

# **SUGGESTED ANSWERS**

## **PROFESSIONAL PROGRAMME**

### **ETHICS, GOVERNANCE AND SUSTAINABILITY (PP-EG&S/2013)**



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

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# THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

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## ETHICS, GOVERNANCE AND SUSTAINABILITY



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PROFESSIONAL PROGRAMME  
**ETHICS, GOVERNANCE AND SUSTAINABILITY**

**TEST PAPER 1/2013**

*Time allowed : 3 hours*

*Max. Marks : 100*

**PART A**

*(QUESTION No.1 is compulsory.  
ATTEMPT any four from the rest in this part.)*

**Question No. 1**

*(a) Fill in the blanks*

- (i) \_\_\_\_\_ mechanism can ensure the reliability of financial reporting and compliance with applicable laws.*
- (ii) Clause 49 of the Listing Agreement requires that the Board shall lay down a \_\_\_\_\_ for all Board members and senior management of the company.*
- (iii) 'Public Company Accounting Reform and Investor Protection Act' 2002 of U.S.A is also known as the \_\_\_\_\_.*
- (iv) The Chief Executive is responsible for the running of the company's business whereas the \_\_\_\_\_ is responsible for the running of the Board.*
- (v) \_\_\_\_\_ approach is the trademark of Corporate Governance in UK.*  
*(1 marks each)*

*(b) State with reason(s) whether True or False*

- (i) A relative of Director can be appointed as Independent Director without any remuneration.*
- (ii) Business Responsibility Reporting is mandatory for all listed companies in India.*
- (iii) Constitution of Nomination Committee is mandatory for a listed PSU in India.*
- (iv) Every Public Company Shall Constitute a Committee of the Board to be known as Audit Committee.*
- (v) Principles of Responsible Investment are meant for Institutional investors.*  
*(1 marks each)*

**Answer to Question No. 1(a)**

- (i) **Internal control** mechanism can ensure the reliability of financial reporting and compliance with applicable laws.*

- (ii) Clause 49 of the Listing Agreement requires that the Board shall lay down a **Code of Conduct** for all Board members and senior management of the company.
- (iii) 'Public Company Accounting Reform and Investor Protection Act' 2002 of U.S.A is also known as the **Sarbanes Oxley Act/ SOX Act**.
- (iv) The Chief Executive is responsible for the running of the company's business whereas the **Chairman** is responsible for the running of the Board.
- (v) **Comply or Explain** approach is the trademark of Corporate Governance in UK.

**Answer to Question No. 1(b)(i)****False**

The expression 'independent director' shall mean a non-executive director of the company who is not related to promoters or persons occupying management positions at the board level or at one level below the board. Therefore, a relative of director will not be considered independent.

**Answer to Question No. 1(b)(ii)****False**

In terms of Clause 55 of the Listing Agreement, there is a requirement to include BR Reports as part of the Annual Reports mandatorily for top 100 listed entities based on market capitalization at BSE and NSE as on March 31, 2012. Other listed entities may voluntarily disclose BR Reports as part of their Annual Reports.

**Answer to Question No. 1(b)(iii)****False**

In terms of Corporate Governance Guidelines issued by the Department of Public Enterprises, constitution of Nomination Committee is not mandatory for a listed PSU in India.

**Answer to Question No. 1(b)(iv)****False**

In terms of Sec. 292A of the Companies Act, 1956, every public company having paid-up capital of rupees 5 crore or more shall constitute a Committee of the Board to be known as Audit Committee.

**Answer to Question No. 1(b)(v)****False**

The Principles provide a voluntary framework by which all investors can incorporate ESG issues into their decision-making and ownership practices and so better align their objectives with those of society at large.

**Question No. 2**

- (a) *Your Company is planning to adopt a code of corporate governance based on international best practices. In this connection, Chairman is wants to know*

*about the corporate governance framework in South Africa. As a company secretary you are required to prepare a note on Corporate Governance framework in South Africa. (10 marks)*

*(b) Elaborate the term 'Governance through Inner Consciousness'. (5 marks)*

**Answer to Question No. 2(a)**

To,

The Chairman

As advised, please find herein below a note on the Corporate Governance Framework in South Africa.

**Corporate Governance Framework in South Africa**

In South Africa, in addition to the legal enactments, the corporate governance codes lays the foundation for corporate governance framework. The release of King III report represents a significant milestone in the evolution of corporate governance in South Africa . Compliance with the King Reports is a requirement for companies listed on the Johannesburg Stock Exchange

All entities are required to apply the principles in the Code and consider the best practice recommendations in the Report. All entities should by way of explanation make a positive statement about how the principles have been applied or have not been applied. This level of disclosure will allow stakeholders to comment on and challenge the board on the quality of its governance.

Following are some highlights of King Code of Governance for South Africa 2009:

- The board should provide effective leadership based on an ethical foundation
- The board should ensure that the company is seen to be a responsible corporate citizen
- The board should ensure that the company's ethics are managed effectively

*Role and Function of the Board*

- The board should act as the focal point for and custodian of corporate governance
- The board should ensure that the company has an effective and independent audit committee
- The board should elect a chairman of the board who is an independent non-executive director. The CEO of the company should not also fulfil the role of chairman of the board.
- A lead independent director should be appointed in the case where an executive chairman is appointed or where the chairman is not independent or conflicted.
- The board should appoint the chief executive officer and establish a framework for the delegation of authority

*Board Composition*

- The board should comprise a balance of power, with a majority of non-executive directors. The majority of non-executive directors should be independent.



- Any independent non-executive directors serving more than 9 years should be subjected to a rigorous review of his independence and performance by the board.
- Every board should have a minimum of two executive directors of which one should be the CEO and the other the director responsible for finance.
- At least one third of the non-executive directors should rotate every year.
- The board, through its nomination committee, should recommend the eligibility of prospective directors.

#### *Board appointment process*

- Directors should be appointed through a formal process
- A nomination committee should assist with the process of identifying suitable members of the board
- The appointment of non-executive directors should be formalised through a letter of appointment.

#### *Director development*

- The induction and ongoing training and development of directors should be conducted through formal processes.

#### *Company Secretary*

- The board should be assisted by a competent, suitably qualified and experienced company secretary.
- The board should appoint and remove the company secretary.

#### *Performance Assessment*

- The evaluation of the board, its committees and the individual directors should be performed every year.

#### *Board Committees*

- The board should delegate certain functions to well-structured committees but without abdicating its own responsibilities.
- Public and state-owned companies must appoint an audit committee. All other companies should establish an audit committee and define its composition, purpose and duties in the memorandum of incorporation.
- Companies should establish risk, nomination and remuneration committees.
- Committees, other than the risk committee, should comprise a majority of nonexecutive directors of which the majority should be independent.

#### *Remuneration of directors and senior executives*

- Companies should remunerate directors and executives fairly and responsibly. Companies should adopt remuneration policies aligned with the strategy of the company and linked to individual performance. The remuneration committee should assist the board in setting and administering remuneration policies. Companies should disclose the remuneration of each individual director and certain senior executives

*Risk Governance*

- The board should be responsible for the governance of risk.
- The risk committee or audit committee should assist the board in carrying out its risk responsibilities.
- The board should ensure continual risk monitoring by management.
- The board should receive assurance from management regarding the effectiveness of the risk management process.
- The board should ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to stakeholders.

The King III Report has placed great emphasis on an integrated report, which will evaluate the company's impact on the economic life of the community in which it operates, as well as many other matters

Sd/-  
Company Secretary

**Answer to Question No. 2(b)**

Inner consciousness is the awareness, the capacity to listen to the inner voice that tells us that there is someone who is looking up at us and also warns that there is someone who is watching us. The soul and core of Corporate Governance is not the conduct or behavior that we see outwardly. It is internalized values that an organization and its top management follow.

The essence of a human being is consciousness and the world we create around us is the expression of our consciousness. The creative and the good as well as the corrupt and the bad are the outcome of our consciousness. An important quality of this higher part of our consciousness is self-governance. Self-governing Individual in a self-governing Community must be the highest ideal of corporate governance.

Ideally, corporate governance should endeavour to create corporate consciousness and an environment in which those who are charged with governance and those who are governed display genuine ethical, social and ecological responsibilities.

**Question No. 3**

- (a) *Your company is planning to constitute Ethics Committee. As a company secretary of the company you are required to apprise the Board about the role and functions of Ethics Committee. Prepare a note in this context. (8 marks)*
- (b) *What are the need and advantages of management through Board Committees? (7 marks)*

**Answer to Question No. 3(a)**

The Boards of Directors  
XYZ Ltd.

As desired, a note on the Ethics Committee is placed as under :

It is a good corporate governance practice to have a committee of independent non-

executive directors who are responsible for ensuring that systems are in place in the company to assure employee compliance with the Code of Ethics. This Committee may be named as Ethics Committee.

The role and functions of an Ethics Committee normally include:

*Review of the definitions of standards and procedures*

The Committee should review the organization's areas of operation, the activities that require a formal set of ethical standards and procedures.

The ethics committee can suggest behaviors to upper management that reinforce the organization's guidelines.

*Facilitate Compliance*

The ethics Committee has the responsibility for overall compliance. It is the responsible authority for ethics compliance within its area of jurisdiction. It should serve as the court of last resort concerning interpretations of the organization's standards and procedures. When and if inconsistencies come to light in this manner, the committee should make recommendations on improving the existing compliance mechanisms.

*Due diligence of prospective employees*

The ethics committee should define how the organization will balance the rights of individual applicants and employees against the organization's need to avoid risks that come from placing known violators in positions of discretionary responsibility. This includes the oversight of background investigations on employees/applicants who are being considered for such positions.

*Oversight of communication and training of ethics programme*

The ethics committee should define methods and mechanisms for communicating ethical standards and procedures. This includes the distribution of documents (codes of conduct, for example) to ensure that every employee understands and accepts the organization's ethical guidelines. To make certain that published standards are understood, the ethics committee should ensure regular training sessions as well.

*Monitor and audit compliance*

The ethics committee should design controls which monitor, audit and demonstrate employees' adherence to published standards and procedures. There should also be mechanisms which check the effectiveness and reliability of such internal controls.

To warrant that the organization's goals, objectives and plans do not conflict with its ethical standards and procedures, the ethics committee should develop methods for regular review and assessment.

*Enforcement of disciplinary mechanism*

The Committee should ensure that disciplinary provisions are in place and ensure the enforcement of the disciplinary mechanism.

*Analysis and follow-up*

When violations occur, the ethics committee should have mechanisms to identify

why they occurred and the lessons learned from prior violations are systematically applied to reduce the chance that similar violations takes place in future.

This is for your information please.

Company Secretary

### **Answer to Question No. 3(b)**

Committees are a sub-set of the board, deriving their authority from the powers delegated to them by the board. Under section 292 of Companies Act 1956, Board of Directors may delegate certain matters to the committees set up for the purpose. These committees are usually formed as a means of improving board effectiveness and efficiency in areas where more focused, specialized and technically oriented discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting.

Committees allows the board to:

- Handle a greater number of issues with greater efficiency by having experts focus on specific areas.
- Develop subject specific expertise on areas such as compliance management, risk management and financial reporting.
- Enhance the objectivity and independence of the Board's judgment.

Greater specialization and intricacies of modern boardwork is one of the reasons for increased use of board committees. The reasons include:

- Responsibilities are shared.
- More members become involved.
- Specialized skills of members can be used to best advantage.
- Inexperienced members gain confidence while serving on the committee.
- Matters may be examined in more detail by a committee

The committees focus accountability to known groups.

### **Question No. 4**

*(a) What do you understand by Secretarial Audit and how can it benefit the organisation? (8 marks)*

*(b) Describe the recommendations of Dr. J.J. Irani Committee relating to Management and Board Governance. (7 marks)*

### **Answer to Question No. 4(a)**

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. The Secretarial Audit is an

effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.

The multiplicity of laws, rules, regulations, etc. has necessitated introduction of a compliance management system to ensure compliances of laws applicable to a company. This has a two-fold objective:

- (a) Firstly, to protect the interests of all the stakeholders;
- (b) Secondly, to avoid any legal actions against the company and its management.

Secretarial Audit will assure the Management of a company that those who are entrusted with the duty and responsibility of compliance are performing their role effectively and efficiently. This also helps the management to establish benchmarks for the compliance mechanism, review and improve the compliances on a continuing basis.

#### **Answer to Question No. 4(b)**

In 2004, the Government constituted a committee under the Chairmanship of Dr. J.J. Irani, Director, Tata Sons, with the task of advising the Government on the revisions to the Companies Act, 1956.

The recommendations of Dr. J.J. Irani Committee relating to Management and Board Governance include:

- *Independent Directors* : Presence of independent director on the boards of companies will lead to greater transparency in company's dealings. Law should recognize the principle of independent directors and spell out their attributes, role, qualifications, liability and manner of appointment along with the criteria of independence. However, prescription of the number and proportion of such directors in the Board may vary depending on size and type of company and may be prescribed through Rules.
- *Appointment and resignation of director* : Every company to have at least one director resident in India. Duty to inform the Registrar of particulars regarding appointment/resignation/death etc. of directors should be that of the company.
- *Board Composition* : Law should provide for only the minimum number of directors necessary for various classes of companies. There need not be any limit to maximum number of directors. Other than procedures for appointments, no age limit for directors need be specified in the Act.
- *Committees* : Certain committees to be constituted with participation of independent directors should be mandated for certain categories of companies where the requirement of independent directors is mandated. In other cases constitution of such committees should be at the option of the company.

Law should specify the manner and composition of various committees of the Board like

- (i) Audit Committee:
- (ii) Stake-holder's Relationship Committee; and
- (iii) Remuneration Committee, along with obligation on the part of the company to consult them in certain matters.

- *Remuneration of Directors* : Decision on remuneration of directors should not be based on a “Government approval based system” but should be left to the company. However, this should be transparent, based on principles that ensure fairness, reasonableness and accountability and should be properly disclosed. No limits need be prescribed. In case of inadequacy of profits also the company to be allowed to pay remuneration recommended by remuneration committee (wherever applicable) and with the approval of shareholders.
- *Disqualification of director* : Failure to attend board meetings for a continuous period of one year to be made a ground for vacation of office regardless of whether or not leave of absence was granted to such director. Specific provisions to be made in the Law to regulate the process of resignation by a director.
- *Board meetings* : Board Meetings by electronic means to be allowed. In the case of companies where Independent Directors are prescribed, notice period of 7 days has been recommended for Board Meetings with provisions for holding emergency meetings at a shorter notice. Consent of shareholders by way of special resolution should be mandatory for certain important matters.
- *Annual General Meetings* : Use of postal ballot during meetings of members should be allowed to be more widely used by companies.

Law should provide for voting through electronic mode. AGMs may be held at a place other than place of registered office (in India), provided at least 10% members in number reside at such place.

Small Companies to be given an option to dispense with holding of AGM. Demand for poll to be limited with due regard for minority interests.

- *Appointment of MD/WTD* : Managing Director (MD)/Whole Time Directors (WTD)/ Executive Director (ED) should be in the whole-time employment of only one company at a time. Provisions relating to options for appointment of directors though proportionate representation to be continued. Limit of paid up capital under existing section 269 for mandatory appointment of MD/WTD to be enhanced to Rs. 10 crore.
- *Key managerial Personnel* : Every company should be required to appoint, a Chief Executive Officer, Chief Finance Officer and Company Secretary as its Key Managerial Personnel whose appointment and removal shall be by the Board of Directors. Special exemptions may be provided for small companies, who may obtain such services, as may be required from qualified professionals in practice.

#### **Question No. 5**

- (a) *Discuss the role and importance of lead Independent Director in Corporate Governance.* (5 marks)
- (b) *Case Study*
- (i) *Mr. A has been working since last fifteen years in the XYZ Biotech Ltd. and now holds the position of the Research Head. Currently he is supervising the team involved in developing a new medicine for a rare disease. Towards the completion of the project Mr. A faces a problem.*

- (ii) *Prior to the launch of the medicine, in a face to face interaction with his immediate junior Mr. 'B', most efficient member of his team Mr. A comes to know that his junior has contacted a contagious disease.*
- (iii) This is one of the ambitious plans of the company; company has already invested heavily for the success of the project. On the other hand he is skeptical if this gets leaked in media would disrepute the company and the medicine launch would also come under cloud.

I. Identify the dilemma in the case

II. Give you suggestions on how to resolve the dilemma (10 marks)

**Answer to Question No. 5(a)**

Internationally, it is considered a good practice to designate an independent director as a lead independent director or senior independent director. He coordinates the activities of other non-employee directors and advises chairman on issues ranging from the schedule of board meetings to recommending retention of advisors and consultants to the management.

A lead independent director :

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

**Answer to Question No. 5(b)**

- (i) Mr. A has been working since last fifteen years in the XYZ Biotech Ltd. and now holds the position of the Research Head. Currently he is supervising the team involved in developing a new medicine for a rare disease. Towards the completion of the project Mr. A faces a problem.
  - (ii) Prior to the launch of the medicine, in a face to face interaction with his immediate junior Mr. 'B', most efficient member of his team Mr. A comes to know that his junior has contacted a contagious disease.
  - (iii) This is one of the ambitious plans of the company; company has already invested heavily for the success of the project. On the other hand he is skeptical if this gets leaked in media would disrepute the company and the medicine launch would also come under cloud.
- I. Identify the dilemma in the case
  - II. Give you suggestions on how to resolve the dilemma

**STEP I**

*What is the dilemma ?*

The dilemma in this case can be summed up as :

The company is on the verge of launching a new medicine on which it has made substantial investment. There is an apprehension that even a remotely corrected negative occurrence could hamper of the success of the new launch.

If Mr.B's condition gets revealed, it could negatively impact the launch.

As Mr.B has contacted a contagious disease, he should not be involved in the completion of the project. The company needs to very discreetly handle the issue. Some options available are (a) ask Mr.B to proceed on leave and not to interact with any other team member (b) recommend the termination of Mr.B as the company is involved in developing medicines and it cannot afford to have people who are not healthy. Both the options somewhere effect the human rights issues.

So the dilemma here is how to handle the situation without violating human rights while at the same time ensure that the product is launched without any hindrance.

*Step 1 – Identify the options*

The options available with the Mr. A are :

- (1) Keep quiet & let things take its own course.
- (2) Recommend terminating the services of Mr B.
- (3) Ask Mr B to proceed on leave and plan to launch after a time gap so that things settle down.

*Step 2 - What are the consequences & evaluation of action?*

*Option 1*

- (i) In all probability the launch will be welcomed by the industry and the consumers. Since the product is a life saving drug. The issue may not get highlighted and it would be in the best interest of the company.



- (ii) On the other hand, keeping quiet may jeopardize the entire project if the information gets leaked, it could also put at risk the health of other team members and also risk contamination of the medicine being developed.

*Option 2*

- (i) Mr. B is an efficient employee of the company with credible record, his termination would not be fair and the company would also lose the services of a good employee.
- (ii) On the other hand, to retain him

*Option 3*

- (i) Suspension of the launch would adversely affect company's product sale and encourage competition.
- (ii) Settling the internal affairs would help launch the product in a peaceful environment.

**STEP 3 - Make decision and act with commitment**

Both the parts of the analysis should be complied and conscious decision should be made. Once the decision is made, it has to be followed through with commitment irrespective of the consequence.

**STEP 4 - Evaluate the system**

The ethical standards practiced by my company will be questioned after the launch after leakage of the news in media. Even if the competitors may be eyeing on the opportunity, my company should not capitalize without re-assessment of the medicine. In any case, the media would discover the matter. This would put the reputation of the company at stake.

The employees of the company need to be sensitized about the ethical practices and the culture of the company through appropriate training.

**Question No. 6**

*Write short notes on:*

- I. Primary and Secondary Stakeholders*
- II. Remuneration Committee*
- III. Classification of Banks*
- IV. Shareholder Activism*
- V. Corporate Secretaries International Association. (3 marks each)*

**Answer to Question No. 6(i)**

Primary stakeholders are those whose continued association is absolutely necessary for a firm's survival; these include employees, customers, investors, and shareholders, as well as the governments and communities that provide necessary infrastructure.

Secondary stakeholders do not typically engage in transactions with a company and thus are not essential for its survival; these include the media, trade associations, and special interest groups.

Both primary and secondary stakeholders embrace specific values and standards that dictate what constitutes acceptable or unacceptable corporate behaviors. While primary groups may present more day-to-day concerns, secondary groups cannot be ignored or given less consideration in the ethical decision-making process.

**Answer to Question No. 6(ii)****Remuneration Committee**

Remuneration Committee or Compensation Committee as the name suggests is constituted by a company to determine the remuneration packages of executive directors including chief executive officers. The role of the committee is to establish overall compensation philosophies, evaluate management performance, recommend compensation for CEO, set compensation for executives, consider industry benchmarks, establish and administer performance goals, establish compensation program for employees, recommend director compensation, administer employee benefit and incentive plans, administer stock option and other equity-based plans, etc.

Constitution of Remuneration Committee is a non-mandatory requirement in terms of Clause 49 of the Listing Agreement

**Answer to Question No. 6(iii)****Classification of Banks**

In the Indian context, banks can be classified as Scheduled Bank and Unscheduled Bank. Scheduled Banks expressed as Scheduled Commercial Banks (SCBs) which can be further grouped as State Banks Group and other Nationalized Banks, Foreign Banks, Regional Rural Banks and other Scheduled Commercial Banks.

Once the name of a bank is included in the Second Schedule to the Reserve Bank of India Act, 1934, it is called a Scheduled Bank. A Scheduled Bank is entitled to facilities of refinance from RBI, subject to fulfilment of the following conditions laid down in Section 42 (6) of the Act, as follows:

- it must have paid-up capital and reserves of an aggregate value of not less than an amount specified from time to time; and
- it must satisfy RBI that its affairs are not being conducted in a manner detrimental to the interests of its depositors.

For the purpose of assessment of performance of banks, the Reserve Bank of India categories them as public sector banks, old private sector banks, new private sector banks and foreign banks.

**Answer to Question No. 6(iv)****Shareholder Activism**

Shareholder activism refers to the active involvement of stockholders in their organization. Active participation in company meetings is a healthy practice. They can resolve issues laid down in the annual and other general meetings and can raise concerns over financial matters or even social causes such as protection of the environment. Shareholder activists include public pension funds, mutual funds, unions, religious institutions, universities, foundations, environmental activists and human rights groups.

**Answer to Question No. 6(v)****Corporate Secretaries International Association**

CSIA, a Geneva- registered body, which was established on March 2010 is an international organization whose members comprise national bodies of professionals at the frontline of governance. It is dedicated to promoting the values and practices of governance professionals in order to create, foster or enhance the environment in which business can be conducted in a fair, profitable and sustainable manner. CSIA issued Twenty Practical Steps to Better Corporate Governance

**PART B**

*(All Questions are Compulsory)*

**Question No. 7**

*(a) Your Company is planning to bring out sustainability report. As a company secretary prepare a note for the Board of Directors apprising them about the importance of Sustainability Reporting and the available framework.*

*(10 marks)*

*(b) Briefly explain the provision of CSR under the Companies Bill, 2012. (5 marks)*

**Answer to Question No. 7(a)**

To,

The Board of Directors

As desired please find below a note on the importance of Sustainability Reporting Frameworks and the available framework.

Sustainability Reporting is a broad term considered synonymous with others used to describe reporting on economic, environmental, and social impacts (e.g. triple bottom line, corporate responsibility reporting, etc.). Sustainability reporting is a practice to measure, disclose, and be accountable to internal and external stakeholders for organisational, environmental, social and economic performance.

Sustainability reporting is becoming more prevalent, driven by a growing recognition that sustainability related issues can materially affect a company's performance; demands from various stakeholder groups for increased levels of transparency and disclosure; and the need for companies (and the business community more generally) to appropriately respond to issues of sustainable development.

Sustainability reporting is increasingly being recognized as a priority for sustainable development. Paragraph 47 of the outcome document of United Nations Conference on Sustainable Development, 2012 (popularly known as Rio +20) "The Future We Want" states:

"We acknowledge the importance of corporate sustainability reporting and encourage companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle. We encourage industry, interested governments as well as relevant stakeholders with the support of the UN system, as appropriate, to develop models for best practice and facilitate action for the

integration of sustainability reporting, taking into account the experiences of already existing frameworks, and paying particular attention to the needs of developing countries, including for capacity building.”

Some of the available frameworks for Sustainability Reporting include:

1. The Sustainability Reporting Guidelines developed by the Global Reporting Initiative (GRI), the Netherlands, is a significant system that integrates sustainability issues in to a frame of reporting.

The GRI Sustainability Reporting Framework is continuously being improved and expanded upon, as knowledge of sustainability issues evolve and the needs of report makers and users change.

On May 22, 2013 GRI unveiled G4 Guidelines for Sustainability Reporting at its 2013 Global Conference on Sustainability and Reporting. GRI indicates that reports published after 31 December 2015 should be prepared in accordance with the G4 Guidelines. GRI recommends that first time reporting organizations use the G4 Guidelines.

2. Securities and Exchange Board of India (SEBI) vide circular CIR/CFD/DIL/ 8/ 2012 dated August 13, 2012 inserted a new Clause 55 in the Listing Agreement by mandating inclusion of Business Responsibility Reports (“BR reports”) as part of the Annual Reports for listed entities. As a starting phase, the SEBI circular requirement to include BR Reports as part of the Annual Reports is mandatory for top 100 listed entities based on market capitalisation at BSE and NSE as on March 31, 2012. Other listed entities may voluntarily disclose BR Reports as part of their Annual Reports.
3. The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. UN Global Compact incorporates a transparency and accountability policy known as the Communication on Progress (COP). Communications on Progress (COP) is a report to inform the company’s stakeholders about the company’s progress in implementing the Global Compact’s ten principles.
4. The AA 1000 - framework developed by the Institute of Social and Ethical Accountability provides a standard for social and ethical accounting, auditing and reporting, including mandatory external verification and stakeholder engagement.  
  
It aims to assist an organisation in the definition of goals and targets, the measurement of progress made against these targets, the auditing and reporting of performance and in the establishment of feedback mechanisms.
5. The Social Accountability - SA8000 - SA8000 is one of the world’s first auditable social certification standards for decent workplaces, across all industrial sectors. It is based on conventions of the ILO, UN and national law, and spans industry and corporate codes to create a common language to measure social compliance. The intent of SA8000 is to provide a standard based on international human rights norms and national labour laws that will protect and empower all personnel

within a company's scope of control and influence, who produce products or provide services for that company, including personnel employed by the company itself, as well as by its suppliers/subcontractors, sub-suppliers, and home workers.

**Answer to Question No. 7(b)**

Clause 135 of the Companies Bill, 2012 (now Companies Act 2013) provides that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

The Corporate Social Responsibility Committee has to

- (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

The Board's report has to disclose the composition of the Corporate Social Responsibility Committee.

The Board of every company referred to in sub-section (1) shall,—

- (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
  - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred above shall make every endeavour to ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.

**Question No. 8**

- (a) Write Short note on :
  - (i) Carbon Footprint
  - (ii) National Green Tribunal
  - (iii) KYOSEI

(iv) *GRI G4 Guidelines*

(v) *Intergrated Reporting*

(2 marks each)

- (b) *Once the activity carried out by any person is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity. Whether in such case the plea that reasonable care was taken while carrying out such activity is valid? Discuss in the light of decided case law.* (5 marks)

#### **Answer to Question No. 8(a)(i)**

##### **Carbon Footprint**

A carbon footprint is an estimate of how much carbon is produced to support your lifestyle. Essentially, it measures your impact on the climate based on how much carbon you produce. Factors that contribute to your carbon footprint include travel methods and general home energy usage. Carbon footprints can also be applied on a larger scale, to companies, businesses, even countries. The word 'carbon' in the phrase 'carbon footprint' is often used as a short-cut to describe the main greenhouse gases - carbon dioxide (CO<sub>2</sub>), methane and nitrous oxide - in terms of carbon dioxide equivalents.

#### **Answer to Question No. 8(a)(ii)**

##### **National Green Tribunal**

The National Green Tribunal has been established under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

#### **Answer to Question No. 8(a)(iii)**

##### **KYOSEI**

A concise definition of the word Kyosei would be "living and working together for the common good," but for some, the definition is broader: "All people, regardless of race, religion or culture, harmoniously living and working together into the future." Kyosei is a Japanese technique meaning "a spirit of cooperation".

#### **Answer to Question No. 8(a)(iv)**

##### **GRI G4 Guidelines**

Global Reporting Initiative Reporting Framework is intended to serve as a generally accepted framework for reporting on an organization's economic, environmental, and social performance. It is designed for use by organizations of any size, sector, or location. It takes into account the practical considerations faced by a diverse range of organizations – from small enterprises to those with extensive and geographically dispersed operations.

GRI unveiled G4 Guidelines for Sustainability Reporting is the Generation 4 Guidelines on Sustainability Reporting. The Guidelines are presented in two parts:

1. Reporting Principles and Standard Disclosures
2. Implementation Manual

The first part: Reporting Principles and Standard Disclosures contains Reporting Principles, Standard Disclosures, and the criteria to be applied by an organization to prepare its sustainability report 'in accordance' with the Guidelines. Definitions of key terms are also included.

The second part: Implementation Manual contains explanations of how to apply the Reporting Principles, how to prepare the information to be disclosed, and how to interpret the various concepts in the Guidelines.

#### **Answer to Question No. 8(a)(v)**

#### **Integrated Reporting**

Integrated Reporting is one step ahead of sustainability reporting and it's set to become the way companies report their annual financial and sustainability information together in one report. The aim of an integrated report is to clearly and concisely tell the organization's stakeholders about the company and its strategy and risks, linking its financial and sustainability performance in a way that gives stakeholders a holistic view of the organization and its future prospects.

Ideally, an integrated report should be the organization's primary report and from which all other detailed reports, such as the annual financial statements and sustainability report, flow. Importantly, integrated reporting includes forward-looking information to allow stakeholders to make a more informed assessment of the future of a company, as well as of how the organization is dealing with its sustainability risks and opportunities.

#### **Answer to Question No. 8(b)**

The Supreme Court held that the Rule laid down by Supreme Court in *M.C. Mehta v. Union of India AIR 1987 SC 1086 commonly known as oleum gas leak case (AIR 1987 SC 1086)*, namely that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying in his activity is by far the more appropriate one and binding. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not". The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers—and not the person affected and the practical difficulty on the part of the affected person, in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

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**TEST PAPER 2/2013**

*Time allowed : 3 hours*

*Max. Marks : 100*

**PART A**

*(QUESTION No.1 is compulsory.  
ATTEMPT any four from the rest in this part.)*

**Question No.1.**

*(a) Fill in the blanks:*

- (i) Clause 49 of Listing Agreement recommends a maximum tenure of \_\_\_\_\_ in aggregate for independent directors.*
- (ii) \_\_\_\_\_ refers to the active involvement of stockholders in their organization.*
- (iii) \_\_\_\_\_ stakeholders are those whose continued association is absolutely necessary for a firm's survival.*
- (iv) Clause 49 of Listing Agreement provides that a director shall not be a member in more than \_\_\_\_\_ committees or act as Chairman of more than \_\_\_\_\_ committees across all companies in which he is a director.*

*(1 marks each)*

*(b) State with reason(s) whether True or False*

- (i) SEBI Business Responsibility Reporting framework is based on the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business issued by MCA.*
- (ii) Adoption of King III Code on Corporate Governance is voluntary for listed Companies in South Africa.*
- (iii) DPE Guidelines on Corporate Governance for CPSEs are supreme to follow for public enterprises and will prevail over Listing Agreement.*
- (iv) Society is a Primary Stakeholder for an organization. (1 marks each)*

*(c) Choose the most appropriate answer from the given options in respect of the following:*

- (i) SEBI introduced Business Responsibility Reporting via Listing Agreement Clause*
  - (a) 49*
  - (b) 47(c)*
  - (c) 35*
  - (d) 55*



(ii) *Key managerial personnel under clause 2(51) of the Companies Bill, 2012 does not include -*

(a) *Chief Executive Officer*

(b) *Whole Time Director*

(c) *Non-Executive Director*

(d) *Company Secretary.*

(1 marks each)

**Answer to Question No. 1(a)**

- (i) Clause 49 of Listing Agreement recommends a maximum tenure of **9 Years** in aggregate for independent directors.
- (ii) **Shareholder Activism** refers to the active involvement of stockholders in their organization.
- (iii) **Primary** stakeholders are those whose continued association is absolutely necessary for a firm's survival.
- (iv) Clause 49 of Listing Agreement provides that a director shall not be a member in more than **Ten** committees or act as Chairman of more than **Five** committees across all companies in which he is a director.

**Answer to Question No. 1(b)(i)**

**True**

SEBI Business Responsibility Reporting framework is based on the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business issued by MCA.

**Answer to Question No. 1(b)(ii)**

**False**

Adoption and disclosure on the requirements of King III Code on Corporate Governance is mandatory for listed Companies in South Africa. The code is based on apply or explain approach.

**Answer to Question No. 1(b)(iii)**

**False**

Listed CPSEs are required to comply with the provisions of Listing Agreement as well as DPE Guidelines. In case of contradiction Listing Agreement will prevail.

**Answer to Question No. 1(b)(iv)**

**True**

Primary stakeholders include employees, customers, investors & shareholders, as well as the governments and communities that provide necessary infrastructure

**Answer to Question No. 1(c)(i)**

(d) 55

**Answer to Question No. 1(c)(ii)**

(c) Non-Executive Director

**Question No. 2**

- (a) Give a brief note on role of Institutional investors in the light of U.K. Stewardship Code. (7 marks)
- (b) "Running a successful business means being able to access many skills." In this context, explain the need of training of directors. (8 marks)

**Answer to Question No. 2(a)****UK Stewardship Code (2012)**

UK Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities. Engagement includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at general meetings.

Principles enumerated under the UK Stewardship Code provides following roles for Institutional Investors:-

- (i) Institutional investors should publicly disclose their policy on how they will discharge their stewardship responsibilities.
- (ii) Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship and this policy should be publicly disclosed.
- (iii) Institutional investors should monitor their investee companies.
- (iv) Institutional investors should establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value.
- (v) Institutional investors should be willing to act collectively with other investors where appropriate.
- (vi) Institutional investors should have a clear policy on voting and disclosure of voting activity.
- (vii) Institutional investors should report periodically on their stewardship and voting activities.

**Answer to Question No. 2(b)**

"Running a successful business means being able to access many skills" the given statement is very much true in the emerging role of board of directors towards ensuring the good governance at all level of the organization and decision making process.

The Board of Directors is primarily responsible for good governance practices and their role which is quite different from management, calls for new areas of knowledge and different skills. Training should encompass both a thorough induction programme and an ongoing training and development opportunities for the board members. Since the Board composition is getting more diverse a system of formal training and evaluation is very important to foster trust, cohesion and communication among board members.

Clause 49 of listing agreement provides that a company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them. Although the training of board members is a non-mandatory requirement under clause 49 of the listing agreement, it is considered as a good governance practice.

An important aspect of Board effectiveness is the appropriate attention to development and training of directors on the lines of management development and training. Director induction training is the first step of the board's continuing improvement which helps the board members to understand the organization perspectives to set the future goals. Investing in board development strengthens the board and individual directors. The normal expectation from independent directors is that they bring objective and Independent judgment to the Board decision making and ensure the interest of organizational stakeholders. It is general perception that the Independent Directors having been invited to join the Board due to their rich background and expertise may not need any training. In spite of this the Directors Training programme including the Induction Training and regular updation training and development programmes plays a vital role and are very much necessary for increasing the efficiency of the Directors as Individual and Board as a whole.

### **Question No. 3**

- (a) *Mr. A aged 20 years (Son of Mr. X) has been appointed as an independent director on the Board of RKG Ltd., a listed company promoted by GKR Ltd. Mr.X is an independent director on the Board of Extreme Enterprises Ltd., which is also a listed company.*

*Examine the appointment of Mr. A in the light of applicable provisions of clause 49 of the listing agreement.* (5 marks)

- (b) *'Better Stakeholders Engagement ensures good governance'. Comment.* (5 marks)

- (c) *Explain about the ICSI Initiatives in promoting good corporate governance.* (5 marks)

### **Answer to Question No. 3(a)**

Clause 49(I)(A) of the Listing Agreement provides that the 'independent director' shall mean a non-executive director of the company who:

- a. apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;

- b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;
- c. has not been an executive of the company in the immediately preceding three financial years;
- d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:
  - i. the statutory audit firm or the internal audit firm that is associated with the company; and
  - ii. the legal firm(s) and consulting firm(s) that have a material association with the company.
- e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;
- f. is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares;
- g. is not less than 21 years of age.

Therefore, in the given situation the appointment of Mr. A as Independent Director on the Board of RKG Limited is not valid as he is less than 21 years of age.

**Answer to Question No. 3(b)**

Stakeholders provide resources that are more or less critical to a firm's long-term success. These resources may be both tangible and intangible. Shareholders, for example, supply capital; suppliers offer material resources or intangible knowledge; employees and managers grant expertise, leadership, and commitment; customers generate revenue and provide infrastructure; and the society builds its positive corporate images.

Stakeholder engagement is an alliance-building tool. Corporations practice stakeholder engagement in an effort to understand the needs of their stakeholders, create partnerships and to promote dialogue. Stakeholder engagement identifies stakeholders, assesses stakeholder needs, develops stakeholder relations plans and forms alliances with stakeholders.

Stakeholder engagement leads to increased transparency, responsiveness, compliance, organizational learning, quality management, accountability and sustainability. Stakeholder engagement is a central feature of sustainability performance.

Better Stakeholders Engagement ensures good governance. 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 will 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 to Question No. 3(c)**

#### **ICSI Initiatives in Promoting Good Corporate Governance**

- ICSI has set up the ICSI- Centre for Corporate Governance Research and Training (CCGRT) with the objective of fostering and nurturing research initiatives among members of the Company Secretaries profession and other researchers.*
- ICSI National Awards for Excellence in Corporate Governance* was instituted by the ICSI in 2001 to identify, foster and reward the culture of evolving global best practices of corporate governance among Indian companies. Each year, the award is conferred upon two best governed companies and ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality is bestowed on an eminent personality.
- Focus on Corporate Governance in the Course Curriculum* - Considering corporate governance as core competency of Company Secretaries, education and training for Company Secretary significantly focuses on corporate governance. One full paper on Corporate Governance titled "Ethics, Governance and Sustainability" forms part of the syllabus in the Professional Programme.
- PMQ Course in Corporate Governance* - ICSI has a Post Membership Qualification Course in corporate governance to enable its members gain acumen, insight and thorough expertise in corporate governance.
- Secretarial Standards* - As a pioneering initiative, ICSI issues Secretarial Standards to integrate, harmonise and standardise the diverse secretarial practices prevalent in the corporate sector. So far ICSI has issued 10 Secretarial Standards.
- Corporate Governance Publications* – The Institute regularly brings out publications of interest to members and corporate sector to inculcate the culture of good governance. One of the major publications of ICSI is 'Corporate Governance – Beyond Letters'. The revised edition of this publication is brought out regularly by incorporating the best practices of the corporates participating in the Award.
- Directors Development and Capacity Building Programmes* - Recognizing that leadership development in boardroom is the key driver to better governance, the Institute organizes directors' development programmes. The Institute also conducts extensive programmes throughout India and abroad strengthening specialization in corporate governance.

- (viii) *Investor Education and Awareness* - Committed to the cause of investor education, ICSI is actively engaged in activities relating to investor awareness and education.
- (ix) *ICSI Recommendations to Strengthen Corporate Governance Framework* - ICSI after a detailed study of corporate governance standards, principles and practices across the world, made its recommendations to strengthen the Corporate Governance Framework. Corporate Governance Voluntary Guidelines, 2009 issued by MCA draw substantially from the ICSI Recommendations to Strengthen the Corporate Governance Framework.
- (x) *National Policy on Corporate Governance* - The Ministry of Corporate Affairs vide Office Memorandum dated March 7, 2012 had constituted a Committee to formulate a Policy Document on Corporate Governance under the chairmanship of Mr. Adi Godrej. The President, ICSI was the Member Secretary/Convener. The concept paper prepared by ICSI was the base paper for discussion for this committee. The Committee submitted its report, which is articulated in the form of Guiding Principles of Corporate Governance, to the Government of India on 18th September, 2012.
- (xi) *Founder member of National Foundation for Corporate Governance* - The ICSI is one of the four founder trustees of National Foundation for Corporate Governance, alongwith MCA, CII and ICAI. The vision of NFCG is to - Be A Catalyst In Making India The Best In Corporate Governance Practices.
- (xii) *Founder member of Corporate Secretaries International Association (CSIA)* - ICSI is a founder member of Corporate Secretaries International Association, alongwith the Chartered Secretaries Institutes of Australia, Hong Kong, Malaysia, Singapore, South Africa, UK and Zimbabwe. CSIA has issued 'Twenty Practical Steps to Better Corporate Governance'

**Question No. 4**

- (a) Elucidate on the good practices that a company may adopt for conducting a Board Meeting. (8 marks)
- (b) Briefly explain the role of Institutional Investors in Corporate Governance. (7 marks)

**Answer to Question No. 4(a)**

Decisions relating to the policy and operations of the company are arrived at meetings of the Board held periodically. Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective judgment of the Board.

**Good Practices in Convening Board Meetings***Annual Calendar*

An Annual calendar that schedules the Board and committee meetings and accordingly dates by which action required is accomplished is an effective planner for the year. The planner schedules in advance the events so that both the providers of inputs and receivers of inputs can plan their work systematically.

### *Meeting Location*

The board meetings should take place at a venue that is convenient to the directors (normally the head office). Boards are increasingly holding at least one board meeting at other company locations so that directors can see the other sites.

### *Board Meeting Frequency*

Board meetings should be held regularly, at least four times in a year, with a maximum interval of four months between meetings.

As a rule of thumb and in line with best practice, six to ten meetings are likely to constitute an appropriate number of board meetings per year, particularly when committees meet between board sessions.

## **Board Agenda**

- *Preparation of Agenda*

The board agenda determines the issues to be discussed. The items for agenda should be collected from heads of all the departments. Secretary may segregate the ones that can be discussed and decided internally and the ones which need to be put up before the Board, in consultation with the Chairman and/or Managing Director and inputs from the CEO.

Any director can request that the chairman include a matter on the board agenda. It is the chairman's obligation to offer directors the opportunity to suggest items, which cannot be reasonably denied. In the end, it is each director's responsibility to ensure that the right matters are tabled.

*Key success factors for setting the agenda include:*

- Agendas should strike a balance between reviews of past performance and forward-looking issues.
- Strategic issues require more time for debate so it is a good practice that the allocated discussion time is indicated in the agenda.
- Some issues will need to be brought to the board several times as projects progress and circumstances develop.

*Factors to keep in mind*

- Care should be taken not to consume too much board time on routine or administrative matters.
- The agenda should show the amount of time allocated for each item, without unduly restricting discussion.

- *Circulation of Notice & Agenda*

Notice

Even if meetings have been scheduled in advance, the members of the Board should be adequately and timely sent notice to enable them to plan accordingly.

### Agenda

The agenda should be made available to the Board along with supporting papers at least seven days before the date of the meeting. The mode of circulation of agenda should ensure that all directors receive the agenda notes on time. All the material information should be sent to all Directors simultaneously and in a timely manner to enable them to prepare for the Board Meeting. This would enable the board and especially to non-executive independent directors to pre-emptly prepare for the discussions based on the papers.

A system should exist for seeking and obtaining further information and clarifications on the agenda items before the meeting. Directors, including nominee directors, requiring any clarification before the meeting may be asked to contact the Secretary for additional inputs.

### Answer to Question No. 4(b)

Institutional investors are organizations which pool large sums of money and invest those sums in companies. Their role in the economy is to act as highly specialized investors on behalf of others.

Kumar Mangalam Birla Committee on Corporate Governance observed that:

- (a) Institutional shareholders have acquired a large stake in equity share capital of listed companies. In some of the listed companies they are the major shareholders and own shares largely on behalf of the retail shareholders.
- (b) They have a special responsibility given the weightage of their votes and have a bigger role to play in corporate governance as retail investors look upon them for positive use of their voting rights.
- (c) The Institutional shareholders can effectively use their powers to influence the standard of Corporate Governance.

### Expectation of their role

The committee therefore recommended that institutional shareholders should reflect the following characteristics:

- Take active interest in the composition of board of Directors
- Be vigilant
- Maintain regular and systematic contact at senior level for exchange of views on management, strategy, performance and quality of management
- Ensure that voting intentions are translated into practice
- Evaluate Corporate Governance performance of the company

### Question No. 5

- (a) *For the success of the organization it is important that it works in a moral and ethical manner. Ethical crisis may arise at any point of time in an organization. During such crisis credo helps guide the organization, overcome the period of upheaval. Giving examples, outline the benefits of credo. (8 marks)*



(b) *What is Enterprise Risk Management? Discuss the role of company secretary in Risk Management.* (7 marks)

**Answer to Question No. 5 (a)**

The organization's values greatly influence the decisions that individuals make. A company can have a 'credo' which can be used as a tool to define the ethical practices that the company pursue and the respect for stakeholders including (customers, employees, community). Credo is a Latin word which means "a set of fundamental beliefs or a guiding principle." For a company, a credo is like a mission statement.

Many Companies skip the important part of developing the company's credo. A good credo gives the company a reason to exist; it develops the spirit of employees motivating them at all times. It is a statement of common values that allows employees to understand the importance of the stakeholders and services provided. It is the force which makes them work together to achieve a consistent high standard.

For the success of the organization it is important that it works in a moral and ethical manner. Ethical crisis may arise at any point of time in an organization. During such crisis credo helps guide the organization, overcome the period of upheaval.

It is the belief of Johnson & Johnson that it is its credo which has led to the company's growth. The credo depicts company's ethical and socially responsible approach of conducting business. The credo epitomizes the company's responsibility to the people who uses its products and services- to its employees to the community and environment and to its shareholders.

Johnson & Johnson's subsidiary, McNeil Consumer Products had an analgesic called Tylenol which was the absolute leader in the market for pain-killers in 1982. Seven persons had died mysteriously after taking cyanide laced capsules of Extra-Strength Tylenol. The deaths were broadly reported in the media and became the cause of a massive nationwide panic.

The investigation by the company revealed that the product was tampered with and Tylenol Extra- Strength capsules was replaced with cyanide laced capsules and resealed packages were deposited on the shelves of pharmacies and food stores. Through the investigation it was also revealed that the tampering had taken place in the Chicago area only.

The media widely reported about the cyanide laced capsules and this sensational news caused a nationwide panic. The company had to suddenly explain to the world why its trusted and premium product was killing unsuspecting people.

**Johnson & Johnson's Crisis Communication Strategies**

Johnson & Johnson reacted in a matured manner to the adverse media reports. The areas which the company had to address were firstly "how to protect the people?" and secondly "how to save the product?"

As a first step the company issued warnings using the media and advised the consumers across the United States not to consume any type of Tylenol product. Johnson & Johnson withdrew all forms of Tylenol capsules from the width and breadth of the United States of America.

Even though the company was convinced that there was little chance of discovering any more cyanide coated tablets, Johnson & Johnson made it known that they would not like to take any risk with the safety and health of the Tylenol-consuming public, even if it cost the company its reputation and millions of dollars. It was estimated that the recall included approximately 31 million bottles of Tylenol, with a retail value of more than \$100 million.

Johnson & Johnson concentrated on a comeback plan. To restore the confidence and trust of the public in Tylenol, and to make the product tamper-free, Johnson & Johnson followed a series of concerted measures: First, the company brought in a new Triple Safety Seal Packaging—a glued box, a plastic seal over the neck of the bottle, and a foil seal over the mouth of the bottle. Tylenol became the first product in the industry to use the new tamper resistant packaging within 6 months after the tampering of the product was reported. The company made the announcement of the new Triple Safety Seal Packaging at a press conference at the manufacturer's headquarters. Before the crisis, Tylenol was a premium product and had a massive advertising budget and it was number one alternative to aspirin in the country.

### **The Success of the Comeback Trail**

Not only is Tylenol still one of the top selling over-the-counter drugs in the USA, but it took very little time for the product to return to the market. Johnson & Johnson's handling of the Tylenol tampering crisis shows that when the company dealt with the issue in an open and transparent manner the stakeholders – customers, regulators, media, shareholders all were sympathetic. If the company had not fully cooperated with the media, they would have, in turn, received much less positive media coverage. Disapproving coverage by the media could have easily destroyed Tylenol's reputation permanently, and with it Johnson & Johnson's as well.

### **Answer to Question No. 5(b)**

Risk management, commonly known in the business community as enterprise risk management (ERM), can provide for the structured and explicit consideration of all forms of uncertainty in making any decision. The overarching principle of ERM is that it must produce value for the organization. It is the culture, processes and structures that is directed towards taking advantage of potential opportunities while managing potential adverse effects.

Corporations face the task of managing their risk exposures while remaining profitable and competitive at the same time. Managing risks is not a new challenge, yet it may get overlooked due to several reasons. The challenges and demands of contemporary markets, customer expectations, regulatory authorities, employees and shareholders present organizations with an interesting array of contradictions.

The board is responsible for reviewing the company's policies on risk oversight and management and satisfying itself that management has developed and implemented a sound system of risk management and internal control.

As a top level officer and board confidante, a Company Secretary can play a role in ensuring that a sound

Enterprise wide Risk Management [ERM] which is effective throughout the company

is in place. The board of directors may have a risk management sub-committee assisted by a Risk Management Officer. As an officer responsible for coordination and communication for effective corporate functioning and governance, a Company Secretary can ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework could become a model for discussing and evaluating risk management efforts in the organization. Risk and control consciousness should spread throughout the organization. A Company Secretary can ensure that this happens so that the risk factor will come into consideration at the every stage of formulation of a strategy. It will also create awareness about inter-relationships of risks across business units and at every level of the organization. A Company Secretary can ensure that the following questions [an illustrative list] are effectively addressed at the board level:

- What is the organization's risk management philosophy?
- Is that philosophy clearly understood by all personnel?
- What are the relationships among ERM, performance, and value?
- How is ERM integrated within organizational initiatives?
- What is the desired risk culture of the organization and at what point has its risk appetite been set?
- What strategic objectives have been set for the organization and what strategies have been or will be implemented to achieve those objectives?
- What related operational objectives have been set to add and preserve value?
- What internal and external factors and events might positively or negatively impact the organization's ability to implement its strategies and achieve its objectives ?
- What is the organization's level of risk tolerance?
- Is the chosen risk response appropriate for and in line with the risk tolerance level?
- Are appropriate control activities (i.e., approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets, segregation of duties) in place at every level throughout the organization?
- Is communication effective — from the top down, across, and from the bottom up the organization ?
- How effective is the process currently in place for exchanging information with external parties ?

**Question No. 6**

- (a) *What are the functions of Company Secretary provided under King III Code on Corporate Governance and the Companies Bill, 2012 ? (7 marks)*
- (b) *You as a company secretary of Mentor Products Limited are made responsible for tender filing for the company. Your company is looking forward to win the tender by the government department.*

*A junior worker joins your company after working with your Competitor Excel Products Ltd., for 5 years. The worker informs you that in his last company he had access to the bids made by the company and that he had knowledge of what standards of cost were set by that company.*

He offers for assistance in winning the bid by providing the information of the competitor.

How would you resolve the Ethical Dilemma ?

- a. would you take the input from him;
  - b. avoid such input and focus on your standards; or;
  - c. ask him to leave the company for proposing to leak trade secret of competitor as that reflects his integrity;
  - d. if you decide to retain him, how will you ensure that such things do not happen in future ?
- (8 marks)

**Answer to Question No. 6(a)**

**Functions of the Company Secretary**

(I) *Under King III Code on Corporate Governance*

The company secretary should:

- have an arms-length relationship with the board;
- not be a director of the company;
- assist the nominations committee with the appointment of directors;
- assist with the director induction and training programmes;
- provide guidance to the board on the duties of the directors and good governance;
- ensure board and committee charters are kept up to date;
- prepare and circulate board papers;
- elicit responses, input, feedback for board and board committee meetings;
- assist in drafting yearly work plans;
- ensure preparation and circulation of minutes of board and committee meetings; and
- assist with the evaluation of the board, committees and individual directors.

(II) *Under the Companies Bill, 2012 (Now the Companies Act, 2013)*

Section 205 of the Companies Act, 2013 prescribed that the functions of the company secretary shall include,—

- to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

- to ensure that the company complies with the applicable secretarial standards;
- to discharge such other duties as may be prescribed.

**Answer to Question No. 6(b)****Steps to Resolving an Ethical Dilemma**

*STEP I – Listing of the alternative courses of action available.*

What are the Options?

- would you take the input from junior employee;
- avoid such input and focus on your standards; or;
- ask him to leave the company for proposing to leak trade secret of competitor as that reflects his integrity
- if you decide to retain him, how will you ensure that such things do not happen in future?

*STEP II – Evaluate Action and analyse the consequences of each option.*

Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

- Who/ what will be helped by what is done?
- Who/what will be hurt?
- What kinds of benefits and harms are involved and what are their relative values?
- What are the short-term and long- term implications?

*Option 1*

- If in case the company takes the input from the junior employee then probably we may win the bid.
- If by any chance, the competitor comes to know about our internal arrangement we could be subject to disciplinary action by the tender authority in addition to bad publicity.
- Whether we can rely on the information of the worker is also an issue.

*Option 2*

- Following our own standards and avoiding any such information will keep us focused and we may or we may not win the bid.
- We will not be subject to any scrutiny.

*Option 3*

- Termination of the services of junior employee would assure that the ethical environment of the organisation is maintained at all level.

*Option 4*

- Retaining the employee would adversely affect company's confidentiality policy, as when he comes to know about our trade secrets he may repeat the same when he leaves this company.

- (ii) If we retain him what procedure should be adopted avoid such things to happen in future.

*STEP III – Make decision and act with commitment*

Whatever decision is taken, it has to be followed through with commitment irrespective of the consequence.

*STEP IV – Evaluate the system*

The ethical standards practiced by the company will be questioned. Even if this benefits our company, assessment shows this cannot be adopted, as this may injure company's reputation in long term. The employees of the company need to be sensitized about the ethical practices and the culture of the company through appropriate training.

**PART B**

*(All Questions are Compulsory)*

**Question No. 7**

- (a) *The Japanese concept of Kyosei reflects spirit of cooperation. Formulate a note on how to implement kyosei in the organization? (10 marks)*
- (b) *Fill in the blanks*
- (i) \_\_\_\_\_ is a report to inform the company's stakeholders about the company's progress in implementing the global compact's ten principles.
- (ii) In 1999, Elkington developed the concept of \_\_\_\_\_
- (iii) GRI Stands for \_\_\_\_\_
- (iv) \_\_\_\_\_ is the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development.
- (v) \_\_\_\_\_ every year is observed as World Earth Day. (1 marks each)

**Answer to Question No. 7(a)**

**Kyosei is a Japanese technique meaning "a spirit of cooperation"**

Kyosei establishes harmonious relations between the company and -

- Customers
- Suppliers
- Competitors
- Governments
- Natural Environment

It works in five stages

- First is economic survival of the company
- Second is cooperating with labour
- Third is cooperating outside the company

- Fourth is global activism, and
- Fifth is making the government/s a Kyosei partner

In the first stage of kyosei, a company must work to secure a predictable stream of profits and to establish strong market positions. At this stage corporate is at the stage of evolution it is concerned with profit making and for its economic survival. Stakeholder's benefits are not a major concern area.

From this foundation, it moves on to the second stage, in which managers and workers resolve to cooperate with each other, recognizing that both groups are vital to the company's success. Managers and workers unite in working for the prosperity of the corporation and both have a share in the profits. Labor disputes get resolved at this stage, but community development and environmental protection measures are yet to be undertaken by the company.

A small beginning is made by creating a cooperative spirit among employees. Many Japanese companies have eliminated the distinction between salaried and hourly workers. They did away with the rule that the workers had to use different cafeterias and rest rooms.

In the third stage, this sense of cooperation is extended beyond the company to encompass customers, suppliers, community groups, and even competitors. At this stage company assumes local social responsibilities. Companies respect the interests of their own stakeholders-customers, staff, shareholders, suppliers, competitors and the local community. Suppliers are provided with technical support and, in turn, deliver high quality materials on time. Competitors are invited in to partnership agreements and joint ventures, which results and higher profits for both parties. Forming Kyosei partnership for the common good is very different from forming a cartel and fixing prices. Community groups become partners in solving local problems.

Partnership with Competitors' other than forming cartels and price fixing is reflected in activities that they do for common good. For e.g. ATM facility of one bank, following the central bank guidelines can be used by customer of competitor's bank. This benefits the competitors and adds value to their customer base.

At the **fourth stage**, a company takes the cooperative spirit beyond national boundaries and addresses some of the global imbalances. At this stage company assumes global social responsibilities. At this stage company cares for all its direct stakeholders including its local community and beyond, it strives to fulfill its corporate obligations on a global scale. A company can help reduce trade friction by building production facilities and training local scientists and engineers in other countries. Thereby, improve the standard of living of people in poor countries by exposing them to new technologies.

Its social responsibilities transcend national boundaries. In the fifth stage, which companies rarely achieve, a company urges its national government to work toward rectifying global imbalances. At the global level Kyosei will address

- Trade imbalances
- Income imbalances
- Environmental imbalances

by advocating political, economic and educational reform.

Kyosei philosophy banks upon the theory of corporate governance that makes governance function look outside in

- Governance leadership will pull and push executive leadership towards satisfaction of all stakeholders
- Conflicts and tension will be replaced by creative living and working together
- Spirit of happy cooperation is made all-pervasive

Strong relationships are the sine qua non of the Kyosei framework of responsibility. Togetherness and unity of life objectives are the idealist nature of Kyosei. Japanese companies like Canon strive hard to make the ideal a reality.

#### **Answer to Question No. 7(b)**

- (i) **Communications on Progress (COP)** is a report to inform the company's stakeholders about the company's progress in implementing the global compact's ten principles.
- (ii) In 1999, Elkington developed the concept of **Triple Bottom Line** .
- (iii) GRI Stands for **Global Reporting Initiative** .
- (iv) **Sustainability Reporting** is the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development.
- (v) **22nd April** every year is observed as World Earth Day.

#### **Question No. 8**

- (a) *ESG index is a new concept in India. How does it work?* (5 marks)
- (b) *Discuss about the rule in Rylands v. Fletcher and the applicability of Rylands Doctrine in India.* (5 marks)
- (c) *Write short note on Rio+20* (5 marks)

#### **Answer to Question No. 8(a)**

#### **Environment, Social, Governance (ESG) INDEX**

ESG describes the environmental, social and corporate governance issues that investors are considering in the context of corporate behaviour. Integration of ESG refers to the active investment management processes that include an analysis of environmental, social, and corporate governance risks and opportunities and sustainability aspects of company performance evaluation.

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.

#### *Key Performance Indicators*

- *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.

#### *Standard & Poor's ESG India Index*

Standard & Poor's ESG India index provides investors with exposure to a liquid and tradable index of 50 of the best performing stocks in the Indian market as measured by environmental, social, and governance parameters. The 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 their peers in the Indian market. Its quantitative scoring system offers investors complete transparency.

The creation of the index involves a two step process, the first of which uses a multi-layered approach to determine an 'ESG' score for each company. The second step determines the weighting of the index by score. Index constituents are derived from the top 500 Indian companies by total market capitalizations that are listed on National Stock Exchange of India Ltd. (NSE). These stocks are then subjected to a screening process which yields a score based on a company's ESG disclosure practices in the public domain.

#### **Answer to Question No. 8(b)**

*Rule of Rylands vs. Fletcher was first stated by Black burn, J. (Court of Exchequer).*  
In his words:

"We think that that the rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major or the act of God..... and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property".

In Indian context in *M.C.Mehta v. Union of India*, AIR 1987 SC 1086 case the petitioner raised few question concerning the Arts.21 and 32 of the Constitution,

1. the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products;
2. the basis on which damage in case of such liability should be quantified; and
3. whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function;
4. what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the neighbourhood.

Supreme Court sought to make a departure from the accepted legal position in

*Rylands v. Fletcher* stating that “an enterprise which is engaged in a hazardous or inherently dangerous activity that poses a potential threat to the health and safety of persons and owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The principle of absolute liability is operative without any exceptions. It does not admit of the defences of reasonable and due care, unlike strict liability. Thus, when an enterprise is engaged in hazardous activity and harm result, it is absolutely liable, effectively tightening up the law.

Supreme Court further held that “We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken”.

The Apex Court held that the Rule laid down by Supreme Court in oleum gas leak case (AIR 1987 SC 1086), namely that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying in his activity is by far the more appropriate one and binding.

#### **Answer to Question No. 8(c)**

#### **United Nations Conference on Sustainable Development (Rio+20)**

The United Nations Conference on Sustainable Development (Rio+20) took place in Rio de Janeiro, Brazil on 20-22 June 2012. It resulted in a focused political outcome document which contains clear and practical measures for implementing sustainable development.

Rio+20 was a 20-year follow-up to the 1992 Earth Summit/United Nations Conference on Environment and Development (UNCED) held in the same city, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg.

In Rio, Member States decided to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda. The Conference also adopted guidelines on green economy policies. Governments also decided to establish an intergovernmental process under the General Assembly to prepare options on a strategy for sustainable development financing.

The Rio +20 Conference also galvanized the attention of thousands of representatives of the UN system and major groups. It resulted in over 700 voluntary commitments and witnessed the formation of new partnerships to advance sustainable development.

The Rio+20 outcome document “The Future We Want” resolved to establish an inclusive and transparent intergovernmental process on SDGs that is open to all stakeholders with a view to developing global sustainable development goals to be agreed by the UNGA. The outcome document mandated the creation of an intergovernmental Open Working Group, that will submit a report to the UN General Assembly containing a proposal for sustainable development goals for consideration and appropriate action.

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**TEST PAPER 3/2013**

*Time allowed : 3 hours*

*Maximum Marks : 100*

**PART A**

*(QUESTION No.1 is compulsory.*

*ATTEMPT any four from the rest in this part.)*

**Question No. 1**

- (a) *Fill in the blanks.*
- (i) *In terms of Clause 35 of the listing agreement the company is required to file the shareholding pattern with Stock exchange on a quarterly basis within \_\_\_\_\_ days from the end of each quarter.*
  - (ii) *Under clause 49 of listing agreement \_\_\_\_\_ shall mean personnel of the company who are members of its core management team excluding Board of Directors.*
  - (iii) *\_\_\_\_\_ were developed by an International Group of Institutional Investors and launched by the UN secretary general in April, 2006.*
  - (iv) *Once the name of a bank is included in the \_\_\_\_\_ to the Reserve Bank of India Act, 1934, it is called a Scheduled Bank. (1 marks each)*
- (b) *State with reasons whether true or false*
- (i) *Filing of CSR E-form is mandatory for all the listed companies.*
  - (ii) *Constitution of Nomination Committee is a non-mandatory requirement in terms of Clause 49 of the Listing Agreement.*
  - (iii) *Internal control can ensure the reliability of financial reporting and compliance with laws and regulations.*
  - (iv) *The separation of role of Chairman and CEO is a mandatory requirement under the DPE Guidelines on Corporate Governance for CPSEs. (1 marks each)*
- (c) *Choose the most appropriate answer from the given options in respect of the following:*
- (a) *RBI regulates the -*
- (i) *Nationalized Banks*
  - (ii) *Private Sector Banks*
  - (iii) *Non-Banking financial Companies*
  - (iv) *All the above*

(b) Which of the following is not the mode for risk handling:

- (i) Risk Avoidance
- (ii) Risk Transfer
- (iii) Risk Retention
- (iv) Risk Disclosure.

(1 marks each)

**Answer to Question No.1(a)**

- (i) In terms of Clause 35 of the listing agreement the company is required to file the shareholding pattern with Stock exchange on a quarterly basis within **21** days from the end of each quarter.
- (ii) Under clause 49 of listing agreement **Senior management** shall mean personnel of the company who are members of its core management team excluding Board of Directors.
- (iii) **UN Principles for Responsible Investment** were developed by an International Group of Institutional Investors and launched by the UN secretary general in April, 2006.
- (iv) Once the name of a bank is included in the **Second Schedule** to the Reserve Bank of India Act, 1934, it is called a Scheduled Bank.

**Answer to Question No. 1(b)(i)**

**False**

Presently, filing of CSR E-form is a voluntary reporting on CSR. MCA has launched CSR e-form, wherein the companies adopting and pursuing CSR activities may report their activities on voluntary basis for all companies.

**Answer to Question No. 1(b)(ii)**

**False**

Clause 49 of the Listing Agreement does not mention the constitution of nomination committee either as a non-mandatory requirement or a mandatory requirement. Constitution of remuneration committee is a non-mandatory requirement in terms of Clause 49 of the Listing Agreement.

or **True**

The Listing Agreement does not recognize the constitution of Nomination Committee. Listing Agreement does not mention about Nomination Committee.

**Answer to Question No. 1(b)(iii)**

**True**

Internal control can help ensure the reliability of internal and external reporting and assists in compliance with laws and regulations.

**Answer to Question No. 1(b)(iv)****False**

DPE Guidelines on Corporate Governance for CPSEs does not require the separation of role of Chairman and CEO

**Answer to Question No. 1(c)(a)**

(iv) All the above

**Answer to Question No. 1(c)(b)**

(iv) Risk Disclosure

**Question No. 2**

(a) *As a strategy CalPERS invests in sick and ailing companies where it employs good governance practices to improvise company's overall performance. CalPERS issued Global principles of accountable Corporate Governance; give a brief account of core principles of accountable corporate Governance.*

(7 marks)

(b) *What should be the content of the Report on Corporate Governance in terms of Listing Agreement?*

(8 marks)

**Answer to Question No. 2(a)**

CalPERS has issued **Global principles of accountable Corporate Governance** which were updated on 16th February, 2010. The underlying tenet for CalPERS' Core Principles of Accountable Corporate Governance is that fully accountable corporate governance structures produce, over the long term, the best returns to shareowners.

The core Principles of Accountable Corporate Governance are as under:

1. *Optimizing Shareowner Return* : Corporate governance practices should focus the board's attention on optimizing the company's operating performance, profitability and returns to shareowners.
2. *Accountability* : Directors should be accountable to shareowners and management accountable to directors. To ensure this accountability, directors must be accessible to shareowner inquiry concerning their key decisions affecting the company's strategic direction.
3. *Transparency* : Operating, financial, and governance information about companies must be readily transparent to permit accurate market comparisons; this includes disclosure and transparency of objective globally accepted minimum accounting standards, such as the International Financial Reporting Standards ("IFRS").
4. *One-share/One-vote* : All investors must be treated equitably and upon the principle of one-share/one vote.
5. *Proxy Materials* : Proxy materials should be written in a manner designed to provide shareowners with the information necessary to make informed voting decisions. Similarly, proxy materials should be distributed in a manner designed to encourage shareowner participation. All shareowner votes, whether cast in

person or by proxy, should be formally counted with vote outcomes formally announced.

6. *Code of Best Practices* : Each capital market in which shares are issued and traded should adopt its own Code of Best Practices to promote transparency of information, prevention of harmful labor practices, investor protection, and corporate social responsibility. Where such a code is adopted, companies should disclose to their shareowners whether they are in compliance.
7. *Long-term Vision* : Corporate directors and management should have a long-term strategic vision that, at its core, emphasizes sustained shareowner value. In turn, despite differing investment strategies and tactics, shareowners should encourage corporate management to resist short-term behavior by supporting and rewarding long-term superior returns.
8. *Access to Director Nominations* : Shareowners should have effective access to the director nomination process.

#### **Answer to Question No. 2(b)**

In terms of Clause 49 Of the Listing Agreement, there shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of clause 49 with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

The suggested list of items to be included in Corporate Governance Report has been spelt out in Annexure- IC of Clause 49. These include

1. A brief statement on company's philosophy on code of governance.
2. *Board of Directors* :
  - (a) Composition and category of directors
  - (b) Attendance of each director at the Board meetings and the last AGM.
  - (c) Number of other Boards or Board Committees in which he/she is a member or Chairperson.
  - (d) Number of Board meetings held, dates on which held.
3. *Audit Committee* :
  - i. Brief description of terms of reference
  - ii. Composition, name of members and Chairperson
  - iii. Meetings and attendance during the year
4. *Remuneration Committee* :
  - i. Brief description of terms of reference
  - ii. Composition, name of members and Chairperson
  - iii. Attendance during the year
  - iv. Remuneration policy
  - v. Details of remuneration to all the directors, as per format in main report.

5. *Shareholders Committee* :
  - i. Name of non-executive director heading the committee
  - ii. Name and designation of compliance officer
  - iii. Number of shareholders complaints received so far
  - iv. Number not solved to the satisfaction of shareholders
  - v. Number of pending complaints
6. *General Body meetings* :
  - i. Location and time, where last three AGMs held.
  - ii. Whether any special resolutions passed in the previous 3 AGMs
  - iii. Whether any special resolution passed last year through postal ballot – details of voting pattern
  - iv. Person who conducted the postal ballot exercise
  - v. Whether any special resolution is proposed to be conducted through postal ballot
  - vi. Procedure for postal ballot
7. *Disclosures* :
  - i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
  - ii. Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
  - iii. Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
  - iv. Details of compliance with mandatory requirements and adoption of the nonmandatory requirements of this clause.
8. *Means of communication* :
  - i. Quarterly results
  - ii. Newspapers wherein results normally published
  - iii. Any website, where displayed
  - iv. Whether it also displays official news releases; and
  - v. The presentations made to institutional investors or to the analysts.
9. *General Shareholder information* :
  - i. AGM : Date, time and venue
  - ii. Financial year
  - iii. Date of Book closure
  - iv. Dividend Payment Date

- v. Listing on Stock Exchanges
- vi. Stock Code
- vii. Market Price Data : High., Low during each month in last financial year
- viii. Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
- ix. Registrar and Transfer Agents
- x. Share Transfer System
- xi. Distribution of shareholding
- xii Dematerialization of shares and liquidity
- xiii. Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
- xiv. Plant Locations
- xv. Address for correspondence

**Question No. 3**

- (a) *What is an integrity pact? What is the monitoring mechanism developed by Transparency International under the pact ?* (8 marks)
- (b) *Your company is willing to comply with ICSI Secretarial Standards with regard to minutes, Prepare a note to the Board with regard to this standard.* (7 marks)

**Answer to Question No. 3(a)**

The Integrity Pact (IP) has been developed by Transparency International (TI). It is a tool aimed at preventing corruption in public contracting. It consists of a process that includes an agreement between a government or a government department and all bidders for a public contract. It contains rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while carrying out the contract.

IP is a written agreement between the government/government department and all bidders to refrain from bribery and collusion.

Bidders are required to disclose all commissions and similar expenses paid by them to anyone in connection with the contract. .

It has a monitoring system that provides for independent oversight and increased government accountability of the public contracting process.

Under this monitors are appointed and they perform functions such as:

- Overseeing corruption risks in the contracting process and the execution of work;
- Offering guidance on possible preventive measures;



- Responding to the concerns and/or complaints of bidders or interested external stakeholders;
- Informing the public about the contracting process's transparency and integrity (or lack thereof).

In most cases, monitors are members of civil society or experts appointed by (and reporting to) the TI Chapter and its civil society partners. The independent monitoring system aims to ensure that the pact is implemented and the obligations of the parties are fulfilled.

### **Answer to Question No. 3(b)**

#### **A Note on Secretarial Standards on Minutes**

Institute of company secretaries of India had issued secretarial standards to harmonise and standardize diverse secretarial practices which the companies follow. SS-5 deals with Secretarial Standard on Minutes. Here are the brief details of the same

## **2. CONTENTS**

### **2.1 General Contents**

#### **2.1.1 Minutes should begin with the number and type of the Meeting, name of the company, day, date, venue, time of commencement and conclusion.**

In respect of a Meeting convened but adjourned for want of quorum that fact should be recorded in the Minutes of such adjourned meeting.

#### **2.1.2 Minutes should record the names of the directors and the Company Secretary present at the Meeting.**

The names of the directors should be listed in alphabetical order or in order of seniority, but in either case starting with the name of the person in the Chair and the Vice-Chairman, if any.

### **2.2 Meetings of the Board or Committee**

#### **2.2.1 Minutes should contain:**

- (a) The names of officers in attendance and invitees for specific items.
- (b) The names of directors who sought and were granted leave of absence.
- (c) If any director has participated only for a part of the Meeting, the agenda items in which he had participated.
- (d) In case of a director joining through video or tele conference the place from and the agenda items in which he participated.
- (e) The fact that an interested director did not participate in the discussion or vote.
- (f) The appointment of officers made by the Board.
- (g) The fact of the dissent and the name of the director who dissented or abstained from the decision.

(h) The resolutions sent for passing by circulation along with the decisions thereon.

(i) Notings of the Minutes of the last Meeting.

**2.2.2 Minutes should mention the brief background of the proposal, summarise the deliberations and the rationale for taking the decisions.**

The agenda items discussed should be recorded and appropriately numbered.

The decisions should be recorded in the form of resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes should record the same and also refer to the Articles which empowers the Chairman to exercise the second or casting vote.

**3. RECORDING**

***3.1 Minutes should contain in unambiguous terms a fair and correct summary of the proceedings of the Meeting.***

Minutes should be written using clear, concise and plain language. The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company.

***3.2 Minutes should be written in third person and past tense.***

***3.3 Each item of business taken up at the Meeting should be appropriately numbered.***

For ease of reference, topic-wise index and cross-reference may be separately maintained.

**Meetings of the Board**

***3.4 Any document, report or notes placed before the Board and referred to in the Minutes should be identified by initialing of such document, report or notes by the Chairman or the concerned director.***

***3.5 Where an earlier resolution or decision is superseded or modified, Minutes should contain a clear reference to the earlier resolution or decision.***

**4. ENTRY**

***4.1 Minutes should be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.***

Minutes must be written within 30 days from the date the Meeting is finally concluded.

**4.2 The date of entry in the Minutes Book should be recorded.**

**4.3 Minutes, once entered in the Minutes Book, should not be altered.**

Any alteration, other than grammatical or minor corrections, in the Minutes as entered, should be made only by way of express approval taken in the subsequent Meeting in which such Minutes are sought to be altered.

## **5. FINALISATION**

**5.1 Within fifteen days from the date of the conclusion of the Meeting of the Board or Committee the draft Minutes thereof should be circulated to all the members of the Board or the Committee, as the case may be, for their comments.**

The directors should forward their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

**5.2 Minutes of the Meetings of all Committees should be placed and noted at a subsequent Meeting of the Board.**

## **6. SIGNING AND DATING**

**6.1 Minutes of the Meeting of the Board or Committee should be signed and dated by the Chairman of the Meeting or the Chairman of next Meeting.**

**6.3 The Chairman or the authorized director should initial each page of the Minutes, sign the last page and append to such signature the date on which he has signed the Minutes.**

### **Question No. 4**

- (a) *What should be the Composition of Board of Directors for nationalized banks in India ?* (7 marks)
- (b) *Elucidate the salient features of fraud risk management mechanism in a company.* (8 marks)

### **Answer to Question No. 4(a)**

In terms of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, which is applicable to nationalised banks, the Board Composition shall include-

- (a) not more than two whole-time Directors to be appointed by the Central Government after consultation with the Reserve Bank;
- (b) one Director who is an official of the Central Government to be nominated by the Central Government. Such Director shall not be a Director of any other nationalized bank.
- (c) one Director who is an officer of the Reserve Bank to be nominated by the Central Government on the recommendation of the Reserve Bank.
- (d) not more than two Directors to be nominated by the Central Government from amongst the Securities Exchange Board of India established under Section 3 of

the Securities and Exchange Board of India Act, 1992 (15 of 1992), the National Bank for Agriculture and Rural Development established under Section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (16 of 1981), public financial institutions as specified in sub-section (1), or notified from time to time under sub-section (2), of Section 4A of the Companies Act, 1956 (1 of 1956) and other institutions established or constituted by or under any Central Act or incorporated under the Companies Act, 1956 and having not less than fifty-one per cent of the paid-up capital held or controlled by the Central Government;

- (e) one Director, from among such of the employees who are workmen under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), to be nominated by the Central Government in such manner as may be specified in a scheme made under this section;
- (f) one Director, from among the employees who are not workmen to be nominated by the Central Government after consultation with the Reserve Bank;
- (g) one Director who has been a Chartered Accountant for not less than fifteen years to be nominated by the Central Government after consultation with the Reserve Bank;
- (h) subject to the provisions of clause (i) not more than six Directors to be nominated by the Central Government;
- (i) where the capital issued under clause (c) of sub-section (2B) of Section 3 is-
  - (i) not more than twenty per cent of the total paid-up capital, not more than two Directors,
  - (ii) more than twenty per cent but not more than forty per cent of the total paid-up capital, not more than four Directors,
  - (iii) more than forty per cent of the total paid-up capital, not more than six Directors,

to be elected by the shareholders, other than the Central Government, from amongst themselves:

On the assumption of charge after election of any such Directors under this clause, equal number of Directors nominated under clause (h) shall retire in such manner as may be specified in the scheme.

The Directors to be nominated under clause (h) or to be elected under clause (i) of sub-section; (3A) shall,-

- (A) have special knowledge or practical experience in respect of one or more of the following matters namely,-
  - (i) agricultural and rural economy,
  - (ii) banking,
  - (iii) co-operation,
  - (iv) economics,
  - (v) finance,

- (vi) law,
- (vii) small scale industry,
- (viii) any other matter the special knowledge of and practical experience in, which would in the opinion of the Reserve Bank, be useful to the corresponding new bank;

(B) represent the interests of depositors; or

(C) represent the interest of farmers, workers and artisans.

**In other words, in a nationalised bank,** In addition to the Chairman and Managing Director and Executive Director(s), the Board should comprise the following Non Executive Directors:

- Nominee of GOI – (Official of the Central Government);
- Nominee of RBI – (Official of Reserve Bank of India);
- Workmen Director – Representing the interest of Workmen of the Bank;
- Non Workmen Director – Representing the interest of Officer of the Bank;
- A Chartered Accountant with minimum 15 years experience—nominated by Government of India;
- Not more than six directors – Nominated by Government of India – representing various areas of interest such as Finance, Economics, Banking, Artisan, Agriculture etc., or any other area considered useful to the bank by RBI.
- Two, four or six Directors elected by Shareholders other than Central Government based on dilution of Government of India's shareholding in the Bank

#### **Answer to Question No. 4(b)**

As a fraud risk management mechanism, it is important for corporates to proactively incorporate Fraud Management policy or a plan aligned to its internal control and risk management plan. Such policy/plan protects the company from any kind of uncertain happening which leads the company to a huge loss or damage (brand reputation, financial loss, assets).

The Fraud Risk Management Policy will help to strengthen the existing anti-fraud controls by raising the awareness across the Company and:

- Promote an open and transparent communication culture
- Promote zero tolerance to fraud / misconduct
- Encourage employees to report suspicious cases of fraud / misconduct
- Spread awareness amongst employees and educate them on risks faced by the company.

Such a policy may include the following:

*Defining fraud* : This shall cover activities which the company would consider as fraudulent.

*Defining Role & responsibilities* : The policy may define the responsibilities of the officers who shall be involved in effective prevention, detection, monitoring & investigation of fraud. The company may also consider constituting a committee or operational structure that shall ensure an effective implementation of anti-fraud strategy of the company. This shall ensure effective investigation in fraud cases and prompt as well as accurate reporting of fraud cases to appropriate regulatory and law enforcement authorities.

*Communication channel* : Encourage employees to report suspicious cases of fraud / misconduct. Any person with knowledge of suspected or confirmed incident of fraud/misconduct must report the case immediately through effective and efficient communication channel or mechanism.

*Disciplinary action* : After due investigations disciplinary action against the fraudster may be considered as per the company's policy.

*Reviewing the policy* : The employees should educate their team members on the importance of complying with Company's policies & procedures and identifying/ reporting of suspicious activity, where a situation arises. Based on the developments, the policy should be reviewed on periodical basis.

#### **Question No. 5**

- (a) *As a company secretary of the company you are made responsible for preparing Code of Conduct for your company. What all may be included in the Code?*  
(5 marks)
- (b) *Your company is planning to get listed on stock exchanges in India. As a Company Secretary provide a comparative of Section 292A of the Companies Act, 1956 and listing agreement w.r.t constitution of Audit Committee for the consideration of Chairman of your company.*  
(5 marks)
- (c) *In the context of regulatory laws give a brief account of duties of directors towards stakeholders.*  
(5 marks)

#### **Answer to Question No. 5(a)**

Code of conduct or what is popularly known as Code of Business Conduct contains standards of business conduct that must guide actions of the Board and senior management of the Company.

The Code may include the following:

- (a) Company Values.
- (b) Avoidance of conflict of interest.
- (c) Accurate and timely disclosure in reports and documents that the company files before Government agencies, as well as in Company's other communications.
- (d) Compliance of applicable laws, rules and regulations including Insider Trading Regulations.
- (e) Maintaining confidentiality of Company affairs.
- (f) Non-competition with Company and maintaining fair deal-ings with the Company.

- (g) Standards of business conduct for Company's customers, communities, suppliers, shareholders, competitors, employees.
- (h) Prohibition of Directors and senior management from taking corporate opportunities for themselves or their families.
- (i) Review of the adequacy of the Code annually by the Board.
- (j) No authority of waiver of the Code for anyone should be given.

The Code of Conduct for each Company summarises its philosophy of doing business.

**Answer to Question No. 5(b)**

To

The Chairman

**Dear Sir**

In view of the fact that the company is planning to get listed on stock exchanges, it was desired that a comparative of the provisions of the Companies Act, 1956 and the listing Agreement with regard to Audit Committee be up. Accordingly, the comparative is placed hereunder:

<i>Basis of difference</i>	<i>Requirements of Clause 49</i>	<i>Requirements of Section 292A of Companies Act</i>
Applicability	Applicable to all listed companies with paid-up capital of more than Rs. 3 cr or Networth greater than Rs. 25 cr at any time in the history of the company and to companies seeking listing	Applicable to public companies with paid-up capital of Rs. 5 Cr or more.
Composition	Minimum three directors as members. Two - thirds of the members of audit committee shall be independent directors.	Minimum three directors as members. 2/3rd members shall be directors, other than managing or whole-time directors i. e. members shall be non-executive directors.
Qualification of committee members	All members shall be financially literate and at least one member shall have accounting expertise	No corresponding requirement
Chairman	The Chairman shall be an independent director	Any member of Audit Committee can be Chairman
Invitees	Auditors, internal auditor & director-finance or other executives may be present as invitees	Auditors, internal auditor & the director-finance shall attend & participate

<i>Basis of difference</i>	<i>Requirements of Clause 49</i>	<i>Requirements of Section 292A of Companies Act</i>
		at meetings of Audit Committee but shall not vote
Secretary	Company secretary to be secretary of the Audit Committee	No corresponding requirement
Meeting	At least four times in a year and not more than four months shall elapse between two meetings	Nothing particular, it only states for periodical discussions with the auditors.
Quorum	The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.	No corresponding requirement
Effect of recommendations of the committee	Audit committee shall suggest and make recommendations on various financial matters to the board for its assistance and proper functioning.	The recommendations on any matter relating to financial management including the audit report, shall be binding on the board. If the board does not accept the recommendation of the audit committee, it shall record the reasons therefore and communicate such reasons to the shareholders.

sd/-

Company Secretary

**Answer to Question No. 5(c)**

The stakeholder concept has been reflected in the laws governing the corporates for a long period. The labour laws seeks to ensure fair and equitable treatment to employees, the environment protection laws seeks ensure adoption of measures which will minimize the negative impact on environment. Tax laws give incentives in the form of tax holidays for development of backward areas. Tax benefits in the form of exemptions for donations made to recognized funds and organizations etc.

But an interesting development of recent origin is the definition of director's duties in



the company's acts of various jurisdictions which highlights care for stakeholders as a duty of directors.

A case to highlight this is the duties of directors set out in the UK Companies Act of 2006 :

### **172 Duty to promote the success of the company**

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
  - (a) the likely consequences of any decision in the long term,
  - (b) the interests of the company's employees,
  - (c) the need to foster the company's business relationships with suppliers, customers and others,
  - (d) the impact of the company's operations on the community and the environment,
  - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
  - (f) the need to act fairly as between members of the company.

Further Companies Bill 2012 (now Companies Act, 2013) section 166 provides that "A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company, its employees, the community and the environment."

### **Question No. 6**

#### **Write short notes on the following**

- (i) *Ethics Audit*
- (ii) *Risk Management Committee*
- (iii) *Barriers to visionary leadership*
- (iv) *Role of the Board of Directors in Good Corporate Governance.*
- (v) *Features of Good Ethics Programme.* (3 marks each)

### **Answer to Question No. 6(i)**

#### **Ethics Audit**

Ethics audit is the system of examining the state of a company's ethics. The reasons for examining the state of a company's ethics are many and various. They include external societal pressures, risk management, stakeholder obligations, and identifying a baseline to measure future improvements. In some cases, companies are driven to it by a gross failure in ethics, which may have resulted in costly legal action or stricter government regulation. An ethical profile brings together all of the factors which affect a company's reputation, by examining the way in which it does business.

**Answer to Question No. 6(ii)****Risk Management Committee**

A company needs to have a proactive approach to convert a risk into an opportunity. A business is exposed to various kind of risk such as strategic risk, data security risk, fiduciary risk, credit risk, liquidity risk, reputational risk, environmental risk, competition risk, fraud risk, technological risk etc. It is important for the company to have a structured framework to satisfy that it has sound policies, procedures and practices are in place to manage the key risks under risk framework of the company. A risk management Committee's role is to assist the Board in establishing risk management policy, overseeing and monitoring its implementation.

**Answer to Question No. 6(iii)****Barriers to visionary leadership**

*Lack of Time Management*- Lack of time to attend meetings, read materials and maintain contact with each other in between meetings.

- *Resistance to risk taking* - In order to be innovative and creative in its decision-making, boards must be willing to take chances, to try new things, to take risks. Board leadership must strike a balance between taking chances and maintaining the traditional stewardship role.
- *Lack of Strategic Planning* - Strategic planning offers boards an opportunity to think about changes and trends that will have significant impact and develop strategies to respond to challenges.
- *Complexity* - Board members frequently lack a deep understanding of critical changes, trends and developments that challenge fundamental assumptions about how it defines its work and what success looks like.
- *Micro Management* - It is necessary that the board focuses its attention on items of critical importance to the organization. If the board is tempted to micro manage or to meddle in lesser matters, an opportunity to provide visionary leadership is lost.
- *Clinging to Tradition* – Boards often resist change in order to preserve tradition. However, changing environment requires the Boards to be open to change.
- *Confused Roles* - Some boards assume that it is the job of the executive director to do the visionary thinking and that the board will sit and wait for direction and inspiration. This lack of clarity can result in boards that do not exercise visionary leadership because they do not think it is their job.
- *Past Habit* - For many boards their leadership style has not kept pace with this new awareness.

**Answer to Question No. 6(iv)****Role of the Board of Directors in Good Corporate Governance**

The Board of Directors plays a pivotal role in ensuring good governance. Board

responsibilities derive from law custom, tradition and current practice. The role of directors can be explained as below:

- *To establish the vision & mission statement*: approval of company's philosophy, vision and mission statement is done by the board of directors. The board ensures that the organization effectively and efficiently work towards achieving its mission and be committed to continual quality improvement.
- Strategic direction and advice board to review and approve management's strategy, plan and decisions, financial objectives, extra ordinary business transactions.
- Overseeing strategy implementation and performance. The board plays a crucial role in advising, evaluating and monitoring strategy implementation by setting benchmarks to measure progress and by drawing on objective sources of information.
- Appointing and evaluating CEO and senior management: it is the duty as well as power of the board to appoint the CEO and senior management officers and specialist officers of the company and evaluate their performance.
- Ensuring stakeholders relations: board is to ensure cordial relations with all stakeholders including members.
- Risk management: the whole board must be involved in risk management particularly around financial matters and legal compliance.
- Procuring resources: financial resources, human resources, technological resources, business relationship, are the key resources that are essential to an organizations success. The board plays an important role to manage these resources.

#### **Answer to Question No. 6(v)**

#### **Features of Good Ethics Programme**

The following factors indicate the success of an ethics programme :

- *Leadership* : that executives and supervisors care about ethics and values as much as they do about the bottom line.
- *Consistency between words and actions* : that top management "practises what it preaches". This is more important than formal mechanisms such as hotlines for people to report wrongdoing.
- *Fairness* : that it operates fairly. To most employees, the most important ethical issue is how the organization treats them and their co-workers.
- *Openness* : that people talk openly about ethics and values, and that ethics and values are integrated into business decision-making.
- Just rewards: that ethical behaviour is rewarded. This has greater influence on the effectiveness of an ethics programme than the perception that unethical behaviour is punished.

- *Value-driven* : that an ethics and compliance programme is values-driven. This has the most positive effect on ethics and compliance programme and results in:
  - lower observed unethical conduct;
  - stronger employee commitment;
  - a stronger belief that it is acceptable to deliver bad news to management.

### **PART B**

*(All Questions are Compulsory)*

#### **Question No. 7**

- (a) *Why is sustainability an Imperative ?* *(5 marks)*
- (b) *Write short notes on:*
  - (i) *Communication of Progress under UN Global Compact*
  - (ii) *Global Warming*
  - (iii) *Bali Road map*
  - (iv) *Concept of Triple Bottom Line*
  - (v) *Principles for Responsible Investment (UN-PRI).* *(2 marks each)*

#### **Answer to Question No. 7(a)**

Sustainability is an emerging megatrend and is a measure of good corporate governance. Over the years, environmental issues have steadily encroached on businesses' capacity to create value for customers, shareholders, and other stakeholders. Globalized workforces and supply chains have created environmental pressures and attendant business liabilities. The rise of new world powers has intensified competition for natural resources (especially oil) and added a geopolitical dimension to sustainability. "Externalities" such as carbon dioxide emissions and water use are fast becoming material—meaning that investors consider them central to a firm's performance and stakeholders expect companies to share information about them.

These forces are magnified by escalating public and governmental concern about climate change, industrial pollution, food safety, and natural resource depletion, among other issues. Consumers in many countries are seeking out sustainable products and services or leaning on companies to improve the sustainability of traditional ones.

Further fueling this megatrend, thousands of companies are placing strategic bets on innovation in energy efficiency, renewable power, resource productivity, and pollution control. In the end, it can be concluded that the top management of an organisation can no longer afford to ignore sustainability as a central factor in their companies' long-term competitiveness.

#### **Answer to Question No. 7(b)(i)**

##### **Communication of Progress under UN Global Compact**

Communications on Progress (COP) is a report to inform the company's stakeholders

about the company's progress in implementing the UN Global Compact's ten principles. The purpose of the COP is both to ensure and deepen the commitment of Global Compact participants and to safeguard the integrity of the initiative.

While there is no strict format for a COP, in order to be considered complete, it must contain:

- a statement of continued support for the Global Compact in the opening letter, statement or message from the company's top executive;
- description of practical actions that participants have taken to implement the Global Compact principles since their last COP (or since they joined the Global Compact);
- a measurement of outcomes or expected outcomes using, as much as possible, indicators or metrics such as, for example, the Global Reporting Initiative Guidelines.

#### **Answer to Question No. 7(b)(ii)**

##### **Global Warming**

Global warming is an average increase in the temperature of the atmosphere near the Earth's surface and in the troposphere, which can contribute to changes in global climate patterns. Global warming can occur from a variety of causes, both natural and human induced. In common usage, "global warming" often refers to the warming that can occur as a result of increased emissions of greenhouse gases from human activities. See climate change, greenhouse effect, enhanced greenhouse effect, radiative forcing, troposphere.

#### **Answer to Question No. 7(b)(iii)**

##### **Bali Road map**

At the 2007 United Nations Climate Change Conference in Bali, Indonesia in December, 2007, the participating nations adopted the Bali Roadmap as a two-year process to finalizing a binding agreement in 2009 in Denmark.

The Bali Road Map consists of a number of forward-looking decisions that represent the various tracks, essential to reaching a secure climate future. The Bali Road Map included the Bali Action Plan, which charts the course for a new negotiating process designed to tackle climate change, with the aim of completing by 2009. To conduct the process, a subsidiary body under the Convention was set up, called the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA).

#### **Answer to Question No. 7(b)(iv)**

##### **Concept of Triple Bottom Line**

The concept of Triple Bottom Line (TBL) was coined in 1997 by John Ellington, noted management consultant. It is based on the premise that business entities have more to do than make just profits for the owners of the capital, only bottom line people understand. "People, Planet and Profit" is used to succinctly describe the triple bottom

lines. "People" (Human Capital) pertains to fair and beneficial business practices toward labor and the community and region in which a corporation conducts its business. "Planet" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment. A TBL company endeavors to benefit the natural order as much as possible or at the least do no harm and curtails environmental impact. "Profit" is the bottom line shared by all commerce.

While profitability is a pure economic bottomline, social and environmental bottomlines are semi or non-economic in nature so far as revenue generation is concerned but it has certainly a positive impact on long term value that an enterprise commands.

#### **Answer to Question No. 7(a)(v)**

#### **Principles for Responsible Investment (UN-PRI)**

The Principles for Responsible Investment were developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The Principles were designed to be applied by all investors, with a special focus on fiduciary institutions with long-term perspectives.

Following are the Six PRI Principles for Institutional Investors:

*Principle 1* : We will incorporate ESG issues into investment analysis and decision-making processes.

*Principle 2* : We will be active owners and incorporate ESG issues into our ownership policies and practices

*Principle 3* : We will seek appropriate disclosure on ESG issues by the entities in which we invest.

*Principle 4* : We will promote acceptance and implementation of the Principles within the investment industry.

*Principle 5* : We will work together to enhance our effectiveness in implementing the Principles

*Principle 6* : We will each report on our activities and progress towards implementing the Principles

#### **Question No. 8**

(a) *Explain the term Sustainable Development. What is the role of corporate in Sustainable Development ?* (5 marks)

(b) *What are the differences between CSR and Sustainability Reporting?* (5 marks)

(c) *Explain with few examples, alignment of CSR objectives with the business goals. What can be covered in a CSR policy of a company?* (5 marks)

#### **Answer to Question No. 8(a)**

Sustainable development is a broad, concept that balances the need for economic

growth with environmental protection and social equity. It is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.

It indicates development that meets the needs of the present generation without compromising 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 needs of the future generation are not impaired.

World Commission on Environment and Development recognized that the achievement of sustainable development could not be simply left to government regulators and policy makers. It recognized that industry has a significant role to play. While corporates are the drivers for economic development, they are required to be more proactive in balancing this with social equity and environmental protection. This is all the more so because on the one hand, they have been a huge cause of some of the unsustainable conditions, and on the other they have access to the resources necessary to address the problems.

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. Second, it provides a common societal goal for corporations, governments, and civil society to work toward: ecological, social, and economic sustainability. However, sustainable development by itself does not provide the necessary arguments for why companies should care about these issues. Those arguments come from corporate social responsibility and stakeholder theory.

Corporate sustainability encompasses strategies and practices that aim to meet the needs of stakeholders today while seeking to protect, support and enhance the human and natural resources that will be needed in the future.

#### **Answer to Question No. 8(b)**

Corporate Social Responsibility (CSR) is a concept whereby companies not only consider their profitability and growth, but also the interests of society and the environment by taking responsibility for the impact of their activities on stakeholders, environment, consumers, employees, communities, and all other members of the public sphere. The basic premise is that when the corporations get bigger in size, apart from the economic responsibility of earning profits, there are many other responsibilities attached to them which are more of non-financial/social in nature. These are the expectations of the society from these corporate to give something in return to the society with whose explicit or implicit help these entities stand where they are.

CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society. According to the World Business Council for Sustainable Development, 1999 "Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to the economic development while improving the quality of life of the workforce and their families as well as of the local community and the society at large."

Sustainability Reporting is a broad term considered synonymous with others used to describe reporting on economic, environmental, and social impacts (e.g. triple bottom line, corporate responsibility reporting, etc.). Sustainability reporting is a practice to measure, disclose, and be accountable to internal and external stakeholders for organisational, environmental, social and economic performance.

Sustainability reporting is becoming more prevalent, driven by a growing recognition that sustainability related issues can materially affect a company's performance; demands from various stakeholder groups for increased levels of transparency and disclosure; and the need for companies (and the business community more generally) to appropriately respond to issues of sustainable development.

#### **Answer to Question No. 8(c)**

CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.

The CSR activity that a company pursues must be aligned to the business of the company; this ensures that such CSR also contributes to the growth of the company on a wider scale. Brief examples will explain the win-win model of alignment of CSR activities into business model.

#### **NESTLE -- Moga Milk Factory**

The Company started milk collection in Moga in 1961 with a collection of 511 Kgs of milk from 180 farmers. It has substantially expanded its operations with over 85,000 farmers in its own milk district. Nestlé uses local raw materials and develops local resources wherever possible. Milk Collection Centres with farm cooling tanks to preserve the quality of milk were established by the Company.

Besides this, milking machines were provided to the farmers maintaining large dairy farms. Farmers were advised on good breeding and feeding practices, and on the health of dairy herds. Techniques for increasing milk yields at the farm were introduced. Nestlé has invested in Chilling Centres and Farm Cooling Tanks. In addition to this, the Company provides assistance to farmers in the areas of cattle feed, quality fodder seeds, veterinary medicines and mineral mixture and procurement of bank loans.

By working very closely with the farmers of the Moga Milk District and local administrators, Nestlé has helped to raise the quality and hygiene of the milk produced there and improve the health and life style of the farmers and other residents. Its contribution to the creation of prosperity on an on-going and sustainable basis has not only transformed Moga into a prosperous and vibrant milk district today, but also a thriving hub of industrial activity.

#### **ITC -- "e-Choupal"**

ITC's Agri Business Division, one of India's largest exporters of agricultural commodities, has conceived e-Choupal as a more efficient supply chain aimed at delivering value to its customers around the world on a sustainable basis. e-Choupal' model unshackles the potential of Indian farmer who has been trapped in a vicious cycle of low risk taking ability - low investment - low productivity - weak market orientation - low value addition - low margin - low risk taking ability. This made him and Indian



agribusiness sector globally uncompetitive, despite rich & abundant natural resources.

'e-Choupal' leverages Information Technology to virtually cluster all the value chain participants, Real-time information and customised knowledge provided by 'e-Choupal' enhance the ability of farmers to take decisions and align their farm output with market demand and secure quality & productivity. The aggregation of the demand for farm inputs from individual farmers gives them access to high quality inputs from established and reputed manufacturers at fair prices. As a direct marketing channel, virtually linked to the 'mandi' system for price discovery, 'e-Choupal' eliminates wasteful intermediation and multiple handling. Thereby it significantly reduces transaction costs.

Launched in June 2000, 'e-Choupal', has already become the largest initiative among all Internet-based interventions in rural India. 'e-Choupal' services today reach out to over 4 million farmers growing a range of crops - soyabean, coffee, wheat, rice, pulses, shrimp - in over 40,000 villages through 6500 kiosks across ten states (Madhya Pradesh, Haryana, Uttarakhand, Karnataka, Andhra Pradesh, Uttar Pradesh, Rajasthan, Maharashtra, Kerala and Tamil Nadu).

An effective CSR policy may include:

- *Vision* : The CSR vision of the company should be such that it defines the purpose of the company's CSR initiatives; and defines the company's CSR goal. The CSR vision should be well aligned to the business goals so that it benefits the company as well.
  - *Implementation* :
    - o Identification of thrust areas
    - o Identification of manner and nature of projects/activities
    - o Defining measurable targets & time frame for the activities
    - o Performance Management: Quality and standard of the work to be maintained
    - o Organisational Mechanism & Assigning responsibilities for due performance of the CSR Projects
    - o Manner of Delivering CSR: Foundation/ Partnership with Non Government Organisation/Participation of Employees
  - Fund Resources: Budget Allocation and its utilization
  - Medium of Dissemination of information on CSR
  - Management Commitment
-