

GUIDELINE ANSWERS
PROFESSIONAL PROGRAMME

JUNE 2023

MODULE 1

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

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

CS Examinations Applicability of Amendments to Laws

December Session upto 31 May of that Calender year

June Session upto 30 November of previous Calender Year

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MODULE 1

1. Governance, Risk Management, Compliances and Ethics
2. Advanced Tax Laws
3. Drafting, Pleadings and Appearances

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2023

GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART I

Question 1

Zion Ltd., is one of the listed leading companies in the pharmaceutical sector. Meta Ltd. acquired 75% Equity shares of Zion Ltd. five years ago and is being retained by Meta Ltd. till date. The shareholding pattern of Meta Ltd. includes the following:

The Government of Punjab and Government of Haryana each hold 18% of the paid-up share capital. The Government of Rajasthan's share is 15.5%. During the course of audit for the financial year 2019-20, the Auditors made the following observations:

- (i) *The company was not maintaining proper records with respect to the fixed assets. The value of fixed assets of the company amounts to approx. ` 1.50 crore.*
- (ii) *The physical verification of the assets was not carried out at regular intervals. The last physical verification was conducted on 31st July 2018. On 29th June 2020, Mr. Sam, the Auditor of Zion Ltd., resigned from his post, citing medical reasons. However, he had forgotten to inform about his resignation to the concerned authorities. Casual vacancy so created was filled up with the appointment of RMT & Co. Chartered Accountants as statutory, auditors of Zion Ltd.*

As far as RMT & Co. Chartered Accountants are concerned, Mr. R, who is one of the partners of the firm had borrowed a sum of ` 3.00 lakh from Meta Ltd. He had also purchased goods worth ` 1.89 lakh from the company. Both the sum borrowed and the cost of the goods bought are not yet paid by Mr. R does not sign the financials of Zion Ltd. In the above circumstances:

- (a) Whether the process of resignation by the Auditor was correct? Explain the provisions under the Companies Act 2013 with regard to resignation and communication by the Auditor. Who and by what time the resignation has to be informed?*
- (b) Whether the appointment of Mr. R as the Auditor is a valid one?*
- (c) What should the auditor do for reporting of the fraud?*
- (d) Discuss the role of Audit Committee in such situation*

(5 marks each)

Answer 1(a)

As per the provisions of Section 140 of the Companies Act – “The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation”.

Further, as per Rule 8 of Companies (Audit and Auditors) Rules, 2014 - “when an auditor has resigned from the company, he shall file a statement in Form ADT-3”.

According to the above, under the provisions of Companies Act, 2013 it is the responsibility of the auditor to inform about his resignation to the Company and to the Registrar of Companies within 30 days of his resignation by filing e-form ADT 3 indicating the reasons and other facts as may be relevant with regard to his resignation; and hence

(a) the process of resignation of auditor appears to be incorrect as the auditor has forgotten to inform about his resignation to the concerned authorities;

(b) and (c) the provisions with regard to resignation and communication of Auditor as contained in Section 140 and provisions as to the person responsible to give information and the timelines prescribed are outlined above.

Answer 1(b)

Section 141 of the Companies Act, 2013 contains provisions relating to eligibility, qualifications and disqualifications of auditors.

It is given to understand here that one of the partners of the Statutory Audit firm had borrowed a loan of Rs. 3 lakhs from the Company and also purchased goods worth 1.89 lakhs which are due to be paid to the Company.

In the given context, Section 141 contains that - a person shall not be eligible to be appointed as the auditor of the Company if he, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakhs.

As the indebtedness does not exceed the prescribed threshold of rupees five lakhs, it appears from the above provision that the appointment of M/s. RMT & Co. as statutory auditors is not affected by the reason of Mr. R being indebted to the company.

Answer 1(c)

It is the duty of the auditor to verify whether the financial statements are prepared in accordance with the applicable financial reporting framework and to express an opinion on the financial statements audited by him as to whether the financial statements provide a true and fair view on the financial position of the company. If during the course of the audit, the auditor comes across fraudulent activities or offence involving the fraud, he shall report the same to the management of the company and Central Government as appropriate.

Section 143(12) of Companies Act, 2013 and Companies (Audit and Auditors) Rules 2014 lays down the procedure for reporting of fraud. The same has been explained below-

Amount involved in fraud is more than Rs. 1 Crore

If during the course of audit, the auditor has reason to believe that an offence of fraud involving an amount exceeding Rs. 1 crore or more is being or has been committed against the company by the officers or employees of the company, then the auditor shall report the matter to the Central Government.

The matter shall be reported to the Central Government in the following manner-

The auditor is required to report fraud to the management within 2 days from the date of his knowledge of fraud, asking them to reply within a period of 45 days.

Upon receipt of reply from the management, the auditor shall forward his report along with reply from the management and his comments on such reply to the Central Government within a period of 15 days from the date of receipt of such reply from the management.

If the auditor fails to get any response from the management within a period of 45 days, he shall forward his report to the Central Government along with the details of the report earlier forwarded to the management for which he has not received any reply.

The report shall be forwarded to the Secretary, Ministry of Corporate Affairs in a sealed cover either by registered post or by speed post. It shall be followed by an email in confirmation of the same. Such a report forwarded shall be on the letter head of the auditor containing the postal address, email address and telephone number.

The report shall also be signed and sealed and shall indicate his membership number. The report shall be in form ADT-4

Amount involved in fraud is less than Rs. 1 Crore

If the amount involved in fraud is less than Rs. 1 crore, the auditor shall report the matter to the audit committee or Board within a period of 2 days from the date of his knowledge of fraud.

The report shall include the following-

- Nature of Fraud
- Amount involved in fraud
- Parties involved

Further, in case of fraud in which the amount involved is less than Rs. 1 crore, the board report shall include the following-

- Nature of Fraud Amount involved in fraud
- Parties involved
- Remedial Actions Taken Reporting

Requirements under CARO 2020

CARO 2020 provides for specific requirements for reporting of fraud under clause 11. The same has been provided below-

1. Has there been any fraud by the company or any fraud done on the company. If any such fraud has been noticed or reported any time of the year. If yes, nature and amount involved have to be reported.
2. Whether the auditors of the company have filed a report in Form ADT-4 with the Central Government as prescribed under the Companies (Audit and Auditors) Rules, 2014.

Answer 1(d)

Under Section 177(4) of the Companies Act, 2013, the role of audit committee with respect to appointment of auditors, review of financial statements and reporting of fraud is as below:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board. Terms of reference as prescribed by the board shall inter alia, include-

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor's independence and performance., and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed under rule 6A of the Companies (Meetings of Board and its Powers) Rules. 2014:

Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it.

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

Question 2

(a) Discuss the institutional mechanism for prevention of insider trading under the relevant Insider Trading laws in India.

(5 marks)

(b) For greater accountability and effectiveness performance, review of the board and individual director is essential. What is the scope of evaluation of director's performance?

(5 marks)

(c) National Infrastructure Ltd., a Government Company appointed Z, a senior retired IAS officer on its Board as an Independent director. The retired IAS officer wants to know the qualifications of an independent director and also wishes to know any code of professional conduct with reference to the provisions of the Companies Act, 2013. State the same.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A.

(i) Mr. A is appointed as an Actuary in PQR Ltd. under IRDA (Appointed Actuary) Regulations, 2000. Mr. A, the appointed actuary shall provide professional advice or certification to the Board of Directors of PQR Ltd. on certain items. Discuss role of Appointed Actuaries and indicate such items on which Actuary may provide professional advice or certification to the Board of Directors.

(5 marks)

(ii) "The corporate governance framework should protect and facilitate exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redressal for any violation of their rights." Explain the provisions of the Companies Act, 2013 to protect the interests of minority shareholders.

(5 marks)

(iii) X Ltd., the holding company of B Ltd. (having 51% of its shareholding in B Ltd.), wants to appoint A as Chief Finance Officer over there. A is related to one of the Directors of the holding company. Will it be considered a related party transaction under the provisions of the Companies Act, 2013? If so, what is the procedure to be followed by the Board of X Ltd.? Would your answer differ, assuming it is an associate company or wholly owned subsidiary company?

(5 marks)

Answer 2(a)

Institutional Mechanism for Prevention of Insider trading (Regulation 9A of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015):

(1) The Chief Executive Officer, Managing Director or such other analogous person of a listed Company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

(2) The internal controls shall include the following:

(a) all employees who have access to unpublished price sensitive formation are identified as designated person;

(b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;

(c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;

(d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;

(e) all other relevant requirements specified under these regulations shall be complied with;

(f) periodic process review to evaluate effectiveness of such internal controls.

(3) The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub- regulations (1) and (2) of this regulation.

(4) The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

(5) Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

(6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

(7) If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information. the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

Answer 2(b)

Board evaluation is a key means by which boards can recognize and correct corporate governance problems and add real value to their organizations. A properly conducted board evaluation can contribute significantly to performance improvements on organisational; board and individual member level.

Board evaluation typically examines the roles of the Board and the entailing responsibilities, and assesses how effectively these are fulfilled by the Board. Board evaluation contributes significantly to improved performance at three levels – organizational, Board and individual Board member level. It also improves the leadership, teamwork, accountability, decision- making, communication and efficiency of the board. A commitment to annual evaluation is powerful change.

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

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

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

Schedule IV [Part II (2)]: Independent directors are required to bring an objective view in the evaluation of the performance of board and management.

Schedule 1V (Part VII) : The independent directors of the company shall hold at least one meeting in a financial year. without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting. The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole:

(b) review the performance of the Chairperson of the company. taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

3. Performance evaluation of Independent Directors

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

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

4. Inclusion of Performance evaluation in Board' Report

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

Provisions under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with respect to Board Evaluation

It also requires Boards to conduct an annual performance evaluation and its disclosure in the annual report through the following provisions:

1. Regulation 4(2)(N(i1) (9) states the Key functions of the board of directors which includes: Monitoring and reviewing board of director's evaluation framework.

2. Regulation 17(10) mandates that evaluation of independent directors shall be done by the entire board of directors which shall include-

a. performance of the directors: and

b. fulfilment of the independent criteria as specified in these regulations and their independence from the management.

In the above evaluation process, the directors who are subject to evaluation shall not participate.

3. Regulation 19(4) read with Part D of Schedule II - It provides that the role of Nomination and Remuneration committee shall, inter-alia, include the following:

(1) formulation of the criteria for determining qualifications. positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the Directors, key managerial personnel and other employees;

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(3) devising a policy on diversity of board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors;

(6) recommend to the board all remuneration, in whatever form, payable to senior management.

4. Disclosure on Performance evaluation criteria for independent directors has to be made under head Nomination and Remuneration Committee in the section on the corporate governance of the annual report.

Answer 2(c)

Qualifications of Independent Director

As per Section 149(6) - An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.

Further, as per Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 -

An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

Code for Independent Directors

Section 149 (8) of the Companies Act, 2013 states that the company and independent directors shall abide by the provisions specified in Schedule IV, which contains the Code for Independent Directors.

Schedule IV - Code for Independent Directors

The Code is a guide to professional conduct for independent Directors. Adherence to these standards by independent Directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent Directors.

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent Judgment in the paramount interest of the company as a whole while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person.
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

Answer 2A (i)

IRDAI has brought out detailed Regulations on Appointed Actuary vide IRDA (Appointed Actuary) Regulations, 2000, detailing the procedure for his appointment, qualifications, powers along with his duties and obligations.

The Regulations also stipulate that prior approval of the Authority shall be taken for the appointment of the Appointed Actuary. The Board should ensure that the requirements are scrupulously complied with.

In brief, it reiterated that:

- The Appointed Actuary should qualify and satisfy the "Fit & Proper" criteria and other eligibility conditions as mentioned in IRDA (Appointed Actuary) Regulations, 2000, as amended from time to time.

- The insurance companies shall clearly set forth the Appointed Actuary's responsibilities and any advisory role vis-a-vis the Board or the management as well as his/her rights and obligations. These shall be in addition to the duties of the Appointed Actuaries as specified in the IRDAI Regulations and any other directions of IRDA in the matter.
- As soon as the Appointed Actuary realizes that the entity does not comply or is likely to fail in complying with the requirements of solvency and other parameters of sound operations, he/she shall inform the Board of the insurer. If no viable/acceptable action is taken by the Board, then he/she has to inform the same to IRDAI.
- The Board shall interact directly with the Appointed Actuary wherever it considers it expedient to secure his advice. it may do so in such manner as it may deem fit.

The Appointed Actuary shall provide professional advice or certification to the board with regard to: -

- Estimation of technical provisions in accordance with the valuation framework setup by the insurer.
- Identification and estimation of material risks and appropriate management of the risks.
- Financial condition testing.
- Solvency margin requirements.
- Appropriateness of premiums (and surrender value).
- Allocation of bonuses to with-profit insurance contracts.
- Management of participating funds (including analysis of material effects caused by strategies and policies).
- Product design, risk mitigation (including reinsurance) and other related risk management roles

While the areas of advice/certification listed above are with specific reference to life insurance companies, the appointed actuaries in case of non-life insurance companies shall provide such advice/certification to the extent applicable. In order to facilitate the Appointed Actuary in discharging his/her responsibilities, he/she shall at all times be provided access to the information as required.

Answer 2A (ii)

As an equity shareholder, minority have the right to:

- participate in the profits of the company.
- information about the company.
- participation in general shareholder meetings and influence corporate actions through voting on proposal.

Companies Act, 2013 provides for some measures to protect the interest of minority shareholders which are discussed as under: -

(1) **Oppression and Mismanagement:** Part XVI consisting of Sections from 241 to 246 of Companies Act, 2013 deals with prevention of Oppression and Mismanagement. When a shareholder's rights are violated it can be termed as oppression. Oppression occurs when the majority shareholders misuse their rights and take company's business as their personal property resulting in loss to the minority shareholders

(2) **Class Action Suit:** A class action suit is a legal proceeding in which shareholders bring suit as a group against the company or its directors or officers and the judgment or settlement received from the suit covers all the shareholders equally.

(3) **Special Rights:** As "the will of the majority prevails" the decision of majority shareholders in a company binds the minority. They exercise their rights without considering the interests of minority. They may misuse their power to exploit the rights of minority. Hence Companies Act, 2013 provides some special powers to small shareholders to prevent exploitation of their rights.

(4) **Representation on Board:** Section 151 provides that a listed company may have one director elected by such small shareholders as prescribed under Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(5) **E-Voting:** Voting by electronic means is a facility given to the members of a company with more than 1000 shareholders to cast their votes on the resolutions through electronic mode. It provides an opportunity to shareholders residing in far-flung area to take part in the decision-making process of the company. Shareholder can therefore exercise their voting rights even when they cannot be physically present for meetings and without spending too much time or money.

(6) **Exit Rights:** In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety percent majority or holding 90% of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares [Section 236(1)].

(7) **Related Party Transactions:** Section 188(1) provides that except with the consent of the Board of Director given by a resolution at meeting of the Board, not company shall enter into any contract or arrangement with a related party with respect to (a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind (c) leasing of property of any kind, (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company.

(8) Application to Tribunal for Relief:

Section 244(1) provides that any member of a company who complains that —

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under Chapter XVI.

Answer 2A (iii)

As per the provisions of Section 2(76), "related party", with reference to a company, includes —

(i) a director or his relative;

(ii) key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director or and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

Further, as per section 188, the following transaction is deemed to be related party transaction:

(f) related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and where the expression "office or place of profit" includes any office or place—

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

In the given scenario, relative of director of X Ltd. is going to be appointed as CFO in subsidiary company of X Ltd. and hence as per the above provisions, the same is a related party transaction under the Act.

Procedure to be followed by X Ltd.

- Consent of Board of Directors to be taken at a meeting of the Board of Directors;

The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-

- (a) the name of the related party and nature of relationship;
- (b) the nature, duration of the contract and particulars of the contract or arrangement;
- (c) the material terms of the contract or arrangement including the value, if any;
- (d) any advance paid or received for the contract or arrangement, if any;
- (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
- (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
- (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

The director who is interested in the contract or arrangement with a related party, shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

- Where the transaction is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188, prior consent of members by means of a resolution should also be obtained.

Any member of the company who is a related party shall not vote on such resolution, to approve any contract or arrangement which may be entered into by the company:

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-

- name of the related party;
- name of the director or key managerial personnel who is related, if any;
- nature of relationship;
- nature, material terms, monetary value and particulars of the contract or arrangements;
- any other information relevant or important for the members to take a decision on the proposed resolution.

Every contract or arrangement entered into under sub-section (1) of Section 188 shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

The requirement of seeking approvals as above shall not apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

The requirement of passing the member's resolution shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. In case of wholly owned subsidiary, the resolution passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company. For associate company, no specific difference from above procedure has been prescribed.

Question 3.

(a) What are the methods by which IRDA exercises control over significant ownership?

(b) What are the Classes of Companies and bodies corporate governed by the National Financial Reporting Authority (NFRA)?

(c) What are the provisions under Sarbanes-Oxley Act 2002 for protection of Whistle Blowers?

(d) What are the committees required to be constituted by Non-Banking Financial Companies?

(e) You have been appointed as a Company Secretary for a Company formed a month ago. As the secretary, you are required to list out the items of business for the agenda for first meeting of Board of the Company.

(3 marks each)

Answer 3(a)

IRDAI prescribes a minimum lock-in period of 5 years from the date of certificate of commencement of business of an insurer (R3) for the promoters of the insurance company and no transfer of shares of the promoters is permitted within this period without the specific approval of the Authority. Section 2 (7A) of the Insurance Act, 1938 has prescribed the ceiling of Foreign Investment in Indian Insurance Companies at 74%, subject to the Indian Insurance Company being Indian owned and controlled. The manner of computation of Foreign Investment to satisfy this requirement is specified in the Rules and Regulations issued by the Government and IRDAI from time to time.

It has to be demonstrated through express provisions in the agreements between the promoters/ shareholders and/ or the Articles of Association of the Insurance companies that the ownership as well as control does not lie with foreign entities but ultimately rests with resident Indian citizens at all times.

The Insurance Act, 1938 stipulates prior approval of the IRDAI for registration/transfer of shares, exceeding one per cent and /or which involve holding of share capital, after such transfer, in excess of 5 per cent of the paid-up capital of the company. The Board of Directors of the company shall ensure that the registration of shares is in compliance with the above provisions of the Act, Regulations and circulars issued by IRDAI from time to time.

Answer 3(b)

Classes of Companies and bodies corporate governed by the National Financial Reporting Authority (NFRA) as per Rule 3 of the National Financial Reporting Authority Rules, 2018 (NFRA Rules) are as below:

1. companies whose securities are listed on any stock exchange in India or outside India;
2. unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;
3. Insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act.

4. Any body corporate or company or person, or any class of bodies corporate or companies or persons. on a reference made to the Authority by the Central Government in public interest: and

5. A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net worth of such subsidiary or associate company exceeds twenty percent, of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be.

6. A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

Answer 3(c)

Sarbanes Oxley Act of 2002 is an Act enacted by U.S. congress to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes. Section 302 of the said Act contains following provisions for whistle-blowers:

- Make it illegal to “discharge, demote, suspend, threaten, harass or in any manner discriminate against” whistle-blowers.
- Establish criminal penalties of up to 10 years for executives who retaliate against whistle-blowers.
- Require board audit committees to establish procedures for hearing whistle-blower complaints
- Allow the secretary of labour to order a company to rehire a terminated employee with no court hearing.
- Give a whistle-blower the right to a jury trial, by passing months or years of administrative hearings.

Answer 3(d)

1. **Audit Committee:** All Applicable NBFCs shall constitute an Audit Committee, consisting of not less than three members of its Board of Directors. The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the NBFCs.

2. **Nomination Committee:** All Applicable NBFCs shall form a Nomination Committee to ensure “fit and proper” status of proposed/ existing directors. The Nomination Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in Section 178 of the Companies Act, 2013.

3. **Risk Management Committee:** To manage the integrated risk, all Applicable NBFCs shall form a Risk Management Committee, besides the Asset Liability Management Committee.

Few other committees are prescribed in other regulations depending on asset base or other parameter. For example - Asset Liability Management Committee (ALCO) for NBFCs with asset base of Rs. 100 cr or more & NBFC- D as per Para 1 of Asset Liability Management (ALM) System for NBFCs – Guidelines. Stakeholders Relationship Committee for NBFCs having more than 1000 shareholders, debenture holders, deposit-holders and any other security holders at any time during the FY as per Section 178(5) of Companies Act, 2013, CSR Committee for NBFCs with 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 as per Section 135 of Companies Act, 2013, Committees as per Listing regulations for Listed NBFCs etc.

Answer 3(e)

The first meeting of the board may contain the following agendas:

1. To appoint the Chairman of the Meeting, ascertain quorum and grant leave of absence, if any
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company as registered.

4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease/ rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors, if any.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company, if any.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company on receipt of subscription money.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. to take note of secretarial standards.
16. To authorise personnel for GST and other registrations
17. To delegate powers for day-to-day operations of Company
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers

PART-II

Question 4

A Chocolate Company since inception in 1990 has been largely responsible for satisfying the country's demand for Chocolates and Sugar Confectionery. The plant has various lines producing a wide range of confectionery like Éclairs, Toffees, Fudges, Caramels, Hard Boiled Candy and Enrobed Chocolates. These products are available in attractive packaging and premium Gift Boxes making them ideal for gifting as well as for own consumption. Most of the packaging in the Gift Pack segment has been carefully selected to ensure its enduring utility, thereby giving our valued customers an added benefit. The confectionery is produced by experienced personnel under stringent quality control and hygiene standards. State-of-the-art manufacturing facilities ensure products of international quality. The company in its relentless pursuit of quality obtained relevant Certification in April, 2004.

The Company, through its uncompromising stand on quality and competitive pricing, has successfully penetrated countries all over the Gulf, the African continent, Asia, Australia, New Zealand, Canada, South Africa, USA and the UK.

The principal business processes involved are:

- *Procurement of raw materials and consumables, Production and Quality Control.*
- *Distribution and marketing, Inventory Management, Pricing and cost control.*
- *Feedback from consumers and redressal systems, Publicity and promotional activities, Investor relations.*
- *Recruitment and HR, Finance & Administration.*
- *Corporate communications and public relations, Legal and secretarial matters.*
- *Maintenance of equipment and other assets, Capital expenditure for equipment and other purposes.*

- *IT systems and telecommunications, Transportation and Logistics.*

Today, manufacturing sector companies like chocolate manufacturing operates in increasingly complex, competitive and global markets. The ability to manage risks across geographies, products, assets, customer segments and functional departments is of paramount importance. The inability to manage these risks can cause irreparable damages. Chocolate company will always face the likelihood of being impacted by uncertain or adverse future events. These uncertainties will have an impact on a company's ability to generate capital and shareholders returns. The company Board expects that management will not only look at where the company may be exposed to risk, but also how these risks can be managed to influence favorable business outcomes. Considering the above, answer the following questions:

- (a) What are the fundamental principles to be considered by company to develop an appropriate Risk Policy Framework for the Company?*
- (b) What are the various risks, the company is exposed to?*
- (c) Discuss some approaches for risk impact assessment.*
- (d) What do you understand by Liquidity Risk? What are the techniques to control liquidity risk?*

(5 marks each)

Answer 4(a)

Effective risk management plays a crucial role in any company's pursuit of financial stability and superior performance. The adoption of a risk management framework that embeds best practices into the firm's risk culture can be the cornerstone of an organization's financial future.

There are at least five crucial components that must be considered when creating a risk management framework. They include risk identification; risk measurement and assessment; risk mitigation; risk reporting and monitoring; and risk governance.

Risk Identification

The first step in identifying the risks a company faces is to define the risk universe. The risk universe is simply a list of all possible risks. Examples include IT risk, operational risk, regulatory risk, legal risk, political risk, strategic risk, and credit risk.

After listing all possible risks, the company can then select the risks to which it is exposed and categorize them into core and non-core risks. Core risks are those that the company must take in order to drive performance and long-term growth. Non-core risks are often not essential and can be minimized or eliminated completely.

Risk Measurement

Risk measurement provides information on the quantum of either a specific risk exposure or an aggregate risk exposure and the probability of a loss occurring due to those exposures. When measuring specific risk exposure, it is important to consider the effect of that risk on the overall risk profile of the organization.

Some risks may provide diversification benefits while others may not. Another important consideration is the ability to measure an exposure. Some risks may be easier to measure than others. For example, market risk can be measured using observed market prices, but measuring operational risk is considered both an art and a science.

Specific risk measures often give the profit and loss ("P/L") impact that can be expected if there is a small change in that risk. They may also provide information on how volatile the P/L can be.

Common aggregate risk measures include value-at-risk (VaR), earnings-at-risk (EaR), and economic capital. Techniques such as scenario analysis and stress testing can be used to supplement these measures.

Risk Mitigation

Having categorized and measured its risks, a company can then decide on which risks to eliminate or minimize, and how many of its core risks to retain. Risk mitigation can be achieved through an outright sale of assets or liabilities, buying insurance, hedging with derivatives, or diversification.

Risk Reporting and Monitoring

It is important to report regularly on specific and aggregate risk measures in order to ensure that risk levels remain at an optimal level. Financial institutions that trade daily will produce daily risk reports. Other institutions may require less frequent reporting. Risk reports must be sent to risk personnel who have the authority to adjust (or instruct others to adjust) risk exposures.

Risk Governance

Risk governance is the process that ensures all company employees perform their duties in accordance with the risk management framework. Risk governance involves defining the roles of all employees, segregating duties, and assigning authority to individuals, committees, and the board for approval of core risks, risk limits, exceptions to limits, and risk reports, and also for general oversight.

Answer 4(b)

Different types of risks the company is exposed to:

I. **Market Risks:** It is the risk that the value of the company will be adversely affected by movements in market rates or prices. foreign exchange rates, national & global fluctuations, credit spreads and/or commodity prices resulting in a loss to earnings and capital. The market risks identified at this chocolate company are as follows:

- Government Policy risks
- Product Risks
- Environmental risks
- Volatility of export orders
- Price Competition in the local & export market
- Currency fluctuation for export orders

II. **Operational Risks:** The operational risks identified at chocolate company are as follows:

- Fire & Allied Risks
- Machinery breakdown/ obsolescence
- Volatility of Raw material & Packing material prices
- Quality/ Ageing risks of Raw material/ Packing material
- Delivery risk of Suppliers
- Loss of data & information- IT security
- Manpower Availability risks
- Accidents
- Inventory carrying risk

III. **Reputation Risks:** These are risks arising from negative public opinion resulting from failures of process, strategy or corporate governance. The Reputation risks identified at this company are as follows:

- Contamination-hygiene

- Product expiry/Shelf life
- Corporate Governance

IV. **Credit Risks:** Non receipt of receivables or delay in receipts is the credit risks attributable to the company. These may be identified as:

- Payment risk [rom customers-local
- Payment risk from Customers- export
- Security from customers
- Advance to Suppliers

V. **Liquidity Risks:** The possibility is that the company will be unable to fund present and future financial obligations. These may be identified as:

- Cash flow & working capital management
- FOREX decisions
- Cost overruns

VI. **Strategic Risks:** Risk those are arising from adverse business decisions or the improper implementation of such decisions. These may be identified as follows:-

- Business Plan forecasts.
- Attrition of key people.

Answer 4(c)

The following are approaches for risk impact assessment: -

1. **Critical Self-Assessment (CSA):** This is one of the common qualitative bottom-up approaches where line managers of the company can critically analyse their business processes given specific scenarios to identify potential risks and gaps in their risk management processes. Tools like questionnaires, checklists and workshops are used to help the managers analyze the risk profile of their business units. The key idea behind this method is that businesses managers of this company are in the best position identify and manage the Operational Risks pertaining to their business units.

2. **Risk Audit:** Employing the services of external (or internal) auditors to review the business processes of a business unit is another approach. This process not only helps identify risks but also helps put in place the oversight organization for the manageable risks.

3. **Key Risk Indicators (KRI):** Using the KRI approach the company can blend the qualitative and quantitative aspects of Operational Risk management. Factors that have predictive value and that can be easily measured with minimum time lag can serve as risk indicators. Key indicators are identified from several potential factors and are tracked over time. The predictive capabilities of the indicators are tested through regression analysis on historical loss data and indicator measurements. Based on such analysis, the set of indicators of the company being tracked can be modified suitably. Over time, as the model gets refined, the set of indicators can provide early warning signals for operational losses.

Answer 4(d)

Liquidity risk is the risk that a company will not have enough cash to meet its financial obligations (pay its debts) on time. Liquidity refers to the ease at which an asset can be converted into cash without negatively affecting its market price; the risk arises when a company cannot buy or sell an investment in exchange for cash fast enough to pay its debts.

An effective liquidity risk management would include systems to identify measure. Monitor and control its liquidity exposures. Management should be able to accurately identify and quantify the primary sources of the company liquidity risk in a timely manner. To properly identify the sources. management should understand both existing as well as future risk that it can be exposed.

Key elements of an effective risk management process should include an efficient MIS system to measure, monitor and control existing as well as future liquidity risks and reporting them to senior management. An effective management information system (MIS) is essential for sound management decisions. Information should be readily available for day-to-day liquidity management and risk control, as well as during times of stress. Data should be appropriately consolidated, comprehensive yet succinct, focused, and available in a timely manner.

An effective measurement and monitoring system is essential for adequate management of liquidity risk. Consequently, intends to institute systems that will enable it to capture liquidity risk ahead of time, so that appropriate remedial measures could be prompted to avoid any significant losses. Some commonly used liquidity measurement and monitoring techniques are:

- **Contingency Funding Plans:** In order to develop a comprehensive liquidity risk management framework, the company should have way out plans for stress scenarios. A CFP is a projection of future cash flows and funding sources of the company representing management's best estimate of balance sheet changes that may result from a liquidity event. A CFP can provide a useful framework for managing liquidity risk both short term and in the long term. Further it helps ensure that a financial institution can prudently and efficiently manage routine and extraordinary fluctuations in liquidity.
- **Cash Flow Projections:** At the basic level the company may utilize flow measures to determine their cash position. A cash flow projection estimates company's inflows and outflows and thus net deficit or surplus (GAP) over a time horizon.
- **Liquidity Ratios and Limits:** The Company may use a variety of ratios to quantify liquidity. These ratios can also be used to create limits for liquidity management. However, such ratios would be meaningless unless used regularly and interpreted taking into account qualitative factors. Internal Controls: In order to have effective implementation of policies and procedures, the company should institute review process that should ensure the compliance of various procedures and limits prescribed by senior management.

PART-III

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

Question 5

(a) *“Financial Reports are one of the important documents detailing the performance of a company but still many other significant aspects are left out.” Critically analyse the statement.*

(b) *Discuss the various forms of capital and what are the guidelines given by SEBI towards improving disclosure standards?*

(c) *“A number of controls falling under operational controls can also be administrative controls.” Explain.*

(d) *“Risks are mitigated by implementing internal controls as appropriate to the business environment. These type of controls must be integrated in the IT solution implemented at the Bank’s branches.” Indicate five examples of Internal Control in a branch of Bank as well as five IT related controls in Bank.*

(5 marks each)

OR (Alternate question to Q. No. 5)

Question 5A

(i) As a Company Secretary of a growing multinational deeply rooted with the belief of Triple Bottom Line (TBL) approach, specify the areas where and how the company can focus.

(5 marks)

(ii) What are the new norms under Rule 7 of the Companies (Amendment) Act, 2020 introduced for carrying forward and setting off excess CSR expenditure?

(5 marks)

(iii) What do you understand by corporate sustainability? What is SDG India Index?

(5 marks)

(iv) "Certain Universal Standards forms part of Global Reporting Initiative (GRI) Standards." Discuss the statement mentioning its internal and external benefits.

(5 marks)

Answer 5(a)

Financial reporting is the process of producing statements that disclose an organisation's financial status to management, investors and the government. Financial reporting serves two primary purposes. First, it helps management to engage in effective decision-making concerning the company's objectives and overall strategies. The data disclosed in the reports can help management discern the strengths and weaknesses of the company, as well as its overall financial health.

Second, financial reporting provides vital information about the financial health and activities of the company to its stakeholders including its shareholders, potential investors, consumers, and government regulators. It's a means of ensuring that the company is being run appropriately. The financial reporting model is like "looking in the rear-view mirror." when in fact the road ahead is very turbulent and there are huge impacts on the company, both societal and environmental.

It is not necessarily the volume of information, but the lack of a comprehensive story, which is where improvements in corporate reporting are needed. Investors expect information about:

- Business model and strategy.
- Intangible factors and sustainability (i.e., economic, environmental, social) commitments.
- Impacts and performance that affect a company's value today and its ability to create value in the future.
- Key aspects of corporate governance.
- Internal controls.
- Human rights / diversity practices and policies.
- Key financial ratios.

Non-financial reporting is an opportunity to communicate in an open and transparent way with stakeholders. In their non-financial reports, firms volunteer an overview of their environmental and social impact during the previous year. The information in non-financial reports contributes to building up a company's risk-return profile.

Non-financial reporting includes-

- **Board's Report:** The Board's Report should avoid repetition of information. If any information is mentioned elsewhere in the financial statement, a reference thereof should be given in Board's Report instead of repeating the same. A board's report should typically include

information under following heads- Company Specific Information, General Information, Capital and Debt Structure, Credit Rating of Securities, Investor Education and Protection Fund (IEPF), Management. Disclosures Relating to Subsidiaries, Associates and Joint Ventures, Details of Deposits, Particulars of Loans, Guarantees And Investments, Particulars of Contracts or Arrangements with Related Parties. Conservation of Energy, Technology Absorption, Foreign Exchange Earnings and Outgo. Details of Establishment of Vigil Mechanism, Material Orders of Judicial Bodies /Regulators. Auditors Report, Secretarial Audit Report and so on.

- **Corporate Social Responsibility Report:**

1. A brief outline of the company's CSR policy including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years.
4. Prescribed CSR Expenditure (two per cent of the amount as in item 3 above).
 - Corporate Sustainability Reporting: Comparing performance internally, and between Organizations and sectors External benefits of sustainability reporting can include:
 - Mitigating — or reversing — negative environmental, social and governance impacts.
 - Improving reputation and brand loyalty.
 - Enabling external stakeholders to understand the organizations true value, and tangible and intangible assets.
 - Demonstrating how the organization influences, and is influenced by, expectations about sustainable development.

Answer 5(b)

All organizations depend on various forms of capital for their success. It is important that all such forms of capital are disclosed to stakeholders to enable informed investment decision making. IIRC (International Integrated Reporting Council) has categorized the forms of capital as follows:

- Financial capital
- Manufactured capital
- Intellectual capital
- Human capital
- Social and relationship capital
- Natural capital

It has been observed that certain listed entities in India and other jurisdictions have already been making disclosures by following the principles of integrated reporting. Towards the objective of improving disclosure standards, in consultation with industry bodies and stock exchanges, the listed entities have been advised to adhere to the following by the SEBI:

(a) Integrated Reporting may be adopted on a voluntary basis from the financial year 2017-18 by top 500 companies which are required to prepare BRR.

(b) The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion & Analysis or by preparing a separate report (annual report prepared as per IR framework).

(c) In case the company has already provided the relevant information in any other report prepared in accordance with national/international requirement / framework, it may provide appropriate reference to the same in its Integrated Report so as to avoid duplication of information.

(d) As a green initiative, the companies may host the Integrated Report on their website and provide appropriate reference to the same in their Annual Report.

Answer 5(c)

A number of controls falling under operational controls can also be administrative controls. Examples of operational controls are: quality control, works standards, periodic reporting, policy appraisal etc.

Administrative controls are very wide in their scope. They include all other managerial controls concerned with decision-making process. They are concerned with the authorisation of transactions and include anything from plan of organisation to procedures, record keeping, distribution of authority and the process of decision-making. They include controls such as time and motion studies, quality control through inspection, performance budgeting, responsibility accounting and performance evaluation etc.

Administrative controls have an indirect relationship with financial records and the auditor may evaluate only those administrative controls which have a bearing on the financial records. However, for the purposes of understanding the internal control we may study it in four parts as:

1. Accounting controls.
2. Operational controls.
3. Internal checks.
4. Internal audit.

1. **Accounting controls** pertain purely to the accounting system which enter finally in the preparation of financial statements and information which are subject to the expression of opinion by the auditors.

2. **Operational controls** are those which help in improving the efficiency, productivity and not necessarily enter the accounting systems. Works standards, quality control, methods study and motion study, critical path method etc. may be many examples of operational controls.

3. **Internal check** is a built-in device in the day to day working by separating the duties and functions of the staff in such a way that the work of one is automatically checked by the other e.g. posting of cash transactions in the ledger is done by a person other than who handles the cash and writes the cash book — the cashier.

4. **Internal audit** is an appraisal function to be performed on the principles and practices of audit. The scope of this extends to all the quantifiable information.

Answer 5(d)

Internal Controls in Banks

Risks are mitigated by implementing internal controls as appropriate to the business environment. These types of controls must be integrated in the IT solution implemented at the bank's branches. Some examples of internal controls in bank branch are given below: -

- Work of one staff member is invariably supervised/ checked by another staff member, irrespective of the nature of work (Maker Checker process).
- A system of job rotation among staff exists; Financial and administrative powers of each official/ position is fixed and communicated to all persons concerned;
- Branch managers must send periodic confirmation to their controlling authority on compliance of the laid down systems and procedures.
- All books are to be balanced periodically. Balancing is to be confirmed by an authorized official.

IT Controls in Banks

IT Risks need to be mitigated by implementing the right type and level of controls in the automated environment. This is done by integrating control into IT. Sample list of IT related controls are:-

- The system maintains a record of all log ins and log outs.
- If the transaction is sought to be posted to a dormant (or operative) account, the processing is halted and can be proceeded with only with a supervisory password.
- The system checks whether the amount to be withdrawn is within the drawing power.
- The system flashes a message if the balance in lien account would fall below the lien amount after the processing of the transaction.
- Access to the system is available only between stipulated hours and specified days only.

Answer 5A (i)

Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporates. Coined in 1997 by John Ellington, "People" (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporation conducts its business.

"**Planet**" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment. A TBL enshrined company endeavours to benefit the natural order as much as possible or at the least do no harm and curtails environmental impact.

Therefore, the company can work for any issues addressing to the needs in any manner. For **people** issues faced by the organisation includes —

- Health
- Safety
- Diversity
- Ethnicity
- Education and literacy
- Prevention of child labour
- Differently-abled.

The **planet** concerns include-

- Climate change
- Energy
- Water
- Biodiversity and land use
- Chemicals, toxics and heavy metals
- Air pollution
- Waste management
- Ozone layer depletion
- Ocean and fisheries
- Afforestation.

The **Profit** includes-

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

Answer 5A(ii)

New norms introduced for carry forward and set-off excess CSR expenditure

(2) According to Rule 7 of the Companies (CSR Policy) Rules, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that —

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- (ii) the Board of the company shall pass a resolution to that effect.

Answer 5A(iii)

Everything that we need for our survival and well-being depends, either directly or indirectly, on our natural environment. Sustainability creates and maintains the conditions under which humans and nature can exist in productive harmony that permits fulfilling the social, economic and other requirements of the present and future generations.

Corporate sustainability indicates new philosophy, as an alternative to the traditional growth and profit-maximization model, under which sustainable development comprising of environmental protection, social justice and equity, and economic development are given more significant focus while recognizing simultaneous growth of the corporate and profitability.

It is a business approach that creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental and social developments. Corporate sustainability describes business practices built around social and environmental considerations.

Corporate sustainability encompasses strategies and practices that aim to meet the needs of the stakeholders today while seeking to protect, support and enhance the human and natural resources that will be the need of the future. Corporate sustainability leaders achieve long-term shareholder value by gearing their strategies and management to harness the market's potential for sustainability products and services while at the same time successfully reducing and avoiding sustainability costs and risks.

The UN Sustainable Development Solutions Network (SDSN) partners with a variety of organizations to assess progress towards SDG achievement at the national level and the local level. Both official and unofficial metrics are used to measure distance to targets for each of the SDGs to identify priorities for action, understand key implementation challenges, track progress, ensure accountability, and identify gaps that must be closed in order to achieve the SDGs by 2030. The SDG India Index 2020-21 is developed in collaboration with the United Nations in India.

The NITI Aayog launched its index in 2018 to monitor the country's progress on the goals through data-driven assessment, and foster a competitive spirit among the States and Union Territories in achieving them. The index represents the articulation of the comprehensive nature of the Global Goals under the

2030 Agenda while being attuned to the national priorities. The SDG India Index 2020-21 is also live on an online dashboard, which has cross-sectoral relevance across policy, civil society, business, and academia.

- **Methodology:**

- ✚ The SDG India Index computes goal-wise scores on the 17 SDGs for each State and Union Territory.
- ✚ These scores range between 0-100, and if a State/UT achieves a score of 100, it signifies it has achieved the 2030 targets.
- ✚ The higher the score of a State/UT, the greater the distance to target achieved.
- ✚ States and Union Territories are classified in four categories based on their SDG India Index score: Aspirant (0-49), Performer (50-64), Front-Runner (65-99), Achiever (100).

Answer 5A(iv)

Universal Standards: The GRI Standards begin with three Universal Standards to disclose general information about an organization and its approaches to sustainability management.

Further topic-specific standards outline approaches to disclosing qualitative and quantitative information deemed material to each reporting organization.

GRI-101: Foundation: The starting point for using the GRI Standards.

GRI-102: General Disclosure: Used to report contextual information about the organization.

GRI-103: Management Approach: Used to disclose how the organization manages impacts related to each of its material topics.

Internal benefits for companies and organizations can include:

- Increased understanding of risks and opportunities.
- Emphasizing the link between financial and non-financial performance.
- Influencing long term management strategy and policy and business plans.
- Streamlining processes, reducing costs and improving efficiency
- Benchmarking and assessing sustainability performance with respect to laws, norms, codes, performance standards, and voluntary initiatives.
- Avoiding being implicated in publicized environmental, social and governance failures
- Comparing performance internally, and between organizations and sectors.

External benefits of sustainability reporting can include:

- Mitigating — or reversing — negative environmental, social and governance impacts.
- Improving reputation and brand loyalty.
- Enabling external stakeholders to understand the organization's true value, and tangible and intangible assets.
- Demonstrating how the organization influences, and is influenced by, expectations about sustainable development.

PART-IV

Question 6

(a) *What is Communication on Progress? How does it help to incorporate transparency and accountability amongst participants? Answer the questions with reference to UN Global Compact transparency and accountability policy.*

(b) *A newly established car manufacturing company sold 1000 cars of new variant; but subsequently it was found that the product has a major defect, which can be fatal in certain cases. If the company calls back its products it will face huge losses which may lead to its closure. Advise the company to bail out of this situation.*

(5 marks each)

Answer 6(a)

UN Global Compact incorporates a transparency and accountability policy known as the Communication on Progress (COP). The Communication on Progress (COP) is an annual disclosure to stakeholders on progress made in implementing the ten principles of the UN Global Compact in the areas of human rights, labour, environment and anti-corruption, and in supporting broader UN development goals. The COP is posted on the Global Compact website by business participants. Failure to issue a COP will change a participant's status to non-communicating and can eventually lead to the expulsion of the participant.

Joining the Global Compact is a widely visible as commitment to the ten principles. A company that signs-on to the Global Compact specifically commits itself to:

- set in motion changes to business operations so that the Global Compact and its principles become part of management, strategy, culture and day-to-day operations;
- publish in its annual report or similar public corporate report (e.g., sustainability report) a description of the ways in which it is supporting the Global Compact and its principles (Communication on Progress),
- publicly advocate the Global Compact and its principles via communications vehicles such as press releases, speeches, etc.

Ideally, COPs should be integrated into a participant's existing communication with stakeholders. such as an annual or sustainability report. However, in case a participant does not publish such reports, a COP can be a standalone report that is made available for stakeholders through other public communication channels (e.g., websites, newsletters, intranets, company notice boards, included with payroll, etc.). COPs should be issued in the company's working language and if the company determines a need, in additional languages.

Participants are asked to supply a URL link to their COP and to upload the COP itself (as a PDF, PowerPoint, or word document) to the Global Compact website in order to meet the COP submission requirement.

Answer 6 (b)

This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm. There is usually a degree of danger in any product or production process and it is difficult to define a degree of permissibility, or the degree of permissibility may depend on the changing state of preventative technologies or changing social perceptions of acceptable risk. Defective, addictive and inherently dangerous product sand Ethical relations between the company and the environment including pollution, environmental ethics, carbon emissions trading. Ethical problems arising out of new technologies for e.g. genetically modified food. Product testing ethics.

It is a case of ethical dilemma. This decision needs to be cross checked with the company seniors and policies and prevailing legal provisions. A win-win situation is attainable if the new technology adopted by the entrepreneur benefits the clients and business. What matters in the end, are profits and customer satisfaction. There is nothing wrong about growing and automating and bombarding the market with newer models. However, the company must take steps to mobilize its resources and to maintain his/her reputation — the company's goodwill might suffer a major setback in the market share owing to the mass sales of

defective and inferior product. Instead, the company may try to avail any beneficial schemes for writing off at least some part of such losses. In fact, may offer customer higher exchange value of those defective models.

Specifically, steps for resolving ethical dilemma are:

1. Considering the options available
2. Considering the consequences of each option
3. Analysing the Actions
4. Decision making and commitment
5. Evaluate the system.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **ALL** Questions.

2. **ALL** the references to sections in Part-II of the Question Paper relate to the Income- tax Act, 1961 and relevant Assessment Year 2023-24 unless stated otherwise.

3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.

4. Working notes should form part of the answer.

PART I

Question 1.

(a) Vimal Ltd. received the following services from the Government of India during the taxable period (1st April, 2022 to 31st March, 2023):

(i) Received a registration certificate required under a law by paying ₹20,000 as application fee

(ii) Warehoused his imported goods for an extended period by paying ₹7,000 to customs department as Merchant Over Time fee

(iii) Obtained a safety certificate on voluntary basis for his factory not covered under the Factories Act from Inspector of Factories. The fee paid was ₹35,000

(iv) Got security services provided by a government security agency for a period of 5 months from January 2023 by paying ₹ 1,500 p.m. Find out the taxability or otherwise under GST laws of the above service charges paid by Vimal Ltd. during the period from 1st April, 2022 to 31st March, 2023.

(5 Marks)

(b) Find out the time of supply in the following cases in which GST is payable under reverse charge basis:

| Date of receipt of goods/services | Date of payment by recipient of goods/services | Date of issue of Invoice by suppliers |
|-----------------------------------|---|---------------------------------------|
| (i) Goods – 04/07/2022 | 12/08/2022 | 29/06/2022 |
| (ii) Services – 25/06/2022 | 10/08/2022 | 29/06/2022 |
| (iii) Goods– 01/07/2022 | Entered in the books of accounts on 30/06/2022 but debited in recipient's bank account – 27/06/2022 | 28/06/2022 |
| (iv) Goods – 03/08/2022 | 12/08/2022 | 26/06/2022 |
| (v) Services – 08/07/2022 | 08/08/2022 | 20/07/2022 |

(5 marks)

(c) Classify the following supplies into mixed supply and composite supply:

- (i) Train ticket including meals supply
- (ii) Supply of health care services along with consumables and medicines
- (iii) Supply of toothpaste with toothbrush
- (iv) Providing lodging facility in hotel along with breakfast and dinner
- (v) A laptop seller sold laptop along with laptop bag.

(5 marks)

(d) Rohan is engaged in a variety of businesses at Chennai, Tamil Nadu. He has furnished the following information with regard to the supplies made in the month January:

| | | ₹ |
|-----|---|----------|
| (a) | Supply of 5,000 Kits to Angels Beauty Paradise in Chennai (Each Kit consists of 1 Scented Perfume bottle, 1 Beauty Soap and 1 Talcum Powder). | 7,50,000 |
| (b) | Gift of Microwave oven to his employee on the occasion of his marriage | 60,000 |
| (c) | Supply of Laptops along with Laptop bags to M/s LTI Ltd. | 4,00,000 |
| (d) | Gift Articles provided free of cost to relatives on the occasion of his brother's son birthday function | 70,000 |

Assume GST rates are to be as under:

| S. No. | Particulars | GST Rate |
|--------|------------------------|----------|
| (i) | Laptop | 18% |
| (ii) | Laptop Bag | 28% |
| (iii) | Scented Perfume Bottle | 5% |
| (iv) | Beauty Soap | 18% |
| (v) | Talcum Powder | 12% |
| (vi) | Microwave Oven | 18% |
| (vii) | Gift Articles | 28% |

From the above information, examine each of the above supplies made by Rohan for the month of January and determine the rate of GST applicable on the same. Reasoning should form part of your answer.

(5 Marks)

Answer 1(a)

Computation of GST payable

| Particulars | Result |
|---|--|
| (i) Application fee paid for issuance of registration certificate required by a law | Exempted |
| (ii) Merchant Over Time fees paid to Customs Department | Exempted |
| (iii) Fee paid to Inspector of Factories to get Safety certificate on voluntary basis | Taxable under Reverse Charge Mechanism |
| (iv) Fees paid to Government Security agency is taxable only when the total consideration paid in a financial year exceeds Rs. 5000. Here, in this case, out of five months, three months are coming under one financial year (January, February and March). For the said three months period the fee paid was Rs. 4,500 (1500 X 3) which is less than Rs. 5,000. Hence, the whole amount is exempted. | Exempted |

Answer 1(b)

Time of Supply under Reverse Charge Basis:

| Good / Services | Date of receipt of goods/services (1) | Date of payment (2) | Date of issue of invoice (3) | Date immediately following 30/60 days from date of Invoice (4) | Time of Supply (5) |
|-----------------|---------------------------------------|---------------------|------------------------------|--|---|
| Goods | 04/07/2022 | 12/08/2022 | 29/06/2022 | 30/07/2022 | Earlier of (1), (2) and (4). 04/07/2022 |
| Services | 25/06/2022 | 10/08/2022 | 29/06/2022 | 29/08/2022 | Earlier of (2) and (4). 10/08/2022 |

| | | | | | |
|----------|------------|---|------------|------------|---|
| | | | | | |
| Goods | 01/07/2022 | 27/06/2022 (Dt. of debit in bank a/c) | 28/06/2022 | 29/07/2022 | Earlier of(2) and (4). 27/06/2022 |
| Goods | 03/08/2022 | 12/08/2022 | 26/06/2022 | 27/07/2022 | Earlier of(1), (2) and (4). 27/07/2022 |
| Services | 08/07/2022 | 08/08/2022 | 20/07/2022 | 19/09/2022 | Earlier of (2) and (4). 08/08/2022 |

Answers 1(c)

Classification of Supplies in to Mixed Supply or Composite supply:

- (i) Composite supply
- (ii) Composite supply
- (iii) Mixed supply
- (iv) Mixed Supply (Composite supply, breakfast and dinner with lodging facility in hotel in ordinary course of business)
- (v) Composite supply

Answers 1(d)

Determination of rate of GST:

| | Particulars | Rate of GST |
|----------|--|-------------|
| A | Supply of 5,000 Kits to Angels Beauty Paradise in Chennai; [It is a Mixed Supply and is treated as Supply of that particular supply which attracts highest tax rate (Beauty Soap attracts highest rate) in terms of section 8(b)] | 18 % |
| B | Gift of Microwave oven to his employee on the occasion of his marriage; [It is a transaction between related persons. (Employer and Employee). Gift not exceeding Rs. 50,000 in value in a financial year by an employer to employee will not be treated as supply. But in the given case it has exceeded Rs. 50,000 hence the transaction is taxable supply attracting 18% GST] | 18 % |

| | | |
|----------|---|-------------|
| C | Supply of Laptops along with Laptop bags to M/s LTI Ltd.; (Naturally bundled, it is a composite service which is treated as the supply of the principal supply which is laptop as per section 8(a). Hence the rate of the Laptop which is the principal supply is charged.) | 18 % |
| D | Gift articles provided free of cost to relatives on the occasion of his brother's son birthday function shall be considered as supply since as the gift articles being goods are being provided free of cost to a related person. It is an individual supply and the rate applicable to it will be taxed. | 28 % |

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

Question 2.

(a) Risk Free Ltd. is providing life insurance services to subscribers. It is the policy of the company not to intimate the amount allocated for investment to the subscribers at the time of taking policy. The company supplies the following particulars about the premiums received from subscribers during a period:

Premium collected from new policy subscribers ₹ 60,00,000

Premium received for renewal of policies ₹ 1,30,00,000

Single premium collected on annuity policies ₹ 1,50,00,000

Premium collected from policy holders for risk cover only ₹ 60,00,000

Calculate the value of supply made by the company during the period by assuming that all the above given premiums are exclusive of taxes.

(5 marks)

(b) Jambu Agencies a registered supplier of goods and services, in Chennai has furnished the following information for the month of February:

| S. No. | Particulars | Amount (₹) |
|---------------|--|--------------------|
| (i) | Rent received from Agricultural land used as parking lot | 7,00,000 |
| (ii) | Service provided to a foreign diplomatic mission in Chennai | 3,00,000 |
| (iii) | Rent received from an educational Institution for the building used by it for residential quarters of its teachers | 5,00,000 |

| | | |
|------|---|-----------|
| (iv) | Renting of motor vehicle to a Pvt. Ltd. Company. The company uses the vehicle for transportation of its staff and goods (in the ratio of 60 : 40) | 50,000 |
| (v) | Sale proceeds of imported goods lying in the customs bonded warehouse | 10,00,000 |
| | | |

Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively unless otherwise mentioned.

The figures given above are exclusive of taxes, wherever applicable.

The turnover of Jambu Agencies for the previous year is ₹ 3 crore. Compute the GST Liability of Jambu Agencies for the month of February with necessary explanation for treatment of each item.

(5 marks)

(c) Comment on the liability to get registered under the GST law in the given independent situations for financial year 2022-23. Your answer should also include relevant provisions of law, notifications or circulars.

(i) Suresh is exclusively engaged in the export of readymade garments from Coimbatore, Tamil Nadu and his export turnover for the year is ₹ 19,00,000. Apart from export turnover, he also earned interest on bank FDR ₹ 5,00,000.

(ii) Omega enterprises is exclusively engaged in trading of handloom goods which are exempt from GST hence it has not taken the GST registration. During the year its turnover is ₹ 60,00,000.

(iii) Balaji is full time trader of shares and he completely operates in Futures and options segment of the capital market. The income earned through this is categorized as business income under the Income Tax Act, 1961. Mr. Balaji made ₹ 1,25,00,000 as profit during the year which was also promptly disclosed in his Income Tax return.

(iv) Senthil is a tour operator and has presence in 2 states i.e. Tamil Nadu and Andhra Pradesh. He registered his business under GST in the state of Tamil Nadu voluntarily even before crossing the threshold limit. Is he mandatorily required to get registered in the state of Andhra Pradesh? His turnover during the year was ₹ 12,00,000 and ₹ 7,00,000 respectively.

(5 marks)

(d) Discuss the validity period of an e-way bill. Who can extend the validity period of e-way bill and what is the time limit within which such extension is valid ?

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A. (i)

(a) Jai Hind Ltd. a manufacturing company in Delhi has opted for composition scheme furnishes you the following information for the financial year 2022-23. You are required to compute the Composition tax and total tax liability. Its aggregate turnover during previous financial year 2021-22 was ₹ 1,20,00,000. Jai Hind Ltd. made the following supplies during the year 2022-23:

| S. No. | Particulars | Amount (₹) |
|--------|--|------------|
| (i) | Intra-state supply of goods chargeable @ 12% GST | 75,00,000 |

| | | |
|-------|---|-----------|
| (ii) | Inward supplies on which tax is payable on reverse charge @ 18% | 5,00,000 |
| (iii) | Intra-state supplies of exempt goods | 10,00,000 |
| (iv) | Intra-state supply of services chargeable @ 18% GST | 6,50,000 |

(b) Jai Hind Ltd. wants to start another unit in Jaipur (Rajasthan) where the company wants to obtain GST registration under Normal scheme to take advantage of ITC. Can it do so?

(5 marks)

(ii) Ashok Traders, a sole proprietary concern is engaging in the supply of exempted and taxable goods within Kerala only. The following are the sales made by the dealer in the month of April, 2022. All the sales amounts are exclusive of GST:

Intra-state sales of non-taxable goods 4,00,000

Intra-state sales of taxable goods 14,00,000

Intra-state sales of tobacco 3,00,000

Intra-state sale of alcoholic liquor for human consumption 4,00,000

With the consideration of the provisions of the CGST Act, 2017 and on the basis of the above given details:

- (i) Compute the aggregate turnover
- (ii) State, with reasons whether Ashok Traders is liable to be registered under the Act
- (iii) What is the threshold limit for taking registration in the case of Ashok Traders?

(5 marks)

(iii) Write a detailed note on Special Audit under Section 66 of the CGST Act, 2017.

(5 marks)

(iv) NR, a non-resident individual wants to provide taxable supply of goods. He has no fixed place of business or residence in India. He seeks your advice on the following aspects in the light of the provisions of the CGST Act, 2017 :

- (i) Whether registration is compulsory or optional in the case of NR ?
- (ii) When shall he apply for registration ?
- (iii) When the tax has to be paid ?
- (iv) What is the period of validity of registration certificate granted ?
- (v) If he asks for extension, what will be the period of extension ?

(5 marks)

Answers 2(a)

Computation of Value of Supply

| Particulars | Amount (Rs.) |
|--|--------------|
| Premium for New Policy (60,00,000 x 25%) | 15,00,000 |

| | |
|---|--------------------|
| Premium from Renewed Policy (1,30,00,000 x 12.5%) | 16,25,000 |
| Premium from Annuity Policy (1,50,00,000 x 10%) | 15,00,000 |
| Premium from only Risk Cover Policy | 60,00,000 |
| Total Value of Supply | 1,06,25,000 |

Answers 2(b)

Computation of GST liability of Jambu Agencies for the month of February

| S. No. | Particulars | CGST | SGST |
|--------|---|---------------|---------------|
| a. | Rent received form Agricultural land used as parking lot. Final use of land is not for agriculture purpose. Any lease, tenancy, easement licence to occupy land will be supply of services. | 63,000 | 63,000 |
| b. | Services provided to a foreign diplomatic mission in Chennai is not exempt service tax is to be paid on this. | 27,000 | 27,000 |
| c. | Rent received form educational institution for the building used by it for residential quarters of its teachers. As per notification 12/2017 s. no. 66 any service provided to an educational institute is exempt. Moreso in this case the building is used as residential hence is not liable to GST. | - | - |
| d. | Renting of motor vehicle to a Pvt. Ltd company. The company uses the vehicle for transportation of its staff and goods (in the ratio of 60:40). Transportation of staff is exempt and transportation of goods is not exempt(30,000*2.5% each) Alternative Options <i>Renting of motor vehicle to a Pvt. Ltd company. The company uses the vehicle for transportation of its staff and goods (in the ration of 60:40).</i> | 750 | 750 |

| | | | |
|----|--|---------------|---------------|
| | <p><i>(assuming fuel cost include) Renting of motor vehicle for passenger with fuel cost is chargeable on RCM @ 5% if provided by non-body corporate to body corporate.</i></p> <p><i>If fuel cost is not included, then Supplier will be liable to pay GST on FCM Basis @ 12%</i></p> <p><i>Further services of transportation of goods by GTA to specified entities is chargeable on RCM Basis @ 5% or FCM @ 12%. If services provided by non GTA , it is exempt</i></p> | - | - |
| e. | <p>Sale proceed of imported goods lying in the customs bonded warehouse.</p> <p>Any sale before it is cleared for home consumption is exempt from GST. IGST will be will arise at the time of clearance from the bonded warehouse.</p> | - | - |
| | Gross GST Liability | 90,750 | 90,750 |

Answers 2(c)

- Export of goods is treated as inter-state supply. Suresh is compulsorily required to get himself registered irrespective of his aggregate turnover since he is engaged in the inter- state supply of goods. (Exports)
- Any person who is exclusively engaged in exempt supplies is not required to get registration. Hence Omega Enterprises is not required to take registration.
- Securities are excluded from the definition of goods as per section 2(52) of the CGST Act as well as from the definition of services as per section 2(102) of the Act. Hence dealing in shares is not a supply of goods or services under the GST Act. Thus, Balaji is not liable to obtain registration since he is not engaged in making a taxable supply.
- Any person who is voluntarily registered in one state needs to obtain registration in other states from where he makes a taxable supply only if his aggregate turnover exceeds applicable threshold limit for registration. Hence, Senthil is not liable to obtain registration in the state of Andhra Pradesh since his turnover does not exceed the threshold limit.

Answers 2(d)

Validity period of e-way bill:

The transporter may extend the validity period of e-way bill after updating the details in Part B of Form GST EWB-01, if required. Further, *The Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein*

Validity of e-way bill may be extended within 8 hours from the time of its expiry.

| Sr. No. | Distance | Validity period |
|---------|--|---|
| 1 | Up to 200 km | One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship |
| 2 | For every 200 km. or part thereof thereafter | One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship |
| 3 | Up to 20 km | One day in cases of Over Dimensional Cargo or Multimodal shipment in which at least one leg involves transport by ship |
| 4 | For every 20 km. or part thereof thereafter | One additional day in cases of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship |

Answer 2 (A)(i)

(a) Computation of Taxable Turnover and Tax Liability of Jai Hind Ltd.

| S. No. | Particulars | Amount (in Rs.) |
|----------|---|------------------|
| A | Supplies made under forward charge | 75,00,000 |
| B | Value of supplies made on which tax is payable on reverse charge basis is not to included | -- |
| C | Intra state supply of exempt goods - not to be included | -- |
| D | Intra-state supply of services (note-1) | 6,50,000 |
| E | Taxable Turnover | 81,50,000 |
| F | Total composition tax - CGST 0.5% and SGST 0.5% (A) | 81,500 |
| | Tax Payable under reverse charge | |
| G | Value of Inward Supplies on which tax payable under RCM | 5,00,000 |
| H | Tax payable under RCM- GST rate @ 18% (B) | 90,000 |

| | | |
|---|----------------------------------|-----------------|
| I | Total Tax Liability (A+B) | 1,71,500 |
|---|----------------------------------|-----------------|

Note: 1

Under section 10 of CGST Act a composition dealer can indulge in service not exceeding Rs.5,00,000 or 10% of state turnover of last f/y. In this case turnover is 1,20,00,000, 10% of which is Rs.12,00,000. Hence Jai Hind Ltd will be eligible for composition levy.

- (b) According to the proviso to Section 10(2) of the CGST Act, where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme unless all such registered persons opt to pay tax under this sub-section.

Thus, if Jai Hind Ltd opts to take registration in Rajasthan under normal scheme, it will have to shift to normal scheme in the state of Delhi. Else, it will not be able to opt for Normal scheme in Rajasthan by continuing with the Composition scheme in Delhi

Answer 2 (A)(ii)

| (i) Computation of Aggregate Turnover: | Amount |
|--|------------------|
| Intra-state sales of non-taxable goods - a supply for calculation of aggregate turnover | 4,00,000 |
| Intra-state sales of taxable goods - aggregate turnover includes value of all outward taxable supplies | 14,00,000 |
| Intra-state sales of tobacco – an outward taxable supply | 3,00,000 |
| Intra-state sales of alcoholic liquor for human consumption- being an exempted supply to be considered for the calculation of aggregate turnover | 4,00,000 |
| Aggregate Turnover | 25,00,000 |
| (ii) Every person engaged in making taxable supply is required to obtain the registration if his aggregate turnover exceeds Rs. 20 lakhs in a financial year. Enhanced threshold limit of Rs. 40 lakhs is for persons exclusively engaged in intra-state supply of goods in specified states. Kerala is not a specified state and hence, this provision is not applicable to Ashok Traders. Ashok Traders is engaged in supply of tobacco, therefore not eligible for enhanced threshold. | - |

| | |
|--|---|
| (iii) In view of all the above, the applicable threshold limit for the dealer is Rs.20,00,000. As the aggregate turnover (Rs. 25, 00,000) is more than the threshold limit, the dealer is liable to get his business registered. | - |
|--|---|

Answer 2 (A)(iii)

Special Audit:

- (i) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the commissioner, direct such registered person by a communication in writing to get his records, including books of accounts, examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- (ii) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner.
- (iii) The Assistant Commissioner may on an application made to him in this behalf by the registered person or the chartered accountant or a cost accountant on sufficient reason, extend the said period for another ninety days.
- (iv) The expenses of an examination and audit including the remuneration of such chartered accountant or a cost accountant shall be determined and paid by the commissioner.
- (v) On the findings of the special audit the proper officer may take action under Section 73 or 74 of the CGST Act, 2017.

Answer to Question No. 2 (A) (iv)

- (i) In the case of Non-Resident, the registration under CGST Act is compulsory under section 24(v) of the CGST Act, 2017.
- (ii) He should apply for registration at least 5 days prior to commencement of business
- (iii) Tax has to be paid at the time of registration in advance on the basis of his estimated turnover.
- (iv) The certificate shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.
- (v) The validity of a certificate of registration in case of non-resident can be extended for a further period of 90 days provided the applicant shows sufficient cause of doing so.

Question 3.

(a) Discuss the comparative analysis of Sections 73 and 74 of the CGST Act, 2017 with respect to the applicability of the sections, time limit to issue notice by proper officer, time limit to issue order by proper officer and penalty.

(4 marks)

(b) Who shall be responsible for the correctness of the particulars furnished in a return filed by a GST practitioner? What will be the penalty in case of negligence on the part of the practitioner?

(4 marks)

(c) Following are the mistakes noted in the tax invoices issued by Jaipure Ltd., during the month of March, 2023:

(i) Due to wrong HSN code being chosen while preparing invoice, an actual tax liability of ₹ 75,000 was mentioned as ₹ 35,000 in the invoice.

(ii) Due to a mistake in the no. of units taken while preparing an invoice, value charged in the invoice was ₹ 4, 00,000 against the actual value of ₹ 5,20,000.

With reference to the above mistakes, answer the following questions:

(i) Who has to issue the Debit/Credit notes under the CGST Act?

(ii) State the note to be issued (Debit/Credit) with the amount.

(iii) State the maximum time limit available for declaring the credit note in the GST return.

(4 marks)

(d) Agilitive Appliances Ltd. a registered supplier of refrigerators, is required to send from Chennai (Tamil Nadu) a consignment of spare parts of refrigerators, to be replaced under warranty at various client locations in Karnataka. The value of consignment declared in delivery challan accompanying the goods is ₹ 60,000. Agilitive Appliances Ltd. claims that since the movement of goods to Karnataka is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case. Examine whether the claim made by Agilitive Appliances is tenable.

(4 marks)

(e) What is OIDAR ? Who will be responsible for paying tax in case of OIDAR ?

(4 marks)

Answer 3(a)

Comparative Analysis of Section 73 and 74 of the CGST Act, 2017

| Basis | Section 73 | Section 74 |
|---|--|---|
| Applicability | Non-payment payment or short payment of tax without fraud or willful misstatement suppression of facts | Non-payment payment or short payment of tax with fraud or willful misstatement suppression of facts |
| Time limit for proper officer to issue notice | At least 3 months prior to issue order | At least 6 months prior to issue of order |
| Time limit for proper officer to issue order | Within 3 years from the due date for furnishing of annual return | Within 5 years from the due date for furnishing of annual return |
| Penalty - before issuance of show cause notice | No Penalty | 15% of the tax amount |
| Penalty - within 30 days of issuance of show cause notice | No Penalty | 25% of the tax amount |

| | | |
|---|---|------------------------|
| Penalty - after 30 days of the issuance of show cause notice Or after the issuance of order | 10% of Tax or Rs. 10,000, whichever is higher | 50% of the tax amount |
| In any other case | 10% of Tax or Rs. 10,000, whichever is higher | 100% of the tax amount |

Answer 3(b)

Responsibility for correctness of particulars furnished in return is of the taxable person but it is the duty of the professional to furnish the correct return otherwise he may be charged under negligence.

If Practitioner is found guilty of misconduct in connection with any proceedings under the act, he shall be disqualified under section 48 to function as GST practitioner.

Answer 3 (c)

1. In both the scenarios the supplier i.e., Jaipur Limited has to issue Debit/Credit Notes.
2. (a) In the first scenario, the supplier shall issue a for the differential tax amount of Rs. 40,000
(b) In the second scenario, the supplier shall issue a Debit note with a value of Rs. 1, 20,000 along with the applicable tax
3. The details of credit note are required to be declared in the return for the month during which such credit note has been issued but not later than the:

Thirtieth day of November following the end of the financial year in which such supply was made,

Or

The date of furnishing of the relevant annual return, whichever is earlier.

Answer 3 (d)

The goods to be moved to another state for replacement under warranty is not a supply.

However, Rule 138(1) of the CST Rules, 2017, stipulates that every registered dealer who causes movement of goods of consignment value exceeding Rs. 50,000.

- (i) in relation to a supply;
- (ii) or for reason other than supply; or
- (iii) due to an inward supply from an unregistered person shall, generate an electronic way bill before commencement of such movement.

Thus, in the given case, since the consignment value exceeds Rs. 50,000, e-way bill is required to be mandatorily generated. Therefore the contention of Agilitive Appliances Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply is not correct.

Answer 3 (e)

OIDAR means Online Information Database Access and Retrieval services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services.

Persons responsible for paying tax in case of OIDAR:

- (i) In cases where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and

the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge.

- (ii) If the supplier is located outside India and the recipient is in India is an individual consumer, i.e. unregistered person, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services (IGST).
- (iii) In case of intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be treated as the supplier of the service and liable to pay GST.

Question 4.

(a) Anand and his wife (Indian residents aged 30 and 32 years respectively) visited USA for some business prospects and wanted to settle in USA. After being there for a month, they brought to India a laptop computer valued at ₹ 1,25,000, used personal effects valued at ₹ 2,00,000 and a personal computer for ₹ 80,000. What is the customs duty payable ? Ignore Agriculture infrastructure and development cess.

(b) Maruthi car decorators imported car accessories from China. They seek your opinion on the following issues:

- (i) 10 audio systems were pilfered before unloading and before the proper officer have made an order for clearance for home consumption.*
- (ii) 10 gear lines were pilfered after unloading and before the proper officer have made an order for clearance for home consumption.*
- (iii) 10 decorative steering wheels were damaged after unloading and examination for assessment by the custom authorities but before actual home clearance.*

Maruthi Car decorators seek your expert advice with reason regarding the liability of customs duty on the said goods.

(5 marks each)

Answer 4(a)

As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of used personal effects and travel souvenirs without any value limit. Articles (other than certain specified articles) upto a value of Rs. 50,000 carried as accompanied baggage (General duty-free baggage allowance). Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

Accordingly, there will be no customs duty on used personal effects (worth Rs. 2,00,000 of Mrs. and Mr. A and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs.80,000 - Rs. 50,000 = Rs.30,000.

Effective rate of duty for baggage =38.5% [including social welfare surcharge @ 10%]

Therefore, total customs duty = Rs. 11,550.

Answer 4(b)

- (i) Duty is not leviable on the audio systems pilfered before unloading since the import duty is leviable only when the import is completed, import gets completed only when the goods become part of the mass of goods within the country.

- (ii) Under section 13 of the Customs Act, Import duty is not liable to be paid if the goods are pilfered after unloading but before the order of clearance is made by the proper officer. Accordingly, in this case, Maruthi car decorators is not liable to pay duty on the gear lines pilfered after unloading and before the proper officer makes order for clearance for home consumption
- (iii) Abatement of duty on damaged imported goods is available if such imported goods are damaged accidentally after unloading but before examination for assessment by the customs authorities. In the given case, since the steering wheels are damaged after examination by the proper officer, abatement of duty on such goods is not available.

However, If Maruthi Car is able to demonstrate that the steering wheels have been destroyed after unloading and examination by the proper officer but before order of clearance, the duty can be remitted provided the importer relinquishes the title to the goods.

PART – II

Question 5.

- (a) *Mishra, a resident Indian earned some income outside India from country P. India has not entered into any DTAA with the country P. Examine whether Mishra will be allowed with any credit for the tax paid by him on the foreign income against his income tax liability in India.*
(3 marks)
- (b) *What is Advance Pricing Agreement ? How long the agreement is valid? Can the agreement be declared as void during the agreement period?*
(3 marks)
- (c) *Explain the purpose of Tax Information Exchange Agreements (TIEAs)?*
(3 marks)
- (d) *Satish is the director of Games Pvt. Ltd. holds 75% of its paid up capital of ₹ 10 lakh. The balance as at 31st March, 2022 in general reserve was ₹ 15 lakh. The company on 1st April, 2022 gave an interest free loan of 10 lakh to its Manager having salary of ₹ 50,000 per month who in turn on 30th April, 2022 advanced the said amount of loan taken from the company to Satish. The assessing officer had treated the amount of advance as deemed dividend. Is the action of assessing officer correct?*
(3 marks)
- (e) *From the following particulars, compute the taxable income for assessment year 2023-24 of a partnership firm engaged in retail trade:*
- (i) *Net profit of ₹ 3,95,000 arrived at after debit of interest on capitals of partners of ₹ 4,90,000.*
- (ii) *Total capital of the partners on which interest paid as debited in the Profit and Loss Account was ₹ 10,00,000.*
(3 marks)

Answer 5(a)

As per the provision of Section 91 of the Income tax Act, 1961, If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

In this case, Mr. Mishra is a resident in India and therefore liable to pay tax on his global Income i.e. income accrue or arise in and outside India. However, a deduction shall be allowed equal to the sum calculated on such

doubly taxed income @ Indian rate of tax or the rate of tax of such foreign country whichever is lower as India does not have a DTAA with the country P.

Therefore, Mr. Mishra shall not be entitled to tax credit under section 90 of the Income Tax but shall be allowed a deduction of tax paid in Country P from the income tax payable to the Indian Government.

Answer 5(b)

As per Section 92CC (1) of Income Tax Act, 1961, w.e.f. 1st July, 2012, the Central Board of Direct Taxes (Board), with the approval of the Central Government, may enter into an Advance Price Agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

Advance Pricing Agreement (APA) is an agreement between a taxpayer and a taxing authority (Board) on an appropriate transfer pricing methodology for fixing the arm's length price for a set of transactions over a fixed period of time in future.

The Advance Pricing Agreement shall be valid for a period as specified in the Advance Pricing Agreement. However, this period will not be more than 5 consecutive previous years.

The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

Answer 5(c)

The purpose of the TIEA is to promote international co-operation in tax matters through exchange of information between two jurisdictions. Without such TIEAs, it would not be possible for a tax jurisdiction to exchange or request information from other jurisdictions for tax purposes.

TIEAs are intended for use with countries for which a DTAA is not considered appropriate, mainly because they have no, or low, taxes on income or profits. While TIEAs are much narrower in scope than DTAAs, they are more detailed than DTAAs on the subject of information exchange. They specify the rules and procedures for how such information exchange is to occur.

Answer 5(d)

The company has advanced a loan to its employee who in turn had advanced the same to the director of the company holding 75% of its share capital. By virtue of the provisions of section 2(22)(e) of the Income tax Act, 1961, the same shall be treated as payment by a company in which public are not substantially interested, on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which company possesses accumulated profits.

In this case, the company i.e. Games Pvt. Ltd. has reserves of Rs. 15 lakhs on 31st March, 2022 and the amount of loan advanced on 1st April, 2022 is Rs. 10 lakhs. Therefore, the payment is to be treated as deemed dividend.

The amount of interest free loan of Rs. 10 lakhs given by the company to the manager who in turn has given the same to Mr. Satish (Director of the company), shall be construed as interest free loan given for the benefit of Mr. Satish (Director) and would be treated as Deemed Dividend. This has been held by the Hon'ble Supreme Court in the case of L. Alagusundaram chettiar vs. CIT (2001) 252 ITR 893.

Answer 5 (e)

Computation of Taxable Income of Partnership Firm (AY 2023-24)

| Particulars | Amount (Rs.) |
|--------------------------------------|--------------|
| Net Profit | 3,95,000 |
| Add: Interest on Capital of Partners | 4,90,000 |
| | 8,85,000 |

| | |
|--|-----------------|
| Less: Allowable Interest as per section 40(b) 12% of Rs. 10,00,000 | (1,20,000) |
| Taxable Income | 7,65,000 |

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

Question 6.

(a) GA Ltd., a German automobile company manufactures an important component used in SUV cars. It has a subsidiary S Ltd. in India. GA Ltd. sells the components @ ₹ 22,000 p.u. to S Ltd. for resale in India. GA Ltd. also sells components to another retailer RT Ltd. in India @ ₹ 17,000 p.u. Number of units sold to S Ltd. is 5,000. With regard to annual maintenance of the components sold by RT Ltd, GA Ltd. is taking the responsibility for 5 months and leaving the responsibility with S Ltd. with respect to component sold by it. Both GA Ltd. and S Ltd. offered extended annual maintenance at a standard rate of ₹ 1,200 p.a. Calculate the changes to be made in the total income of S Ltd., by applying a most appropriate method of transfer pricing. Assume that there is no advance price agreement and also assume that Safe Harbour Rules have not been opted.

(5 marks)

(b) Analyze the following situations and find out whether the entities are deemed associated enterprises or not:

(i) A Inc., an American Company has a total loan of 20 lakh dollars with United Bank of America. Out of that B Ltd., an Indian company guaranteed 1.6 lakh dollars of loan against any default to be committed by A Inc.

(ii) In the Board of Directors of C Ltd., there are 12 Directors. Out of that, six Directors have been appointed by D Ltd.

(iii) E Ltd. directly participated in the management of F Ltd. and F Ltd. directly participated in the management of G Ltd.

(iv) H Ltd. holds 30% of voting power in I Ltd., and I Ltd., holds 75% of voting power in J Ltd.

(v) K Ltd. has total assets having a book value of ₹ 200 crores. For K Ltd., L Ltd. advanced a loan equal to 26% of the book value (₹ 52 lakhs) of assets of K Ltd.

(5 marks)

(c) Explain the various methods of Advance Pricing Agreement (APA). Specify the validity period of an Advance Pricing Agreement.

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A.

(i) Explain the primary factors taken into account in the process of determination of Place of Effective Management (POEM).

(5 marks)

(ii) State with reasons whether the following acts can be considered as Tax Planning or Tax Management or Tax Evasion ?

(i) A Partnership firm made a payment of ₹ 70,000 towards purchase of Television which is kept at the residence of one of the partners. However the firm is claiming depreciation by showing its installed location as office.

- (ii) An individual assessee deposits a sum of ₹ 20,000 in the name of his children in a post office savings scheme eligible for section 80C benefit so that his total income is reduced from ₹ 5,18,000 to ₹ 4,98,000 and he can claim rebate u/s 87A and consequently his tax liability becomes Nil.
- (iii) Raja an individual, engaged in business pays his wife as salary ₹ 15,000 per month. She is an MBA by profession but does not take part in his business and is a Housewife. This is done to create some income for his wife and to take advantage of the exemption available to individuals upto ₹ 2,50,000 and also to reduce his income from business.
- (iv) S Finance Ltd. obtains Form 60 in lieu of PAN card from all its customers for whom PAN is not yet allotted.
- (v) X Ltd. engaged in manufacturing business has opened a 3 star hotel near its factory to claim deduction u/s 35AD.

(5 marks)

(iii) ANZ Ltd. is a resident company. Its profit and loss account for the year ended 31st March, 2023 shows a net profit of ₹ 2 crore after debiting/crediting the following items :

- (a) Depreciation on Assets (Incl. depreciation on revaluation of ₹ 5 Lakh) ₹ 45 Lakh
- (b) Provision for tax ₹ 30 Lakh
- (c) Proposed dividend ₹ 20 Lakh
- (d) Interest income from Bank fixed deposits ₹ 5 Lakh

The following additional information is provided by the company:

- (i) Provision for leave encashment (Scientifically calculated) ₹ 3 Lakh
- (ii) Provision for actual loss from subsidiary ₹ 10 Lakh
- (iii) Transfer to general reserve ₹ 5 Lakh
- (iv) Depreciation computed as per Income Tax Act ₹ 28 Lakh

The details of brought forward business loss and unabsorbed depreciation from the books are as given below:

| Financial year | Unabsorbed depreciation (₹) | Business loss (₹) |
|----------------|-----------------------------|-------------------|
| 2018-19 | 2,00,000 | 7,00,000 |
| 2019-20 | 1,00,000 | 3,00,000 |

You are required to compute the Minimum Alternate Tax under section 115JB for the assessment year 2023-24.

(5 marks)

Answer 6(a)

GA Ltd. is the holding company and S Ltd. is the subsidiary company. Therefore, GA Ltd. and S Ltd. are associated enterprises. Holding company sold identical product to another company in India who is not an associated enterprise. Hence, the most appropriate method of transfer pricing for determination of arm's length price is Comparable Uncontrolled Price (CUP) Method.

| Particulars | Amount (in Rs.) |
|--|-----------------|
| Price charged per unit by GA Ltd. to RT Ltd. | 17,000 |

| | |
|--|-------------|
| Less: Cost of annual maintenance service included in price (1200*5/12) | (5,00) |
| Arm's Length Price | 16,500 |
| Actual Price Charged | 22,000 |
| Difference in price per unit | 5,500 |
| No. of units sold to S Ltd. | 5000 unit |
| Addition required to be made in the total income of S Ltd. (5500*5000) | 2,75,00,000 |

Answer 6(b)

(i) Since B Ltd. guarantees only 8% of the total borrowings of A Inc. (i.e. less than 10%), B Ltd. and A Inc. are not deemed associated enterprises under section 92A(2)(d) of the Income Tax Act, 1961.

(ii) In this case, D Ltd. appointed half of the directors in C Ltd. Company's board, not more than half. Therefore, C Ltd. and D Ltd. are not deemed associated enterprises under section 92A(2)(f) of the Income Tax Act, 1961.

(iii) In this case, E Ltd. directly participated in the management of F Ltd. and F Ltd. directly participated in the management of G Ltd. Therefore E Ltd. indirectly participated in the management of G Ltd. Hence, F Ltd. and G Ltd. are associated enterprises of E Ltd, not deemed associated enterprises.

(iv) In this case, H Ltd. holds 26% or more voting power in I Ltd. Therefore, H Ltd. and I Ltd are deemed to be associated enterprises. However, H Ltd. indirectly holds only 22.5% of voting power in J Ltd. [less than 26%] therefore not deemed to be associated enterprises.

(v) In this case, L Ltd. advanced loan to K Ltd. for less than 51% of the book value of assets (i.e. 26% only). Therefore, K Ltd. and L Ltd. are not deemed associated enterprises.

Answer 6(c)

Advance Pricing Agreement or APA is further segregated into various types based on the number of related parties involved.

- **Unilateral APAAs** the name itself signifies, Unilateral Advance Pricing Agreement involves only the taxpayer company and just the tax authority of the country where the company is located.
- **Bilateral APA:** Bilateral APA actually involves four entities in total. First is the taxpayer located in the country. Second is the tax authority of the taxpayer's location. The third entity is the associated enterprise (AE) of the taxpayer in a foreign country and fourth if the tax authority of the country where the associated enterprise is located.
- **Multilateral APA:** multilateral APA involves multiple entities which get into an agreement about transfer pricing. These entities include the taxpayer in a country, the tax authority of the taxpayer's company, two or more associated enterprises of the taxpayer and the respective tax authorities of the countries where these AEs are located.

The Advance Pricing Agreement shall be valid for a period as specified in the Advance Pricing Agreement. However, this period will not be more than 5 consecutive previous years.

Answer 6A (i)

Primary factor to be considered in the process of determination of Place of Effective Management (POEM):

- i. The location where a company's Board regularly meets and makes decisions.
- ii. A company's Board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies.
- iii. The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made.
- iv. The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore, physical location of Board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the Directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.
- v. v. In case of circular resolution or round robin voting the factors like, the frequency with which it is used, the type of decisions made in that manner and where the parties involved in those decisions are located etc. are to be considered.
- vi. Day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of Place of Effective Management 'POEM'.
- vii. The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management.

Alternative Solution to 6A (i)

| |
|--|
| <p>The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in Active Business Outside India (ABOI).</p> <p>A company shall be said to be engaged in 'Active Business Outside India',</p> <ul style="list-style-type: none"> - If passive income is not more than 50% of its total income; and - Less than 50% of its total assets are situated in India; and - Less than 50% of its total number of employees are situated in India or are residents in India and - The payroll expenses incurred on such employees is less than 50% of its payroll expenditure. <p>A company is said to be engaged in 'Active Business Outside India' (ABOI) if it satisfies all the above conditions and hence its POEM is outside India.</p> |
| <p>If a company is not engaged in ABOI, that is for companies not fulfilling the conditions of ABOI, the determination of POEM would be done in two stages:</p> <ol style="list-style-type: none"> i. Identify the person/s who actually make the key management and commercial decision for the conduct of the company's business as a whole. i. Determination of the place where the decisions are de facto made. |

Answer 6 A(ii)

- i. **Tax Evasion:** A television placed at partner's house is wrongly shown as installed at firm's office for the purpose of claiming depreciation is a clear case of providing false information in the books of accounts for the purpose of decreasing profits to evade tax and therefore is an act of Tax Evasion.

- ii. **Tax Planning:** Amount deposited in children's name in a post office saving scheme for claiming deduction u/s 80C benefits so that his total income is reduced from Rs. 5,18,000 to Rs. 4,98,000 and he can claim rebate u/s 87A and consequently his tax liability becomes Nil is an act of tax planning through which the individual is able to take advantage of the deductions provided under the Income tax laws.
- iii. **Tax Evasion:** Payment of Rs. 15,000 per month to house wife, who does not take part in the business, to reduce the profits of his business and also claiming separate exemption limit of Rs. 2,50,000 for wife's income is an act of tax evasion. The professional qualification of his wife is not relevant in this case.
- iv. **Tax Management:** Obtaining Form 60 in lieu of PAN card for the sake of compliance of Income tax laws is an act of tax management. The company obtaining Form 60 in lieu of PAN cards to avoid any future compliance issues from tax authorities.
- v. **Tax Planning:** This is the case of tax planning. A company to take advantage of the provisions of Income tax laws, for set-off and carried forward of losses and tax holiday adapts such expansion / diversification.

Answer 6(A)(iii)

Computation of Book Profits

| Particulars | Amount (Rs.) | Amount (Rs.) |
|---|--------------|--------------------|
| Net profit as per P&L | | 2,00,00,000 |
| Add: items to be added as per explanation 1 to 115JB | | |
| Transfer to General Reserve | 5,00,000 | |
| Proposed Dividend | 20,00,000 | |
| Provision for Tax | 30,00,000 | |
| Loss from subsidiary | 10,00,000 | |
| Depreciation including revaluation reserve | 45,00,000 | 1,10,00,000 |
| Less: items to be deducted | | |
| Allowable depreciation | 28,00,000 | |
| Cumulative B/F loss or depreciation whichever is less | 3,00,000 | (31,00,000) |
| Book Profit for computation of MAT u/s 115JB | | 2,79,00,000 |

Computation of MAT

| | |
|--------------------------------|---------------|
| 15% of Book Profit | Rs. 41,85,000 |
| Add: Surcharge | Rs. 2,92,950 |
| Add: Health and Education Cess | Rs. 1,79,118 |
| MAT Payable | Rs. 46,57,068 |

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer **ALL** Questions.

Question 1.

(a) A, B and C decided to form a Housing Finance Company. As a Company Secretary draft an Object clause for the same. Assume other facts, if required.

(b) Mr. X was appointed as Additional Director by Board of Directors of the Company to hold the office up to the date of the Annual General Meeting in which resolution is to be passed to appoint Mr. X as a Director of the Company liable to be retired by rotation. Draft the resolution for the appointment of Mr. X.

(c) Mr. A supplied certain goods to XYZ Ltd. for a sum of ` 500.00 Lakhs. Before the payment of said amount, the XYZ Ltd. gone into liquidation. Mr. A has to submit an affidavit before the Hon'ble High Court of Orissa to support his case. Draft an affidavit; assume other facts, if required.

(d) Mr. Ramestha Dher, a patwari of a village, is put up for trial of an offence under section 409 of Indian Penal Code (Criminal breach of Trust by a Public Servant). He is being prosecuted for non-deposition of the collected land revenue of ` 1,000/- to the Government Treasury. An offence under section 409 is a non-bailable offence. The accused, an under-trial prisoner, is now 60 years old man. Draft a bail application on behalf of Mr. Ramestha Dher.

(5 marks each)

Answer 1(a)

Object clause for Housing Finance Company

1. To provide long term finance to any individual, person or persons or co-operative society or association of persons or body of individuals, company or corporate, either at interest or without and/or with or without any security for construction, purchase, enlarge, or repair of any house, flats, raw houses, bungalows, rooms, huts used for residential purposes either in total or part thereof or to purchase any free hold or lease hold lands, estate or interest in any property to be used for residential purposes.
2. To carry on the business of providing loans to persons and other entities engaged in the business of construction of houses or flats for residential or non-residential/ commercial purpose upon such terms and conditions as the Company may think fit and proper.
3. To carry on the business of providing loan to Individuals, Co-operative Societies, Association of Persons, Companies or Corporations or such other persons or entities for any purpose, upon such securities and on such other terms and conditions as the Company may think fit and proper.

Answer 1(b)

Resolution for the appointment of Mr. X as a director

RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. X (DIN _____), who was appointed as an Additional Director of the Company with effect from _____ by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr X for the office of Director, be and is hereby appointed as a Director of the Company, liable to retire by rotation with effect from the date of this Meeting.

Answer 1(c)

Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of a Company

IN THE HIGH COURT OF ORISSA
The matter of Companies Act, 2013
and
The matter of the liquidation of XYZ Limited

I, A, son of Shri _____ aged about _____ years resident of _____ do hereby solemnly affirm on oath state as follows:

1. That the above-named company XYZ Limited was on the _____ day of _____, 20____, the date of the order for winding up the same, and still is justly and truly indebted to me for a sum of Rupees 5 Crore (Rs 5,00,00,000/-) only on account of goods supplied to XYZ Ltd.
2. That in proof of aforesaid debt, I attach hereto the Invoice for goods supplied, copy of Goods Receipt (GR) and Account Statement duly marked as Annexure 1, 2 and 3 respectively.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rs. 5,00,00,000/- (Five Core only) or any part thereof, or any security or satisfaction for the same or any part thereof.
4. That this affidavit is true and, that it conceals nothing and no part of it is false.

Dated: _____

Deponent

Verification

I, the above named deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to the best of my knowledge and belief.

Deponent

Answer 1(d)

IN THE COURT OF THE JUDICIAL MAGISTRATE, F.C. , _____

Misc. Application No. _____ of 2023

In

C.R. No. _____ of 2023 of Police Station _____/Cri. Case No. _____ of 2017

State of _____

...Complainant

Versus

Mr. Rameshtha Dher

...Accused

FIR No. _____

U/S 409 _____

P.S _____

Application for bail under Section 437, Cr. P. C.

May it please your honour

1. The accused was arrested by the _____ Police Station on _____ under section 409 of Indian Penal Code, 1860, and is in Police custody for the last ten days.

2. The main allegation is that the accused who is a patwari of _____ village, in the capacity of a public servant has failed to account for a paltry sum of Rs. 1,000/- (One Thousand Only) to Government treasury, and has thereby committed criminal breach of trust.

3. Though the offence is a non-bailable one, yet considering such a small amount involved, it is highly improbable that he would even think of misappropriating such a paltry sum. There must be some honest mistake on the part of the accused concerned which can well be attributed to his old age.

4. The accused is a respectable family man and has roots in his society. The accused has immovable property of his own and he is not likely to abscond.

5. Under the above circumstances, it is requested that the accused may be released on bail. The accused is ready and willing to give such surety as the court would be pleased to order. And for this Act of Kindness the accused as in duty bound shall ever pray.

Place: _____

Date: _____

Sd/-

Advocate for Accused

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

Question 2.

Explain the following:

(a) *Secretarial Standard-1 in respect of alteration of minutes of the meeting of Board of Directors once signed by the Chairman.*

(b) *Importance of Force Majeure clause in commercial contracts.*

(c) *National Company Law Tribunal as quasi-judicial body.*

(d) *Notice period to convey meeting of Board of Directors. State whether company may prescribe a longer Notice period through its Articles?*

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A.

Distinguish between the following:

(i) *The Shrink-Wrap Agreements and Electronic Data Interchange (EDI).*

(ii) *Revocable and Irrevocable Power of Attorney*

(iii) *License and Lease*

(iv) *Ordinary Resolution and Special Resolution*

(4 marks each)

Answer 2(a)

Minutes once signed by the Chairman shall not be altered, save as mentioned in Secretarial Standard-1 (SS-1). SS-1 specifically provides for that any alteration in the minutes, as entered, should be made only by way of an express approval of the Board at its subsequent Meeting at which the minutes are to be noted

by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent meeting. Within 15 days of signing of the Minutes, a copy of the said Signed Minutes certified by the Company Secretary or if there is no Secretary then any of the director authorized by the Board, shall be circulated to all the director as on date of meeting and appointed thereafter. But if any Director has waived right of receiving the said copy of signed Minutes either in writing or his waiver is recorded in Minutes then there is no need of sending him such copy.

Answer 2(b)

A very important provision witnessed in modern commercial contracts relates to *force majeure* or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like natural calamity, strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance. It may be further provided that events of a similar nature, which are beyond the control of the parties and which could not have been avoided with due diligence would also furnish the above relief.

For example, the Govt. of India has issued memo and clarified that disruption of the supply chains due to spread of corona virus in China or any other country will be covered in force majeure clause and it should be considered as a case of natural calamity and *force majeure* clause may be invoked whenever considered appropriate.

The purpose of a *force majeure* clause is to relieve a party from performing its contractual obligations when an unexpected, external event has occurred which prevents it from performing.

Answer 2(c)

National Company Law Tribunal (NCLT) is a *quasi-judicial* body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. It has been established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

- i) Company Law Board
- ii) Board for Industrial and Financial Reconstruction.
- iii) The Appellate Authority for Industrial and Financial Reconstruction
- iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

Answer 2 (d)

According to section 173(3) of the Companies Act, 2013, a meeting of the Board of Directors shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

However, 1st proviso to section 173(3) provides that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Further, 2nd proviso to section 173(3) provides that in case of absence of independent directors from such a meeting of the Board of Directors, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Accordingly, Notice convening the Meeting of Board of Directors shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period. However, clear seven days are not required. Adequate notice of meeting should be given so that Directors can plan their schedule as to attend and participate in the Meeting. Participation in Meeting is central to the discharge of a Director's responsibilities.

The Company may prescribe a longer Notice period through its Article, in which case the Articles should be complied with. The statutory notice period of seven days cannot be reduced by the company in its Articles.

Answer 2A (i)

The Shrink-wrap Agreements and Electronic Data Interchange (EDI) are distinguished are under:

The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Electronic Data Interchange (EDI)

These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

Answer 2A (ii)

The Revocable and Irrevocable Power of Attorney are distinguished as under:

- A power of attorney executed in favour of a person can always, at the discretion of the donor thereof, be revoked. While, irrevocable power of attorneys is rarely used and mostly limited to a specific purpose.
- A power of attorney is said to be revocable if the principal has the right to revoke power at any time. The agent can no longer act on the principal's behalf once the principal revokes the power. But agency coupled with interest cannot be terminated without the consent of the other party (Section 202 of the Indian Contract Act, 1872). Therefore, a power of attorney executed, in which the donee himself has an interest, is irrevocable.
- If a firm gives Power of Attorney to an agent, such power of attorney gets revoked automatically upon dissolution of the firm. While irrevocable powers of attorney are executed in favour of the financial institutions by a company who offer financial assistance to the latter. Through such irrevocable powers of attorney, powers are given to the financial institutions for executing a security document for securing the financial assistance in the event of a company failing to execute such a document by a certain date.
- Irrevocable power of attorney needs registration if it relates to immovable property. While revocable POA can be registered or unregistered.

Answer 2A (iii)

License and Lease is distinguished *inter se* with following characteristics:

| Basis | License | Lease |
|----------|---|-----------------------------------|
| Heritage | License is a personal non-heritable right | Lease is a heritable right in rem |
| Interest | Creates no interest in the guarantee | Interest created in the lessee |

| | | |
|------------------------------|--|---|
| Assignment | Non assignable | Usually assignable |
| Revocation | Always permissive and normally revocable | Permissive but not normally revocable |
| Exclusivity | Not exclusive user | Exclusive user |
| Forfeiture | Denial of grantor's title does not necessarily result in forfeiture. | Denial of lessor's title results in forfeiture |
| Remedy | Remedy for breach is damages | Specially enforceable |
| Notice | No notice necessary to terminate relationship | Notice necessary to terminate relationship |
| Registration | Instrument granting right does not require registration. | Instrument creating right requires registration |
| Suits | Does not entitle licensee to sue strangers in his own name | Can sue in his own name |
| Vote | A licensee does not qualify for a vote | May qualify for a vote |
| Rents | Not liable for rents | Liable for rents |
| Liability of Public Nuisance | User not liable for public nuisance | Liable for public nuisance |

Answer 2A (iv)

Ordinary Resolution and Special Resolution are distinguished are under:

Ordinary Resolution

According to section 114(1) of the Companies Act, 2013(the Act), a resolution shall be an ordinary resolution if the notice required under the Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

Special Resolution

According to section 114(2) of the Companies Act, 2013(the Act), a resolution shall be a special resolution when—

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under the Act has been duly given; and
- (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

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

Question 3.

Explain the following:

- (a) Importance of Skeleton draft and its self-appraisal in drafting of documents.*
- (b) Rule of Adverse Inference.*
- (c) Form and manner of filing complaint.*
- (d) Who can be a partner as per Partnership Act, 1932?*

(4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A.

Elucidate the following:

- (i) Significance of attestation, registration and stamp duty with regard to execution of an Agreement.*
- (ii) In case of transfer of immovable properties, no right, title or interest can be transferred in the absence of Deed of Conveyance.*
- (iii) Interlocutory Proceedings.*
- (iv) What a Company Secretary should bear in mind while appearing before any judicial authority?*

(4 marks each)

Answer 3(a)

Importance of Skeleton draft and its self-appraisal in drafting of documents

After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft. In other words, he should frame what is called a "skeleton draft" which should be filled in or elaborated as he proceeds with his work. It is important to note that a skeleton draft will not be perfect and polished. It consists of unfinished sentences and ideas that are unpolished. The main aim of skeleton draft is to figure out the key events in the document being drafted and how they lead into one another. One should not be afraid to make skeleton draft messy, unpolished, and even incomplete.

After preparing skeleton draft it is time to appraise it. For that draftsman should go through it all again and clean things up to create his first draft proper. Once the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts, use of simple language intelligible to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers' Rules of drafting so as to satisfy himself about its contents.

Answer 3(b)

Rule of Adverse Inference

An adverse inference is a discretionary tool available to courts, and a remedy for the parties to seek to discharge a party from its burden of proof in the face of non-disclosure of evidence by the opposing party. This tool is usually employed when a party is silent or fails to disclose despite having the obligation or being ordered to do so.

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294 of the Code of Criminal Procedure, 1973.

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [*Ms. Shefali Bhargava v. Indraprastha Apollo Hospital & Anr.*, 2003 NCJ 787 (NC)].

Answer 3(c)

Form and manner of filing complaint

A complaint in a criminal case is what a plaint is in a civil case. The requisites of a complaint are:

- (i) an oral or a written allegation;
- (ii) some person known or unknown has committed an offence;
- (iii) it must be made to a magistrate; and
- (iv) it must be made with the object that he should take action

Form & Manner of Complaint:

- There is no particular form for narration of the incident in the body of complaint.
- It is sufficient if it contains a valid and correct description how and in what manner the offence was committed.
- Only facts which are connected with the incident have to be stated in the complaint.
- Facts which can prove involvement of the accused in the offence should also be mentioned.
- The petition of complaint must disclose the names of the witnesses of the offence.
- The petition of complaint shall thus set out in clear and unambiguous terms all the points essential for establishing the case.
- Complaint need not be presented in person. A letter to a magistrate stating facts constituting an offence and requesting to take action is a complaint.

A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprit be suitably dealt with is a complaint (*Mohd. Yousuf v. Afaq Jahan*, AIR 2006 SC 705).

Note: Police report is expressly excluded from the definition of complaint but the explanation to Section 2(d) makes it clear that such report shall be deemed to be a complaint where after investigation it discloses commission of a non-cognizable offence. Police report means a report forwarded by a police officer to a Magistrate under Subsection (2) of Section 173 of the Code of Criminal Procedure, 1973.

Answer 3(d)

Who can be a partner as per Partnership Act, 1932

The word "person" in Section 4 of the Indian Partnership Act, 1932 contemplated only natural and legal persons (*Duli Chand v. C.I.T.*, AIR, 1956 SC 354). Partnership relation is one of contractual nature. Therefore, such persons who are competent to contract can enter into partnership. A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person. When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not *ipso facto* become partners (*Firm Bhagat Ram v. Comm. of Excess Profits Tax*, AIR 1956 SC 374).

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

Two partnership firms cannot enter into partnership as such but its partners can certainly form a new partnership.

A body corporate can be a partner in the firm, provided the relevant clause in this regard is entered in the Memorandum of Association (MOA) and Articles of Association (AOA) of the Company. As such while considering applications for registration of firms with bodies corporate as partners under the Indian Partnership Act, 1932, the State Government should examine the applications before them and find out whether the memorandum and articles of association of the applicant incorporated companies contain any special clause which authorised the incorporated companies to enter into partnership.

Answer 3A (i)

Significance of attestation, registration and stamp duty with regard to execution of an Agreement

Attestation: It is not necessary for an agreement to be attested by any witness. But agreements are usually attested by one witness. Where registration is desired, the agreement should be attested by two witnesses.

The purpose of attesting an agreement is to authorise it simply. A document's attestation is required under Indian law for several reasons. According to section 68 of the Indian Evidence Act, 1872, if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. However, it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

Registration: Agreements not relating to immovable property and agreements not creating an interest in immovable property are not compulsorily registrable. Only agreements creating an interest in immovable property worth more than Rs. 100 are required by law to be registered.

Significance of Registration:

- It provides authenticity and validity to a document.
- The use of registered documents aids in protection from fraud and misappropriation.
- Registered document can also be used as legitimate court evidence.
- Registered document ensures transparency in deals.

If the document is registered, it becomes easier to find out if there's any kind of dispute or ongoing litigation with regard to a property.

Stamp Duty: For the purpose of stamp duty, agreements are covered by Article 5 of Schedule I to the Indian Stamp Act, 1899. The stamp duty for different kinds of agreements varies from State to State. While drafting an agreement, the draftsman should ascertain the proper stamp duty having regard to the changes made in the Stamp Act in the State where the agreement is executed.

The stamp duty is necessary for all agreements such as agreement to sale, conveyance deed, gift deed, mortgage deed, partition deed, power of Attorneys, leave and license agreement, lease deeds and so on.

Basically, stamp duty and stamp papers are commonly used in almost all of the commercial transactions. To be precise stamp duty is not a transaction duty but a document impost.

Answer 3A (ii)

Usually a transaction of a sale of immovable property involves two documents, e.g., Agreement to sell and the Conveyance Deed i.e. sale deed. But with only a Sale Deed the transaction of sale can be completed.

In *Suraj Lamp & Industries Pvt Ltd. v. State of Haryana*, the Supreme Court of India observed that it has become common practice to effect transfers of immovable property by way of either General Power of Attorney (GPA) sales or sale agreement, GPA or will transfers in order to evade, *inter-alia*, the payment of duties, taxes and other fees payable on transfer and registration (e.g., stamp duty or registration fees).

The Apex Court held that such transactions are illegal and cannot be recognized as valid under law. Hon'ble Supreme Court further sought to distinguish these illegal transactions from genuine transactions entered into by parties in good faith. While referring to Sections 53A and 54 of the Transfer of Property Act, 1882

and its decisions in earlier cases, it further observed that a transfer of immovable property by way of sale can be effected only by a deed of conveyance. In the absence of a deed of conveyance, duly stamped and registered, no right, title or interest in an immovable property can be transferred.

Answer 3A (iii)

Interlocutory Proceedings

Interlocutory proceedings are court hearings that focus on a specific matter related to a trial during the life cycle of the case. Interlocutory proceedings concern issues brought before the court in civil proceedings the disposal of which does not result in a final determination of the case. Interlocutory proceedings are conducted during the period involved between initiation and disposal of litigation which is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance, it is known as "*status quo*". It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final. It does not finally determine cause of action but only decides some intervening matter pertaining to the cause.

The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage. The court either grants the order *ex-parte* or issues urgent show cause notice and the reply is to be filed within short time.

One of the most common interlocutory reliefs sought is that of 'injunction'.

Answer 3A (iv)

A Company Secretaries should bear in mind the following while appearing before Tribunals or other quasi-judicial bodies:

(i) Clarity: The judge's time is limited, so make the most of it.

(ii) Credibility: The judge needs to believe that what you are saying is true and that you are on the right side.

(iii) Demeanour: We do not have a phrase "hearing is believing". Humans which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.

(iv) Eye contact: While pleading, maintain eye contact with your judge.

(v) Voice modulation: Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.

(vi) Psychology: Understand judge's psychology as your job is to make the judge prefer your version of the truth.

(vii) Be likeable: At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.

(viii) Learn to listen.

(ix) Entertain your judge: Humour will often bail you out of a tough spot.

Question 4.

Explain the following:

(a) 'Goodwill is an intangible, but not necessarily a fictitious asset'.

(b) 'Utmost care is required to draft the Articles'.

(c) Important points which should be kept in mind while drafting pleadings.

(d) Judgment and write a note on it.

(4 marks each)

Answer 4(a)

Goodwill is an intangible, but not necessarily a fictitious asset, representing the value, however, difficult its appraisal may be to its owner, of benefits arising from the business in question, such as the sole right to enjoy the profits of the business, and, where goodwill has been acquired, the sole right of succession to the advantages of the business, which have been built up in the past. Goodwill arises mainly:

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

The purchaser of goodwill acquires the trade marks, patents, copyrights etc. of the business as well as the benefits of contacts and all the benefits accruing from the location, reputation, connections, organisation and other exceptional features of the business. The purchaser will seek to express the sum payable in terms of the compound or capitalised value of an annuity of future differential or "super" profits that is those profits in excess of the marginal return normally arising.

Answer 4(b)

Utmost care is required to be taken to draft the Articles. It should contain strictly only relevant and necessary matters. In its draft, all efforts must be made to incorporate comprehensive provisions so as to cover all statutory requirements and all possible contingencies. Any alteration requires cumbersome procedure to be followed which is expensive and time consuming.

Articles, as a public document of the company, have evidentiary value in matters which involve dealing of the company with its own members or third parties. Any outsider has constructive notice of the contents of Articles and expected to inspect before entering into any transaction with the company. Articles must be signed by the subscribers of the Memorandum and be registered along with the Memorandum. Articles shall be divided into paragraph numbered consecutively. This will help the company to alter the articles conveniently.

After drafting a proper balancing should be done with Memorandum's contents, as to coverage, inconsistencies with it, contradictions occurred etc. to enable proper modification in time. It is better to have an Article of an existing company in the same field of activity, either to modify it or at least to know the relevant matters which can be included in the Draft.

Answer to question no. 4(c)

The following points should be kept in mind while drafting a pleading:

- a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.
- b) Facts should be stated in active and not in the passive voice omitting the nominative.
- c) All circumstances and paraphrases should be avoided.
- d) 'Terse', 'Short', 'Blunt' sentences should be used as far as possible. All 'its' and 'buts' should be avoided.
- e) Pronouns like "he" "she" or "that" should be avoided if possible. Anyway, such pronouns when used should clearly denote the person or the thing to which such pronouns refer.

- f) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff" or "defendant".
- g) Things should be mentioned by their correct names and the description of such things should be adhered to throughout.
- h) Where an action is found on some statute, the exact language of the statute should be used.
- i) In any pleading, the use of "if", "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity
- j) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. Repetitions should be avoided in pleadings.
- k) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph. The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and well-knit matter, must not look like isolated fact placed together. Inter-relationships of paragraphs must seem to exist. All the relevant facts must be stated in strict chronological order.
- l) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Answer 4(d)

Judgement means the statement given by the judge on ground of which a decree or order is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose.

Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay.

The last paragraph of the judgement shall indicate in precise terms the relief, which has been granted by such judgement. Every endeavor shall be made to ensure that the decree is drawn as expeditiously as possible and in any case within 15 days from the date on which the judgement is pronounced.

The court also has the power to award 'cost'. If on any date fixed for hearing, a party to the suit fails to take step or obtains adjournment for producing evidence, the court may also award costs for causing delay. If the court finds, that the claim or defence as against the objector is false or vexatious to the knowledge of the party by whom it has been put forward, and if such claim is disallowed, abandoned or withdrawn, court holding the claim false or vexatious may order compensatory costs.

Question 5.

- (a) 'The articles may contain provisions for entrenchment to the effect that specified provisions of the articles be altered.' Comment and discuss.
- (4 marks)*
- (b) Before incorporation, the promoters of ABC Mills Ltd., Ms. Desai & Mr. Advani entered into an agreement with Mr. Dalvi to buy a plot of land in Pune, on behalf of a Company. After incorporation, ABC Mills Ltd. refuses to ratify the agreement. Does Mr. Dalvi have remedies against promoters Ms. Desai and Mr. Advani ? Explain.
- (6 marks)*
- (c) A Company wishes to shift its registered office from Mumbai to New Delhi. An extra-ordinary general meeting is called for this purpose, where the shareholders passed an ordinary resolution in this regard. A petition is then filed before the Company Law Board for its approval. Examine the validity of the shifting of registered office of the company.

(6 marks)

Answer 5(a)

According to section 5(3) of the Companies Act, 2013(the Act), the articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

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

The Companies Act 2013, recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining 100% consent of members). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

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

Answer 5(b)

The legality of the contracts formed before the incorporation stage is a little difficult to define because it was entered on behalf of company by promoters but company is not in existence. But anyhow, the promoters are themselves liable for all the contracts entered by them.

Further, according to section 19(e) of the Specific Relief Act, 1963, except as otherwise provided by Chapter II, specific performance of a contract may be enforced against when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

In the given situation, Mr Dalvi can hold Ms. Desai and Mr. Advani personally liable and sue them to specifically enforce his right to sell the Pune land in accordance with Specific Relief Act, 1963 or take action in accordance with Indian Contract Act, 1872. Pre-incorporation contracts in general are *void ab initio* and hence not binding on the company.

Thus, Mr. Dalvi can take action against Mr. Desai and Mr. Advani.

Answer 5(c)

According to section 12(5) of the Companies Act, 2013(the Act), except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of the Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

However, no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

Further, According to 13(4) of the Companies Act, 2013, the alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

The power of Central Government under section 13(4) of the Act, has been delegated to the Regional Directors.

If a company wishes to shift its registered office from Mumbai to New Delhi, a company has to:

1. Comply with the provisions of Section 12(5) of the Companies Act, 2013 by passing a Special Resolution.
2. Obtaining approval of Central Government in accordance with section 13(4) of the Companies Act, 2013.

In the given situation, the company has passed ordinary resolution only which is not in accordance with the provisions of Section 12(5) of the Act as provided above and also not approached the appropriate authority as they approached erstwhile Company Law Board(Now, National Company Law Tribunal). As now, the power of Central Government under section 13(4) of the Act, has been delegated to the Regional Directors.

Therefore, shifting of registered office of the company from Mumbai to New Delhi is not valid in given situation.

Question 6.

(a) Under agreement between X Ltd. and A Ltd., X Ltd. was awarded with the contract for supply of Machinery. Draft an Arbitration Agreement to refer disputes, if any, to two Arbitrators which are to be appointed by both the parties to the agreement. Assume other facts, if required.

(b) Mr. A and Mr. B are running business in Partnership and sharing Profits/Losses in equal proportion; name of the Firm is X & Co. They want to introduce Mr. C into the firm as a new partner with 30% share in firm and Rs. 10.00 Lakhs as Capital Contribution. Draft a Partnership Deed for admission of Mr. C as a new partner. Assume other facts, if required.

(8 marks each)

Answer 6(a)

Arbitration Agreement to Refer the Dispute to two Arbitrators

This agreement is made and entered on ____ Day of _____, 20__ at _____.

Between

X Ltd. acting through its _____ s/o
_____ r/o _____, hereinafter
referred to as the First Party

AND

A Ltd. acting through its _____ s/o
_____ r/o _____,
hereinafter referred to as Second Party.

WHEREAS differences and disputes have arisen between the above-mentioned parties regarding the matter of contract for supply of Machinery and parties could not settle the matter mutually. Now, the parties agree that the matter as under be referred to arbitration to obtain an award:

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. For the purpose of final determination of the dispute, the matter will be referred to Mr _____ nominated by one party and Mr _____ nominated by the other party as arbitrators and their award shall be final and binding on both the parties.
2. If differences should arise between the said two arbitrators on the questions referred to them, the said arbitrators shall select an umpire and the award to be given by the umpire shall be final and both the parties hereby agree that the award so given by the umpire or arbitrators shall be binding on both the parties.
3. A reasonable time-limit may be fixed after consulting the arbitrators for the grant of the award by them and umpire if appointed and the said time may be extended in consultation with the arbitrators or umpire if need be.
4. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and as are not inconsistent or repugnant to the purposes of this reference shall apply to this reference to arbitration.
5. Both the parties agree that they would co-operate and lead evidence etc. with the arbitrators so appointed as expeditiously as possible and it is an express condition of this agreement, that if any of the parties does not cooperates or is absent at the reference, the arbitrators would be at liberty to proceed with the reference *ex-parte*.
6. The parties hereto agree that this reference to arbitration would not be revoked either by death of either party or any other cause.
7. If the arbitrators or anyone of them as chosen under this agreement become incapacitated either by death or sickness or other disability, the parties retain the right of nominating substitutes and no fresh agreement therefor would be necessary.
8. It is an express stipulation that any award passed by the said arbitrators shall be binding on the parties, their heirs, executors and legal representatives.

Having agreed to the above by both the parties, the said parties affix their signatures to this agreement on this ____ day of _____, 20____ (month and year) at _____(place).

Signed by the above named first party Signed by the above named second party

Witnesses
1. _____
2. _____

Answer 6(b)
Deed of Partnership for admission of Mr. C as a New Partner

This deed of partnership is made on this ____ day of _____, 20____ at _____ by and amongst the following:

Mr. A S/o _____ aged about _____ years r/o _____ (hereinafter referred to as First Party);

Mr. B S/o _____ aged about _____ years r/o _____ (hereinafter referred to as Second Party);

Mr. C S/o _____ aged about _____ years r/o _____ (hereinafter referred to as Third Party)

WHEREAS the above mentioned First party and Second party were carrying on the business of _____ in partnership in the name and Style of X & Co. under the duly executed partnership deed dated _____.

AND WHEREAS First Party and Second Party decided to admit Third Party Mr. C into Partnership. Third party shall bring Rs. 10,00,000/- (Ten Lakh Only) as his capital contribution to the Firm for his share of 30% in profit/losses in the firm.

NOW THIS DEED WITNESSETH AS UNDER

1. That the Partnership Business shall be carried out under the same name and style of X & Co.
2. That the principle place of business shall continue to be located at _____.
3. That this deed of partnership shall come into effect on _____.
4. That the main business of the firm shall remain the same.
5. That interest @ _____ per annum shall be payable on Partners' capital account.
6. That the profit or losses of the Partnership shall be shared in the following ratio:
First Party: 35%
Second party: 35%
Third Party: 30%
7. That each partner shall be just and faithful to other at all the times and shall keep others duly informed as to the activities of the firm.
8. That each partner shall have free access to the books of account of the firm.
9. That the partnership shall be at "Will".
10. That dispute, if any arises amongst the partners shall be referred to Arbitrators chosen by each of the Partner and the representatives of their umpire to be appointed in the manner provided by the law and such reference shall be in all respect, as to the mode and consequence thereof conform to the provisions in that behalf contained in the Arbitration and Conciliation Act, 1996 or any other statutory amendments thereof.

IN WITNESS WHEREOF the said First Party, Second Party and Third Party have hereto at _____ signed on the day and the year mentioned above.

Witnesses

1. _____

First Party

2. _____

Second party

Third party

