

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME (*New Syllabus*)

DECEMBER 2019

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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PROFESSIONAL PROGRAMME EXAMINATION
DECEMBER 2019
**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

PART - I

Question 1

- (a) *P Pvt. Ltd. was incorporated under the Companies Act, 1956 on 3rd October, 2011. The Authorised Share Capital of the Company is ₹75 crores. The present paidup Share Capital of the Company is ₹60 crore. The turnover of the company for financial year 2017-18 was ₹150 crores and because of good overseas marketability of the company's product, the turnover of the company for the year ended 31st March, 2019 increased to ₹210 crores.*

The Secretarial Auditor of the company advised that the company should have internal audit in place, but the Managing Director of the company argued that since it is a private company, so it is not required.

Based on the facts in the above case, answer the following questions :

- (i) *Whether internal audit is compulsory for the Private Limited ? (1 mark)*
- (ii) *In the above case if the company had been an Unlisted Public Limited and Turnover for year ended 31st March, 2019 would be ₹190 crore, what would have been your answer ? (2 marks)*
- (iii) *Can Company Secretary be appointed as Internal Auditor in an Unlisted Public Company where he is already appointed as Key Managerial Personnel? (2 marks)*
- (b) *M Pvt. Ltd. was registered in the year 2001 as a Private Limited Company and continuing with the same status. It is having a paid-up share capital of ₹65 crore as on 31st March, 2019. The present company's auditor, X, Chartered Accountant, (a Proprietor Firm) who was appointed as auditor of the company in the year 2014. The term of the said auditor is going to expire and company wants to re-appoint the same person, since he is having well acquaintance with the company's officials and its working.*

Based on the above facts, answer the following questions :

- (i) *Whether X can be reappointed as Statutory Auditor of the Company ? (1 mark)*
- (ii) *In the above case if, instead of the Individual Person as an auditor, the company would have appointed any Firm of Chartered Accountants, and now the tenure of the said firm is expiring, whether this firm is eligible for reappointment ? (2 marks)*

(iii) *In the given case, if the paid-up capital of the company is ₹5 crore and having cash credit limit and term loan facility from a bank to the tune of ₹55 crore, what would have been your answer ?* (2 marks)

(c) *RST Ltd. recently issued the Equity Shares on basis of right issue. Due to this, the paid-up capital of the Company has been increased from ₹7.5 crore to ₹15 crore. The Company Secretary in the Board Meeting put up the proposal for constitution of various committees including Audit Committee and Nomination & Remuneration Committee. All members of the Committee were proposed to be Independent Directors. In the scope of Nomination & Remuneration Committee, it was inter-alia added that the Committee shall also evaluate the performance of Chairman & Managing Director (CMD) of the company. The Directors present in the Board meeting strictly objected on the said proposal. CMD has also expressed dissent on the proposal.*

In view of this, check the validity of the proposal of the Company Secretary. (5 marks)

(d) *Under the Energy Department, Govt. of Tamil Nadu, three Companies as Government Company were incorporated as below :*

A Ltd. for Generation of Electricity

B Ltd. for Transmission of Electricity

C Ltd. for Distribution of Electricity.

Further, three subsidiaries namely X Ltd., Y Ltd. and Z Ltd. were incorporated as wholly owned subsidiary companies of C Ltd. C Ltd. purchases the Power (Electricity) from A Ltd. and sale all Power to subsidiary Companies. Subsidiary Company through B Ltd. distributes the Power in the State.

Apart from that, C Ltd. also purchases cables from manufacturer and sells it to Subsidiary Companies with margin of 5% on sale price. In the power supply, C Ltd. also charge 0.05 paise per unit as service charge from Subsidiary Companies.

During the Audit, Auditors raised the question that there are lot of related party transactions and directors and members are same in all the Companies. Further, Chairman is also common. Neither the Board nor the Members of the Company approved any transaction which comes under the definition of Related Party Transaction. The Company Secretary replied that the transactions are pre-approved by Energy Department, Govt. of Tamil Nadu but Auditor is dissatisfied with this reply.

In such situation, check the validity of the transactions between related parties. (5 marks)

Answer 1(a)(i)

As per section 138 of the Companies Act, 2013 read with rule 13(1)(c) of The Companies (Accounts) Rules, 2014 every private company having-

- (a) turnover of two hundred crore rupees or more during the preceding financial year; or
- (b) 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 shall be required to appoint an internal auditor.

As the turnover of the P Pvt. Ltd is more than Rs. 200 crore, for the year ended 31st March, 2019 it is mandatory to appoint an internal auditor.

Answer 1(a)(ii)

As per section 138 of the Companies Act, 2013 read with rule 13(1)(b) of The Companies (Accounts) Rules, 2014 every unlisted public company having-

- (a) paid up share capital of fifty crore rupees or more during the preceding financial year; or
- (b) turnover of two hundred crore rupees or more during the preceding financial year; or
- (c) 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; or
- (d) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year shall be required to appoint an internal auditor.

In the mentioned case, as the paid up capital is more than Rs. fifty crores hence the company needs to appoint the internal auditor.

Answer 1(a)(iii)

Section 138 of the Companies Act, 2013 states that an internal auditor, shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board. Further explanation to Rule 13 of The Companies (Accounts) Rules, 2014 states that the internal auditor may or may not be an employee of the company.

In view of the above the Company Secretary who is appointed as Key Managerial Personnel in the company can be appointed as an internal auditor of the company.

Answer 1(b)(i)

Section 139(2) of the Companies Act, 2013 read with Rule 5(b) of the Companies (Audit and Auditors) Rules, 2014 provides that:

all private limited companies having paid up share capital of rupees fifty crore or more shall not appoint or re-appoint

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Also, an individual auditor who has completed his term of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

In view of the above as the paid up share capital of the company is more than Rs.50 Crore, Mr. X cannot be appointed as Statutory Auditor for the second term.

Answer 1(b)(ii)

Section 139(2) of the Companies Act, 2013 read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that:

all private limited companies having paid up share capital of rupees fifty crore or more shall not appoint or re-appoint

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

An audit firm which has completed its term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

In view of the above the firm of Chartered Accountants will not be eligible for the reappointment for five years on the completion of the term.

Answer 1(b)(iii)

Section 139(2) of the Companies Act, 2013 read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that no listed company or the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of Rs. ten crores or more or
- (b) all private limited companies having paid up share capital of Rs. fifty crores or more or
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more shall not appoint or re-appoint—
 - (a) an individual as auditor for more than one term of five consecutive years and
 - (b) an audit firm as auditor for more than two terms of five consecutive years

Since in the present case the company is having paid up share capital of Rs. 5 crore i.e. within the threshold limit of Rs.50 crors but the company have borrowing facility from a bank of Rs 55 crores (i.e. exceeding the threshold limits of Rs. 50 crores), hence the company cannot re-appoint X as auditor.

Answer 1(c)

As per rule 6 of the Companies (Meeting of Board and its power) Rules, 2014 read with rule 4 of the Companies (Appointment and qualification of Directors) Rule 2014, every listed company or public company having :

- (i) Paid up capital of Rs. 10 crore or more or

- (ii) Turnover of Rs. 100 Crore or more or
- (iii) Aggregate outstanding loan, debenture and deposit exceeding Rs.50 Crore

Shall constitute the Audit Committee and Nomination and Remuneration Committee.

Further, as per section 178 of the Companies Act, 2013 Nomination and Remuneration Committee shall have at least three members out of which not less than one half shall be Independent Director.

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

The performance of the Chairperson is linked to both the functioning of the Board as a whole as well as the performance of each director. The Nomination and Remuneration Committee provides that the Independent Director should review the performance of the Chairperson of the company taking into account the views of the executive directors and non-executive directors.

In view of this, the proposal of the Company Secretary is valid as per the law.

Answer 1(d)

According to Section 2(76) of Companies Act 2013, "related party", with reference to a company includes any body corporate which is —

- (a) a holding, subsidiary or an associate company of such company; or
- (b) a subsidiary of a holding company to which it is also a subsidiary; or
- (c) an investing company or the venture of the company.

Transactions referred to in the question are covered under Section 188 (1) of the Companies Act, 2013 which deals with the related party transactions.

All related party transactions require the approval of the Audit Committee as per section 177 of the Companies Act, 2013 except to a transaction, other than a transaction referred to in section 188 of the Companies Act, 2013, between a holding company and its wholly owned subsidiary company, as stated under fourth proviso to section 177(4) of the Companies Act, 2013. Up to certain limits, the approval of the Board is required and above the limits, approval of the members must be taken.

As per proviso two of section 188(1) of the Companies Act, 2013 member of the company shall not vote where he is related party. However as per proviso three of the section 188(1) of the Companies Act, 2013 , if 90% or more members are related party, members can vote. As per proviso four of the section 188(1) of the Companies Act, 2013, the approval of the Board is not required where the transactions are on arms length basis in ordinary course of business. Further, as per proviso five of the section

188(1) of the Companies Act, 2013, the approval of members is not required in case of transaction between holding and wholly owned subsidiary.

Further, as per the exemption notification dated 5th June, 2015 issued by Ministry of Corporate Affairs, the first and second proviso to sub-section(1) to section 188 of the Companies Act, 2013 shall not apply to

- (a) a Government Company where the contracts/arrangements to be entered into by it with any other Government Company;
- (b) a Government company (other than a listed company) , in respect of contracts/ arrangements other than those mentioned in (a) above, if it has obtained approval of the administrative ministry of the concerned Central/ State Government.

In this case, C Ltd, being a Government company has entered into the following transactions:

- (i) Purchase of power from A Ltd.(Government Company)
- (ii) Sale of power to subsidiary companies (all Government companies, as they are subsidiaries of a Government company)
- (iii) X Ltd, Y Ltd. and Z Ltd (wholly owned subsidiaries, being Government companies) distribute power through B Ltd.(Government company)
- (iv) Purchase of cables from a manufacturer and sale to its Subsidiary companies (Government companies)
- (v) Levy of service charges at 0.05 paise per unit on its Subsidiary companies (Government companies)

Therefore, in the present case, assuming that the transactions are at arm's length and in the ordinary course of business, neither the approval of the Board nor the members of the company is required and the related party transactions would be valid.

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

Question 2

- (a) *In year 2017, the SEBI has constituted a Committee on Corporate Governance under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of Corporate Governance of listed companies in India. List out the recommendations given by this Committee.*
- (b) *With what mission, International Corporate Governance Network (ICGN) was incorporated ? Describe the purpose of the ICGN.*
- (c) *To protect the interest of the Stakeholders, SEBI has taken various initiatives and Code of Fair Disclosure is one of the important step under Regulation 8 of SEBI (Prohibition of Insider Trading) Regulations, 2015. Prepare a note on Code of Fair Disclosure. (5 marks each)*

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *KLM Ltd. in its 64th Board meeting held on 30th June, 2019 has constituted*

Risk Management Committee with objective of mitigation of risk and recommendation of preventive measures comprising of two Independent Directors and one Whole Time Director. In the first Meeting of the Committee held on 6th July, 2019, Whole Time Director could not be present and sought the leave of absence. The Board proposal about the constitution was silent with respect to Chairman of the Committee and quorum of the Meeting of Committee. The remaining two members held the Meeting and the Seniormost Director present in the Meeting was selected as Chairman of the Committee. The Committee also approved the policy for Systematic Risk Management. Whether, the decision of the Committee is valid in light of the approved Secretarial Standards as issued by the ICSI ?
(5 marks)

- (ii) *The big investors, FII's etc. engages the Proxy Advisory Firms to get the important information and recommendations which lead the protection of their interest and safeguard of their fund. Prepare a brief note on reasons for engaging the Proxy Advisory Firms.*
(5 marks)
- (iii) *Compliance Management is the most important part of any business. Highlight the risk of non-compliances.*
(5 marks)

Answer 2(a)

In 2017 the SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. The recommendations of the Committee were as follows:

- Composition and Role of the Board of Directors i.e. Minimum no. of Directors on a Board, Gender Diversity on Board, Attendance of Directors, Quorum for Board Meetings, Minimum no of Board Meetings, Maximum no. of Directorships etc.
- The Institution of Independent Directors i.e. Minimum nos. of Independent Directors, Eligibility Criteria for Independent Directors, Minimum compensation to Independent Directors, Lead Independent Directors, Casual vacancy of Independent Directors etc.
- Board Committees i.e. Composition and Role of Audit Committee, Nomination, Remuneration and Stakeholder Relationship Committee etc.
- Enhanced Monitoring of Group Companies i.e. Obligation on the Board of the Listed Co. with respect to subsidiaries, Secretarial Audit) etc.
- Promoters/ Controlling Shareholders and Related Party Transactions i.e. Disclosure and Approval of Related Party Transactions, Royalty and Brand Payments to Related Party, Remuneration to Executive Promoters Directors and Non- Executive Directors etc.
- Disclosures and Transparency pertaining to Submission of Annual reports, Disclosures pertaining to Credit Rating, Disclosures pertaining to Directors, Disclosures pertaining to Disqualification of Directors, Disclosures pertaining to Subsidiary Accounts, Prior Intimation of Board meeting to discuss Bonus Issue, Disclosure on Website etc.

- Accounting and Audited related issues i.e. Audit Qualifications, Independent External opinion by Auditors, Group Audits, Quarterly financial controls, Internal financial control, IND-AS adoption, Disclosure of Audi fees of Auditors etc.
- Investors participation in Meetings of Listed Entities i.e. Timeline for AGM in listed entities, E-voting and webcast of proceedings of meeting, Treasure Stock, Stewardship code).
- Governance aspects of Public Sector Enterprises.
- Leniency Mechanism.
- Capacity building in SEBI for enhancing Corporate Governance in Listed Entities.

In its board meeting on March 27, 2018, SEBI, after detailed consideration and due deliberation, accepted several recommendations of the Kotak Committee without any modifications and accepted a few other recommendations with certain modifications as to timelines for implementation, applicability thresholds among others.

Answer 2(b)

The International Corporate Governance Network (“ICGN”) founded in 1995 is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales.

ICGN’s mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide.

ICGN’s positions are guided by the ICGN Global Governance Principles and Global Stewardship Principles, which were first published in 2003, as a statement on shareholder stewardship responsibilities both of which are implemented by:

- Influence policy by providing a reliable source of investor opinion on governance and stewardship.
- Connect peers at global events to enhance dialogue between companies and investors around long term value creation.
- Inform dialogue through education to enhance the professionalism of governance and stewardship practices.

It has four primary purposes:

- (i) To provide an investor-led network for the exchange of views and information about corporate governance issues internationally;
- (ii) To examine corporate governance principles and practices;
- (iii) To develop and encourage adherence to corporate governance standards and guidelines; and
- (iv) To generally promote good corporate governance.

Answer 2(c)**Note on Code of Fair Disclosure**

As per Code of Fair Disclosure under Regulation 8 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015:

- (1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to the regulation on Prohibition of Insider Trading, without diluting the provisions in any manner.

This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule to the Regulations on Prohibition of Insider Trading.

- (2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1) of Regulation 8 of (Prohibition of Insider Trading) Regulations, 2015

SCHEDULE A [Sub-regulation (1) of regulation 8]**Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information**

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.

6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a need-to-know basis.

Answer 2A(i)

The Secretarial Standard 1 (SS-1) deals with the Meetings of the Board of Directors.

Clause 3.5 of Secretarial Standard 1 (SS-1) which relates to the Meetings of Committees provides as under:

“Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum”.

In the given case of the company KLM Ltd, it is mentioned in the question itself that “The Board proposal about the constitution was silent with respect to Chairman of the Committee and quorum of the Meeting of Committee”.

Since the quorum was not specified, hence as per the clause 3.5 of SS-1, where no such quorum is specified, the presence of all the members of such committee is necessary to form the quorum. Therefore, the meeting was held by the Risk Management Committee (RMC) without the presence of adequate quorum and in view of this the decision taken by the RMC is also invalid.

Answer 2A(ii)

Proxy advisory firms are independent research outfits that evaluate the pros and cons of corporate matters such as mergers, acquisitions, top appointments and CEO pay, which shareholders are expected to vote on in AGMs, EGMs or court-convened meetings.

Institutional investors contract with these firms to carry out comprehensive reviews of voting proposals that the investors themselves have neither the time nor the resources to undertake.

Following are few reasons why institutional investors engage proxy advisors:

- (i) Proxy advisors generally offer variety of services consisting of both, analyzing the proposals at general meetings and recommending voting decisions.
- (ii) The recommendations of proxy advisors help the investors to obtain a more considered understanding of different agenda items and to arrive at an informed voting decision, allowing them to optimise their own limited resources and cast their votes in a timely and informed manner.
- (iii) Considering that institutional investors invest in multiple companies in different industry range and across the globe, it may not be feasible for those investors

to have informed knowledge of the corporate governance specifications of that country and hence there may be an inability to understand the need and impact of a particular agenda item. Proxy advisors help to combat this issue as well through their informed consultancy. Due to cross border voting investors may face issues in terms of language of a country. The proxy advisors can assist in mitigating the language issues as well. Further, they may also enable the investors to have a voting platform in cases where electronic voting is a pre-requisite at general meetings.

- (iv) Apart from the above, general meetings across the globe may be concentrated during a certain period of the year and therefore the investors may not be in a position to gather information and knowledge about all the companies and hence, may not be in a position to take informed decision while voting. Proxy services industry emerged and expanded with the growth of institutional investors and shareholder activism. Proxy services firms play an important role in the proxy voting system. Such firms offer valuable services which includes analysing of the proposals for general meetings and providing voting recommendations, either based on the their own voting policy or on the investor's customised voting policy.

Proxy advisers also influence boards' decision making. They do a good job of policing the boards and governance records of the firms they track, and nudging institutional investors to take a stand on governance issues.

Answer 2A(iii)

Failing to comply with rules, regulations, and specifications could have costly consequences. In the famous Sahara case, the Group was accused of failing to refund over 200 billion rupees to its more than 30 million small investors that it had collected through two unlisted companies of Sahara. In 2011, SEBI ordered Sahara to refund this amount with interest to the investors, as the issue was not in compliance with the requirements applicable to the public offerings of securities. Later in 2014, Mr Subrata Roy, the chairman of Sahara was arrested for the said fraud. His proposal to settle the matter was rejected by the court and SEBI.

Thus non-compliance with the laws of the land can have multi-faceted consequences, ranging from penalties, additional fines to prosecution.

Following are some of the risks of non compliance :

1. *Penalties and Fines* : Penalties include financial fines, limitations on activities, additional barriers to approval and even imprisonment.
2. *Criminal Charges* : Criminal charges are a potential consequence for certain regulatory non-compliance.
3. *Reputational Damage* : A business' public image is a key to its success. When a company is thrust into the public eye for failing to comply with regulations, there are reputational repercussions, which eventually lead to distrust.
4. *Access to Markets and Product Delays* : Non-compliance across enterprise and business network could result in exclusion from the tendering processes and

supplier databases. In addition, companies that place value on corporate compliance may avoid doing business with companies which are non compliant as they would want to ensure that they meet their own regulatory obligations.

5. *Roadblock in Funding* : A company cannot get funded, even in the seed investment level, whose compliances are not up to date.

Question 3

- (a) *Prepare a brief note on National Foundation for Corporate Governance (NFCG) and Board of Trustees of NFCG.*
- (b) *“Better Stakeholder engagement ensures Good Governance”. In light of this sentence, elaborate the role of stakeholders in governance.*
- (c) *Now the days, protection of the Investors’ wealth is big challenge before the Government. In insurance sector, under IRDA’s Regulation, various committees are mandatorily required to be constituted by the Companies. Highlight the name of the committees and describe the role of With Profit Committee.*
- (d) *Prepare a detailed note on ICSI Recommendations to strengthen Corporate Governance framework.*
- (e) *What are the material disclosures of which information should be disclosed to Stock Exchange within 24 hours of conclusion of the Board Meeting as per SEBI (LODR) Regulations, 2015 ?* (3 marks each)

Answer 3(a)

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up National Foundation for Corporate Governance (NFCG) along with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI). In the year 2010, stakeholders in NFCG have been expanded with the inclusion of Institute of Cost Accountants of India and the National Stock Exchange of India Ltd. The Vision of NFCG is “Be the Key Facilitator and Reference Point for highest standards of Corporate Governance in India.”

The internal governance structure of NFCG consists of Governing Council, Board of Trustees and Executive Directorate.

Board of Trustees

Board of Trustees deal with the implementation of policies and programmes and lay down the procedure for the smooth functioning. It is chaired by Secretary, Ministry of Corporate Affairs, Government of India.

The members of the Board of Trustees are:

- Director General, Confederation of Indian Industry (CII)
- Secretary, Institute of Chartered Accountants of India (ICAI)
- Secretary, Institute of Company Secretaries of India (ICSI) and
- Secretary, The Institute of Cost Accountants of India (ICAI-CMA)

- Representative, National Stock Exchange (NSE)
- Director General & CEO, Indian Institute of Corporate Affairs (IICA)

Answer 3(b)

Stakeholders are characterized by their relationship to the company and their needs, interests and concerns, which will be foremost in their minds at the start of an engagement process. However, as the process unfolds they soon take a particular role with related tasks and responsibilities. The following are just some of the different roles that stakeholders can play:

- Experts, such as academicians, who have been invited to contribute knowledge and strategic advice to the company's board.
- Technical advisors with expertise on the social and environmental risks associated with particular technological and scientific developments invited to sit on scientific and ethical panels in science-based industries.
- Representatives of special interests, such as employees, local communities or the environment, commonly invited to participate in stakeholder panels to review company performance and/or reporting practices.
- Co-implementers, such as NGOs, who have partnered with the company to implement a joint solution or program to address a shared challenge.

Stakeholders can only be well informed and knowledgeable if companies are transparent and report on issues that impact stakeholders. Both parties have an obligation to communicate sincerely and attempt to understand, not just be understood.

Answer 3(c)

IRDA advises all insurers that it is mandatory to establish Committees for Audit, Investment, Risk Management, Policyholder Protection, Nomination and Remuneration, Corporate Social Responsibility (only for insurers earning profits).

Following are the names of few committees:

- (i) Audit Committee (mandatory)
- (ii) Investment Committee (mandatory)
- (iii) Risk Management Committee (mandatory)
- (iv) Policyholder Protection Committee (mandatory)
- (v) Nomination and Remuneration Committee (mandatory)
- (vi) Corporate Social Responsibility Committee ('CSR Committee') (mandatory)
- (vii) With Profits Committee:

With Profits Committee

The Authority has issued IRDA (Non-Linked Insurance Products) Regulations 2013, which lay down the framework about the With Profit Fund Management and Asset sharing,

among other things. In terms of these Regulations, every Insurer transacting life insurance business shall constitute a With Profits Committee comprising of an Independent Director, the CEO, The Appointed Actuary and an independent Actuary. The Committee shall meet as often as is required to transact the business and carry out the functions of determining the following:

- The share of assets attributable to the policyholders.
- The investment income attributable to the participating fund of policyholders.
- The expenses allocated to the policyholders.

The report of the With Profits Committee in respect of the above matters should be attached to the Actuarial Report and Abstract furnished by the insurers to the Authority.

Answer 3(d)

ICSI Recommendations to strengthen Corporate Governance framework suggests for constitution of Corporate Compliance Committee on mandatory basis in respect of all public limited companies having a paid-up capital of Rs.5 crore or more.

The charter of the committee may include:

- To oversee the Company's compliance efforts with respect to relevant Company policies, the Company's Code of Conduct, and other relevant laws and regulations and monitor the Company's efforts to implement legal obligations arising from agreements and other similar documents.
- To review the Company's overall compliance programme to ensure that it is well communicated, supports lawful and ethical business conduct by employees, and reduces risk to the Company for non compliance with laws and regulations related to the Company's business.
- To review complaints received from internal and external sources, regarding matters other than the financial matters which are within the purview of the Audit Committee.
- To periodically present to the Board for adoption appropriate changes to the policies, and oversee implementation of and compliance with these policies.
- To review regularly the company's compliance risk assessment plan.
- To investigate or cause to be investigated any significant instances of non-compliance, or potential compliance violations that are reported to the committee.
- To coordinate with other committees regarding matters brought to the committees attention that relate to issues of compliance with applicable laws and regulations.
- Regularly report to the Board on the Committee's activities, recommendations and conclusions.
- To discuss any significant compliance issues with the Chief Executive officer.
- To periodically report to the Board and CEO on the adequacy and effectiveness of the company's compliance programme.

- To retain at the company's expense, independent advisors to assist the committee with carrying out its responsibilities from time to time.
- To perform such other duties and responsibilities as may be assigned to the committee by the board.

Answer 3(e)

Regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 clarifies that the listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.

1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.
2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).
3. Capacity addition or product launch.
4. Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.
6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity.
8. Litigation(s) / dispute(s) / regulatory action(s) with impact.
9. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
10. Options to purchase securities including any ESOP/ESPS Scheme.
11. Giving of guarantees or indemnity or becoming a surety for any third party.
12. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

PART II

Question 4

- (a) *Liquidity and Solvency are altogether different. Do you agree ? Discuss the types of liquidity risk. (5 marks)*
- (b) *Your company is running its corporate office in a rented business premises. The Landlord of the building has increased the rent of other companies and there are 80% chances of increase in the rent of the office occupied by your company within the next year.*

If this happens, it will cost your business an extra ₹5,00,000 over the next year.

Calculate the risk value. (5 marks)

(c) What is Systematic Risk and Unsystematic Risk ? Give examples. (5 marks)

(d) Write the relevant provisions of the Companies Act, 2013 relating to the reporting of fraud. (5 marks)

Answer 4(a)

Yes, Liquidity and Solvency are two different aspects.

Solvency signifies the capability of the organization to pay its debt and dues. It represents the financial soundness of the organization. Whereas the liquidity risk arises due to mis-matches in the cash flow i.e. absence of adequate funds. Liquidity is altogether different from the word solvency. A firm may be in sound position as per the balance sheet, but if the current assets are not in the form of cash or near cash assets, the firm may not make payment to the creditors which adversely affect the reputation of the firm.

Types of Liquidity Risk : The liquidity risk may be of two types, trading risk and funding risk.

(a) *Trading Risk :* It may mean the absence of the liquidity or enough products or securities etc to actually undertake buy and sell activities. e.g. in the context of securities trading inability to enter into derivative transactions with counter parties or make sales or purchase of securities.

(b) *Funding Risk :* It refers to the inability to meet the obligations e.g. inability to manage funds by either borrowing or the sale of assets/securities. It arises where the balance sheet of a firm contains illiquid financial assets which cannot be turned in to cash within a very short time.

Answer 4(b)

The formula for calculating the Risk Value is:

Risk Value = Probability of Event x Cost of Event

By putting the values, we get:

0.80 (Probability of Event) x Rs.500, 000 (Cost of Event) = Rs. 400,000 (Risk Value)

Answer 4(c)

Risk may be classified according to controllability, i.e Controllable risk and Uncontrollable risk. In other words, the Controllable risk is categorized as Unsystematic Risk and Uncontrollable risk is categorized as Systemic Risk. The concept of Systematic and Unsystematic risk may be further explained as under:

<i>Systematic Risk</i>	<i>Unsystematic Risk</i>
It is not fully uncontrollable by an organisation.	It is usually controllable by an organisation.
It is not entirely predictable	It is reasonably predictable.

It is usually of a macro nature.

It is normally micro in nature.

It usually affects a large number of organisations operating under a similar stream.

If not managed it directly affects the individual organisation first.

It cannot be fully assessed and anticipated in advance in terms of timing and gravity.

It can be usually assessed well in advance with reasonable efforts and risk mitigation can be planned with proper understanding and risk assessment techniques.

The example of such type of risks is Interest Rate Risk, Market Risk, Purchasing Power Risk

The examples of such risk are Compliance risk, Credit Risk, Operational Risk.

Answer 4(d)

Section 143(12) of the Companies Act, 2013 read with rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving an amount of rupees one crore or above, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government.

Rule 13(2) of Companies (Audit and Auditors) Rules, 2014 provides that the auditor shall report the matter to the Central Government as under:

- Reporting the matter to the Board/ Audit Committee immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within 45 days.
- on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board / Audit Committee along with his comments to the Central Government within 15 days from the date of receipt of such reply or observations.
- in case the auditor fails to get any reply or observations from the Board / Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report.
- the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same
- the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number, and
- the report shall be in the form of a statement as specified in Form ADT-4.

Rule 13(3) of Companies (Audit and Auditors) Rules, 2014 further states that in case of a fraud involving lesser than one crore rupees, the auditor shall report the matter to Audit Committee / Board immediately but not later than two days of his knowledge of the

fraud and he shall report the matter specifying the nature of Fraud with description, approximate amount involved; and Parties involved and the same shall also be disclosed in the Board's Report.

The provisions of Rule 13 of the Companies (Audit and Auditors) Rules, 2014 shall mutatis mutandis apply to a cost auditor conducting cost audit under section 148 and a company secretary in practice conducting Secretarial Audit under section 204 of the Companies Act, 2013.

Penal Provisions : The person guilty of the offence shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

PART–III

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

Question 5

- (a) *“Integrated reporting would build on the existing financial reporting model to present additional information about a company’s strategy, governance, and performance.”*

In light of above sentence, prepare a note on purpose of Integrated reporting and guiding principles for preparation of such report.

- (b) *Compliance should be ethical and in spirit of good intention for compliance of laws. In view of this, describe the term ‘Compliance with Spirit of Law’.*
- (c) *Elucidate principles on Internal Control enunciated by Committee of Sponsoring Organizations of the Treadway Commission (COSO).*
- (d) *What are the major sections of Business Responsibility Report (BRR) ?*

(5 marks each)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *Prepare a brief note on National Guidelines on Responsible Business Conduct (NGRBC).*
- (ii) *“Corporate Compliance Management should broadly include compliance of various laws”. In view of this, what are the Commercial Laws and Fiscal Laws, which should be complied with by every organization ?*
- (iii) *“Compliance Management plays the significant role to comply with a steady stream of complex regulations”. What can be added to the significance of the Corporate Compliance Management ?*
- (iv) *Why the Information System is the most essential component of Internal Control?*

(5 marks each)

Answer 5(a)

Integrated reporting is founded on integrated thinking, which helps demonstrate

interconnectivity of strategy, strategic objectives, performance, risk and incentives and helps to identify sources of value creation. It is a concept that has been created to better articulate the broader range of measures that contribute to long-term value and the role, organisations play in society.

Purpose of Integrated Reporting

The primary purpose of an integrated report is to explain to providers of financial capital how an organisation creates value over time. An integrated report benefits all stakeholders interested in an organisation's ability to create value over time, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policy-makers.

An integrated report aims to provide insight about the resources and relationships used and affected by an organisation — these are collectively referred to as "the capitals" in this Framework.

It also seeks to explain how the organisation interacts with the external environment and the capitals to create value over the short, medium and long term. The capitals are stocks of value that are increased, decreased or transformed through the activities and outputs of the organisation. They are categorized in this Framework as financial, manufactured, intellectual, human, social and relationship, and natural capital, although organisations preparing an integrated report are not required to adopt this categorization or to structure their report along the lines of the capitals.

Guiding Principles : The following Guiding Principles underpin the preparation and presentation of an integrated report, informing the content of the report and how information is presented. These Guiding Principles are applied individually and collectively for the purpose of preparing and presenting an integrated report; accordingly, judgement is needed in applying them, particularly when there is an apparent tension between them (e.g., between conciseness and completeness).

- A. *Strategic focus and future orientation* : An integrated report should provide insight into the organisation's strategy, and how it relates to the organisation's ability to create value in the short, medium and long term and to its use of and effects on the capitals.
- B. *Connectivity of information* : An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organisation's ability to create value over time.
- C. *Stakeholder relationships* : An integrated report should provide insight into the nature and quality of the organisation's relationships with its key stakeholders, including how and to what extent the organisation understands, takes into account and responds to their legitimate needs and interests.
- D. *Materiality* : An integrated report should disclose information about matters that substantively affect the organisation's ability to create value over the short, medium and long term.
- E. *An integrated report should be concise* : An integrated report includes sufficient context to understand the organisation's strategic governance, performance and prospects without being burdened with less relevant information.

- F. *Reliability and completeness* : An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.
- G. *Consistency and comparability* : The information in an integrated report should be presented:
- On a basis that is consistent over time.
 - In a way that enables comparison with other organisations to the extent it is material to the organisation's own ability to create value over time.

Answer 5(b)

It is true to say that ‘Compliance should be ethical and in spirit of good intention for compliance of laws’. The enterprise response to compliance mandates seems to be to create and implement whatever compliances are prescribed - to ‘get it done’. The goal is to simply meet the ‘letter of the law’. The effort is directed towards completing Compliance tasks as quickly as possible so all could return to ‘real’ business tasks. But ensuring compliances as per the “spirit of law” is more important.

In the context of corporate governance, compliance means adhering to the law. Ethics is the intent to observe the spirit of law. In other words, it is the expressed intent to do what is right. In the wake of recent corporate scandals, a program that strongly emphasizes both ethics and compliance is good business.

An ethical compliance management programme ensures that the mechanisms are in place to provide early warning of deviations from guidelines and regulations. It is essential to create or expand a culture of trust, enthusiasm, and integrity - critical attributes that can produce measurable results in terms of productivity, employee satisfaction, customer satisfaction, and, ultimately, brand equity.

Answer 5(c)

COSO is the abbreviation of The Committee of Sponsoring Organizations of the Treadway Commission (COSO).

COSO’s (original framework, which identified five components of internal control, became widely adopted for use in assessing the effectiveness of internal controls. Its more recently updated framework identifies 17 principles mapped to the original components. These Principles are as under:

Component 1: Control Environment

1. Demonstrates commitment to integrity and ethical values
2. Exercises oversight responsibility
3. Establishes structure, authority, and responsibility
4. Demonstrates commitment to competence
5. Enforces accountability

Component 2: Risk Assessment

6. Specifies suitable objectives

7. Identifies and analyzes risk
8. Assesses fraud risk
9. Identifies and analyzes significant change

Component 3 : Control Activities

10. Selects and develops control activities
11. Selects and develops general controls over technology
12. Deploys control activities through policies and procedures

Component 4 : Information & Communication

13. Uses relevant information
14. Communicates internally
15. Communicates externally

Component 5 : Monitoring Activities

16. Conducts ongoing and/or separate evaluations
17. Evaluates and communicates deficiencies

Answer 5(d)

SEBI in its (Listing Obligations and Disclosure Requirements) Regulations, 2015 has mandated the requirement of submission of Business Responsibility Report (BRR) for top 500 listed entities describing initiative taken by them from an environmental, social and governance perspective in the prescribed format [Regulation 34(2)(f)].

The Business Responsibility Report framework is divided into five sections:

- (a) *Section A* : General Information about the Organisation – Industry Sector, Products & Services, Markets, other general information.
- (b) *Section B* : Financial Details of the Organisation – Paid up capital, Turnover, Profits, CSR (Corporate Social Responsibility) spend.
- (c) *Section C* : Other Details – Business Responsibility initiatives at Subsidiaries and Supply-chain Partners.
- (d) *Section D* : Business Responsibility Information – Structure, Governance & Policies for Business Responsibility.
- (e) *Section E* : Principle-wise Performance – Indicators to assess performance on the 9 Business. Responsibility principles as envisaged by the National Voluntary Guidelines (NVGs)

Answer 5A(i)

The Ministry of Corporate Affairs has revised the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGs) and has released the National Guidelines on Responsible Business Conduct (NGRBC) in

March 2019. These guidelines urge businesses to actualise the principles in letter and spirit. The annexure 3 of the Guidelines details the reporting framework associated with the National Guidelines for Responsible Business Conduct.

It consists of three sections:

- (a) Section A – General Disclosures, covering operational, financial and ownership related information.
- (b) Section B – Management and Process Disclosures covering the structures, policies and processes to integrate the Guidelines and
- (c) Section C – Principle-wise Performance Indicators covering how well businesses are performing in pursuit of these Guidelines.

Businesses may use this reporting framework to voluntarily disclose their commitment to and performance against their economic, social and environmental impacts. A growing number of businesses are already doing this and are reporting several benefits, internal and external, as a result of their commitment to disclosure and reporting.

Answer 5A(ii)

With reference to Corporate Compliance Management, the following Commercial Laws should be complied by an organization:

- Indian Contract Act, 1872
- Transfer of Property Act 1882
- Arbitration and Conciliation Act, 1996
- Negotiable Instruments Act, 1881
- Sale of Goods Act, 1930

Following Fiscal Laws should be complied with by an organization:

- Income Tax Act, 1961
- Central Excise Act, 1944
- Customs Act, 1962
- GST Act, 2017

Answer 5A(iii)

As the organizations face mounting pressures that are driving them towards a structured approach to enterprise wise compliance management, the key drivers of compliance management encompass, the complexity of today's business, dependency on IT and hi-tech processes, growth in business partner relationships. Increased liability and regulatory oversight has amplified risk to a point where it demands continuous evaluation of compliance management systems. Furthermore, the multiplication of compliance requirements that organizations face increases the risk of non-compliance, which may have potential civil and criminal penalties.

The following may add to the significance of the corporate compliance management:

- Image building of a responsible corporate citizen.
- Stake holders can trust in the working of the corporate.
- Prevent improper conduct in the organization.
- It keeps things running smoothly and minimizes risks.
- It helps the company in maintaining a good reputation.
- Real time status of legal/statutory compliances.
- Prevent unintended non compliances/ prosecutions.
- Higher Productivity in the Company.
- Building Positive Reputation.
- It enhances credibility/creditworthiness being a law abiding company.
- Proper compliance management avoids the penal provisions.
- Saves cost in litigation by avoiding penalties/fines.
- It lays down the foundation for the control environment.
- Enjoys healthy returns through employee and customer loyalty.
- Benefits of compliance program far outweigh its costs.

Answer 5A(iv)

An information system consists of infrastructure (physical and hardware components), software, people, procedures, and data. Many information systems make extensive use of information technology (IT).

The information system relevant to financial reporting objectives, which includes the financial reporting system, encompasses methods and records that:

- Identify and record all valid transactions.
- Describe on a timely basis the transactions in sufficient detail to permit proper classification of transactions for financial reporting.
- Measure the value of transactions in a manner that permits recording their proper monetary value in the financial statements.
- Determine the time period in which transactions occurred to permit recording of transactions in the proper accounting period.
- Present properly the transactions and related disclosures in the financial statements.

The quality of system-generated information affects management's ability to make appropriate decisions in managing and controlling the entity's activities and to prepare reliable financial reports.

Communication, which involves providing an understanding of individual roles and responsibilities pertaining to internal control over financial reporting, may take such forms as policy manuals, accounting and financial reporting manuals, and memoranda. Communication also can be made electronically, orally, and through the actions of management.

PART–IV

Question 6

(a) Describe the following terms :

- (i) “Foreign Public Official” as per ICSI Anti-Bribery Code
- (ii) “Disciplinary Mechanism” under ICSI Anti-Bribery Code
- (iii) “Ethical Dilemma”
- (iv) “Indian Ethos”
- (v) “Environment, Social, Governance (ESG) Index”.

(b) Define the term “Sustainable Development”. What are the fundamental principles of Sustainable Development ? (5 marks each)

Answer 6(a)

- (i) *Foreign public official* : It means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and includes a person who performs a public function or provides service for a foreign country.
- (ii) *Disciplinary Mechanism* : As per clause 9 ‘Sanctions for Non-compliance’ of ICSI Anti Bribery Code any non-compliance of the Code is subject to disciplinary mechanism. The company shall set up disciplinary mechanism as approved by its Board, for non-compliance of any part of the Corporate Anti- Bribery Code.
The disciplinary mechanism shall include:
 - Nature of offence
 - Penalty of the office
 - Competent Authority
- (iii) *Ethical Dilema* : An ethical dilemma is a moral situation in which a choice has to be made between two equally undesirable alternatives. It is a decision-making problem between two possible moral imperatives, neither of which is unambiguously acceptable or preferable. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.
- (iv) *Indian Ethos*: Indian Ethos in Management refers to the values and practices that can contribute to service, leadership and management. The essence of good governance and leadership lies not in the paraphernalia of systems and procedures but on the quality of people who create, govern or operate the systems, which is known as Sanathana Dharma (the eternal essence), and have been influenced by various strands of Indian philosophy.

- (v) *Environment, Social, Governance (ESG) Index* : ESG describes the environmental, social and corporate governance issues. The ESG index employs a unique and innovative methodology that quantifies a company's ESG practices and translates them into a scoring system which is then used to rank each company against its peers in the market. Its quantitative scoring system offers investors complete transparency on Environmental, Social & governance issues of a company.

The ESG Performance indicators are:

- Environment - Energy use and efficiency, Greenhouse gas emissions, Water use, Use of ecosystem services – impact & dependence and Innovation in environment friendly products and services.
- Social - Employees, Poverty and community impact and Supply chain management.
- Governance - Codes of conduct and business principles, accountability, transparency and disclosure and Implementation – quality and consistency.

Answer 6(b)

Sustainable development is a broad concept and it combines economics, social justice, environmental science and management, business management, politics and law. Sustainable Development indicates development that meets the needs of the present generation without compromising with the ability of the future generations to meet their needs. The principle behind it is to foster such development through technological and social activities which meets the needs of the current generations, but at the same time ensures that the needs of the future generation are not impaired.

The contribution of sustainable development to corporate sustainability is twofold:

- First, it helps set out the areas that companies should focus on: environmental, social, and economic performance.
- Secondly, it provides a common societal goal for corporations, governments, and civil society to work towards ecological, social, and economic sustainability.

Four fundamental Principle of Sustainable Development agreed by the world community are as under:

1. *Principle of Intergenerational equity* : Need to preserve natural resources for the future generations.
2. *Principle of sustainable use* : Use of natural resources in a prudent manner without or with minimum tolerable impact on nature.
3. *Principle of equitable use or intra-generational equity* : Use of natural resources by any state / country must take into account its impact on other states.
4. *Principle of integration* : Environmental aspects and impacts of socio-economic activities should be integrated so that prudent use of natural resources is ensured.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2019-20 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

PART-I

Question 1

- (a) Parikh is a practising Company Secretary at Mumbai. His gross fee receipts for the financial year 2018-19 was ₹28 lakhs. He estimated his gross receipts at ₹32 lakhs for the financial year 2019-20. He wants to avail composition scheme for the financial year 2020-21. Briefly narrate whether he can avail composition scheme for the financial year 2020-21 with attendant conditions. Will he be eligible to avail input tax credit ? Can he issue tax invoice ? (5 marks)
- (b) Amit Ltd., a registered supplier, is engaged in manufacturing activity. It also gives job work to other units. It purchased raw materials on 5th June, 2018 for ₹2 lakhs (+GST @ 12%). It dispatched 50% of the raw material to job worker on 10th July, 2018. How much can the company claim as input tax credit in respect of those goods ?

What is the time limit for receiving the goods after completion of job work by the job worker ? What would be your answer in case 50% of the raw material is directly sent to job worker by the original seller of goods ? Will your answer be different in case it is capital good, instead of raw material ? (5 marks)

- (c) Determine (with brief reason) the time of supply of goods in the following cases, where the supply involves movement of goods (in one lot) :

Case No.	Date of removal of goods	Date of Invoice	Date of Payment
1.	10-06-2018	12-06-2018	20-05-2018
2.	10-11-2018	20-10-2018	29-11-2018
3.	07-09-2018	02-10-2019	06-12-2017
4.	10-12-2018	20-11-2018	Bank credit 22-09-2018/in the books of account 24-09-2018
5.	27-12-2018	29-12-2018	Bank credit 24-12-2018/in the books of account 22-12-2018

(5 marks)

- (d) State with reasons, whether the following statements are true or false under GST law :
- (i) Rectification of Advance Ruling must be made within 3 months of the date of order.
 - (ii) Supply of newspaper in trains shall be taxed at 'nil' rate of GST.
 - (iii) While doing repair of furniture of a company, GST was paid on wood, board, mica, paint etc.; the amounts so paid are eligible for input tax credit.
 - (iv) A person aggrieved by the order passed by the adjudicating authority must file appeal to the appellate authority within 30 days from the date of the impugned order.
 - (v) Expenditure incurred on construction of factory building is ₹18,40,000 including GST of ₹2,80,000. The GST amount is not eligible for input tax credit. (5 marks)

Answer 1(a)

Applicability of Composition Scheme

The new composition scheme, introduced vide Notification No.2/2019 dated 7.03.2019, provides for concessional rate of tax particularly to the suppliers of services. It is applicable to suppliers of services who have to pay tax at a rate of 6% (3% CGST and 3% SGST / 6% IGST). The basic condition for its applicability is that the annual turnover of the person in preceding financial year must not have exceeded Rs.50 lakhs. In the present case, since Mr. Parikh has estimated turnover of Rs. 32 lakhs in the year 2019-20 which is below the minimum threshold of Rs.50 lakhs, he can avail the new composition scheme for supply of service in the F.Y. 2020-21.

The registered person opting for new composition scheme is not eligible to avail input tax credit nor shall he be eligible to charge output tax from its recipients of supply. The registered person shall issue bill of supply instead of tax invoice.

Answer 1(b)

ITC on raw materials/capital goods sent to job worker

Amit Ltd paid GST @ 12% on the goods which works out to Rs.24,000. As per Section 19(1) of the CGST Act, 2017, it can claim input tax credit in entirety regardless of the fact that it has wholly or partially sent such goods to a job worker. It dispatched 50% of the raw materials on 10.07.2018 to the job worker.

The time limit is that the job worker must return the raw material as such or as processed goods within 1 year from the date of dispatch by Amit Ltd. In the case of delay, the raw material so sent to job worker would be treated as supply from the date when the goods were originally sent out Amit Ltd would be required to pay tax along with interest.

Where the raw material is dispatched directly to the job worker i.e. on 05.06.2018, the time limit of one year would be counted from that date of receipt of raw material by the job worker. Thus, in case 50% of the raw material is directly sent to the job worker, the time limit for return of such raw material as such or as processed goods would be

one year from the date of receipt of such raw material by the job worker. In the case of capital goods, the time limit for return is 3 years instead of 1 year. If the goods are not returned by the job worker within 3 years then such capital goods would be deemed to have been supplied to the job worker on the date when the same were originally sent and therefore Amit Limit would be required to pay tax on such capital goods along with interest.

Answer 1(c)

Time of supply

As per Section 12(1) of CGST Act, 2017, the time of supply of goods shall be the earlier of the following dates, namely :—

- (a) the date of issue of invoice by the supplier or the last date on which he is required to issue invoice under section 31; or
- (b) the date on which the supplier receives the payment with respect to the supply.

However, advance received in respect of supply of goods is not liable to be taxed at the time of receipt vide Notification No. 66/2017 CT dated 15.11.2017. Therefore, the date of payment in respect of supply of goods shall not be relevant for determining the time of supply.

Further, Section 31 of the CGST Act provides that a registered person supplying taxable goods shall issue a tax invoice, before or at the time of, —

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case.

In view of the above stated legal position, the time of supply of goods in each of the independent cases shall be as tabulated below

Case 1 : In this the earliest date is the date of removal of goods [as date of payment is not relevant] Hence, the time of supply is 10.6.2018.

Case 2 : In this case, the earliest is the date of invoice and whereas the removal of goods is much later. The time of supply hence is 20.10.2018.

Case 3 : In this case, the date of removal of goods is much before date of invoice and therefore the time of supply is 07.09.2018.

Case 4 : Since the date of payment is not relevant for supply of goods and the date of invoice is earlier than the date of removal, the time of supply is 20.11.2018.

Answer 1(d)

- (i) **False.** As per Section 102 of the CGST Act, 2017, the Authority or the Appellate Authority may amend any order passed by it, so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order.
- (ii) **True.** Supply of newspaper invoiced separately shall be taxed at 'nil' rate of GST. (Notification dated 28th June, 2017)

- (iii) **True.** As per Section 16 of the CGST Act, the tax charged in respect of goods which are used or intended to be used in the course or furtherance of his business shall be eligible for input tax credit. Thus, materials purchased for repairs of existing furniture is eligible for ITC.
- (iv) **False.** As per Section 107 of the CGST Act, a person aggrieved by the order of the adjudicating authority must file appeal before the appellate authority within the time limit of 3 months from the date on which the said decision or order is communicated to such person
- (v) **True.** As per clause (c) and (d) of Section 17(5) of the CGST Act, tax charged on works contract service or goods or services used for construction of immovable property on its own account shall not be eligible for input tax credit.

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

Question 2

- (a) *Gopal Das & Co., Kolkata is a manufacturer and is a registered supplier (under regular scheme). It furnishes the following details for the tax period ended on 31st March, 2019 :*

(i) <i>Intra-State supply of goods (includes GST @ 18%)</i>	₹70,80,000
(ii) <i>Goods exported (GST Nil)</i>	₹32,00,000
(iii) <i>Inward supplies liable for reverse charge</i>	₹6,00,000
(iv) <i>Transfer of goods to Branch at Delhi (without GST)</i>	₹50,00,000

*Complete the 'aggregate turnover' under section 2(6) of the CGST Act, 2017.
(5 marks)*

- (b) *Jogiram (P) Ltd. claimed ITC of ₹2,50,000 with an intention to defraud the Revenue. What is the rate of interest at which the liability could be discharged voluntarily ? Can the Revenue levy penalty, if so, how much ? Can the tax, interest, penalty and any payment due under reverse charge, be adjusted against ITC of a registered person ?
(5 marks)*
- (c) *State whether the following are supply of goods/services, as per GST law, with brief reasons :*
- (i) *Mr. X availed the architectural services of his son living in France (free of cost) for designing his residential building and factory layout.*
 - (ii) *Scrap of machinery destroyed by fire handed over to insurance company for settlement of claim.*
 - (iii) *Lease of land for two wheeler parking stand.*
 - (iv) *Permitting use of registered patent for annual fee.*
 - (v) *Transfer of tenancy right by executing and registering a document.
(5 marks)*

- (d) *Bharat Ltd., a registered supplier under the regular scheme, is engaged in manufacture of electronic items. The following details for the month of March, 2019 are available :*

<i>Item</i>	<i>GST Paid (₹)</i>
<i>Machines acquired for manufacture (capital goods)</i>	<i>10,00,000</i>
<i>Electronic items utilized in manufacture</i>	<i>25,00,000</i>
<i>Trucks used for transporting materials</i>	<i>1,00,000</i>
<i>Food and beverages consumed within the factory</i>	<i>25,000</i>

Advise the ITC eligibility for the company.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Decide the following transactions in the context of GST law :*
- (a) *When would a discount be excluded from the value of supply ? Will secondary discount issued for goods supplied be reduced in determining the value of supply ?*
- (b) *Determination of value of supply when TCS under Income-tax Act, 1961 is charged separately in the invoice.* (5 marks)
- (ii) *Ganga Co. Ltd. commenced business on 01-07-2018. It applied for registration on 05-08-2018. The registration was granted on 07-08-2018. What is the effective date of registration ? Instead of 01-07-2018, if it had commenced business on 20-07-2018, what would be your answer ?*
- Ganga Co. Ltd. is an authorized dealer of two-wheeler vehicles. Its sales turnover was ₹125 lakhs for the year ended 31-03-2019. It also provided after sales service to customers for ₹7 lakhs. Is it eligible for composition levy for the financial year 2018-19 ?* (5 marks)
- (iii) *State which of the following is composite supply or mixed supply under the GST law :*
- (i) *Sale of car with warranty coverage.*
- (ii) *Gift pack with chocolates and books.*
- (iii) *Sale of Refrigerator with power stabilizer.*
- (iv) *Hotel accommodation with complimentary breakfast.*
- (v) *Doctor providing consultancy and dispensing medicines.* (5 marks)
- (iv) *Tex Mark Inc. of USA, established a liaison office in Mumbai for the purpose of liaising with the suppliers for purchase of raw materials. The purchase orders or contracts were entered into with the suppliers directly by the head office.*

Liaison office did not enter into any contract with any of the suppliers. Payments were also made by the head office directly to the suppliers. The expenses incurred by the liaison office are reimbursed by the HO. There is no amount excessively charged by the liaison office to the HO. Is the amount received by the liaison office liable for GST as supply of service ? Is the liaison office required to get registered under GST law ? (5 marks)

Answer 2(a)

Section 2(6) of the CGST Act, 2017 defines the term “aggregate turnover” so as to mean the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess

In the light of the above definition, the computation of aggregate turnover in the instant case is as below:

<i>Particulars</i>	<i>Turnover (Rs.)</i>
Intra-State supply of goods Rs.70,80,000 x 100 /118 Excludes CGST, SGST, IGST	60,00,000
Export Supplies [to be included as per section 2(6)]	32,00,000
Inward supplies under reverse charge [not to be included]	Nil
Transfer of goods to branch / distinct person is categorized as supply under section 7 of the CGST Act. [No adjustment needed as GST is already excluded]	50,00,000
Aggregate turnover	1,42,0000

Answer 2(b)

Utilisation of ITC

Section 74 of the CGST Act, 2017 says that when a registered person has not paid tax or short paid or received erroneously refund or claimed input tax credit by reason of fraud or any willful mis-statement or suppression of facts, he shall be liable to pay such tax along with interest payable under section 50 of the Act. Presently, the rate of interest notified under Section 50 is 18%. Where the registered person pays such tax along with interest voluntarily before the service of notice under Section 74, it shall be liable to pay penalty at the rate of 15% of such tax in terms of Section 74(5) of the Act.

Section 49(4) of the CGST Act provides that the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

Section 2(82) of the CGST Act defines the term “output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services

or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Thus, the amount available in the electronic credit ledger **i.e. input tax credit can be used only towards payment of output tax and the definition of output tax includes only tax chargeable on taxable supplies and excludes tax chargeable under reverse charge.**

In light of above, input tax credit can be used only for the payment of tax **and cannot be used for payment of interest, penalty and tax under reverse charge.**

Answer 2(c)

Issues on supply of service

- (i) In terms of Section 7 of the CGST Act, 2017, import of service for a consideration whether or not in the course of or furtherance of business is a supply.

Here, the services received by Mr X is **without consideration, thus not a supply**. It is not subject to GST.

- (ii) As per Clause 2 of Schedule I of the CGST Act, Permanent transfer or disposal of business assets where input tax credit has been availed on such assets is considered as supply.

When the machinery destroyed by fire is handed over to insurance company in return for insurance compensation, it is a **supply of goods**.

- (iii) As per Clause 2(a) of Schedule II of the CGST Act, any lease, tenancy, easement, licence to occupy land is a supply of services.

Thus, lease of land for two wheeler parking is a **supply of service**.

- (iv) As per Clause 5(c) of Schedule II of the CGST Act provides that Temporary transfer or permitting the use or enjoyment of any intellectual property right is supply of service.

Hence, permitting use of registered patent/ trade mark shall amount to **supply of service**.

- (v) The activity of transfer of tenancy rights is squarely **covered under the scope of supply** of service in terms of Section 7.

However, renting of residential dwelling unit for use as a residence is exempt.

Answer 2(d)

Computation of ITC available

	<i>Amount (₹)</i>
i. Machineries acquired for manufacture of electronic items is eligible for ITC. However, depreciation has to be claimed on the net value excluding the GST. It is assumed that the GST amount has not been considered for the purpose of depreciation under section 32 of the Income-tax Act, 1961.	10,00,000

ii. Electronic items utilized in manufacture. The ITC would be fully available as these are used in the course of business / furtherance of business. [Section 16 CGST Act]	25,00,000
iii. Trucks used for transporting materials. ITC on motor vehicles for transportation of goods has not been blocked under Section 17(5) of the CGST Act. Hence, it is eligible for input tax credit.	1,00,000
iv. Under Section 17(5) of the CGST Act, ITC on food and beverages is a blocked credit unless they are consumed to make outward taxable supplies in the same category or as part of mixed supply or composite supply or it is obligatory on the part of the employer to provide such service to its employees under any law. However, in the present case, food and beverage have been consumed within the factory. Hence, not eligible.	Nil
Total ITC available	36,00,000

Answer 2A(i)**Determination of the value of supply**

- (a) The value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply [Section 15(3)(a)].

The value of supply shall also not include any discount issued after the supply if such discount is established in terms of an agreement entered into at or before the time of supply and specifically linked to relevant invoice and input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of supply. [Section 15(3) (b)].

As such GST law does not distinguish between secondary discount and primary discount. In the present case, if the secondary discount is issued after the supply is completed and does not fulfil the conditions laid down under Section 15(3)(b), it shall not be excluded while determining the value of supply. In other words, the value of supply shall not include any discount by way of issuance of credit notes except where it is covered by section 15(3)(b).

- (b) Vide C.B.I. & C. Corrigendum F.No. 20/16/04/2018-GST, dated 7-3-2019, this aspect has been clarified as under;

Section 15(2) of the CGST Act says that the value of supply shall include 'any taxes, duties, cesses, fees and charges levied under any law for time being in force other than under CGST, SGST and UTGST, if charged separately by the supplier.

For the purpose of determination of value under GST, Tax collection at source under the provisions of the Income-tax Act is deductible as it is an interim relief **not having the character of tax.**

Hence TCS charged under Income Tax Act is not includible in determination of the value of supply.

Answer 2A(ii)

Eligibility for composition levy

As per rule 10(3) of CGST Rules, 2017 if the applicant has submitted an application for registration after the expiry of 30 days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration.

Ganga Co Ltd commenced business on 01.07.2018 but applied on 05.08.2018 and it was granted on 07.08.2018. Since, the application for registration has been made after the expiry of 30 days from the date when it was liable to obtain registration, the effective date of registration would be the date of grant of registration i.e. 07.08.2018.

If it had commenced business on 20.07.2018, the application for registration submitted within 30 days i.e. 07.08.2018, hence the effective date of registration would be 20.07.2018.

Under section 10 of the CGST Act, a registered person opting to pay tax under composition levy can apart from manufacture / supply of goods, provide service **not exceeding 10% of total turnover or Rs.5 lakhs whichever is higher.**

In this case the annual turnover is Rs.125 lakhs and hence the higher of the two limits is Rs. 12.5 lakhs; the amount received by way of supply of service is Rs.7 lakhs which is less than 10% of the total turnover.

Hence, Ganga Co Ltd is eligible for composition levy.

Answer 2A(iii)

Composite Supply or Mixed Supply

- (i) *Composite Supply* : Sale of car with warranty coverage is a composite supply as both supplies are naturally bundled and sale of car is a principal supply.
- (ii) *Mixed Supply* : Gift pack with chocolates and books are not bundled due to natural necessities and hence they are mixed supply.
- (iii) *Mixed Supply* : Refrigerator and power stabilizer are not inseparable and are not bundled due to natural necessities. They are mixed supply.
- (iv) *Composite Supply* : Hotel accommodation with complimentary breakfast is a composite supply as the principal supply is supply of service i.e. accommodation.
- (v) *Composite Supply* : Doctor providing consultancy and dispensing medicine is a composite supply as the principal supply of service is medical service.

Answer 2A(iv)

Liaison office : Whether liable for registration

The liaison office does not undertake any activity of trading, commercial or industrial nature. It does not enter into any business contracts. It does not charge any commission,

fee or remuneration for the liaison activities / services rendered by it either from the suppliers or from the head office.

The head office merely reimburses the expenses incurred by the liaison office on actual expenditure basis without any mark up. There is no **source of income for the liaison office and it is solely dependent on the head office for all expenses** incurred by it and therefore the head office and liaison office cannot be treated as separate persons.

The liaison office **does not render any consultancy services directly or indirectly** with or without consideration and does not have significant commitment powers. The amount received by liaison office hence **cannot be treated as amount received towards supply of service.**

Since it is not in furtherance of business of the liaison office, it is **not required to get registered under GST.**

Case law reference : Habufo Meubelan B.V. 2018(14) G.S.T.L 596 (A.A.R- GST)

Question 3

- (a) *Briefly explain about apportionment of credit and blocked credits under section 17 of the CGST Act. (5 marks)*
- (b) *State with brief reasons whether the following are true or false; as per GST law:*
- (i) *When the refund is issued beyond 60 days from the date of application, interest is payable @ 8% per annum.*
 - (ii) *Final return has to be furnished within 3 months of the date of order of cancellation of registration of GST.*
 - (iii) *Commissioner can grant time for payment of GST liability in maximum of 20 instalments for the self assessed tax shown in the GST return, as per section 80.*
 - (iv) *Under section 10, the 'due date for' filing return by a registered person is 20 days after the end of each quarter.*
 - (v) *Rendering service by way of fumigation in a warehouse of agricultural produce is exempted service. (5 marks)*
- (c) *With brief reasons, state whether the following will attract GST levy :*
- (i) *Lodging accommodation with room tariff @ ₹900 per day.*
 - (ii) *SKT & Co. transporting textile goods thro ESSEM Transport Agency by paying ₹700 per bundle and sending 10 bundles on 31st March, 2019.*
 - (iii) *Kaziranga National Park collecting ₹200 per person as entrance fee.*
 - (iv) *Muthu Lab is a pathological lab owned by Muthu. He is a post-graduate in Microbiology. He collects fees for services rendered.*
 - (v) *Samy Transports carried agricultural produce i.e. turmeric from villages to town (markets) by charging ₹2,000 per day per person. (5 marks)*

- (d) *Badrinath Filters Ltd., a registered supplier of industrial air filters, is required to send from Mumbai (Maharashtra), a consignment of parts of air filters to be replaced under warranty at various client locations in Ahmedabad, Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹52,000.*

Badrinath Filters Ltd. is of the view that since movement of goods to Gujarat is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.

You are required to examine whether the aforesaid view is correct. (5 marks)

Answer 3(a)

Apportionment of credit and blocked credits

Section 17 of the CGST Act deals with apportionment of credit and blocked credits.

Where the goods or services or both are used by the registered person partly for the purpose of business and partly for other purposes the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Where the goods or services or both are used by the registered person partly for taxable supplies including zero rated supplies and partly for exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero rated supplies.

The value of exempt supply shall be such amount as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building.

A banking company or financial institution engaged in supplying services by way of accepting the deposits, extending loans or advances shall have the option to either comply with the provisions of section 17(2) viz. proportionate input tax credit or avail of every month 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Provided that once the option is exercised by a banking company or financial institution, it shall not be withdrawn during the remaining part of the financial year. This restriction of 50% also shall not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.

Answer 3(b)

- (i) **False.** As per section 56 of the CGST Act, where any tax ordered to be refunded is not refunded to the applicant within 2 months from the date of the application, the applicant shall be paid interest at such rate not exceeding 6%. as may be prescribed by Board.

Vide Notification No. 13/2017-C.T., dated 28-6-2017, the Government has notified the rate of interest for the purpose of Section 56 @ 6%.

- (ii) **True.** As per section 45 when a registration is cancelled such person shall

furnish a final return within 3 months of the date of cancellation or date of order of cancellation - whichever is later.

- (iii) **False.** As per Section 80 of the CGST Act, the Commissioner cannot grant payment of tax in instalments in respect of self assessed tax. However, In respect of any amount due other than self assessed tax the Commissioner can provide monthly instalments not exceeding 24 for the purpose of payment of tax.
- (iv) **False.** As per section 39(2) the due date for filing return by the composition person is 18 days after the end of each quarter.
- (v) **True.** As the services by way of fumigation in a warehouse of agricultural produce is an exempted service by Notification No.12 of 2017.

Answer 3(c)

Exemption for certain services

Service exemption is to be considered in the light of Notification No.12/2017-C.T (Rate) dated 28.6.2017

- (i) Lodging accommodation with tariff below Rs.1,000 is **not liable** for GST.
- (ii) Services provided by the goods transport agency where the consideration for the transportation of goods for a single consignee does not exceed Rs.750 is not liable for GST. **However, in the present case, the consideration for 10 bundles [being single consignment] is Rs.7000. Hence, GST is attracted.**
- (iii) As per S.No. 79 of Notification No.12/2017-C.T (Rate) dated 28.6.2017, Entrance/ admission fee received by national park from visitors is not liable for GST.
- (iv) Services by way of health care including paramedical service are not liable for GST.
- (v) As per S.No. 20 of the referred notification, Transportation of agricultural produce by rail or vessel from one place in India to another place is not liable for GST.

Answer 3(d)

E-way bills

The goods to be moved to another State for replacement under warranty is not a 'supply'. However, Rule 138(1) of the CGST Act, 2017, *inter alia*, stipulates that every registered person who causes movement of goods of consignment **value exceeding Rs. 50,000** :

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, generate an electronic way bill (E-way Bill) before commencement of such movement.

CBIC vide Q 9. of FAQs on E-way Bill has also clarified that **even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.**

Thus, in the given case, **since the consignment value exceeds Rs. 50,000, e-way bill is required** to be mandatorily generated.

Therefore, the contention of Badrinath Filters Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is **not correct**.

Question 4

(a) Ms. Poorvisha has exported some goods to Sydney, Australia. She provides the following details to you :

- (i) CIF value of the goods = AUD 210,000.
- (ii) FOB price of goods : (Australian \$) AUD 200,000.
- (iii) Shipping bill presented electronically on 29th April, 2019.
- (iv) Proper officer passed an order permitting clearance and loading of goods for export (Let Export Order) on 2nd May, 2019.
- (v) During the interval between presentation of the shipping bill and clearance of goods, there were changes in the rate of export duty as well as rate of exchange.

Rate of export duty and rate of exchange details are as follows :

Date	Rate of exchange	Rate of Export duty
29-04-2019	1 AUD = ₹70	11%
02-05-2019	1 AUD = ₹70.50	10%

You are required to calculate the export duty payable by the exporter.

(b) ABC Ltd., an exporter whose export turnover for the year ended 31st March, 2019 is ₹20.00 Lakhs, approaches you to discuss the conditions to be complied to become a Status Holder and to know about the privileges available to Status Holder, if any.

Advise the exporter suitably.

(5 marks each)

Answer 4(a)

Computation of export Duty Payable

Particulars	Amount
FOB price of goods [Note 1] AUD	200,000
Value in Indian currency (AUD 200,000 x Rs. 70) [Note 2]	Rs. 1,40,00,000
Export duty @ 10% [Note 3]	Rs. 14,00,000

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
3. As per section 16(l)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Answer 4(b)**Status holders**

With regard to the conditions to be complied to become status holder, M/s ABC Ltd is advised as below:

- Status recognition will depend on export performance.
- An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (for Gems & Jewellery Sector the performance during the current and previous two financial years)
- The export performance will be counted on the basis of FOB of export earning in freely convertible foreign currencies
- For granting status, export performance is necessary in at least two out of four years.

Export Performance shall be as per table below:

<i>Status Category</i>	<i>Export Performance FOB / FOR (as converted) Value (in US \$ million)</i>
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Grant of Double Weightage

- (a) The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status.
 - (i) Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006.

- (ii) Manufacturing units having ISO/BIS.
- (iii) Units located in North Eastern States including Sikkim and Jammu & Kashmir.
- (iv) Units located in Agri Export Zones.
- (b) Double Weightage shall be available for grant of One Star Export House Status category only.
- (c) A shipment can get double weightage only once in any one of above categories.

Other conditions for grant of status

- (a) Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.
- (b) Exports made on re-export basis shall not be counted for recognition.
- (c) Export of items under Authorisation, including SCOMET items, would be included for calculation of export performance.

Accordingly, M/ABC Ltd is advised to go through the above stated conditions and determine its eligibility to become status holder.

PART- II

Question 5

- (a) *Discuss in brief some distinguishing features of General Anti-Avoidance Rules (GAAR) and Specific Anti-Avoidance Rules (SAAR).*
- (b) *Under what circumstances can Unilateral Relief be granted to avoid Double Taxation under section 91 of Income Tax Act 1961 ?*
- (c) *Discuss in brief a few benefits derived from the Safe Harbour Rules, relating to the transfer pricing regulations.*
- (d) *XYZ Ltd., a foreign company, has its head office at USA. The Board of Directors (BOD) meetings are held in USA. However, the Board of Directors has delegated major powers to a committee in Kolkata and the members of this committee are based in Kolkata. The Board of Directors ratified the decisions of the said committee.*

In the light of above,

- (1) *Discuss the place of effective management (POEM) of XYZ Ltd.*
- (2) *Discuss the guiding factors of POEM for Board of Directors delegating authorities to Committee.*
- (e) *Discuss the factors to be considered by the Assessing Officer while selecting the appropriate transfer pricing method. (3 marks each)*

Answer 5(a)

Distinguishing features of General Anti Avoidance Rules (GAAR)

1. These involve necessarily granting the discretion to the tax authorities to invalidate the arrangements as impermissible tax avoidance.

2. They have a far broader application and hence interpreted in a more extensive manner.
3. GAAR has the potential to counter more effectively and outsmart the tax payers in their "out of box thinking" and their approach in devising new means of tax avoidance.

Distinguishing features of Specific Anti Avoidance Rules (SAAR)

1. These are specific and help reduce to time and cost involved in tax litigation.
2. These provide certainty to any taxpayer while formalising specific arrangements.
3. These don't provide any discretion to the tax authorities.
4. There is always a possibility that the tax payer may find loopholes and circumvent the limited applications of specific provisions.

Answer 5(b)

Under the following circumstances, the Indian Government can grant Unilateral Relief from double taxation u/s 91 of the Income Tax Act, 1961, if:

1. The person or company has been resident of India in the previous year.
2. The Income must have accrued to and received by the tax payer outside India in the previous year.
3. The Income should have been taxed in India and in another country with which there is no tax treaty.
4. The person or company had paid tax under the laws of the foreign country in question.

On a similar note, the unilateral relief can be granted to

- any person who is resident in India in any previous year
- proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income.

Similarly, unilateral relief can be granted to

- any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included.

Answer 5(c)

Benefits derived from Safe Harbour Rules are as under

1. *Compliance Simplicity* : Safe Harbour Rules tends to substitute requirements in place of existing regulations, thereby reducing compliance burden and associated

costs for eligible taxpayers, who would otherwise be obligated to dedicate resources and time to collect, analyze and maintain extensive data to support their inter-company transactions.

2. *Certainty and Reduce litigation* : Electing Safe Harbours may grant a greater sense of assurance to taxpayers regarding acceptability of their transfer price by the authorities without onerous audits. This conserves administrative and monetary resources for both the taxpayer and tax administration.
3. *Administrative Simplicity* : Since Tax administration would be required to carry out only a minimal examination in respect of taxpayers opting for safe harbours, they can channelize their efforts to examine more complex and high - risk transactions and high- risk transactions and taxpayers.

Answer 5(d)

The location where company's Board of Directors (BOD) regularly meets and makes decisions may be the company's Place of Effective Management (POEM) provided the Board:

1. Retain and exercises its authority to govern the company: and
2. Does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

In given case the board meetings are held in USA, but the same formalise the decisions taken by the committee at Kolkata. Hence Place of Board meeting held at USA cannot be POEM, as power is delegated to committee which is based at Kolkata.

Guiding factors when Board Delegating Authorities to Committee are as under:

If Board of Director had delegated some or all of its major authorities to one or more committees consisting senior management, then POEM shall be at the place where:

1. Members of executive committee are based and
2. Where committee develops and formulate key decisions for formal approval by Board.

Hence in given case, POEM of XYZ Ltd. will be Kolkata, as discussed above.

Answer 5(e)

Factors to be considered by the Assessing Officer while selecting an appropriate transfer pricing method are as under:

1. The nature and class of the International or Specified Domestic Transaction.
2. The class or classes of Associated Enterprises entering into the transactions and the functions performed by them taking into account assets employed or to be employed and risk assumed by each enterprises.
3. The availability, coverage and reliability of data necessary for application of the method.
4. The degree of comparability existing between the International transaction or

Specified Domestic Transaction and the uncontrolled transaction, and between the enterprises entering into such transaction

5. The extent to which reliable and accurate adjustments can be made to account for differences, if any, between the International or Specified Domestic Transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions.
6. The nature, extent and reliability of assumptions required to be made in the application of the method.

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

Question 6

- (a) ABC & Co. is a partnership firm consisting of four partners. The partnership deed provides for remuneration of ₹4,00,000 to partners and interest to partners at 12%.

Profit for the year ended 31st March, 2019 is ₹1,00,000 after arriving the following adjustments :

Particulars	Amount ₹
Remuneration to partners	4,00,000
Interest to partners on capital account @ 12%	20,000
Municipal tax of house property	5,000
Rent received on house property	50,000

Compute the book profit and remuneration deductible under section 40(b) of the Income tax Act, 1961. (5 marks)

- (b) Define Tax Treaty. Discuss the principal objectives of Indian Tax Treaties. (5 marks)

- (c) ABC Ltd. proposes to sell one unit XYZ which was set up in 2010 (out of 10 units) and is not related to company's main line of business. Total consideration for sale of XYZ unit as a going concern by way of slump sale is ₹3,50,000. The summarized financial position of XYZ unit as on 31st Jan., 2019 (Date of Sale) is as under :

Liabilities	Amount ₹	Assets	Amount ₹
Paid up capital	50,000	Fixed assets	70,000
General Reserve	40,000	Debtors	40,000
Revaluation Reserve	30,000	Inventories	40,000
Current liabilities	30,000		
	<u>1,50,000</u>		<u>1,50,000</u>

Additional information as under :

Fixed assets includes Land purchased at ₹ 5,000 in May, 2012 revalued at ₹50,000.

For the remaining fixed assets, their written down value as per the Income-tax Act, 1961 is ₹10,000.

Cost inflation indices are as under :

FY 2012-13-200, FY 2018-19-289.

Compute the capital gain arising on sale of XYZ unit of ABC Ltd. (5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) ABC Ltd. is a foreign subsidiary company of XYZ Ltd. XYZ Ltd. sells refrigerators to ABC Ltd. at a price of ₹10,000 each for sale to its dealers in Singapore. In other States, XYZ Ltd. is directly selling to their dealers at ₹12,000 with a warranty of one year (₹500 for each fridge). ABC Ltd. does not offer such warranty. Quantity sold to ABC Ltd. is 8000 units and to dealers of XYZ Ltd. is 3000 units.

Discuss the method to be applied to arrive at the arm's length price and compute the ALP.

How is the assessment of XYZ Ltd. going to be affected ? (5 marks)

- (ii) X Ltd. is a resident company engaged in garment manufacturing at Kolkata. The Profit & Loss Account has been prepared in accordance with Schedule III of the Companies Act, 2013.

Net profit for the year ended 31st March, 2019 is ₹99,000 arrived at after the following adjustments :

Particulars	Amount ₹
Depreciation (includes Revaluation of assets ₹1,000)	4,000
Provision for Income Tax	3,000
Proposed dividend	5,000
Loss of subsidiary A Ltd.	2,000
Interest on term loan from nationalised bank (Not yet paid)	1,20,000
Income	
Dividend received from C Ltd.	1,000

Compute the Book profit u/s 115JB and the Minimum Alternate Tax (MAT) liability. (5 marks)

- (iii) ABC Ltd. is a public limited company but shares are not listed in any stock exchange in India as on 31st Dec., 2018. On 1st Jan., 2019, the company issued 10 lakh shares of face value of ₹ 10 per share, the fair market value of which is ₹ 130, at issue price of ₹ 150 per share.

Discuss the applicability of section 56 of the Income-tax Act, 1961 where shares are issued to :

- (a) Resident Indians;
- (b) Non-resident Indians;
- (c) Venture Capital Undertakings.

(5 marks)

Answer 6(a)

Computation of book profit for AY 2019-20 and remuneration allowed under section 40(b) of Income -Tax Act, 1961

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Net Profit as per Profit and Loss Account		1,00,000
Add : Remuneration to Partners	4,00,000	
Add : Municipal Tax of House Property	5,000	4,05,000
Total		5,05,000
Less : Rent received on House Property		(50,000)
Book Profit as per section 40(b)		4,55,000

Remuneration allowed is lower of the amount as per partnership deed (Rs. 4,00,000) or amount actually paid (Rs. 4,00,000) or the amount computed as under:

Maximum amount deductible on account of payment of remuneration to partners

<i>Particulars</i>	<i>Amount</i>
First Rs. 300000 @ 90%	2,70,000
Balance of Rs. 155000 @ 60%	93,000
Total	3,63,000

Lower of above i.e. Rs. 363000 is the maximum remuneration permissible u/s 40(b).

Answer 6(b)

Tax Treaty : A Tax treaty is a bilateral agreement made by two countries to resolve issues involving double taxation of passive as well as active income Tax treaties generally determine the amount of tax that a country can levy on a taxpayer's income/capital. It is also called a Double Taxation Avoidance Agreement.

Principal objective of India Tax Treaties are as under:

- (1) For granting relief in respect of
 - a. Income on which tax have been paid both under the Income Tax Act, 1961 and Income Tax Act prevailing in the other country ; or

- b. Income -tax chargeable under the Income Tax Act, 1961 and under law in force in that country to promote mutual economic relations, trade and investment; or
- (2) For the avoidance of double taxation of on income under the Income Tax Act, 1961 and under the corresponding law in force in that country; or
- (3) For exchange of information for the prevention of evasion or avoidance of Income Tax chargeable under the Incomes Tax Act, 1961 or under corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or
- (4) For recovery of income tax under Income Tax Act, 1961 and under the corresponding law in force in that country.

Answer 6(c)**Computation of long term capital gain on slump sale of XYZ Unit of ABC Ltd.**

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
Fixed assets at W.D.V.	10,000	
Land at cost price	5,000	
Debtors	40,000	
Inventories	40,000	95,000
<i>Less Current liabilities</i>		(30,000)
Net worth of XYZ Unit Full		65,000
Value of Consideration		3,50,000
Long Term Capital Gain		2,85,000

Note:

1. In slump sale, benefit of indexation is not available.
2. Revaluation Reserve is not to be considered.

Answer 6A(i)

ABC Ltd. and XYZ Ltd. are associated enterprise as ABC Ltd is subsidiary of XYZ Ltd. Comparable product (fridge) is sold to dealers (Uncontrolled transactions). Hence in given circumstances Comparable Uncontrolled Price (CUP) Method for determining arm's length price can be applied.

<i>Particulars</i>	<i>Amount</i>
Sale price charged to Dealers of XYZ Ltd.	12,000
<i>Less cost of warranty included in price</i>	(5,00)
Arm length price	11,500
Actual price paid by ABC Ltd. to XYZ Ltd.	10,000
Difference per unit	1,500
Addition required to be made in the computations of the total Income of XYZ Ltd. (1500 x 8000 units)	12,00,000

No deduction under chapter VI-A would be available in respect of the enhanced Income.

Answer 6A(ii)**Computation of Book Profit u/s 115JB of X Ltd. a Resident Company**

<i>Particulars</i>	<i>Amount</i>
Net profit for the year ended on 31st March 2019	99,000
Add:	
Depreciation (includes Revaluation of Assets Rs. 1000)	4,000
Provision for Income Tax	3,000
Proposed Dividend	5,000
Loss of Subsidiary A Ltd.	2,000
Total	1,13,000
Less:	
Dividend received from C Ltd.	(1,000)
Depreciation excluding revaluation (Rs. 4000 – Rs. 1000)	(3,000)
Book Profit	1,09,000
Computation of MAT Liability	
18.5% of Book Profit	20,165
Add : Health and Education Cess 4%	8,07
Total Minimum Alternate Tax (MAT) Liability	20,972
Round-off	20,970

Note : Delayed or non remittance of interest to bank attracts disallowance u/s 43B only. No adjustments required u/s 115JB.

Answer 6(A)(iii)**Issue of shares at excessive share premium**

Since, the Shares of ABC Ltd. are not listed in any recognized stock exchange in India, it is a Company in which public are not substantially interested.

When such company issues shares at a price in excess of the Fair Market Value, share premium so charged in excess, will be taxable under Section 56 of the Income Tax Act, 1961.

Excess premium is (Rs. 150 – Rs. 130) Rs. 20 per share. Hence where 10 lakh shares are issued, excess share premium charged is Rs. 200 lakhs.

Such liability will arise only when shares are issued to residents. Rs. 200 lakhs will be treated as Income from other sources.

Where the shares are issued to non-residents or Venture Capital undertakings, there is no applicability of section 56 of the Income Tax Act, 1961 and hence there will be no tax effect.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

- (a) *'Limited judicial control over delegated legislation can be exercised by the courts'. Discuss and cite leading case law, if any.*
- (b) *Why the knowledge about the rules of drafting of pleadings and conveyancing important in corporate affairs ? Illustrate.*
- (c) *'Corporate decision making process has to be collective as per law'. Comment.*
- (d) *Write down the required important practical aspects, while drafting agenda and notes thereon. (5 marks each)*

Answer 1(a)

Judicial control over delegated legislature can be exercised at the following two levels :-

- (1) Delegation may be challenged as unconstitutional; that is the delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary or
- (2) That the Statutory power has been improperly exercised.

Limitations of delegated legislation set out under Article 13(3)(a) of the Constitution of India are as under :-

- (a) Delegated Legislation should not infringe any provisions, basic structure (e.g Keshavananda Bharati, a famous case) or even the philosophy as described in The Preamble of the Constitution of India.
- (b) Delegated Legislation should not infringe any fundamental right. Even the procedure must confirm such rights.
- (c) Delegated Legislation should be within the limits laid down in the statute. The validity of the rules can be described at this stage in two ways :-
 - (i) They run counter to the provisions of the Act, and
 - (ii) They have been made in excess of the authority delegated by the legislature.

Here the substance of the Rules and Regulations impugned has to be looked into and not the procedural requirements of the rule-making that may be prescribed in the statute. Latter is looked into procedural ultra vires rule.

High Court and Supreme Court have struck down defective Delegated Legislation Rules etc time and again.

Answer 1(b)

Importance of drafting and conveyancing for a company executive could be well

understood as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents. The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz.,

- (i) for obtaining legal consultations;
- (ii) for carrying out documentation departmentally;
- (iii) for interpretation of the documents.

With the knowledge of drafting and conveyancing, there could be better interaction by the corporate executives while seeking legal advice from the legal experts with reference to the matters to be incorporated in the documents, to decide upon the coverage and laying down rights and obligations of the parties therein. Robust knowledge of rules on drafting assist in better communication, extraction of more information, arriving on workable solutions, and facilitates settlement of the draft documents, engrossment and execution thereof.

Knowledge of drafting and conveyancing for the corporate executives is also essential for doing departmental wise documentation. An executive can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.

A number of documents are required to be studied and interpreted by the corporate executives. In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.

Answer 1(c)

A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as “resolutions” at validly held meetings.

In case of *Re Associated Colour Laboratories Ltd (1970) 12 D.L.R*, a meeting has been defined as ‘Coming together of two or more persons face to face, so as to be in each other presence or company.

There are two collective bodies in the company which take decision through resolutions:

- (i) Board of Directors – who manage, control and direct the business of the company
- (ii) General body of members – who ultimately own the company.

Such decisions pertain to the various corporate activities and management of the company.

Thus corporate decision making process has to be collective as laid down in the Law.

Answer 1(d)

Following are the important practical aspects while drafting agenda and notes thereon:-

1. While preparing the Agenda and notes thereon, good drafting is of the essence. Important or non routine items of the Agenda have to be written with special care, employing not only good drafting skills but also an understanding of commercial considerations and the business environment. The following points needs to be focused for drafting agenda and notes thereon:
 - (a) Divide the Agenda into two parts: - the first part containing usual or routine items and the second part containing other items which can further be bifurcated as (i) items for approval; and (ii) items for information/noting.
 - (b) For each item of the Agenda an explanatory note should be provided. The explanatory note should give sufficient details of the proposal, including the proposed Resolution, if any, references to the provisions of the Companies Act and other applicable laws, the Memorandum and Articles of Association, other relevant documents, decisions of previous Board or General Meetings, as necessary. The explanatory note may be drafted under the following heads :
 - (i) Background (or Introduction);
 - (ii) Proposal, with recommendations of the management;
 - (iii) Provisions of Law;
 - (iv) Decision(s) to be taken ; and
 - (iv) Interest, if any, of any Directors.
2. As a good governance practice, the agenda item should be initiated by the concerned Department (Head of Department or other authorised person) and approved by the competent authority as may be decided by the Board.
3. The Company Secretary should refer to the Agenda of previous Meetings, to see whether any items had been deferred and should consider whether such items are to be included for discussion at the ensuing Meeting.
4. The Company Secretary should also refer to the Minutes of the Meeting held during the corresponding period of the previous year to see whether there are any recurring periodic items (e.g. interim/final dividend, quarterly results). The Company Secretary should finalise the Agenda in consultation with the Chairman or in his absence the Managing Director or in his absence the Whole-time Director.

5. Notes on policy matters should present clear-cut issues in order to facilitate due deliberations and precise decisions at the Meeting.
6. The Company Secretary should keep, in addition to a record of matters to be discussed, a separate folder of all such correspondence, notes and documents which need to be dealt with at the Meeting. In preparing the Agenda, the Company Secretary should refer to this folder to ensure that all items which require the decision of the Board are included in the Agenda.
7. A separate Agenda item number should be given for items which are brought forward for discussion from a previous Meeting rather than placing them under the omnibus Agenda items.

A few extra copies of the Agenda should always be kept available at the Meeting.

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

Question 2

(a) Write notes on the following as desired :

- (i) Name forums where a company secretary in practice can appear as authorized representative.
 - (ii) Summarize standards applicable to preparation of an opinion. Mention the common purposes for which legal opinion are sought. (4 marks each)
- (b) A partnership firm, a HUF and a Minor wants to be partner of another partnership firm. Decide the possibility of the same. (4 marks)
- (c) In order to solve certain disputes among the partners, arbitrator has been appointed, but there is no arbitration clause in the partnership deed, except only communication through electronic means among the partners relating appointment of arbitrator. One partner challenges the appointment of arbitrator. Decide. (4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

Draft the following as per the instructions :

- (i) A sample FIR assume facts. Comment "Genuineness or creditability of the information is not a condition precedent for FIR".
- (ii) A memorandum of mortgage by deposit of title deeds.
- (iii) A specimen deed of assignment of shares in a company.
- (iv) A Deed altering conditions in a lease. (4 marks each)

Answer 2(a)(i)

The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. Apart from this a Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI),

Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.

Under the Companies Act

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

Under the TRAI Act

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal.

Under the SEBI Act

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Under the Competition Act

Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India.

Under Real Estate (Regulation and Development) Act, 2016

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

Answer 2(a)(ii)

Standards applicable to preparation of an opinion

1. *General* : A lawyer is expected to be well informed and to exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.
2. *Customary Practice*: The opinion preparers should devote the time needed to interpret and apply legal principles relevant to the situation at hand, ascertain (through appropriate inquiry and certificates of officers of the Company) the facts that underlie the opinion, and identify areas of significant uncertainty (if any) in the interpretation and application of legal principles. In certain cases, opinion givers may conclude that it is necessary to conduct research with respect to particular legal principles or to conduct an investigation of the underlying facts relevant to the opinion.

3. *Fraudulent or Misleading Opinions* : An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A lawyer owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a lawyer should not render an opinion that the lawyer recognizes would be misleading to the opinion recipient.
4. *Ethical Issues Relating to the Provision of Opinions to Non-clients* : A lawyer delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidence of its client. He should decline to give legal opinion in such cases.

Some of the common purposes for which legal opinion are sought are as follows:

1. *Lawfulness of an action* : When one wants to know if an action is lawful.
2. *Legal consequences* : Sometimes a party entering into a transaction obtains legal opinion to ascertain if the action will lead to desired legal consequences.
3. *Answer questions* : When client wants professional guidance in an area.
4. *Regulatory requirements* : Sometimes legal opinion has to be sought because it is mandated by law.
5. *Compliance* : It can be sought to meet the compliance requirement.
6. *Protective shield* : Clients sometimes desire the protection of an expert's legal opinion.
7. *Designed to mislead* : Sometimes promoters of unscrupulous schemes obtain as many opinions from different experts as is possible and use the one which is favourable to their scheme of things.
8. *To satisfy contractual requirements* : Sometimes a clause in commercial contracts require the opinion of an expert.
9. *Due Diligence* : Lawyers and clients often cite due diligence as the principal reason for requesting.

Answer 2(b)

The word "person" in Section 4 of the Indian Partnership Act, 1932 contemplated only natural and legal persons. (*Duli Chand v. C.I.T., AIR, 1956 SC 354*). Partnership relation is one of contractual nature. Therefore, such persons who are competent to contract can enter into partnership.

A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person. When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not ipso facto become partners (*Firm Bhagat Ram v. Comm. of Excess Profits Tax, AIR 1956 SC 374*). Further it is to be noted that two partnership firms cannot enter into partnership as such but its partners can certainly form a new partnership.

A minor cannot be a partner in a firm but, with the consent of all the partners, he can be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932). He is entitled to share in the profits and his share is liable for the acts of the firm, but he is not personally liable. He cannot be made liable for the losses of the firm. Within six months of attaining majority or obtaining knowledge of his admission, whichever is later, the minor may elect to become or not to become a partner in the firm.

Answer 2(c)

The ‘arbitration agreement’ under the Arbitration and Conciliation Act, 1996 means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined legal relationship whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. It has to be in writing.

It is in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex telegrams or other means of telecommunication “including communication through electronic means” which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of agreement is alleged by one party and not denied by the other.

Thus the appointment of arbitrator in the question cannot be challenged by the partner.

Answer 2A(i)

Specimen Form of First Information Report

To

The Officer-in-Charge (Name of the Police Station)

Sir

This is to inform you that my cycle has been stolen from the cycle stand in the daily market last evening. Last evening, before I went to the market, I placed my green model Hero Cycle in the cycle stand No. 1 as usual. I had locked the cycle. The cycle bears the No. I had bought it only a month ago and it was almost new. The cycle had a full gear case, a carrier and a side basket. When such mishap occurred I was buying vegetables in the market. I asked everybody who were present there about the cycle. It was all in vain. I request you to kindly register a case of theft and initiate the necessary investigation to recover the stolen cycle.

Yours faithfully,

_____ (YourName)

In *Lallan Chaudhary and Ors v. State of Bihar*, AIR 2006 SC 3376, the Supreme Court held that section 154 of the Cr.P.C 1973 casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 of the Cr.P.C 1973 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

The provision of Section 154 of the Cr.P.C 1973 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case. [*Ramesh Kumari v. State (NCT of Delhi) and Ors*, 2006 Cri.LJ 1622].

Answer 2A(ii)

Memorandum that this..... day of..... 2019, 'AB' of, etc. (the mortgagor), as beneficial owner, has deposited with 'CD' of, etc. (the mortgagee), the original title deeds comprised in the Schedule A hereto, relating to the premises belonging to the said 'AB' and situate at..... etc., described in Schedule B with intent to create a charge thereon for securing repayment to the said 'CD' of the sum of Rs..... this day lent and advanced by the said 'CD' to the said 'AB' on demand with interest for the same from this date at the rate of Rs..... per cent per annum.

The said 'AB' do hereby undertake as and when required by the said 'CD' to execute and register at the costs of the said 'AB' a legal mortgage in such form and containing such covenants and provisions as he may reasonably require.

Dated this..... day of..... 2019.

The Schedule A above referred to

Description of the Title Deeds deposited.

The Schedule B above referred to

Description of the Property.

Signature of the Mortgagor.

Answer 2A(iii)

THIS ASSIGNMENT is made this day of

BETWEEN

AB, son of, resident of..... (hereinafter called "the Assignor") of the one part,

AND

CD, son of....., resident of (hereinafter called "the Assignee") of the other part.

THE DEED WITNESSES:

That in consideration of the sum of Rs..... (Rupees.....) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD..... Equity Shares of Rs..... each, fully paid up, bearing consecutive Nos..... to..... (inclusive), which stand in the name of the assignor in the Register of Members of..... Co. Ltd.

TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness: Assignor

Witness: Assignee

Answer 2A(iv)

THIS DEED made the..... day of.....

BETWEEN AB of, etc. (thereafter called “the landlord”) of the one part

AND

CD of, etc. (thereinafter called “the tenant”), of the other part.

WHEREAS by a lease (hereinafter called “the principal deed”), dated the..... day of..... and made between the parties hereto and registered at..... Registration office in Book No..... Volume No..... pages..... to..... Being No..... for the year....., the said AB granted and demised to CD the house (or, etc.) situate at, etc.

AND WHEREAS the parties hereto have agreed to alter and modify the terms and conditions of the principal deed in the following manner.

NOW THIS DEED WITNESSES as follows:

1. Sub-clause (e) of clause 2 (or, etc.) of the principal deed, the following sub-clause shall be omitted and shall cease to have any effect.
2. For sub-clause (b) of clause 2 (or, etc.) of the principal deed, the following sub-clause shall be substituted, namely: (Set out the new sub-clause)
3. That as altered and modified as aforesaid the principal deed shall remain in full force and effect.

IN WITNESS WHEREOF etc.,

Witnesses:

..... AB

..... CD

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

Question 3

Explain the following :

- (a) *Two types of Hire Purchase Agreements.*

- (b) *The objectives of trade marks law. Whether an unregistered trade mark can be assigned ?*
- (c) *Concept of the Goodwill of the Company and the criteria from which goodwill arises.*
- (d) *Concept of entrenchment in the Companies Act, 2013.* (4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following :

- (i) *BPO and KPO type of outsourcing.*
- (ii) *Summons case and warrants case.*
- (iii) *Hypothecation and pledge.*
- (iv) *License and lease.* (4 marks each)

Answer 3(a)

Following are the two types of Hire Purchase Agreements:-

1. When the owner is unwilling to approach the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price.
2. In the other form of transactions, goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a license to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement.

Answer 3(b)

The trademark law has undergone changes from time to time, with the changing pattern of business methods and practices. Even the very concept of a trade mark and its functions have changed. The object of trade mark law is to deal with the precise nature of the right which a person can acquire in respect of trade marks and;

- the mode of acquisition of such rights,
- the method of transfer of those rights to others,
- the precise nature of infringement of such rights, and
- the remedies available in respect thereof.

Section 39 of the Trade Marks Act, 1999 states that an unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.

Answer 3(c)

Goodwill is an intangible asset. It represents the value of a business attaching to all the factors, internal and external, which enable it to earn a differential return of profit on the capital employed that is, a better return than that which arises in other comparable businesses, having regard to the nature, size, location and risk inherent in such a business, and which is capable of being enjoyed by a successor.

Goodwill has been variously defined by different commercial pundits. Some definitions are:

“The goodwill of a business is the advantage, whatever it may be, which a person gets by continuing to carry on, and being entitled to represent to the outside world that he is carrying on a business, which has been carried on for some time previously.”

“The attractive force which brings in custom.”

“The benefit of a good name, reputation and connection of a business.”

“The one thing which distinguishes an old-established business from a new business at its first start.”

“The monetary measurement of the benefits attaching to the ownership of a successful business.”

“The capitalized value attaching to the differential profit-capacity of a business.”

“The whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work organised by lavish expenditure of money.”

Goodwill arises mainly:

- (a) by personal reputation of the owners;
- (b) by reputation of the goods dealt in;
- (c) by site monopoly or advantage;
- (d) by access to sources of supply, e.g., large quotas;
- (e) due to patent and trade-mark protection;
- (f) due to effectiveness of publicity;
- (g) due to reputation of the first's goods and methods;
- (h) due to relationship between firm and personnel; and
- (i) due to elements stimulating business growth.

Answer 3(d)

The concept of entrenchment is given under section 5 of the Companies Act, 2013, which are as follows:

Section 5 (3) of the Companies Act, 2013 states that the articles may contain

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

Section 5 (4) of the Companies Act, 2013 states that the provisions for entrenchment referred to in section 5 (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Section 5 (5) of the Companies Act, 2013 states that Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No INC-32(SPICe) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Answer 3A(i)

Following are the main differences between BPO and KPO type of outsourcing:

<i>Basis</i>	<i>BPO</i>	<i>KPO</i>
Definition	BPO provides services like customer care, technical support through voice processes, tele-marketing, sales, etc.	KPO provides in-depth knowledge, expertise and analysis on complex areas like Legal Services, Business and Market Research, etc.
Stands for	Business Processing Outsourcing	Knowledge Processing Outsourcing
Requires	Good communication skills and basic computer knowledge	Specialized knowledge
Services	Low end services	High end services
Process	Pre-defined process	Requires application and understanding of business
Employees	Not so qualified employees	Skill and expertise of knowledge employees
Expertise in	Process	Knowledge
Relies on	Cost arbitrage	Knowledge arbitrage
Driving force	Volume driven	Insights driven

Answer 3A(ii)

Summon Case : According to section 2(w) of the Code of Criminal Procedure, 1973 summon-case means a case relating to an offence, and not being a warrant-case. Those cases in which an offence is punishable with an imprisonment of fewer than two years is a summons case. A summons case doesn't require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case are as under:

- A summons case can be converted into a warrant case.
- The person accused need not be present personally.
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses

Warrant Case : According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is triable exclusively by the Court of Session, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are as under:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once
- The Magistrate should ensure that the provisions of Section 207 are complied with. Section 207 of Cr. P.C. 1973, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

Answer 3A(iii)

The main differences between Hypothecation and Pledge are as under:

1. The pledge can be defined as the form of bailment in which goods are held as security for the payment of the debt or the performance of an obligation. Hypothecation is moreover different from the pledge, in which the collateral asset is not delivered to the lender.
2. The pledge is defined under section 172 of the Indian Contract Act, 1872. On the other hand, Hypothecation is defined under section 2(1)(n) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. In the pledge, the possession of the asset is transferred, but in the case of hypothecation, possession lies with the debtor only.
4. Parties to the contract of the pledge are called as pawnor (borrower) and Pawnee (lender) whereas in case of hypothecation the parties are known as hypothecator (borrower) and hypothecatee (lender).
5. In the pledge, when the borrower default in payment, the lender can exercise his right to sell the asset to recover the debt amount. However in hypothecation, the lender does not have the possession of goods so he can file a suit to realize his dues to take the possession first and then disposing off them.

Answer 3A(iv)

The license is not a lease. The lease and the license both are different. The word “License” under Section 52 of the Indian Easement Act, 1882 is a grant by one person to another or to a definite number of persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

A lease of immovable property as per Section 105 of the Transfer of Property Act defined as lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

In *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala*, 1988 SCC 155, the Supreme Court has held: “In order to determine whether a document created a license or a lease the real test is to ascertain the intention of the parties i.e. whether they intended to create a license or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, then it is a license.”

Question 4

- (a) ‘X’ filed a civil suit for eviction and possession of his property against ‘Y’, an unauthorized occupier. But the case was ‘dismissed by default’ without any hearing and not considering merits of the case by Honorable Court, due to several nonappearance of ‘X’. Now ‘X’ again wants to file another civil case before the same Court for same cause of action. Advise ‘X’.
- (b) A civil suit was filed without disclosing the cause of action in the Plaint and the Honorable Court rejects the Plaint. Comment and advise the plaintiff for remedial measures, if any.
- (c) Rush Bank, a banking company, wants to take action against the defaulting borrower, being Company Secretary advise the appropriate forum to file the

petition. Suggest, whether THFL, and MBFC (not a banking company) can file the petition against the defaulting borrower before the same forum ? Give a reasoned reply.

- (d) *An application for revision had been made before the Sessions Judge, can another revision be filed before High Court ? Whether application of revision can only be filed directly before the High Court ? (4 marks each)*

Answer 4(a)

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. The principle of resjudicata applies only under following circumstances:

- (i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
- (ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other.

In the present case the competent court has dismissed without any hearing i.e. the case not been heard, and also case must be decided on merits. So the principle of Res judicata does not apply, Mr. X can file a fresh suit before the competent court.

Answer 4(b)

Order 7, Rule 11 of the Code of Civil Procedure provides for rejection of plaint on the following grounds:

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalues and the plaintiff on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where it is not filed in duplicate;
- (f) Where the plaintiff fails to comply with the orders of the court that the summons are to be served on the defendants, directing the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.

Further, as per Order 7, Rule 13 of the Code of Civil Procedure, the rejection of plaint on any of the grounds mentioned above, shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of same cause of action.

Therefore, the court has power to reject the plaint where it does not disclose the cause of action.

However the rejection of plaint on non-disclosure of cause of action does not of its own force bar the Plaintiff from presenting a fresh plaint. The plaintiff can present a fresh plaint.

Answer 4(c)

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. Debt Recovery Tribunal (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and financial institutions under RDDBFI Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

Hence Rush Bank can file the petition before the Debt Recovery Tribunal against the defaulting borrower.

Assuming THFL and MBFC (not a banking company) being financial institutions can also file the petition before the Debt Recovery Tribunal against the defaulting borrower.

Alternate Answer 4(c)

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. Debt Recovery Tribunal (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and financial institutions under RDDBFI Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

Hence Rush Bank can file the petition before the Debt Recovery Tribunal against the defaulting borrower.

Assuming THFL and MBFC (not a banking company) being non financial institutions can not file the petition before the Debt Recovery Tribunal against the defaulting borrower.

Answer 4(d)

Section 397(3) of the Code of Criminal Procedure, 1973 states that if an application under this section has been made by any person for the revision either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Since the application for revision is already made before the Session Judge the same cannot be filed before the High Court.

A person can directly move a revision application to the High Court without first approaching the Session Court. But if he has already filed the application before the Session Court, he cannot thereafter approach High Court for another revision.

Question 5

- (a) *Draft a specimen notice by Requisitionists convening an Extra-ordinary General Meeting as per annexure VII in this regard under the Companies Act, 2013.* (8 marks)
- (b) *'Promoter of a company is a person who does the necessary preliminary work in connection with the formation and the establishing of the company'. Comment.* (4 marks)
- (c) *When an urgent resolution by circulation can be initiated ?* (4 marks)

Answer 5(a)

NOTICE is hereby given that the persons named below, who are Members of..... (Name of the Company), having its Registered Office at....., and who have requisitioned the convening of an Extra-Ordinary General Meeting of the Company, hereby, in exercise of the powers and rights conferred by Section 100 of the Companies Act, 2013, give Notice that the said requisitioned meetings shall be held on day, the20....., ata.m./p.m. at (address) to consider the following proposal:

State the proposal

{OR

for considering and, if thought fit, passing the following Ordinary/ Special Resolution:

Reproduce the Resolution}

Names of requisitionists:

- 1.
- 2.
- 3.
- 4.

Note :

A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to

attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

By Order of the Board of Directors

For

.....(Signature)

Place

.....(Name)

Date :20

Company Secretary

(ACS/FCS No.....)

Further Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
2. The requisition dated, referred to above, signed by the requisite number of Members in terms of Section 100 of the Companies Act, 2013, and all documents referred to in the Notice are available for inspection by any Member at the Registered Office of the Company on any working day of the Company between the hours of 11:00 a.m. and 1:00 p.m. upto the date of this Extra-Ordinary General Meeting and at the venue of the Meeting for the duration of the Meeting.
3. Route-map to the venue of the Meeting is enclosed.

Answer 5(b)

Generally Promoter of a company is a person who does the necessary preliminary work in connection with the formation and the establishment of the company. It is promoters only who conceives an idea, develops it, formulates a scheme or project and takes all the necessary steps for the formation of a company to implement the project or the scheme.

Before the company is registered by the Registrar promoters continue to be known as promoters. They gather funds for meeting the expenses in connection with the formation of the company and spend them, which are known and designated as "preliminary expenses" and a provision is made in the articles of association of the company authorising the company and its directors to reimburse promoters the preliminary expenses incurred by them, and also a provision for the formalisation of the contracts which the promoters of the company had entered into with third parties prior to the birth of the company. Promoters usually enter into contracts with the prospective directors, solicitors, bankers, brokers, underwriters, auditors, secretary, manager and with those who offer to sell land, plant, machinery equipment etc. for implementing the proposed project. Such

contracts are known as “promoters’ contracts” which are not binding on the company because the company had not come into existence when they were entered into with third parties by the company’s promoters. However, as a matter of practice, the company, on its incorporation enters into fresh contracts with the third parties on the lines of the promoters’ contracts, which then become binding on the company.

Answer 5(c)

The Companies Act, 2013 requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

As per the secretarial standard 1 on ‘Meetings of the Board of Directors’:

1. The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.
2. Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.

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

Secretarial Standard 1 on ‘Meetings of the Board of Directors’ lists certain items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting.

Question 6

- (a) *The employees registered union of ABC Ltd., proposes to construct a temple on half acre vacant plot adjoining factory dispensary in the factory campus. The local authorities and labour welfare officer also recommended the proposal and grant NOC for the same. The managing director of the company, ‘XYZ’, asked the Company Secretary to examine it, report and if worth approving put up a draft deed for consideration of the Board. The Company Secretary recommends it on the following main terms :*
- (i) *Draft deed will be prepared by the Company and executed by the Temple Management Committee (TMC).*
 - (ii) *Temple will be constructed within six months.*
 - (iii) *Annual rental of ₹100/- shall be payable by TMC to ABC Ltd. by the first week of January every year.*
 - (iv) *Employees will not be charged with any fees, donations etc, however may be accepted in case of volunteer.*
 - (v) *Proper cleanliness at all times, will be the responsibility of TMC.*

- (vi) *Company's authorized officers shall be allowed to inspect temple premises on a one-week time notice, and TMC will be bound to follow their instructions.*
- (vii) *Jurisdiction clause will be the local jurisdiction of the ABC Ltd., in case of any dispute. Though Arbitration Clause will also be mentioned.*

On the basis of the terms by the Company Secretary of ABC Ltd., you are required to draft a Deed of Grant of Land for temple in the factory premises. Assume other facts, if required. (10 marks)

- (b) *The date of the execution of a deed is material for the purpose of limitation and registration of the document. If the date is accidentally missing in the deed, how do you, as a company secretary, will deal with such a situation ? Refer the relevant law on the point. (6 marks)*

Answer 6(a)

This grant is made on the 1st September, 2019 between ABC Ltd (herein after called the grantor) of the one part, and Temple Management Committee (TMC) (herein after called the Grantee) of the other part;

Whereas the grantee on 1st July 2019 applied to the Grantor for the grant of Grantee's land admeasuring half an acre, which is lying vacant adjoining the Company's Dispensary in factory complex, for the purpose of building a temple thereon;

AND WHEREAS the grantor has agreed with the grantee to grant him for the said purpose the land hereby transferred belonging to the grantor on the terms and conditions hereinafter contained;

AND WHEREAS the grantee has accepted the said grant for the said purpose and on the terms and conditions hereinafter contained.

Now, THIS DEED WITNESSES' AS FOLLOWS:-

1. In pursuance of the aforesaid agreement and in consideration of the Grantee's covenants hereinafter contained, and for the purpose of promoting, religion worship, the grantor hereby grants and transfers to the Grantee ALL THAT PLOT of land etc., TO HOLD THE SAME to the grantee and his Successors according to custom of Succession in the management of religious endorsements recognized by the religion professed by the Grantee for the purpose of a Temple and for no other purpose (excluding ancillary purposes) in accordance with the covenants and the provision hereinafter contained.
2. The Grantee hereby covenants with the grantor as follows:-
 - (i) He will within six months from the date hereof erect a temple of the value of Rs..... on the said premises and will not use the said premises for any other purpose whatsoever.
 - (ii) If the grantee fails to erect a temple within the said period of six months, the said premises shall revert to the grantor.
 - (iii) Such temple, when erected shall be open to all human beings without any distinction of caste or creed to enter the said temple for worship and prayer and for no other purpose.

- (iv) The grantee has undertaken to pay a sum of Rs. 100/- as annual rental to the grantor to be paid before first week of January every year in advance.
- (v) The grantee shall not charge any fee, donations etc. from the employees of the grantor except by way of voluntary contributions for the benefit of the temple.
- (vi) The grantee shall be bound to maintain proper cleanliness in the temple premises at all the times.
- (vii) The grantee and his successors shall at all time hereafter keep such temple in good and substantial repair and will at his or their own cost perform all ceremonies of worship therein according to the religion professed by the grantee.
- (viii) The grantee and his agents shall, on a prior notice of one week, permit at all reasonable times, the authorized officers of the company to examine the condition of the temple premises.
- (ix) If the said premises shall cease to be used for the purpose of a temple then the said premises and all buildings thereon shall revert to the grantor.
- (x) In case of any dispute arising out or concerning the terms of this deed, the same shall be referred to _____ for arbitration whose decision thereon shall be final and binding on the parties.
- (xi) In case of any other disputes arising out of or in any way connected with this deed the same shall be deemed to have arisen inand only courts inshall have jurisdiction to determine the same.

In witness whereof, etc. ----

Signed, sealed and delivered.

ABC Ltd on this _____ day of 2019 at _____ place.
GRANTOR

Temple Management Committee (TMC)
GRANTEE

Both signed by Grantor Grantee and two witness
And registered as per law.

Answer 6(b)

The date on which the document is executed comes immediately after the description of the deed. For example, "This Deed of Mortgage made on the first day of January, 2019". It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the "date" of the document is important.

Date of execution of document is inscribed on the deed. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.

If no date is given oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it.

However, it is of great importance to know the date from which a particular deed operates. In India there is a short period of 4 months (Section 23 of Registration Act) for its registration from the date of execution within which a deed must be presented for registration. The date is important for application of law of limitation also. In view of the extreme importance of date of execution of deed it should be regarded as an essential requirement. The date of deed is the date on which parties sign or executing it. If several parties to a deed sign the deed on different dates, in such cases, the practice is to regard the last of such dates as the date of deed.

In order to avoid mistake and risk of forgery, the date should be written in both words and figures.
