financial transactions.

d) To buy, sell, lease, mortgage, or otherwise deal with movable and immovable properties on behalf of the Principal.

e) To sign and file applications, tax returns, and other necessary statutory documents with relevant authorities.

f) To appoint agents, legal advisors, and professionals as necessary for carrying out the above functions.

g) To undertake any other lawful act necessary for the business of the Principal.

2. Limitations and Restrictions

a) The Attorney-in-Fact shall act in good faith and in the best interest of the Principal.

b) The Attorney-in-Fact shall not delegate authority further without prior written consent from the Principal.

c) Any financial transaction exceeding [specified amount] shall require prior approval from the Principal.

3. Validity and Revocation

a) This GPA shall remain in force until revoked in writing by the principal.

b) The principal reserves the right to revoke or amend this GPA at any time with prior notice.

4. Indemnity

The principal agrees to indemnify and hold harmless the Attorney-in-Fact from any claims, losses, or damages arising from lawful acts performed under this authority, except in cases of fraud, wilful misconduct, or negligence.

5. Governing Law and Jurisdiction

This Power of Attorney shall be governed by the laws of [Jurisdiction], and any disputes shall be subject to the exclusive jurisdiction of the courts in [City/State].

IN WITNESS WHEREOF, the Principal has executed this General Power of Attorney on the day, month, and year first above written.

For and on behalf of ABC Corporation

[Authorized Signatory]

Designation: _____

ABC Corporation

Accepted and agreed by

[Attorney-in-Fact Name]

Signature: _____

Witnesses:

1. Name: _____ Address: _____ Signature: _____
2. Name: _____ Address: _____ Signature: _____

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

Question 4

(a) What are the different types of endorsements under the Negotiable Instruments Act, 1881 and how do they impact the transferability of negotiable instruments ?

(b) Differentiate between a Distribution Agreement, a Franchise Agreement, and a Dealer Agreement, highlighting their key features, legal implications, and commercial significance.

(c) Critically examine the significance of declaratory decrees under the Specific Relief Act, 1963. How do they contribute to preventive justice and what are their limitations in the Indian legal system ?

(5 marks each)

Answer 4(a)

Under the Negotiable Instruments Act, 1881, endorsement refers to the act of signing a negotiable instrument (such as a promissory note, bill of exchange, or cheque) for the purpose of transferring the title or ownership to another person. The signature is usually made on the back of the instrument by the holder or payee.

Different types of endorsements affect how the instrument is transferred, who can claim it, and what rights and liabilities arise. Below is a detailed explanation of the types of endorsements and their impact on transferability:

1. **Blank Endorsement (Section 16)**

   When the endorser signs his name only, without mentioning the endorsee's name, it is a blank endorsement. Blank Endorsement makes the instrument payable to bearer. Can be transferred by mere delivery. Highly transferable, but less secure (risk of loss or theft).

2. **Full Endorsement (or Special Endorsement) (Section 16)**

   When the endorser signs and also mentions the name of the person to whom or to whose order the instrument is payable. This makes the instrument payable only to the named endorsee or someone endorsed by them. Transfer requires endorsement and delivery. More secure than blank endorsement.

3. **Restrictive Endorsement**

   When the endorsement restricts or limits further negotiation of the instrument. This limits the rights of endorsee to further endorse or transfer. It does not allow further negotiation, but endorsee may receive payment.

4. **Conditional Endorsement**

   When the endorser imposes a condition that must be fulfilled before the instrument becomes payable.

   Example: "Pay to B on the condition that he delivers the goods. (Signed) A"

   This Transfer is subject to fulfillment of the stated condition. Bankers generally ignore the condition and pay if the endorsement is otherwise valid. It creates conditional liability on the part of the endorser.

5. **Partial Endorsement**

   When the endorser transfers only part of the amount payable under the instrument. This type of endorsement is not valid under the Negotiable Instruments Act. The Act requires that

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the endorsement must transfer the entire amount. Such endorsement does not operate as negotiation of the instrument.

6. **Sans Recourse Endorsement**

When the endorser excludes personal liability by writing "sans recourse" or "without recourse" while endorsing. By this endorsement endorsee can collect payment from the maker/ drawee. Endorser is not liable in case the instrument is dishonored. This type of endorsement is useful in commercial transfers to limit liability.

7. **Facultative Endorsement**

When the endorser waives certain rights, especially the requirement of notice of dishonor.

Example: "Pay B or order – Notice of dishonor waived. (Signed) A"

This type of endorsement makes the transfer smoother by waiving procedural formalities. Endorser remains liable, even if the holder fails to give notice of dishonor.

Answer 4(b)

Differentiation between Distribution Agreement, Franchise Agreement & Dealer Agreement

Feature	Distribution Agreement	Franchise Agreement	Dealer Agreement
Nature	Bulk purchase Business & resale	Licensing	Retailing for a manufacturer
Relationship	Supplier-Distributor	Franchisor-Franchisee	Manufacturer-Dealer
Brand Usage	Limited or none	Extensive	Moderate
Control	Low	High	Moderate
Legal Framework	Contract law & Competition law	Contract law, Intellectual Property Laws & Franchise laws	Contract law & Consumer protection law
Risk Bearing	Distributor	Franchisee	Dealer
Investment	Low	Moderate	High
Requirement	High	Moderate	Low
Revenue Model	Profit margin on resale	Franchise fees + royalties	Markup on retail sales

1. Distribution Agreement

Key Features: -

- A manufacturer or supplier appoints a distributor to sell its products within a specified territory.
- The distributor purchases goods from the supplier and resells them at a margin.
- The agreement may be exclusive (one distributor per region) or non-exclusive.
- The distributor operates under its own business name and branding.

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Legal Implications: -

- Governed by **contract law** and, in some cases, **competition laws**.
- No direct employer-employee relationship between the supplier and distributor.
- The distributor is responsible for compliance with taxation, product liability, and consumer protection laws.
- Intellectual property (IP) rights usually remain with the supplier, and trademark use is restricted.

Commercial Significance:

- Helps manufacturers expand market reach without directly managing sales operations.
- Reduces the manufacturer's burden of logistics, warehousing, and marketing.
- Distributors take on market risks but benefit from bulk purchasing.

2. Franchise Agreement

Key Features:-

- A franchisor grants a franchisee the right to operate a business using its established brand, trademarks, and business model.
- The franchisee pays an initial fee and ongoing royalties to the franchisor.
- The agreement includes strict operational guidelines, training, and quality control measures.
- The franchisor provides continuous support, including marketing and supply chain assistance.

Legal Implications: -

- Regulated under franchise laws (in India, governed by contract law and influenced by Competition Act, 2002).
- The franchisee does not own the brand but gets a license to operate under it.
- Strong intellectual property protection clauses are included.
- Franchise agreements often include non-compete and confidentiality clauses.
- Failure to comply with brand standards can lead to termination.

Commercial Significance: -

- Allows businesses to expand rapidly with lower capital investment.
- Franchisees benefit from an established brand, reducing startup risks.
- Ensures uniformity in service or product quality across different locations.

3. Dealer Agreement

Key Features: -

- A manufacturer or wholesaler appoints a dealer to sell its products, often within a specific territory.
- Unlike distributors, dealers do not typically buy in bulk but sell products at a markup.
- Dealers often receive training and marketing support but operate independently.
- The manufacturer may set pricing guidelines, but the dealer handles retailing.

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Legal Implications: -

- Governed by **contract law** and **competition law**.
- Dealers may have restrictions on selling competing products.
- Dealers must comply with consumer protection laws.
- The manufacturer may impose quality control measures but does not dictate business operations as in franchising.

Commercial Significance: -

- Helps manufacturers reach end consumers while retaining some control over pricing and branding.
- Dealers benefit from association with an established brand without strict operational restrictions.
- More flexible than franchise agreements but still involves some level of dependency on the supplier.

Answer 4(c)

Declaratory Decree

A declaratory decree is a judicial determination that establishes the rights, legal status, or obligations of parties without providing for enforcement or specific relief. It serves as an authoritative statement of law, helping to prevent disputes and ensure legal clarity.

Significance of Declaratory Decrees

1. **Protection of Civil and Constitutional Rights**
   - Used in constitutional law to declare fundamental rights or interpret statutes.
   - Courts often grant declaratory relief in matters of personal liberty, property disputes, and public interest litigation.
2. **Commercial and Contractual Stability**
   - Businesses often seek declaratory decrees to interpret contractual clauses, ensuring compliance and avoiding breaches.
   - Resolves ambiguities in agreements, reducing risks of litigation.
3. **Recognition of Legal Status**
   - Commonly used in family law (e.g., declaration of marital status, legitimacy of a child).
   - Useful in property law to establish ownership and inheritance rights.
4. **Judicial Economy**
   - Saves court resources by resolving disputes at an early stage before they escalate into complex enforcement proceedings.
   - Helps avoid repetitive litigation by providing authoritative legal clarity.

Contribution to Preventive Justice

1. **Pre-emptive Clarification of Rights**

   Declaratory decrees play a vital role in preventive justice by allowing individuals to secure clarity regarding their legal status or rights before a wrong is committed. This helps avoid unnecessary litigation in the future.

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2. **Deterrence against Potential Wrongdoers**

   Once a right or status is judicially declared, it acts as a deterrent against those who might otherwise challenge or violate that right.

3. **Preservation of *Status Quo***

   Particularly useful in property, family, and contract law, declaratory relief helps preserve relationships and contractual balances without escalating disputes into enforceable actions like injunctions or damages.

4. **Preservation of Rights without Coercion:** A declaratory decree is non-coercive; it simply affirms legal rights. Useful in personal status matters (e.g., legitimacy, citizenship, caste status) where enforcement is not needed, just recognition.

5. **Facilitates Legal Certainty**

   By affirming the rights of parties without requiring coercive relief, it enhances legal certainty, especially in ambiguous or disputed circumstances.

6. **Avoidance of Future Harm or Infringement**

   By declaring that a person has legal rights over property, status, or contract, the decree prevents potential interference or trespass. It acts like a legal warning to others not to infringe on the declared right.

7. **Guidance to Administrative Authorities**

   Helps in correcting government or official records (e.g., name in property records, school documents, caste certificates). Prevents unlawful administrative actions by confirming the citizen's legal status.

Limitations in the Indian Legal System

1. **Discretionary Nature**

   The remedy under Section 34 is discretionary, not absolute. Courts may deny relief especially where alternative remedies exist.

2. **No Enforceable Relief**

   A declaratory decree does not grant any enforcement—such as damages or injunctions—which limits its utility where immediate or coercive relief is necessary.

3. **Time-Consuming and Procedural Complexity**

   Despite being preventive, declaratory suits follow the ordinary civil procedure (pleadings, evidence, hearings). This makes them slow and expensive, defeating their preventive purpose in urgent cases.

4. **Ineligibility without Further Relief**

   The proviso to Section 34 bars relief if the plaintiff, being able to seek further relief (e.g., injunction, possession), omits to do so. This restricts the use of declaratory decrees as a standalone remedy, especially in property and contractual matters.

OR (Alternative to question to Q. No. 4)

Question 4.A.

A, a minor, is the sole owner of a property inherited from his father. He decides to mortgage the property to B, a moneylender, to secure a loan of ₹ 50,000. At the time of the transaction, B is aware that A is a minor but still proceeds with the mortgage deed. After receiving a portion of the loan

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amount, A refuses to pay back the loan and files a suit claiming that the contract is void as he is a minor.

B argues that since A has benefited from the transaction, he must either return the money received or the contract should be specifically enforced against him. He further contends that A's guardian has ratified the contract, making it binding.

Based upon the case study, answer the following questions :

(a) Critically analyze the competency of parties in contract law, using the problem as a case study. How does the Indian Contract Act, 1872, address the validity of agreements involving minors ?

(5 marks)

(b) Examine the legal and equitable considerations governing the enforceability of a minor's contract. Under what circumstances can specific performance be sought in such cases.

(5 marks)

(c) Assess the significance of knowledge of age in contractual dealings. What legal doctrines and precedents apply when one party knowingly enters into a contract with a minor ? Would the legal position change if B was unaware of A's age, and how does this impact the principle of void contracts ?

(5 marks)

Answer 4.A.(a)

As per Section 11 of the Indian Contract Act, 1872, only persons who have attained the age of majority, are of sound mind, and are not disqualified by law can enter into a valid contract. In *Mohiri Bibi v. Dharmodas Ghose (1903)*, the Privy Council held that a minor's contract is *void ab initio*. Applying this principle to the given problem, A, being a minor, lacks contractual competency, making the mortgage deed void. Consequently, B cannot enforce the contract against A.

Answer 4.A.(b)

Under the Specific Relief Act, 1963, specific performance of a contract is generally not granted if the contract itself is void. Since a minor's contract is void, specific performance cannot be enforced against A. Additionally, even if A's guardian ratified the contract, it would not make it valid, as a contract with a minor cannot be ratified upon attaining majority. However, if the minor has misrepresented his age fraudulently, restitution may be considered under equity, but not enforcement of the contract itself.

Answer 4.A.(c)

Knowledge of a minor's age is crucial in contractual dealings. In *Mohiri Bibi v. Dharmodas Ghose*, the court rejected the argument that the minor should return benefits received, as the contract was *void ab initio*. If B knowingly entered into the contract with A, he cannot later claim relief. If B was unaware of A's age, the legal position remains unchanged, as a minor's incapacity to contract is absolute. Thus, the principle of void contracts remains intact irrespective of the other party's knowledge.

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PART-II

Question 5

A company, XYZ Ltd., is involved in a commercial dispute with its minority shareholders regarding alleged mismanagement and oppression. The minority shareholders filed a petition before the National Company Law Tribunal (NCLT), seeking various interim reliefs. The Tribunal, after hearing the parties, passed an interlocutory order restraining the company's board from passing any major financial resolutions without prior approval.

XYZ Ltd. contends that the order is unjust and seeks to challenge it before the National Company Law Appellate Tribunal (NCLAT). However, the respondents argue that the order is purely interlocutory and not subject to appeal.

Meanwhile XYZ Ltd. also files a revision petition before the High Court under its supervisory jurisdiction, claiming that the NCLT exceeded its jurisdiction. The respondents counter that the power of revision cannot be exercised in this case since an alternative remedy exists.

Additionally, XYZ Ltd. argues that even if the appeal is not maintainable, the revision petition should be treated as an appeal in the interest of justice. The respondents dispute this claim, citing procedural limitations.

Furthermore, as the main dispute progresses, the case reaches the trial stage where questions arise regarding the admissibility of certain evidence and the role of the Tribunal in assessing disputed facts.

Answer the following questions :

(a) Whether the order passed by the NCLT qualifies as an interlocutory order and if it is appealable.

(b) The extent of powers of revision under relevant laws and whether the High Court can exercise its jurisdiction in this case.

(c) Illustrate the procedural aspects and stages for Filing an Appeal Before NCLAT Against the Orders of NCLT.

(5 marks each)

Answer 5(a)

Interlocutory Order

In the context of commercial and company law disputes, especially before the NCLT and NCLAT, the concept of interlocutory orders must be examined with a nuanced approach, distinguishing between routine procedural directions and those which substantially affect rights.

The NCLT's order restraining the board of XYZ Ltd. from passing major financial resolutions without prior approval is interlocutory in nature, as it does not finally dispose of the petition. Such orders are passed during the pendency of proceedings to maintain the *status quo* and prevent irreparable harm.

Section 397(2) of Criminal Procedure Code, 1973 / section 438(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) bars the exercise of revisional power concerning interlocutory orders. These are temporary or provisional orders that do not finally decide the rights of the parties. However, the nature and impact of such orders may bring them within the scope of judicial review or special revision under Article 227 of the Constitution, especially when the Tribunal is alleged to have acted beyond its jurisdiction or in breach of principles of natural justice.

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The Supreme Court has held that interlocutory orders should be construed liberally in favor of the party affected to ensure a fair hearing in civil or commercial matters. However, 'intermediate' or 'quasi-final' orders that significantly affect proceedings may still be subject to revision. In such cases, where no statutory appeal lies, the party may invoke special supervisory jurisdiction of the High Court under Article 227 as a limited revisional remedy to prevent miscarriage of justice.

Under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (erstwhile Criminal Procedure Code, 1973) and Company Law, interlocutory orders are generally not appealable unless they decide substantive rights. Nonetheless, in the company law framework, if the interlocutory order substantially affects the right to manage or administer the affairs of the company, it may be challenged through a special writ petition or revision application under Article 227, where the order is patently arbitrary or without jurisdiction.

Section 421 of the Companies Act, 2013 allows appeals from NCLT to NCLAT, but only against final orders, not interlocutory orders. Yet, courts have recognized exceptions where the interlocutory order has serious civil consequences or prejudicially affects the outcome of the main dispute. In such cases, Article 227 jurisdiction or special revision has been entertained to ensure that procedural safeguards are upheld.

In *Sundresh Bhatt v. Central Bank of India (NCLAT)* it was decided that Interim orders of NCLT are appealable only if they substantively determine rights.

Therefore, if an interlocutory order passed by the NCLT seriously affects legal rights, or is passed without jurisdiction, the aggrieved party may approach the High Court under special revisionary jurisdiction via Article 227, which, although limited, is available when there is a patent error of law or abuse of process.

The case of *Shiv Kumar Chadha v. Municipal Corporation of Delhi (1993) SC*, has clarified the distinction between final and interlocutory orders. Also, in *Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675*, the Supreme Court clarified that even where a statutory revision or appeal is not maintainable, supervisory jurisdiction under Article 227 can be exercised to keep tribunals within bounds of their authority.

Therefore, it may be said that the order restricting the board from taking financial decisions affects the company's decision-making power and may qualify as substantially affecting rights. Hence, it may be considered appealable, though subject to NCLAT's discretion.

Answer 5(b)

Generally, the High Courts do not exercise supervisory jurisdiction over tribunals with a complete appellate hierarchy, such as NCLT → NCLAT → Supreme Court.

However, the High Court has revisional powers under Article 227 of the Constitution, which allows it to ensure that lower courts and tribunals do not exceed their jurisdiction.

A civil revision petition under Article 227 can be filed in NCLT's cases, but it is subject to significant limitations. The High Court will likely dismiss such petitions if there are alternative remedies available or if the NCLT''s jurisdiction has not been exceeded.

Section 115 of the Code of Civil Procedure (CPC) provides for revision in cases where no appeal lies and where the subordinate court has acted beyond its jurisdiction or committed a material irregularity.

In *Punjab National Bank v. O.C. Krishnan (2001)*, the Supreme Court held that supervisory jurisdiction should be exercised sparingly and only when substantial injustice has occurred.

The High Court may intervene if the NCLT's order violates fundamental principles of justice, but it will generally defer to the statutory appellate mechanisms under the Companies Act.

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Answer 5(c)

The Procedural Aspects of Filling an Appeal before NCLAT against the order of NCLT

Rule 22: Presentation of appeal

(1) Every appeal shall be presented in Form NCLAT–1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non–compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies ofthe appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Rule 23 of NCLAT Rules, 2016 - Number of copies to be filed

The appellant or petitioner or applicant shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Rule 24 of NCLAT Rules, 2016 - Endorsement and verification

At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

Rule 25 of NCLAT Rules, 2016- Translation of document

(1) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.

(2) The fee and process fee shall be deposited by separate demand draft or Indian Postal Order favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.

The Appellate Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.

Stages for filling an Appeal

1. **Receipt of Impugned Order:** Obtain a certified copy of the interlocutory or final order passed by the NCLT.
2. **Limitation Period:** File the appeal within 45 days from receipt of the order (Section 421, Companies Act, 2013). A further 45-day extension may be granted by NCLAT on sufficient cause being shown.
3. **Preparation of Appeal:** Draft the Memorandum of Appeal in Form NCLAT-1, clearly stating:
    - Grounds of appeal

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- Relief sought
- Details of the impugned order
- Get it signed and verified by the authorised representative
- Filing of Appeal and Documents

4. **Submit the appeal in triplicate, along with:**
   - Certified copy of the NCLT order
   - Index of documents
   - Copies of pleadings, annexures, supporting affidavits
   - Payment of Fees
   - Properly filled notice forms and envelopes for service

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

Question 6

Ravi Mehta, a prominent investor in the Indian securities market, has been accused of violating the Securities and Exchange Board of India (SEBI) regulations. SEBI found that he had indulged in insider trading by accessing unpublished price-sensitive information regarding a merger between two listed companies and making profits from the illegal trade. This activity was discovered when SEBI analyzed his trading patterns and found unusual transactions in shares of the two companies just before the merger announcement.

SEBI initiated an investigation under Section 11B of the Securities and Exchange Board of India Act, 1992, along with relevant provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015. After completing the investigation, SEBI issued a show-cause notice to Ravi Mehta, alleging that he had violated regulations by trading based on State Industrial Corporation.

Ravi Mehta, realizing the potential consequences of the charges, including penalties, suspension, and even a ban on trading in the securities market, opts to resolve the matter through settlement proceedings under the SEBI (Settlement Proceedings) Regulations, 2018. He expresses his intention to settle the matter without admitting or denying the charges but is willing to pay a settlement amount and adhere to specific conditions set by SEBI.

The Settlement Officer of SEBI reviews Ravi Mehta's application for settlement under the SEBI (Settlement Proceedings) Regulations, 2018, which offers the opportunity for an expedited resolution of matters involving violations of securities laws, subject to payment of a settlement amount, and without further legal proceedings.

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

(a) What is the scope of the SEBI (Settlement Proceedings) Regulations, 2018, and how do they apply to Ravi Mehta's case ?

(b) What is the process for initiating settlement proceedings under SEBI (Settlement Proceedings) Regulations, 2018 ?

(c) What are the factors to be considered by SEBI to arrive at the settlement terms under the SEBI (Settlement Proceedings) Regulations, 2018 ?

(5 marks each)

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Answer 6(a)

The SEBI (Settlement Proceedings) Regulations, 2018 provide for the provisions relating to terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto. Regulation 2(1)(f) provides the definition of "specified proceedings" which means the proceedings that may be initiated by SEBI or have been initiated and are pending before SEBI or any other forum, for the violation of securities laws, under Section 11, Section 11B, Section 11D, sub-Section (3) of Section 12 or Section 15-I of the Act or Section 12A or Section 23-I of the Securities Contracts (Regulation)Act, 1956 or Section 19 or Section 19H of the Depositories Act, 1996, as the case may be.

Further, according to regulation 3(1), a person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to SEBI.

The scope of these regulations is broad and includes violations of securities laws such as insider trading, market manipulation, fraudulent trade practices, and other breaches of SEBI's regulations.

Further, regulation 5 of SEBI (Settlement Proceedings) Regulations, 2018 provides the provisions relating to Scope of settlement proceedings. According to regulation 5, no application for settlement of any specified proceedings shall be considered, if:

(a) an earlier application with regard to the same alleged default had been rejected;

(b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

(c) monies due under an order issued under securities laws are liable for recovery under securities laws.

SEBI may also not settle any specified proceeding, if it is of the opinion that the alleged default, -

i. has market wide impact, or

ii. caused losses to a large number of investors, or

iii. affected the integrity of the market.

Further, SEBI may also not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

In the given situation, Ravi Mehta may make an application to settle the matter by admitting the charges, paying a monetary settlement amount and accepting certain terms and conditions proposed by SEBI.

Answer 6(b)

Process of Initiating Settlement Proceedings

1. **Application:** A person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to SEBI in the Form specified in Part-A of the Schedule-I. The application shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I.
2. **Application by association or a firm or a body corporate or a limited liability partnership:** Where the applicant is an association or a firm or a body corporate or a limited liability partnership, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or

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body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

3. **Procedural Aspects:** An application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations. The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee (HPAC). The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members.

4. **Notice by Whole-time Member (WTM):** Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel.

5. **Payment of Settlement Amount:** The applicant shall remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand.

Answer 6(c)

Regulation 10 of SEBI (Settlement Proceedings) Regulations, 2018 provides the provisions for Factors to be considered to arrive at the settlement terms. It states:

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

(a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;

(b) the role played by the applicant in case the alleged default is committed by a group of persons;

(c) nature, gravity and impact of alleged defaults;

(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;

(e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;

(f) processes that have been introduced since the alleged default to minimize future defaults or lapses;

(g) compliance schedule proposed by the applicant;

(h) economic benefits accruing to any person from the non-compliance or delayed compliance;

(i) conditions which are necessary to deter future non-compliance by the same or another person;

(j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;

(k) any other enforcement action that has been taken against the applicant for the same violation;

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

Further schedule II inter alia provides for:

(i) Guidelines for arriving settlement terms

(ii) Indicative Amount and the Settlement Amount

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(iii) Manner of Calculations

(iv) Repetitive Nature of Default

OR (Alternate question to Q. No. 6)

Question 6.A

(a) Explain the concept of Writ Petitions under the Indian Constitution. Compare and contrast the writ jurisdiction of the Supreme Court under Article 32 and the High Courts under Article 226 with respect to their nature, scope, suspension, territorial jurisdiction, and discretionary powers.

(b) What is the procedure for the endorsement and scrutiny of a petition, appeal, application, or document under Rule 28 of the NCLT Rules ?

(c) What are the additional functions and duties of the Registrar under rule 26 of the Appellate tribunal ?

(5 marks each)

Answer 6.A(a)

Writ Petition

The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs. Earlier the High court of Bombay Madras and Calcutta had the power of issuing these writs, but after 1950 under Article 226 of the Constitution of India all the high courts were eligible to issue the writs. The concept of writs has been taken from England where it is known as prerogative writs. In England, the writs were issued in the exercise of the prerogative of the king who is still considered the Fountain of Justice. Later on, the High courts started to issue the writs as an extraordinary remedy to uphold the liberties of the Britishers.

Writ under Article 32 and 226

Aspect	Article 32 (Supreme Court)	Article 226 (High Courts)
Nature of Right	It is a Fundamental Right to approach the Supreme Court for enforcement of Fundamental Rights.	It is a Constitutional Right that includes enforcement of both Fundamental and Legal Rights.
Scope	Limited to the enforcement of Fundamental Rights only.	Broader scope – includes violation of Fundamental as well as Legal Rights.
Suspension	Can be suspended during Emergency under Article 359.	Cannot be suspended even during Emergency.
Territorial Jurisdiction	Has pan-India jurisdiction to issue writs.	Limited to persons, authorities, or events within the High Court's territorial jurisdiction.
Discretionary Power	Issuance of writ is mandatory since Article 32 is itself a Fundamental Right.	Issuance of writ is discretionary; the High Court may refuse to issue a writ in certain cases.

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Answer 6.A(b)

Rule 28 of NCLT Rules, 2016: Endorsement and scrutiny of petition or appeal or document

The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of NCLT thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

If, on scrutiny, the appeal or petition or application or document is found to be defective, such document shall, after notice to the party, to returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

Answer 6.A(c)

Additional functions and duties of Registrar (Rule 26 of Securities Appellate Tribunal (Procedure) Rules, 2000)

In addition to the functions and duties assigned in the rules, the Registrar shall have the following functions and duties subject to any general or special order of the Presiding Officer or in his temporary absence, the Member authorized under sub-rule (2) of rule 5, namely : –

(i) to receive all appeals, replies and other documents;

(ii) to decide all questions arising out of the scrutiny of the appeal before they are registered;

(iii) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rule;

(iv) subject to the directions of the Presiding Officer, or in his temporary absence, the member authorized under sub-rule (2) of rule 5, to fix date of hearing of the appeal or other proceedings and issue notices thereon;

(v) to direct any formal amendment or records;

(vi) to order grant of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of the Appellate Tribunal;

(viii) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers; and

(ix) to requisition records from the custody of any court or other authority.

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Alternate Answer

Additional Duties of Registrar under Rule 26 of the National Company Law Appellate Tribunal Rules, 2016

(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.

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COMPLIANCE MANAGEMENT, AUDIT AND DUE DILIGENCE

GROUP 1 PAPER 3

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

Part-I

Question 1

(a) Citing the relevant provision(s), indicate the date up to which each of the following compliances have to be submitted to the Stock Exchange as per the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) [SEBI (LODR)] Regulations, 2015 ?

(i) Up to which date for the quarter from July to September 2024, ABC Ltd. shall file with the recognized stock exchange, a statement giving the Investors Complaint Statement as per Regulation l3(3) ?

(ii) What should be the number of Investors complaints resolved during the quarter, if the complaints at the beginning of the quarter were 15 and received during the quarter were 25 and remaining unresolved at the end of the quarter were 05, in the statement to be filed with recognised stock exchange giving the Investors Complaint Statement as per Regulation 13(3) ?

(iii) Up to which date Quarterly Compliance Report on Corporate Governance as per Regulation 27(2) will be furnished by ABC Ltd. to the stock exchange for the quarter October to December 2024 ?

(iv) What will be the last date up to which Quarterly Financial Results as per Regulation 33(3) of ABC Ltd. has to be submitted to the stock exchange for the quarter ending October to December 2024 ?

(v) Up to which date the Secretarial Compliance Report of the ABC Ltd. as per Regulation 24A of Secretarial Audit and Compliance Report will be furnished to the stock exchange for the financial year 2024-25 ?

(1×5=5 marks)

(b) MJ Ltd. a listed company, engaged P, a Practicing Company Secretary (PCS) for the pre-certification of e-forms related to certain corporate filings under the Companies Act, 2013. P obtained the engagement letter and reviewed the Company's records. During verification, it was observed that a crucial board resolution authorising a key transaction was missing from the Company's records and the financial statements attached to the form were not the final audited versions. Despite these gaps, P proceeded with certification based on representations made by MJ's management. Later, upon scrutiny by the Registrar of Companies (RoC), it was found that the certified documents contained material misstatements, leading to regulatory action against both the Company and the certifying professional.

Explain the best practices that a PCS should adopt while undertaking such assignments.

(5 marks)

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(c) SM Capital Ltd. was penalised by the Securities and Exchange Board of India (SEBI) for failing to comply with disclosure requirements under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Take-Overs) [SEBI (SAST)] Regulations, 1997, after acquiring shares that increased the promoter group's stake beyond the prescribed threshold. The Company contended that the non-compliance was inadvertent and due to lack of awareness of the regulatory requirements. Additionally, it was argued that since the violation occurred in March 2001, the penalty should be based on the legal provisions applicable at that time, rather than the amended Section 15H(ii) of the SEBI Act, 1992, which came into effect in October 2002. However, the tribunal ruled that as the obligation to disclose and make a public announcement persisted beyond the amendment date, the Company was liable under the revised law.

With reference to judicial pronouncement, examine whether the contention of SM Capital is tenable.

(5 marks)

(d) DE Ltd. recently transitioned from physical document storage to a Cloud-Based Document Management System (DMS) to streamline record-keeping and improve its compliance system. While the new system provided secure access, audit trails and keyword search functionality, some employees raised concerns about data security, restricted access policies, and long-term reliability of cloud storage. The Company Secretary of the Company had confirmed to the Board of Directors that the new DMS would be compliant with the provisions of the Companies Act, 20l3.

In this context, explain DMS and its benefits. Also explain the relevant provisions of the Companies Act, 2013.

(3+2=5 marks)

Answer 1

(i) Quarterly statement regarding Investors Complaint as per Regulation 13(3) shall be filed up to the stock exchange within 21 days from end of each quarter as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations, 2015].

Hence, in the given case the Quarterly statement regarding Investors Complaint Statement for the quarter July to September, 2024 as per Regulation 13(3) shall be filed up to 21st October, 2024 to the stock exchange [i.e. within 21 days from end of quarter as per SEBI (LODR) Regulations, 2015].

(*However, the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 vide Notification dated December 12, 2024 read with SEBI circular dated SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185 dated December 31, 2024, has altered the timelines*.)

(ii) As per Regulation 13(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity shall file with the recognized stock exchange, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

In the given case of ABC Ltd. for the Investor complaints Statement (Grievance Redressal mechanism) for the July to September 2024 quarter will constitute:

Opening +received during the quarter-unresolved at the end of quarter= complaints disposed (Resolved) off during the quarter.

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Hence the calculation will be as follows:

15+25-5=35.

Hence, 35 complaints resolved during the quarter.

{However, the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 vide Notification dated December 12, 2024 read with SEBI circular dated SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185 dated December 31, 2024, has altered the timelines and substituted regulation 13(3)}

(iii) The listed entity shall submit a quarterly compliance report on Corporate Governance as per Regulation 27(2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in the format as specified by SEBI from time to time to the recognized stock exchange(s) within 21 days from the end of each quarter.

Hence in the present case ABC Ltd. has to submit it up to January 21, 2025 (Quarter October to December 2024)

(However, the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 vide Notification dated December 12, 2024 read with SEBI circular dated SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185 dated December 31, 2024, has altered the timelines.)

(iv) Quarterly and year-to-date standalone Financial Results as per Regulation 33(3)(a) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, has to be submitted to the stock exchange, within 45 days of end of each quarter, other than the last quarter.

Hence in the present case, it has to be submitted on or before 14 February, 2025.

(v) As per Regulation 24A(2) of the of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall submit a Secretarial Compliance Report in such form as specified, to the stock exchange(s) within 60 days from end of each financial year.

Accordingly, Secretarial Compliance Report of the ABC Ltd. to be furnished to the stock exchange for the financial year 2024-25 within 60 days from end of each financial year i.e. by 30 May, 2025.

Answer 1(b)

Professional in Practice before undertaking the work relating to pre-certification should thoroughly read the:

- Requirements of the provisions of the Companies Act, 2013 and Rules made thereunder; and
- Familiarize himself with the actual practices that are followed in this regard.

Further he should particularly ensure the following:

- Ensure that letter of engagement/Board Resolution authorizing the professional for the assignment by the company to be obtained.
- Maintain a physical/scanned of all documents verified (subject to confidentiality requirement).
- Ensure that all relevant documents and attachments are legible & visible.
- Verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts.
- The form is signed by the authorised person of the company.

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- Before certification of any form, the person should be aware about the relevant provisions under the Act and Rules made thereunder, Process to be followed by the company, approval if any required etc.

For maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practicing Company Secretary/Finn of Practicing Company Secretaries shall maintain a register regarding attestation /certification services provided by him/her/it.

Answer 1(c)

Ignorance of Law is not an excuse from escaping from liability of violation of law

In the leading case the Appellant, Mega Resources Ltd. is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/ under Section I 5A(b) of the SEBI Act, 1992 and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act, 1992 for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(I) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions.

However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. Further, the appellant contended that, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Decision

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. 25 Crore, SAT finds that the penalty of Rs. 50 Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down.

Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. 50 lakh is upheld and the appeal is dismissed.

In view of the above case and the decision of the tribunal that the obligation to disclose and make a public announcement persisted beyond the amendment date, the Company was liable under the revised law, is a valid.

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Answer 1(d)

Document management refer the process of managing and tracking of the documents and records through an electronic or physical source of documents.

In an electronic repository, Document Management Systems (DMS) works by using a computer system and software to store, manage and track electronic documents and electronic images of paper-based information captured through the use of a scanner.

The term document management system can be defined as the software that controls and organizes documents of an organization. It incorporates document and content capture, workflow, document repositories and output systems, and information retrieval systems. Also, the processes used to track, store and control documents.

Now a days many business houses are adopting maintenance of records efficiently through document scanning, cloud document management and secure archive storage services. In Cloud Document Management – Digitized records can be uploaded, together with relevant data to secure cloud document management solution. This allows maintenance records to be accessed from any location using a web browser. The system provides a full electronic audit trail and restricts access to records by user, group or role, providing improved compliance.

Documents can be tagged by any required data, which allows information to be found quickly and easily using a keyword search functionality.

Benefits/Advantages of DMS:

- Tracking on check-in/ heck-out by various officers
- Locking and unlocking of documents
- Simultaneous editing
- Document version control
- Roll back options/retrieve options
- Ease in audit trail
- Annotations and stamps

Section 120 of the Companies Act, 2013 (the Act) read with Rule 27 & 28 of the Companies (Management and Administration) Rule, 2014, provides for maintenance of documents in electronic form. The provisions also provide for inspection of documents maintained in electronic form. It states that any document, record, register, minutes, etc. that are required to be kept by a company or allowed to be inspected or copies to be given to any person by a company under the Act, may be kept or inspected or copies given, as the case may be, in electronic form. Rule 27 provides that every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records in electronic form.

In view of above the contention of the Company Secretary is valid.

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

Question 2

(a) "Compliance Monitoring System (MCACMS Portal) in MCA 21 by the Ministry of Corporate Affairs (MCA) has made compliance process easier and it ensures regular enforcement of Compliance requirements under the Companies Act, 2013."

Discuss the statement and mention the steps for filing the reply to the Show Cause Notice under the system.

(5 marks)

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(b) VM Pvt. Ltd. engaged in wholesale trading, received Rs. 5,00,000 from a foreign investor in April and October 2016. As per the Foreign Exchange Management Act (FEMA) regulations, the Company was required to allot shares within 180 days of receiving the inward remittance. However, the allotment was delayed and completed only in May 2017, after obtaining RBI approval. Recognising the contravention, the Company filed a compounding application under the FEMA, 1999 in July 2018.

Comment whether VM Pvt. Ltd. has taken a correct action by filing a compounding application. Support your answer with relevant case law.

(5 marks)

(c) TK & Associates LLP, a firm of practicing Company Secretaries, was engaged by KL Ltd. to certify certain regulatory filings under the Companies Act, 2013. Due to high workload, the senior partner of TK & Associates LLP, authorised a junior associate, who was not a qualified Company Secretary, to sign the compliance certificates on behalf of the firm. The certificates were then submitted to the Registrar of Companies (RoC) without disclosing that the signing authority was not a member of the Institute of Company Secretaries of India (ICSI). During an internal compliance audit, the Company discovered the irregularity and raised concerns about the legitimacy of the certifications. The issue was subsequently reported to the concerned Disciplinary Committee, which initiated an inquiry against TK & Associates LLP for professional misconduct.

In the background of professional misconduct in relation to Company Secretaries in Practice, analyse the validity of the Senior Partner's action.

(5 marks)

(d) Explain the documents which are considered as confidential and need complete privacy by any business house. What should be included in the confidential policy of the business house in this regard ?

(5 marks)

Answer 2(a)

MCA Compliance Monitoring System:

MCACMS Portal is an Artificial Intelligence initiative under system in MCA 21 by Ministry of Corporate Affairs to make compliance process easier and to ensure regular enforcement of Compliance requirements under Companies Act. 2013.

MCACMS Portal by Ministry of Corporate Affairs is for issuing show cause notices electronically for non-compliances under Companies Act, 2013 and submitting replies from companies / directors with their clarifications and submissions. Based on the replies / submissions, the Register of Companies, Ministry of Corporate Affairs shall initiate penal actions for violations referred in the show cause notices.

Following are the steps for filing reply to the Show Cause Notice;

1. Visit the MCA CMS portal;
2. Click on 'Reply for Show Cause Notice Tab;
3. Click the relevant section for which SCN has been issued;
4. Fill the CMS Reference number written on the SCN & click search. The system will validate the number;

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5. After validation click on 'Send OTP' tab.
6. OTP will be sent on the email id on which SCN was received;
7. Click on 'Submit Reply' tab and reply once submitted cannot be altered;
8. The system will show a confirmation message and the 'Action' tab will show reply status.

Conclusion: Hence, the above statement is absolutely correct as this portal has made easier for filing of reply to the show cause notice issued electronically for non-compliances.

Answer 2(b)

In the matter of M/s Candor View India Private Limited, Compounding order dated October 30, 2018 Reserve Bank of India, Bengaluru.

Delay in allotment of shares to the foreign investors (i.e beyond 180 days of receipt of the inward remittances), person's resident outside India. The applicant, M/s Candor View India Private Limited (applicant), was incorporated on December 01, 2015, under the Companies Act, 2013, as per the Certificate of Incorporation issued by the Registrar of Companies, Karnataka. The company is engaged in the business of aluminum metal & metal alloys as cash and carry wholesale trading

The applicant has filed a compounding application dated July 06, 2018, for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999, (the FEMA) and the regulations issued there under. The contravention sought to be compounded is delay in allotment of shares to the foreign investors, persons resident outside India, beyond 180 days of receipt of the inward remittances, in terms of Paragraph 8 of Schedule I to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000- RB dated May 03, 2000, and as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB). The company received inward remittances of Rs. 4,96,321.58, and Rs. 3,678.84, amounting to Rs. 5,00,000.42, from the foreign investor in USA, on April 05, 2016, and October 13, 2016, respectively. Company allotted 50,000 equity shares for a total consideration of Rs.5,00,000.00, on May 26, 2017, to the foreign investor, which is beyond 180 days from the date of receipt of inward remittances, with prior approval of Reserve Bank of India,

The application was considered and the contraventions were compounded. In terms of Section 13 of the FEMA, any person contravening any provision of the Act, shall be liable to a penalty up to thrice the sum involved, in such contravention upon adjudication. However, taking into account the relevant facts and circumstances of the case, a lenient view were taken on the amount for which the contravention are to be compounded and an amount of Rs. 31,500.00 (Rupees Thirty One Thousand and Five Hundred only) was imposed under Compounding.

In view of above leading case, VM Pvt. Ltd. has taken correct action by filing a compounding application.

Answer 2(c)

Professional misconduct in relation to Company Secretaries in Practice (Part I of the First Schedule to the Act)

Clause (11)

Provides that a Company Secretary in Practice (PCS) shall be deemed to be guilty of professional misconduct, if he–

> "allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto."

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This clause further fortifies clause (1) discussed already. It is not permissible for a Company Secretary in Practice to allow any person to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary or any other statement related thereto. The purpose is not to allow a member to have his judgment and expertise substituted by the judgment of any other person who is not a member in practice or his partner in the firm. To take an instance, the annual return under Section 92 of the Companies Act, 2013 has to be certified by a Company Secretary in Practice himself. It is not possible to have the certification done by a Company Secretary, say, through a power of attorney holder, even though the holder of the power of attorney is an employee (of the Company Secretary) who has been associated with the checking up of various details furnished in the Annual Return.

PCS who is not a partner of another PCS cannot sign on behalf of such other PCS on Annual Returns or Secretarial Audit Report or any other certificates.

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

In view of the above clause, the Senior Partner of the firm in the given case is guilty of professional misconduct and cannot authorise his junior to sign the compliance certificate.

Answer 2(d)

For the managing the confidential and privacy, the first step in the process is to identify what constitutes confidential documents at the workplace, and what to share securely. For any business house the following documents are primarily considered as confidential and need complete privacy:

(i) Customer's & Employees' Information

Safe guarding of the personal data is information about an individual that can be used to identify him/her. Information like Aadhar number, Mobile numbers, Residential addresses, Name, credit card numbers, etc. can all be considered personal information. In India, by the majority of the business, the strong mechanism for safe guarding the personal information is not yet adopted. Even when the documents or data cease to be useful to the organisation, this doesn't mean that the information is no longer confidential.

Control includes in such cases the data needs to be disposed of securely and cannot be placed freely on the public platform or mixed with other kinds of data in the office. In such cases the business should work with a trusted information destruction agency to physically destroy both electronic and physical data. The Customer's & Employees Confidential Information includes discussions about employee relations issues, disciplinary actions, impending layoffs/ reductions-in-force, terminations, workplace investigations of employee misconduct, etc.

(ii) Office Plans, Office IDs and Internal Procedure Manuals

For every organisation internal planning & procedures is the key aspect for controlling business and the organisation should ensure the protection of the same. It is important to place the documents with detailed office layouts throughout offices to identify key exits in case of emergency but the other documents and forms related to internal processes and procedures should be kept electronically on secure network drives and encourage employees to limit print-outs.

(iii) Contracts and Commercial Documents and Trade Secretes;

In case of the business contracts, every detail of the arrangement should be treated with the utmost confidentiality for both organization itself and the third party's benefit. If the contract

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has a confidentiality agreement, it could be rendered obsolete if an unauthorised person got their hands on the physical copy of the contract. The contracts are full of commercially sensitive information such as the nature of the arrangement, the value of the services offered/ received in the agreement, the names of the main contracting parties, etc.

The business should avoid sharing contracts broadly unless strictly required, and limit physical copies; consider using tools to sign contracts electronically in order to reduce unnecessary print-outs. While these documents are some of the most important to securely store and shared, the easiest and safest way to reduce the risk of a data breach is to implement a secure document retention policy specific to organisation's needs.

(iv) Trade secrets:

The confidential business information as "proprietary information" or "trade secrets." Which is not generally known to the public and would not ordinarily be available to competitors except via illegal or improper means.

Common examples of "trade secrets" include manufacturing processes and methods, business plans, financial data, budgets and forecasts, computer programs and data compilation, client/ customer lists, ingredient formulas and recipes, membership or employee lists, supplier lists, etc.

"Trade secrets" does not include information that a company voluntarily gives to potential customers, posts on its website, or otherwise freely provides to others outside of the company. If such Confidential information is available in the wrong hands, confidential information can be misused to commit illegal activity (e.g., fraud or discrimination), which can in turn result in costly lawsuits for the Company.

The confidential policy of the business house should describe the type of information considered confidential and the procedure employees must follow for protecting confidential information and dealing with the confidential information.

OR (Alternate Question to Q. No. 2)

Question 2A

(i) ST Ltd. failed to file annual returns, appoint independent directors, and report key Board resolutions on time. Regulatory authorities issued a show cause notice holding Company Secretary KM as the ''officer in default.'' KM argued that compliance was the Board's responsibility.

As per the provisions of the Companies Act, 2013, examine the professional liabilities of a Company Secretary and determine whether KM's contention is valid.

(ii) OS Pvt. Ltd. implemented a document control system to ensure its quality and compliance. However, during an internal audit, gaps were identified, including lack of operating logs, incomplete review records, and inadequate tracking of document access and inspections. The management faced challenges in monitoring work performance and analysing information flow.

Enumerate the key measures which should be adopted for effective document control and key concepts required to be considered to take care of records and archives.

(5 marks)

(iii) JK Ltd. engaged AK, a PCS, to certify its Annual Return (Form MGT-8) for FY 2023-24. During his review, AK identified material discrepancies, including non-disclosure of related party

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transactions, non-compliance with shareholding disclosure norms, and incomplete statutory registers. The Company's management insisted on certification without adverse remarks, claiming the omissions were minor.

Discuss the duties, responsibilities and guiding principles to be adopted by a PCS in certifying Form MGT-8.

(5 marks)

(iv) GY Ltd. a publicly listed company, is in the process of securing a high-value government contract. The Company's Chief Financial Officer (CFO), under pressure to meet aggressive financial targets, instructs the Company Secretary (CS) to delay the disclosure of certain financial irregularities detected in an internal audit report. The CFO argues that disclosing the findings immediately might jeopardise the Company's chances of winning the contract, potentially leading to job losses and financial instability for shareholders. The Company Secretary is in dilemma now.

Using Kidder's approaches to resolve ethical dilemma, suggest the Company Secretary on further course of action. Also explain that each professional should avoid any conflict of interests with that of the client as its one of the fundamental duties.

(2+3=5 marks)

Answer 2A(i)

Though a Company Secretary is entitled to enjoy some rights and powers as laid down in the Companies Act, yet his position is not free from liabilities. The Companies Act and other laws related to company management provide the framework of certain liabilities for the Company Secretary. Professional liabilities in context of Company Secretary means the Company Secretary shall be liable as the officer in default in context of the non-compliances with the provisions of statutes to which he/she is entrusted with.

A Company Secretary may or may not be officer bearer as director, but they will often be accounted for breach of duty in the same manner as Board of Directors. The Companies Act, 2013 specifies certain duties to Board of Directors and Company Secretary. Therefore, as an officer of the company, it is peculiar to work in interest of company and avoid situations leading to conflict of interest and always opt for independent judgment.

The Company Secretary has many statutory and administrative responsibilities, including filing returns and ensuring compliance with the Companies Act. Various sections in the Companies Act, 2013 provide that, where there is a failure of compliance, 'an offence is committed by every officer of the company who is in default'. If the Company Secretary is the person with main responsibility for the task, he will be the person in default and liable to the fine/penalty.

For instance, default in filing annual return of company within sixty days from the date on which the annual general meeting is held, then every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default. Further, if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of two lakh rupees.

In view of the above KM is the officer in default and liable to the fine/penalty as per the provisions of the Companies Act, 2013.

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Answer 2A(ii)

To assure the best quality of documents, it is to be assured that sufficient records are maintained to furnish evidence of the activities affecting quality. The records should incorporate the following:

- Operating logs: the names of the individuals who all have worked on the same documents;
- Results of reviews: the recording of the changes suggested by each reviewer and basis of the rejection on Non agreement;
- Inspections: list of individuals who have access of the records and have inspection rights of the same;
- Monitoring of work performance: will ease in the monitoring of work performed by the person to whom the file is shared;
- Information analyses: Provide ease in the Information system of the organization and tracking of files.

Records should be identifiable and retrievable and should consistent with applicable regulatory requirements. The company should comply with requirements concerning record retention, such as duration, location, and assigned responsibility. Every record must be well managed in order to ensure that they are protected for both administrative purposes and to serve as evidence of the organization's work. Records management provides a professional approach to caring for records.

The care of records and archives is governed by three key concepts:

(i) Keeping together

The records must be kept together according to the department / Section responsible for their creation or accumulation, in the original order established at the time of their creation. This gives them their 'evidential' nature and distinguishes them from other kinds of information. It is the basis for retrieving information from records. Knowing who created or used a record, and where, when and why, is the key to retrieval rather than their format, subject matter or content. This is true for paper-based records as well as the electronic records.

(ii) Ensure life cycle

Every records follow a 'life-cycle', in that they are created, used for so long as they have continuing value and then disposed of by destruction or by transfer to an archival institution. Every record pass through three main phases, i.e. current phase, semi-current phase and non-current phase. In the current phase, they are used regularly in the conduct of current business and maintained in their place of origin or in the file store of an associated records office or registry.

In the semi-current phase, they are used infrequently in the conduct of current business and are maintained in a records center. In the non-current phase they are destroyed unless they have a continuing value which merits their preservation as archives in an archival institution. The effective management of records throughout this life-cycle is a key issue in civil service reform.

(iii) Record Preservation

The care of records and archives is that the care should be managed through a coherent and consistent range of actions from the development of record-keeping systems, through the creation and preservation of records to their use as archives.

The concept suggests that four actions continue or reappear throughout the life of a record: i.e., identification of records; intellectual control; provision of access; and physical control. The management of this continuum basis for a strategic approach to records management.

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Answer 2A(iii)

Certification with Reservation /Qualification /Observations /Adverse Remarks

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

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

It is the duty of the certifying professional to take the copy of the relevant documents and record such facts, based on which he has certified the Returns. While certifying of the Annual Return in Form No. MGT-8, the certifying professional shall give the observation, limitation and disclaimer as may be required and appropriate for the certification.

Guiding Principles

There are no specific modalities or stringent test practices applicable for certification of Annual Return. However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

(i) **Internal Controls:** The PCS shall perform a detailed review of the internal controls, checks and balances built into the systems and procedures of the Company. If appropriate internal controls exist, and operate effectively, the need for detailed checking is reduced to a large extent. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another before the whole process is complete. The system could also provide for inherent checks, particularly in cases where the process is automated/computerized.

(ii) **Materiality:** Similar to any audits, the principle of materiality is another important and relevant concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance. For example, in share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.

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

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

Answer 2A(iv)

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

- Ends-based: Select the option that generates the most good for the most people.

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- Rule-based: Choose as if you're creating a universal standard. Follow the standard that you want others to follow.
- Care-based: Choose as if you were the one most affected by your decision. Once you've identified an ethical right versus right dilemma, lay out your options according to these three principles. One approach will immediately present itself as the "most right".

Avoid Conflicts: Fundamental Duty of professional

Each professional should avoid any conflict of interests with that of the client. A 'conflict of interest' exists where the interests or benefits of one person or entity conflict with the interests or benefits of the client. The professional must avoid situations involving actual or potential conflict of interest. Any situation that involves or may involve a conflict of interest must be promptly disclosed. No transaction, which involves an actual or potential conflict of interest, should be undertaken by professional.

A professional must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the professional or an associate of the professional, except as permitted. A professional must not exercise any undue influence intended to dispose the client to benefit the professional in excess of the professional fair remuneration for legal services provided to the client.

A professional must not borrow any money, nor assist an associate to borrow money, receiving a financial benefit from a third party in relation to any dealing where the professional represents a client, or from another service provider to whom a client has been referred by the professional, provided that the professional advises the client:

I. that a commission or benefit is or may be payable to the professional in respect of the dealing or referral and the nature of that commission or benefit;

II. that the client may refuse any referral and the client has given informed consent to the commission or benefit received or which may be received.

PART-II

Question 3

(a) An auditor may be appointed either as a result of one-to-one communication between the auditor and the Management or through a tendering process followed by the Management. Discuss various steps where Auditor is appointed through Tendering Process by Management.

(5 marks)

(b) PT Pvt. Ltd., has a paid-up capital of ₹ 75 lakh and reserves of ₹ 7 crore. Over the last three consecutive financial years, immediately preceding the financial year under audit, its turnover has been ₹ 120 crore, ₹ 250 crore, and ₹ 310 crore respectively. During one of the management meetings, the Managing Director suggested that presently, they may not be required to appoint internal auditors. However, if need arises, they can appoint Jain and Gupta Associates, (Chartered Accounting firm) the Company's statutory auditor, as its internal auditor to ensure compliance.

With reference to the provisions of the Companies Act, 2013, evaluate whether the contention of Managing Director is tenable.

(c) ''Financial due diligence provides peace of mind to both corporate and financial buyers by analysing and validating all the financial, commercial, operational and strategic assumptions

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being made." Give your views on the statement and also provide imperative components of Financial Due Diligence.

(5 marks)

Answer 3(a)

The Audit Engagement

An auditor may be appointed either as a result of

- one to one communication between the auditor and the Management or
- through a tendering process followed by the Management.

In case where the appointment of auditor is through a tendering process by the management, following steps take place.

1. Pre-bid meeting with the management to discuss upon various aspects of the tender, scope of work terms of engagement, prior year audit results, appropriateness of reporting framework, understanding business and environment including internal control system, design & operation, audit process, periodicity of audit determining nature and conflict of interest etc.
2. Submission of technical bid as per the requirements of the tender document of the management.
3. Signing the engagement letter with the management.
4. Certificate by auditor before accepting an audit.

The Auditor shall furnish a certificate to the Appointing Authority that:

(a) The number of audits are within the ceiling prescribed by the ICSI as specified in para 2 of CSAS 1.

(b) No substantial conflict of interest as defined in para 3 of CSAS-1 exists with the Auditee.

(c) There is no restriction to render the professional services under ICSI Guidelines.

(d) He is not debarred to undertake such audit under any law or under the disciplinary mechanism of the ICSI

Answer 3(b)

Applicability of Provisions of Internal Audit: As per section 138 of the Companies Act, 2013, read with rule 13 of Companies (Audit and Auditors) Rules, 2014, every private company shall be required to appoint an internal auditor or a firm of internal auditors, having-

(i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

Also, as per section 138, the internal auditor shall either be a chartered accountant or a cost accountant (whether engaged in the practice or not), or such other professional as may be decided by the Board to conduct an internal audit of the functions and activities of the company.

The internal auditor may or may not be an employee of the company. However, Statutory Auditor shall not be appointed as internal auditor of the Company.

Conclusion: In the instant case, PT Pvt. Ltd, is having a turnover of ₹ 310 crores during the preceding financial year which is more than two hundred crore rupees. Hence, the company has the

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mandatorily statutory requirement to appoint an Internal Auditor and mandatorily conduct an internal audit.

Therefore, the appointment of Jain and Gupta Associates (Chartered Accounting Firm) as an internal auditor of the Company is not valid as they are also its statutory auditor.

Answer 3(c)

Financial Due Diligence:

Financial Due Diligence is the process of analyzing requiring inquiry, analysis and interpretation of financial and operational data to assist a buyer in assessing certain risks and opportunities involved in a potential transaction.

It seeks to check whether the financials showcased in the Information Memorandum is correct or not. It also provides a deep understanding of all the:

- Company's financials, including but not restricted to audited financial statements for last three years, recent unaudited financial statements with comparable statements of last year,
- review of accounting policies,
- review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures,
- examination of information systems to establish the reliability of financial information, internal control systems etc.

The Financial Due diligence also review the company's projection and basis of such projections, capital expenditure plan, schedule of inventory, debtors and creditors, etc. Also, the process involves analysis of major top customer accounts, fixed and variable cost analysis, analysis on gross margins, customers with high profit margins and their contract period, internal control procedures etc. It will also involve the type of the company's order book and sales pipeline to better build projections.

The Financial Due Diligence can further extends to tax due diligence which covers the Diligence on various taxes the company is required to pay and which ensure that the proper calculation with no intention of under-reporting of taxes. Status of any tax related case running with the tax authorities.

COMPONENTS OF FINANCIAL DUE DILIGENCE:

- Sustainable / normalised earnings
- Sales trends – by segment product geographies diligence Sales trends – by segment, product, geographies
- Customer / product profitability
- Overheads – fixed vs. variable
- Balance sheet – fixed assets, borrowings, working capital Unrecorded liabilities
- Commitments, contingencies
- Accounting policies
- Management BOD control environment Corp Governance Relationship between profit and operating cash flows Reliance on debt funds and usage of debt
- Debt repayment and potential debt trap
- Working capital lock up

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Question 4

(a) HY Ltd., a growing manufacturing company, initiated a performance assessment of its Internal Audit function to evaluate its alignment with business objectives and risk management practices. During the review, the Board and Audit Committee identified key concerns, including delays in audit completion, inadequate coverage of critical risk areas, and inconsistent communication of audit findings. Additionally, stakeholders expressed concerns about the accuracy of reports, the effectiveness of recommendations, and the overall value addition of the internal audit process.

Prepare a brief note explaining, how HY Ltd. can systematically evaluate and enhance its Internal Audit function.

(3 marks)

(b) AR & Co., were the Secretarial Auditors of PQ Ltd. The audit was carried out by the team, as per the requirements of the Companies Act, 2013 covering various aspects including compliance with corporate laws and governance requirements. During the final review by the Partner of the firm, it was observed that certain working papers lacked proper referencing, key compliance conclusions were not adequately supported by evidence, and some review notes remained unresolved. Additionally, discussions with management regarding critical findings were not properly documented. In the background of above facts, enumerate the key aspects which the secretarial auditor should consider while reviewing working papers.

(3 marks)

(c) Following is the financial information of MM Ltd., an Indian Company :

FY	*Net profit/loss (in ₹ crores)*
2022-23	4.50
2023-24	4.90
2024-25	6.70

The turnover for the FY 2024-25 is ₹ 980 crore and net worth is ₹ 450 crore. However, profits for the year 2024-25 includes profit of an overseas branch of ₹ 1.5 crore and dividend received from Indian company which is covered under complying with the provision of section 135 of the Companies Act, 2013 as ₹ 50 lakh.

Whether the Corporate Social Responsibility (CSR), as per the Companies Act, 2013, be applicable on MM Ltd.? Explain.

(3 marks)

(d) Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalised/poor groups whose voices are rarely heard. Explain the benefits of Social Audit.

(3 marks)

(e) Define suspicion and how will the Secretarial Auditor proceed in case he has sufficient reasons to believe that there is any commission of fraud in the company ?

(3 marks)

Answer 4(a)

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

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Performance measurement ensures high standards for audit strategy, execution, and reporting. It also helps organizations align their audit strategy with the overall business strategy, thereby linking the audit's performance to the organization's mission and objective. This ensures that concerned stakeholder audit needs are fulfilled.

Key benchmarks of performance assessment are mentioned below:

- Effectiveness of audit in covering key areas;
- Feedback of audit findings during audit;
- Duration and timeliness of the audit;
- Accuracy of audit findings;
- Value of the audit recommendation;
- Value added by the internal audit function.

Answer 4(b)

The auditor should review all working papers to determine whether they are relevant and have a useful purpose, evidence the audit work performed and sufficiently support the audit findings. In addition, the auditor should ensure the conclusions reached were reasonable and valid, and that the office working paper standards were followed. The auditor should review all audit review notes to be certain that all notes have been resolved within the working papers. Documentation obtained and not relevant to the audit should be returned/destroyed upon the completion of the audit. The review will consist of:

- Determining compliance with working paper guidelines.
- Reviewing the audit program that outlines the major objectives of the audit, and ensure that the procedures accomplish the objective(s).
- Reviewing the audit procedures and the referenced working papers to ensure the working papers support the procedures performed and all procedures have been completed.
- Determine that the working papers adequately are documented and the conclusions reached in the report.
- Ensuring that all findings prepared have been discussed with the appropriate member of management, and that the disposition of the audit concerned is documented.
- Documenting review notes.

Answer 4(c)

Provision of law;

As per section 135(1) of the Companies Act 2013, the CSR provisions are applicable to companies which fulfils any of the following criteria:-

Every company including its holding or subsidiary, and a foreign company having its branch office or project office in India having net worth of ₹ 500 crore or more, or turnover of ₹ 1000 crore or more or a net profit of ₹ 5 crore or more during the immediately preceding financial year.

Rule 2(h) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, any profits arising from any overseas branch of the company whether operated as a separate company or otherwise will not be included in profits of the company;

Any dividend from other companies in India, which are covered under and complying with the provision of sec 135 of the Companies Act, 2013 will not be included in the profits of the company.

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Facts of the case:

Since the Turnover for the FY 2024-25 was ₹ 980 crore and net worth is ₹ 450 crore, the company does not fulfil the turnover and net worth criteria as it is below the limit.

However, during FY 2024-25, net profits will be recalculated because it included profits of overseas branch and dividend which is not allowed for computation of profit, hence revised amount of profit is calculated as below;

Net profit = ₹ 6.70 crore

Less profit of overseas branch=₹ 1.50 crore

Less dividend received from company specified above=₹ 0.50 crore

i.e. 6.70-1.50-0.50=₹ 4.70 crore.

Conclusion: Since, profits of the FY 2024-25 is below the ₹ 5 crores. Hence, CSR is not applicable. Since CSR is not applicable, there is no need to make CSR provision.

Answer 4(d)

A social audit examines issues regarding internal practices or policies and how they affect the identified society. The activities included tend to pertain to the concepts of social responsibility. This can include activities affecting the financial stability of a region, any environmental impact resulting from standard operations and issues of transparency in reporting.

Benefits and Advantages of Social Audit;

- Financial data on social activities/ programs/ interventions: Social Audit assesses the source of funding, its utilisation and appropriate reporting to the Governing Body of the Social Enterprise.
- Encourage for social performance: Social Audit assesses the impact of the activities undertaken and brings the social point of view to the attention of the management, and thus encourages the Social Enterprise to perform better.
- Improve relationships with Stakeholders: By Implementing the auditors' recommended improvements, it helps the Social Enterprise to meet stakeholder expectations, enabling it to build a good relationship with them in the long term.
- Comparison of different activities: The Social Audit provides data for comparing effectiveness of different types of social welfare programmes undertaken and this further enables to assess which activity has better social impact.
- Enhances Social Reputation: Social Audit helps the organization to build up the image and reputation of the organization in the minds of the public.
- Sense of Social Responsibility among Shareholders and Community as a whole: Social Audit helps shareholders as well as other stakeholders realize the importance of socially beneficial programmes and extend their cooperation to the Social Enterprise's programmes of social welfare and development.

Answer 4(e)

Suspicion' is a state of mind more definite than speculation, but falls short of knowledge based on evidence. It must be based on some evidence, even if that evidence is tentative – simple speculation that a person may be engaged in fraud is not sufficient grounds to form a suspicion. Suspicion is a slight opinion but without sufficient evidence.

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Examples of information which could be classified as suspicion are provided below:

- Recurring negative cash flows from operations or
- Inability to generate cash flows from operations while reporting earnings and earnings growth.
- The practice by management in maintaining or increasing the entity's stock price or earnings trend.

Duty of Secretarial Auditor:

- The Auditor may communicate directly with the internal auditors and statutory auditors to verify whether they have suspected/identified any fraud during the course of their audit.
- The Auditor shall ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the Auditee by its employees and officers.
- During the course of the audit, if the auditor suspects any commission of fraud, he shall endeavour to collect further evidence for the same.
- The suspicion may arise on perusal of internal control systems, perusal of any complaints under whistle blower mechanism, reports of the other auditors, etc.
- The auditor shall ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the Company by the employees and officers of the company.

Conclusion:

The auditor shall ensure that he has sufficient reason to believe that there is commission of fraud and should have justifiable grounds for the same.

Question 5

(a) You have been appointed as an Auditor of a large manufacturing company and during review, you have noticed that there were several entries in the electronic records [maintained by the company, as required by the Audit Trail system implemented by the Ministry of Corporate Affairs (MCA)], which did not match with the company's financial statements. Moreover, there were multiple changes made to the electronic records, but there was no documentation explaining the reasons for the changes. How you will investigate the discrepancies as an Auditor and promote Good Corporate Governance and protect the interest of stakeholders ?

(5 marks)

(b) UV Ltd., a listed entity, declared full compliances with regulations of the Securities and Exchange Board of India (SEBI) in its Annual Report, despite failing to disclose material non-compliances. Additionally, a significant related party transaction was omitted to be disclosed in the report. These misstatements could mislead investors and affect the Company's credibility. Realising these inadvertent errors, the management has asked you as a Practicing Company Secretary to do a detailed evaluation. During one of the conversations with the management, you mentioned to them that the auditors should have expressed a modified opinion on this. Prepare a brief note covering the key causes of misstatements in corporate disclosures and modifications to the audit opinion.

(5 marks)

(c) KT Solutions Ltd., a technology-driven organization, is preparing for an Information Systems

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Audit aimed at evaluating the overall performance and regulatory compliance of its IT framework. Management wants to ensure that its systems fully support business objectives and protect essential assets. Explain the key aspects that the auditors should focus during an Information Systems Audit.

(5 marks)

Answer 5(a)

For conducting an audit of a large manufacturing company in India, the auditor has to review the electronic records maintained by the company, as required by the Audit Trail system implemented by the MCA.

During the review, the auditor noticed these Discrepancies;

- There were several entries in the electronic records that did not match the company's financial statements.
- The auditor also observed that there were multiple changes made to the electronic records, but there was no documentation explaining the reasons for the changes.

To investigate the discrepancies:

- The auditor used the Audit Trail system to review the changes made to the electronic records. The system provided a detailed record of all changes, including the date, time, and person making the change.
- The auditor also reviewed the company's financial statements to identify the source of the discrepancies.
- The auditor found that the company had understated its revenues by recording them in a different financial year than when they were actually earned.
- The auditor also discovered that there were several unauthorized changes made to the electronic records to conceal the irregularities.

Steps to be taken by Auditor:

- The auditor should report the findings to the company's management and recommended that the discrepancies be corrected and the electronic records to be updated accordingly.
- The company's management should cooperate with the auditor and take corrective action to address the issues identified.
- As a result of the audit, the company will improve its internal controls and financial reporting processes so as to prevent similar issues in the future.

Conclusion:

The Audit Trail system implemented by the MCA has been instrumental in uncovering the irregularities and ensuring that the company took corrective action .This case study demonstrates the importance of the Audit Trail system implemented by the MCA in promoting transparency and accountability in corporate reporting and detecting financial irregularities.

The system provides a powerful tool for auditors to identify discrepancies in electronic records and to investigate the causes of those discrepancies. It also helps to promote good corporate governance and protect the interests of stakeholders.

Answer 5(b)

"Misstatement" means when any written statement is found to be false, incorrect, incomplete, misleading, or which misrepresents or omits or suppresses any material fact from the given meaning

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of the stated sentence or paragraph or otherwise from the whole document, which in turn fails to portray a clear, true and fair meaning of the titled subject and ultimately purpose of the given statement is not attained or understood in its correct sense.

Causes of misstatement may include:

- an inaccuracy in gathering or processing data or information;
- an omission of a disclosure;
- an incorrect or clear misinterpretation of the facts; or
- Management's judgments that the Auditor considers unreasonable.

Modifications to the Opinion:

The Auditor should express modified opinion when the Auditor concludes that:

(a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines or process; or

(b) based on the Audit Evidence obtained, the records as a whole are not free from misstatement; or are not maintained in accordance with applicable laws; or

(c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or

(d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the records as a whole are free from misstatement; or are maintained in accordance with applicable laws.

Answer 5(c)

Information systems auditing or systems audit is an ongoing process of evaluating controls, collecting and evaluating evidence to determine whether a computer system safeguards assets, maintains data integrity, allows organizational goals to be achieved effectively, and uses resources efficiently. Thus, information systems auditing supports traditional audit objectives; attest objectives (those of the external auditor) that focus on asset safeguarding and data integrity, and management objectives (those of the internal auditor) that encompass not only attest objectives but also effectiveness and efficiency objectives.

An information systems audit performed in an organization is a comprehensive examination of a given targeted system. The audit consists of an evaluation of the components which comprise that system, with examination and testing in the following areas:

- High-level systems architecture review
- Business process mapping (e.g. determining information systems dependency with respect to user business processes)
- End user identity management (e.g. authentication mechanisms, password standards, roles limiting or granting systems functionality)
- Operating systems configurations (e.g. services hardening)
- Application security controls
- Database access controls (e.g. database configuration, account access to the database, roles defined in the database)
- Anti-virus/Anti-malware controls

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- Network controls (e.g. running configurations on switches and routers, use of Access control lists, and firewall rules)
- Logging and auditing systems and processes
- IT privileged access control (e.g. System Administrator or root access)
- IT processes in support of the system (e.g. user account reviews, change management)
- Backup/Restore procedures.

During the System audit, the auditors are required to understand and evaluate the overall control environment. The control environment reflects the overall attitude of awareness and actions by the board of directors, management, and others concerning the importance of internal controls in the enterprise.

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

Question 6

(a) A, T and K are partners in LMN LLP, a firm specialising in secretarial audits. A holds 1% paid-up share capital in a company JKL Ltd, where the nominal value of his shares is ₹ 80,000 and the current market value is ₹ 50,000. Wife and daughter of A who are financially dependent on him, each holds l% paid-up share capital in JKL Ltd. JKL Ltd. has recently offered a Secretarial Audit engagement to LMN LLP. Critically evaluate whether LMN LLP can accept this engagement.

(5 marks)

(b) The Peer Reviewer is expected to examine the office systems and procedure with regards to Compliance Professional Service, including the training programmes for staff. Elucidate.

(5 marks)

(c) AM & Co., the auditors of AT Ltd. plans to rely on a third-party valuation report for assessing the Company's financial position. Define Third Party and explain the considerations which an Auditors should adhere while forming an opinion based on the Third Party reports. Also explain various steps the auditor should take to evaluate and validate the work of a Third Party.

(1+2+2=5 marks)

Answer 6(a)

Provision:

As per Para 3 of CSAS-1, Substantial Conflict of interest means holding of more than 2% in the paid up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power, as the case may be, by the Auditor singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

Before accepting the audit, the Auditor shall disclose that there is no conflict of interest of ownership as specified in this Standard or prescribed in any law, act, rules and regulations under which the audit is being carried on. Where there exists a substantial conflict of interest in the Auditee organization, the Auditor cannot accept the Audit Engagement.

The limit of holding of more than 2% in the paid-up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power shall be applied based

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on combined holding of the Auditor along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

Given Case:

A, T and K are partners in LMN, LLP, a firm of Practicing Company Secretaries. A holds 1% of the paid-up share capital in company JKL Ltd. Nominal value of such shares is ₹ 80,000. The market value of the shares held by. A is ₹ 50,000. Also wife and daughter of A who are financially dependent on him hold 1% paid-up share capital in JKL Ltd.

In this case, there will be a substantial conflict of interest between A and the company JKL Ltd, as the nominal value of shares held by A is more than Rs. 50,000, therefore he cannot accept the Secretarial Audit of XYZ Ltd. The market value of the shares is irrelevant while deciding the conflict of interest based on ownership in accordance with CSAS-1.

Also, in this case A is not directly holding any interest in JKL Ltd.as he has 1% paid-up share capital in JKL Ltd. However, according to para 3.1 of CSAS-1, A is having a substantial conflict of interest in JKL Ltd. As the aggregate value of paid-up share capital held by his wife, daughter and wife in JKL Ltd is 3%. Viewed in this context also, he is not eligible to become Secretarial Auditor of JKL Ltd.

Answer 6(b)

Office system and procedures;

The Peer Review is expected to examine the office systems and procedures with regard to Compliance Professional Services. The reviewer shall verify whether the practice unit has adequate office systems and procedures in place. However, the extent and scale of these systems may vary from one practice unit to another, depending upon the size and scale of practice of the practice unit. The reviewer shall particularly examine the following aspects, besides forming his own judgment during the review:

1. Whether the practice unit has a document management system which should ideally include the filing system, record storage and retrieval system (whether in hard copy or soft copy),
2. Whether allocation of attestation assignments among the staff/trainees are commensurate with the capability of the staff, whether the assignments are properly carried out and the attestation services are verified by the proprietor or partner of the practice unit or a qualified assistant in the office of the practice unit before authentication.

Training programs for staff (including apprentices)

It is for the staff including apprentices who are concerned with attestation functions, including appropriate infrastructure;

Proper training and capacity development of the apprentice staff/trainee(s) and other staff in the office of the practice unit is very essential to maintain the quality of professional services. As it may become difficult for company secretaries in Practice/Partner(s) of the PU to attend all the services rendered by their PU, most practice units generally rely on the trainees for execution of the professional services.

In this context, the peer reviewer may examine whether:

1. The trainees are maintaining a training diary to record the work done every day, the dairy is being examined by the proprietor/partner/qualified assistant of the practice unit periodically.
2. Whether any staff induction process is in place.
3. Whether the staff are periodically encouraged to attend any training program or any other capacity building programme, including any in-house mechanism for their professional development.

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4. Whether the office of the practice unit is equipped with a library or reference material relating to professional services.
5. Whether the overall décor/appearance of the office of the practice unit is satisfactory.

The peer reviewer may like to examine any other matters also. However, in doing so, the peer reviewer shall keep in mind the size of the practice unit and its scale of operations.

Answer 6(c)

"Third Party" means any person who does not have a direct connection with the audit but whose inputs or opinion might influence the audit conclusion and includes an expert. Third party may include any person who has given inputs and opinion of the expert relevant for forming an opinion.

Sometimes due to circumstances like geographical constraints or want of expertise on any specific subject matter an Auditor may be required to rely on the Third Party reports. The Third Party reports may be arranged by the Auditee or Auditor directly. Third Party Report or Opinion is used as one of the external source of obtaining the Audit Evidences that would help in building the strong and quality Audit Opinion.

The Auditor shall adhere to the following while forming an opinion based on Third party reports or opinions:

(a) The Auditor shall indicate the fact of use of Third party report or opinion and shall also record the circumstances necessitating the use of Third party report or opinion;

(b) The Auditor shall indicate the fact if Third party report or opinion is provided by the Auditee;

(c) The Auditor shall consider the important findings/observation of Third party;

(d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third-party report or opinion

While using the work of Third Party, the Auditor should:

- Consider the independence and objectivity of the Third Party;
- Take account of the Third Party's professional competence for the specific audit;
- Consider the scope of the Third Party's work;
- Determine the cost-effectiveness of using such work;
- Perform procedures to obtain sufficient appropriate Audit Evidence that the work of the Third Party is adequate in the context of the specific audit (which may require access to the Third Party's working papers); and
- Consider the significant findings of the other Auditor when analysing and interpreting the results of that work. Where these findings are significant to the opinion, Auditor should discuss these findings with the Third Party and consider whether it is necessary to carry out additional audit testing by him.
- When using the work of Third Party, Auditor should carefully consider that, the Third Party may only recognise a duty of care to the addressee of the audit report.

OR (Alternate Question to Q. No. 6)

Question 6A

(i) CK has been appointed a Secretarial Auditor of FP Pvt. Ltd, a rapidly growing company with diverse business operations. As a part of his role, he is responsible for all secretarial

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compliance and during reviewing secretarial compliances for the financial year 2024-25, he identifies potential gaps in the Board Process compliance. Draft guidelines for verifying Board Processes, giving various provisions mandating Board Processes.

(5 marks)

(ii) A quality review is an engagement that needs to be carried out in a manner that ensures the work performed by the Quality Reviewer and the review team meet the professional standards established by the Institute.

Explain various factors affecting quality of the work done by reviewer and also various considerations taken by the Quality Reviewer while planning the Quality Review.

(5 marks)

(iii) C, a partner at NTU & Associates, a Practicing Company Secretaries firm, specialises in secretarial audits, internal audits, and corporate governance services, primarily catering to the needs of clients in the renewable energy sector. In March 2025, the Chairman of the Audit Committee of GD Ltd, approached NTU & Associates, to take over as the Secretarial Auditor, replacing their existing auditors and C was leading the engagement. C was trying to reach out to the previous auditor and he asked his team to determine materiality for the engagement.

In view of above details, answer each of the following :

(a) Should C communicate with the previous auditor ?

(b) Outline the process and key steps involved in determining materiality for the new audit engagement; and

(c) Explain the risk assessment to be done for audits.

(1+2+2=5 marks)

Answer 6A(i)

Various provisions mandating Board Processes:

Provisions with respect to Board Processes may include:

- Meetings of Board and Committees
- Meetings of Committees that exercise powers of the Board u/s 179 of the Companies Act, 2013
- Meeting of Members
- Board's performance evaluation and training
- Appointment and resignation of the members of the Board

Role of Auditor in the verification of Board Processes

The Auditor shall verify notice of the meetings, minutes, and supporting records, including the agenda, to satisfy himself whether the Auditee has complied with the applicable laws, rules, regulations, guidelines, standards and defined internal processes (defined internal processes to be explained). Many corporates have manuals for Board Processes, in such cases, the Auditor should verify whether the Auditee has complied with the policy and processes laid down in the manual of the Auditee.

Deviations, if any, observed during the course of audit from the policies and processes laid down in the manual adopted by the Board.

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Directors, collectively called Board of Directors, in fulfilling the fiduciary objectives need to ensure that the company adheres to transparent, ethical and responsible governance of the company. It is, therefore, important that the Board processes of the company are robust. The board process refers to the processes followed for decision making by the Board and its committees. They can be broadly divided into two parts namely: -

1. Part A – Board Structure
2. Part B – Board Systems and Procedures

Board Composition the auditor shall verify:

1. Overall composition of the Board including the minimum and maximum strength of the Board as per provisions of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, Articles of Association and provisions of other Acts/rules/ regulations as may be applicable to the Company.
2. Optimum combination of Executive, Non-executive, Independent, Non-independent, retiring, non-retiring, woman, nominee in the Board as per provisions of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Articles of Association, agreement with Lenders/Investors and provisions of other Acts/rules/regulations as may be applicable to the company.
3. Eligibility criteria including qualifications of Directors in accordance with the provisions/ principles laid down in the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Articles of Association and provisions of other Acts/rules/ regulations as may be applicable on the Company.
4. The constitution and composition of Committees of the Board.

Board Processes:

The Auditor shall verify that the decisions of the Board and its Committees are taken and recorded in compliance with applicable laws, rules, regulations, guidelines, standards and defined internal processes, if any. In case of conflict between various provisions the stricter compliance to be verified.

Answer 6A(ii)

Yes, this statement is correct. It is of utmost importance to ensure that the quality in an assignment given by the Board remains priority for a Quality Reviewer.

Factors affecting the quality of Quality Review:

The quality of a Review is directly affected by factors such as:

- Knowledge and experience of the Quality Reviewer and his team
- Time devotion
- Composition of the Review team
- Understanding of the objective and scope of work
- Monitoring, direction and supervision of the Review team In fact, maintaining the quality in a Review as also the final report of the Review, is and remains the responsibility of the Quality Reviewer.

Planning the Quality Review:

A well planned review engagement ensures that a review is performed in an effective manner.

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It involves establishing the overall strategy for the review and developing the review plan. A well planned review helps the reviewer to:

- Devote appropriate attention to important areas of review;
- Identify and resolve problems on timely basis;
- Facilitate direction and supervision of the team members and their work.

The nature and extent of the planning required for a review will vary according to the size of the PU, nature and complexity of the quality control system in PU and the engagements under review, the experience and competence of the review team and any changes that may occur subsequently in the circumstances of the review.

The Reviewer should establish an overall review strategy that would set the scope, timing and direction of the Quality Reviewer, and guide the development of plan to conduct the quality review. In establishing the overall review strategy.

The Reviewer needs to consider the following:

(a) Characteristics of the review assignment that would determine the scope of the review, viz., evaluation of design and implementation of systems and evaluation of compliances;

(b) Reporting objectives of the review, to plan the timing of the review and the nature of the communication required with the PU

(c) Factors that, in the Reviewer's judgment, are significant in directing the review team's efforts; and

(d) Ascertain the nature, timing and extent of resources necessary to perform the review assignment.

Since quality review is essentially an "on-site" engagement, it is important that the on-site visit to the PU is also properly planned.

This planning would include:

- Preparing the checklists of the activities during review process.
- Preparing a list of documents that would be required from PU for quality review.
- Coordinating with the PU as to the timing of the visit and the authorised coordinating person/s at PU so as to ensure minimum disruption to the PU.

Answer 6A(iii)

(a) As per para 1.3 of CSAS -1, the Auditor shall communicate in writing to the Predecessor or Previous Auditor, if any, before accepting the Audit Engagement.

Yes, C should communicate with previous auditor.

(b) Determining materiality

- Identify business risks for the processed food service sector;
- Identify and evaluate the factors important in assessing an audit client's business risk and the risk of material misstatement;
- Identify and understand the implications of key inherent and business risks associated with a new client;
- Determine planning materiality for an audit client;
- Provide support for your materiality decisions.

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(c) As per CSAS-2 para 2, Risk assessment of the Auditee with respect to and connected/relevant to the Audit Engagement shall be done considering industrial & business environment, organizational structure and compliance requirements. The industrial & business environment includes the regulatory changes & judicial orders, compliance and disclosure requirements, etc.

The Auditor shall evaluate high risk areas and activities of the Auditee relating to:

- Internal control systems and processes of the Auditee for adherence to the constitutional documents, applicable laws, act, rules, regulations and standards;
- Transparency, prudence and probity; and
- Changes or Attrition in the compliance team and frequency of such changes and attrition.

The Auditor shall endeavor to make assessment of risk and shall identify critical and high risk areas; the risk assessment by Auditor can be made:

- By considering the underlying risk assessed by Management or internal and/or specific expert/agencies and analysis thereof;
- By reviewing policies and procedures put in place to mitigate risk;
- By having insight into the objectives, key performance indicators, risks and control measures, holding meetings with key executives of the Auditee.

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CORPORATE SOCIAL RESPONSIBILITY & SOCIAL GOVERNANCE

GROUP 1 ELECTIVE PAPER 4.1

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

Part-I

Question 1

Yash, Company Secretary, presents the report on CSR to the Board of Directors. The key points of the report are as follows :

Corporate Social Responsibility (CSR) guarantees that companies are dedicated to humanity. It is not a matter of charity, but rather an obligation to the utilization of resources in the best possible manner, which should be beneficial to everyone. CSR, as a term of legal currency, is fairly recent in origin. CSR is becoming an important part of every organization and different countries in the world are increasingly emphasizing the importance of CSR. Corporate Social Responsibility (CSR) guarantees the dedication of corporations to humanity. It is not in a philanthropic sense but rather a duty owed for the utilization of resources.

Corporate Social Responsibility (CSR) is increasingly becoming a key component of many businesses' policies. Comprehending the four levels of CSR demonstrates that the practice provides advantages, not just to employees and the community, but also to the company itself and the nation in which it functions. This is the reason it is frequently in the government's interest to promote these initiatives.

Companies engaged in Corporate Social Responsibility (CSR) initiatives must assess whether they have met their CSR objectives. To facilitate this assessment, a CSR audit is indispensable. A CSR audit serves as a management tool that involves a systematic, documented, periodic, and objective evaluation of the effectiveness of CSR organization, processes, and management, to generate social value for stakeholders.

Effective CSR audits not only enhance stakeholder confidence but also assist in regulatory compliance and risk mitigation. 'They are crucial for ensuring adherence to regulations, identifying potential risks, and promoting transparency among stakeholders. Internal auditors, armed with the necessary tools and expertise, act as facilitators for organizations to integrate CSR principles into their operations, thereby promoting sustainable growth and bolstering stakeholder trust. Social development is often not a core competency for many corporations, consequently, most companies prefer to engage implementing agencies to execute their projects. A recurring challenge faced by companies in the implementation of' CSR initiatives is the difficulty in identifying suitable implementing agencies (IAs). The National CSR Exchange Portal aims to assist corporations in locating appropriate IAs for the successful execution of their CSR projects, thereby reducing transaction costs. Additionally, the portal addresses a common issue cited by corporations regarding their inability to fulfill CSR obligations due to the challenge of finding suitable projects aligned with their CSR policies. The CSR Exchange Portal provides a platform for viewing projects proposed by various implementing agencies, allowing corporations to list their CSR projects and seek funding.

Based on the report above, the Board of Directors, inquire the following questions from the Company

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Secretary :

(i) 'The art of business has analogies to sailing. It is about setting a course, steering to make best use of the prevailing winds, and constantly checking to see if the sails need to be adjusted'. In similar fashion, an evaluation of CSR projects is very important. Explain the reasons for carrying out evaluation activities for CSR projects. Also indicate who are involved in the evaluation process ?

(5 marks)

(ii) "The tradition of 'giving' has been deeply entrenched in the culture of India". Elucidate the statement. Outline the significant milestones in Evolution of Responsible business since 2013. Which tool is used to increase the reputation of the company in the eyes of society ?

(5 marks)

(iii) XYZ Limited is a large multinational company having its business in India also. It has committed to expanding its corporate social responsibility initiatives in the communities surrounding its plants. The company aims to ensure that its social contribution is meaningful, lasting, and beneficial to the societies it serves. The business wants to make sure that its social impact is significant, long-lasting, and advantageous to the communities it serves. XYZ Limited has decided to undertake various programs such as healthcare services, education efforts, and clean water projects.

Explain the different modes of implementation which XYZ Limited can use to implement CSR programs. Also identify how it can disseminate this information to the public ?

(5 marks)

(iv) The two nations, namely Nepal and India have been neighbouring countries and display a significant economic, cultural, geographical. and strategic connection for a considerable duration. CG measures have mainly been examined within their own countries. Make a comparative study of the corporate governance measures in India and Nepal ? Outline the working of CSR activities in China as well.

(5 marks)

Answer 1(i)

The art of business has analogies to sailing. It is about setting a course, steering to make best use of the prevailing winds, and constantly checking to see if the sails need to be adjusted. In similar fashion, an evaluation allows a company to see whether it is on course, and what it needs to do to be more effective. It enables the company to:

- determine what is working well, why and how to ensure that it continues to do so;
- investigate what is not working well and why not, to explore the barriers to success and what can be changed to overcome the barriers;
- assess what competitors and others in the sector are doing and have achieved; and
- revisit original goals and make new ones as necessary.

This base of information should allow the company to determine whether the current CSR approach is achieving its objectives and whether the implementation approach and overall strategy are correct. Evaluation involves systematically gathering data about the program's inputs, activities, outputs, outcomes, and long-term impacts to assess effectiveness and guide future decision-making. An evaluation can be at the operational level or at the corporate level and can be done by either internal teams or external teams. Ideally, they should involve all stakeholders impacted

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by the project being undertaken, including comments and suggestions from management, CSR coordinators, managers and committees, employees and outside stakeholders.

Answer 1(ii)

The tradition of 'giving' has been deeply entrenched in the culture of India for community, religious and spiritual causes. The concept daana (giving), karma (fate) and seva (service) in Hinduism; zakat (almsgiving) and sadaqat (voluntary offerings) in Islam; and of bhiksha (food given as alms) in Buddhism emphasize giving.

The significant milestones in Evolution of Responsible business since 2013 are as follows:

Year	Significant Milestones
2013	Enactment of the Companies Act, 2013
2014	Section 135 of the Companies Act, 2013 on Corporate Social Responsibility (CSR) comes in to force.
2015	High Level Committee on CSR (HLC-2015) under the chairmanship of Shri. Anil Baijal makes recommendations on the CSR framework and stakeholder concerns.
2015	SEBI extends BRR reporting to top 500 companies by market capitalization.
2016	Companies Law Committee reviews the recommendations of HLC-2015 for adoption.
2018	The Second High-Level Committee on CSR constituted under the Chairmanship of Shri. Injeti Srinivas, Secretary, Corporate Affairs to review the CSR framework
2018	Committee on Business Responsibility reporting constituted under the chairmanship of Shri. Gyaneshwar Kumar Singh, Joint Secretary, Corporate Affairs
2018	Zero Draft of National Action Plan on Business and Human Rights released by Ministry of Corporate Affairs
2019	National Guidelines on Responsible Business Conduct released.
2019	SEBI extends BRR reporting to top 1000 companies by market capitalization.
2021	SEBI introduces the Business Responsibility and Sustainability Reporting in lieu of BRR and made it mandatory for the top 1000 companies by market capitalisation.

Corporate Social Responsibility activity is a tool to increase the reputation of the company in the eyes of society. It acts as a new business strategy to reduce investment risks and maximise profits by taking all the key stakeholders into confidence.

The proponents of this perspective often include corporate social responsibility in their advertising and social marketing initiatives.

Answer 1(iii)

CSR programs, projects or activities of the company may be implemented through following methods:

(i) Directly by the company;

(ii) Through eligible Implementing Agencies;

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(iii) Any foundation or body incorporated by the company and eligible to undertake such CSR projects.

(iv) in collaboration with other organizations/group companies.

While the company can engage suitable Implementing Agencies to undertake approved CSR projects, it may also partner with local governance bodies, such as Gram Panchayats, Civic Bodies, Municipality to directly undertake approved CSR projects with the help and support of these bodies.

The methods by which a company can disseminate information to the public about its CSR initiatives are as given below:

- CSR Policy and activities undertaken are disseminated on the website of the Company for public access and;
- Published in the Annual Report of the company in the format prescribed under the Act and CSR Rules.

Answer 1(iv)

A comparative study of the corporate governance measures in India and Nepal

India and Nepal had their own share of financial crises and problems besetting the trust of investors while the former took several measures to instil trust among the stakeholders, shareholders, regulatory bodies and the public. Nepal, on the other hand, has taken initiatives in the late 2010s and is expected to fulfil the intended objectives. Although both countries experienced with financial scandals, India has been a forerunner in installing CG practices widely and gained edge compared to Nepal. On the other hand, Nepal has taken the necessary initiatives to move forward in the corporate ladder with its manpower, closeness to India both geographically and politically, and vibrant economy.

Philanthropy has been deeply rooted in the history and culture of Asian economies. India and Nepal have mandated spends on Corporate social responsibility (CSR)by corporates. Indian companies with a net worth of INR ₹ 500 cr + or more or a turnover of INR ₹ 1000 cr + or more or a net profit of INR ₹ 5 cr + or more must donate at least 2% of their net profit to CSR activities. On the other hand, Nepalese corporations with revenues above US$1.3 million are mandated to spend 1% of their profits to CSR. Unlike India where companies exercise control over their CSR spending, the Nepalese government collects the CSR funds and directs them to charitable organizations.

Working of CSR activities in China: China's Company Law merely requires all companies to "undertake social responsibility." The Government of the Republic of China has issued directives for state-owned companies and export companies to encourage CSR as a way to create a "harmonious society" and improve the international image of the country. Government procurement from the social sector is one of the most significant reforms, adopted by China in 2004 when the government began outsourcing social service delivery to social organizations. According to the Doing Good Index 2020, China procures more services from SDOs than any other economy.

Question 2

(a) (i) What does 'Impact' imply according to United Nations Organization ?

(1 mark)

(ii) Identify the type of 'impact' on the following illustrative examples and give two more examples of each impact identified.

(a) Farmers from Telangana, Haryana, Kerala, Maharashtra, Andhra Pradesh, Uttar

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Pradesh, etc., cleared the large number of trees such as Mahua, Coconut, Sangri, Neem, and Babul in order to enlarge paddy fields and increase yields and also to dig bore wells for groundwater extraction. Additionally, they claimed that trees with big canopies, like neem, had a detrimental effect on crop output.

(2 marks)

(b) The ancient library of Alexandria, one of the greatest academic and cultural establishments in antiquity, was destroyed by several events (full details are not available), most notably fire during the Roman era. It resulted in a major loss of ancient knowledge.

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

(b) What is CSR mode and medium of CSR spending ? How CSR Expenses are measured ?

(5 marks)

(c) State Bank of India (SBI), under Section 135 of the Companies Act, 2013, implements a robust Corporate Social Responsibility (CSR) policy. The bank focuses on education, healthcare, rural development, and environmental sustainability, allocating at least 2% of its average net profits from the past three years to CSR initiatives. SBI's flagship programs, like the "SBI Youth for India" fellowship, contribute to rural development and education. The CSR Committee ensures compliance with Schedule VII of the Act, conducting impact assessments for projects exceeding ` 1 crore. By integrating ESG (Environmental, Social, and Governance) principles, SBI maintains transparency, accountability, and measurable outcomes in its CSR practices.

How does SBI ensure compliance and transparency in its CSR initiatives under the Companies Act, 2013 ?

(5 marks)

Answer 2(a)(i)

As per the United Nations Organisation, 'Impact' implies changes in people's lives. This might include change in their knowledge, skills, behavior, the way health & education conditions are changing across community. Such changes may be negative or positive, small or huge in quantum, it can be either long term or short term and may be identifiable or non-identifiable. These changes can be economic, socio-culture, institutional, environmental or of any other type.

Answer 2(a)(ii)

The type of 'impact" on the illustrative examples and example of each impact identified are as given below:

(a) The first illustration has an economic impact.

Few more examples of it are:

- Loss of dwellings and other farm buildings
- Loss of access to common property resources
- Loss of shops, commercial buildings
- Loss of businesses/jobs
- Overall reduction in income due to above losses

(b) The second illustration has a Socio/Cultural impact.

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Few more examples of it are:

- Break-up of community cohesion
- Disintegration of social support systems
- Disruption of women's economic activities
- Loss of time-honoured sacred places of worship.

Answer 2(b)

CSR Mode of Spending

The spends on CSR is restricted to the list of programs and activities specified in Schedule VII of the Act, as amended from time to time. In addition, the following should be considered:

- Preference to the local area where it operates
- Programs and activities should be undertaken in India only
- Programs and activities should not be exclusively for employees & their families.

CSR Medium of Spending

a. Self

b. Through an implementing agency. Such an implementing agency can be:

i) A section 8 Company or a Registered Public Trust or a Registered Society established by the Company either singly or along with any other company

ii) A Section 8 Company or a Registered Public Trust or a Registered Society established by either the Central Government or the State Government

iii) Any entity established by an Act of Parliament or the State Legislature

iv) Any Section 8 Company or a Registered Public Trust or a Registered Society having a tract record of atleast three years in undertaking similar activities.

c. Collaboration or pool resources with other companies

Measurement of CSR expenses

CSR Expenses are measured at the aggregate level of amount actually spent/paid together with and amount for which contractual liability has been incurred (benefits received but payment not made as on date).

Answer 2(c)

State Bank of India (SBI) ensures compliance and transparency in its Corporate Social Responsibility (CSR) initiatives under Section 135 of the Companies Act, 2013, through a well-structured approach. The bank's CSR policy aligns with legal mandates, focusing on key areas like education, healthcare, rural development, and environmental sustainability which are covered under Schedule VII of the Act. It commits to allocating at least 2% of its average net profits from the past three financial years towards CSR activities, as required by the Act.

SBI's CSR Committee plays a crucial role in maintaining compliance by formulating and monitoring the CSR policy in line with Section 135, CSR Rules and Schedule VII of the Act. The committee evaluates CSR proposals, monitors project implementation, and ensures that funds are utilized effectively. The bank adheres to the Companies (CSR Policy) Amendment Rules, 2021, which mandate impact assessments for projects with a budget exceeding ₹1 crore. These assessments,

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conducted by independent agencies, provide unbiased evaluations of project outcomes, enhancing transparency and accountability.

Programs like "SBI Youth for India," which focuses on rural development and education, demonstrate SBI's commitment to impactful CSR initiatives. The bank uses Key Performance Indicators (KPIs) to measure project success and align outcomes with intended objectives. Transparent reporting, as required under Rule 8 of the Companies (CSR Policy) Rules, 2014, is achieved through detailed CSR reports included in the bank's annual disclosures.

SBI also integrates Environmental, Social, and Governance (ESG) principles into its CSR framework, promoting sustainable development and responsible business practices. The bank's CSR reports disclose financial data, project progress, and impact assessment findings, ensuring stakeholders are well-informed.

Through these measures, SBI not only complies with statutory requirements but also builds trust with stakeholders by demonstrating a transparent and strategic approach to CSR, contributing to long-term societal and environmental benefits.

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

Question 3

(a) Companies nowadays adopt CSR not because it is a legal compulsion but also because it helps in increasing their brand value. Companies having CSR projects develop an emotional connection with consumers. In today's times, many organizations are focusing more on Corporate Social Responsibility (CSR) to have a competitive advantage and build long-term relationships with their stakeholders. CSR plays an important role in enhancing a brand's reputation and making it a distinguishing factor in the market.

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

(i) Explain how CSR helps in building the brand of an organization ?

(3 marks)

(ii) Provide any one corporate example to support your answer.

(2 marks) (3+2=5 marks)

(b) "Good governance flows from ethical business practices even when there is no legislation. It promotes investor confidence, which is crucial to the ability of entities listed on stock exchanges to compete for capital."

Analyse the statement by indicating the need for Corporate Governance along with describing management environment and board skills as important features of good corporate governance.

(5 marks)

(c) (i) Analyse the most important benefits of conducting an impact assessment of a CSR project.

(3 marks)

(ii) According to the January 2021 amendment, impact assessment is mandatory for companies with a CSR budget of INR 5 crore or more in any fiscal year and all projects with outlays of INR 5 crore or more. State whether the statement is True or False. Give reasons.

(2 marks) (3+2=5 marks)

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Answer 3(a)(i)

How CSR helps in building the brand of an organization is briefly explained below:

The importance of public and their respective targets is the key to building a strong brand and value creation and in today's economic scenario businesses are well aware of the importance of the public, especially their target audience, having a positive perception of them. Of course, their social responsibility, first and foremost, is to deliver value for money goods/services, followed by providing perfect after-sales support, customer service, involvement in civic causes, and generally performing acts that demonstrate that company cares about their customers, the environment, and the society as a whole. Organisations with good and strong Corporate Social Responsibility policies get more & better media coverage and able to garner more customer confidence which is considered to be one of the best ways to create the brand image of the company. The brand value of the organisation is built not only through offering value good and services to its customers and other stakeholders, but one of the strong pillars of building strong brand value and creating trust amongst stakeholders is how the organisation is catering to the needs of the society at large through its social responsibility policies and projects. A company demonstrates by being socially responsible, that it incorporates ethical practices in conducting itself, how it does the business. Customers are becoming more aware about the local, national and global issues, and there is no denying that their decisions are now being greatly influenced by these matters. Therefore, they tend to avail the goods & services from the companies that show their concern and their action over issues that also resonates greatly with the customers. Businesses regard their name and their brand to be one of their most valuable assets and, by showing that they take their social responsibility seriously, they are also encouraging the public to take them seriously. Consumers are willing to spend more money on the products and services of a company that has proven itself to be socially responsible. A company's workforce, for example, is inclined to feel more motivated to put in their best at work when they know they are contributing to a cause which helps the society as a whole the greater good. Social responsibility definitely helps in boosting the morale of employees, in turn, does wonders in increasing their productivity. It is a foregone conclusion that everyone – individuals and entities alike – have a responsibility to society. There is a moral obligation inherent in everyone, and companies are not exempt from doing their part. Potential investors also look into a company's social responsibility, using it as one of their criteria in deciding whether to put money into the company or not. It is also instrumental in improving companies' stock prices, since it inspires confidence among associates and business partners.

Answer 3(a)(ii)

Corporate example to show how CSR helps in building the brand of an organization:

When Starbucks entered the Chinese market, they confronted strong hostility among Chinese consumers who were proud of their traditional tea culture and against the Western, especially the American, culture. Starbucks actively implemented the CSR programs (e.g. charity projects to areas with poor education, improve benefits for the local employees, various activities for local communities, development of the first China-source coffee) and successfully built up their brand image to be more favourable to local consumers and became the dominant market leader in the Chinese market. CSR became the core branding strategy for Starbucks worldwide and it was the key driver that makes Starbucks the most recognizable and respected global brand.

Other empirical examples:

1. **TOMS Shoes:** TOMS is renowned for its "One for One" campaign, where for every pair of shoes purchased, the company donates a pair to a child in need. This initiative has not only improved the lives of millions but also created a loyal customer base that feels a strong emotional connection to the brand's mission.

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2. **Patagonia:** Patagonia's commitment to environmental sustainability has earned it a dedicated following. The company's initiatives, such as the Worn Wear program, which encourages customers to buy used products or repair old ones, align with its ethos of reducing environmental impact. This commitment has fostered a deep sense of loyalty among environmentally conscious consumers.
3. **The Body Shop:** The Body Shop, founded by Anita Roddick, has built its brand around ethical practices, including cruelty-free products and fair-trade sourcing. The company's strong stance on various social issues has cultivated a loyal customer base that values ethical consumption.

Answer 3(b)

Corporate Governance is integral to the existence of the company. Corporate Governance is needed to create a corporate culture of transparency, accountability and disclosure.

Specifically corporate governance is needed to:

(a) To improve company performance

(b) To enhance enterprise valuation

(c) To enhance investor interest

(d) To facilitate global access for finance, suppliers and customers

(e) To combat corruption

(f) To improve accountability

(g) To reduce risks of scandals and crises

Management Environment

Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behavior, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution within the organisation.

Board Skills

To be able to undertake its functions efficiently and effectively, the Board must possess the necessary blend of qualities, skills, knowledge and experience. Each of the directors should make quality contribution to the organizations policies, operations and management. Illustratively, a Board should have a mix of the following skills, knowledge and experience:

- Operational or technical expertise, commitment to establish leadership;
- Financial skills;
- Legal skills; and
- Knowledge of Government and regulatory requirement

Answer 3(c)(i)

The following are some of the most important benefits of conducting an impact assessment of a CSR project: -

1. *Provides Insight into Development of the Community*: The provisions for impact assessment

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have come into effect from 22nd January, 2021. Hence, companies are required to undertake impact assessment of the CSR projects completed on or after January 22, 2021. However, as a good practice the board of a company may undertake impact assessment of completed projects of previous financial years as well. A big reason to do that is to gauge how the CSR project and activity may have impacted the community the project took place in.

2. *Highlights the Gaps in the Project and Ways to Improve* It: Not every CSR project is implemented optimally. There may be certain areas that require more attention for greater impact. A CSR impact assessment study will help the company identify these gaps so that they can focus on bridging the same to deliver results as hoped.
3. *Calculates Detailed Financial Information for the Board:* The CSR impact assessment can provide insight into past year's performance to current stakeholders. It can help the founder, funder, or the business owner understand how effective their CSR donation was.
4. *Facilitates Performance Valuation for the Management:* Since success of a project is highly subjective, a CSR impact assessment report helps quantify the project from start to finish so that one can easily determine its result.
5. *Evaluates the Relevance and Sustainability of the Project:* The success of the project is an all-rounded measure of its holistic results. A CSR impact assessment report gives a holistic insight into the sustainability and the relevance of the project keeping in mind the environment, people, animals and the ecology that is affected by the implementation of the project.

Answer 3(c)(ii)

As per Rule 8 of the CSR Rules,

(3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

Thus, the given thresholds are not correct and the statement is false.

OR (Alternate Answer to Q. No. 3)

Question 3A

(i) Even though companies were reporting through a range of mechanisms—sustainability reports, triple bottom line, and CSR reports—these methods of reporting were seen as fragmented and not integrating the financial and non-financial information into one report. Also, the methods "failed to make the connection between the organization's strategy, its financial performance and its performance on environmental, social and governance issues."

With regard to the above which body was created and what were its objectives ?

(5 marks)

(ii) Define CPSEs. Also provide its focus and scope.

(5 marks)

(iii) A CSR impact assessment report gives a holistic insight into the sustainability and the relevance of the project keeping in mind the environment, people, animals, and the ecology that is affected by the implementation of the project.

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Discuss how impact measurement and management is a continuous cycle ? Support with example of Tata Consumer Product Limited.

(5 marks)

Answer 3(A)(i)

In response to the shortcomings identified in the given case, the International Integrated Reporting Council (IIRC) was formed in the year 2010, projecting Integrated Reporting as a solution to the shortfalls of financial reporting. Its intent was to act as a catalyst for behavioural change and long-term thinking, bringing together financial, social, environmental and governance information in a clear, concise, consistent and comparable format.

The main objective of the IIRC was to structure an Integrated Report that encompassed financial and non- financial information. In addition, the Integrated Report was also to:

- Improve the quality of information provided to investors and lenders
- Communicate the full range of factors that materially affect the ability of an organization to create value over time by using a more cohesive and efficient approach to corporate reporting which draws on different reporting strands.
- Enhance accountability and stewardship for the broad base of six capitals (financial, manufactured, intellectual, human, social and relationship, natural) and promote understanding of their interdependencies.
- Support integrated thinking, decision-making and actions so as to create value.

Answer 3(A)(ii)

Central Public Sector Enterprises (CPSEs) are defined as those companies in which the direct holding of the Central Government or other CPSEs is 51% or more. CPSEs are classified into three main categories based on their performance and various parameters:

1. Miniratna
2. Navratna
3. Maharatna

These categories provide varying degrees of financial autonomy and operational flexibility to the enterprises. These enterprises operate in various sectors of the Indian economy, including manufacturing, mining, power generation, telecommunications, and financial services. CPSEs play a significant role in the country's economic development and are instrumental in achieving the government's social and strategic objectives.

CPSEs play a critical role in the Indian economy by:

- Generating employment
- Contributing to GDP
- Developing infrastructure
- Ensuring the supply of essential goods and services
- Supporting strategic sectors such as defense, energy, and minerals

CPSEs have made significant contributions to the Indian economy. In the financial year 2020-21, there were 256 operating CPSEs, with a total turnover of Rs. 24.61 lakh crore and a net profit of Rs. 93,294 crore. CPSEs also provide substantial employment opportunities, with a total workforce of

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around 14.04 lakh employees as of March 2021.

CPSEs have been instrumental in developing critical infrastructure, such as power plants, steel mills, and telecommunication networks. They have also played a crucial role in achieving the government's social objectives, such as providing affordable housing, healthcare, and education.

The main focus of CSR and Sustainability policy of CPSEs has been inclusive growth, development of backward regions, upliftment of the marginalised and underprivileged and weaker sections, empowerment of women, environment sustainability, promotion of green and energy efficient technologies and sustainability development in all its aspects.

Scope: To address the basic needs of the deprived, under privileged, neglected and weaker sections of the society which comprise of SC, ST, OBCs, minorities, BPL families, old and aged, women / girl child, physically challenged, etc.

Central Public Sector Enterprises have contributed to industrial growth, infrastructure development, and social welfare. While facing challenges in the evolving business landscape, CPSEs continue to adapt and reform to remain competitive and relevant. The government's ongoing efforts to improve the efficiency and profitability of CPSEs will be crucial in ensuring their sustainable growth and contribution to the Indian economy.

Answer 3(A)(iii)

The various steps in the Impact measurement and management process/cycle are given below:

1. *Define impact questions*: Consider what decisions need to be made, what data is needed and whether data is already available, and what capacity is available to integrate lessons.
2. *Choose appropriate data collection tool/method:* Consider time, cost, skills and intention to capture breadth versus depth of impact.
3. *Collect data/embed technology:* Use most relevant tool or a range of tools as needed.
4. *Extract learning:* Analyse the data you have collected to extract insights about impact on people and/or planet and how you might improve your operation for increased impact.
5. *Take action:* Use newly gained insights to inform decision-making and potentially inform new questions.

Tata Consumer Product Limited

The company has a robust CSR Policy and active CSR Committee in place, has empanelled an independent impact assessment agency to conduct an Impact Assessment study of its eight CSR Projects to comply with the recent 'CSR Amendments Rules 2021' regarding Impact Assessment of CSR projects. The CSR projects of the Company are focused on the Tea Communities of Assam and Munnar (Kerala), Coffee Communities of Kodagu (Karnataka) and Communities of Mithapur (Gujarat), and Paonta Sahib (HP)

- The impact assessment agency planned an experimental design to understand the impact of selected CSR projects on different beneficiaries. The agency also planned monitoring and evaluation of a few of the projects depending on the priority of the organization.
- The evaluation approach has been designed in line with the objectives and scope of the project. A consultative approach for the impact assessment has been adopted.
- The findings have been triangulated based on interactions with key stakeholders, supplemented by primary and secondary research, and complemented by domain knowledge and field expertise as per the project-specific objective.

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- The assessment broadly involves a review of the literature of every project, interaction with the key stakeholders for each project, development, and validation of questionnaire. The methodology of this study included designing the data points to be analysed and developing questionnaires for all eight projects.
- The assessment takes place in a hybrid mode with individual and focus group discussions. It is a blended mode on onsite and virtual assessment. The questionnaires were shared through one-on-one interviews and during focus group discussions. Document review and physical verification were also conducted at the site.
- Further data cleaning, analysis and interpretation had been done using statistical data analysis software.
- Representative samples & stratified random sampling method were used at 95% confidence level and 10% confidence interval respectively.
- Transparency was maintained throughout the study, the data and analysis represented in this report are from primary sources and collected by agency's trained resources. The secondary information used is collected from the authentic sources shared by respected project coordinators.
- Quality Assurance Interventions were also mentioned in report:

  (i) development of questionnaires had been reviewed to check the alignment with the assessment objectives and confirm the data points;

  (ii) review of sampling plan in terms of completeness;

  (iii) training of enumerators and sample data fill-up;

  (iv) on-site random witness (where planned);

  (v) data cleaning and data accuracy checking;

  (vi) review and validation of the first set of samples being analysed;

  (vii) stage review of outcome analysis and interpretation;

  (viii) final review by review team/mentor group.

PART- II

Question 4

(A) Z, a fresh Company Secretary was giving interviews for jobs in one company. He was asked to read a few lines on NGOs and Non-corporate entities. After that, he was given a few questions to solve :

Humans are social beings; they can't be isolated from society. Every human being is to perform his/her social responsibility which further empowers the employees to leverage the corporate resources at their disposal to do good. Even the corporates need to be socially responsible which bolsters a company's image and build its brand. Social responsibility programs can boost employee's morale in the workplace and lead to greater productivity, which has an impact on how profitable the company can be. Businesses that implement social responsibility initiatives can increase customer retention and loyalty.

Further, the needs of every class of society can't be met by the government. Every segment of society can be reached by an NGO (Non-Governmental Organization). International development, humanitarian relief and charity are all heavily impacted by non-governmental

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organizations or NGOs.

Despite having budgets ranging from millions to billions of dollars every year, NGOs are by definition non-profit. Because of this, non-governmental organizations (NGOs) depend on various sources of funding from government support to private donations and membership fees. An NGO's mission is to focus on all subjects related to advocacy, social issues, environmental issues and human rights. Non-governmental organizations work to advance and improve the social and political situation of society at large. They aim to improve and advance the social and political situation of society at large. The activities of non-governmental organizations (NGOs) contribute heavily to social change for the betterment of society. It has been seen that these organizations are present in many parts of the world and supporting humanity and other noble causes.

The person involved in the NGO should be highly educated, committed, motivated and passionate about the organization's objectives and activities. The importance of NGOs is very high in today's world.

Non-corporate entities, which are primarily formed to provide benefits or services to their members, are subject to less stringent regulations than companies. Non-corporate entities can take the shape of civic organizations, societies, trusts, clubs, welfare associations, and more. The members of the Council of Non-Corporate Entities or the Governing Body are typically selected from among the members of the entities or, in certain situations, are government-appointed nominees. By making the proper decisions at its meeting, the Governing Body/ Council oversees the operations of non- corporate entities. Effective decision-making is necessary for any entity to accomplish its goals, and non-corporate entities are no exception. Legal principles and procedures pertaining to non-corporate entities are established in their bylaws or in the laws that apply to them explicitly. The Model Code for Meetings of Non-corporate Entities issued by ICSI offers fundamental governance procedures for calling and running meetings of the Governing Council/Management Committee of such organizations in addition to the relevant legal requirements. It also attempts to standardize the widely used disparate practices. The goal of this model code is not to replace or amend any current laws that apply to non-corporate entities. It aims to support improved governance in calling and running these entities' meetings by adding to existing laws.

Answer the following questions :

(i) Name the set of guidelines and practices that organizations can use to manage and address social issues. Also provide its components. How do small non- corporate entities contribute to employment generation in India, which acts as a key social issue ?

(5 marks)

(ii) As a Company Secretary, what are the constraints of implementing social governance ? Identify some of the key activities undertaken by NGOs to support social and community development ?

(5 marks)

(iii) How do NGOs act as social mediators to bring about change in social and behavioural attitudes ? What are the other major roles played by the various NGOs ? (Identify any 3)

(5 marks)

(B) Answer the following :

(i) There are many business enterprises who do not function only with profit motive but their

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activities have placed a greater positive impact on the society. Name them.

(1 mark)

(ii) Regulation 292B of the SEBI (ICDR) Regulations states that the provisions of Chapter X-A shall apply to which entities ?

(1 mark)

(iii) Regulation 292M of the SEBI (ICDR) Regulations. Explain.

(2 marks)

(iv) SASIX.

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

Answer 4(A)(i)

There are many internationally recognised guidelines on CSR and ESG which companies may adopt to manage and address social issues.

It has been largely opined that to properly execute corporate social responsibility (CSR), organisations need to adhere to several international norms and regulations. Human rights, labour practices, environmental sustainability, fair business practices, consumer issues, and community involvement are all highlighted in the extensive guidelines on social responsibility provided by ISO 26000. Ten fundamental principles that address labour, human rights, the environment, and anti-corruption are aligned with business strategy by the United Nations Global Compact. Aiming to prevent harm and promote sustainable development, the OECD Guidelines for Multinational Enterprises offer guidelines for ethical corporate behaviour. Organisations can report on their social, environmental, and economic consequences using a commonly used framework provided by the Global Reporting Initiative (GRI)

A social governance framework developed by an organisation considering the above can act as guideline and indicate the practices that the organization can use to manage and address social issues.

A social governance framework typically includes the following components:

- *Social risk assessment:* Companies can identify and prioritize social issues that are relevant to their operations and stakeholders, and assess the potential impact of these issues on their business.
- *Stakeholder engagement:* Companies can engage with stakeholders to understand their concerns and perspectives on social issues, and incorporate this feedback into their decision-making processes.
- *Policy development:* Companies can develop policies and standards that outline their commitments to addressing social issues, and establish clear expectations for their employees and suppliers.
- *Implementation and monitoring:* Companies can implement their social governance policies and standards, and monitor their performance to ensure that they are meeting their commitments and achieving their goals.
- *Reporting and transparency*: Companies can report on their social governance performance, including their progress towards achieving their goals and any challenges or opportunities that they have identified.

Non-Corporate Entities are a significant source of employment in the Indian economy, ranking

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second to agriculture. These enterprises have the potential to generate a large number of job opportunities with minimal capital investment compared to larger companies. This makes them one of India's key contributors to employment generation. The labour-intensive nature of many small businesses allows them to provide employment opportunities to many people, especially in local communities. They create jobs across various sectors, including manufacturing, services, and trade, contributing to the country's overall economic growth. The role of small Non-Corporate Entities in employment generation is vital, as it helps to address the issue of unemployment, particularly in a country with a large workforce like India. Small business owners' entrepreneurial spirit and innovation contribute to creating new jobs and supporting the livelihoods of individuals and families. As the second largest employment generator in the Indian economy, small businesses are crucial in driving economic growth, promoting entrepreneurship, and creating opportunities for people to earn a livelihood. Small businesses' continued support and promotion can contribute to more inclusive and sustainable economic development in India.

Answer 4(A)(ii)

While social governance has many benefits, it is not free from limitations. A few of these limitations are discussed below –

- *Limited resources:* Social governance requires resources, including funding, expertise, and time, which may be limited or inadequate. This can make it difficult to address complex social problems effectively and sustainably.
- *Political barriers:* Social governance may face political barriers, such as resistance from powerful interest groups, lack of political will, and conflicting agendas. These barriers can make it difficult to implement policies and programs that address social challenges effectively. Inadequate participation: Social governance relies on citizen participation and engagement, which may be limited or inadequate in some communities. This can make it difficult to incorporate diverse perspectives and experiences into decision-making processes and to identify and address social challenges effectively.
- *Complex social problems:* Social problems are often complex and interconnected, which can make it difficult to address them effectively. Social governance may require a comprehensive and holistic approach that addresses the root causes of social problems, which can be difficult to identify and address.
- *Limited impact:* Social governance may have limited impact on social problems, especially in the short term. Social problems may be deeply rooted in society, and addressing them may require long-term and sustained efforts.

Some of the key activities undertaken by Non-Governmental Organizatio (NGOs) to support social and community development:

Advocacy and Analysis & Awareness Raising: Acting as a voice for people both on a representative and self-appointed basis; researching, analyzing and informing the public about issues; mobilizing citizen action through media campaigns and other forms of activism; and lobbying business leaders and policymakers.

Brokerage: Acting as an intermediary between different sectors and groups.

- Conflict resolution – acting as a mediator and facilitator.
- Capacity Building – providing education, training and information.
- Delivery of services – operational delivery of essential humanitarian, development and/or social services.

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Evaluation and Monitoring: serving as a 'watchdog' or third party / independent 'auditor', invited and uninvited, of government and corporate performance, accountability and transparency.

Answer 4(A)(iii)

Non-profit organisations play a vital role in mobilizing public attention to societal problems and needs. They are the principal vehicle through which communities can give voice to their concerns.

Acting as a social mediator: NGOs act as social mediators at different levels of society so as to bring the required change in social and behavioural attitudes prevailing within the social environment. They create awareness among people and become the voice of the poor and needy person or group. The non-profit sector acts as a flexible mechanism through which people concerned about a social or economic problem can begin to respond. It also caters to groups of the population who desire a range of public goods that exceeds what the government or society is willing to support.

Other roles are:

- Improving Government performance: It is one of the important works of the NGOs to ensure that the Government should be responsive and solve the problems of the citizens thereby making the Government more accountable. NGOs can broaden government's accountability by ensuring government is responsive to citizens at large rather than to narrow sectarian interests. They also induce innovation and flexibility in policymaking by bringing their own independent expertise and research teams. They enhance the efficiency of delivery of many services at the local level through involvement of residents. They also improve policy monitoring and evaluation as Comptroller and auditor general (CAG) takes cognizance of reports and social audits by NGOs while preparing its reports.
- NGOs also help in providing suggestions and their expertise in matters related to policy-making of Government by providing research teams. Many path-breaking laws in the country like Environmental Protection Act 1986, Right to Education Act 2009, Right to Information Act 2005, etc. have been formulated with the initiatives of the NGOs.
- NGOs help in constructive conflict resolution. In the international arena Track II diplomacy (involving non-governmental bodies) plays a crucial role in creating an environment of trust and confidence.
- Facilitating communication: NGOs work at two different levels in order to facilitate communication. One is at the upward level whereby NGOs inform the Government about the needs, abilities, and activities of the people in their local area. On the other hand, they work at the downward level where people are informed and educated about the policies and programs of the Government.
- Acting as a pressure group: They also act as a pressure group and mobilize public opinion against various Governmental policies and activities. They also help poor people, Farmers, Scheduled Caste or a Scheduled Tribe etc. in availing quality services by making the Government accountable.
- Building Community Participation: NGOs encourage and facilitate the participation of disadvantaged communities and help in preserving the culture of diverse communities. The non-profit organisations offer alternative perspectives; and most importantly, the capacity to conduct a meaningful dialogue with communities, particularly those that are disadvantaged. They foster pluralism, diversity and freedom. Many NGOs work to preserve and promote India's diverse culture.
- Women Empowerment: The role of NGOs in women empowerment cannot be denied. They have been constantly fighting against social evils like Sati, dowry, cruelty, and other causes

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like employment, lessening of female foeticide, etc.

- Mobilising Local Resources: Over utilization of natural resources lead to natural calamities and environmental threats. NGOs keep an eye on this particular domain so that the destruction of natural resources does not take place.
- Providing Education, Training, and Technical Assistance: NGOs provide education, training, and technical assistance to the people in need, volunteers, and to other NGOs. Later on, the trained NGOs provide their services to assist the Government.
- Bridging the Gap: NGOs reach out to those sections of people who are often left untouched by the State projects. For example, during the Covid-19 crisis, aid was provided to migrant workers. Apart from this, NGOs are also engaged in activities like education, human and labor rights, legal aid, gender issues, healthcare, and even research.
- Monitoring and Evaluation: NGOs monitor and evaluate government policies and activities that encourage active people's participation in the developmental process. This also results in keeping a check on the administrative functions of the Government.

Answer 4(B)(i)

There are many business enterprises who function with profit motive but their activities have placed a greater positive impact on the society. SEBI has classified these enterprises as FPSE (For Profit Social Enterprise) and the hard-core social organisations as NPO (Not for Profit Organisation).

Answer 4(B)(ii)

Regulation 292B of the SEBI (ICDR) Regulations states that the provisions of Chapter X-A shall apply to:

(a) a Not-for-Profit Organization seeking to only get registered with a Social Stock Exchange;

(b) a Not-for-Profit Organization seeking to get registered and raise funds through a Social Stock Exchange;

(c) a For Profit Social Enterprise seeking to be identified as a Social Enterprise.

Answer 4(B)(iii)

Under Regulation 292M of the SEBI (ICDR) Regulations the draft fund-raising document and the final fund-raising document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed decision.

The draft fund-raising document and the final fund-raising document shall contain disclosures as may be specified by the Board from time to time.

The Social Stock Exchange may specify additional disclosures in respect of the draft fund-raising document and the final fund-raising document.

Answer 4(B)(iv)

South Africa's SASIX: The SASIX was set up by the Greater Good South Africa Trust in 2006. the SASIX does not provide financial returns to investors. SASIX allows investors to purchase "shares" of a specified value, that are directed at funding towards specific projects, within a time bound manner. Impact is measured by outcomes in the community.

Question 5

(a) Society is an organized group of people with the only purpose and goals of non-profit service.

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Societies are more resilient than other forms of business, but there are still a number of reasons why societies may need to cease trading like a society can be dissolved by its members on the appropriate basis and adoption of the procedures set forth by laws and an act, if any, applicable. It may also be obtained by the Registrar, Court or Government if applicable law is provided. If the company is created to achieve a specific objective, it will be disbanded when it achieves this objective.

Required :

(i) Write the circumstances when a court may order for dissolution of the society.

(ii) What are the consequences of dissolution of the society ?

(3+2=5 marks)

(b) Anil, Jay and Rajeev are partners in a business involved in the manufacturing and selling of furniture. They have a partnership agreement that does not explicitly detail all the aspects of their daily operations, but it is agreed that they will equally share profits and losses.

Anil is tasked with overseeing the business operations, Jay manages sales, and Rajeev is responsible for the financial matters. One day, Anil makes a contract with a supplier for raw materials valued at ` 5,00,000. The supplier consents to deliver the materials on credit, to be paid within 30 days.

The other partners, Jay and Rajeev, were not consulted prior to the purchase, although the materials are essential for the ongoing operations of the business.

Following the transaction, Jay and Rajeev found out that Anil had signed the contract without notifying them. They expressed concerns regarding Anil's decision, as the amount is considerable, and they had not consented to the purchase in advance.

(i) Discuss whether Anil had the authority to enter into the contract on behalf of the partnership without consulting the other partners, and whether the contract is binding on Jay and Rajeev ? Justify your answer.

(3 marks)

(ii) Discuss the acts by which the partners can bind the firm ?

(2 marks) (3+2=5 marks)

(c) Based on Model Code for Meetings of Non-corporate Entities, define the following :

(i) "Clear Days"

(1 mark)

(ii) "Interested Member"

(1 mark)

(iii) Leave of Absence

(1 mark)

(iv) Procedure for passing of Resolution by Circulation.

(1 mark)

(v) Modification or Cancellation of Resolution/discussions.

(1 mark) (1+1+1+1+1=5 marks)

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Answer 5(a)(i)

The Society Registration Act does not provide for dissolution of societies by the Court. But in some States, the Court may order for dissolution of a society on application by 10% of its members or the Registrar on having been satisfied that any one or more of the following circumstances exist:

(1) If there is any contravention by the society of the provisions of the Act, or

(2) If the number of members is less than seven, or

(3) If the society has ceased to function for more than three years, or

(4) If the society is unable to pay its debts or meet its liabilities, or

(5) If it is proper that the society has to be dissolved on the ground of its activities, or

(6) If proposed activities have been or will be opposed to the public policy,

(7) If the activities of the society constitute a public nuisance,

(8) If the activities of the society are otherwise opposed to public policy.

Answer 5(a)(ii)

Dissolution of a society results in cessation of its activities. Its liabilities are to be settled suitably and its surplus assets are to be given to another society or the Government in terms of its rules and regulations. If the rules do not provide in the matter, the governing body of the society shall take appropriate steps with requisite majority vote or as directed by the Registrar or the Court. But in no circumstances, the surplus assets of the dissolved society can be paid or distributed amongst its members or any of them.

Answer 5(b)(i)

Yes, Anil has the authority to enter into a contract on behalf of the partnership without consulting the other partners.

In an unlimited partnership, every partner is an agent of the firm and is also an agent of the other partners.

Anil had an implied authority to do so which is subject to the following conditions:

1. the act done must relate to the "normal business" of the firm;
2. the act must be done in the usual way;
3. the act must be done in the name of the firm.

Section 9 of the Partnership Act may be referred in the matter which provides that relation of partners to one another is of utmost good faith. It provides that every partner is an agent of each other, therefore, contract entered by one of the partners will bind all the partners.

The contract is binding on Jai and Rajeev

Answer 5(b)(ii)

Every partner has an implied authority to bind the firm by the following acts:

- By selling firm's goods;
- By purchasing goods for the firm;
- By accepting any payment of debts due to the firm; and
- By engaging and discharging employees.

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In a trading firm, a partner has the following additional powers:

- To borrow money and to pledge the firm's goods for that purpose
- To accept, make and issue negotiable instruments in the firm name
- To employ a solicitor or attorney on behalf of the firm.

However, the following conditions are to be satisfied in order to bind the other partners:

- the act done must relate to the "normal business" of the firm;
- the act must be done in the usual way;
- the act must be done in the name of the firm.

Answer 5(c)(ii)

(i) "Clear days" means days excluding the day of the dispatch of notice/notes on agenda and the day of the Meeting, and includes Sundays and holidays.

(ii) "Interested Member" means a member having personal or financial interest, either directly or indirectly, in any matter placed before a Meeting of the Non-corporate Entity.

(iii) Leave of absence shall be granted to the Member(s) only when a request for such leave has been received by the Secretary or Chairman or any other person who issued the Notice of the Meeting. The request for leave of absence received shall be placed / announced at the Meeting.

(iv) A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Members including Interested Members. The Resolution is passed when it is approved by a majority of the members entitled to vote on the Resolution. Resolutions passed by circulation shall be noted at a subsequent meeting of the Governing Council and the text thereof, with dissent or abstention, if any, shall be recorded in the Minutes of such meeting.

(v) No resolution of the Governing Council shall be modified or cancelled except through a resolution duly passed at a subsequent Meeting by a majority or such higher number of the total Members of the Governing Council as prescribed and permitted under the applicable laws. Such modification or cancellation of a resolution shall be done within the time prescribed, if any, in the Bye-laws of the Non-corporate Entity.

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

Question 6

(a) The Indian Partnership Act of 1932 makes firm registration either optional or compulsory, but there are a number of reasons why registering a partnership firm is unquestionably required. A partnership is an essential type of business organization where two or more people join forces to conduct business and share profits in an equitable manner, as stipulated at the time of formation. It provides vital legal status and protections for the business and its partners. It also encourages transparency and confidence from the viewpoints of creditors, clients, and possible investors. The registration process may present certain administrative difficulties, but they are outweighed by the long-term advantages.

Explain the process for firm registration according to Indian Partnership Act, 1932. Is there any procedure for recording of alterations in Firm-Name, nature of business and principal place of conducting business ?

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(5 marks)

(b) How and who authorises Associations with economic nature to accept foreign contribution ? Enumerate the list of activities carried out by association with economic nature ?

(5 marks)

(c) Answer the following :

(i) Part IX of the Constitution

(2 marks)

(ii) The concept of local self-government is not new to our country. Discuss.

(2 marks)

(iii) Define "Prescribed", as per Model Governance Code for Meetings of the Gram Panchayats.

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

Answer 6(a)

A statement for the registration of a firm shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm, effected by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated. The statement shall be in the prescribed form and accompanied by the prescribed fee and a true copy of the deed of partnership stating:

(a) the firm-name,

(aa) the nature of business of the firm,

(b) the place or principal place of business of the firm,

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. On the date such entry is recorded and such statement is filed, the firm shall be deemed to be registered.

The firm, which is registered, shall use the brackets and word (Registered) immediately after its name.

If the statement in respect of any firm is not sent or delivered to the Registrar within the time of one year as stated above, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

Recording of Alterations in Firm-Name, Nature of Business and Principal Place of Business (Section 60)

When an alteration is made in the firm name or in the nature of business of a firm or in the location of

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the principal place of business of a registered firm, a statement shall be sent to the Registrar, within a period of 90 days from the date of making such alteration, accompanied by the prescribed fee, specifying the alteration and signed and verified by all partners or by their agents specially authorised in this behalf.

Answer 6(b)

Associations having definite cultural, economic, educational, religious or social programme can accept foreign contribution only after obtaining either prior permission from the Central Government or registration under the Foreign Contribution (Regulation) Act 2010.

Following are illustrative but not exhaustive list of activities which may be permissible and may be carried out by associations of different nature.

Economic: Following but not being commercial or profit-making activities:

- Micro-finance projects, including setting up banking co-operatives and self-help groups.
- Self-sustaining income generation projects/schemes.
- Agricultural activities.
- Rural development programmes/schemes.
- Animal husbandry projects.
- Setting up and running handicraft centres/cottages and khadi industry/social forestry projects.
- Vocational training, tailoring, motor repairs, computers etc.
- Projects for income generation activities or any other developmental projects for urban slum development.
- Any other activities related to the above, not being commercial activities.

Answer 6(c)(i)

Part IX of the Constitution provides for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of five years for Panchayats and holding elections within a period of six months in the event of super session of any Panchayat.

Answer 6(c)(ii)

The concept of local self-government is not new to our country and there is mention of community assemblies in the Vedic texts. Around 600 B.C., the territory north of the river Ganga comprising modern day north Bihar and eastern U.P. was under the suzerainty of small republics called Janapadas among which Lichhavis were the most powerful. In these Janapadas, the affairs of the State were conducted by an assembly consisting of local chieftains. In the post Mauryan times as well, there existed republics of Malavas and the Kshudrakas where decisions were taken by "sabhas". Similar participatory structures also existed in South India. In the Chola Kingdoms, the village council together with its sub-committees and wards played an important part in administration, arbitrated disputes and managed social affairs. Their transactions recorded on the walls of the village temples show a vigorous community life and are a permanent memorial to the best practices in early Indian

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polity.

Answer 6(c)(iii)

"Prescribed" means prescribed by respective State Acts or Rules made thereunder.

OR Alternate Answer to Q. No. 6

Answer 6. A(i)

(a) The Institute of Chartered Accountants of India (ICAI), issued Technical Guide on Financial Statements of Non-Corporate Entities. The objective of this Technical Guide is:

- to deal with applicability of Accounting Standards to the non-corporate entities and
- to prescribe format of the financial statements for the non-corporate entities.

(b) A complete set of financial statements provided by the Technical Guidance Notes normally includes:

- A Balance Sheet
- A Statement of Profit and Loss
- A Cash Flow Statement
- Those notes and other statements and explanatory material which are an integral part of the financial statements
- Technical guide Note provides for four fundamentals i.e. comparability, transparency, completeness and unbiasedness while preparing financial statements of Non-Corporate Entities.

(c) The Technical guide note is only recommendatory. It is not mandatory

Question 6A

(i) In order to satisfy the common information needs of the various stakeholders, Technical Guide is issued to recommend uniform accounting principles in accordance with the Accounting Standards and other generally accepted accounting principles in India for the preparation and presentation of NPO financial statements. This involves applying good accounting practices to the recognition, measurement, presentation, and disclosure of various income and expense items, assets, and liabilities in NPO financial statements while taking into account the unique characteristics of their operations.

Answer the following questions :

(a) Write down the two objectives of the technical guide ?

(2 marks)

(b) What set of financial statements do technical guidance notes include ? Identify the fundamentals to be followed while preparing financial statements.

(2 marks)

(c) Is it compulsory to follow technical guidance notes ?

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

(ii) For effective monitoring, all foreign contributions received from any "foreign source" must be necessarily received only in a bank account and must be routed and spent only through bank accounts. Opening a bank account at a specified location is a one-time exercise. This

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process will increase the efficiency of administration by the government.

Based on the paragraph above, identify the name of the bank account along with the procedure for receiving foreign contributions under the FCRA 2010, for an association that has been granted prior permission or registration ? Also discuss the good practice guidelines of Financial Action Task Force (FATF) which must be adhered to.

(5 marks)

(a) Part IX-A of Indian Constitution.

(2 marks)

(b) How does a Gram Panchayat act ?

(2 marks)

(c) Define "Special Meeting", as per Model Governance Code for Meetings of the Gram Panchayats.

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

Answer 6.A.(ii)

An association granted prior permission or registration under the FCRA, 2010 should initially receive the foreign contribution only in the FCRA account at SBI, Main Branch located at Sansad Marg, New Delhi**.** This account number would be the same as has been intimated by the organisation in their application for prior permission/registration or intimated through FC-6C. Deposit of any local fund/domestic contribution in this bank account is not allowed. One or more accounts in any PFMS enabled scheduled bank may be opened for utilizing the foreign contribution. For more clarity, Section 17 of the FCRA, 2010 is reproduced as below:

'17. (1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances offoreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf: Provided that such person may also open another ''FCRA Account'' in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his ''FCRA Account'' in the specified branch of State Bank of India at New Delhi:

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his ''FCRA Account'' in the specified branch of the State Bank of India at New Delhi or kept by him in another ''FCRA Account'' in a scheduled bank of his choice: Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified, —

(a) the prescribed amount of foreign remittance;

(b) the source and manner in which the foreign remittance was received; and

(c) other particulars, in such form and manner as may be prescribed.

Good practice Guidelines to the Non-Profit Organisations (NPOs) to ensure compliance with the

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following Financial Action Task Force (FATF) requirements:

1. Wherever necessary, NPO shall inform the Ministry of Home Affairs (FCRA Wing) about the suspicious activities of the customer, without waiting for annual returns.
2. The Board of Directors / Chief Functionary of NPO shall issue directions regarding duties of official who shall be required to enforce these guidelines and other rules of FCRA, 2010 read with FCRR, 2011 as amended from time to time.
3. The NPO shall put its goals, objectives and activities on its website.
4. The NPO shall upload the details of key persons associated with NPOs activities on its website.
5. The NPO shall take due diligence of its employees at the time of recruitment.
6. The NPO shall maintain the information of beneficiaries of funds and upload on its website and monitor the activities of the beneficiaries. Wherever a beneficiary is a legal person, the details of beneficial owner shall also be uploaded.
7. The NPO shall ensure that the financial transactions involving more than Rs.20,000/- to be routed through Banking channels only.
8. The Board of Directors/Trustees of NPO's must ensure utilization of funds consistent with objectives as approved by MHA.
9. The Board of Directors/Trustee of NPO's shall conduct meeting once at least in six months to review the working of these instructions and shall record the minutes of these meetings.
10. The NPO shall train its staff on the FCRA and about the application of these guidelines.
11. When any transaction is under investigation by any authority, the MHA shall be informed by such NPO.

Answer 6.A.(iii)

(a). Part IX-A of the Constitution provides for among other things, constitution of three types of Municipalities, i.e., Nagar Panchayats for areas in transition from a rural area to urban area, Municipal Councils for smaller urban areas and Municipal Corporation for large urban areas, fixed duration of municipalities, appointment of state election commission, appointment of state finance commission and constitution of metropolitan and district planning committees.

(b). A Gram Panchayat cannot act by itself and it acts only through its elected members i.e. Panch(s) and Sarpanch. Moreover, Panch(s) and Sarpanch are in a fiduciary position vis-à-vis the Gram Panchayat and, to that extent, they are also deemed to be trustees of the properties and assets of the Gram Panchayat. They owe a duty to the people of the village and should exercise care, skill and diligence in the discharge of their functions and in the exercise of the powers vested with them. All the powers vested in Panch(s) and Sarpanch are exercisable by them only collectively through decisions taken at a validly convened meeting of the Gram Panchayat.

(c). "Special Meeting" means a meeting, other than a regular meeting of the Gram Panchayat, convened suo moto by the Sarpanch or on the special request of the members, to discuss any specific item including matters of urgent nature.

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INTERNAL AND FORENSIC AUDIT

ELECTIVE 1 PAPER 4.2

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART- I

Question 1

Case Study :

Background and Business Growth

Vasudha Armaments Tech Ltd. (VATL) is a rapidly growing company specializing in IT solutions, custom enterprise software, and Natural food sector. Head office is in Coimbatore, with operations in Ahmedabad, Indore, and Mumbai. The company serves both commercial manufacturing clients and Natural food sector. VATL has witnessed significant growth, with revenue increasing from ₹ 42 crores to ₹ 63 crores in its technology division and from ₹ 300 crores to ₹ 850 crores in its Natural food segment over the past three years.

The company's expansion has been driven by acquisitions, internal growth, and diversification into new industries. However, this rapid growth has also brought challenges related to financial controls, revenue recognition, procurement efficiency, and risk management.

Financial and Operational Challenges

During the pre-audit meeting, the Managing Director expressed concerns that the company's financial controls had not kept pace with its expansion. VATL recently migrated from a legacy accounting system to a cloud-based platform, which has led to operational difficulties. Additionally, the accounts team underwent significant changes, with multiple new staff members joining during the transition.

The audit planning process highlighted several key risks :

1. Revenue and Receivable Management Risks (Technology Division)
    - Customer contracts include complex performance obligations with variable consideration clauses.
    - Revenue recognition practices vary across the three regional offices.
    - Collection efficiency has declined, with DSO increasing to 83 days.
    - Around 18% of accounts receivable balances are under dispute.
    - Significant credit notes were issued after year-end for prior period sales.
    - The new accounting system lacks proper integration with the CRM platform.
    - Certain key customers receive unconventional payment terms not documented in formal policies.
    - The internal audit report flagged unusual patterns in month-end revenue recognition and inconsistencies in credit policy application.

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2. Procurement and Risk Management Concerns (Natural food segment Division)
    - VATL imports over 53% of its raw materials, requiring strict compliance with international trade regulations.
    - Management does not receive alerts regarding undue preference given to specific vendors or excessive demands placed on single vendors.
    - Purchases are frequently made from dealers rather than manufacturers, leading to additional costs.
    - Internal audit has identified potential risks related to fraud, corruption, and conflicts of interest in procurement.

To address these concerns, VATL's audit committee engaged BMA & Co. Chartered Accountants to conduct a comprehensive audit of revenue recognition, accounts receivable management, procurement efficiency, and internal controls.

Audit Documentation and Compliance Measures

The audit team collected the following documents for verification :

Revenue and Receivables Documentation (Technology Division)

- Sales contracts and invoices from major clients.
- Credit notes issued after year-end.
- Aging reports of accounts receivable.
- Integration reports from the new accounting system.

Procurement Documentation (Natural food Segment Division)

- Purchase invoices issued by Drone System Ltd.
- Purchase orders placed with ABC Ltd.
- Transfer documents from stores to the production department.
- Transfer documents from the production room to the finished goods store.

The audit team leader emphasized that all collected documentation should be clear, understandable, and properly classifed.

As a part of audit team, answer the following :

(i) Prepare a questionnaire to assess the revenue recognition process and accounts receivable management.

(ii) Given the procurement-related irregularities observed at VATL's natural food segment division, what specific documentation should be collected to validate whether purchases were made in compliance with trade regulations and cost-saving objectives ?

(iii) How will you ensure that the documents collected are clear, understandable, and meet the criteria outlined by the audit team leader ? How would you classify the collected documents based on their origin and availability ?

(5+5+5=15 marks)

Answer 1(i)

Revenue and Accounts Receivable for VATL

To assess revenue recognition and accounts receivable management at VATL, the audit team should focus on compliance with accounting standards, consistency in revenue recognition

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practices across regional offices, and the impact of disputed receivables. The questionnaire should address contractual obligations, variable consideration, credit policies, and system integration issues.

	Questionnaire for Revenues Recognition and Accounts Receivable Management	Yes	No	Not Sure	N/A
1	Are the following duties performed by separate individuals? • Providing services • Preparing billings • Approving billings • Receiving payments • Posting, adjusting and reconciling accounts				
2	To the maximum extent possible, is revenue from all eligible sources identified, recorded and collected?				
3	Are billings generated in a timely manner for all services rendered, goods sold and costs incurred?				
4	Are all billings promptly recorded as accounts receivable?				
5	Are authorized fee schedules used for all goods and services?				
6	Are billing rates and service fees reviewed periodically to ensure that all costs, including indirect costs, are recovered to the maximum extent possible?				
7	Are invoices pre-numbered and accounted for?				
8	Are statements of accounts regularly sent to all debtors?				
9	Are billings checked for accuracy before mailing?				
10	Are the outstanding balances of individual accounts receivable summarized and reconciled to the control balances on a regular basis?				
11	Are credits and refunds approved by an appropriate level of authority?				
12	Is an aged trial balance (i.e., a listing of receivables grouped by age: 0-30 days, 31-60 days, 60 - 90 days, over 90 days) prepared on a regular basis to evaluate the adequacy of the collection process and to identify old, unpaid accounts which should be pursued for collection or written-off?				
13	Are overdue accounts pursued for collection and, if appropriate, referred to Central Collections or other collection agencies?				

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14	Are uncollectible accounts identified and submitted to the Board of Supervisors on an annual basis for discharge from accountability?				
15	Are adequate provision for bad and doubtful debts has been made at the year end?				

Answer 1(ii)

Documentation Requirements for Exceptional Procurement Cases

Given the procurement irregularities in VATL's natural food segment division, the audit team must gather sufficient supporting documents to verify compliance with trade regulations, evaluate the robustness of procurement policies, and cost-saving measures like Variance analysis, ratio analysis.

The focus should be on vendor selection process, pricing agreements, and internal approvals. Whistle blowing mechanism and its resolution thereof by an independent committee.

Where in exceptional circumstances, new or additional audit procedures are performed or new conclusions are reached after the date of the audit report, whether the following were documented?

- The circumstances encountered;
- Who authorised purchases from dealers at additional costs?
- Is there is a conflict of interest between the person authorising such purchases and from the dealers with whom they were purchased?
- Evaluation of living beyond means of such persons who are associated with purchasing decisions.
- The new or additional audit procedures performed, audit evidence obtained, and conclusions reached, and their effect on the auditor's report; and
- When and by whom the resulting changes to audit documentation were made and reviewed.

Answer 1(iii)

Ensuring Audit Documentation meets Set Criteria

To ensure that audit documentation is clear and understandable, the audit team should verify completeness, consistency, and alignment with audit objectives. This involves cross-checking records, confirming the authenticity of source documents, and ensuring clarity in financial and procurement data.

Clarity and understanding

- As a preparer of audit documentation, step back and read your work objectively. Would it be clear to another auditor?
- Working papers should be clear and understandable without supplementary oral explanations.
- With the information the working papers reveal, a reviewer should be able to readily determine their purpose, the nature and scope of the work done and the preparer's conclusions.

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Completeness and Accuracy

- As a reviewer of documentation, if you have to ask the audit staff basic questions about the audit, the documentation probably does not really serve the purpose.
- Work papers should be complete, accurate, and support observations, testing, conclusions, and recommendations.
- They should also show the nature and scope of the work performed appropriately indexing and cross linking with the sample supporting documents obtained.

The auditor can rely on the documents depends on the origin (source) of the documents and the efficiency of the internal control system in operation. Also, the written confirmation of the management of the company could be considered in case the supporting documents are not available.

One can classify the documents into four major categories according to their **origin and availability.**

- Purchase invoices issued by Drone System Ltd - Documents which have their origin in the hands of the third party and held by them – **Most reliable evidence**.
- Purchase orders placed with ABC Ltd - Documents which have their origin in the hands of the third party and held by the organization – **More reliable.**
- Transfer documents from stores to the production department and transfer documents from the production room to the finished goods store - Documents which have the origin in the hands of the organization and held by the organization – **Reliable only if the internal control is effective.**

Question 2

(a) Information Systems (IS) Audting is an ongoing process of evaluating controls, collecting and evaluating evidence to determine whether a computer system safeguards assets, maintains data integrity allows organizational goals to be achieved effectively and uses resources efficiently. Information systems auditing supports traditional audit objectives, attest objectives that focus on assets safeguarding and data integrity, and management objectives that encompass not only attest objectives but also effectiveness and efficiency objectives. The audit comprises evaluation of various components and areas.

In view of the above, mention the objectives of Information Systems (IS) Auditing. Explain the components/areas to be covered under IS Auditing.

(*5 marks*)

(b) Intergold Fashion Jewellery Pvt. Ltd., Agra is one of the leading silver and gold ornaments manufacturing company having turnover of ₹ 250 crore and paid-up share capital ₹ 20 crores. Company has Cash Credit limit of ₹ 20 crore and Term Loan of ₹ 15 crores from a public sector bank. Company has significant outsourced activities of silver and gold ornaments manufacturing and has around more than two hundred job-work processors and sub-processors for different processes of Payal, chain and other ornaments manufacturing. Company purchases various types of raw materials and consumables including silver bullion from various suppliers and issues the same to the job-work processors. Company also allows its customers Goods on Approval.

In the company, Manager (Accounts) has full responsibilities for all the operations. He issues receipts for all inward materials and authorizes all issues from godowns. Also, he is responsible for verifying the weights and payment slips and for verification of physical quantities of the finished goods stored. He possesses the keys of the godowns. Company's CEO hardly finds

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any time to verify all such transactions and physical quantities of inventories. Although, there are CCTVs, gatekeeper frisking all the entries into and exits from the premises. Yet on a day, it was observed that gatekeeper allowed a worker some gold articles in his bag.

In a recently conducted stock audit by the bank, auditors have pointed out various non-compliance and control lapses including non-appointment of internal auditors. However, management is of the view that as it is a private limited company, hence, internal audit is not required. Further, management is of the view that internal audit is merely a routine checking which could be done by the external auditors avoiding additional costs to the company. In stock audit process, it has come across that some debtors have been squared up by way of discounts and rebates. These discounts and rebates have been allowed by the Manager (Accounts) alone who is authorizing and passing all accounting transactions. Lately, CEO of the company came to know about these discounts and rebates when a debtor told him in normal conversations.

In stock audit report, instances of several missing articles of ornaments were observed. Auditors observed lack of adequate controls over receipts and issues of inventories and stock records are not reconciled with the financial records. In physical verification of stocks lying with the processors, it was found that quantities as reported by the company in stocks statements are not matched and also some parts of the inventories were not lying at the location addresses of job-work processors as reported in the stock statements. This poses a significant risk of non-coverage of such stocks in insurance policies.

You as a Company Secretary are required to advise the management about the legal provisions of the Companies Act 2013 regarding applicability of internal audit to the company, explaining the differences of how it is different from the external audit ?

(*5 marks*)

(c) In any entity, be it small or large, Government or Private, Profit making or non profit making, an adequate accounting system is key. This will enable entity to control the business, safeguard the assets, prepare accounts, and comply with laws. Hence, it is fundamental, in order to carry out an effective internal auditing, to gain an understanding of the existing accounting system and of the procedures and controls therein.

What are the ways to understand the entity's accounting system and controls ?

(*5 marks*)

Answer 2(a)

Objectives of Information Systems Auditing:

i. Safeguards of Assets;

ii. Maintains data integrity;

iii. Achieving organizational goals effectively; and

iv. Uses resources efficiently

Components/areas to be evaluated in Information Systems Auditing:

The audit consists of an evaluation of the components which comprise that system, with examination and testing in the following areas:

i. High-level systems architecture review

ii. Business process mapping (e.g. determining information systems dependency with respect to user business processes)

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iii. End user identity management (e.g. authentication mechanisms, password standards, roles limiting or granting systems functionality)

iv. Operating systems configurations (e.g. services hardening)

v. Application security controls

vi. Database access controls (e.g. database configuration, account access to the database, roles defined in the database)

vii. Anti-virus/Anti-malware controls

viii. Network controls (e.g. running configurations on switches and routers, use of Access control lists, and firewall rules)

ix. Logging and auditing systems and processes

x. IT privileged access control (e.g. System Administrator or root access)

xi. IT processes in support of the system (e.g. user account reviews, change management)

xii. Backup/Restore procedures.

Answer 2(b)

According to Section 138 of the Companies Act 2013 read with Rule 13 of Companies (Accounts) Rules 2014,

Prescribed class or classes of companies shall be required to appoint an internal auditor, who shall either be a chartered accountant (whether in practice or not) or a cost accountant (whether in practice or not), or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

These companies are:

i. every listed company.

ii. every unlisted public company having-

- paid up share capital of 50 crore rupees or more during the preceding financial year, or
- turnover of 200 crore rupees or more during the preceding financial year; or
- outstanding loans or borrowings from banks or public financial institutions (PFIs) exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
- outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and

iii. every private company having-

- turnover of 200 crore rupees or more during the preceding financial year; or
- outstanding loans or borrowings from banks or PFIs exceeding 100 crore rupees or more at any point of time during the preceding financial year.

As the Company i.e. Intergold Fashion Jewellery Pvt. Ltd. Agra is private limited company having turnover more than 200 crore rupees, hence company is required to appoint internal auditor.

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Difference between Internal Audit and External Audit

Basis for Comparison	Internal Audit	External Audit
Meaning	It refers to an ongoing audit function performed within an organization by a separate internal auditing department.	It is an audit function performed by the independent body which is not a part of the organization.
Appointment	Internal auditor is appointed by the Management.	External auditor is appointed by the Members.
Examination	Internal auditor examines the Operational efficiency of the organization.	External auditor examines the Accuracy and Validity of Financial Statements.
Users of Report	User of internal audit report is Management.	User of external audit report is Stakeholders.
Period	Internal audit is a Continuous Process throughout the year.	External audit is done once in a year.
Opinion	Opinion is provided on the effectiveness of the operational activities of the organization.	Opinion is provided on the truthfulness and fairness of the financial statement of the company.
Status of Auditor	Internal auditor could be an employee of the company, thus, less independent.	External auditor is an independent person and not an employee of the company

Answer 2(c)

Understanding and documenting the system

Any entity be it a small entity, a large enterprise, a multinational company, Government, Bank, Insurance Company, Not for Profit organizations like Trust, Charitable Institutions need an adequate accounting system. This will enable them to control the business, safeguard the assets, prepare accounts and comply with legislation of the land.

Hence, it is fundamental, in order to carry out an effective internal audit or statutory audit, the auditor should gain an understanding of the existing accounting system and of the procedures and controls incorporated therein, sufficient for the purpose of his audit. It is considered preferable that the processes necessary to understand and document the entity's accounting system and to evaluate the entity's system of internal controls to be conducted separately.

The documentation of the understanding of an entity's accounting system may be achieved as below:

1. An extended form of internal control questionnaire
2. Notes on accounting procedures or other narrative description
3. Flow charts.

For small business, certain of the procedures may not be appropriate. When reliance is not to be placed on internal controls, the auditor may only need brief notes of the client's accounting system.

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A small business with few staff operating from one location might not warrant the preparation and completion of internal control questionnaires or flow charts. Where the accounting system is complex, it is preferable for the internal auditor to use flowcharting techniques in conjunction, if necessary, with narrative descriptions to record his understanding of the system since flowcharting enables the auditor to obtain a better understanding of the system.

After having completed the flowcharts or notes on accounting procedures to document his understanding of the entity's accounting system, the auditor should confirm the understanding by carrying out a transaction review by way of walk-through test.

Transaction reviews: The transaction reviews should be documented, showing the operations reviewed and identifying the specific transaction selected. The results of the transaction review may conveniently be filled with the related flowcharts or notes on accounting procedures.

Narrative Description: The internal auditor prepares a written description of the system in use.

Internal Control Questionnaire: The internal auditor considering the size and nature of its business and based on the discussions with the management designs a set of questions. This questionnaire is popularly known as internal control questionnaire (ICQ) and can be very useful in documenting and assisting the evaluation of controls.

Visual Description: The internal auditor uses charts to make the system more visual and easier to understand. Organizational Chart, Audit trail flow chart (CRADLE TO GRAVE), Document flow chart and Systems flow chart used in documenting computer system as application controls.

Question 3

(a) As per Standard on Internal Audit (SIA) 220-Conducting Overall Internal Audit Planning issued by ICAI, a number of specific internal audit plans are prepared for individual assignments to be undertaken covering some part of the entity and presented to the chief internal auditor. Internal auditor can plan the audit engagement as per the Standard on Internal Audit (SIA) 310-Planning the Internal Audit Assignment issued by ICAI. What are the main objectives of preparing the detailed audit plan and what would typical audit work plan comprise of ?

(*5 marks*)

(b) ABC & Associates, Chartered Accountants, having been appointed as concurrent auditors of a commerical bank. Before formal commencement of the audit and field work, auditors have asked the branch management to schedule a meeting with all functional heads. However, branch management is of the view that the meeting is not required and would not result into any benefit and management is reluctant to fix such a meeting. Advise :

- How this meeting is so important ?
- How the process walks-through yields benefits to auditing

(*5 marks*)

(c) You have been appointed internal auditors of a Government Medical College and Hospital. Transactions include receipts of general and specific grants from the Government. Apart from grants, college receives tuition and exam fee for various courses and also receives donations from public. There are regular teaching and non-teaching staff and contractual faculties for teaching different subjects of UG, PG and Diploma Courses. College runs library and maintains hostels for staff, boys and girls against a nominal charge. Hospital runs IPDs and OPDs. Canteen is run by a contractor who pays a monthly rental to the college. College has fixed deposits and bank account with a nationalized bank branch in premises.

What are the points to be kept in mind while planning the internal audit of such Government Medical College & Hospital ?

(*5 marks*)

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Answer 3(a)

Main Objectives for preparing the Detailed Audit Plan

The main objectives for preparing the detailed audit plan for any process are:

1. Ensure all the requirement and management expectations from the audit are factored. Audit (Engagement) Plan and also in line with stakeholder.
2. Ensure that the scope and coverage of the process is comprehensive for providing reasonable assurance.
3. Allocate adequate time and resources to the engagement.
4. Ensure all identified and major risks are reviewed and tested during the audit and audit procedures are conducted in an efficient and effective manner.
5. Ensure the audit is performed in accordance to the applicable standards, regulatory requirements and available guidance.

Typical audit work plan would consist of following elements:

1. Mega and Sub process being reviewed
2. Key activities involved in underlying process
3. Underlying risk in the activities / sub-processes
4. Audit Checks to be performed
5. Sample criteria and sample to be used
6. Data required for audit.

Answer 3(b)

Importance of Kick off Meeting:

After the internal audit notification is received by the internal auditor, a kick-off meeting is generally organized by the internal auditor with the relevant function owners and their subordinates to discuss the audit objectives, audit scope (more detailed), audit schedule, audit process and methodology, audit team details, escalation routes on both sides, turn-around-time for provision of information or records, and initial data requirement is discussed and agreed.

Usually, a presentation is made by the internal auditor covering all these aspects and inputs, from the auditees, are invited to the same. Exchange of views and clarifications from both sides enables better understanding of the expectations from each side and helps in avoiding debate about scope of audit and process to be followed for finalization of the internal audit report later. Further, it helps in improving the perception of the internal audit activity since auditees can understand it better.

Process Walkthrough(s): Process walkthroughs are step-by-step demonstrations or explanations of a process or task conducted by the process or task owner in the presence of the internal auditor. Internal auditor can use process walkthroughs to understand the process flow and identify the design of the internal controls using one or two examples chosen by the auditee for such demonstration.

It helps the internal auditor in understanding how the auditees are conducting their day-to-day work, engagement objectives, and identify the key controls or stage gates which ensure that the desired output of the process is achieved by the organization.

While in case of mature control environments, the flow charts explaining the flow of information and

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key stage gates / key controls of the process are already documented, where such documentation may not be available to a level which is detailed enough, or self-explanatory to meet the purposes of an internal auditor. Organisation chart has to be updated and see if there are significant turnover in the key persons over a period of 5 years.

In such cases, the internal auditors need to draw their own flow charts for complete understanding the process. A flow chart provides a visual sequence of the steps in a process, illustrates the relationship between parts, and identifies what the process does or should do. Flowcharts created in a variety of ways by internal auditors, from informal pencil drawings on scraps of paper to technically sophisticated computer graphics.

Creation of flow charts by internal auditor based on process walkthroughs has following advantages:

i. In the process of creating the flowchart, internal auditor can discover weakness in controls such as weak responsibility/accountability definitions, supervision by the wrong level of the organization, failure to segregate functions to avoid conflict of interest, and so on.

ii. A flowchart can provide an accurate description of process design, and later on when an internal auditor finds some exceptions to the process, it is easy to understand the risk or potential impact of that observation on the outcome of the process. In these days of ERP environment across many organisations, system flow charts are also a must.

Answer 3(c)

Internal Audit Points to be kept in mind while planning the audit of Medical College and Hospital:

1. **Register of Patients:** Vouch the Register of patients with copies of bills issued to them. Verify bills for a selected period with the patients' attendance record to see that the bills have been correctly prepared. Also see that bills have been issued to all patients from whom an amount was recoverable according to the rules of the hospital.
2. **Collection of Cash:** Check cash collections as entered in the Cash Book with the receipts, counterfoils and other evidence for example, copies of patients' bill, counterfoils of dividend and other interest warrants, copies of rent bills, etc.
3. **Income from Investments, rent etc.** See by reference to the property and Investment Register that all income that should have been received by way of rent on properties, dividends, and interest on securities have been collected.
4. **Legacies and Donations:** Ascertain those legacies and donations received for a specific purpose have been applied in the manner agreed upon.
5. **Reconciliation of Subscriptions:** Trace all collections of subscription and donations from the Cash Book to the respective Registers. Reconcile the total subscriptions due (as shown by the Subscription Register and the amount collected and that still outstanding).
6. **Authorization and Sanctions:** Vouch all purchases and expenses and verify that the capital expenditure was incurred only with the prior sanction of the Trustees or the Managing Committee and that appointments and increments to staff have been duly authorized.
7. **Grants and TDS:** Verify that grants, if any, received from Government or local authority has been duly accounted for. Also, that refund in respect of taxes deducted at source has been claimed.
8. **Budgets:** Compare the totals of various items of expenditure and income with the amount budgeted for them and report to the Trustees or the Managing Committee, significant variations which have taken place.

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9. **Internal Check:** Examine the internal check as regards the receipt and issue of stores; medicines, linen, apparatus, clothing, instruments, etc. so as to ensure that purchases have been properly recorded in the Inventory Register and that issues have been made only against proper authorization.
10. **Depreciation:** See that depreciation has been written off against all the assets at the appropriate rates.
11. **Registers:** Inspect the bonds, share scrips, title deeds of properties and compare their particulars with those entered in the property and Investment Registers.
12. **Inventories:** Obtain inventories, especially of stocks and stores as at the end of the year and check a percentage of the items physically; also compare their total values with respective ledger balances.
13. **Management Representation and Certificate:** Get proper Management Representation and Certificate with respect to various aspects covered during the course of audit.
14. **Human Resource Management**: Get proper attendance of all the staffs and look into their contributions and deductions towards statutory funds including preparation of pay-slip and salary certificate.

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

Question 4

(a) What is an exit meeting ? What are the stages of audit communication ? In an exit meeting, you requested the management for comments on action plan. What does this plan contain?

(*5 marks*)

(b) ABC Motors Private Limited, Delhi is one of the leading authorized dealers of commercial vehicles and have sales, spares and service outlets at several places in different states of India. Company, currently has standalone systems of accounting at each location. Maintaining inventories of vehicles and spares at each location is one of the key challenges to the management. As it is difficult and time-consuming to collect accounting and MIS data from all the locations, the company has planned to switch over from standalone to cloud-based accounting.

Suggest the controls to be implemented by the management to ensure availability of real-time update accounting and MIS data accessible from all the locations without any possibility of any unauthorized modifications.

(*5 marks*)

(c) A.M. Limited, a steel fabrication company based in Tamil Nadu, India, scaled up production in FY 2024-25 to meet surging demand from infrastructure projects. To secure raw materials and machinery, the company engaged a network of suppliers, managing acquisition as per order to support its Chennai plant. Amid this expansion, management observed delays and unexpected costs, prompting them to appoint CA Sanjay Rao in 2025 to examine the systems governing these external transactions. A.M. Limited relies on a mix of digital tools and manual oversight to coordinate supplier dealings, payments, and material deliveries, yet inconsistencies persist. CA Sanjay Rao must dissect the company's acquisition framework, ensuring it drives efficiency and compliance under growing operational strain.

What key areas should CA Sanjay Rao focus on when reviewing the acquisition processes of A.M. Limited ?

(*5 marks*)

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Answer 4(a)

Exit Meeting - The internal auditor should discuss with the management of the entity regarding the findings, observations, recommendations, and text of the discussion draft. At this meeting, the entity's management should comment on the draft and the internal audit team should work to achieve consensus and reach an agreement on the internal audit findings.

The internal audit report contains the observations and comments of the internal auditor, presents the audit findings, and discusses recommendations for improvements. To facilitate communication and ensure that the recommendations presented in the final report are practical from the point of view of implementation, the internal auditor should discuss the draft with the entity's management prior to issuing the final report.

The different stages of communication and discussion should be as under:

Discussion Draft - At the conclusion of fieldwork, the internal auditor should draft the report after thoroughly reviewing the working papers and the discussion draft before it is presented to the entity's management for auditee's comments. This discussion draft should be submitted to the entity management for their review before the exit meeting.

Formal Draft - The internal auditor should then prepare a formal draft, taking into account any revision or modification resulting from the exit meeting and other discussions. When the changes have been reviewed by the internal auditor and the entity management, the final report should be issued.

Final Report - The internal auditor should submit the final report to the appointing authority or such members of management, as directed. The periodicity of the Report should be as agreed in the scope of the internal audit engagement. The internal auditor should mention in the Report, the dates of discussion draft, exit meeting, Formal Draft and Final Report. The copies of the above Reports have to be preserved confidentially in soft copy form duly encrypted for future reference with appropriate version controls for future reference and for peer review.

The management action plan should contain, inter alia:

a) the timeframe for taking appropriate corrective action;

b) the person responsible; and

c) resource requirements, if any, for ensuring such compliance.

Further comments from the internal auditor, in response to the auditee feedback, are to be clearly mentioned. This paragraph should also contain the internal auditor's suggestions and recommendations to mitigate risks, strengthen controls and streamline processes with respect to each of the observations and comments made.

Answer 4(b)

Controls to be implemented in Cloud Computing:

Cloud computing is a technology that allows users to access computing resources, such as servers, storage, applications, and services, over the internet. Internal control, on the other hand, is a process designed to provide reasonable assurance regarding the achievement of an organization's objectives in terms of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. When it comes to cloud computing, internal control is essential to ensure that the organization's data, systems, and processes are secure and reliable.

Internal controls that can be implemented in the context of cloud computing:

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- **Risk assessment:** The organization should conduct a risk assessment to identify potential risks associated with using cloud computing services, such as data breaches, system failures, and vendor lock-in.
- **Vendor selection:** The organization should select cloud computing vendors that meet its security and compliance requirements. This may include evaluating vendor's security controls, certifications, and audit reports.
- **Service level agreements (SLAs):** The organization should negotiate SLAs with cloud computing vendors that define the level of service, performance, and availability that is required. The SLAs should also include provisions for data privacy, security, and compliance.
- **Access controls:** The organization should implement access controls to ensure that only authorized personnel can access its cloud computing resources. This may include using multi-factor authentication (MFA), role-based access control, and encryption.
- **Data encryption:** The organization should encrypt data before storing it in the cloud, to prevent unauthorized access and data breaches.
- **Monitoring and reporting:** The organization should implement monitoring and reporting mechanisms to detect and report security incidents and data breaches. This may include using intrusion detection systems, log monitoring, and vulnerability scanning.

Answer 4(c)

Depending upon the nature of procurement, the organisations may decide some procurements to be done through a Purchase Order (called as PO route).

- Review adherence to Delegation of Authority (DOA) for issuance of PO.
- Reviewing 3-way match controls (Purchase order, Goods Receipt Note (GRN) and invoice booking).

This process step involves checking whether the requirement defined in PO has been received as evidenced by GRN, and whether the supplier invoice matches with the received quantity as per GRN and price as per PO. This matching is required before payment made to a vendor.

While this process can be automated in an ERP environment, it may be partially automated or manual in a non-ERP environment. This checking includes the checks to ensure compliance with agreed terms and SLAs before processing the invoice and payment.

- Review PO/signed agreement terms and conditions (T&Cs).

This is to observe if any waivers on standard T&Cs have been granted to the vendors with the exception approvals being taken. While enforcing T&Cs with vendors may not be possible, an exception route definition should exist in the policy to approve for the exceptions.

- Review the process of accounting of procurement, and related segregation of duties within the accounting function including review of accounting system controls on invoice booking and payment processing.
- Review of payment process including bank payments process and cash payments process (if any) and review of appropriateness of supporting evidence.
- Review of levy of any interest, penalty or liquidated damages as per the agreed T&Cs. Review of segregation of duties with respect to PO creation & approval, expense approval, receipt of goods/ services, accounting and payment processing is an integral part of a Procurement Review.

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OR (Alternative to Q. No. 4)

Question 4A

(*i*) Unity Bank Limited, a public sector bank headquartered in Kolkata, India, oversees a broad loan portfolio catering to various sectors. In FY 2024-25, the internal audit team, led by CS Amit Sen, evaluates advances as of March 31, 2025.

The portfolio includes :

(1) A term loan of ₹ 50 lakh to a manufacturing unit, with principal and interest unpaid since December 1, 2024.

(2) An overdraft facility of ₹ 30 lakh to retailer, continuously overdrawn since October 15, 2024.

(3) A bill purchased worth ₹ 20 lakh, overdue since November 10, 2024.

(4) A ₹ 15 lakh agricultural loan, deemed uncollectible by the bank's inspection in February 2015, yet not fully written off.

With regulatory oversight intensifying, CS Amit Sen is required to :

– Classify these advances and

– Compute the necessary provisions to meet RBI standards.

(*5 marks*)

(ii) Sharma Enterprises, a mid-sized textile manufacturing company based in Ahmedabad, India, had been thriving in the competitive market for over a decade. Led by Rajesh Sharma, the company prided itself on its quality products and timely deliveries, catering to both domestic and international clients. However, in early 2024, the company faced an unexpected setback. A major export order worth ₹ 5 crore was delayed due to a sudden spike in raw material costs, which strained the company's cash reserves. To meet the shortfall, Sharma Enterprises secured a short-term loan from a local bank at a high interest rate, assuming that the order's revenue would cover the repayment. The company's financial accounts, however, were not meticulously maintained. The accounting team, understaffed and overburdened, failed to reconcile cash inflows and outflows accurately. This led to an overestimation of available funds, and soon, the company struggled to pay its suppliers and meet loan repayment deadlines. By mid- 2024, Sharma Enterprises faced a liquidity crunch, delaying employee salaries and risking its reputation with clients. Rajesh, puzzled by the sudden downturn, called for an internal audit to uncover the root cause. The audit revealed that poor financial oversight and an over-reliance on borrowed funds had exposed the company to significant vulnerabilities, threatening its long-term stability.

As an internal auditor of the company :

(a) Provide an explanation tied to the specific issues encountered by Sharma

(b) Enterprises.Evaluate the potential fallout of neglecting this risk and its impact on the financial health of the Sharma Enterprise.

(c) What actionable steps would you recommend to Sharma Enterprise to improve financial management and protect against similar challenges ?

(*5 marks*)

(iii) PaySecure India, a prominent online bill payment platform in India, encountered a major security breach in FY 2023-24, compromising the financial details of millions of users. A

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cybersecurity analyst discovered that the exposed data was being traded on the dark web, tracing the leak to DataSync Solutions, a third-party vendor handling user authentication for PaySecure. Investigations revealed that DataSync had stored sensitive customer information in an unsecured server, accessible via a simple URL, due to lax security protocols. PaySecure faced backlash for not overseeing DataSync's practices closely and for ignoring prior warnings from experts about potential weaknesses in their vendor's setup. The incident sparked concerns over trust and regulatory compliance, highlighting gaps in third-party oversight. As PaySecure scrambles to restore confidence, questions arise about how internal auditors could have prevented such a debacle.

What critical steps should internal auditors undertake to strengthen oversight of third- party relationships and ensure robust data security in a company like PaySecure India ?

(*5 marks*)

Answer 4A(i)

1. Term loan of ₹50 lakh to manufacturing unit, Principal and interest unpaid since December 1, 2024. As of March 31, 2025, the account is overdue for 4 months (121 days > 90 days).

   Classification: Sub-standard asset Term Loan (₹50 lakh)

   Provision requirement: 15% of outstanding amount = ₹7.5 lakh

2. Overdraft facility of ₹30 lakh to retailer, continuously overdrawn since October 15, 2024. As of March 31, 2025, the account is overdue for over 5 months (168 days > 90 days)

   Classification: Sub-standard asset

   Provision requirement: 15% of outstanding amount = ₹4.5 lakh

3. Bill purchased worth ₹20 lakh, Overdue since November 10, 2024. As of March 31, 2025, the account is overdue for more than 4 months (142 days > 90 days)

   Classification: Sub-standard asset

   Provision requirement: 15% of outstanding amount = ₹3 lakh

4. Agricultural loan of ₹15 lakh, deemed uncollectible by the bank's inspection in February 2025, yet not fully written off.

   Classification: Loss asset (based on bank's own inspection declaring it uncollectible)

   Provision requirement: 100% of outstanding amount = ₹15 lakh

   Total provision required:

   ₹7.5 lakh + ₹4.5 lakh + ₹3 lakh + ₹15 lakh = ₹30 lakh

Answer 4A(ii)

(a) When it comes to financial accounting, funding risk is the potential risk that an organisation may face when it comes to its ability to obtain funding from lenders or investors. For organisations that are dependent on external financing, funding risk can be a major concern. If an organisation is unable to obtain the necessary funding to keep operating, it could quickly find itself in financial trouble.

In this case, the funding risk is:

- The potential inability of Sharma Enterprises to secure or sustain sufficient financing to meet its obligations.

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- This risk arises from poor financial management and external pressures, like the company's experience in 2024.
- A spike in raw material costs drained cash reserves, pushing the company to take a high-interest loan it couldn't easily repay.
- Unreconciled cash flows and overestimated funds worsened the situation, leaving Sharma unable to pay suppliers or manage debt.

(b) When it comes to financial accounting, organisations must take into account funding risk in the decision-making process. Internal audit can play a vital role in identifying and evaluating funding risks, as well as in providing recommendations on how to best manage them. By considering funding risk in internal audit, organisations can make more informed decisions that can help protect their bottom line.

- Funding risk is critical in Sharma Enterprises' audit because it jeopardizes financial stability, as evidenced by the recent liquidity crisis.
- The audit revealed how sloppy accounting and loan reliance halted supplier payments and salary disbursements, nearly derailing operations.
- If overlooked, unpaid creditors could pursue legal action, clients might abandon the company over delays, and insolvency could become a real threat.
- These outcomes would erode market trust and competitiveness in the textile industry.
- By examining cash flow, debt levels, and funding sources, the audit delivers actionable insights to protect the bottom line and ensure long-term survival.

(c) There are a number of ways to avoid funding risks when it comes to financial accounting. First, be sure to have a clear understanding of organisation's financial situation and goals. This will help to make informed decisions about how to allocate funds and where to invest. One way is to choose investment vehicles carefully. Make sure to understand the risks associated with each type of investment before commit any money.

The internal auditor should recommend three targeted steps to boost Sharma Enterprises' financial management and reduce funding risks.

- First, overhaul accounting by hiring skilled staff and enforcing monthly reconciliations to prevent cash flow errors like those that masked the shortfall.
- Second, establish a liquidity buffer – either a cash reserve or a pre-arranged low-cost credit line – to absorb shocks like raw material price hikes without resorting to costly loans.
- Third, implement cash flow forecasting tools to predict funding needs and avoid over-reliance on debt.

These measures, grounded in audit findings, address the root issues and strengthen resilience against future financial strain.

Answer 4A(iii)

Third-party risk management is an emerging area of focus in internal audit, and it is gaining more attention due to the increasing reliance on third-party vendors by organizations.

Many companies now outsource critical business functions to third-party vendors to reduce costs, increase efficiency, and gain access to specialized expertise. However, this outsourcing exposes organizations to new and evolving risks, such as data breaches, cyber-attacks, financial fraud, regulatory non-compliance, and reputational damage.

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Internal auditors are responsible for assessing and managing risks within their organizations, and third-party risk management is an area where they can add significant value. Internal audit can help to identify potential risks associated with third-party relationships, evaluate the effectiveness of controls, and make recommendations to management on how to mitigate risks.

In the context of third-party risk management, internal auditors can perform the following key activities:

- Adequate Due Diligence: Companies need to conduct thorough due diligence on third-party vendors before engaging with them. This includes verifying their security controls and practices, and ensuring that they are in compliance with data protection laws and regulations.
- Clear Contractual Provisions: Contracts between companies and third-party vendors need to include clear provisions that outline specific security requirements and obligations. Including data protection, breach notification, and liability.
- Ongoing Monitoring: Companies need to establish a process for monitoring third-party vendors regularly to ensure they comply with the contractual provisions, and to detect any potential vulnerabilities or breaches.
- Effective Incident Response: Companies need to have an effective incident response plan in place to respond to security breaches effectively, including notifying affected customers, regulators, and law enforcement, and taking appropriate action to mitigate the impact of the breach.

This case focuses and bring out the importance of implementing effective third-party risk management processes to minimize the risks associated with engaging the third-party vendors. Companies need to conduct thorough due diligence on vendors, ensure that contractual provisions are in place to manage risks, regularly monitor vendors, and have an effective incident response plan in place. By doing so, companies can protect themselves from the reputational and financial damage that can result from a breach of third-party vendors.

PART II

Question 5

Case Study :

Global Enterprises Ltd. is a prominent multinational conglomerate headquartered in Mumbai, India, with an annual turnover surpassing ₹ 2,000 crores. The company operates across diverse sectors, including the manufacture and distribution of fertilizers, retail sales of mobile phones from renowned international brands (premium "Nova" and budget "Eco" models), and jewellery exports through its Surat-based division. With a sprawling network of subsidiaries, joint ventures, and an offshore entity registered in a tax haven (Cayman Islands), the company's financial operations are intricate, involving multiple currencies, intercompany transactions, and a decentralized supply chain. Its stock is stored and distributed through over 50 branches nationwide, and its jewellery exports cater to markets in Europe, the Middle East, and North America. However, recent developments have cast a shadow over its operations, prompting a comprehensive forensic audit by Pinnacle Forensic LLP.

The Board of Directors first grew wary when the company's financial statements—laden with consolidated figures from subsidiaries and joint ventures—showed declining profitability despite steady revenue growth in the fertilizer manufacturing division. The statements, prepared under Ind-AS, were opaque, with significant related-party transactions and unexplained adjustments,

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raising suspicions of financial irregularities or deliberate misstatement. Concurrently, the Income Tax Department initiated scrutiny after noticing large fund transfers to the Cayman Islands subsidiary, suspected to be a conduit for siphoning profits to evade Indian taxes. These transfers, totalling ₹ 500 crores over two years, were recorded as "consultancy fees" and "investment advances," yet lacked supporting documentation during preliminary inquiries.

Adding to the complexity, the Department of Foreign Trade (DFT) received multiple complaints from trade associations and foreign buyers about the Surat jewellery division. Allegations pointed to "book exports"—where export entries worth ₹ 300 crores were recorded in the books over the past year, but no corresponding shipments were traced through customs or shipping records, the complaints suggested that fictitious export invoices were used to claim tax rebates and inflate revenue, with the proceeds possibly diverted elsewhere. Meanwhile, in August 2023, the Mobile Sales Division reported an alarming issue : despite consistent demand for Nova and Eco mobile phones, sales volumes had inexplicably dropped by 25% compared to the previous quarter. The Sales Manager flagged this anomaly, noting a mismatch between inventory outflows and recorded sales. Around the same time, the company received anonymous letters alleging that two sales executives—Rakesh (handling Nova mobiles) and Sunil (handling Eco mobiles)—had recently purchased luxury cars and properties, hinting at possible collusion with distributors or under-the-table dealings.

Faced with this confluence of red flags—potential financial irregularities in manufacturing, tax evasion via the offshore subsidiary, fictitious exports in jewellery, and corruption in mobile sales—the board of Global Enterprises Ltd. engaged Pinnacle Forensic LLP to conduct a forensic audit. The firm's mandate is to unravel the truth across these interconnected issues, collaborating with the board, the Income Tax Department, and the DFT. The company's decentralized operations, voluminous transactions (e.g., 10,000 + monthly mobile sales entries, 500+ export invoices annually), and reliance on junior staff for branch-level inventory management further complicate the investigation. Against this detailed backdrop, address the following questions :

(i) What steps will Pinnacle Forensic LLP undertake to detect financial irregularities within Global Enterprises Ltd.'s manufacturing division and its complex financial structure ?

(ii) How will your firm investigate whether Global Enterprises Ltd. has siphoned funds to its tax-haven subsidiary to evade taxes, as suspected by the Income Tax Department ?

(iii) What methdology will Pinnacle Forensic LLP adopt to prove that the jewellery export arm in Surat has engaged in fictitious "book exports," as alleged in complaints to the DFT ?

(iv) What course of action will your firm follow to uncover the potential misdeeds of Rakesh and Sunil against Global Enterprises Ltd. ?

(5+5+5+5=20 marks)

Answer 5(i)

Steps Undertaken by Pinnacle Forensic LLP

- Financial Statement Review: Examine Global Enterprises Ltd.'s consolidated financial statements under Ind-AS, focusing on the fertilizer manufacturing division. Cross-check with subsidiaries and joint ventures' financials to identify inconsistencies.
- Books and Records Verification: Reconcile financial statements with books of account, general ledgers, and supporting records (e.g., invoices, payment vouchers). Identify unusual transactions, such as inflated expenses or unreported liabilities, warranting deeper scrutiny.
- Transaction Analysis: Flag significant related-party transactions within the manufacturing

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division for potential misstatement or manipulation. Use data analytics to detect patterns of revenue overstatement or cost suppression.

- Employee Interviews: Conduct interviews with key personnel in the manufacturing division, finance team, and subsidiary management. Uncover evidence of fraud, such as falsified invoices, kickbacks to suppliers, or hidden debts, through direct testimonies.
- Evidence Collection: Gather documentary proof (e.g., altered records, email correspondence) and witness statements to substantiate findings. Compile a forensic audit report detailing the irregularities and their financial impact.
- Board Reporting: Submit the forensic audit report to the board, highlighting evidence of financial irregularities for decision-making. Recommend corrective actions or legal recourse based on findings.
- Legal Action Support: Assist the board in filing a police complaint if fraud is confirmed, as decided after legal counsel discussions. Prepare evidence for trial, ensuring compliance with admissibility standards.
- Court Admissibility: Present forensic evidence in court, adhering to the Bharatiya Sakshya Adhiniyam, 2023 guidelines for expert evidence. Ensure the judge accepts the audit findings (e.g., falsified records, kickbacks) as admissible, supporting prosecution.

Outcome: Enable successful conviction of responsible individuals (e.g., prison sentences) if found guilty based on audit evidence. Demonstrate the forensic audit's effectiveness in uncovering irregularities acceptable to a court of law.

Conclusion: Forensic audits, supported by the Bharatiya Sakshya Adhiniyam, 2023, provide a robust framework for detecting financial irregularities in complex structures like Global Enterprises Ltd.'s manufacturing division, leading to actionable legal outcomes.

Answer 5(ii)

Siphoning off funds refers to the illegal transfer of company resources for personal gain or to conceal illicit activities, such as tax evasion. Pinnacle Forensic LLP will investigate whether Global Enterprises Ltd. has employed such practices to divert ₹500 crores to its Cayman Islands subsidiary, as flagged by the Income Tax Department. The firm will examine the following potential methods of siphoning, tailoring its approach to the case specifics:

- Over-Invoicing: Analyse invoices for services (e.g., "consultancy fees") billed to the Cayman Islands subsidiary to check if costs were inflated beyond market rates, allowing excess payments to be siphoned off. Cross-reference with industry benchmarks and service agreements.
- Under-Invoicing: Review sales or asset transfers from the subsidiary back to Global Enterprises Ltd. to detect undervaluation aimed at reducing taxable income in India, with the unreported difference potentially diverted for personal gain.
- Ghost Employees: Scrutinize payroll records of the Cayman Islands entity to identify fictitious employees whose "salaries" might represent funds siphoned by management, verifying employee existence through independent confirmations.
- Round-Tripping: Investigate whether the ₹500 crores labelled as "investment advances" involved fictitious transactions, where funds were sent to the subsidiary and returned to India as legitimate revenue, enabling management to siphon the amount. Trace bank flows for circular patterns.
- Transfer Pricing Manipulation: Examine intercompany transactions between Global Enterprises

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Ltd. and its Cayman Islands subsidiary (e.g., goods, services, or intellectual property transfers) to detect price manipulation reducing Indian tax liability, with the differential siphoned offshore.

- Misappropriation of Funds: Inspect the company's bank accounts and cash flows to determine if management directly withdrew portions of the ₹500 crores for personal use without business justification, reviewing authorization trails and fund destinations.
- Offshore Entity Abuse: Focus on the Cayman Islands subsidiary as a potential conduit for tax evasion, verifying the legitimacy of the ₹500 crores in transfers. Investigate subsidiary financials, ownership structures, and ultimate beneficiaries to confirm if funds were siphoned and hidden offshore.

Answer 5(iii)

Pinnacle Forensic LLP will examine various aspects connected with the alleged "book exports" of the jewellery export arm of Global Enterprises Ltd. in Surat. The following steps outline the documents, records, and related aspects the forensic auditor will verify to substantiate the complaints:

- Historical Export Trends Analysis: Compare the jewellery export arm's track record over the past five years to identify any significant spike in export volumes during the current year (e.g., ₹300 crores) compared to prior years, signalling potential fictitious entries. Email Confirmation of balance to be obtained from all the export customers by asking them to send detailed Statement of account. Taking the assistance of Industries Association or Chambers of Commerce of such countries to ascertain the genuineness of existence of customer or is it a shell entity. Evaluation of customers address, if it is of Post Box Numbers the genuineness of such customers are questionable.
- Buyer Verification: Scrutinize the details of alleged buyers listed in export records to check if they are located in notified jurisdictional areas (e.g., tax havens) under Income Tax rules, necessitating deeper investigation for possible round-tripping or shell entities.
- Bank Record Examination: Thoroughly review bank statements to confirm whether actual foreign exchange remittances corresponding to the ₹300 crores in exports were received from the listed buyers, validating the authenticity of transactions.
- Remittance Flow Investigation: Trace the origin and utilization of any remittances received from abroad to determine if funds were funnelled out of India and reintroduced as export proceeds, indicating a money-laundering scheme tied to fictitious exports.
- Export Pricing Benchmarking: Compare rates in the export invoices of Global Enterprises Ltd.'s jewellery arm with those of competitors exporting similar jewellery to markets like Europe, the Middle East, and North America, checking for anomalies suggestive of inflated or fabricated sales.
- Production and Stock Record Review: Analyse production and stock records of the Surat division to assess the flow of jewellery inventory; genuine exports require available stock, which must stem from production or purchases, exposing any mismatch with reported exports.
- Purchase Invoice Verification: If stock inflows are attributed to purchases rather than production, verify all purchase invoices to ensure they are legitimate, cross-checking supplier details and payments to rule out fabricated stock entries.
- Related Party Transaction Scrutiny: Investigate any related party transactions within the jewellery arm's export activities, conducting deeper scrutiny if such dealings exist, as they could facilitate fictitious export arrangements.

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- Form 3CD Examination: Review Form 3CD (filed under the Income-tax Act, 1961) to identify transactions with related parties or persons specified under Section 40A(2), ensuring no undisclosed relationships support the alleged fraud.
- GST Returns Analysis: Meticulously check GST returns to verify how the jewellery arm claimed refunds for GST paid on the ₹300 crores of exports, looking for inconsistencies (e.g., refund claims without corresponding input tax credits) that indicate fictitious transactions.

Answer 5(iv)

Methodology to be Adopted by Pinnacle Forensic LLP

The following steps may be employed by Pinnacle Forensic LLP, either individually or in combination, to investigate the potential misdeeds of Rakesh and Sunil in the Mobile Sales Division of Global Enterprises Ltd.:

- Interviews with Employees: Conduct interviews with staff in the Mobile Sales Division, particularly those working closely with Rakesh and Sunil, to gather insights into their behaviour, sales practices, and any unusual activities observed.
- Anonymous Suggestion Boxes: Place anonymous suggestion boxes in the sales department, encouraging employees to share observations or suspicions about Rakesh and Sunil's conduct without fear of reprisal, ensuring candid feedback.
- Email History Review: If permitted by company policy, examine the email correspondence of Rakesh and Sunil for the past year to identify communications with buyers, distributors, or each other that might indicate collusion or unauthorized dealings.
- Buyer Interviews: Interview key buyers of Nova and Eco mobiles to determine if Rakesh or Sunil engaged in collusive practices, such as under-reporting sales or offering unreported discounts in exchange for personal gains.
- Standard Operating Procedure (SOP) Compliance Check: Obtain the SOPs for sales of Nova and Eco mobiles and verify whether Rakesh and Sunil adhered to them, checking for deviations like unrecorded sales or inventory mismanagement that could mask fraud.
- Collusion Analysis: Investigate the possibility that Rakesh and Sunil colluded with each other or with buyers, potentially billing costly Nova mobiles as cheaper Eco models to pocket the price difference, cross-referencing sales invoices with inventory records.
- Balance Confirmations: Request balance confirmations from major buyers and cross-check these with Global Enterprises Ltd.'s sales records to detect discrepancies that might indicate under-reported sales or diverted funds.
- GST Returns Scrutiny: Thoroughly examine GST returns for August 2023 and prior months to identify fraud patterns, such as mismatched input-output tax credits or unreported taxable sales linked to Rakesh and Sunil's transactions.
- Red Flag Identification: Look for behavioural red flags, such as Rakesh and Sunil's excessive dedication (e.g., never taking entitled sick leave or vacations), which could suggest efforts to maintain control over fraudulent activities.
- Deploy covert agents to discreetly visit the residential areas of Rakesh and Sunil, assessing their lifestyles (e.g., luxury cars, properties) assets disproportionate to income and gathering informal intelligence from neighbours or local contacts to corroborate the anonymous letters.

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

Question 6

(a) Founded in 2009 by siblings Arjun and Neha, Apex GreenTech Ltd. (AGT) began with a mission to harness renewable energy solutions. Today, after 15 years, AGT thrives as a passionate collective committed to sustainable innovation. Anticipating a boom in green technology, AGT plans to acquire competitors to enhance its reach, competitiveness, and customer base. The shortlisted targets are Eco Innovations Ltd. (focused on solar panel tech, energy storage, and efficiency analytics) and SmartGrid AI (specializing in AI-powered energy management). To ensure a sound decision, AGT commissions you, a reputed forensic auditor, to evaluate these firms beyond traditional financials, with stakeholder approval secured. The management emphasizes qualitative insights, especially since Eco Innovations operates in African regions where money laundering risks linger, though your focus here is broader.

What non-financial qualitative factors should you include in your report to assess the performance and future prospects of these companies ?

(5 marks)

(b) Rakesh Saha, the Chief Financial Officer (CFO) of Sunrise Industries, a prominent manufacturing firm in Mumbai, was under immense pressure to achieve the company's financial objectives. The Board of Directors had established aggressive targets, and Rakesh knew that his annual performance review and substantial bonuses hinged on meeting these goals. While reviewing the company's accounts during a routine internal audit, Rakesh identified a weakness in the oversight of travel and expense reimbursements. Seizing this vulnerability, he saw a chance to artificially boost the company's profits by altering the financial records. Rakesh justified his actions to himself, believing that the prosperity of Sunrise Industries would ultimately benefit its employees and stakeholders, outweighing any temporary ethical lapse. He viewed this manipulation as a short-term solution, intending to rectify the figures in the subsequent quarter once the company regained financial stability.

Fraud is always driven by an underlying motive. When an opportunity to perpetrate fraud arises, the individual rationalizes the wrongdoing in a manner that aligns with their personal moral framework. Explain this statement in the context of the scenario above.

(5 marks)

(c) What is circumstantial evidence ? What are the tests to qualify for a circumstantial evidence ?

(5 marks)

(d) In order to solve a cybercrime alleged to have been committed, appropriate digital evidence have to be identifed, collected, analyzed and evaluated as to the suitability in the court of law. Every sequence of events within a single computer might cause interactions with files and file systems in which they reside, other process and the programs they are executing. Collecting volatile data requires specific technical skills and precautions by the Digital Forensic Expert.

In view of the above, what are the precautions to be taken by the Digital Forensic Export ?

(5 marks)

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Answer 6(a)

Comprehensive business analysis, however, calls for going beyond the conventional financial measures to consider qualitative factors relevant for evaluating the performance and prospects of a company. The American Association of Individual Investors (AAII) has summarised these factors as follows:

1. Are the company's revenues tied to one key customer? If so, the company's performance may decline dramatically if the customer goes elsewhere. On the other hand, if the relationship is firmly entrenched, this might actually stabilise sales.
2. To what extent are the company's revenues tied to one key product? Companies that rely on a single product may be more efficient and focused, but a lack of diversification increases risk. If revenues come from several different products, the overall bottom line will be less affected by a drop in the demand for any one product.
3. To what extent does the company rely on a single supplier? Depending on a single supplier may lead to unanticipated shortages, which investors and potential creditors should consider.
4. What percentage of the company's business is generated overseas? A large percentage of overseas business are often able to realise higher growth and larger profit margins. However, firms with large overseas operations find that the value of their operations depends in large part on the value of the local currency. Thus, fluctuations in currency markets create additional risks for firms with large overseas operations.
5. Competition. Generally, increased competition lowers prices and profit margins. In forecasting future performance, it is important to assess both the likely actions of the current competition and the likelihood of new competitors in the future.
6. Future prospects. Does the company invest heavily in research and development? If so, its future prospects may depend critically on the success of new products in the pipe line.
7. Legal and regulatory environment. Changes in laws and regulations have important implications for many industries. For example, when forecasting the future of tobacco companies, it is crucial to factor in the effects of proposed regulations and pending or likely lawsuits. Likewise, when assessing banks, telecommunications firms, and electric utilities, analysts need to forecast both the extent to which these industries will be regulated in the years ahead, and the ability of individual firms to respond to changes in regulation.

Answer 6(b)

Fraud Triangle Overview:

Developed by Dr. Donald Ray Cressey from his Ph.D. research on embezzlers ("trust violators").

Based on interviews with 133 imprisoned individuals who misused trusted positions (published in Other People's Money).

Excludes habitual offenders; focuses on trusted persons turning to fraud.

Hypothesis: Fraud occurs when a trusted person faces a non-shareable financial problem, sees a secret solution via abuse of trust, and justifies it to align with their self-image.

Known as the Fraud Triangle: Pressure, Opportunity, Rationalization.

Application to Rakesh Saha's Case:

Pressure (Motive):

Faced intense board expectations to meet aggressive financial targets at Sunrise Industries.

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Performance evaluation and bonuses tied to success, creating a personal, non-shareable financial strain.

Opportunity (Ability):

Identified a weakness in internal controls over travel and expense reimbursements during an audit.

Allowed discreet manipulation of financial records to inflate profits.

Rationalization (Justification):

Convinced himself the fraud was a temporary fix benefiting all employees and stakeholders.

Believed he could correct the figures next quarter, aligning the act with his moral compass as a short-term necessity.

Explanation of the Statement:

Fraud requires a motive (Pressure: Rakesh's need to meet targets).

An opportunity enables it (Opportunity: weak controls).

The fraudster justifies it internally (Rationalization: Rakesh's belief in collective benefit and reversibility).

Rakesh's case shows how these elements converge, allowing a trusted person to violate trust while preserving self-image.

Answer 6(c)

Circumstantial Evidence

There is no difference between circumstantial evidence and indirect evidence. Circumstantial Evidence attempts to prove the facts in issue by providing other facts and affords an instance as to its existence. It is that which relates to a series of other facts than the fact in issue but by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.

According to Justice Fetcher Monten the acceptance of evidence and there appreciation thereof is not a rigid mathematical formula and hence the circumstantial evidence qualifies a significant role in any matter before the court to make it possible that the court should reach to truth, reality and actual happenings of the things.

According to Justice Stetson, circumstantial evidence is like a light in the dark which slowly touches all corners of a matter and bring the reality in front of the adjudicator. He further observes that circumstantial evidence has to be appreciated with utmost caution because if light is strong enough to remove all darkness, then it will uplift the justice in the matter but if the light is weak and removes darkness from some part of the matter it may result into grave injustice to both the parties.

In modern times, circumstantial evidence is given importance. It is seen as evidence which relates to the series of the facts other than the fact in issue. Circumstantial evidence assumes importance in both categories when either direct evidence is lacking or the direct evidence is not conclusive of the fact in issue.

In State of U.P. v. Ravindra Prakash Mittal Supreme Court had taken a strong stand while redefining and reframing the evidentiary value of circumstantial evidence. Court said that circumstantial evidence. Court said that circumstantial evidence will be treated as a good piece of evidence if it qualifies the following tests:

a) The circumstances from which guilt is established must create a series of circumstances and must be fully proved.

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b) The circumstances must be of conclusive nature and tendency.

c) Circumstantial evidence must not need any reasonable doubt regarding existence of fact.

d) It should create the hypothesis of guilt in such a way which includes all possibilities that only accused has committed the crime and it should exclude all possibilities that any person other than the accused has committed the crime.

Answer 6(d)

Precautions to be adopted by Digital Forensics Expert

1. Take image of computer media using a write-blocking tool to ensure there is no data added or modification done to the suspected device. The process of creating an exact duplicate of the original evidentiary media is called imaging. Using hard drive duplicator or software, the entire hard disk drive is completely duplicated. The original disk drive is then securely stored to prevent tampering.
2. Establish and maintain Chain of Custody: Chain of custody means the chronological documentation, trail that indicates the seizure, custody of digital evidence, control, transfer, analysis and disposition of evidence, physical or electronic. Digital evidence by its very nature is invisible to the human eyes and hence evidence must be developed using sophisticated tools.

   The chain of custody requires that from the moment the evidence is collected, every transfer of evidence between persons should be documented to prove that nobody else could have accessed to that evidence. If the chain of custody is broken, the defendant can ask the court to declare the evidence as admissible.
3. Document everything
4. Use only the tools and methods that have been tested and evaluated to validate the reliability of digital evidence.
5. Most valuable information that can be obtained in the course of digital forensic examination will come from interviewing the users, witnesses and the suspects. It can yield valuable information about the system configuration, applications, encryption keys and methodology to access encrypted files and network servers.
6. Without legal authority and unless the owner of the digital evidence has given consent to have the media examined, special care must be taken not to seize, copy and examine the data.
7. Due to the growing use of cryptographic storage, it may be that the only copy of the keys to decrypt the storage is in computer's memory. If the computer is switched off it will cause that information to be lost.

OR (Alternative to Q. No. 6)

Question 6A

(*i*) Ghost employees are those who do not actually work for the entity but appear on the payroll. Inserting ghost employees in the payroll register is one of the common ways of asset misappropriation or assets fraud.

What are the preliminary tests you would employ to analyses such unusual patterns and to detect such frauds ?

(*5 marks*)

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(ii) According to SA-240, "The auditor is responsible for maintaining professional skepticism throughout the audit, considering the potential for management override of controls, and recognizing the fact that audit procedures that are effective for detecting error may not be effective in detecting fraud. The requirements in this are designed to assist the auditor in identifying and assessing the risks of material misstatement due to fraud and in designing procedures to detect such misstatement". In view of this, mention general audit techniques required for the below objective of the audit :

S. No.	Objectives of applying audit techniques
1	To identify falsification in a document
2	To identify discrepancies and ensure accuracy
3	To identify control gaps in cash handling procedures
4	To gather information about internal control system
5	To identify abnormal transactions

(*5 marks*)

(iii) What is 'Undue Advantage' under The Prevention of Corruption (Amendment) Act 2018 ? What are the provisions regarding offer of bribes by commercial organizations ?

(*5 marks*)

(iv) For evidence to have any value in the eyes of courts of law, what are essential ingredients for being replied upon in the courts of law ? What are the tests to determine relevancy ?

Answer 6A(i)

Asset misappropriation is a fraudulent conduct (or misconduct). Data analysis helps to detect frauds especially in bigger organization with many employees, customers, vendors and due to a large amount of data, manual forensic audit is impractical. Inserting Ghost or fictitious employees in the payroll register are those who does not actually work for the entity. Detecting fraudulent payments and siphoning off funds can be detected with data analysis to cover ghost employees.

Tests that can help unravel fictitious employees are:

1. Check whether multiple employees are using the same bank account
2. Employee using multiple bank accounts
3. Multiple employees have same home address.
4. Employees still on the payroll even after resignation/dismissal/ retirement date
5. Head count analysis department wise.

With the help of IDEA DATA analysis software etc., test for employees with the same address can be made as a process of fraud detection.

Answer 6A(ii)

Best General audit techniques which would be more appropriate:

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S. No.	Objectives of applying audit techniques	Best general audit technique
1	To identify falsification in a document	Inspection
2	To identify discrepancies and ensure accuracy	Re-performance
3	To identify control gaps in cash handling procedures	Observation
4	To gather information about unusual changes in company's financial performance	Analytical Procedures
5	To identify abnormal transactions	Sampling

Answer 6A(iii)

Definition of 'Undue Advantage': The Amendment Act provides that any public servant who accepts or attempts to accept from any person, any 'undue advantage', either for himself or for any other person, in lieu of performance of a public duty, shall be punishable with imprisonment for a minimum term of 3 (three) years and maximum of 7 (seven) years. The Amendment Act has defined 'undue advantage' to mean any gratification other than legal remuneration that a public servant is permitted to receive. Fur 'gratification' is not limited to pecuniary gratifications or to gratifications estimable in money. By virtue of such an expansive definition, even non-monetary considerations such as a better posting, post-retirement benefits, gifts and favors not estimable in money can also be covered under the ambit of undue advantage.

Offering of bribes by commercial organizations: The Amendment Act has defined 'commercial organization' to mean not just a company or partnership incorporated in India and carrying on business in India or outside India, but also a body or partnership incorporated or formed outside India but carrying on business in India. Section 9 of the PC Act has been substituted by the Amendment Act to provide for a specific provision for offences committed by commercial organizations and persons associated with it. It provides that if a commercial organization commits any of the offences listed out in the PC Act with the intention to obtain or retain business or obtain or retain an advantage in the conduct of its business, then such commercial organization shall be punishable with fine, quantum of which is not prescribed in the Amendment Act.

The Amendment Act mandates the Central Government to formulate and prescribe guidelines to prevent persons associated with commercial organizations from bribing any public servant.

Answer 6A(iv)

For evidence to have any value in the eyes of court of law and be relied upon on reaching the decision these few rules have to be kept in mind:

1. Relevancy;
2. Admissibility; and
3. Weight.

Tests to determine Relevancy

Often it becomes difficult to draw a line between relevant and irrelevant material. In such circumstances it becomes necessary to lay down test of relevancy. The test can be considered by also having a look at two types of relevancies.

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Logical Relevancy:

The reliance is to be proved on common stock of knowledge about the world that is logic, common sense and general experience. Thus, when we derive relevancy on the basis of logic it can be said logical relevancy. There are many ways to derive relevancy on the basis of logic. For example, syllogism. A syllogism is a type of logical reasoning where the conclusion is gotten from two linked premises.

i. An apple is a fruit. All fruit is good. Therefore, apples are good.

ii. All Thieves are Criminals; A is a Thief; Therefore, A is a Criminal.

But Logical relevance is not necessarily be admissible in the court of law. If the legislature lays down guidelines to test relevancy, then such guidelines will prevail over logical reasoning.

Legal Relevancy:

By legal relevancy, it means that a fact should be relevant under the rules laid down by law. In India Section 5 of the Act, provides that only those evidences can be given which are relevant under the Act. (Section 6 to 55). Hence, these provisions lay down what are the relevant facts to be considered while recording evidences.

Any fact howsoever material not falling under the provisions will not be considered as evidence and hence not admissible. Thus, the actual test to determine relevancy becomes whether the fact is relevant under the provisions of the statute or not.

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INTELLECTUAL PROPERTY RIGHTS – LAW & PRACTICE

GROUP 1 ELECTIVE PAPER 4.3

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART- I

Questions 1

A confectionery company VITA was launched in India in 1940 which owned many registered trademarks in India and abroad. The Company is particularly famous for its "Gluco" biscuit. With its unique color scheme and design of farmyard scene the wrapper was registered as a trademark in December 1942. This wrapper is used in connection with the sale of their biscuits known as "VITA Gluco Biscuits" printed on the wrapper. The wrapper is of blue color and depicts a farmyard with a girl in the center carrying a pail of water and cows and hens around her on the background of a farmyard house and trees. For decades, the company had been selling its biscuits in this iconic packaging, building a reputation and goodwill among customers as of which it became well known.

However, in March 1961, they discovered that another company MTC was using a wrapper that they believed was deceptively similar to their registered trademark. VITA served a notice to prohibit the use of their wrapper but MTC, continued to use the wrapper. As a result, VITA filed a lawsuit seeking an injunction.

MTC, in their defense, claimed they were unaware of the registered trademarks and denied that their wrapper was similar to the registered design. They argued that there were notable differences between the two wrappers. For instance, their design depicted a girl carrying a bundle of hay on her head and carrying a sickle and a bundle of food in one hand, the cow, and hens that were different from those in the other party's wrapper. There was also said to be a difference in the design of the buildings on the two wrappers and the words printed on the two wrappers were distinct and separate.

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

(a) Discuss the concept of Passing off in the context of Trademark Law. What is the difference between Infringement and Passing off ?

(b) A mark has a direct reference to the character of the Goods/Service. Examine the statement in the light of its capability of distinguishing the Goods/Services from those of others.

(c) Explain the concept of Trade Description under Trademark Law.

(d) Describe the ingredients of Ecological Diversity.

(e) Explain the management process of Intellectual Property.

(5 marks each)

Answer 1(a)

Trademark is essentially adopted to advertise one's product and to make it known to the purchaser. It attempts to portray the nature and quality of a product. And over a period of time when the

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product becomes popular, temptations sprout up and induce others to pass off a similar or nearly similar product of theirs as that of the original owner, though not in the same words and same symbols, but in a way that makes the gullible consumer believe the product that he is purchasing is the same as the one on whose quality he has full faith and confidence.

Passing off is not defined in the Trademark Act, 1999. It is referred to in Section 27 (2), 134 (1)(c) and 135 of the Act.

The notion of Passing off in the Indian Trademarks Act, 1999 seeks to safeguard the goodwill associated with unregistered trademarks. Passing off is a common law tort which occurs when a person sells his products as the goods of another, wherein the trademark owner can take legal action to remedy this violation. This idea was developed in the seminal English case of *Perry v Truefitt (1842)* where the Court held that "a man is not to sell his own goods under the pretence that they are the goods of another man". The concept of the Passing Off in Trademark Act has since expanded to include various commerce, services, business, and non-business activities. Passing off action depends upon the principle that nobody has a right to represent his goods as the goods of somebody else. That is, a man shall not sell his goods or services under the pretence that they were those of another person.

The modern tort of passing off has five elements—

(1) a misrepresentation;

(2) made by a trader in the course of his trade;

(3) to prospective customers of his or ultimate consumers of goods or services supplied to them;

(4) which is calculated to injure business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence); and

(5) which causes actual damage to a business or goods of the trader by whom the action is brought or will probably do so.

While an action for passing off is a common law remedy for passing off of one's own goods as those of another, action for infringement of a trade mark is a statutory remedy for vindication of one's own exclusive right to the use of trade mark in relation to those goods. The use by the defendant of a trademark is not essential in an action for passing off but is a sine qua non in the case of an action for infringement. In a passing off action the plaintiff's right is "against the conduct of the defendant which leads to or is intended to lead to deception. Passing off is said to be a species of unfair trade competition or of actionable unfair trading by which one person, through deception, attempts to obtain an economic benefit of the reputation that the other has established for himself in a particular trade or business. The action is regarded as an action for deceit".

Answer 1(b)

Trademark distinctiveness is a foundational principle in trademark law, playing a crucial role in the registration and protection of trademarks. It refers to the ability of a mark to identify and distinguish the source of goods or services from those of others. The concept is not merely a legal formality; it is essential because the distinctiveness of a mark determines its eligibility for protection. Without a certain level of distinctiveness, a mark may be deemed incapable of serving its primary purpose indicating the source of a product or service.

Distinctiveness exists on a spectrum, which ranges from arbitrary and fanciful marks, known for their strong identity, to generic marks, which are inherently weak. Arbitrary marks, such as "Apple" for computers, have no relation to the goods being sold, making them highly distinctive and protectable. Fanciful marks, such as "Kodak" for photography, are invented words that carry no meaning until associated with a brand, resulting in robust protection.

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As we move along the spectrum, suggestive marks imply something about the product but require consumer thought to understand the connection. Examples include "Coppertone" for sunblock, suggesting an association but not clearly defining the product itself. Conversely, descriptive marks provide specific information about a product and inherently possess lower distinctiveness.

They can obtain protection only if they acquire secondary meaning, where consumers begin to associate the mark with a specific source. At the far end of the spectrum are generic terms, which refer to a common category of goods or services. Marks classified as generic cannot be registered or protected as trademarks, as they lack the distinctiveness needed to identify the source effectively.

As under the old law in determining whether a trade mark is capable of distinguishing, the tribunal should have regard to the extent to which the mark is inherently capable of distinguishing and also the extent to which it is in fact capable of distinguishing by virtue of use of the mark or of other circumstances. The selected mark should be capable of being represented graphically (that is in the paper form). It should be capable of distinguishing the goods or services of one undertaking from those of others. It should be used or proposed to be used as a mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person having the right either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person.

Answer 1(c)

Trade description under Section 2(1)(za) of Trade Marks Act 1999, means any description, statement or other indication, direct or indirect :

(i) as to the number, quantity, measure, gauge or weight of any goods; or

(ii) as to the standard of quality of any goods or services according to a classification commonly used or recognized in the trade; or

(iii) as to fitness for the purpose, strength, performance or behaviour of any goods, being "drug", as defined in the Drugs and Cosmetics Act, 1940 or "food", as defined in the Prevention of Food Adulteration Act, 1954; or

(iv) as to the place or country in which or the time at which any goods or services were made, produced or provided, as the case may be; or

(v) as to the name and address or other indication of the identity of the manufacturer or of the person providing the services or of the person for whom the goods are manufactured or services are provided; or

(vi) as to the mode of manufacture or producing any goods or providing services;

(vii) as to the material of which any goods are composed; or

(viii) as to any goods being the subject of an existing patent, privilege or copyright, and includes–

(a) any description as to the use of any mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters;

(b) the description as to any imported goods contained in any bill of entry or shipping bill;

(c) any other description which is likely to be misunderstood or mistaken for all or any of the said matters.

As the name suggests, Trade Description briefly describes the service or product that a company or an individual is going to sell. The main aim of adding its description is to prevent retailers, manufacturers, or service providers from misleading customers.

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The registered trademark will provide the exclusive rights to its proprietor with respect to trade description provided in the application. However, different class covers various activities; the scope of protection provided by trademark will be limited only to the area defined by a trade description in trademark registration application.

For example: If a company deals in the software industry with the brand name "PQR", another company may use the said brand name for a trade of other description like for legal industry or for sports purpose. Both these company can be registered under different class, but if the trade description does not match nature of work, then one cannot apply for registration. However, the discretion lies to accept the application with the Registrar itself. The approval for the trademark is circumstantial, and it depends on many other grounds.

The Trade Marks Act gives power to the judiciary for punishing companies or individuals who make false claims about any products or services that they sell. The Section 104 of the Trade Marks Act, levies punishment on a person or a company who sells, or hire or exposes for sale, the product or service which gives any false impression of trademark or false trade description.

The importance of filling true and correct trade description can be easily understood supported by famous case laws like *Yahoo Inc. v. Akash Arora and another, 1999 Arb L. R. 620, P. Manikam v. Assistant Commissioner, 2017 (Madras High Court)* etc.

Answer 1(d)

Ecological diversity, within the context of biodiversity, refers to the variety and richness of ecosystems, habitats, and ecological processes within a given area or region. It encompasses the diversity of landscapes, biomes, and the interactions between different organisms and their environments. Ecological diversity includes species diversity, genetic diversity, and the ecosystem diversity.

They are collectively considered as the Biodiversity Ecological diversity includes the following components: Ecosystem Diversity: This refers to the variety of ecosystems present in a particular area, such as forests, grasslands, wetlands, deserts, rivers, lakes, and oceans. It represents the inter-relation between the living (plants and animals) and non-living components (climate, soil, chemicals) of the environment. A drop of water represents the smallest ecosystem.

Tree, ponds, ocean, well, etc. all are examples of ecosystems. Ecological diversity is essential for maintaining ecosystem resilience, stability, and productivity. It supports various ecosystem services, such as nutrient cycling, pollination, water purification, and climate regulation. Additionally, ecological diversity provides habitats and resources for numerous species, contributing to overall biodiversity and ecosystem health. Conservation efforts aimed at preserving ecological diversity are crucial for sustaining ecosystems and their associated benefits for present and future generations.

Answer 1(e)

Management of Intellectual Property: Companies that invest time and money in securing their intellectual property can become more competitive in a variety of ways, including by preventing rivals from copying or closely imitating their goods or services, avoiding unnecessary spending on R&D and marketing, establishing a distinctive corporate identity through trademark and branding use, and negotiating licencing, franchising, or other intellectual property-based contractual agreement.

Management of Intellectual Property (IP) involves the strategic handling of intellectual assets to maximize their value while ensuring legal protection against infringement. It includes identifying, acquiring, protecting, and commercializing various IP rights such as patents, trademarks, copyrights, and trade secrets. Organizations must conduct regular IP audits to assess their existing intellectual assets, ownership, and legal status.

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Patent management requires filing applications, maintaining renewals, and enforcing rights against unauthorized use, while trademark management focuses on registration, brand monitoring, and infringement prevention. Copyright management ensures the protection of creative works, proper licensing agreements, and enforcement against unauthorized reproduction.

Additionally, trade secret management involves implementing confidentiality agreements, access controls, and internal policies to safeguard proprietary information. Effective IP management also includes licensing and commercialization, allowing businesses to generate revenue through agreements, franchising, and partnerships.

Strong enforcement strategies involve litigation, cease-and-desist actions, and alternative dispute resolution to protect rights against infringement. IP risk management ensures compliance with legal frameworks, assesses potential risks, and prevents unauthorized use of third-party IP.

A global IP strategy is essential for businesses operating across multiple jurisdictions, requiring knowledge of international treaties like the TRIPS Agreement. By securing rights worldwide and implementing a robust IP management plan, organizations can enhance their competitive advantage, foster innovation, and ensure long-term business sustainability.

Question 2

The United Kingdom based Company BREXIT along with members of the Scotch Whisky Association (SWA) filed a suit before the Delhi High Court for permanent injunction to prevent the Defendant, Golden Bottling Ltd., an Indian based company from selling whisky under the name "Red Scot" or any other similar designation incorporating the word "Scot", that creates misrepresentation with the genuine Scotch whisky.

The SWA had previously many times appealed to the defendant from using the word 'Scot' or 'Scotch' in their whisky productions and dealings, for two years, the defendant dropped using the word Scot in their product, later on again it was found that the defendant was still selling Red Scot Whisky in the market. Therefore, the plaintiff filed a suit before the Delhi High Court. Subsequently, a summon was duly served accompanied by an injunction to prohibit the defendant from further using the word Red Scot or Scot. However, despite service of the summons, the defendant did not appear before the court. Consequently, the Court continued the proceedings ex parte against the defendant. The Delhi High Court in its final verdict provided a permanent injunction in favor of the plaintiff as they sought, and also ordered compensation amounting to Rupees Five Lakh along with litigation cost. In the light of the above case, answer the following questions :

(a) Explain the nature and purpose of the Geographical Indication Act.

(b) What is bio-piracy ? Examine the impact of bio-piracy on bio-diversity.

(c) How does the court's interpretation of software as a 'literary work' under the Copyright Act, 1957, influence the legal protection of digital intellectual property in India ? (d) Explain the functions of Semi-Conductor Integrated Circuits Layout Design Registry.

(e) Discuss the criteria outlined in the GI Act for a Good that cannot be registered as a geographical indication. Provide examples to illustrate your points.

(5 marks each)

Answer 2(a)

Geographical Indication (GI) registrations of goods are governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Geographical Indications of Goods (Registration and Protection Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

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The Geographical Indications of Goods (Registration and Protection) Act, 1999 is a sui generis Act of the Parliament of India for protection of geographical indications in India. India, as a member of the World Trade Organization (WTO), enacted the Act to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights. The GI tag ensures that only those registered as authorised users (or at least those residing inside the geographic territory) are allowed to use the popular product name.

Darjeeling tea became the first GI tagged product in India, in 2004–05, since then 370 goods had been added to the list as of August 2020.Geographical Indications (GIs), are a crucial aspect of intellectual property law with far-reaching implications for both cultural preservation and economic development. Geographical Indications, often abbreviated as GIs, represent a form of intellectual property rights that protect products originating from specific geographical regions. These products possess unique qualities, characteristics, or reputations attributable to their geographical origin, making them distinct from similar products produced elsewhere.

A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term "Darjeeling" for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication.

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.

In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

As per Section 2(1)(e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 "Geographical indication" in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

It may be noted that any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

Answer 2(b)

Bio piracy is a violation of the rights of traditional communities over their biological resources and related knowledge. The implications of bio-piracy are economic as well as ethical: Obtaining IPRs usually patents or Plant Breeders Rights to gain monopoly control over biological resources, related traditional knowledge, or commercial products based on these resources or knowledge, without the consent of, or any benefits going to, the original holders of the resources/knowledge. The impact of bio-piracy on biodiversity are:

(a) *Lack of Sustainability*: Bio-piracy disregards the imperative of long-term sustainability, leading to the unchecked depletion of environmental resources. This short-sighted exploitation

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precipitates resource exhaustion and ecosystem collapse, engendering severe repercussions for both biodiversity and human welfare.

(b) *Loss of Biodiversity*: Bio-piracy often triggers the excessive exploitation of natural resources and the degradation of habitats, culminating in a decline in biodiversity. Such degradation profoundly affects ecosystems and the dependent species, leading to dire consequences.

(c) *Disruption of Traditional Knowledge Systems*: The illicit appropriation of traditional knowledge from indigenous communities disrupts their cultural heritage and ecological wisdom. This disruption not only undermines their way of life but also erodes invaluable traditional knowledge crucial for sustainable coexistence with nature.

(d) *Genetic Erosion*: Bio-piracy exacerbates genetic erosion by favouring the selective utilization of genetic resources beneficial for commercial ventures. This selective exploitation diminishes genetic diversity, compromising ecosystem resilience and rendering them susceptible to various threats like pests, diseases, and climatic fluctuations.

(e) *Inequitable Distribution of Benefits*: Bio-piracy entails the unjust exploitation of genetic materials and associated traditional knowledge, devoid of consent or compensation to the source communities. Such exploitation fosters social injustices and economic disparities, further marginalizing vulnerable communities.

Answer 2(c)

The Delhi High Court's recognition of software as a literary work under the Copyright Act, 1957 aligns with international legal frameworks such as the Berne Convention and TRIPS Agreement. By extending copyright protection to software code and accompanying documentation, the ruling reinforces that unauthorized reproduction or use of software constitutes copyright infringement.

This interpretation strengthens the legal foundation for digital intellectual property (IP) enforcement in India, ensuring that software developers can claim ownership over their creations. Additionally, it discourages piracy by providing software companies with the legal authority to seek injunctive relief and damages against infringers.

However, challenges remain, particularly in identifying and penalizing online piracy, where digital rights management (DRM) and blockchain based tracking mechanisms could complement legal enforcement. The case further underscores the need for India's copyright law to evolve in response to emerging technologies such as artificial intelligence-generated code and open-source software licensing. Ultimately, the court's stance enhances India's compliance with global IP standards, making the country a more attractive destination for software development and investment.

Answer 2(d)

Semiconductor Integrated Circuits Layout-Design Registry (SICLDR) is the office where the applications on Layout-Designs of integrated circuits are filed for registration of created IPR. The Registry, as per the guidelines laid down in the Semiconductor Integrated Circuits Layout Design (SICLD) Act 2000 and the Semiconductor Integrated Circuits Layout-Design (SICLD) Rules 2001, examines the layout-designs of the Integrated Circuits and issues the Registration Certificate to the original layout-designs of the Semiconductor Integrated Circuits.

A record called the Register of Layout-Designs shall be kept at the head office of the Semiconductor Integrated Circuits Layout Design Registry wherein shall be entered all registered layout-designs.

The main functions are given below:

(i) Promotion of Semiconductor Integrated Circuits Layout Designs in the country.

(ii) Act as a catalyst for generation of Intellectual Property of Semiconductor Integrated Circuits Layout Designs.

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(iii) Protecting Intellectual Property of Semiconductor Integrated Circuits and matters connected therewith and incidental thereto.

(iv) Create awareness for protection of Intellectual Property of Semiconductor Integrated Circuits Layout Designs.

(v) Protection of original Layout-Designs of Semiconductor Integrated Circuits as per the provisions of the Semiconductor Integrated Circuits Layout Design Act 2000.

(vi) Promote registration of Intellectual Property of Semiconductor Integrated Circuits Layout Designs.

Answer 2(e)

Goods that cannot be registered as GI

The following goods shall not be registered as a geographical indication:

(a) The use of which would be likely to deceive or cause confusion; or

(b) The use of which would be contrary to any law for the time being in force; or

(c) Which comprises or contains scandalous or obscene matter; or

(d) Which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or

(e) Which would otherwise be disentitled to protection in a court; or

(f) Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or

(g) Which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

Examples of Goods That Cannot Be Registered as GI:

1. Generic Names or Terms

- **Example:** "Basmati" if used generically without regional specificity.
- **Why:** If the term has become generic and does not point to a specific geographic origin, it loses eligibility.

2. Goods That Do Not Originate from a Specific Geographical Location

- **Example: Plastic buckets** manufactured in any city.
- **Why:** GI protection is for goods *originating* in a specific place with qualities or reputation essentially due to that place.

3. Services

- **Example: Ayurvedic treatment services** in Kerala.
- **Why:** The Act only covers **goods**, not services.

4. Living Animals or Plants Not Linked to Geography

- **Example:** A specific **dog breed** not tied to a region, like generic Labradors.
- **Why:** Unless the breed has qualities tied to a geographic origin (e.g., Malabari goats), it isn't eligible.

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5. Goods Whose Use Would Be Deceptive or Against Public Morality

- **Example:** A liquor product falsely claimed as a traditional tribal product.
- **Why:** Misleading or offensive names are disallowed under Section 9 of the Act.

6. Names Conflicting with Existing Trademarks

- **Example:** A local sweet named "Cadbury Delight" trying to claim GI.
- **Why:** It could infringe on an existing trademark and cause confusion.

7. Goods Not Having a Proven Historical or Reputational Link to the Region

- **Example:** A newly-invented textile pattern made in Lucknow but with no cultural or historical link.
- **Why:** GI requires historical, traditional, or reputational ties to a geographic region.

Question 3

The principle of novelty in patent law is a cornerstone in determining whether an invention qualifies for patent protection. A fundamental requirement for patentability, novelty ensures that the invention is genuinely new and has not been disclosed in any form before the date of filing. Judicial precedents have shaped the legal understanding of novelty, as evident in Ganjendra Nath Banerji v. Dhanpal Das Gupta, AIR 1945 in which the court ruled that no fixed rule can define what constitutes an invention. Instead, the assessment depends on whether the claimed invention represents an unexpected advancement beyond the ordinary progression of a given field. If a person skilled in that trade could have arrived at the claimed invention through routine developments without an inventive step, the invention lacks novelty. However, novelty does not always reside in the final product; it may exist in the manufacturing process, making procedural innovations patentable even if the resulting product is known. Additionally, a novel combination of previously known elements may be sufficient to establish novelty if the combination results in a synergistic effect rather than a mere aggregation of known features. For a patent to be granted, an applicant must not only demonstrate an improvement upon the prior art but also prove that the improvement contributes significantly to the existing body of knowledge. The novelty of the invention must be explicitly stated in the claims section of the patent application, as this defines the legal scope of protection and distinguishes the invention from prior art. The emphasis on novelty ensures that patents are granted only for genuine innovations, thereby promoting technological advancement and economic progress.

Answer the following :

(a) What is meant by 'Doctrine of Colorable Variation" ? Explain the doctrine with the help of decided cases.

(b) Explain piracy of a registered design under the provisions of the Design Act, 2000. State the penalties provided for piracy of a registered design.

(c) What is the process of pre-grant opposition and post-grant opposition of a patent in India ?

(d) "A new variety shall not be registered under the Plant Varieties Protection and Farmers' Rights Act, 2001 unless it satisfies certain criteria". Explain the meaning of new variety and the criteria required in this regard.

(e) "An applicant desirous of obtaining a patent is required to describe fully the invention therein claimed in a complete specification." Bring out the meaning and importance of complete specification.

(5 marks each)

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Answer 3(a)

The doctrine of "colorable variations" is a legal principle applied in patent law to determine whether an allegedly infringing product or process is sufficiently different from a patented invention to avoid infringement liability. A colourable variation or immaterial variation amounting to Infringement is where an infringer makes slight modification in the process or product but in fact takes in substance the essential features of the patentee's invention. By focusing on the functional equivalence and the alleged infringer's intent or design, this doctrine helps prevent competitors from avoiding infringement liability through minor or insubstantial modifications to patented inventions.

In Lektophone Corporation v. The Rola Company, 282 U.S. 168 (1930), a patent holder's patents were of sound-reproducing instruments for phonographs. According to the patent application, size and dimensions of the invention were the essence of the patent.

The patent holder claimed that a radio loud speaker manufactured by the defendant (manufacturer) infringed the patents. The manufacturer's devise also had a central paper cone, but the cone was smaller than that of the patented devise and that constituted colorable alteration. The court held that because colorable alterations of the manufacturer's devise, it would not accomplish the object specified in the patent claims and hence did not infringe upon the patent holder's claims.

Answer to Question 3(b)

Piracy of a design means the application of a design or its imitation to any article belonging to the class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing them for sale with knowledge of the unauthorized application of the design to them also involves piracy of the Design. The proprietor of the design gets exclusive right to apply the design to the article in a class in which the design is registered.

During the existence of copyright over any design, other persons are prohibited from using the design except or with the permission of the proprietor, his licensee or assignee. The following activities are considered to be infringement:

(i) to apply for the purpose of sale the design or any fraudulent imitation of it to any article in any class of articles in which the design is registered;

(ii) to import for sale any article to which the design or fraudulent or obvious imitation of it, has been applied;

(iii) to publish or to expose for sale knowing that the design or any fraudulent or obvious imitation of it has been applied to it.

Penalties: A registered proprietor can institute a suit for injunction as well as recovery of damages against any person engaged in piracy of the registered design. If any person commits piracy of a registered design, as defined in Section 22, he shall be liable to pay for a payment of a sum not exceeding Rs.25,000/- recoverable as contract debt. However, the total sum recoverable in respect of any one design shall not exceed Rs.50,000/-. The suit for injunction/damages shall not be instituted in any Court below the Court of District Judge.

Answer 3(c)

Under the Patents Act, 1970, the provisions regarding 'Opposition proceedings to Grant of Patents' are contained in Chapter V, containing Sections 25 to 28. Under the Act there are two types of opposition proceedings:

(i) Representation by any person in writing by way of opposition under various grounds stated in section 25(1), and

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(ii) by notice of opposition by any person interested, in the prescribed form on any of the grounds enumerated under section 25(2).

The Opposition by representative is required to be decided by the Controller after a hearing while the regular Opposition by any person interested is to be examined by the 'Opposition Board' constituted by the Controller from the staff of the Patent office. The Opposition Board will submit its recommendation to the Controller. The procedure for the first type is contained in Rules 55(1) to (6). The procedure for Opposition by a person interested is contained in Rules 55A to 70.

Representation in writing by any person by way of Opposition [Section 25(1) and Rule 55].- This Opposition can be made only against an application for Patent which has been published, but patent is not granted yet. The representation should be filed in the appropriate office within three months from the date of publication of the application or before the grant of patent whichever is later and should include a statement and evidence, if any, in support of the representation and a request for a hearing, if so desired.

Procedure on notice of Opposition under section 25(3) and Rule 55A to 70.- This Opposition can be filed at any time after the grant of Patent but before the expiry of one year from the date of publication of grant. The person filing the notice of opposition must be a person interested. The notice of Opposition is to be given in Form 7 and sent to the Controller in duplicate at the appropriate office.

On receipt of the notice of Opposition the Controller will notify the Patentee. He will then constitute an 'Opposition Board' consisting of three officers (see Rule 56) and refer such notice of Opposition along with the documents to that Board for examination and submission of its recommendations to the Controller. The opponent should send a Written Statement in duplicate setting out the nature of the opponent's interest, the facts upon which he bases his case and the relief which he seeks and evidence, if any, along with the notice of Opposition and should deliver to the Patentee a copy of the statement and evidence, if any.

Although a Patentee has the exclusive right of making, using or selling the invention, the validity of the Patent is not guaranteed by the Government, as is made clear in the form of the grant itself, and in section 13(4) of the Act. This is a basic principle of Patent law accepted in all the Patent Acts in India as well as in England.

The reason is not far to seek. A Patent is a kind of limited monopoly granted to the true and first inventor as a reward for the creation of something new and useful which might ultimately benefit the public. Questions whether the Patentee is the true and first inventor, whether what he has claimed as an inventor is really new, or merely what is already known dressed up on a new form, whether he has disclosed the invention completely so that a person skilled in the art could use the invention after the expiry of the term without employing further inventive skill, are all questions which can seldom be finally determined at the application stage by the Patent office. The public should therefore be given an opportunity to challenge the validity of the grant if the Patent does not fulfil any of the conditions laid down under the Act for the grant of monopoly.

Answer 3(d)

Meaning of new variety: Under Plant Varieties Protection Act, a variety developed or bred as a new variety by following breeding procedures by creating variability using other varieties or genetic stocks to be disclosed as being utilized as parents of the breeding material or for variability through other means for selection, shall be categorized as any other new variety bred by a breeder. That means for all purposes and processes, such a variety will be treated in the same manner as any other breeder's variety and will also be registered eventually as a new variety or extant variety, as the case may be following DUS testing procedures and formalities as required.

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Criteria prescribed for new variety

A new variety shall not be registered under this Act if the denomination given to such variety—

(i) is not capable of identifying such variety; or

(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950); or

(viii) is comprised of solely or partly of geographical name.

Answer 3(e)

The complete specification is a techno-legal document which fully and particularly describes the invention and discloses the best method of performing the invention. As the complete specification is an extremely important document in the patent proceedings it is advised that it should be drafted with utmost care without any ambiguity.

Important Elements of Complete Specification: As per Section 10 of the Patents Act, every complete specification is required to –

(a) Fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) Disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) End with a claim or claims defining the scope of the invention for which protection is claimed; and

(d) Be accompanied by an abstract to provide technical information on the invention; Also, make reference to deposit of the biological material in the International Depository Authority, if applicable. A complete specification customarily begins after the title, with a general preamble stating the subject to which the invention relates, followed by a detailed description of one or more embodiments of the inventions. In case of an international application designating India the title, description, drawings, abstracts and claims filed with the application shall be taken as the complete specification for the purposes of the Act.

Question 4

Competition Law and Intellectual Property Rights (IPR) have historically evolved as distinct legal frameworks, each serving different yet interrelated objectives. While both legal systems strive to promote innovation, economic growth, and consumer welfare, they achieve these goals through different mechanisms. Intellectual property rights are designed to incentivize innovation by granting inventors exclusive rights over their creations, thereby enabling them to commercially exploit

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their inventions for a limited period. These rights encourage further advancements by ensuring that valuable knowledge is not kept secret but instead made available to the public. Conversely, competition law seeks to maintain a level playing field in the market by preventing monopolistic practices, regulating mergers, and promoting fair trade. By preventing undue market concentration and restrictive business practices, competition law ensures that no single entity exerts excessive control over a particular industry.

The interplay between these two legal systems becomes particularly complex when the exclusive rights conferred by IP laws come into conflict with competition regulations. While IP laws allow for temporary monopolies on inventions, competititon law curtails the abuse of such monopolistic privileges to ensure that market competition remains healthy. In recent years, regulatory authorities and courts have intervened in cases where intellectual property owners have exercised their exclusive rights in a manner that distorts competition. Certain actions, which would ordinarily be lawful under intellectual property statutes, have been deemed anti- competitive when they lead to unfair market dominance or restrict consumer access to essential innovations. This regulatory intervention has sparked debates regarding the harmonization of competition law with intellectual property regimes, as businesses leveraging their IP assets increasingly face scrutiny under "second-tier" competition regulations. One of the most contentious issues arises when an IP rights holder engages in practices that hinder consumer welfare and market innovation. In such scenarios, competition law serves as a corrective mechanism, ensuring that the owner of an intellectual property right does not misuese their dominant position to the detriment of market fairness.

The primary tools of competition law include prohibiting anti-competitive agreements, preventing the abuse of dominant market positions, regulating mergers and acquisitions, and encouraging the efficient allocation of resources. These regulations help protect consumer interests by fostering a market environment where a variety of choices, superior-quality products, and competitive pricing exist. In contrast, intellectual property law maintains a delicate equilibrium between granting exclusive rights to innovators and serving the greater public interest. It guarantees that creators receive adequate protection and commercial benefits while preventing the indefinite monopolization of knowledge. IP rights provide a temporary legal monopoly, enabling innovators to reap economic benefits from their creations before such knowledge becomes part of the public domain. The intersection of competition law and IPR underscores the necesssity for a balanced approach that fosters innovation while preserving market competitiveness. Regulators and policymakers must ensure that intellectual property protections do not become instruments for market manipulation, thereby stifling competition and restricting consumer access to technological advancements. Ultimately, the coexistence of these legal frameworks must be structured to encourage technological progress, facilitate fair market practices, and protect consumer interests, ensuring a dynamic and competitive global economy.

Answer the following :

(a) How can competition law effectively regulate the abuse of intellectual property rights without undermining the incentive structures that drive innovation ?

(b) Explain briefly the key clauses in Technology Transfer Agreement.

(c) Explain the key features of INCOPAT Global Patent database.

(d) What are the acts that do not constitute infringement of broadcast reproduction right and performers' right ?

(e) Explain how Personality theory justifies IPR.

(5 marks each)

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Answer 4(a)

Balancing Competition Law and Intellectual Property Rights:

The intersection of competition law and intellectual property rights (IPR) presents a critical challenge in modern legal and economic frameworks. While IP laws are designed to incentivize innovation by granting temporary monopolies, competition law ensures that these exclusive rights do not distort market dynamics or harm consumer welfare.

The challenge arises when IP holders leverage their dominant market position to restrict competition, control pricing, or limit access to essential technologies. If left unchecked, such monopolistic practices can stifle innovation, limit market entry for new competitors, and reduce consumer choices. Therefore, competition law plays a crucial role in preventing the abuse of IP rights while still upholding their fundamental purpose encouraging technological advancements and economic growth. One of the key issues in regulating IP-related anti-competitive behavior is distinguishing between the legitimate exercise of exclusive rights and anti-competitive conduct. IP laws grant temporary monopolies to reward inventors, but if these rights are extended indefinitely or used to block competitors unfairly, they create entry barriers that harm market competition.

For example, patent thickets where companies accumulate numerous overlapping patents to deter new entrants can be used as a strategy to prevent innovation rather than promote it. Similarly, refusal to license standard-essential patents (SEPs) on fair, reasonable, and non-discriminatory (FRAND) terms can limit technological access, violating competition principles.

To address these issues, competition authorities have increasingly intervened to curb anti-competitive IP practices while ensuring that legitimate IP protections remain intact. Regulatory interventions in recent years have sought to maintain this delicate balance. Competition law frameworks worldwide, including antitrust regulations in the U.S. (Sherman Act), EU competition law (Article 102 TFEU), and India's Competition Act, 2002, prohibit the abuse of market dominance by IP holders.

Courts and regulatory agencies have ruled against unjustified refusals to license, tying arrangements, and patent misuse that lead to market monopolization. Landmark cases, such as Microsoft v. European Commission, highlight how tech companies have been penalized for using their IP dominance to eliminate competition.

Additionally, compulsory licensing provisions in patent law allow governments to override exclusivity in cases of public interest, such as life-saving drug patents, ensuring broader access without violating competition principles. However, overregulation by competition authorities can discourage innovation, as excessive intervention may undermine the financial incentives that drive research and development (R&D).

If companies fear that their patented innovations will be subjected to forced licensing or strict competition scrutiny, they may reduce investments in innovation, ultimately harming technological progress. Therefore, an optimal approach requires a case-by-case assessment to ensure that competition enforcement does not weaken IP incentives. In conclusion, competition law and IPR must coexist in a way that promotes both innovation and market fairness.

Regulatory bodies must adopt a balanced enforcement approach, ensuring that IP protections encourage creativity without fostering monopolistic behavior. Future policies should focus on preventing anti-competitive conduct, such as patent abuse and licensing restrictions, while still upholding the fundamental purpose of IPR—to reward and protect innovation. Achieving this equilibrium is essential for maintaining a dynamic and competitive global economy that benefits both innovators and consumers.

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Answer 4(b)

Key clauses in Technology Transfer Agreement

1. **Extent Clause:** This clause outlines the broad definition of technology transfer, including the approach, tools, and resources. The clause should clearly outline what is excluded from the license's scope as well as the parties' respective roles in the performance. The agreement that a patent licensor offers the licence to use the patent solely in a specific area can include a field of use restriction clause.
2. **Intellectual Property or Technology Transferred Clause:** Patents, trademarks, designs, and knowhow are examples of intellectual property that is covered under a technology transfer agreement. The intellectual property clause is typically provided to the client to ensure that they are the only owners of the intellectual property and to shield the genuine owner from any infringement by third parties.
3. **Termination Clause:** It should be made clear in the termination provision under what conditions a technology transfer agreement may be cancelled. The termination clause may specify grounds such as failure to pay the agreed-upon fee or price, any breach of the contract by either party, or a failure to provide goods or services of the calibre promised by the vendor. Moreover, one of the grounds for termination and insolvency is force majeure.
4. **Performance Guarantee Clause:** It is a guarantee relating to technical performance requirements that the investor must meet. It should guarantee that the design will be carried out and include sanctions in the event that it is not. The contract may be terminated if the promised performance is not met in some cases.
5. **Confidentiality Clause:** The terms governing the management of confidentiality and privacy must be made clear in the agreement. The obligations and responsibilities of both parties to keep all information pertaining to the technology private must be specified in the confidentiality agreement. Any violation or unlawful activity by a third party could result in legal action, financial penalties, and reputational damage for the licensee. The remedies and indemnity clause should be specified for both parties in the event of a similar breach in the future.
6. **Pricing and Payment Clause:** The fee structures stipulated in the agreement must include a timetable for recurring fees, taxes, foreign exchange, employee-on costs, employee entitlements, and many other expenses that must be explicit as to what, how, and where they will be used. Customers shall have the right to audit all invoices and bills under a clause that is provided for their satisfaction and transparency. In the event that the company encounters financial difficulties in the future, the parties may additionally stipulate a minimum payment. It should be stated if they will pay on a royalty basis or a lump sum basis.
7. **Warranties Clause:** A warranty clause in a technology transfer agreement will ensure that the licensor is the only owner of the transferred intellectual property and that it doesn't violate the rights of any third parties. Because there is always a danger of risk in a contract, the clause must have a warranty period during which the customer can receive some advantage of rework or newly added service with some conditions. If the vendor discovers any involvement by a third party without his knowledge, he has the right to reject the guarantee.
8. **Dispute Resolution Clause:** The procedure that will be followed if a dispute occurs between the parties is described in full in this clause. If a dispute arises between the parties, they can settle it with the help of an arbitrator and outside of court by using the predetermined settlement outlined in this clause. Arbitration is one of the ADR processes used to settle business disputes between parties. The jurisdiction clause and controlling law must be referenced in this clause. In the event that an indemnity situation arises between the parties, either the vendor will indemnify, hold harmless, and defend the client indemnities or the client will indemnify, hold

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harmless, and defend the vendor indemnities from and against any losses brought on by any Third Party Claim.

9. **Miscellaneous Clause:** The additional points or issues that are not covered by the aforementioned provisions are all included in the miscellaneous clause, which is used to address those clauses that are also important for a fair contract. Periodic auditing, details of the indemnification, insurance provisions, etc. are all mentioned in this section.

Answer 4(c)

INCOPAT is a patent database provider from China with a collection of patents from 120 authorities and is updated daily. The platform integrates functions like patent search, analysis, online cooperation and monitoring. It also facilitates the processing of value-added data like legal status, litigation's, corporate business information, technology operations, custom records, communication standards, declassified national defense patents, etc. INCOPAT provides over 300 searchable fields, 50 analytical templates and 100 customized analytical fields for users to search and analyse patents.

Key Features include-

(a) INCOPAT provides 11 types of search features, including Simple Search, Advanced Search, Citation Search, Batch Search, Citation Search, Legal Search, AI Search, Semantic Search, Extended Search, Graph Search, and Chemical Search.

(b) Search Language- All patents' titles, abstracts and full-text are translated into English and Chinese to support searching and analysing. Non-Latin text, such as Japanese and Korean can also be searched.

(c) AI Search for novelty, invalidation and clearance searches -Use of technology Knowledge Map and AI to identify the core structure in patent document and basic element of patent DNA. Knowledge Map to realize invention contents accurate identification and accurate matching.

(d) Graph Search- Supports users to search design patents. Users could upload a picture and select Locarno Classification to carry out design similarity search.

(e) Semantic Search by using Operator RAD/RPD- User can combine manual search together with semantic technology to rank the patent search results e.g. RAD=(CN1325248C) AND TI=(laminate), the search results will comprise patents with titles containing laminate and similar to CN1325248C with the application date earlier than CN1325248C.

(f) Technical Efficiency Search- INCOPAT uses NLP technology, machine deep learning together with manual intervention. It extracts content on function and efficiency from patents' abstracts, description contents and generates technical efficiency after simplification and normalization. Currently, technical efficiency index is applied to only Chinese patents.

(g) INCOPAT provides the technical efficiency sentences and phrases, which can assist users to conduct indexing more effectively.

Answer 4(d)

Section 37 of the Copyright Act, 1957, entitles every broadcasting organisation to have a special right to be known as "broadcast reproduction right" in respect of its broadcasts for twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.

Acts not Constituting Infringement of Broadcast Reproduction Right and Performers Right

Section 39 of the Copyright Act, 1957, stipulates situations in which no broadcast reproduction right or performer's right shall be deemed to be infringed. These include:

(i) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or

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(ii) the use, consistent with fair dealing of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or

(iii) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52.

Answer 4(e)

Intellectual property rights are deeply rooted in various philosophical traditions that shape how we understand and protect creative works. Among these, the Personality Theory stands out as a compelling framework that views creative expressions as extensions of their creators' personalities and identities. Unlike utilitarian approaches that focus primarily on economic incentives, this theory emphasizes the deeply personal connection between creators and their intellectual creations, suggesting that protection is warranted based on this intimate relationship.

The Personality Theory of intellectual property finds its philosophical foundations in the works of renowned German philosophers Immanuel Kant and Georg Wilhelm Friedrich Hegel. Their ideas about personhood, self-expression, and property rights laid the groundwork for this influential perspective on intellectual property protection.

Personality theory finding place in the writings of Kant and Hegel is that private property rights are crucial to the satisfaction of some fundamental human needs. The law makers thus must create and allocate entitlements to resources in a way that best enables people to satisfy such needs. From this perspective, Intellectual Property Rights may be justified either on the ground that they shield from appropriation or modification artifacts through which authors and artists have expressed their "wills" (an activity thought central to "personhood"). Justin Hughes, taking inspiration from Hegel's Philosophy of Right, laid down following guidelines concerning the proper shape of an Intellectual Property regime:-

(a) We should be more willing to accord legal protection to the fruits of highly expressive intellectual activities, such as the writing of novels, than to the fruits of less expressive activities, such as genetic research.

(b) Because a person's "persona" -- his "public image, including his physical features, mannerisms, and history" -- is an important "receptacle for personality," it deserves generous legal protection, despite the fact that ordinarily it does not result from labour.

(c) Authors and inventors should be permitted to earn respect, honour, admiration, and money from the public by selling or giving away copies of their works, but should not be permitted to surrender their right to prevent others from mutilating or misattributing their works.

The Personality Theory suggests that intellectual property rights protect not just creative works themselves but the dignity and autonomy of their creators. By recognizing legal rights over intellectual creations, society acknowledges the personal investment makers put into their work and respects their agency in determining how that work enters public discourse. This perspective views IP rights as a form of respect for human dignity—recognizing that creative expression is integral to human flourishing and deserves protection on that basis. The theory argues that when we protect intellectual property, we're ultimately protecting creators' capacity for self-expression and self-determination.

Indian courts have periodically affirmed the importance of personality interests in intellectual property. In landmark cases like *Amar Nath Sehgal v. Union of India* (2005), the Delhi High Court recognized the destruction of an artist's mural as a violation of his moral rights, emphasizing that creative works represent the "soul" of the creator and deserve protection on that basis.

Similarly, in *Amarnath Sehgal v. Union of India*, the court observed that "the author has a right to preserve, protect and nurture his creations through his moral rights," reflecting Hegelian concepts of property as an extension of personhood.

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ARTIFICIAL INTELLIGENCE, DATA ANALYTICS AND CYBER SECURITY LAWS & PRACTICE

GROUP 1 ELECTIVE PAPER 4.4

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

Question 1

In a high-level management discussion at Zedtronics Solutions Ltd, a leading technology firm, the legal team, Artificial Intelligence (AI) researchers, and Compliance personnel gathered to explore the evolving complexities of artificial intelligence, copyright laws, and digital regulations. The discussion was triggered by a real-time scenario–an AI-powered content generator recently developed by the Company that could produce unique works of music, text and design. This innovation had already been used in various projects, leading to an internal debate about the ownership and copyrightability of AI-generated content.

The legal team pointed out that the current copyright framework primarily recognizes human authorship. Some experts argued that since AI models are trained using vast datasets, the developers who curate these datasets and fine-tune the model should hold the copyright. Others emphasized that users who direct the AI's output through specific instructions play a crucial creative role and should, therefore, be granted authorship. One of the AI researchers noted that AI-generated works often combine existing ideas in novel ways without direct human input, raising concerns about whether such works meet the originality threshold required for copyright protection. Some jurisdictions had recently acknowledged AI-generated works by assigning authorship to the person initiating the creative process, whereas others remained firm that only humans could hold intellectual property rights. Additionally, the risk of monopolistic control over AI-generated content was highlighted, as granting rights to developers could lead to restrictive licensing models, limiting creativity and access for end users.

The conversation then transitioned to the broader regulatory landscape, particularly the government's evolving approach to digital governance. With increasing dependence on digital platforms, a newly introduced regulation aimed at structuring compliance in the online space had sparked debate. The compliance officer explained that small and medium-sized enterprises (SMEs) were particularly vulnerable, as they often lacked the resources to implement extensive compliance measures. Content creators and online businesses also faced challenges concerning new standards for digital platforms. While ensuring accountability was essential, overly rigid measures could risk stifling creativity and engagement, potentially leading to excessive content takedowns. The discussion also touched on the issue of data localization, with questions raised about the implications for global trade and the ability of businesses to store information across borders. Some felt that enforcing data localization could strengthen national security, while others warned of the economic and operational challenges for companies navigating multi- jurisdictional regulations.

Another pressing concern in the discussion was the increased reliance on digital records in legal proceedings. The legal department referenced recent case where manipulated digital evidence had led to an erroneous judicial outcome, underscoring the risks associated with electronic

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documentation. Company's compliance experts stressed the importance of implementing stringent verification mechanisms, including emerging technologies such as blockchain for secure documentation. However, challenges remained in distinguishing between accidental errors and deliberate falsification, raising the question of how accountability should be structured in such cases. There was also a discussion on whether the legal system was adequately equipped to assess digital evidence and whether new forensic methodologies needed to be standardized across courts.

As the meeting progressed, the focus shifted to evolving challenges in data security, privacy concerns, and customer relationship management, the leadership team recognized the need for a strategic approach to technology integration that aligns with business objectives.

The conversation concluded with reflections on the broader impact of these legal and regulatory developments. While technological advancements offered immense opportunities for innovation, there was a growing need for balanced legal frameworks that protected stakeholders without hindering progress. As AI and digital regulations continued to evolve, organizations had to remain agile, adapting their compliance strategies to align with emerging legal standards.

In the light of above case scenario, answer the following questions :

(a) You being in the legal team of Zedtronics Solutions suggest, should the law evolve to recognize AI-generated content, and if so, who should be the rightful copyright holder ? Support your answer with a case law.

(5 marks)

(b) In the light of a judicial precedent of a case in the Delhi High Court, regarding the issue of whether an AI generated work can be copyrighted in India, comment whether granting copyright to AI developers encourages innovation or creates monopolistic control ?

(5 marks)

(c) What are the key concerns which Zedtronics Solutions Ltd may face in balancing business interests, individual privacy, and national security under new digital regulations i.e., Digital India Act 2023 ?

(5 marks)

(d) "Company's compliance experts stressed the importance of implementing stringent verification mechanisms, for secure documentation. However challenges remained in distinguishing between accidental errors and deliberate falsification, raising the question of how accountability should be structured in such cases." In the light of the above statement state how can legal frameworks effectively differentiate between unintentional mistakes in digital records and the deliberate fabrication of electronic evidence in judicial proceedings ?

(5 marks)

(e) Explain the significance of data privacy as a fundamental right and outline the key challenges individuals face in protecting their personal information online.

(5 marks)

Answer 1(a)

The ability of Artificial Intelligence to generate huge content quickly raises copyright issues as it can easily duplicate and reproduce copyrighted content such as images, texts, videos, music, etc. AI-powered systems can copy any work or art or content without permission of the owner, making

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it difficult to identify the original and duplicate or unauthorized work. Now, the question arises whether the content generated through AI can be copyrighted. In most jurisdictions including Spain and Germany, it has been determined that only works created by a human being can be protected by copyright.

A key question regarding AI copyright in India is whether computer-authored works meet the originality criterion under Section 13 of the Copyright Act, 1957. Courts have interpreted originality as intellectual effort furnished by humans. But training neural networks involves significant human endeavour in curating datasets, designing architectures, etc. Developers argue this effort imbues originality into works like AI- generated music. Similarly, in the *M/S Kibow case*, the Delhi High Court ruled that AI systems cannot be officially registered as the proprietor of a trademark. It also highlighted that the Trade Marks Act, of 1999 illustrates that only a human being can apply for and be officially registered as the proprietor of a trademark.

Amending the law to designate AI developers as owners could incentivize building socially useful AI assistants and content generators. However, some caution this may create monopolies over data used to train models. Nuanced provisions may be needed to balance interests, like compulsory licensing of protected AI works. Infusing human intent into generative processes can also strengthen copyright claims. India's jurisprudence around AI copyright will likely evolve case-by-case.

However, others contend processing data alone may not satisfy originality – focus should be on the creative process itself. Especially with advanced AI like Generative Adversarial Networks, outputs manifest autonomously with little human input during generation. Even if AI works get copyright, determining the rights-holder is difficult – the programmer, user, or AI system itself? Overall, more clarity is required on copyright's applicability to AI works in India.

Answer 1(b)

Intellectual Property Rights including Copyright and Related rights provide exclusive rights to the right owner who are legal persons for a set duration. These rights allow for the work or creation or innovation to be protected and enables collection of royalties through licensing. For a right to be granted, the owner is required to meet the criteria specified under the law. India being a member of all major international conventions and agreements for the protection of Intellectual Property Rights grants adequate protection of rights for works created by legal persons through Copyright Law and protects inventions through the Patent system. Therefore, there is no requirement to create a separate category of rights for AI and related innovations in the Indian IPR Regime. Therefore, while Artificial Intelligence (AI) and related innovations is an evolving stream of technology the current legal framework under the Patent and Copyright Act is well-equipped to protect Artificial Intelligence generated works and related innovations. Presently, there is no proposal to create any separate right so the law in the context of AI-generated content.

In the case of *Ferid Allani v. Union of India*, the Delhi High Court examined the issue of whether an AI-generated work can be copyrighted in India. The court held that copyright protection can be granted to AI-generated works if they meet the criteria for originality and authorship under the Copyright Act, of 1957. The court also held that the authorship of an AI-generated work should be attributed to the person who decided to create the work, such as the programmer or user of the AI system.

Alternate Answer to above paragraph

The Copyright Act, 1957, does not explicitly address AI-generated content, but Section 2(d)(vi) states that for computer-generated works, the person causing the work to be created is considered the author. However, there is no clear judicial precedent in India attributing copyright to AI-generated works, especially those with minimal human intervention.

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Recent Development:

In 2020, the Indian Copyright Office faced a case involving an AI system named 'RAGHAV' and its attempt to secure copyright registration for an artwork called 'Suryast.' Initially the application was rejected for lacking a human author, the painting was later granted protection when a natural person was named as a co-author alongside 'RAGHAV.' Subsequently, a withdrawal notice was issued, seeking clarification on the legal status of 'RAGHAV,' highlighting the ambiguity surrounding AI's qualification as an artist under the Copyright Act. Therefore, from this case it can be said as the AI with human can be made author. But the legal position is yet to be clarified.

Answer 1(c)

Key concerns which Zedtronics Solutions Ltd may face in balancing business interests, individual privacy, and national security under new digital regulations proposed i.e., Digital India Act 2023(Proposed) are given below:

- **Burdensome Compliance Requirements**: The act's regulations may place a significant burden on businesses, particularly small and medium-sized enterprises (SMEs).
- **Freedom of Expression**: The review of the "safe harbor" principle for online platforms could potentially impact freedom of expression. Ensuring that the act doesn't curb this fundamental right is a delicate task.
- **Resource and Infrastructure Requirements**: Effective enforcement of the DIA will require substantial resources, expertise, and infrastructure. Investing in these areas will be crucial.
- **Stakeholder Interests**: Balancing the interests of various stakeholders, including tech giants and citizens' rights, poses a significant challenge. Ensuring that all voices are heard and considered in the implementation process is essential.
- **Surveillance and Privacy Concerns**: Critics argue that certain provisions of the act may grant excessive surveillance powers to the government, potentially compromising privacy rights. Robust safeguards should be incorporated to protect against abuse of power and violations of privacy.
- **Data Localization and Cross-Border Data Flows**: The act's approach to data localization is a point of contention. While localization can enhance data protection and security, it may also disrupt cross-border data flows, impacting global business that rely on efficient data transfers.

Answer 1(d)

Section 228 of the Bharatiya Nyaya Sanhita, 2023 (BNS) deals with fabricating false evidence. Section 228 provides that whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

Courts and investigators determine whether an error in a digital record was accidental (due to human error, oversight, or technical glitches) or deliberate (intended to deceive or manipulate). This is typically established through forensic analysis, witness testimony, and examination of system logs.

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Technical Safeguards: The use of audit trails, cryptographic hash values, and access controls helps establish the integrity of digital records. These mechanisms enable forensic experts to trace changes to records and identify unauthorized or suspicious modifications. Audit trails and cryptographic hashes provide objective evidence of when and by whom a record was created or modified. Discrepancies in these logs can indicate tampering, while consistent records may suggest an honest mistake.

Procedural Requirements: Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023 mandates certification and authentication of electronic records presented in court. This ensures that only records produced through a reliable process are admissible as evidence. This process helps filter out records that may have been altered or fabricated, intentionally or otherwise.

Conclusion

Legal frameworks differentiate between unintentional mistakes and deliberate fabrication of digital records by requiring proof of intent for criminal liability, implementing technical safeguards to detect tampering, and mandating procedural requirements for the authentication of electronic evidence. This structured approach ensures that only deliberate acts of falsification are subject to severe legal consequences, while accidental errors are addressed through procedural improvements and training.

Answer 1(e)

In many jurisdictions, privacy is considered a fundamental human right, and data protection laws exist to guard that right. Data privacy is also important because in order for individuals to be willing to engage online, they have to trust that their personal data will be handled with care. Organizations use data protection practices to demonstrate to their customers and users that they can be trusted with their personal data.

Personal data can be misused in a number of ways if it is not kept private or if people don't have the ability to control how their information is used:

- Criminals can use personal data to defraud or harass users.
- Entities may sell personal data to advertisers or other outside parties without user consent, which can result in users receiving unwanted marketing or advertising.
- When a person's activities are tracked and monitored, this may restrict their ability to express themselves freely, especially under repressive governments.

For individuals, any of these outcomes can be harmful. For a business, these outcomes can irreparably harm its reputation, as well as result in fines, sanctions, and other legal consequences. In addition to the real-world implications of privacy infringements, many people and countries hold that privacy has intrinsic value: that privacy is a human right fundamental to a free society, like the right to free speech.

Key Challenges users face individuals face in protecting their personal information online:

- **Online tracking:** User behavior is regularly tracked online. Cookies often record a user's activities, and while most countries require websites to alert users of cookie usage, users may not be aware of to what degree cookies are recording their activities.
- **Losing control of data:** With so many online services in common use, individuals may not be aware of how their data is being shared beyond the websites with which they interact online, and they may not have a say over what happens to their data.
- **Lack of transparency:** To use web applications, users often have to provide personal data like their name, email, phone number, or location; meanwhile, the privacy policies associated with those applications may be dense and difficult to understand.

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- **Social media:** It is easier than ever to find someone online using social media platforms, and social media posts may reveal more personal information than users realize. In addition, social media platforms often collect more data than users are aware of.
- **Cybercrime:** Many attackers try to steal user data in order to commit fraud, compromise secure systems, or sell it on underground markets to parties who will use the data for malicious purposes. Some attackers use phishing attacks to try to trick users into revealing personal information; others attempt to compromise companies' internal systems that contain personal data. The Digital Personal Data Protection Act, 2023, is the new legal framework in India which aims to protection of data and curb the data theft.

Question 2

The risk management committee and the senior leadership team of a Paythen Ltd, a major fintech company and Kyuthen Ltd, its e-commerce subsidiary convened for a strategic cybersecurity review. As both companies expanded their digital presence, concerns over cybersecurity threats, regulatory compliance, and operational risks became more pressing. The Chief Risk Officer (CRO) opened the session by emphasizing the need for a proactive approach to cybersecurity. He invited the Chief Information Security Officer (CISO) to brief the team on how the e-commerce subsidiary could enhance its network security to prevent DoS attacks and unauthorized access. The CISO suggested implementing stateful inspection to monitor network traffic dynamically, while the Chief Technology Officer (CTO) argued that proxy-based filtering would provide greater control over outbound traffic. The discussion revealed that a hybrid approach, combining multiple filtering techniques, would likely provide the best balance between security and performance.

The conversation naturally evolved to secure remote and hybrid access for employees across both entities. The Head of IT Security explained that traditional VPNs were proving insufficient in handling diverse access points, and the company was considering a shift toward zero- trust architecture. The committee discussed the benefits of identity and access management solutions, including multi-factor authentication and role-based access controls. The Chief Human Resources Officer (CHRO) raised concerns about the impact on employee productivity, prompting a debate on how to maintain a seamless user experience while ensuring robust security. Endpoint security for personal devices also emerged as a critical topic, with the Risk Management Committee stressing the importance of strict policies and cybersecurity awareness programs.

Midway through the session, the discussion shifted to a recent cybersecurity breach at competitor fintech company, where sensitive customer data had been compromised. The Compliance Officer reminded the leadership team of their obligation to report such incidents to the national cybersecurity response agency, warning that non-compliance could lead to penalties and reputational damage. The CRO questioned whether the Company's security policies were sufficiently proactive or merely reactive. The consensus was that investing in continuous threat monitoring and incident response mechanisms was essential to prevent future breaches.

Attention then turned to risk management at the multinational level. The fintech company was rapidly expanding its operations, and the committee recognized the need for a globally recognized cybersecurity framework. The CIO emphasized the importance of prioritizing investments in cybersecurity infrastructure based on critical operational risks. The team explored strategies for integrating cybersecurity risk management with business objectives, ensuring that investments in cybersecurity were both effective and cost-efficient. The discussion underscored the significance of aligning cybersecurity strategies with regulatory requirements across different regions, ensuring compliance while optimizing security practices.

Further complicating matters, one of the firm's major financial clients faced increasing cyber threats, including phishing, ransomware, and identity fraud. The firm was engaged in helping this client

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develop a robust Cyber Crisis Management Plan (CCMP) that aligned with regulatory frameworks and RBI guidelines. Cybersecurity and regulatory teams worked closely with the client to integrate proactive threat detection, swift incident response strategies, and effective recovery protocols. The firm also advised on fostering a cybersecurity-conscious corporate culture to minimize risks associated with human error.

As the meeting neared its conclusion, a critical issue surfaced concerning the e-commerce subsidiary. The platform had come under legal scrutiny for allegedly enabling the sale of counterfeit products. While the Company claimed intermediary protection from liability, legal experts pointed out that this protection was contingent on demonstrating due diligence. The discussion revolved around the necessary steps the e-commerce platform should take, including setting up automated monitoring tools, strengthening seller verification processes, and swiftly acting on customer complaints regarding counterfeit goods. The committee emphasized that beyond legal compliance, ensuring a trustworthy platform was essential for maintaining customer confidence and long-term sustainability.

In the light of above case scenario, answer the following questions :

(a) How should the e-commerce subsidiary of both Paythen Ltd and Kyuthen Ltd optimize network security using hardware as well as software or combination of both to prevent DoS attacks and unauthorized access while maintaining efficiency ?

(5 marks)

(b) Explain the key components of a Cyber Crisis Management Plan and outline its significance in mitigating cyber risks for financial institutions.

(5 marks)

(c) How should the Paythen Ltd respond to a cybersecurity breach while ensuring regulatory compliance and strengthening its cyber resilience ? Name and state the role of national nodal agency in this regard.

(5 marks)

(d) What measures should Paythen Ltd implement to enhance cybersecurity resilience and protecting critical infrastructure to manage risks effectively across its operations and supply chain ?

(5 marks)

(e) Explain the method which the e-commerce subsidiaries of fintech companies Paythen Ltd and Kyuthen Ltd should use to navigate legal risks related to counterfeit products while ensuring responsible platform management.

(5 marks)

Answer 2(a)

It is a hardware/software which acts as a shield between an organizations network and the internet and protects it from the threats like virus, malware, hackers, etc. It can be used to limit the persons who can have access to your network and send information to you. There are two type of traffic in an organization viz. inbound traffic and outbound traffic. Using firewall, it is possible to configure and monitor the traffic of the ports. Only the packets from trusted source address can enter the organizations network and the sources which are blacklisted and unauthorized address are denied access to the network. It is important to have firewalls to prevent the network from unauthorized access, but firewall does not guarantee this until and unless it is configured correctly. A firewall can be implemented using hardware as well as software or the combination of both.

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- Hardware Firewalls: example of hardware firewalls are routers through which the network is connected to the network outside the organization i.e. Internet.
- Software Firewalls: These firewalls are installed and installed on the server and client machines and it acts as a gateway to the organizations network.

  In the operating system like Windows 2003, Windows 2008 etc. it comes embedded with the operating system. The only thing a user need to do is to optimally configure the firewall according to their own requirement. The firewalls can be configured to follow "rules" and "policies" and based on these defined rules the firewalls can follow the following filtering mechanisms.
- Proxy- all the outbound traffic is routed through proxies for monitoring and controlling the packet that are routed out of the organization.
- Packet Filtering- based on the rules defined in the policies each packet is filtered by their type, port information, and source & destination information. The example of such characteristics is IP address, Domain Name, port numbers, protocols etc. Basic packet filtering can be performed by routers.
- Stateful Inspection- rather than going through all the field of a packet, key features are defined. The outgoing/incoming packets are judged based on those defined characteristics only.
- The firewalls are an essential component of the organizations network. They not only protect the organization against the virus and other malicious code but also prevent the hackers to use their network infrastructure to launch DOS attacks.

By applying the measures discussed above, the e-commerce subsidiary of both Paythen Ltd and Kyuthen Ltd may optimize network security using hardware as well as software or combination of both to prevent DOS attacks and unauthorised access while maintaining efficiency.

Answer 2(b)

A Cyber Crisis Management Plan (CCMP) should be immediately evolved and should be a part of the overall Board approved strategy. Considering the fact that cyber-risk is different from many other risks, the traditional BCP/DR arrangements may not be adequate and hence needs to be revisited keeping in view the nuances of the cyber-risk. In India, CERT-IN (Computer Emergency Response Team – India, a Government entity) has been taking important initiatives in strengthening cyber-security by providing proactive & reactive services as well as guidelines, threat intelligence and assessment of preparedness of various agencies across the sectors, including the financial sector. CERTIN also have come out with National Cyber Crisis Management Plan and Cyber Security Assessment Framework. CERT-In/NCIIPC/RBI/IDRBT guidance may be referred to while formulating the CCMP.

CCMP should address the following four aspects: (i) Detection (ii) Response (iii) Recovery and (iv) Containment. Banks and Financial Institutions need to take effective measures to prevent cyber-attacks and to promptly detect any cyber-intrusions so as to respond / recover / contain the fall out. Banks are expected to be well prepared to face emerging cyber-threats such as 'zero-day' attacks, remote access threats, and targeted attacks. Among other things, banks should take necessary preventive and corrective measures in addressing various types of cyber threats including, but not limited to, denial of Service, Distributed Denial of Services (DDoS), ransom-ware / crypto ware, destructive malware, business email frauds including spam, email phishing, spear phishing, whaling, vishing frauds, drive-by downloads, browser gateway fraud, ghost administrator exploits, identity frauds, memory update frauds, password related frauds, etc.

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Answer 2(c)

The Computer Emergency Response Team (CERT-In) is the national nodal agency for collecting, analyzing, forecasting, and disseminating non-critical cybersecurity incidents.

In addition to cybersecurity incident reporting and notifying, the CERT-In cybersecurity directive helps with issuing guidelines for Indian organizations guidelines as well, offering the best information security practices for managing and preventing cybersecurity incidents. As per Information Technology Act and related Rules under it, all intermediaries are required to report any cybersecurity incidents to CERT-In. CERT-In roles and functions were later clarified in an additional amendment under Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 (IT Rules, 2013). CERT-In acts as the primary task force that:

- Analyzes cyber threats, vulnerabilities, and warning information
- Responds to cybersecurity incidents and data breaches
- Coordinates suitable incident response to cyber-attacks and conducts forensics for incident handling
- Identify, define, and take suitable measures to mitigate cyber risks
- Recommend best practices, guidelines, and precautions to organizations for cyber incident management so that they can respond effectively.

Paythen should immediately report any cybersecurity incident to CERT-In, follow its guidelines, and implement incident response, containment, and recovery measures as outlined in its Cyber Crisis Management Plan."

Alternate Answer

In the event of a cybersecurity breach, Paythen Ltd must undertake a structured, multi-pronged response to both mitigate the damage and ensure compliance with regulatory obligations, particularly as outlined under the Information Technology Act, 2000 and the rules framed thereunder, including the IT (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.

1. Immediate Incident Response

- Activate the Cyber Crisis Management Plan (CCMP): Paythen Ltd must immediately activate its incident response protocol to contain the breach, assess the scope of compromised data, and isolate affected systems.
- Engage internal incident response teams and relevant stakeholders including IT Security, Legal, Risk Management, and Compliance.
- Document all actions taken from the point of detection for audit and legal purposes.

2. Regulatory Notification and Reporting

- Report the incident to CERT-In, the national nodal agency for handling non-critical cybersecurity incidents. As per the CERT-In directions and the IT Act, all cybersecurity incidents must be reported within six hours of detection.
- CERT-In's core functions include:
  - Analyzing cyber threats and vulnerabilities.
  - Coordinating responses to incidents.

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- Issuing security alerts, best practices, and guidelines.
- Conducting forensics and post-incident assessments.

- Failure to notify CERT-In in time can attract legal penalties and reputational damage.

3. Technical Containment and Recovery

- Implement network-level controls such as intrusion detection systems (IDS), firewalls, and endpoint protection to prevent further infiltration.
- Patch vulnerabilities and deploy remediation updates across compromised systems.
- Restore operations through verified and secure backups.

4. Internal and External Communication

- Inform affected customers and stakeholders in a transparent and timely manner, ensuring adherence to principles of accountability and privacy.
- Prepare public statements in consultation with legal and PR teams to manage reputational impact.

5. Strengthening Cyber Resilience Post-Breach

- Undertake a root cause analysis to understand how the breach occurred.
- Review and upgrade Identity and Access Management (IAM) systems, including Multi-Factor Authentication (MFA) and Zero Trust Architecture.
- Enhance endpoint security protocols for remote and hybrid access, especially for personal devices.
- Conduct cybersecurity awareness training for employees to minimize risks due to human error.

6. Long-Term Strategic Integration

- Align cybersecurity investments with operational risk priorities using globally recognized frameworks such as NIST, as mentioned in the scenario.
- Ensure continuous threat monitoring, automated detection tools, and incident response drills are embedded in the organization's cyber governance structure.
- Integrate cybersecurity risk management with business objectives to achieve resilience alongside regulatory adherence.

Role of the National Nodal Agency – CERT-In

The Computer Emergency Response Team – India (CERT-In) functions as the national nodal agency for responding to computer security incidents. It:

- Collects, analyzes, forecasts, and disseminates information on cybersecurity incidents.
- Issues advisories and directions for effective incident prevention, detection, and response.
- Coordinates with affected entities to conduct forensics and recommends cyber hygiene practices.
- Ensures compliance with obligations under the Information Technology Act and helps Indian organizations align with national security strategies such as the National Cyber Security Strategy 2023.

By promptly reporting incidents to CERT-In and implementing its guidelines, Paythen Ltd can not

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only ensure regulatory compliance but also build a robust, proactive, and resilient cybersecurity posture.

Answer 2(d)

As the most credible global certification body, the National Institute of Standards and Technology (NIST) has approved the Cybersecurity Framework (NCFS) as a framework for harmonizing the cybersecurity approach. To manage cyber-related risks responsibly, the NIST Cybersecurity Framework includes guidelines, standards, and best practices. According to this framework, flexibility and affordability are of prime importance. Moreover, it aims at fostering resilience and protecting critical infrastructure by implementing the following measures:

- A better understanding, management, and reduction of the risks associated with cybersecurity.
- Prevent data loss, misuse, and restoration costs.
- Determine the most critical activities and operations that must be secured.
- Provides evidence of the trustworthiness of organizations that protect critical assets.
- Optimize the cybersecurity 'Return on Investment' (ROI) by prioritizing investments.
- Responds to regulatory and contractual requirements.
- Assists in the wider information security program.
- Using the NIST CSF framework in conjunction with ISO/IEC 27001 simplifies the process of managing cybersecurity risk. Moreover, NIST's cybersecurity directive also allows for easier collaboration in the organization as well as across the supply chain, allowing for more effective communication.

Paythen Ltd may implement these measures.

Answer 2(e)

The safe harbour protection for e-commerce marketplaces is an important aspect that deserves careful consideration. The concept of safe harbour under Section 79 of the Information Technology Act, 2000(IT Act), acts as a defence for the intermediaries, but there are some instances where Intellectual Property Rights (IPR) are openly violated by the intermediaries. Safe harbour protection acts as an inherent security granted to intermediaries against the imposition of liability for acts done by third parties.

Safe harbour provisions were introduced to protect intermediaries from becoming liable for the acts of third parties, provided the intermediary observed 'due diligence'. Intermediaries are shielded from liability under Section 79 of the IT Act for data, material, and information shared by users through them but over which they have no direct knowledge. Under the safe harbour, intermediaries are protected from third-party information and data made available or hosted by them thereby acting as a defence. Intermediaries are protected by safe harbour from all legal consequences unless they knew that illicit content was being broadcast on their platform.

This method may be used to navigate legal risks related to counterfeit products while ensuring responsible platform management. To maintain safe harbour protection, e-commerce platforms must demonstrate proactive due diligence, such as monitoring for counterfeit goods, verifying sellers, and acting promptly on complaints.

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Question 3

In a recent strategic management meeting held at Sainik Enterprises Ltd, a medium-sized enterprise operating in the precision engineering sector, senior management engaged in an intensive discussion regarding the Company's technology infrastructure and its preparedness for future growth. The enterprise had witnessed commendable expansion over the past five years, extending its market presence significantly within India and internationally. However, operational bottlenecks, fragmented data management systems, and escalating cybersecurity concerns had surfaced, compelling the leadership to critically evaluate the existing technological framework.

During the meeting, Priyank Sharma, the Head of IT and Data Security, highlighted an alarming incident that had recently shaken the confidence of enterprises nationwide. In one highly publicized cybercrime case, an employee at an Indian call center misused confidential credit card details of an international customer to conduct unauthorized online transactions. The incident not only led to severe reputational damage but also resulted in India's first conviction for cybercrime involving the misuse of foreign customers' data. Drawing parallels, Priyank emphasized the critical importance of strengthening internal data governance and robust cybersecurity practices. Her concern was compounded by the increasing reliance on cloud-based services, which, despite their operational benefits, inherently heightened risks associated with data breaches and insider threats.

Adding to the complexity, Anita Kar, the Chief Operations Officer, steered the discussion towards the Company's immediate need for a comprehensive Enterprise Resource Planning (ERP) system. He argued that fragmented legacy systems were creating inefficiencies, inaccurate forecasting, and inventory mismanagement. According to Anita, investing in an ERP solution was vital not only for integrated management of core business processes but also for enhancing real-time visibility across departments, enabling informed decision-making. Nevertheless, the management acknowledged that selecting an ERP system required meticulous evaluation, balancing cost constraints, necessary functionalities', and vendor reliability. It was clear from previous internal assessments that indiscriminate ERP adoption without thorough due diligence had led competitors into financial overruns and operational setbacks. Ananda Menon, the Finance Head, echoed the cautious sentiment, emphasizing the necessity of a structured evaluation framework before committing significant capital investment into any ERP solution. He stressed the importance of clearly defining organizational objectives, involving cross-functional teams in the evaluation, and conducting thorough vendor assessments to measure reliability, support capabilities, and scalability. The evaluation process, according to Anand, must incorporate comprehensive cost-benefit analysis, encompassing not just the initial implementation but ongoing maintenance, training, and support.

Raken Joshik, Head of Business Analytics, seized upon this moment to highlight how contemporary ERP solutions were increasingly integrating artificial intelligence (AI) and machine learning (ML), offering significant potential to enhance strategic and operational decision-making capabilities. He explained that leveraging AI-driven ERP systems could automate routine tasks, optimize inventory management through predictive analytics, and significantly improve demand forecasting accuracy. Raken advocated for a strategic approach to integrating AI capabilities within ERP systems, emphasizing that intelligent data analysis could lead to more accurate and quicker managerial decisions, operational optimization, and considerable cost savings. However, Smritina Iyer, Head of Procurement and Logistics, cautioned against over-reliance on technology without clearly defining management practices. She argued that although AI and automation were beneficial, the role of Management Information Systems (MIS) should not be underestimated. Smritina advocated for a balanced approach, suggesting organizations should utilize expert systems for specific diagnostic and problem-solving tasks. Her recommendation aimed at ensuring a smooth synergy between technological adoption and human managerial oversight, thereby preventing over-automation that could potentially obscure managerial judgment and responsiveness.

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Rajivan Nair, Chief Technology Officer, further enriched the discussion by addressing the contemporary shift towards Software-as-a-Service (SaaS) models. He acknowledged the notable advantages of SaaS, such as reduced upfront capital expenditure, scalability, and enhanced flexibility, particularly beneficial for SMEs like Sainik Enterprises. Nonetheless, Rajivan underscored the potential challenges accompanying SaaS adoption. Rajivan recommended adopting a strategic SaaS integration approach by carefully assessing the reliability of vendors, negotiating robust Service Level Agreements (SLAs), and ensuring stringent cybersecurity measures are embedded within service contracts.

Concluding the comprehensive deliberation, senior management agreed on establishing a cross-functional task force responsible for formulating a detailed strategic roadmap. The aim was to ensure an informed, balanced, and future-proof technological infrastructure capable of supporting sustained organizational growth, enhancing operational efficiencies, and maintaining robust data security.

In the light of above facts, answer the following :

(a) Outline the significance of India's first cybercrime conviction that Priyank Sharma, the Head of IT and Data Security revealed in the meeting. Indicate how the case demonstrated the applicability of the Indian Penal Code in tackling online fraud ?

(5 marks)

(b) Enumerate the approach that Anita Kar the Chief Operations Officer emphasized that businesses should take to structure a thorough evaluation process for identifying the most suitable ERP system while balancing cost, functionality, and vendor reliability.

(5 marks)

(c) Raken Joshik, Head of Business Analytics emphasized that organizations strategically leverage AI-powered ERP solutions to enhance decision-making, optimize operations, and drive efficiency in key business functions. Explain significant benefits for businesses which AI can deliver ?

(5 marks)

(d) Smritina Iyer, Head of Procurement and Logistics recommendation aimed at ensuring a smooth synergy between technological adoption and human managerial. Explain the various information systems which are part of MIS contributing to enhance managerial decision-making and operational efficiency.

(5 marks)

(e) Raken Joshik, Head of Business Analytics, addressed the contemporary shift towards Software-as-a-Service (SaaS) models. Suggest how can companies strategically adopt SaaS solutions to enhance flexibility and cost-efficiency while mitigating concerns around internet dependency and data security ?

(5 marks)

Answer 3(a)

India saw its first cybercrime conviction in 2013. It all began after a complaint was filed by Sony India Private Ltd, which runs a website called www.sony-sambandh.com, targeting Non-Resident Indians. The website enables NRIs to send Sony products to their friends and relatives in India after they pay for it online.

The company undertakes to deliver the products to the concerned recipients. In May 2002,

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according to the cybercrime case study, someone logged onto the website under the identity of Barbara Campa and ordered a Sony Colour Television set and a cordless headphone. She gave her credit card number for payment and requested the products to be delivered to Arif Azim in Noida. The payment was duly cleared by the credit card agency, and the transaction was processed. After following the relevant procedures of due diligence and checking, the company delivered the items to Arif Azim.

At the time of delivery, the company took digital photographs showing the delivery being accepted by Arif Azim. The transaction closed at that, but after one and a half months the credit card agency informed the company that this was an unauthorized transaction as the real owner had denied having made the purchase.

The company lodged a complaint about online cheating at the Central Bureau of Investigation which registered a case under Section 418, 419 and 420 of the Indian Penal Code, 1860. The matter was investigated, and Arif Azim was arrested. Investigations revealed that Arif Azim while working at a call centre in Noida gained access to the credit card number of an American national which he misused on the company's site.

The CBI recovered the colour television and the cordless headphone, in this one of its own kind of cyber fraud case. In this matter, the CBI had evidence to prove their case, and so the accused admitted his guilt. The court convicted Arif Azim under Section 418, 419 and 420 of the Indian Penal Code - this being the first time that cybercrime has been convicted.

The court, however, felt that as the accused was a young boy of 24 years and a first-time convict, a lenient view needed to be taken. The court, therefore, released the accused on probation for one year. The judgment is of immense significance for the entire nation. Besides being the first conviction in a cybercrime matter, it has shown that the Indian Penal Code can be effectively applied to certain categories of cybercrimes which are not covered under the Information Technology Act 2000. Secondly, a judgment of this sort sends out a clear message to all that the law cannot be taken for a ride.

Answer 3(b)

Evaluation process for identifying the most suitable ERP system while balancing cost, functionality, and vendor reliability

Stage 1 - Plan Requirement

Business need is defined, along with areas in business that require technical approach. Develop a specific business case with business value for a solution. Ensure that the project sponsor is willing to articulate the business case for change. Identify vendors that operate in the line of products that you are looking for. Get familiar with the software and hardware infrastructure framework for problem solving. Get general view of investment needed, considering software, hardware, other related infrastructure and ongoing support. Based on the survey, evaluate the organization readiness for the investment and decide whether to continue or not. Now define priorities under "must-have" and "nice-to-have" accordingly.

Stage 2 - Request For Proposals (RFP)

Shortlist interesting vendor based on the outcome of market survey for products. Invite interesting vendors for interaction/demonstration of their products. Collect facts/functionalities in line with the business need from various products demonstrations for the developments of unbiased RFP for vendors. Set-up a neutral body to develop RFP using all facts gathered during products demonstration aligned to the business requirements. Distribute out RFP that addresses the vendor as a company and the products they offer. Generate basic expectations from an ideal proposal in line with the business need for onward selection of the ideal software vendor.

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Stage 3 - Solution Evaluation

Identify and prioritize remaining gaps between demonstrated software capabilities and business requirements. Identify how the gaps will be bridged in terms of configuration, process change or combination of all these. If the gaps can be bridged, consider reengineering of those affected business processes and continue with further evaluation.

Stage 4 - Contract Negotiation

Negotiate with each vendor. Establish software, hardware and other infrastructure agreement requirements, which include version, components, maintenance and support. Also negotiate participation in user groups, license costs, maintenance fees and many others. Establish service provider agreement which also include deliverables, timelines, resources, costs and payment schedules. Establish other legal requirements.

Stage 5 - Selection and Agreement

Upon successful negotiation with the right vendor; Review all legal terms on privacy protection, operation guidance and data manipulation etc. Approve agreements with the selected vendors. Agree on implementation plan.

Answer 3(c)

Artificial intelligence and machine learning capabilities embedded into ERP systems work behind the scenes to help meet increased demand for personalization and improve a broad range of business processes. While companies could add AI functionality to some ERP systems in the past, more vendors now offer ERP software having built-in AI capabilities. AI can deliver significant benefits for businesses, including:

- More insights: As organizations gather more operational and customer data than ever before, they look to AI to deliver valuable business insights based on that information. AI technologies scan vast amounts of unstructured information, quickly identify patterns and predict various trends that wouldn't be possible to spot with manual number crunching alone.
- Improved processes: AI helps to automate and improve a whole range of processes. For example, consider a manufacturer that adopts a just-in-time inventory strategy, which aims to deliver components at the last possible moment to minimize inventory carrying costs. AI, in the form of machine learning, can optimize the supply delivery and labor schedules to increase productivity and lower costs. IFS's 2019 study found that 40% of manufacturers planned to implement AI for inventory planning and logistics, and 36% intended to use it for production scheduling and customer relationship management.

Answer 3(d)

Management Information System encapsulates other information systems to assist the managers to take well informed and proper decision, management information system utilizes other information systems to derive data and help management to take decisions and improve operational efficiency, following are some vital information systems that are part of management information system:

- Expert System: An expert system provides managers with insights and advice based on artificial intelligence (AI). In an expert system, the AI is trained to simulate the knowledge of a human expert in a particular field.
- Decision Support System: Decision support systems (DSS) are interactive software-based systems intended to help managers in decision-making by accessing large volumes of information generated from various related information systems involved in organizational business processes, such as office automation system, transaction processing system, etc.

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DSS uses the summary information, exceptions, patterns, and trends using the analytical models. A decision support system helps in decision-making but does not necessarily give a decision itself. The decision makers compile useful information from raw data, documents, personal knowledge, and/or business models to identify and solve problems and make decisions.

- Transaction Process System: Transaction processing is a style of computing, typically performed by large server computers, that supports interactive applications. In transaction processing, work is divided into individual, indivisible operations, called transactions. A transaction processing system allows application programmers to concentrate on writing code that supports the business, by shielding application programs from the details of transaction management.
- Management Support System: The Management Support System stores and organizes data, enabling end users to generate reports and analyze data to address business needs and inform planning. A data warehouse is an example of a Management Support System.
- Office Automation System: Office automation systems (OAS) are configurations of networked computer hardware and software. A variety of office automation systems are now applied to business and communication functions that used to be performed manually or in multiple locations of a company, such as preparing written communications and strategic planning.

Answer 3(e)

Software as a service (or SaaS) is a way of delivering applications over the Internet as a service. SaaS applications are also known as Web-based software, on-demand software, or hosted software. Common examples are email, calendaring, and office tools (such as Microsoft Office 365). It is a cloud-based software delivery model that allows SaaS applications to run on SaaS providers' servers instead of installing and maintaining software on-premises. The SaaS provider manages access to the application, including security, availability, and performance.

SaaS being a cloud-based service where instead of downloading software your desktop PC or business network to run and update, you instead access an application via an internet browser. The software application could be anything from office software to unified communications among a wide range of other business apps that are available. This offers a variety of advantages and disadvantages.

Key advantages of SaaS include accessibility, compatibility, and operational management. Additionally, SaaS models offer lower upfront costs than traditional software download and installation, making them more available to a wider range of businesses, making it easier for smaller companies to disrupt existing markets while empowering suppliers.

The major disadvantage of SaaS applications is that they ordinarily require an internet connection to function. However, the increasing wide availability of broadband deals and high-speed phone networks such as 5G makes this less of an issue. Additionally, some SaaS applications have an offline mode that allows basic functionality. Google Workspace, Trello, Zoom, DocuSign, Slack, Adobe Create Cloud, Mailchimp are some popular examples of SaaS products.

To mitigate concerns around internet dependency, companies should select SaaS providers offering offline functionality and robust SLAs. For data security, ensure end-to-end encryption, regular security audits, and compliance with relevant data protection laws.

To strategically adopt SaaS solutions while enhancing flexibility and cost-efficiency, companies must adopt a structured approach that involves careful vendor evaluation, robust Service Level Agreements (SLAs), and embedding stringent cybersecurity measures within service contracts. As

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per the AI Laws & Practice supplement, SMEs can particularly benefit from reduced upfront costs and scalability of SaaS, but must mitigate risks by ensuring proper encryption, secure data transfer protocols, and compliance with national data protection regulations such as the Digital Personal Data Protection Act, 2023. Regular audits, continuous vendor monitoring, and data localization clauses can further strengthen trust and ensure business continuity even amid internet disruptions or cross-border data transfer issues.

Question 4

Zindan Ltd, a leading e-commerce and financial services company, has been experiencing rapid growth, driven by its vast customer base and increasing data volumes. However, the Company faces several challenges across different aspects of its operations, ranging from leveraging data analytics for business insights to ensuring cybersecurity compliance and optimizing its IT infrastructure. As part of its strategic initiatives, the Company's leadership convened a management-level meeting to discuss these critical areas and develop a cohesive plan to address them.

One of the primary concerns raised in the meeting was the effective utilization of customer data. The Company has been collecting extensive datasets, including purchase history, browsing behaviour, demographics, and feedback. However, the challenge lies in deriving actionable insights from this data to improve customer experience and drive sales. The data analytics team proposed implementing data mining techniques to identify patterns and develop predictive models that can forecast customer behaviour. However, the team also highlighted potential challenges, such as ensuring data accuracy, handling missing values, and dealing with inconsistencies that could skew analytical results.

In addition to its e-commerce operations, Zindan Ltd also operates in the financial services sector, handling sensitive customer information, including financial transactions and personal details. The Business Head from the e-commerce operations added a perspective about the challenges the financial services sector was facing. The discussion then moved to a crucial issue—data recovery and business continuity. The IT director highlighted the vulnerabilities businesses face due to hardware failures, cyberattacks, or accidental deletions. The team debated the effectiveness of software-based and hardware-based recovery techniques. Software-based recovery tools were seen as cost-effective solutions for minor data losses. However, in cases of severe hardware failure, the reliance on specialized hardware-based recovery solutions was deemed essential. The risk of operational downtime and potential loss of critical business information emphasized the necessity of robust data recovery protocols.

Another pressing issue was the Company's IT infrastructure. Historically, Zindan Ltd relied on on-premises software for its core operations, ensuring full control over security and system management. However, as data volumes increased, so did the costs of maintaining on-site infrastructure. The IT department proposed transitioning to a hybrid IT model, integrating cloud- based solutions while retaining critical applications on-premises. The leadership team debated the advantages and risks of this transition, with concerns raised about integration complexity, compliance challenges, and potential security vulnerabilities. Beyond operational concerns, Company's legal research division explored innovative ways to enhance legal analysis using computational methods. Traditionally, legal researchers manually analyzed historical court proceedings through intensive reading and note-taking. However, the team was proposing to use data analysis for its research purpose. While some experts cautioned against over-reliance on data analysis without qualitative legal interpretation. Challenges such as citation inconsistencies and the need for structured legal data were also discussed.

As the meeting concluded, the leadership team outlined key questions that needed to be addressed moving forward.

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In the light of above case scenario, answer the following questions :

(a) As a data analyst at Zindan Ltd, how would you justify that data mining techniques rnay be used to build a predictive model that identifies repeat customers ?

(5 marks)

(b) "One of the primary concerns raised in the meeting was the effective utilization of customer data." Outline the steps involved in the process of data analytics method to ensure the dataset is ready for meaningful analysis.

(5 marks)

(c) As an IT consultant, list the advantages and challenges of maintaining an on-premises software environment for Zindan Ltd while transitioning to a hybrid IT model.

(5 marks)

(d) Enumerate the key steps that Zindan Ltd should take to implement robust data recovery protocols in cases of severe hardware failures or data corruption incidents.

(5 marks)

(e) As a legal data analyst, explain the role of network analysis in legal history research and outline its applications in analyzing court proceedings.

(5 marks)

Answer 4(a)

The procedure of extracting patterns, trends, and insights from huge databases is known as data mining. By seeing patterns and connections between the data, it includes drawing information from the data. To glean insights from data, data mining employs a variety of methods including machine learning, artificial intelligence, and statistical analysis. Finding hidden patterns and insights that may be utilised to make wise judgements is the main objective of data mining.

Some key characteristics of data mining include:

Large datasets: Large datasets with potentially millions or billions of records are frequently analysed using data mining techniques. To manage the data's complexity and volume, specialist tools and approaches are needed.

Complex data structures: Data mining frequently works with non-tabular data types including text, photos, and audio. Techniques for assessing unstructured and semi-structured data are necessary for this.

Multidimensional analysis: Analyzing data across several dimensions, such as time, place, and client demographics, is known as data mining. As a result, patterns and insights that might not be seen from a single dimensional perspective of the data might be found.

Machine learning: Machine learning techniques are frequently used in data mining to find patterns in the data. These algorithms are capable of automatically learning from the data and progressively improving.

Predictive modeling: Building predictive models that may foretell future trends and behaviours through data mining is feasible. These models may be applied to improve corporate operations and make well-informed judgements.

Data visualization: Data visualisation methods are frequently used in data mining to portray the data in a form that is simple to grasp and analyse. This makes it simpler for analysts to find patterns and connections in the data.

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Iterative process: Data processing, model development, and assessment are all steps in the iterative process of data mining. Once the desired outcomes are obtained, this procedure may be repeated several times.

In view of the above discussion, it may be said that analyzing purchase history and behavior patterns, data mining can help build models to identify customers likely to make repeat purchases.

Answer 4(b)

Below are the common steps involved in the process of data analytics method to ensure the dataset is ready for meaningful analysis:

Step 1: Determine the criteria for grouping the data: Data can be divided by a range of different criteria such as age, population, income, or sex. The values of the data can be numerical or categorical data.

Step 2: Collecting the data: Data can be collected through several sources, including online sources, computers, personnel, and sources from the community.

Step 3: Organizing the data: The data must be organized after it is collected so that it can be examined. Data organization can take place on a spreadsheet or other type of software that is capable of taking statistical data.

Step 4: Cleaning the data: The data is first cleaned up to ensure that there is no overlap or mistake. Then, it is reviewed to make sure that it is not incomplete. Cleaning the data helps to fix or eliminate any mistakes before the data goes to a data analyst for analysis.

Answer 4(c)

On-premises software is a type of software delivery model that is installed and operated from a customer's in-house server and computing infrastructure. Also meaning, thereby that subsequent maintenance, repairs, safety, and further updates are all handled on-site. It just needs a licenced or purchased copy of software from an independent software provider and makes use of the natural computer resources of the company. Software installed on-site is also referred to as shrink wrap. After buying software, the company often installs it on its servers, connecting relevant database software and configuring operating systems accordingly. Since there is no involvement of any third-party, the company has full ownership and responsibility.

On-premises software is the most prevalent, traditional method of using enterprise and consumer applications. On-premises software typically requires a software license for each server and/or end user. The customer is responsible for the security, availability and overall management of on-premises software. However, the vendor also provides after sales integration and support services. Because it requires onsite server gear, capital expenditures for software licences, onsite IT support employees, and longer integration times, onsite software is more expensive than on-demand or cloud software. On-premises software, however, is regarded as being more secure because the full instance of the software stays on the organization's grounds. In the past, on-premise software was the only solution available to companies. Today, that's changing, as more and more off-site solutions become popular, and cloud computing becomes the standard. There is now agreement amongst IT professionals that companies can't solely rely on on-premise applications. In any case, a mixture of off-premise and on-premise solutions, also known as a hybrid IT environment, will be the way forward.

There are advantages of using it which includes full control over security and compliance; at the same time there are challenges which include higher costs, maintenance burdens, and integration complexity with cloud systems.

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Answer 4(d)

Data recovery can be defined as a process of obtaining the information located on a storage device that cannot be accessed by standard means due to its previous deletion or certain damage to the digital medium.

Different approaches are used to regain the missing files, yet, only on the condition that their content is present somewhere within the storage. For instance, data recovery doesn't cover the situations when a file has never been written to persistent storage, like documents that were created but could not be eventually saved to the hard disk drive due to a power failure. Also, none of the existing restore methods can cope with the cases of permanent erasure which occurs when some other information occupies its storage space – under such circumstances, the lost files can only be retrieved from an external backup.

In general, data recovery techniques are divided into two types: software-based and ones involving the repair or replacement of damaged hardware components in a laboratory setting. A software-based approach is employed in the majority of cases and involves the use of specialized utilities able to interpret the logical structure of the problem storage, read out the required data, and deliver it to the user in a usable form for further copying. Physical repairs are conducted by specialists in the most severe instances, for example, when some mechanical or electrical parts of the drive no longer work properly – in this case, all the measures are directed towards a one-time extraction of the critical content, without the possibility of continued usage of the affected device.

The information remaining on an intact storage can usually be recovered without professional help by means of data-specialized software. However, it is important to keep in mind that no information is recoverable after being overwritten. For this reason, nothing should be written to the storage until the last file from it is rescued.

Most data recovery utilities operate using the algorithms of metadata analysis, the method of raw recovery based on the known content of files, or a combination of the two approaches. Metadata is hidden service information contained within the file system. Its analysis allows the software to locate the principal structures on the storage that keep a record of the placement of files' content, their properties, and directory hierarchy. After that, this information is processed and used to restore the damaged file system. This method is preferred over raw recovery as it allows obtaining files with their original names, folders, dates, and time stamps. If the metadata wasn't seriously corrupted, it may be possible to reconstruct the entire folder structure, depending on the specifics of the mechanisms employed by the file system to get rid of "unnecessary" items. Yet, such analysis cannot be performed successfully when the crucial parts of metadata are missing. That is why it is extremely important to refrain from using file system repair tools or initiating operations that may result in its modification until the data is restored completely.

To get the lost files back with maximum efficiency, data recovery software may use the described techniques concurrently during a single scan launched on storage.

Remote data recovery is performed through a modem or Internet connection by engineers using technology to achieve the same results as if the hard drive had been sent to a lab, yet in a more convenient manner for the customer. Assuming the hard drive is still functioning, remote recovery can be achieved for a single file or for huge volumes of data.

Alternate Answer

The following key steps may be taken by Zindan Ltd to implement robust data recovery protocols in case of severe hardware failures or data corruption incidents:

1. Conduct a Comprehensive Risk Assessment

- Identify critical systems and data types across the e-commerce and financial operations.

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- Evaluate vulnerabilities such as hardware obsolescence, system failure points, and cyberattack vectors.
- Prioritize assets based on impact on business continuity.

2. Establish a Tiered Backup Strategy

- Implement the 3-2-1 backup rule:
- Maintain 3 copies of data (1 primary + 2 backups),
- Store backups on 2 different types of media (e.g., local disk and cloud),
- Keep at least 1 backup offsite (e.g., secure cloud storage).
- Ensure regular and automated backups of both customer-facing and internal systems.

3. Use Redundant and Fault-Tolerant Systems

- Deploy RAID configurations or network-attached storage (NAS) with redundancy to mitigate hardware failures.
- Use failover clusters for mission-critical applications.

4. Deploy Enterprise-Grade Recovery Tools and Technologies

- Use software-based recovery solutions for logical failures (e.g., accidental deletion, corruption).
- For severe hardware issues, establish partnerships with certified data recovery service providers capable of physical repairs (e.g., for damaged drives).
- Evaluate cloud-based disaster recovery as a service (DRaaS) solutions for scalable and real-time restoration.

5. Document and Test a Disaster Recovery Plan (DRP)

- Create a detailed Disaster Recovery Plan with defined roles, recovery time objectives (RTOs), and recovery point objectives (RPOs).
- Conduct regular mock drills and simulations to test response time and recovery accuracy.

6. Ensure Data Integrity and Monitoring

- Use checksums and hashing techniques to verify data integrity during storage and recovery.
- Monitor backup operations regularly to detect failures or anomalies promptly.

7. Implement Role-Based Access and Logging

- Restrict access to backup and recovery systems to authorized personnel.
- Maintain audit logs to track access, changes, and attempted recoveries, especially for sensitive financial and customer data.

8. Integrate with Cybersecurity Protocols

- Align recovery plans with cyber incident response plans, particularly in the event of ransomware or malware attacks.
- Ensure backups are air-gapped or immutable, so they cannot be tampered with during cyber incidents.

9. Ensure Compliance with Legal and Industry Standards

- Align recovery protocols with the Digital Personal Data Protection Act, 2023, particularly for handling personal and financial data.

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- Ensure compliance with sector-specific regulations for data handling and recovery.

10. Employee Training and Awareness

- Train IT staff and relevant teams on the data recovery workflow and incident handling procedures.
- Encourage awareness of best practices and early detection of data risks.

Conclusion:

By implementing the above steps, Zindan Ltd can build a robust and resilient data recovery framework that not only ensures business continuity during hardware failures or data corruption but also aligns with regulatory standards and customer trust requirements.

Answer 4(e)

Court proceedings and its records are interesting for the legal historian, specifically from a perspective of law and its development over the centuries. Such cases are commonly analyzed by intensive reading and notetaking and by identifying commonalities, differences and relationships between documents or elements of documents.

These cases can be used to explore whether human analysis can be improved, or at least complemented, by applying network analysis. The latter is a computer science method that allows for the mapping, measuring and visualising of relationships between individuals, groups and other types of information. In this form of analysis, nodes are connected through edges, with the nodes being individuals, groups or information, and the edges being used to link the nodes. By treating court decisions as nodes, and linking the allegations in those cases to legislation and to other cases or scholarly work, network analysis can create a citation network that signals how information flows or has flown, and the extent to which certain nodes in the network are authoritative. Network analysis has been used for several purposes in the legal field:

- for analyzing criminal behaviour and terrorist networks;
- for finding authoritative cases at courts; and
- for examining legal social networks, networks of statutes and regulatory codes and patent citations.

Volkaert argues that network analysis can be both conceivable and useful in legal history. His article provides an overview of research in digital legal history using network analysis and focusing on case citation networks and what he refers to as 'digital-dogmatic legal history'. According to Volkaert, network analysis can complement dogmatic and contextual legal history, although qualitative juridical interpretations for understanding law remain necessary. By applying network analysis to a selected number of cases of the Court of Friesland, we further explore its potential for legal history research purposes.

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