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CS PROFESSIONAL

Applicable From June 24

QUESTION BOOK

COMPLIANCE MANAGEMENT AUDIT & DUE DILIGENCE

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1. COMPLIANCE FRAMEWORK

Past year Papers

Q1. ABC Ltd. is having a paid up capital of `1,000 crore and annual turnover of `2,500 crore. The company has asked you, as a Company Secretary in Practice, to advise it on preparation and finalization of its Compliance Management Framework. Give your advice.

(December 2020 5 marks)

1. *Compliance management system is incorporated to ensure timely compliance with all rules and regulations applicable on the company and be updated with necessary amendments so that changes can be made in the policies and procedures accordingly. Every company needs to follow laws and regulations enacted by central and state governments or such other regulator. Corporate compliance is an ongoing process, and businesses especially ones that have incorporated under any statue need to make sure that they're following the rules set in place.*
2. *The compliance framework consists of three key components: compliance chart, compliance advisory and compliance board.*
3. *The compliance framework is formed by following the below mentioned steps :*

   a) Identification of compliances under applicable Laws, Rules and Regulations

   b) Risk Assessment

   c) Risk Mitigation

   d) Compliance Monitoring

e) Compliance Reporting

4. Compliance identification

The compliance identification involves the identification of compliances requirement under various laws applicable to the company, in consultation with the functional heads. The legal team of the company guides the functional heads in identification of the laws applicable to the company and to identify the compliances that are required under each law, rules and regulations applicable on the company.

5. Risk assessment

Risk assessment involves assessment of risk arising from compliance obligations. In the risk assessment process, the company identifies the inherent risk of each obligation as critical, high, medium or low and on the basis of the outcomes a risk mitigation strategy is prepared.

6. Compliance risk mitigation

Compliance risk mitigation is the process of developing and implementing controls such as policies, procedures and guidelines to prevent or minimise risks arising from compliance obligations. It involves development and communication of policies and procedures in an organised manner, so employees understand their obligations

7. Compliance ownership

The next important step of designing compliance framework is the compliance ownership. It is necessary to describe primary and secondary ownership of compliance obligations, where, the primary owner is mainly responsible for the compliance and the secondary owner has to supervise the compliance.

8. All compliances and non-compliances should be properly reported to the concerned authority so that an appropriate action can be taken by the authorities to reduce the compliance risk.

9. *Hence the above steps should be followed for proper preparation and finalization of its Compliance Management Framework.*

Q3. "The Compliance Chart of any company must contain the complete information non compliance dashboard. which provide a detailed compliance procedure to the compliance executor". As a Company Secretary, list out the various content of the Compliance Chart.

(December 2021 5 marks)

1. *Compliance chart is a vital part of this framework and a Company Secretary plays a crucial role in preparation of the same. The Chart provides an overview of the relevant local, state, central and international laws, regulations and standards relating to a business' operations and outlines how compliance risk mitigation activities are incorporated in business.*
2. *The compliance chart reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks. The compliance chart of the company is prepared after considering the operations and the structure of the company, activity of the company, Industry, Sector in which the company operates and laws which are specifically applicable to the company. Broadly, the compliance chart is prepared by considering the following activities:*

   a) Identification of compliances under applicable Laws, Rules and Regulations

   b) Risk Assessment

   c) Risk Mitigation

   d) Compliance Monitoring

   e) Compliance Reporting

3. A compliance chart should contain all information relating to compliances including-
   a) Reference to compliance related laws, rules, regulations and policies and procedures of the company.
   b) Statements which provide about compliance obligations and risk arising from such obligations.
   c) Risk level of such obligations (critical, medium or low)
   d) Compliance risk mitigation policies and compliance risk tracking and monitoring for managing compliance obligations.
   e) Ownership of activities outlined in the chart.
   f) To whom and how frequently compliance related findings and results are reported.

Q4. Z Ltd. seeks your opinion on the role of the various levels of management for compliance ownership. Explain the role.

(June 2019 5marks)

Compliance ownership helps to assign proper ownership to the person. It is necessary to describe primary and secondary ownership of compliance obligations, where, the primary owner is mainly responsible for the compliance and the secondary owner has to supervise the compliance. The role of the various level of management for compliance ownership can is illustrated as under:

1. <u>Top Management</u>:

a. Understanding the compliance obligations and recent changes

b. Approval of policy and procedures

c. Motivating employees to doing compliance in time

2. <u>Legal Cell:</u>

a. Identification of new and changed relevant local laws, regulations and standards

b. Communication in Writing to compliance owner/ executor

c. Review of system and policies and Procedures

d. Resolution of Doubts and Clarity in Directions

e. Periodical Review and Assessment

3. Senior Management & Functional Heads:

a. Analysis and research on the Regulatory changes

b. Formation of Policy and procedure

c. Motivating Compliance officer to Timely Compliance

d. Motivating Compliance officer to Timely Compliance

e. Guiding compliance officer in doing compliance

f. Tracking the Compliance chart

g. Risk Escalation

h. Conflict Resolution

4. Compliance Officer / Subordinate Staff:

a. Performing Compliance Obligations

b. Updating Compliance obligations into the Compliance Chart

c. Risk Identification and intimation

d. Conflict intimation.

Q6. *Unique Ltd., a start-up company launched in the year 2019, manufactures electric two-wheelers. Jayco, the Company Secretary was discussing the corporate compliance framework of the company. One of the consultants suggested that the Compliance Chart is a vital part of the framework and the company must at present first focus on preparation of the Compliance Chart. Explain the activities in preparation of a compliance chart and its contents.*

(June 2021 5marks)

1. *Compliance chart is a vital part of this framework and a Company Secretary plays a crucial role in preparation of the same. The Chart provides an overview of the relevant local, state, central and international laws, regulations and standards relating to a business' operations and outlines how compliance risk mitigation activities are incorporated in business.*
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   a) Identification of compliances under applicable Laws, Rules and Regulations
   b) Risk Assessment
   c) Risk Mitigation
   d) Compliance Monitoring
   e) Compliance Reporting
3. *A compliance chart should contain all information relating to compliances including-*

g) *Reference to compliance related laws, rules, regulations and policies and procedures of the company.*

h) *Statements which provide about compliance obligations and risk arising from such obligations.*

i) *Risk level of such obligations (critical, medium or low)*

j) *Compliance risk mitigation policies and compliance risk tracking and monitoring for managing compliance obligations.*

k) *Ownership of activities outlined in the chart.*

l) *To whom and how frequently compliance related findings and results are reported.*

4. *Such compliance chart must be practical and concise on the role and responsibilities of the management and of the compliance officer who is specifically responsible for existing and newly identified business activities.*
5. *Hence the Compliance Chart is a vital part of the framework and the company must at present first focus on preparation of the Compliance Chart.*

Q7 Sames Ltd. is a recently listed company. To cater to the growing reporting requirements, the company recruited various professionals across its finance and secretarial team. The Company Secretary was requested to prepare a Compliance training and education programme for providing training to the new recruits. Briefly explain the objective and contents of such Compliance training programme.

(June 2021 5marks) Or

1. *A compliance system can be helpful, if the individuals who are responsible for compliances are aware of such compliances. Creating appropriate*

awareness amongst the owners of compliances is very important as many times compliances are handled by such persons who are not fully aware of the requirements of the law. This can be done through trainings/ meetings or through a manual containing detail of compliances.

2. A strong Compliance training and education programme reinforces Company compliance culture and builds awareness and understanding of -:
   1. Company Framework
   2. Roles and responsibilities outlined in the policies and Framework
   3. Critical and high compliance obligations identified in the Compliance Chart
   4. The process for addressing compliance issues
   5. Consequences of failing to meet compliance obligations.

3. An annual plan for Compliance Risk related training and education must be developed and updated and must include-:
   1. Statements that provide relevant internal and external compliance obligations and the risks arising from those obligations;
   2. The business processes to which the compliance obligations are linked or on which they have an impact
   3. Brief description of the training or education activity;
   4. Target audience (new employees or existing employees)
   5. Frequency of training

Q9 "Compliance Chart is only key component of Corporate Compliance Framework." Explain. (5 marks)(dec2022)

Answer: *The corporate compliance framework is a structured approach to ensuring that a business operates within the legal and regulatory boundaries that apply to its operations. It is comprised of three key components: Compliance Chart, Compliance Advisory, and Compliance Scorecard.*

1. *Compliance Chart:*

- *The Compliance Chart is a crucial element of the framework. It outlines the relevant laws and regulations that pertain to the business's operations. This includes local, state, central, and international laws, as well as industry-specific standards.*
- *The Compliance Chart also explains how compliance risk mitigation activities are integrated into the business processes. This means that it illustrates how the company ensures that it is following all the necessary laws, regulations, and standards in the course of its operations.*
- *The Compliance Chart is essential for helping the business meet its compliance obligations to various stakeholders, including customers, regulators, shareholders, and employees. It serves as a centralized source of compliance information for the company, making it easier to track and manage.*
- *Additionally, the Compliance Chart includes key activities and a compliance calendar, providing a clear roadmap for the business unit to follow in order to effectively manage its compliance risks.*

2. *Compliance Advisory:*

- *The Compliance Advisory component provides advice and guidance on compliance with applicable laws and the potential effects of non-compliance. This function serves as a resource for the business to understand the legal implications of its actions.*

- It helps the company stay informed about changes in regulations and provides recommendations on how to adapt to ensure continued compliance.

3. Compliance Scorecard:

- The Compliance Scorecard is a tool used to assess and analyze the organization's compliance position. It allows the business to evaluate its performance in adhering to legal and regulatory requirements.

In summary, the corporate compliance framework, consisting of the Compliance Chart, Compliance Advisory, and Compliance Scorecard, provides a structured and comprehensive approach to managing compliance risks. It ensures that the business understands and adheres to the laws, regulations, and standards applicable to its operations, thereby mitigating legal and regulatory risks and maintaining the trust and confidence of stakeholders.

Q10 A strong compliance training and education program reinforces the company's compliance culture. In the light of the above statement, you are asked to give a "Compliance Education and Training Program" for the employees of Z Ltd. stating five suitable points which must be included in your above plan. Explain. (5 marks) (june2023)

Answer: A strong compliance training and education program is a critical component of maintaining a robust compliance culture within a company. It serves to ensure that all employees understand and adhere to the relevant compliance standards, procedures, guidelines, and issues.

A detailed explanation of the components are mentioned below:

a. Concise statements of compliance obligations and associated risks:

- *Internal Compliance Obligations: These are the rules, policies, and procedures specific to the company. They could include things like company policies on data privacy, code of conduct, and financial reporting procedures.*
- *External Compliance Obligations: These are laws and regulations that govern the company's operations. This could involve industry-specific regulations, labor laws, environmental regulations, etc.*

For example, in a financial institution, internal obligations might include proper handling of customer data, while external obligations would involve adhering to financial regulations set forth by regulatory bodies.

Associated risks might encompass legal consequences, financial penalties, damage to reputation, etc. This part of the program should clearly define these obligations and risks.

b. Linking compliance obligations to business processes:

- *This component helps employees understand how compliance obligations directly relate to their daily tasks and the broader functioning of the company. For instance, in a pharmaceutical company, compliance with FDA regulations would be linked to the product development and approval processes.*

c. Description of training or education activity:

- *This outlines the nature of the training or education itself. It could include methods like workshops, e-learning modules, seminars, or a combination of these. The description should give a clear understanding of how the information will be conveyed.*

d. Target Audience:

- *This specifies who the training is intended for. This could vary based on the content and purpose of the training. For instance, some compliance training may*

be relevant to all employees, while others may be specific to certain departments or roles.

- *Refresher for Existing Employees: This is for employees who have already undergone initial compliance training but need periodic refreshers to ensure they stay up-to-date with any changes or new regulations.*
- *Induction for New Employees: This is crucial for onboarding new employees, ensuring they start off with a solid understanding of compliance expectations.*
- *Adhoc When Required: Sometimes, specific situations might arise that necessitate ad-hoc training. For example, if a new regulation is introduced that requires immediate action, targeted training may be provided.*

e. Frequency of Training or Education:

- *This specifies how often the training will be conducted. This frequency can vary depending on the nature of the compliance area. For example, some areas, like data security, may require more frequent updates due to the evolving nature of threats and regulations.*

By including these elements in the compliance training and education program, a company can establish a structured and comprehensive approach to ensuring compliance across the organization. This not only helps in meeting legal and regulatory requirements but also contributes to a culture of integrity and accountability within the company

Q 11. You as a Company Secretary in Practice (PCS) are asked by the Managing Director of a client company to explain the need for Compliance Management in his company. Explain. (5 marks) (june2023)

Answer: *Compliance management is a critical aspect of every company's operations, and it is essential for various reasons. The need for compliance management are:*

1. Legal and Regulatory Obligations:

- Companies are bound by a multitude of laws and regulations at the federal, state, and local levels, depending on their industry and location. These laws cover areas such as taxation, environmental protection, labor relations, intellectual property, and more.
- Failure to comply with these laws can result in legal consequences, including fines, penalties, and even criminal charges. Compliance management ensures that a company operates within the bounds of the law.

2. Risk Mitigation:

- Non-compliance can lead to significant financial and reputational risks. Companies that fail to comply with regulations may face lawsuits from stakeholders, damage to their brand image, and loss of customer trust.
- Compliance management helps identify, assess, and mitigate these risks by proactively addressing potential compliance issues.

3. Shareholder Confidence and Share Value:

- Non-compliance can lead to a loss of shareholder confidence. When a company is fined or embroiled in legal disputes due to non-compliance, shareholders may lose faith in the management's ability to protect their investments.
- Reduced shareholder confidence can result in a drop in share value, which can have long-lasting negative effects on a company's financial stability and competitiveness.

4. Operational Efficiency:

- Compliance management involves creating and maintaining processes and systems to adhere to regulations. These processes can enhance operational efficiency by streamlining workflows and reducing the risk of errors and disruptions.
- It also helps companies adapt their business processes to legislative changes promptly.

5. Continuous Monitoring and Adaptation:

- Laws and regulations are not static; they change over time. Companies must stay current with regulatory updates and adjust their practices accordingly.
- Compliance management systems enable continuous monitoring of regulatory changes, ensuring that the company remains in compliance and can react quickly and cost-effectively to any new regulations.

6. Responsibility of Top Executives:
   - Top executives, including CEOs and board members, bear significant responsibility for ensuring compliance within their organizations. They can be held personally liable for compliance failures.
   - Compliance management provides a structured approach for executives to oversee and ensure adherence to compliance requirements.
7. Role of Company Secretaries:
   - Company Secretaries play a vital role in guiding management on compliance matters. They are responsible for advising the company on legal and regulatory issues, ensuring that accurate and timely information is provided, and assisting in the development of effective compliance management systems.
8. Industry and Government Regulations:
   - Many industries are heavily regulated to protect consumers, employees, and the environment. Compliance with industry-specific and government regulations is not optional but a necessity for maintaining a license to operate and public trust.

In conclusion, compliance management is a fundamental aspect of corporate governance that is essential for legal adherence, risk mitigation, shareholder confidence, operational efficiency, and adaptability to a changing regulatory landscape. Companies that neglect compliance may face severe financial and reputational consequences, making it imperative to establish robust compliance management systems and seek guidance from professionals like Company Secretaries

Questions From Module

1. You are the Company Secretary of the newly formed company Sun Moon Ltd. Your chairman has asked you to prepare a compliance chart. What are the various points you would mention in the compliance chart?
2. Define the point which should be kept in mind while developing a compliance framework.
3. ''The Compliance Chart of any company must contain the complete information on compliance dashboard. Which provide a detailed compliance procedure to the compliance executor''. As a Company Secretary, list out the various content of the Compliance Chart.
4. Describe the importance of the compliance chart in the managing compliances of the company.
5. What are the various risks a company may face for non-compliance of law?
6. "A strong compliance training and education program reinforces company compliance culture" Comment.
7. ABC Ltd., a listed company has appointed two independent directors. As part of its familiarization policy it provides key updates and background about the company to the newly appointed directors. The directors have requested you as the Company Secretary of the company to explain the process of Corporate Compliance Reporting. Explain the process.
8. Why does compliance management crucial to any business? Elucidate.

2. DOCUMENTATION & MAINTENACE OF RECORDS

Past year Papers

Q1. **The Chairman of ABC Limited, a listed company, seeks your opinion for framing a policy for preservation of documents to avoid stringent penal provisions for noncompliance of the provisions of the Companies Act, 2013 and the Rules made there under. Write a note to the Chairman stating classification of documents under specific period of preservation with specific reference to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

(December 2019 5 marks)

To,

The Chairman

ABC Limited

Re: Classification of documents for period of preservation under SEBI (LODR) Regulations, 2015.

Dear Sir,

The legal requirements of preservation of documents in accordance with the provisions of the Companies Act, 2013 and Regulation 9 of the SEBI (LODR) Regulations, 2015 are as under:

RECORDS WHICH SHOULD BE PRESERVED PERMANENTLY

1. *Property records including purchase and sale deeds, licences, copyrights, patents &trademarks*
2. *Corporate Records including Certificate of Incorporation, Common Seal, Minutes of Board, Committee and Shareholders' Meetings, Register of Members and other Statutory Records*
3. *Personal files of all live employees*
4. *Any other record as may be decided by the Chief Executive Officer/ Managing Director/ Whole-time Director of the Company from time to time.*

RECORDS WHICH SHOULD BE PRESERVED FOR ATLEAST 8 YEARS AFTER COMPLETION OF TRANSACTION

1. *Books of Account, Bank Statements and vouchers.*
2. *Filings with Stock Exchanges, Registrar of Companies and other statutory authorities.*
3. *Payroll Records, Employee deduction authorisations, attendance records, employee medical records, leave records, Pension and retiral related Records, etc.*
4. *Corporate Social Responsibility Records.*
5. *Sponsorship Projects Records*
6. *Correspondence and Internal Memoranda*
7. *Any other record as may be decided by the Chief Executive Officer of the Company from time to time.*

RECORDS WHICH SHOULD BE PRESERVED FOR ATLEAST 3 YEARS AFTER COMPLETION OF TRANSACTION

1. Tender Documents

2. Lease Deeds and Contracts

3. Legal files

4. Insurance Records including policies and claims

5. All e-mail correspondence, internal & external

6. Documents under Secretarial Standards

a. Proof of sending Notice of the meetings of the Board / Committee and General meetings and its delivery.

b. Proof of sending Agenda and Notes on Agenda and their delivery.

c. Proof of sending and delivery of the draft of the Resolution.?

d. Proof of sending draft Minutes of the Board / Committee and its delivery.

e. Proof of sending signed Minutes of the Board / Committee and its delivery.

7. Any other record as may be decided by the Chief Executive Officer/ Managing Director/ Whole-time Director of the Company from time to time

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Company Secretary

Q2 Privacy of records and its control is the most important function for the Secretarial Department of an organization. Records of Contracts and Commercial

Documents and Trade Secretes are to be kept confidentially. Describe the alertness to be observed with respect to keeping of said records.

(December 2020 5 marks)

The alertness to be observed with respect to keeping records of Contracts & Commercial Documents and Trade Secretes is described as under:

1. *In case of the business contracts, every detail of the arrangement should be treated with utmost confidentiality for both organization itself and also for the benefit of third party. If the contract has a confidentiality agreement, it could be breach of terms if an unauthorised person gets his hands on the physical copy of the contract. The contracts are full of commercially sensitive information such as the nature of the arrangement, the value of the services offered/received in the agreement, the names of the main contracting parties, etc.*
2. *The business should avoid sharing contracts unless strictly required, and limit physical copies. Business may consider using digital signatures for signing contracts in order to reduce unnecessary print-outs thereby ensuring confidentiality. While these are some of the most important documents required to be stored securely, the easiest and safest way to reduce the risk of a data breach is to implement a secure document retention policy specific to needs of the organisation.*
3. *The confidential business information such as "proprietary information" or "trade secrets" shall not be generally known to the public and would not ordinarily be available to competitors.Common examples of "trade secrets" include manufacturing processes and methods, business plans, financial data, budgets and forecasts, computer programs and data compilation, client/customer lists, ingredient formulas and recipes, membership or employee lists, supplier lists, etc. "Trade secrets" do not include information that a company voluntarily gives to*

potential customers, posts on its website or otherwise freely provides to others outside the company. If such confidential information is available in the wrong hands, it can be misused to commit illegal activity (e.g., fraud or discrimination), which can in turn result in costly lawsuits for the Company. The disclosure of sensitive employee and management information can lead to a loss of employee trust, confidence and loyalty. This will almost always result in a loss of productivity.

Q3. What do you mean by Good Documentation ? Give some examples of Good Documentation Practices as well as Poor Documentation Practices.

(December 2020 5 marks)

1. The term document includes all kinds of documents which are prepared by a professional while performing his duty including, written and electronic records, audio and video tapes, emails, images (photographs and diagrams), charts, check lists, communication books, management reports, incident reports and working notes.
2. The good documentation promotes good corporate governance practices in the company, increases compliance level of the company and helps to communicate the information between various stakeholders.
3. The following are the some of the examples of poor documentations practices:

1. Document with errors, not signed or not dated

2. Recording of events is not in sequence & tabled

3. Standards operating procedures adopted by the professional is not authorised

4. The delegation of work is not recorded or documented

5. Flow chart and /or check list not available.

4. The following are the some of the examples of good documentations practices:

1. Records should be completed when the activity is performed

2. Clear examples

3. No assumptions

4. Picture is worth a thousand words

5. Concise, legible, accurate and traceable

Q4. 'R' was appointed as Managing Director of P mart Limited recently. During the meeting of the Board, he desires that all agenda files should be sent by email encrypted by password. He also desires that to protect the file from hacking, there should be some special name to the file. As a company secretary, kindly highlight any eight best practices for file naming.

(December 2021 5 marks) As a CS I would advise that following are the best practices for file naming of a file:

1. **Avoid extra-long folder names and complex hierarchical structures** but use information-rich filenames. For example, use D:\ABC\FY\16-17\ AR\MGT-7.doc and not D:/ Alfa Botanicals Private\ Financial Year\ 2016-2017\Annual Return\ Form MGT-7.doc, as complex hierarchical structures require extra browsing at time of storage and at the time of file retrieval.
2. **Put sufficient elements in the structure for easy retrieval and identification but do not overdo it** because adding too much information increases efforts at

the time of naming of file which proves to be of less use at the time of file retrieval.

3. ***Use the underscore (_) and not other characters like ! # $ % because some search tools do not work with spaces*** *and some tools find other characters as awkward and confusing.*
4. ***Use the hyphen (-) to delimit words within an element or capitalize the first letter of each word within an element.***
5. ***Elements should be ordered logically,*** *in the same sequence that you would normally search for a targeted file.*
6. *Personal names within an element* ***should have family name first followed by first names or initials.*** *For example, Tate-Peter_SunLife _1-7566-2_P.*
7. ***Abbreviate the content of elements whenever possible,*** *for example RevQC _QST_2009-Q2.xls instead of Minister of Revenue Quebec _Quebec-SalesTax_2009-2ndQuarter.xls.*
8. ***Prefix the names of the pertinent sub-folders*** *to the file name of files that are being shared via email or portable storage devices.*
9. ***An element for version control should start with V followed by at least 2 digits*** *and should be placed as the last most element, like MCIM_Proposal_V09.doc, as the "V" helps denote that the element pertains to a version number.*
10. ***Dates should be ordered: YEAR, MONTH, DAY. (e.g. YYYYMMDD, YYYYMMDD, YYYYMM)*** *and time should be ordered: HOUR, MINUTES, SECONDS (HHMMSS) to ensure that files are sorted in proper chronological order.*

Q5 In naming of a document, briefly explain the concept of Descriptive file and Non- Descriptive file.

(December 2021 5 marks)

1. *Good file naming conventions should be adopted to name any documents. The file names can be either self-descriptive or non-descriptive.*
2. *Descriptive file: The Descriptive file names are useful for small, well-defined projects with existing identification schemes.*
3. *Non-Descriptive file: Non-descriptive file names are usually system-generated sequential numerical such as a digital ID number, combination of Date and time, name of original file. These file names are created for large scale digitization projects and may employ a digital ID number and numerical sequences to indicate batch or parent-child relationships. However, the major advantage of non-descriptive names is that there is a very less chance that the file names will be repeated within a data structure.*

Q6. What are the disadvantages of Electronic records?

(June 2019 5 marks)

The disadvantages of electronic records are:

1. *Software risk: if documents are secured by a software there will always be a risk that the software system company may not support the computer on which the data is stored or if the company will cease to exist, conversion costs may required to be paid to recover the documents locked in the system.*

2. *Format risk: In some cases, it may happen that a person may not be able to read the document because of document being in PDF or JPEG format. There is also a constant risk that such software will cease to exist or would no longer support*

the PDF format, which will make it difficult in the future to read those PDF documents.

3. *Media Compatibility: Some of the documents are stored in floppy disks but user don't have a floppy disk drive anymore. These kinds of problems always exist with electronic documents.*

4. *Reliability: Paper is usually considered as the more reliable source; all person needs to have is a light source and some eyes to be able to read paper. It's a good idea to have most vital documents imaged, but keeping a paper copy assures that the person has access to them anytime.*

5. *Portability: data stored in electronic format can be easily transferred. It's very easy to misplace or accidentally delete large amounts of data. Data may be duplicated without the permission of authority or can be misplaced or become corrupt. If proper precautions are not taken then advantages of electronic system will turn into a disadvantage.*

6. *Conversion Expense: It's very expensive to convert paper documents to digital images and the amount of labour it takes to prepare documents and analyse them so that they can be indexed correctly is very large.*

Q7. The Board of directors of Bee & Bee Ltd. was of the view that as the company was diversifying its operations, it should evaluate digitizing the books of accounts and other records. The Board sought views from the Company Secretary about the same and asked him to appraise them about the Document Management System including good documentation practices. Advise the Board as the Company Secretary.

(June 2021 5 marks)

To,

The board of directors

Bee & Bee Ltd.

Subject – Document Management System

Respected Sir,

1. *Electronic repository is used to store electronic documents, records, images of paper-based documents captured through scanner. In electronic repository, software called as document management system is used to control and manage documents of the organisation. Document management refer to the process of managing and tracking of the documents and records through an electronic or physical source of documents.*
2. *The term document management system can be defined as the software that controls and organizes documents of an organization. It incorporates document and content capture, workflow, document repositories and output systems, and information retrieval systems. Also, the processes used to track, store and control documents.*
3. *Following are the advantages of depository management system:*

    1. *Tracking of check-in or check-out by various officers*

    2. *Locking and unlocking of Document*

    3. *Simultaneous editing*

    4. *Document Version Control*

    5. *Ease in Audit trail*

    6. *Annotation*

4. Hence it is recommended to have electronic records.

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Company Secretary

Q8. Records Management provides a professional approach to caring for the records and archives which is governed by certain key concepts. Explain the concepts that govern the care of records and archives. (5 marks) (DEC2022)

Answer: Records management is a systematic and professional approach to handling, maintaining, and preserving records throughout their entire lifecycle. It involves organized processes for the creation, usage, storage, and disposition of records, ensuring their integrity and accessibility over time.

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

(i) Keeping Together:

- This principle emphasizes that records should be kept together based on the department or section responsible for their creation or accumulation. This maintains the original order established when the records were created, which is crucial for their "evidential" nature. It distinguishes records from other types of information.

(ii) Ensure Life Cycle:

- This concept recognizes that every record follows a "life-cycle." Records are created, used while they hold value, and then disposed of through either destruction or transfer to an archival institution. Records pass through three main phases:

Current Phase: *Records in this phase are actively used in ongoing business operations and are typically kept in their original location or in a file store within a records office or registry.*

Semi-Current Phase: *Records in this phase are used infrequently in current business operations and are usually stored in a records center.*

Non-Current Phase: *Records in this phase are either destroyed or, if they have enduring value, preserved as archives in an archival institution. Effective management throughout this life-cycle is crucial in records management.*

(iii) Record Preservation:

- *This concept underscores the importance of caring for records and archives through a coherent and consistent set of actions. These actions encompass the development of record-keeping systems, creation and preservation of records, and their use as archives.*

Q9 What does the term documentation connote? Name the 10'Cs which form the guiding principles of good documentation. (DEC2022)

Answer: *Documentation refers to any material that serves as official information or evidence, acting as a record. This encompasses a wide range of recorded materials created by an individual in their professional capacity, relating to their professional responsibilities. This can include written and electronic records, audio and video recordings, emails, facsimiles, images (such as photographs and diagrams), charts, checklists, communication logs, management reports, incident reports, and working notes, among other forms of documentation.*

Good documentation practices play a vital role in promoting sound corporate governance and ensuring compliance within a company. They also enhance communication and information dissemination among various stakeholders, both internally and externally. These principles provide valuable support to professionals,

employers, policy makers, and managers in the processes of assessment, planning, execution, and evaluation.

The guiding principles for good documentation are as follows:

1. Clear
2. Concise
3. Complete
4. Contemporary
5. Consecutive
6. Correct
7. Comprehensive
8. Collaborative
9. Client Centric
10. Confidential

Adhering to these guiding principles for good documentation practices not only fulfills professional obligations but also demonstrates accountability and meets legal requirements in terms of communicating and recording client information. This ensures transparency, accuracy, and reliability in professional practices.

Q10 ABC Ltd. a listed company has been facing much litigation, before various legal and regulatory authorities, for a long time. Many documents have been produced in this regard, before various authorities. These documents are having overlapping effect of such production i.e. the same document(s) is to be produced before various authorities. In this situation, advise the company regarding the preservation of documents relevant to the various litigations, specifically with reference to the period of preservation. (5 marks) (JUNE 2023)

Answer: This passage outlines the legal requirements and procedures regarding the preservation of documents related to litigation involving a company. Here's a detailed explanation:

1. *Preservation of Documents:*

- *When a company is involved in any kind of legal proceeding (litigation), it is required to preserve all documents that arise from or are relevant to that litigation.*

2. *Directions and Orders of Courts and Authorities:*

- *The company must follow any specific directions or orders given by the court, tribunal, or any other legal authority involved in the litigation. This may include requirements for producing, preserving, or handling specific documents.*

3. *Preservation Period:*

- *If there are no specific directions from the court or other authority, the company is obliged to preserve these documents for a minimum of 8 consecutive calendar years after the conclusion of the litigation. This ensures that the documents are available for reference if needed in the future.*

4. *Power of Authorities:*

- *The authority handling the litigation (such as a court or tribunal) has the authority to instruct the company to produce, preserve, or even destroy certain documents that are pertinent to the case.*

5. *Implications of Destruction:*

- *If documents were destroyed in accordance with the policy of one authority, it may create difficulties if another authority requires the same documents. This highlights the importance of obtaining necessary permissions before any destruction of documents.*

6. *Permission and Statements:*

- *The company is required to seek permission from relevant authorities before destroying any documents related to litigation. Additionally, the company may need to provide a statement confirming that they have obtained the necessary permissions.*

7. *Advice from Authorities:*

- *The company should follow the guidance and advice provided by the legal authorities involved in the litigation. This ensures that the company's actions are in compliance with legal requirements.*

In essence, this passage emphasizes the critical importance of preserving documents related to litigation. It highlights the need to follow specific instructions from the court or other legal authorities, as well as the significance of obtaining permissions before destroying any documents. This is crucial to ensure compliance with legal requirements and to avoid potential complications in future legal proceedings.

Q11 ABC Ltd. a listed company, maintains all its documents, records, registers and minutes in electronic form. A shareholder requests the company to inspect as well as get copies of the AGM minutes held in 2022, in electronic form. The company has 2,500 shareholders, debenture holders and other security holders.
(i) Advise the company whether this can be allowed to the shareholder.
(ii) If the company is an unlisted company, whether the shareholder is eligible to inspect and get the copies of the minutes in electronic form. (5 marks) (JUNE 2023)

Answer: *The given case explains the provisions of Section 120 of the Companies Act, 2013, along with relevant rules, regarding the maintenance and inspection of documents in electronic form. Here's a detailed explanation:*

1. *Section 120 of Companies Act, 2013:*

- *This section establishes that any document, record, register, minutes, etc., that are required to be kept by a company or allowed to be inspected or provided as copies under the Act, may be maintained, inspected, or provided in electronic form, according to the prescribed form and manner.*

2. *Rule 27 of Companies (Management and Administration) Rules, 2014:*

- This rule specifies that every listed company or a company with not less than one thousand shareholders, debenture holders, and other security holders, may maintain its records electronically, as required by the Act or rules.

3. Rule 29 of Companies (Management and Administration) Rules, 2014:

- This rule outlines the duties of a company that maintains its records in electronic form. It states that the company must make the records available for inspection in electronic form or provide copies of those records. The charge for providing copies should not exceed ten rupees per page.
- This means that if a shareholder requests to inspect or obtain copies of records that are maintained electronically, the company is obliged to comply.

Now, let's address the specific scenarios:

i. ABC Ltd. as a Listed Company:

- If ABC Ltd. is a listed company or has not less than one thousand shareholders, debenture holders, and other security holders, it is permitted to maintain its records in electronic form as per Rule 27. Therefore, it can allow shareholders to inspect and obtain copies of the Annual General Meeting (AGM) minutes held in 2022 by following the provisions outlined in Section 120 and Rule 29.

ii. ABC Ltd. as an Unlisted Company with Electronic Records:

- If ABC Ltd. is an unlisted company and it maintains its records in electronic form, it is allowed to comply with the request of the shareholder, as stated in the provisions of Section 120 and Rule 29. This means that even unlisted companies, if they maintain electronic records, must provide access to shareholders as per the rules.

In both cases, the company must adhere to the prescribed form and manner for maintaining electronic records, and it cannot charge more than ten rupees per page for providing copies of the records.

In summary, the passage explains how companies, based on their listing status and the number of shareholders, can maintain and provide access to their records in electronic form, in compliance with the Companies Act, 2013, and relevant rules.

Questions from Module

1. Before drafting any document, it is the most essential to familiar with the purpose of document. Comment?
2. Briefly explain the advantage and disadvantage of the electronic records.
3. In naming of a document, briefly explain the concept of Descriptive file and Non-Descriptive file.
4. To assure the best quality of documents, the records should maintained of the activities affecting quality of the records. Comment.
5. Media compatibility is one of the biggest challenge in saving the documents electronically. Comment.
6. Briefly explain the provisions relating to maintenance of documents in electronic form under Companies Act, 2013 and rules made thereunder.
7. Draft a policy on preservation of Documents and archival of Documents in the website under SEBI (LODR) Regulations, 2015
8. What does the term documentation connote ? Name the 10'Cs which form the guiding principles of good documentation.
9. Records Management provides a professional approach to caring for the records and archives which is governed by certain key concepts. Explain the concepts that govern the care of records and archives.
10. The Board of directors of ABC Ltd. was of the view that as the company was diversifying its operations, it should evaluate digitizing the books of accounts and other records. The Board sought views from the Company Secretary about the same and asked him to appraise them about the Document Management System including good documentation practices. Advise the Board as the Company Secretary.

3. SIGNING AND CERTIFICATION

Past year Papers

Q1. You have been engaged as a Practicing Company Secretary by XYZ Limited, an unlisted company having a turnover of `75 crore, for certification of annual return of the company for the year 2018-19. The annual return is signed by the Chief Executive Officer of the Company. State the provisions of the Companies Act, 2013 and the Rules made there under as to signing and certification of annual return. Is it mandatory to file the annual return if the annual general meeting is not held in a particular year?

(December 2019 5 marks)

According to the relevant provisions of Companies Act, 2013 read with all the rules applicable to the company:

1. *Every company shall prepare its annual return in Form No. MGT-7 as on 31st March i.e. the closure of the financial year. The Annual Return is required to be signed by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in practice.*
2. *In case of OPC and small company same shall be signed by the Company Secretary or where there is no company secretary, by the director of the company.*
3. *The Annual Return, filed by a listed company or a company having paid up share capital of Rs.10 crore or more or turnover of Rs.50 crore or more, shall be certified by a Company Secretary in Practice and the certificate shall be in Form No. MGT-8.*
4. *The annual return of a company shall be filed within 60 days from the date of Annual General meeting. Incase the company fails to hold an Annual General Meeting then 60 days from the date on which the annual general meeting*

should have been held together with a statement specifying the reasons for not holding Annual General Meeting.

In the instant case:

1. *The annual return which is signed by the Chief Executive Officer of the Company is not as per the provisions of Companies Act , 2013.*
2. *It is mandatory to file the annual return in Form MGT-7/7A if the annual general meeting is not held in a particular year within 60 days from the date on which the annual general meeting should have been held together with a statement specifying the reasons for not holding Annual General Meeting.*

Q2. During the Secretarial Audit, a Company Secretary in practice has to check the various compliances of the Law. Explain the following compliance requirement relating to the Private companies under Companies Act, 2013:

(i) ***Certification of annual return***

(ii) ***Appointment of auditor***

(December 2021 5 marks)

Certification of annual return

1. *According to Section 92 read with Rule 11(2) of Companies (Management and Administration) Rules, 2014, Form MGT-8 is required for certification of Annual Return.*
2. *The annual return of every listed company or every company having a paidup share capital of Rs. 10 crore or more having turnover of 50 crore rupees or more shall be certified by a company secretary in whole time practice in the Form No. MGT-8, with respect to following points:*

a. The facts disclosed in annual return are correct and adequate

b. The Company has complied with the provisions of the Act & Rules during the financial year in respect of:

- Maintenance of registers or records & making entries within the time prescribed.
- Closure of Register of Members Security holders.
- Advances or loans to its directors and persons or firms or companies referred in section 185 of the Act.
- Contracts/arrangements with related parties as specified in section 188 of the Act.
- Declaration/ payment of dividend or transfer of unpaid/ unclaimed dividend/ other amounts to the Investor Education and Protection Fund.
- Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act.
- Alteration of the provisions of the memorandum and / or articles of association of the Company.
- Issue, allotment, transfer, transmission or buy back of securities. Filing of forms and returns as stated in the Annual Return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within the prescribed time.
- Signing of audited financial statement and report of directors is as per section 134 of the Act.

<u>Appointment of auditor</u>

1. As per Section 139(1) read with Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014, Auditor shall be appointed for 5 years in the AGM. Before appointment the company shall obtain written consent from the auditor and eligibility certificate. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar

within fifteen (15) days of the meeting in which the auditor is appointed in Eform ADT-1.

2. In case of Specified IFSC Private Company- the notice of auditor's appointment shall be filed with the Registrar within 30 days of the meeting in which the auditor is appointed.
3. As per Section 139 (8) (i) of the Companies Act, 2013- In case of any causal vacancy occurred in the office of auditor shall be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Q3 .Softech Services Private Ltd has failed to file its Annual Return for the financial Year 2018-19. Discuss the consequences of non-filing the Annual Return for the Company.

(December 2021 5 marks)

The consequences of non-filling annual return for the company are:

1. Penalty for default: If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of company and fifty thousand rupees in case of officer who is in default. [Section 92(5) of the Companies Act, 2013]

2. Winding up: If the Company has defaulted in filing Annual Returns for the immediately preceding five consecutive financial years, the Company may be wound up by the Tribunal. [Section 271(d) of the Companies Act, 2013]

3. Inactive Status: If the Company has not filed its Annual Return for last two financial years, it will be termed as "inactive company" [Section 455(1) of the Companies Act, 2013]

4. Dormant Status: If the Company has not filed its Annual Return for two financial years consecutively, the Registrar shall issue notice to the Company and enter its name in the Register of Dormant Companies. [Section 455(4) of the Companies Act, 2013]

Q4. Describe the points to be covered in the form MGT-8 and which required to be certified.

(December 2021 5 marks)

While certifying Form No. MGT 8, the practicing company secretary provide certification relating the following points:

1. The facts disclosed in annual return are correct and adequate

2. The Company has complied with the provisions of the Act & Rules during the financial year in respect of:

- Maintenance of registers or records & making entries within the time prescribed.
- Closure of Register of Members Security holders.
- Advances or loans to its directors and persons or firms or companies referred in section 185 of the Act.
- Contracts/arrangements with related parties as specified in section 188 of the Act.
- Declaration/ payment of dividend or transfer of unpaid/ unclaimed dividend/ other amounts to the Investor Education and Protection Fund.
- Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act.

- Alteration of the provisions of the memorandum and / or articles of association of the Company.
- Issue, allotment, transfer, transmission or buy back of securities.
- Filing of forms and returns as stated in the Annual Return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within the prescribed time.
- Signing of audited financial statement and report of directors is as per section 134 of the Act.

Q5. XYZ Ltd. has not filed Annual return for the financial year 2017-18. Write a note on the consequences of non-filing of Annual Return by the company in relation to a Director of the company, as per provisions laid under the Companies Act, 2013.

(June 2019 5 marks)

1. A company as per Section 92 of the Companies Act , 2013 a company is supposed to file the annual returns of the company within 60 days from the date on which annual general meeting of the company is held for the financial year 2017-18.
2. If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.
3. If the company has not filed its financial statement or Annual Return for continuous period of three financial years, then every person who is or has been director of that company shall not be eligible for re-appointment as Director of that company or appointed in any other company for a period of five years from the date on which the said company fails to do so.

Q6. Vijay is the Company Secretary of Gemmy Ltd. which is having an annual turnover of `500 crore for last three financial years. As part of annual certifications, he asked Mohan, a Practicing Company Secretary (PCS) to sign the latest annual return. Vijay refused to sign the annual return as he thinks that it should be done by Mohan, PCS. What are the requirements for Annual Return Certification by a Company Secretary in Practice? Is Vijay justified in saying so?

(June 2021 5 marks)

1. *According to section 92(1) of the Companies Act, 2013, every company shall prepare an annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding the matters provided in this section and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.*
2. *Under section 92(2) of the Companies Act, 2013 read with rule 11(2) of the Companies (Management and Administration) Rules, 2014, the Annual Return of a listed company or of a company having a paid up share capital of `10 crore or more or turnover of `50 crore or more shall be certified by a Company Secretary in whole time practice in the Form No. MGT-8.*
3. *Annual Return certification by Company Secretary in practice is required by:*

   - *Every listed company*

   - *Every company having paid-up capital of `10 crore or more*

   - *Every company having turnover of `50 crore or more*

4. *While the signing and certification of the annual return, it is advisable to have different Professionals for Signing and Certification for independent verification of*

the Annual Return. However, when a company is having a company secretary then signing of the annual return as per section 92(1) shall be done by the Company secretary in employment only and not by the Company Secretary in Practice.

5. *However, where a company is having a Company Secretary then signing of the annual return as per section 92(1) shall be done by the Company Secretary in employment only, but not by the Company Secretary in Practice.*
6. *Therefore, by virtue of section 92(1) of Companies Act, 2013, the annual return is required to be signed by Vijay, Company Secretary of Gemmy Limited along with any one of its Director and Vijay is not justified on refusal to sign the annual return. However, by virtue of section 92(2) of the Companies Act, 2013 read with rule 11(2) of the Companies (Management and Administration) Rules, 2014, the Annual Return of this company shall be certified by a Company Secretary in whole time practice in the Form No. MGT-8 and such Certificate from the PCS shall be annexed to the Annual Return.*

Q10. The audit of Financial Statements in respect of Spinex Ltd. for the year ended 31st March, 2021 was not completed due to difference of opinion on certain accounting matters between the Management and the Statutory Auditors. Hence, the company was not able to hold its Annual General Meeting (AGM) within the statutory timelines.

As the AGM was not conducted, the Company Secretary was in a dilemma whether to file the Annual return. Advise the Company Secretary.

(June 2021 5 marks)

1. *All the companies are required to convene Annual General Meeting in every year except One Person Company. The very First Annual General Meeting should be held within a period of nine (9) months from the end of first Financial Year after its incorporation. Subsequent all Annual General Meeting after first AGM should be held within a period of Six months from the end of Financial Year.*

2. According to section 92(4) of the Companies Act, 2013, where no Annual General Meeting (AGM) is held in a particular year, the Annual Return has to be filed within 60 days from the last day on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.
3. Any company cannot excuse itself from the obligation to file Annual Return on the basis of not holding Annual General Meeting. As per the proviso to Section 403(1) if the Annual return under section 92 is not filed within the due date the same can be filed on payment of additional fee as may be prescribed, which shall not be less than 100 per day and different amounts may be prescribed for different classes of companies.
4. When the company fails or commits any default to submit file, register or record any document, fact or information, before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall be liable for the payment of fee and additional fee, and be liable for the penalty or punishment provided under this Act for such failure or default.
5. In the instant case,

   The audit of Financial Statements in respect of Spinex Ltd. for the year ended 31st March, 2021 was not completed due to difference of opinion on certain accounting matters between the Management and the Statutory Auditors.

   Hence, the company was not able to hold its Annual General Meeting (AGM) within the statutory timelines.

   The management cannot escape from the responsibility of filing the return, if the AGM is not held. Similarly, the responsibility cannot be abandoned even if the company is inoperative. This section casts an important obligation on the part of management to file the returns and can be relinquished only when the

company is wound-up or its name struck-off from the Register maintained by the Registrar of Companies.

Q11. After passing of the Professional Examinations, A has applied in renowned Company Secretary Practicing Firm. He was selected for 21 months training and assigned Annual Filing relating work. He has successfully registered himself on portal of MCA. A approached his senior, as he is facing other issues during the filing. Being a Company Secretary, list out requirements to overcome common errors noticed in E-Filing for reference of A.

(5 marks)(DEC2022)

To overcome common errors noticed during E-filing, it's essential to follow certain requirements and best practices. Here's an explanation of each of the listed requirements:

1. Digital Signature is Valid and Duly Registered
2. The Size of the Form is Within Permissible Limits
3. The E-forms are Duly Verified Before Filing
4. Use of Updated Version of E-form
5. Payment of Challan Not Done Before the Expiry Date
6. Duplicate Payments Have Been Made
7. Correct Particulars Filled in the E-form
8. Using Newer/Updated Versions of Adobe and Java

In addition to these requirements, it's essential to regularly review guidelines and instructions provided by the relevant government agency or platform for E-filing. Staying informed about any changes or updates to the E-filing process is crucial to avoiding common errors and ensuring a smooth filing experience.

Q12. During the process of preparing the Form No. MGT-8 and Form No. MGT-7, for ABC Ltd. X, the PCS felt that there are some anomalies in information, which may need a reservation/qualification. How can X ensure the execution of the assignment as per the norms?

(5 marks)(JUNE 2023)

This given case outlines the responsibilities and procedures of a Practicing Company Secretary (PCS) when certifying certain forms related to the Annual Return of a company. Here's a detailed explanation:

1. *Certifying Form No. MGT-8:*

- *A PCS is tasked with scrutinizing the client's information for certifying Form No. MGT-8, which is the Certification of Annual Return. This involves a thorough examination of all relevant information, statements, and documents to ensure they accurately represent the true and fair status of the company.*

2. *Incorporating Observations and Remarks:*

- *If the PCS identifies any discrepancies, limitations, reservations, qualifications, adverse remarks, or disclaimers during the scrutiny process, they are required to include them in Form No. MGT-8. This ensures that any issues or concerns are appropriately documented.*

3. *Certifying Form No. MGT-7 with Reservations:*

- *The PCS also has the authority to certify Form No. MGT-7, which is the Annual Return form. However, this certification can be made subject to certain reservations, qualifications, observations, or adverse remarks. This is done by providing an annexure to the certification.*

4. *Conditions for Using Annexure:*

- *The use of an annexure with reservations or qualifications is only permitted when material facts are not accurately or completely stated in the Annual Return, or if the company has not complied with applicable statutory provisions.*

5. *Comprehensive Verification:*

- *In order to execute the assignment in adherence to the established norms, X (the PCS) is advised to apply the concepts outlined. This involves a comprehensive verification process to confirm the accuracy of the information and documents provided by the company.*

6. *Incorporating Reservations and Remarks:*

- *If, after thorough examination, the PCS still identifies issues that require clarification or qualification, they are encouraged to incorporate reservations, qualifications, adverse remarks, or disclaimers as necessary in their report.*

In summary, CS shall recognize the importance of thorough scrutiny, accurate representation of information, and the inclusion of any necessary observations or remarks to ensure compliance with established norms and regulations.

Questions from Module

1. Describe the various forms which are exclusively certified by the company secretary in practice under the Companies Act, 2013.
2. How the scrutiny of the annual retune take place and what are the guiding principles for scrutiny of annual return?
3. Describe the points covered in the from MGT- 8 which are need to be certified?
4. Azra Limited has not been compliant in filing the Annual Returns for more than two years. Explain in brief the penal provisions which will apply to the directors of the Company for not filing the annual returns.
5. Nixal Limited has a paid-up equity share capital of Rs.8 Crores and for the year ended March 31, 2021 the Company reported a turnover of Rs.55 crores. The Managing Director is of the view that the Company does not require a Company Secretary to sign its annual return. Is the MD's view correct?

4. LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES

Questions from Module

1. What is the Disciplinary Mechanism in case of misconduct of clause 5 of Part I of First Schedule of Company Secretaries Act, 1980?
2. Write short notes on: (a) Board of Discipline (b) Fellow member (c) Appellate authority
3. What are the Consequences of Non-Compliance of ICSI (Guidelines for Advertisement by Company Secretaries), 2020?
4. Mr. Y is appointed as Company Secretary in ABC Public Limited. Mr. X (Managing Director) of the company would like to know from Mr. Y him about the duties and functions of Company Secretary as per statutory norms. Prepare pointers to describe the duties and functions of company secretary in order to brief Mr. X.
5. Ashima, who is a Practicing Company Secretary is specialized in the areas of Secretarial Audit. On account of receiving many assignments and unable to handle the work alone, she permits Rajiv, her friend who is a Company Secretary but not in practice and who is also a lawyer but not a member of any Bar Council, to conduct the Secretarial Audit and give reports on her behalf. There is no written agreement between Ashima and Rajiv to this effect; however, the oral understanding between both of them is that the fees received from the assignments shall be passed on to Rajiv and Ashima in equal proportion. Check the validity of this arrangement in light of the relevant provisions related to misconduct under the Company Secretaries Act, 1980.
6. A complaint of professional misconduct is filed with ICSI against Ravi, a Practicing Company Secretary. The Disciplinary Committee of ICSI is of the opinion that Ravi is guilty of professional misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980. The Committee, after affording Ravi an opportunity of being heard, ordered for removal of his name from Register permanently and also imposed penalty of Rs.10 lakh. Is the action of the Committee valid ? What actions

can the Board of Discipline (a separate authority) take if it is of the opinion that a member is guilty of professional misconduct mentioned in the First Schedule to the Act, 1980 ?

7. *Rama, a practicing company secretary, posted a request on whatsapp group of practicing company secretaries for providing secretarial audit in any company. She also made a similar request on whatsapp to her college friends. Has she committed professional misconduct?*

5. VALUES ETHICS AND PROFESSIONAL CONDUCT

Past year Papers

What do you mean by Ethical Dilemma ?

(December 2020 3 marks)

1. Dilemma means a situation in which a difficult choice has to be made between two courses of action. An ethical dilemma (ethical paradox) is a decision-making problem between two possible moral imperatives where neither of them is totally acceptable or preferable.
2. Ethical dilemma is also known as moral dilemma. It makes the situations too difficult. A person has to choose only one way from two of them - a moral or an immoral way. Ethical dilemmas can be seen everywhere in daily lives. However, everybody has their own particular experience towards ethical dilemma.
3. An "absolute" or "pure" ethical dilemma only occurs when two (or more) ethical standards apply to a situation but are in conflict with each other. In ethical dilemma if we obey one decision then it would bring about disobeying another.
4. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.
5. Some examples of ethical dilemmas include:
    a. A secretary discovers her boss has been laundering money, and she must decide whether or not to turn him in.
    b. A doctor refuses to give a terminal patient morphine, but the nurse can see the patient is in agony.
    c. While responding to a domestic violence call, a police officer finds out that the attacker is the brother of the police chief, and the police chief tells the officer to "make it go away".

Q2. As a Company Secretary, prepare a note differentiating between concept of Ethics and Values.

(June 2019 5 marks)

1. *Ethics provides the guidelines for conduct while value means the principles and ideals which are necessary in making judgement about right or wrong.*
2. *Ethics compels us to follow some action while values strongly influence the state of mind and act as motivators.*
3. *Ethical practices are consistent, however, value may differ from one person to another.*
4. *Values tell us what we want to do or achieve in our life, whereas ethics helps us in deciding what is morally correct or incorrect, in the given situation.*
5. *Ethics determines to what extent our options are right or wrong. As opposed to values, which defines our priorities for life.*

Q3.Distinguish between Meta-Ethics and Applied Ethics.

(June 2021 3 marks)

1. ***Meta Ethics or Analytical Ethics:*** *It is basically a high abstract way of thinking about ethics. It does not consider whether an action is good or bad, right or wrong, it questions what goodness, or rightness or morality itself is.*
2. ***Applied Ethics****: deals with the philosophical examination from moral standpoint, of particular issues in private and public life which are matters of moral judgement. This branch of ethics applies to doctors, teachers, rulers and so on.*

Q3. Explain the common causes of Loss of Ethics and Values

(june2023)

1. *Unclear Policies: When a company lacks clear and well-defined ethical policies, it can lead to confusion and poor ethical behavior among managers and employees. Vague, inconsistent, or unenforced policies contribute to this problem.*
2. *Conflict of Goals: When individual goals of employees clash with the organizational goals, ethical dilemmas can arise. Balancing the interests of the individual with those of the organization can be challenging, leading to potential ethical compromises.*
3. *Cultural Values and Background: Different cultural backgrounds and value systems can influence individuals' perceptions of what is ethical. What may be considered ethical by one person may be viewed differently by another due to their cultural upbringing.*
4. *Managerial Decision Making: Managers may face situations where they must make decisions that involve ethical dilemmas. In some corporate cultures, a focus on profits and results may lead management to prioritize outcomes over ethical considerations.*
5. *Diverse Human Nature: Differences in opinion and values among individuals can lead to ethical dilemmas. What is perceived as ethical by one person may be considered unethical by another due to varying perspectives.*
6. *Ambition and Discrimination: Financial pressure, a desire for recognition, or discriminatory attitudes can drive individuals to engage in unethical behavior. This may include falsifying information or taking credit for others' work to advance their careers.*
7. *Pressure from Management: In certain corporate cultures, there may be an emphasis on achieving profits and results at any cost. This can create an environment where management may turn a blind eye to ethical breaches in pursuit of favorable outcomes.*

8. *Negotiation Skills: When dealing with other businesses, the pressure to secure the best deal can lead to unethical negotiation tactics. This may involve dishonesty or bad faith negotiations to gain an advantage.*
9. *Conflicting Values: Ethical dilemmas can arise when there are conflicting values within an organization. Different managers may prioritize different aspects, such as quality over cost-effectiveness, leading to disagreements on ethical courses of action.*

Questions from Module

1. Define ethics and the various types of ethics.
2. What are principles which should be adopted by the company Secretaries to become successful?
3. Describe the duties of professional which are to be performed by every professional.
4. Define the common causes of loss of ethics and values by professionals.
5. Prepare a Ethical Decision Worksheet for the below situation. Assume facts. "X has to take a decision, where the best service provider is his near relative".
6. As a Company Secretary, prepare a note differentiating between concept of Ethics and Values.n. Is the MD's view correct?

6. Non Compliances, Penalties and Adjudication

Past year Papers

Q1. X, a director of PQR Private Limited, is authorised by Board of directors to prepare and file returns, reports or other documents to Registrar of Companies (ROC) on behalf of the Company. He files all the required documents with ROC, despite being aware of material discrepancies in them. Subsequently, it was found that the documents filed with ROC contained materially false details. Explain the penal provisions under the Companies Act, 2013 for this offence.

(June 2019 4 marks)

1. *According to Section 448 If in any return, report, certificate, financial statement, prospectus, statement or other document, any person makes a statement–*
   a. *which is false in any material particulars, knowing it to be false; or*
   b. *which omits any material fact, knowing it to be material, He shall be liable under Section 447.*
2. *As per Section 447 Frauds which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 with*
   a. *imprisonment for a term which shall not be less than six months but which may extend to ten years and*
   b. *fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.*
3. *Frauds below the limits, which do not involve public interest, may be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.*
4. *In the instant case,*

X, a director of PQR Private Limited, is authorised by Board of directors to prepare and file returns, reports or other documents to Registrar of Companies (ROC) on behalf of the Company. He files all the required documents with ROC, despite being aware of material discrepancies in them and it was found that the documents filed with ROC contained materially false details. This is violation of Section 448 and hence shall be punishable with imprisonment and fine as mentioned above.

Q2. Enumerate the Compounding Authorities under Companies Act, 2013. Write the procedure for compounding in brief.

(June 2019 4 marks)

1. There is no specific definition of the word compounding. However, in common language compounding is referred to as "to come to a settlement or agreement".
2. To compound means to settle any matter by payment of additional compensation or money. Compounding is nothing but admission of guilt by the person accused of violation of law.
3. Section 441 of the Companies Act, 2013 deals with the compounding of certain offences. Regional director and NCLT are two authorities which have been vested with the power to compound the offences.
4. Where the maximum amount of fine which may be imposed for an offence does not exceed Twenty-five lakh rupees, the Regional Director will have power to compound the offence and in all other cases Tribunal will have the power to compound the offence.
5. Procedure for Compounding of offence:

a. Call for a board meeting to decide on compounding as per the Companies Act, 2013.
b. Arrive at the amount of the tine involved as per the relevant section(s).
c. Hold the Board Meeting and pass resolution(s) to compound and provide for preparation and providing necessary authorization for compounding.

d. *Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.*

a. *The filing with Registrar of Companies (ROC) is done in the e-from GNL-1 prescribed for this purpose. Also deliver sufficient number of hard copies of the compounding application to ROC for him to forward it to RD/Tribunal based on the quantum of fee involved.*

b. *There will be a personal hearing before the Regional Director or Tribunal which will decide the amount to be paid for compounding.*

c. *Get the order passed by the RD/Tribunal and pay the amount stipulated within the time fixed.*

d. *File Order of RD/NCLT with ROC in form INC-28 and ROC will take note of the same.*

Q3. Can Registrar of Companies order adjudication proceedings under Section 454 of Companies Act, 2013? In what cases can the Central Government appoint him as the Adjudicating Officer?

(June 2019 4 marks)

1. *The Registrar of Companies may note the non-compliance of the provisions of Companies Act as arrived at under section 206(4) of the Companies Act, 2013 either:*

a) *by himself on a scrutiny of documents filed with him and on his satisfaction or*

b) *based on any report on inspection or investigation, if any, under the relevant provisions of the Companies Act, 2013, or*

c) *on the qualifications of the statutory auditors in the Annual Report or by the secretarial auditors in their Secretarial Audit Report whereby he can ascertain and identify the nature of non-compliance or default.*

2. *In all these cases, he himself cannot initiate any adjudicating proceedings if he is the adjudicating officer even as he may be clothed with a power of adjudication. Therefore, if adjudicating powers are under his jurisdiction, any other officer who is independent of his office has to identify the existence of violation as otherwise the adjudicating officer, being the head of his office may be biased. This is a grey area to be addressed by the Central Government as otherwise the adjudicating officer will be sitting on a judgement of the findings of his own office.*
3. *It is pertinent to note that it would, therefore, be only logical, prudent and wise for the concerned Regional Director not to appoint as the adjudicating officer pursuant section 454(2) of the Companies Act, 2013, the same jurisdictional Registrar of Companies whose office has identified the violation.*

Q4. G is the General Manager (HR) of XYZ Limited. He wrongfully withholds the flat of the Company and also lets it out on rent to someone. XYZ Limited has filed a complaint against G. What are the penalties for such a conduct under the Companies Act, 2013.

(June 2019 4 marks)

1. *A person who wrongfully withholds any person's property shall be liable to be punished under Section 452.*
2. *According to the Section if any officer or employee of a company*

(a) Wrongfully obtains possession of any property, including cash of the company; or

(b) Having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

3. *The Court trying an offence under sub-section (1) may also order such officer or employee – To deliver up or refund, within a time to be fixed by it, the benefits*

that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

4. *In the instant case,*

   G is the General Manager (HR) of XYZ Limited. He wrongfully withholds the flat of the Company and also lets it out on rent to someone. He shall be liable to punishment mentioned above.

Q5. The Board of Directors of BIJI Private Limited made an application to the Registrar of Companies under section 248(2) of the Companies Act, 2013 for removal of name of the Company. The Board submitted an affidavit that Company has no pending liabilities. However, it was later found that few amounts were still payable to creditors. What penalties can be levied under the Companies Act, 2013 for such an application ?

(December 2019 4 marks)

1. *An application for removal of name can be made under Section 248(2) of the Companies Act, 2013 after extinguishing all its liabilities. Whereas if such an application has been made by the company with a fraudulent intent to evade the liabilities of the company or to defraud its creditors or other persons then the person in charge of the management of the company shall be liable for action under Section 447. This liability shall accrue even if the company has been notified as dissolved.*
2. *Frauds which involve at least an amount of rupees ten lakh or one percent of the turnover of the company, whichever is lower, may be punishable under Section 447 with*

a) *imprisonment for a term which shall not be less than six months but which may extend to ten years and*

b) *fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.*

c) Frauds below the limits, which do not involve public interest, may be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

3. Further, Section 251(2) of the Companies Act, 2013 states that, the Registrar may also recommend prosecution of the persons responsible for the filing of an application under Section 248(2) of the Companies Act, 2013.

4. In the instant case,

   The Board of Directors of BIJI Private Limited made an application to the Registrar of Companies under section 248(2) of the Companies Act, 2013 for removal of name of the Company. The Board submitted an affidavit that Company has no pending liabilities. However, it was later found that few amounts were still payable to creditors. The board of directors shall be liable to penal provisions as mentioned above.

Q6. During the previous year, Alfa Limited could not conduct its Annual General Meeting (AGM) within the timelines as per the Companies Act, 2013 due to some internal and operational issues. In the current year also, the Company could not conduct its AGM within stipulated time, thereby committing the same default in the current year as well. What would be the penal provisions for such default?

(December 2019 4 marks)

1. As per the provisions of Section 99 of the Act, if the Company has defaulted in holding a meeting in accordance with Section 96 or Section 97, then the Company and every officer would be liable to fine upto Rupees 1 Lakh and further fine upto Rupees 5000 for each day of continuing default.

2. If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and

every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

3. *In the instant case,*

   Alfa Limited could not conduct its Annual General Meeting (AGM) within the timelines as per the Companies Act, 2013 due to some internal and operational issues. In the current year also, the Company could not conduct its AGM within stipulated time, thereby committing the same default in the current year as well. The company shall be liable as per the aforesaid penal provisions.

Q7. The Company Secretary of a Company was allotted quarters during the tenure of his employment. He has retired on 31st March, 2019. As per the terms of his employment, he is required to vacate his quarters within one month of his ceasing to be in employment. i.e. by 30th April, 2019. He seeks one year to vacate the premises on the ground of his children's education. The Company wants him to vacate as it has to allot it to the new Company Secretary. What would be your advice to the Company under the given circumstances?

(December 2020 4 marks)

1. *According to Section 452(1) of Companies Act If any officer or employee of a company –*

   1. wrongfully obtains possession of any property, including cash of the company; or

   2. having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those authorised by this Act,

   He shall, on the complaint of the company or of any member or creditor or contributory, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

2. *Further as per section 452(2), the Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or*

cash or in default, to undergo imprisonment for a term which may extend to two years.

3. *In the instant case,*

   The Company Secretary of a Company was allotted quarters during the tenure of his employment. He has retired on 31st March 2019. As per the terms of his employment, he is required to vacate his quarters within one month of his ceasing to be in employment. i.e. by 30th April, 2019. He seeks one year to vacate the premises on the ground of his children's education. The company can file a case against the retired Company Secretary to deliver up the quarters within a time fixed by court.

   He may also be asked to pay reasonable rent to the company for staying beyond the specified period. The retired Company Secretary will have no option but to leave the quarters within the time fixed by the court. He will also be liable to pay, as may be decided by the court.

   Further, the Court may also order such officer or employee to undergo imprisonment for a term which may extend to two years.

Q8. What do you mean by 'Adjudicating' under the Companies Act, 2013 ? What factors Adjudicating Officer shall consider while adjudging quantum of penalty ?
(June 2021 4 marks)

1. *Adjudication has not been specifically defined under companies act, 2013. However, adjudication is the process by which a judge reviews arguments and evidence of both the parties and after providing them an opportunity of being heard passes all necessary decisions.*
2. *Adjudication of Penalty under Companies Act, 2013 means the official imposing of penalty as prescribed under the respective sections of Companies Act, 2013 on the Company and its officers by the designated officer of Ministry of Corporate Affairs.*

3. *Under Section 454 of the Companies Act, 2013, the Central Government has appointed the Registrar of Companies / Regional Directors as the adjudicating officers for adjudging penalty under the provisions of this Act.*
4. *The factors Adjudicating officer will consider while adjudging quantum of penalty are :*
   a. *The amount of disproportionate gain or unfair advantage made as a result of the default. (b) The amount of loss caused to an investor or group of investors as a result of the default. (c) The repetitive nature of the default.*
   b. *nature of the default;*
   c. *repetition of the default;*
   d. *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and*
   e. *the amount of loss caused to an investor or group of investors or creditors as a result of the default.*
1. *In no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Companies Act, 2013.*
2. *As per Rule 3(13) of the Companies (Adjudication of Penalties) Rules, 2014, in case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.*
3. *Therefore, there is a boundary within which the adjudicating officer has to operate which is confined to only adjudging the quantum of penalty. He cannot wander into the area of ascertaining the merits and demerits of the offence or whether there is a violation of the provisions of the Companies Act, 2013 at all in the capacity of an adjudicating officer.*

Q9. Mrs. Geeta is Managing Director of HEL Limited. She has been arrested for an offence covered under Section 447 of the Companies Act, 2013 on a complaint made by the Director, Serious Fraud Investigation Office. Geeta seeks your legal

advice to know the conditions under which she can be released on bail. Advise Geeta.

(June 2019 4 marks)

1. *According to Section 212(6) of offence covered under section 447 of Companies Act, 2013 shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless*

a) *the Public Prosecutor has been given an opportunity to oppose the application for such release;*

b) *Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*

1. *A person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.*
2. *The Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by –*

i. *The Director, Serious Fraud Investigation Office; or*

ii. *Any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.*

2. *In the instant case,*

Geeta has been arrested for a ground under Section 447 of the Act on a complaint made by the Director, SFIO. She can be released on bail as she is a woman only if the Special Court grants so.

Questions from Module

1. ABC Exports Limited aggrieved by an order of Adjudication Authority under Foreign Exchange Management Act, 1999, wants to file an appeal against the order in Civil Court. As a Company Secretary, advise ABC Exports Limited whether the civil court has jurisdiction to entertain such a suit ? If not, suggest an alternate remedy.
2. Can Registrar of Companies order adjudication proceedings under Section 454 of Companies Act, 2013 ? In what cases can the Central Government appoint him as the Adjudicating Officer ?
3. XYZ Software Technologies Limited of Bengaluru was engaged in business of software exports. During the past years, it had exported services to its Parent entity in United States of America (USA), but failed to realize and repatriate the foreign exchange due on its exports to India, within the stipulated time. The Adjudicating Authority imposed a penalty under the provisions of Foreign Exchange Management Act, 1999. Being aggrieved by this penalty, the Company seeks your advice to file an appeal. Advise the Company.
4. What are the penal provisions under the Companies Act, 2013 for giving incorrect Secretarial Audit Report or making false statements therein.
5. Enumerate the Adjudication Authorities under Companies Act, 2013. Write the procedure for Adjudication in brief.
6. The Board of Directors of BIJI Private Limited made an application to the Registrar of Companies under section 248(2) of the Companies Act, 2013 for removal of name of the Company. The Board submitted an affidavit that Company has no pending liabilities. However, it was later found that few amounts were still payable to creditors. What penalties can be levied under the Companies Act, 2013 for such an application ?
7. Differentiate Fine and Penalty as per the Companies Act, 2013 ?
8. Differentiate Cognizable' and 'Non-bailable' offences under the Companies Act, 2013.

9. What do you mean by 'Adjudicating' under the Companies Act, 2013 ? What factors Adjudicating Officer shall consider while adjudging quantum of penalty ?
10. Amexo International Ltd. is aggrieved by the Order of Deputy Director of Enforcement Directorate (ED), and is evaluating to seek further remedies in this regard. Advise the Company regarding the Appellate jurisdiction under FEMA and also explain in brief the procedure for making such Appeal.
11. ABD Limited (listed Company) has failed to redress investors' grievances relating to the Transfer of the share and indulges in fraudulent and unfair trade practices relating to securities. Write down the penalties which could be faced by the company under SEBI Act, 1992.

7. Relief & Remedies

Past year Papers

Q1. P is the Managing Director of AMR Limited who committed a fraud against the Company. A judicial proceeding has been initiated against P for fraud committed by him. Now P wants to settle the case through mediation or conciliation. Can P's case be referred to mediation or conciliation?

(June 2019 4 marks)

1. Mediation means an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute.
2. Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial mean.
3. Most of the matters can be referred to mediation and conciliation however the following matters cannot be referred:

a. Cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.

b. Cases involving prosecution for criminal and non-compoundable offences.

c. Cases which involve public interest or interest of numerous persons.

d. The matters relating to proceedings in respect of inspection or investigation or the matters which for which applications for compounding have been made.

4. In the instant case,

   P is the Managing Director of AMR Limited has committed a fraud against the Company. Since it is not an offence that can be dealt by mediation or conciliation P's case cannot be referred to mediation or conciliation.

Q2. "A Company and its officers will not be eligible for compounding again for similar offence". Elucidate.

(December 2019 5 marks)

1. *There is no specific definition of the word compounding. However, in common language compounding is referred to as "to come to a settlement or agreement". To compound means to settle any matter by payment of additional compensation or money. Compounding is nothing but admission of guilt by the person accused of violation of law. In the process of compounding, the person may either Suo Moto or on receipt of initiation of prosecution, admit the commission of offence and make an application for compounding of the alleged offence.*
2. *Section 441 of the Companies Act, 2013 deals with the compounding of certain offences. Regional director and NCLT are two authorities which have been vested with the power to compound the offences. Where the maximum amount of fine which may be imposed for an offence does not exceed Twenty-five lakh rupees, the Regional Director will have power to compound the offence and in all other cases Tribunal will have the power to compound the offence.*
3. *The offences which can be compounded under the Companies Act,2013-Any offence punishable with*

a. *Fine only*
b. *Imprisonment or fine*
c. *Imprisonment or fine or both*

4. *The offences which cannot be compounded under the Companies Act,2013-*

a. *Any offence punishable with imprisonment only or imprisonment and also with fine*
b. *If the investigation against such company has been initiated or is pending under this act.*
c. *Offence is committed within a period of three years from the date on which a similar offence is committed*

5. *If any offence committed by Company or the officers was compounded under section 441 of the Companies Act, 2013, and an offence similar to what was compounded earlier is committed again by a company or its officers within a period of three years from the date on which the earlier offence was compounded, then the provisions of section 441 of the Companies Act, 2013 will not be applicable and the company and the officers concerned will not be eligible for compounding again.*
6. *In other words, similar offence can be compounded only once in three years and the company cannot commit the same offence repeatedly and then apply for compounding.*
7. *Section 451 of the Companies Act, 2013 provides that if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.*

Q7. XYZ Software Technologies Limited of Bengaluru was engaged in business of software exports. During the past years, it had exported services to its Parent entity in United States of America (USA) but failed to realize and repatriate the foreign exchange due on its exports to India, within the stipulated time. The Adjudicating Authority imposed a penalty under the provisions of Foreign Exchange Management Act, 1999. Being aggrieved by this penalty, the Company seeks your advice to file an appeal. Advise the Company.

(December 2019 5 marks)

According to the provisions of Foreign Exchange Management Act, 1999:

1. *The jurisdiction to entertain any suit or proceeding under this Act shall be with the Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals).*
2. *APPEAL TO SPECIAL DIRECTOR (APPEALS)*

Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals), within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person. The Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.

3. *APPEAL TO APPELLATE TRIBUNAL*

   The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act. Appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government.

4. *APPEAL TO HIGH COURT*

   Any person aggrieved by any decision or order of the Appellate Tribunal or the Special Director (Appeals) may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal or the Special Director (Appeals) to him only on any question of law arising out of such order. The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

5. *In the instant case as a CS, I would like to suggest that,*

   XYZ Software Technologies Limited should file an appeal against the order of the Adjudicating Authority within 45 days of their order to the Special Director.

Q8. *PQ Limited was a Company listed on XYZ Stock Exchange. The Company was making continuous losses and was not performing well. There were also reports*

of alleged financial irregularities in media. Also, many complaints were received by Securities Board of India (SEBI), regarding its listed securities. Subsequently, SEBI passed an Order to delist the securities of the Company from the said stock exchange. As a Company Secretary, advise PQ Limited for further course of action.

(December 2019 4 marks)

1. *According to Security Laws, SEBI and adjudicating officers are vested with the power to adjudicate defaults and offences. However, any person aggrieved by the orders of the Board or adjudicating authority can make an appeal to higher authorities.*
2. *Any person aggrieved by the orders of adjudicating authority or SEBI can make an appeal to SAT (Securities Appellate tribunal), within 45 days from the date of receiving the order. However, SAT can provide an extension provided there is sufficient cause for delay.*
3. *As a CS I would advise to make an appeal SAT within 45 days following the below procedure:*

a. *The Memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar. A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.*

b. *Every application, document or letter file before the Tribunal should be typewritten or printed neatly, cleanly and legibly on one side of a good quality paper.*

c. *The appeal shall be presented in 5(five) sets in a paper book along with an empty file size envelope bearing the full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.*

d. *Every memorandum of appeal shall be accompanied with the prescribed fee and such fee may be remitted in the form of crossed demand draft drawn on any nationalised bank in favour of "the Registrar, Securities Appellate Tribunal" payable at the station where the registry is located.*

e. *On receipt of an appeal the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*

f. *Every appeal filed before the Tribunal shall be dealt with as expeditiously as possible and an endeavour should be made for the disposal of appeal within six months from the date of the filing of the appeal.*

5. *In the instant case as a Company Secretary, I would advise that,*
PQ Limited may consider making an appeal against the order of SEBI to Securities Appellate Tribunal within 45 days of the order. Alternatively, the company may go for delisting of the securities in accordance with the SEBI (Delisting of Securities) Regulations, 2009.

Q9. *A Practicing Company Secretary wants to establish his practice in the field of Mediation and Conciliation. He wants to know whether he would not be eligible to be appointed as a Mediator or Conciliator as per Rule 5 of Companies (Mediation and Conciliation) Rules, 2016. Advise him. (4 marks each)*

(December 2019 4 marks)

1. *Mediation means an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute.*
2. *Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial mean.*
3. *According to Rule 5 of Companies (Mediation and Conciliation) Rules ,2016 :*

A. A Company Secretary with at least fifteen years of continuous practice is qualified for being empanelled as mediator or conciliator.

B. A person shall be disqualified for being empanelled as mediator or conciliator, if he

a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending or

b) has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude or

c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government or

d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority.

e) has, in the opinion of the Central Government, have such financial or other interest in the subject matter of dispute or is related to any of the parties, as it is likely to affect the discharge of his professional obligations as a mediator or conciliator.

Q10. Are the following offences compoundable and if yes, by whom?

(i) Failure to maintain Register of Members and Debenture-holders

(ii) Fraudulently issuing duplicate share certificates

(iii) Failure to keep proper books of accounts

(iv) Tampering with minutes of meetings.

(December 2020 4 marks)

i) Since the offence is punishable under section 88(5) of Companies Act, 2013, only with fine, it is compoundable under section 441 of Companies Act, 2013, by Regional Director, if the total penalty amount, including the penalty in case of a continuing offence, leviable under Sec 88(5) does not exceeds Rs. 25 Lakhs. However, in other cases the offence can be compounded by National Company Law Tribunal including where the total penalty amount under section 88(5) exceeds Rs. 25 Lakh.

ii) Since the offence is punishable under section 46(5) of the Companies Act, 2013 with fine only it is compoundable by under section 441 of Companies Act, 2013 by the National Company Law Tribunal.

iii) The punishment was imprisonment or fine or both. Therefore, it was compoundable by the special court under the Companies Act, 2013. Alternate Answer However, as per Companies (Amendment) Act, 2020 dated 28th September 2020, it is compoundable by Regional Director or National Company Law Tribunal.

iv) This offence is punishable under section 118(12) of the Companies Act, 2013 and the prescribed punishment for the same is by way of imprisonment and fine. Therefore, this offence is not compoundable under section 441 of Companies Act, 2013.

Q11. Write short notes on 'Consent Order' issued by SEBI.

(December 2020 4 marks)

1. Consent order is the order passed by the authorities to ensure settlement between the regulator and a person (Party) who may prima facie be found to have violated securities laws. However, if Board is of the opinion that consent cannot be reached between the parties, it may initiate proceedings before the appropriate authority.
2. Consent orders tries to achieve twin goals of remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays. Therefore, it has been decided that administrative or civil actions may be settled between SEBI and a person (party) who may prima facie be found to have violated the securities laws or against whom administrative or civil action has been commenced for such violation.
3. Passing of consent orders will also reduce regulatory costs and would save time and efforts taken in pursuing enforcement actions. This effort could more effectively be used for pursuing cases which require the full process of enforcement action and for policy work.

4. *Consent orders cannot be construed as waiver of statutory powers by Securities Exchange Board of India (Board). The board always has the right to proceed for appropriate action if it cannot achieve its objectives through consent order.*
5. *SEBI has issued a set of regulations to deal with settlement and procedure of settlement. The provisions of Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 regulate the issuance of Consent/ Settlement Orders.*

Q12. 'Companies Act, 2013 allows settlement of disputes even through Mediation and Conciliation' — Enumerate the matters which cannot be referred to Mediation and Conciliation.

(December 2020 4 marks)

1. *Mediation means an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute.*
2. *Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial mean.*
3. *Most of the matters can be referred to mediation and conciliation however the following matters cannot be referred:*

a. *Cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.*
b. *Cases involving prosecution for criminal and non-compoundable offences.*
c. *Cases which involve public interest or interest of numerous persons.*
d. *The matters relating to proceedings in respect of inspection or investigation or the matters which for which applications for compounding have been made.*

Q13. 'Under the Companies Act, 2013, where a Company seeks compounding before institution of any prosecution, no prosecution shall be instituted in relation to such offences either by Registrar of Companies or any person authorised by the

Central Government' — Discuss the objective of providing Compounding, immunity and its economic benefits.

(December 2020 4 marks)

1. *There is no specific definition of the word compounding. However, in common language compounding is referred to as "to come to a settlement or agreement". To compound means to settle any matter by payment of additional compensation or money. Compounding is nothing but admission of guilt by the person accused of violation of law.*
2. *Section 441 of the Companies Act, 2013 deals with the compounding of certain offences. Regional director and NCLT are two authorities which have been vested with the power to compound the offences.*
3. *Where the maximum amount of fine which may be imposed for an offence does not exceed Twenty-five lakh rupees, the Regional Director will have power to compound the offence and in all other cases Tribunal will have the power to compound the offence.*
4. *The offences which can be compounded under the Companies Act,2013-Any offence punishable with*

a. *Fine only*
b. *Imprisonment or fine*
c. *Imprisonment or fine or both*

5. *The offences which cannot be compounded under the Companies Act,2013-*

a. *Any offence punishable with imprisonment only or imprisonment and also with fine*
b. *If the investigation against such company has been initiated or is pending under this act. c. Offence is committed within a period of three years from the date on which a similar offence is committed*

6. *In the process of compounding, the person may either Suo Moto or on receipt of initiation of prosecution, admit the commission of offence and make an application for compounding of the alleged offence.*

7. *Where any offence is compounded before or after the institution of any prosecution, an information shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded. Where offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.*
8. *Where the compounding of any offence is made after the institution of any prosecution compounding shall be brought by the Registrar to the notice of the court in which the prosecution is pending and on notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.*

Q14. 'Though the term 'settlement' is widely used in stock exchanges and securities market, Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 has different meaning to it' — Discuss and also brief on the terms of settlement as per aforesaid regulations.

(December 2020 4 marks)

1. *The terms Settlement is commonly used in the stock exchanges and stock market to mean as payment of consideration and completion of a market transaction. However, in the context of SEBI (Settlement Proceedings) Regulations, 2018 the term "settlement" is used more as a mechanism for dealing with the arrears of cases pending before the SEBI while providing flexibility of a wider array of enforcement actions which will achieve twin goals of an appropriate sanction and deterrence without resorting to long drawn litigation before SEBI, SAT and Courts etc.*
2. *Settlement terms includes a settlement amount and non-monetary terms which includes the following:*

a) *Suspension or cessation of business activities for a specified period;*
b) *Exit from Management;*

c) *Disgorgement on account of the action or inaction of the applicant;*

d) *Refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;*

e) *Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.;*

f) *Lock-in of securities;*

g) *Implementation of enhanced policies and procedures to prevent future securities laws violations and agreeing to appoint an independent consultant to review internal policies, processes and procedures.*

h) *Provide training and education to employees of intermediaries and securities market infrastructure institutions.*

3. *The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India.*

4. *The application fee referred to in and the legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.*

5. *The amount of profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund.*

Q15. 'There are monetary limits for each authority to compound the offence' — Enumerate the powers of Reserve Bank of India and Enforcement Directorate to compound contraventions.

(old syllabus) (December 2020 4 marks)

1. *According to the provisions of Foreign Exchange Management Act, 1999 the authority to compound any offence is with RBI and Enforcement Directorate.*

2. When a person contravenes provisions of section 3 except section 3 (a) of the act then the offence shall be compounded by RBI. Any person who contravenes section 3 (a) of the act then the offence shall be compounded by Enforcement Directorate.
3. When a person contravenes provisions of section 3 except section 3 (a) of the act, compounding can be done:

(a) where the sum involved is ten lakh rupees or below, by the Assistant General Manager of the Reserve Bank of India;

(b) where the sum involved is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;

(c) where the sum involved is rupees forty lakhs or more but less than rupees one hundred lakhs by the General Manager of Reserve Bank of India;

(d) where the sum involved is rupees forty lakhs or more but less than rupees one hundred lakhs by the General Manager of Reserve Bank of India;

4. If a person contravenes provisions of section 3(a) of the act, then following have the authority to compound the offences:

(a) where the sum involved is five lakh rupees or below, by the Deputy Director of the Directorate of Enforcement;

(b) where the sum involved is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement

(c) where the sum involved is rupees ten lakhs or more but less than fifty lakh rupees by the Special Director of the Directorate of Enforcement;

(d) where the sum involved is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;

(e) where the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.

Q16. SEBI issued an order against the directors of the Shyam and Company Ltd., a listed entity, against their failure to comply with the some of the provisions of

the SEBI (LODR) Regulations, 2015 and levied penalty for the same. However, the directors of the company are of the opinion the penalty levied by the SEBI for non-compliance of the provisions are not applicable to the company since these provisions came into effect after the amendment in the SEBI (LODR) Regulations, 2015 and company had complied with the old provisions, which were applicable on the company at the prevailing time. Advise the company the legal recourse available to it, quoting the relevant provisions of the law.

(June 2021 4 marks)

1. *According to Security Laws, SEBI and adjudicating officers are vested with the power to adjudicate defaults and offences. However, any person aggrieved by the orders of the Board or adjudicating authority can make an appeal to higher authorities.*
2. *Any person aggrieved by the orders of adjudicating authority or SEBI can make an appeal to SAT (Securities Appellate tribunal), within 45 days from the date of receiving the order. However, SAT can provide an extension provided there is sufficient cause for delay.*
3. *Hence as a CS I would like to advise that an appeal can be made to SAT within 45 days following the below procedure:*

a) *Any person aggrieved by the orders of AO or Board can file a memorandum of appeal before the registry of SAT.*

b) *Every application, document or letter file before the Tribunal should be typewritten or printed neatly, cleanly and legibly on one side of a good quality paper.*

c) *On receipt of an appeal the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*

d) *Every appeal filed before the Tribunal shall be dealt with as expeditiously as possible and an endeavour should be made for the disposal of appeal within six months from the date of the filing of the appeal.*

Q17. Explain the meaning of Mediation and Conciliation. What is the difference between these two terms?

(June 2021 4 marks)

1. Mediation means an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute.
2. Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial mean.
3. Difference between mediation and conciliation:

A. MEDIATION

1. Mediation is the process by which the parties to a dispute have closed-door discussions on an issue in the presence of neutral mediator or mediators.
2. This is a voluntary process and is undertaken only if all the parties are willing to go by it.
3. The mediator, who is specially trained, helps the parties to determine how the matter can be settled, examining various options.
4. Mediation is a time-bound, private and confidential process. The information shared must be kept confidential by all parties, including the mediator.

B. CONCILIATION

1. The conciliation process is similar to mediation. But the conciliator suggests terms for settlement on evaluation of the issues discussed by the parties. However, no such suggestions can be made by Mediators.
2. Both Mediator and Conciliator cannot impose their own settlement terms on the parties. Only terms agreed by the parties, can be imposed on the parties, through an order passed by the Mediator or Conciliator.

Q18. What do you mean by compounding of offences? Which offences can be compounded under the Companies Act, 2013 and which cannot?

(June 2021 4 marks)

1. There is no specific definition of the word compounding. However, in common language compounding is referred to as "to come to a settlement or agreement".
2. To compound means to settle any matter by payment of additional compensation or money. Compounding is nothing but admission of guilt by the person accused of violation of law.
3. Section 441 of the Companies Act, 2013 deals with the compounding of certain offences. Regional director and NCLT are two authorities which have been vested with the power to compound the offences.
4. Where the maximum amount of fine which may be imposed for an offence does not exceed Twenty-five lakh rupees, the Regional Director will have power to compound the offence and in all other cases Tribunal will have the power to compound the offence.
5. The offences which can be compounded under the Companies Act,2013-Any offence punishable with

a. Fine only

b. Imprisonment or fine

c. Imprisonment or fine or both

6. The offences which cannot be compounded under the Companies Act,2013-

a. Any offence punishable with imprisonment only or imprisonment and also with fine

b. If the investigation against such company has been initiated or is pending under this act.

c. Offence is committed within a period of three years from the date on which a similar offence is committed

Q19. What is the procedure for compounding of contraventions under Foreign Exchange Management Act, 1999?

(June 2021 4 marks)

The broader procedure for compounding of contraventions under Foreign Exchange Management Act, 1999 is as follows:

1. An application in the prescribed format has to be made to the appropriate authority i.e., RBI or Enforcement Directorate.
2. Every application for compounding any contravention under this rule shall be made in Form to the along with a fee of Rs. 5000/- by Demand Draft in favor of compounding authority.
3. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings and pass an order after providing opportunity of being heard to both the parties within 180 days from the date of receiving the application.
4. Where contravention is compounded before adjudication no inquiry can be made against such person.
5. Where contravention is compounded after making a complaint such compounding shall be brought in the notice of adjudicating authority.

Q20. Explain the powers of Enforcement Directorate to compound the contraventions under the provisions of Foreign Exchange Management Act, 1999.

(June 2021 4 marks)

1. According to the provisions of Foreign Exchange Management Act, 1999 the authority to compound any offence is with RBI and Enforcement Directorate.
2. When a person contravenes provisions of section 3 except section 3 (a) of the act then the offence shall be compounded by RBI. Any person who contravenes section 3 (a) of the act then the offence shall be compounded by Enforcement Directorate.
3. If a person contravenes provisions of section 3(a) of the Act, then following have the authority to compound the offences:

a) where the sum involved is five lakh rupees or below, by the Deputy Director of the Directorate of Enforcement;

b) *where the sum involved is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement*
c) *where the sum involved is rupees ten lakhs or more but less than fifty lakh rupees by the Special Director of the Directorate of Enforcement;*
d) *where the sum involved is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;*
e) *where the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.*

Q21 "Mediation and conciliation are all basically non-adjudicatory dispute resolution processes." State briefly the disadvantages of adjudicatory process which has led to rise of mediation and conciliation process. (4 marks) (dec22)

Answer : *Mediation and conciliation are alternative dispute resolution (ADR) processes aimed at resolving conflicts without the need for a formal court trial. These processes involve a neutral third party, often referred to as a mediator or conciliator, who assists disputing parties in reaching a mutually acceptable settlement. Here's an explanation of how mediation and conciliation work and why they have gained popularity:*

1. ***Non-Adjudicatory Nature:*** *Mediation and conciliation are non-adjudicatory processes, meaning they do not involve a judge or formal legal proceedings. Instead, they focus on facilitating communication and negotiation between the parties.*
2. ***Disadvantages of Adjudication:*** *The rise of mediation and conciliation can be attributed to several disadvantages of the adjudicatory (court-based) process, including:*
    - ***Delay:*** *Court cases can take a long time to resolve due to backlogs and legal procedures.*

- ***Uncertainty:*** *Litigation outcomes are uncertain, as they depend on the judge's decision.*
- ***Inflexibility:*** *Court decisions may not always address the unique needs and interests of the parties.*
- ***High Cost:*** *Legal fees and court-related expenses can be substantial.*
- ***Enforcement Difficulties:*** *Enforcing court judgments can be challenging, especially in international cases.*
- ***Hostile Atmosphere:*** *Litigation can create a hostile and adversarial environment between the parties.*

3. ***Mediation Process:*** *In mediation, a trained mediator facilitates communication between the parties. The process typically involves:*
    - *Listening to each party's perspective and concerns.*
    - *Identifying the underlying causes of the dispute.*
    - *Encouraging open dialogue.*
    - *Assisting the parties in exploring various settlement options.*
    - *Creating a conducive environment for negotiation.*
    - *Aiming to help the parties reach a voluntary settlement.*
4. ***Conciliation Process:*** *Conciliation shares similarities with mediation but may involve a more active role for the conciliator. The conciliator may provide suggestions and proposals to help the parties reach an agreement.*
5. ***Voluntary and Flexible:*** *Both mediation and conciliation are voluntary processes, meaning that participation is usually not forced upon the parties. They also offer flexibility, allowing the parties to craft their own solutions rather than having a judgment imposed upon them.*
6. ***Assistance of Experts:*** *Mediators and conciliators are typically trained professionals who specialize in conflict resolution. They are skilled at managing emotions, facilitating communication, and helping parties find common ground.*

In summary, mediation and conciliation provide an alternative to the traditional adjudicatory process by offering a voluntary and flexible approach to dispute resolution. These processes are often preferred when parties seek a more collaborative, cost-effective, and less adversarial means of resolving their disputes. They rely on the skills of neutral third parties to guide the parties toward mutually acceptable solutions, making them valuable tools in modern conflict resolution.

Q 23. Write notes on the following: (i) Meaning of Interlocutory Application under NCLAT Rules, 2016.

(old syllabus) (4 marks)(JUNE2023)

An Interlocutory Application (IA) under the National Company Law Appellate Tribunal (NCLAT) Rules, 2016 is a legal request filed during the pendency of an ongoing main proceeding before the NCLAT. These applications are made to seek specific interim or ancillary orders to facilitate or regulate the progress of the main case. Here are some key points to understand the meaning and significance of Interlocutory Applications under NCLAT Rules, 2016:

1. ***Nature of Application**: An Interlocutory Application is not a standalone case but rather a subsidiary or supplemental application made in connection with the primary appeal or petition filed before the NCLAT.*
2. ***Purpose**: IAs serve various purposes, such as seeking interim relief, requesting clarification on procedural matters, or asking for additional evidence to be considered. These applications are crucial for ensuring a fair and efficient resolution of the main dispute.*
3. ***Examples of Interlocutory Applications**:*

a. ***Stay of Proceedings**: One common type of IA is to seek a stay on the proceedings at the lower tribunal or the National Company Law Tribunal (NCLT) until the NCLAT decides the appeal.*

b. ***Urgent Relief***: Ias can be used to request urgent or time-sensitive relief, such as restraining orders, injunctions, or appointment of provisional liquidators.
c. ***Amendment of Pleadings***: If a party wishes to amend its appeal or application, it can file an IA seeking permission from the NCLAT.
d. ***Additional Evidence***: Parties can file Ias to introduce additional evidence that they believe is crucial for their case.
e. ***Clarification on Procedural Matters***: Ias can be used to seek clarity on procedural issues, timelines, or compliance requirements.
4. ***Procedure***: The NCLAT Rules, 2016 outline the procedure for filing and disposing of Ias. These applications are typically heard and decided by a division bench of the NCLAT.
5. ***Timing***: Ias can be filed at various stages of the appeal process, from the time of filing the initial appeal to the final hearing. The timing may depend on the nature of relief sought.
6. ***Decision***: The NCLAT has the discretion to grant or deny relief based on the merits of the IA. The decision on an IA is typically a prelude to the final judgment or order in the main case.
7. ***Effect on Main Case***: The decisions made through Ias can significantly impact the outcome of the main case. For example, a stay granted through an IA can temporarily halt proceedings at the lower tribunal until the appeal is decided.
8. ***Appeal ability***: In some cases, decisions on Ias themselves can be appealed to a higher court if a party believes there was an error in granting or denying relief.

In summary, an Interlocutory Application under NCLAT Rules, 2016 is a procedural tool that allows parties to seek interim relief, clarifications, or other orders to support the progress of their primary appeals or petitions before the National

Company Law Appellate Tribunal. These applications play a vital role in ensuring a fair and efficient resolution of corporate and insolvency matters.

Q24 A practicing Company Secretary, who is in practice since 2010 with LL.B. degree intends to be empaneled as 'Mediator or Conciliator' under Companies (Mediation and Conciliation) Rules 2016. Can he be empaneled? If not, why?

(old syllabus) (4 marks)

According to the rules outlined in the Companies (Mediation and Conciliation) Rules, 2016, there are specific qualifications required for individuals to be considered eligible for empanelment as a mediator or conciliator.

1. *Rule 4(f) states that a person must be a qualified legal practitioner for a minimum of ten years in order to be eligible for empanelment. This means they must have been actively practicing law for a period of no less than ten years.*
2. *Rule 4(g) specifies that in addition to being a qualified legal practitioner, a person must also have been a professional for at least fifteen years with continuous practice as either a Chartered Accountant, Cost Accountant, or Company Secretary.*
3. *In the given scenario, it is pointed out that the Practicing Company Secretary (PCS) does not meet the requirement outlined in rule 4(g) as they do not have the necessary fifteen years of continuous practice. Additionally, it is noted that an individual with an LLB Degree is not authorized to practice law unless they are registered as an Advocate with the appropriate Bar Council. Therefore, the PCS does not meet the eligibility criteria outlined in rule 4(f) either.*
4. *As a result, the Practicing Company Secretary in question is not eligible for empanelment as a 'Mediator or Conciliator' under the Companies (Mediation and Conciliation) Rules, 2016.*

Questions from Module

1. P is the Managing Director of AMR Limited who committed a fraud against the Company. A judicial proceeding has been initiated against P for fraud committed by him. Now P wants to settle the case through mediation or conciliation. Can P's case be referred to mediation or conciliation ?
2. Enumerate the Compounding Authorities under Companies Act, 2013. Write the procedure for compounding in brief.
3. "A Company and its officers will not be eligible for compounding again for similar offence". Elucidate.
4. Thinking Star Limited, a Public Limited Company was into manufacturing of steel and steel products. The Company wanted to expand its operations and to fund the same, it evaluated various options including bank loan, private placement, etc. However, due to a paucity of time the Company went ahead and funded its operations by issuing shares to a friend of Mr. XY, the Managing Director of the Company on private placement basis. The Company failed to comply with the provisions of the Companies Act, 2013. Mr. XY was not willing to act, unless there was any notice from the regulators. Mr. S, the Corporate Advisor to the Company suggested Mr. XY to compound the offence as it would be in the best interest of the Company. Under the Companies Act, 2013, where a Company seeks compounding before institution of any prosecution, whether any prosecution shall be instituted in relation to such offences either by Registrar of Companies or any person authorised by the Central Government'?
5. Discuss the objective of providing Compounding, immunity and its economic benefits.
6. 'There are monetary limits for each authority to compound the offence' — Enumerate the powers of Reserve Bank of India and Enforcement Directorate to compound contraventions.
7. Explain the meaning of Mediation and Conciliation. What is the difference between these two terms ?

8. *State whether the following offences under the Companies Act, 2013 are compoundable, if yes, also mention the Compounding Authority :*

i. *Failure to comply with the provisions relating to transfer and transmission of securities.*

ii. *A Company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed.*

iii. *Failure to distribute dividend within thirty days.*

iv. *Contravention of provisions relating to charges.*

8. CONCEPT OF VARIOUS AUDITS

Past year Papers

Q1. Describe differences between Social audit and Takeover audit.

(December 2019 5 marks)

SOCIAL AUDIT

1. Social audit is conducted to see company's social performance. It is a way of measuring, understanding and improving company's social and ethical performance. It helps to analyse whether the goals set by company have actually been implemented efficiently and effectively. It masters enhances governance, accountability and transparency in local bodies. It protects the interest of poor people whose voices are rarely heard.
2. Social audit also provides a fair position of the company to the stakeholders.
3. It involves examination of documents to verify whether state reported expenditures have actually been spent on the ground. It involves an evaluation of organisation's involvement in social responsibility projects or endeavours.
4. Impact of social audit:

   1. Social auditing creates an impact upon governance. It values the voice of stakeholders and poor groups whose voices are rarely heard.

   2. Social auditing enhances local governance, strengthening accountability and transparency in local bodies.

   3. Social Audit makes it sure that in democracy, the powers of decision makers should be used as far as possible with the consent and understanding of all concerned.

TAKEOVER AUDIT

Takeover audit is conducted to ensure compliance with Companies Act, 2013 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, regarding disclosures, offer price, pricing etc. Takeover audit includes:

1. *Identify categorises of acquirer i.e. promoter, promoter group, person in control, persons acting in concert, associates, immediate relatives.*
2. *Ensuring that the timely disclosures have been made by promoters, members of promoter group and PAC's relating to acquisition, transfer and encumbrance.*
3. *Effective monitoring of the holdings of promoters, members of promoter group and PACs and take necessary action as required*
4. *Ensuring that timely intimation is sent to stock exchanges in respects of transfers exempt under SEBI (SAST) Regulations,2011.*
5. *Ensuring that timely reports are filed in respect of transfers exempt under SEBI (SAST) Regulations with stock exchanges and SEBI, if applicable.*
6. *Thoroughly examine the takeover regulations through checklist and timeline for compliances.*

Q2. What do you understand by a CSR Audit? Explain its coverage.

(December 2019 5 marks)

1. *Corporate Social responsibility includes the way a company treats and contributes to the society, promotes fair working conditions and a nondiscriminatory environment, provide transparent and honest accounting reports, and generally earns a reputation of trust and integrity in the society where it serves.*
2. *CSR Audit is conducted to measure the social performance of the company against the social objectives of the company. It may be conducted internally by the company or by engaging external agencies having expertise in CSR projects.*

The companies publish periodical report on their social initiatives, through the Website and annex a report on the corporate social responsibilities with the board report of the company.

3. *The CSR audit cover the CSR activities relating to human rights, fundamental human rights, freedom of association and collective bargaining, non-discrimination, forced labor, child labor, health and safety, career development and training, environmental issues and issues relating to community development and social wellbeing. However, the Schedule VII of the Companies Act, 2013 provides the list of activities which could be taken by the company as their CSR activities and cover the following:*
    a. *Eradicating hunger, poverty and malnutrition, promoting health care and sanitation including contribution to the Swach Bharat Kosh setup by the Central Government for the promotion of sanitation and making available safe drinking water.*
    b. *Promoting education and enhancing vocation skills especially among children, women, elderly and the differently abled.*
    c. *Promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.*
    d. *Ensuring environmental protection, protection of flora and fauna, animal welfare, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government.*
    e. *Protection of national heritage, art and culture including restoration of buildings and sites of historical importance, setting up public libraries and promotion and development of traditional art and handicrafts.*

f. *Taking measures for the benefit of armed forces veterans, war widows and their dependents.*

g. *Contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, backward classes, minorities and women.*

h. *Rural development projects.*

i. *Slum area development.*

j. *Disaster management, including relief, rehabilitation and reconstruction activities.*

Q3. What is Forensic Audit Report? Highlight its major contents.

(December 2019 5 marks)

1. *Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science which is applied to legal matters especially criminal matters.*
2. *Forensic audits are highly specialized, and the work requires detailed knowledge of fraud investigation techniques and the legal framework. Forensic accountants are trained to look beyond the numbers and has necessary skills and experience to accept the work.*
3. *A forensic auditor is required to have specialist training so that he can understand the legal framework and also has the knowledge of forensic audit techniques. He should also have the expertise in the use of IT tools and techniques that facilitate data recovery and analysis. He should also have the*

expertise in the use of IT tools and techniques that facilitate data recovery and analysis.

4. *Forensic Audit is done in two phases:*
    a. ***Investigation Services:*** *Forensic audit begins with the investigation into affairs of the company and identifying defects, in order to deal with such defects.*
    b. ***Litigation Services:*** *while conducting forensic audit if any fraud is detected, it will be resolved through the legal channel. During such situations, forensic auditors give litigation support to the advocates and their advice and consultation about the legalities of commercial disputes are very essential.*
5. *Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed. It may include following:*
    a. *Audit Objective*
    b. *Audit Implementation approach*
    c. *Internal Environment Risk: Customers, product and Competitors; Financial Management; Human Resource Management; Information Technology; Business processes*
    d. *External Environment Risk: Economy and market situation; political and legal scenario; Technology in the sector*
    e. *Audit Process*
    f. *Collect evidence*
    g. *Conduct Interviews*
    h. *Analyse findings*
    i. *Audit conclusions*
    j. *Recommendations of the auditor*

Q4. What do you mean by Environment Audit? Prepare a process chart for conducting Environment Audit.

(December 2019 5 marks)

1. *Environment' includes Water, air and land and the inter-relationship that exists between water, air, land, human beings, plants and other living creatures. Environmental Audit refers to verification and assessment of environmental measures in an organisation. It is conducted to ensure company is in compliance with environmental laws, rules and regulations.*
2. ***Need for Environment Audit***

a) *Business can assess the environmental impact of their operations.*

b) *To ensure that the corporate decisions are not spoiling company's market for its products, destroying the source of essential supply, damaging or polluting the very infrastructure.*

c) *It highlights areas of inefficiencies in process e.g. Where the amount of resources used are out of proportion to the amount of saleable items/ services produced.*

d) *It highlights excessive wastages.*

e) *It provides opportunity for business to decrease its wastes output and reduce the cost of waste treatment or waste disposal.*

3. *Process of Environment Audit*

1. ***Understanding the industrial activity and Pre-audit or planning stage:***

   This involves collection of background information of the entity, identification of objectives and scope of audit, formation of audit team and development of audit plan.

2. ***On-site or Field Audit:***

Once the objective for conducting audit has been identified, necessary meetings and interviews should be conducted, areas of concern should be identified, documents and records should be reviewed etc.

3. **Assessing the impact and post-audit:**

   This includes final evaluation of audit findings, preparation of preliminary report, getting approval of management, and submitting final environment audit report to the auditee.

4. **Follow up or review:**

   Verify the action taken on audit findings and recommendations.

Q5. A series of financial crimes and frauds by some of its employees is alleged by a company. It is desired to gather legally tenable evidence and to fix the negligence and responsibility within the company, before taking action in the court of law. Which type of audit will you suggest in this case? Explain.

(December 2020 5 marks)

1 *Forensic audit is an examination of financial records to find any illegal financial activity. Forensic audits are highly specialized, and the work requires detailed knowledge of fraud investigation techniques and the legal framework. Forensic accountants are trained to look beyond the numbers and has necessary skills and experience to accept the work.*

2 *A forensic auditor is required to have specialist training so that he can understand the legal framework and also has the knowledge of forensic audit techniques. He should also have the expertise in the use of IT tools and techniques that facilitate data recovery and analysis. He should also have the expertise in the use of IT tools and techniques that facilitate data recovery and analysis.*

3 *Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and*

embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science which is applied to legal matters especially criminal matters.

4 *Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed.*

5 *A Forensic Audit is a comprehensive and systematic process involving a series of activities and tasks undertaken for establishing the accuracy and authenticity of the transactions under review. Hence, Forensic Audit is suggested in the given situation.*

Q6. "Audit as a monitoring device is essential in corporate governance also". Substantiate the statement.

(December 2020 5 marks)

1. *Corporate Governance is a strategic activity that ensures that all the processes that are necessary for directing and controlling a business enterprise are implemented effectively. It is about ethical conduct in business. Corporate Governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. It is about openness, integrity and accountability.*
2. *Recent scandals in Indian Corporates have raised questions not only about the practices adopted by companies to solicit business but also about the standards of accountability in public administration including within the government machinery and institutions.*
3. *Corporate Governance provisions under the erstwhile listing agreement popularly known as the Clause 49 requirements have been overhauled by the Companies Act 2013, recent adoptions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Schedule II of the said*

regulations have elaborated on the Corporate Governance measures and are applicable to the entities which are listed with recognized stock exchange(s). These regulations have aligned India's corporate governance regime with the developed countries.

4. Audit of corporate governance processes provides assurance to various stakeholders that all the required governance activities have been accomplished. The Stakeholders do not like to receive surprises and audit of corporate governance activities shall ensure the effective check mechanism on the supervisory and managerial layers of a business enterprise. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.

5. Need for Corporate Governance Audit (CGA)

   The audit serves as a monitoring device and is essential in corporate governance also. The auditors view management as the primary driver of corporate governance and to ensure commitment of the Board in managing the company in a transparent manner.

   The history indicates that well-governed companies receive higher market valuations. Improving corporate governance will also increase capital flows to companies; from domestic and global capital; equity and debt; and from public securities markets and private capital sources even the increased customer base. Therefore, the Corporate Governance Audit is essential in Corporate Governance.

Q7. List the major differences between Cyber Audit and Forensic Audit.

(December 2021 5 marks)

Cyber Audit

1. Cyber audit is conducted to avoid cyber risks. In a cyber audit a team of professionals overview that most updated cyber and IT processes are being applied in the company and conducts number of tests to ensure that information stored is secured.

2. *In the era of global digital economy, it is critical to protect enterprise information from the insider as well as the outsider hackers. The internal audit department plays a vital role in cyber security auditing in many organizations. They timely communicate to the audit committee to ensure an independent view is being communicated to the board on the Data Security.*
3. *Organizations, especially within the public sector, also contract for the services of external auditors to provide independent assurance that systems used are effective and the needs of the organization are being met.*
4. *Audit frequency depends on the level of risk identified and regulatory requirements or expectations applicable on the company.*

Forensic Audit

1. *Forensic audit is conducted combat corruption and detect cases of fraud, embezzlement and negligence. The examination of company's financial records to derive evidence which can be used in a court of law is a Forensic Audit.*
2. *Forensic auditors are highly specialized, and the work requires detailed knowledge of fraud investigation techniques and the legal framework. Forensic accountants are trained to look beyond the numbers and has necessary skills and experience to accept the work.*
3. *The work requires detailed knowledge of fraud investigation techniques and the legal framework (civil, criminal laws and human psychology).*
4. *A forensic auditor is required to have specialist training so that he can understand the legal framework and also has the knowledge of forensic audit techniques. He should also have the expertise in the use of IT tools and techniques that facilitate data recovery and analysis.*

5. *It refers to the application of accounting methods for detection and gathering evidence of frauds, embezzlement, or any other such white-collar crime. It is the application of accounting skills to legal questions.*

Q8. Describe the scope of Corporate Governance Audit.

(December 2021 3 marks)

6. *Corporate governance is a strategic activity that ensures that all processes that are necessary for directing and controlling a business enterprise are implemented effectively. Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and which governance norms has not been satisfied by the company for assisting stakeholders in making an informed decision.*
7. *The audit serves as a monitoring device and is essential in corporate governance also. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.*
8. *Corporate Governance audit covers following:*
    1. *Financial and non-financial information's and disclosures.*
    2. *Rights of stakeholders*
    3. *Boards of directors (composition, mix, independence)*
    4. *Boards of directors (composition, mix, independence)*
    5. *Risk management*
    6. *Strategic plans, programs and guidance on social responsibilities.*

Q9. Prepare a checklist on Operational Control under System Audit.

(December 2021 3 marks)

Operational Controls under Audit System

A. Monitoring physical assets

1. *Whether monitoring of physical assets are done at regular intervals?*
2. *Any discrepancy in the data collected as well as in the current data of physical assets are addressed immediately or not?*

B. Ensure adequate environmental controls:

1. Whether proper facilities of Air-conditioning (dust, temperature & humidity controls), Power Conditioning (Online UPS functioning all the time with backups, proper earthing) are timely reviewed?

2. Whether the cable connections/electronic points are functioning properly or not is reviewed on regular intervals?

Q10. Differentiate between Fraud Triangle Vs Fraud Risk Vs Fraud Risk assessments

(December 2021 5 marks)

1. *A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions).*
2. *Fraud risk is the vulnerability a company/organisation has to those who are capable of overcoming the three elements in the fraud triangle.*
3. *Fraud risk assessment is the identification of fraud risks that exist in the company/organisation. The planning involves the formulation of techniques and procedures that align with the fraud risk and fraud risk management.*

Q11. Prepare a note on Illustrative checkpoint on the Cyber Security Audit.

(June 2019 5marks)

1. Cyber audit is performed avoid cyber security risk. Cyber security is implemented to avoid any financial loss or damage to the reputation that may arise from the failure of information technology system. The objective of cyber audit is to assess the cyber security policies and procedures, identify risk and report the same to the Board.
2. Checklist for the cyber security audit:

A. Personnel Security:

1 Whether the staff wears ID badges?

2 Whether the ID badge contains current picture?

3 Are authorized access levels and type (employee, contractor, visitor) identified on the Badge?

4 Whether the company has policies to conduct background checks for employees and contractors?

5 Whether the Company has a process for effectively cutting off access to facilities and information systems when an employee/contractor terminates employment?

B. Physical Security:

1 Whether company has policies and procedure to provide authorized access and limit unauthorised access to information system?

2 Whether access to computing area is controlled?

C. Account and password management:

1 Whether the Company has policies and standards controlling access to information systems, applications and data?

2 Whether the Company ensures that only authorized personnel have access to the computers?

3 Whether the passwords are secure?

D. Confidentiality of data:

1 Whether the Company is exercising responsibilities to protect sensitive data under their control?

2 Whether the most valuable or sensitive data is encrypted?

3 Whether the Company has a policy for retention of information, both hard and soft copies?

E. Compliance and Audit:

1 Whether the Company reviews and revises the policies, standards, procedures, and guidelines, on a regular basis?

2 Whether the Company test the disaster plans on a regular basis?

3 Does management regularly review lists of individuals with physical access to sensitive facilities or electronic access to information systems?

Q12. "A Corporate Social Responsibility (CSR) Audit aims at identifying environmental, social or governance risks faced by the organization and evaluating managerial performance in respect of those". Explain the purpose of CSR Audit.

(June 2019 5marks)

1. Corporate Social responsibility includes the way a company treats and contributes to the society, promotes fair working conditions and a nondiscriminatory environment, provide transparent and honest accounting reports, and generally earns a reputation of trust and integrity in the society where it serves.
2. Purpose of CSR Audit:

1. To ensure compliance with the provisions of Companies Act, 2013 with respect to constitution of the Committee, formation of policy and spending towards CSR activities.
2. To provide a transparent, monitoring mechanism to oversee the activities of the company.
3. To assess the life cycle of CSR project.
4. To financially review the projects and confirm that the budget has been utilised for achieving desired outcomes.
5. To evaluate internal control and governance framework of the company.

Q13. "A fraud triangle is a tool used in forensic auditing." Elucidate.

(June 2021 3marks)

1 A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions). Fraud risk is the vulnerability a company/organisation has to those who are capable of overcoming the three elements in the fraud triangle. Fraud risk assessment is the identification of fraud risks that exist in the company/organisation. The planning involves the formulation of techniques and procedures that align with the fraud risk and fraud risk management.

2 Planning also includes the identification of the best way/mode to gather evidence. Thus, it is necessary that ample research should be done regarding certain investigative, analytical, and technology-based techniques, and also related legal process, with regard to the outcome of such investigation.

Q14. The Board of Directors of Vee Kay Ltd. has received a letter from a whistle blower alleging insider trading by few members amongst the Senior Management. The Board has appointed you to perform the insider trading audit. Explain the essential factors enabling review and reporting of insider trading audit.

(June 2021 Smarks)

1. Insider trading audit is conducted to ensure that company is in compliance with SEBI (Prohibition of Insider Trading) Regulations. Insider trading issues have recently emerged in listed companies. The directors, agents and other officers were found using unpublished price sensitive information for trading in securities. Insider trading occurred due to possession of information with these people before others regarding the changes in economic conditions of the company.
2. To prevent Insider Trading SEBI has provided appropriate guidelines which are required to be complied with by the companies. SEBI provides for establishment of code of conduct and appointment of qualified auditor to investigate into the affairs of the insider or any connected person as decided by the board. It imposes a duty on compliance officer and audit committee to monitor insider trading relating activities. SEBI regulations have also made it mandatory for Promoters and KMP to make necessary disclosures.
3. To ensure compliance with Insider Trading regulations following should be reviewed:
    1. Code of conduct framed in the lines of model code specified in the schedule I of Insider Trading Regulations.
    2. Appointment of compliance officer.
    3. Responsibility discharged by the compliance officer and preservation of price sensitive information.
    4. Prior approval of trading.
    5. Reporting requirement by the directors / officers / designated employees;

6. Restricted list for trading;
7. Disclosure by any person holding more than 5% of shares or voting rights and promoter or promoter group, code of corporate disclosure policy.

QIS LMP Ltd. asks you as a Company Secretary to suggest an audit and explain objectives as well as its dimensions of the process in order to protect the sensitive data and intellectual property and also protection of networks to which multiple information resource are connected.

(3 marks)(Dec2022)

The provided text explains the importance of cyber security in safeguarding an organization from financial loss, operational disruptions, and damage to its reputation resulting from IT system failures. It emphasizes the objective of a cyber audit, which is to assess the effectiveness of cyber security policies and procedures. The audit aims to evaluate processes related to identifying, protecting, detecting, responding, and recovering from cyber threats, and it covers areas like asset management, training, data security, resource planning, recovery planning, and communications.

Key dimensions of the cyber security audit process are outlined:

1. Management:

- The company's management is ultimately responsible for the decisions made regarding the organization's cyber security. They have a vested interest in ensuring that effective cyber security controls are in place. Decisions are typically guided by risk management processes.

2. Risk Management:

- Risk assessments are based on guidance from the organization's Cyber Security Officer and enterprise management. The goal of a risk assessment is two-fold: to communicate the level of risk involved clearly and to identify ways to address that risk. This includes defining processes, having trained and competent cyber

security resources, and establishing a governance framework for effective risk mitigation.

3. *Internal Audit:*

- *Internal auditors and risk management professionals, along with enterprise management, play crucial roles in cyber security auditing. Cyber auditing is seen as a security measure rather than an inconvenience, essential for protecting an enterprise in today's digital economy. The internal audit department often reports, either directly or indirectly, to the audit committee to ensure an independent perspective is communicated at the board level.*

In summary, the text highlights that cyber security is a critical aspect of protecting an organization's operations, finances, and reputation. The cyber audit process assesses the effectiveness of cyber security measures, and various stakeholders, including management, risk management teams, and internal auditors, play integral roles in ensuring that the organization is adequately protected against cyber threats.

Q16 You want to ensure yourself that the company is consistently striving to stick to Shareholder Value Enhancement. Mention any four parameters which you shall check in this regard. (2 marks)*(june2023)*

Answer: *To ensure consistent Shareholder Value Enhancement, several key parameters should be checked:*

1. ***Growth in Net-Worth****:*

- *This measures the increase in the company's net worth over time, reflecting its financial health and value creation.*

2. ***Details of Dividend Paid****:*

- *This provides information on the dividends distributed to shareholders, indicating the company's ability to generate profits and distribute them among its owners.*

3. ***Dividend Policy****:*

- *Understanding the company's dividend policy helps in assessing how it intends to allocate profits to shareholders, which can influence investor confidence and expectations.*

4. ***Earnings Per Share (EPS)***:

- *EPS is a critical financial metric that reflects the profitability of a company and is indicative of the value generated for each outstanding share.*

5. ***Details of Public Shareholding***:

- *This provides insights into the level of ownership and liquidity of the company's shares in the public market.*

6. ***Absence of Shareholder Grievances***:

- *The absence of complaints against the company in various forums indicates a positive shareholder experience and reflects effective management.*

7. ***Majority Voting in General Meetings***:

- *Achieving required majority votes in favor of proposed resolutions indicates that shareholders are aligned with the company's strategic direction.*

8. ***Investment Satisfaction Survey***:

- *Conducting a satisfaction survey among investors helps in understanding their perception, concerns, and level of contentment with their investments.*

Monitoring and assessing these parameters enables the company to track its performance and shareholders' satisfaction, ultimately contributing to consistent Shareholder Value Enhancement.

Questions from Module

1. Comment on the close relationship between Corporate Governance and SEBI (LODR) Regulations & Companies Act, 2013.
2. What is the purpose of CSR Audit?
3. Discuss the scope of Takeover Audit.
4. Discuss the scope and benefits of Industrial and Labour Audit.
5. What is Cyber Audit and write down its objectives?
6. Discuss the current scenario of Environment Laws in India.
7. Describe the System audit controls evaluation process.
8. Forensic audit is unlike other audits. Comment.
9. What do you understand by Social Audit? State the implications of Social Audit.
10. Explain internal audit and its, objectives and scope.
11. Explain the role of internal audit in corporate governance, risk management and internal control.
12. The object of forensic auditing is to relate the findings of audit by examining and gathering legally
13. Rahul has recently started as a Company Secretary in Practice. He has got an assignment of internal audit. Advise Rahul about internal audit and its stepwise approach.
14. The Board of Directors of ABC Ltd. has received a letter from a whistle blow alleging insider trading by few members amongst the Senior Management. The Board has appointed you to perform the insider trading audit. Explain the essential factors enabling review and reporting of insider trading audit.
15. How monitoring and evaluation of effectiveness of the Organisation's Risk Management Process is carried out through internal audit ? Describe.
16. "Audit as a monitoring device is essential in corporate governance also". Substantiate the statement.

9. Audit Engagement

Past year Papers

Q1. Explain the term 'conflict of interest' regarding audit engagement as per the Company Secretaries Auditing Standard (CSAS)-1.

(December 2020 3 marks)

1. Audit is an independent exercise. It is conducted to ensure that company's work is performed efficiently and effectively. Hence, there should be no conflict of interest. If the Auditor has any such interest, it is the duty of the Auditor to disclose such interest/ conflict of interest to the Auditee before accepting the Audit Engagement.
2. In following cases, it shall be construed that the Auditor has a substantial conflict of interest with that of the Auditee and he shall not accept any Audit Engagement from the Auditee:

   1. Auditor holds more than 2% paid up share capital or shares of nominal value of Rs. 50,000

   2. Auditor indebted to the Auditee for an amount exceeding Rs. 5,00,000 3. Indebtedness that may seriously impair the independence of the Auditor, irrespective of the amount

   4. Auditor was in employment of the Auditee during immediately preceding 2 years.
3. Substantial Conflict of Interest means: Holding of more than 2% in the paid up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power, as the case may be, by the Auditor singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

4. *The limit of holding of more than 2% in the paid-up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power shall be applied based on combined holding of the Auditor along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.*
5. *The limit of rupees five lakh as specified shall be applicable to the combined indebtedness of the audit firm including indebtedness by the partners in their individual capacity*

Q2.Gee & Kay Ltd. has appointed Rajshekhar & Co., a Company Secretaries firm as the Secretarial Auditor for the year ended 31st March 2021. The Secretarial Audit of the company for the previous year was performed by Suryadev & Co Is Rajshekhar & Co., required to communicate with the previous auditor before accepting such engagement ? If yes, draft a letter to be addressed to the previous incumbent.

(JUNE 2021 5 marks)

Yes, Rajshekhar & Co. is required to communicate with the previous auditor i.e. Suryadev & Co. before accepting such engagement.

A specimen communication in this regard is given as under:

To

CS Suryadev & Co.

Address .....

Sub.: Intimation in terms of Clause 8 of the First Schedule to the Company Secretaries Act, 1980

Dear Sir,

I, CS Rajshekhar Partner, M/s. Rajshekhar & Co., a firm of Company Secretaries have been approached by the Management of M/s. Gee & Kay Ltd. to provide the secretarial audit services (list of professional services) for the FY 2021-22, vide their letter No. ..... dated .....We understand that earlier the abovementioned professional services were being rendered by your good self to Gee & Kay Ltd. during the Financial Year 2020-21.

I/We request you to kindly take this communication as an intimation to be given to the previous incumbent in terms of Clause 8 of the First Schedule to the Company Secretaries Act, 1980.

Regards,

For M/s Rajshekhar & Co.,

Firm Unique Code

CS Rajshekhar

Q3. A firm of compay secretaries is to be engaged as a professional experts in due diligence process. What are the pre-conditions of accepting the professional engagement by the firm to maintain the quality?

(June 2019 3 marks)

OR

What are pre-conditions of accepting/continuing any professional engagement?

Pre-conditions of accepting professional engagement by a firm of Company Secretaries

The auditor should check following:

1. Whether the reporting framework as required in the preparation, performance of audit, review of the secretarial/ non-financial statements is acceptable; and

2. Whether the management is in agreement to acknowledge and understands its responsibility relating to:

a) *Preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework in a fair manner.*
b) *Development of internal control/systems/procedure to enable the preparation of secretarial/ nonfinancial statements which are free from material misstatement.*
c) *Providing access to all information of which management is aware that is relevant to the preparation/ audit/review etc. of the secretarial/ nonfinancial statements.*
d) *Providing additional information that the auditor may request from management for the relevant purpose and,*
e) *Providing unrestricted access to persons within the company from whom the auditor wants to obtain audit evidence.*

Q4.. XYZ Ltd. a public limited company appointed R, a practicing professional, as an Internal Auditor of the company. During its audit procedure, he came to know some material information of the company which was revealed, due to incompetency of his audit staff, to the outsiders. The company filed a suit against him stating that due to his unprofessional and irresponsible behaviour, the company has to bear a huge loss. Explain the auditor's responsibility & duties in respect of the information acquired while performing the audit assignment

(June 2019 5 marks)

During the course of audit, Auditor receives, verifies and inspects various audit documents, evidence, representation etc. to form an opinion or to give a report. These may be confidential and privileged information that remain in possession of the Auditor and shall not be disclosed without the express authority of the Auditee. It is the inherent duty of the Auditor to maintain the confidentiality of any information about the Auditee or his business that came to his knowledge as a result of performing the audit work.The principle of confidentiality imposes an obligation on the auditor to refrain from:

1. *Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose;*
2. *Using information acquired as a result of professional relationships to their personal advantage or the advantage of third parties.*
3. *An auditor should maintain confidentiality even in a social environment. The auditor should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative.*
4. *He should also maintain confidentiality of information disclosed by a prospective client or employer.*
5. *An auditor should also consider the need to maintain confidentiality of information within the firm or employing organization.*
6. *An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respect the auditor's duty of confidentiality.*

QS. X, Y and Z are three partners in JK LLP, a firm of Practicing Company Secretaries. X holds 1% paid-up share capital in ABC Ltd. Y holds shares of nominal value of `70,000/- in ABC Ltd. Referring the provisions relating to ICSI Auditing Standards, advise whether JK LLP can be engaged for the Secretarial Audit of ABC Ltd. (5 marks)

In accordance with the ICSI Auditing Standards - CSAS 1: Auditing Standards on Audit Engagement, a "Substantial Conflict of Interest" refers to situations where an Auditor's financial interests or relationships may compromise their independence and objectivity in conducting an audit. Here are the specific conditions that qualify as a substantial conflict of interest:

1. *Holding of More Than 2% in Paid Up Share Capital or Shares:*

- *An Auditor, individually or along with specific relatives (partners, spouse, parent, sibling, and child), is considered to have a substantial conflict of interest if they hold more than 2% of the paid-up share capital or shares of nominal value of rupees fifty thousand, whichever is lower, or more than 2% voting power. This applies if any of the mentioned relatives is financially dependent on the Auditor.*

2. *Indebtedness Exceeding Rupees Five Lakh:*

- *If the Auditor has an indebtedness exceeding rupees five lakh (other than that arising from the ordinary course of business of the auditee), it is considered a substantial conflict of interest. However, any indebtedness that could seriously compromise the Auditor's independence is also deemed substantial.*

3. *Former Employment with the Auditee or Its Holding/Subsidiary Company:*

- *If an Auditor was previously employed by the auditee, its holding company, or subsidiary, and less than two years have passed since the cessation of employment, this is considered a substantial conflict of interest.*

In the provided scenario, even though Auditor X holds only 1% of the paid-up share capital in ABC Ltd., there is a substantial conflict of interest according to paragraph 3.1 of CSAS-1. This is because X's partner, Y, holds a share capital with a nominal value of 70,000, which exceeds the 50,000 threshold. Therefore, JK LLP, with X and Y as partners, is not eligible to become the Secretarial Auditor of ABC Ltd. due to this substantial conflict of interest as outlined in the auditing standards.

Q6. State the obligation of the auditor to maintain confidentiality regarding auditee information.

(December 2020 5 marks each) OR

XYZ Ltd. a public limited company appointed R, a practicing professional, as an Internal Auditor of the company. During its audit procedure, he came to know some material information of the company which was revealed, due to incompetency of his audit staff, to the outsiders. The company filed a suit against him stating that due to his unprofessional and irresponsible behaviour, the company has to bear a huge loss. Explain the auditor's responsibility & duties in respect of the information acquired while performing the audit assignment.

(June 2019 5 marks each)

1. *The auditors of a company while performing the audit assignment access various confidential information of the company and it is most important and required for the auditors to maintain confidentiality of the auditee information.*
2. *An Auditor shall maintain confidentiality even in a social environment. He shall be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative or friends etc*
3. *The Auditor shall educate his employees, staff and other team members about the importance of the confidentiality of the information available to them during the course of audit. He should ensure that reasonable procedures have been followed to maintain the confidentiality of the information.*

4. *The principle of confidentiality imposes an obligation on the auditor to refrain from:*
    1. *Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose.*
    2. *Using information for their personal advantage or the advantage of third parties.*
    3. *An auditor should also maintain confidentiality of information disclosed by a prospective client or employer.*
    4. *He Should maintain confidentiality of information within the firm or employing organization.*

An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respect the auditor's duty of confidentiality.

Q7. Explain (Additional Question)

(a) Social Stock Exchange.

(b) Explain the procedure in case a person seeking appointment as a Director of a company is a national of a country which shares land border with India and consequence of non-compliance in this regard.

(c) Explain the relevant provisions for giving an intimation of receiving foreign funds from relatives under Foreign Contribution (Regulation) Amendment Rules, 2022.

(d) Explain the provisions relating to the physical verification of a registered office of the company by the Registrar of Companies (ROC).

(e) Outline various factors that are considered by an Auditor for deciding the audit fee. What precaution the auditor should keep in this regard?

(3 marks each)

(a) *A Social Stock Exchange is a distinct segment within a recognized stock exchange that is equipped with nationwide trading terminals. It is authorized to facilitate the registration of Not-for-Profit Organizations (NPOs) and enable the listing of securities issued by these organizations. This initiative is in accordance with the provisions set forth in the SEBI Notification known as the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022.*

The primary purpose of a Social Stock Exchange is to create a dedicated platform for NPOs, which are organizations focused on social welfare, community development, and other charitable activities. By providing NPOs with a platform to raise funds and list their securities, the exchange aims to encourage investment in social causes and projects.

The establishment of a Social Stock Exchange aligns with broader social impact and sustainable development goals. It allows investors to directly contribute to social and environmental initiatives through financial support. This platform brings together organizations committed to making a positive impact on society and investors seeking to support such causes.

Overall, a Social Stock Exchange serves as a bridge between investors and Not-for-Profit Organizations, facilitating the flow of capital towards projects and initiatives that address critical social and environmental challenges. It provides a transparent and regulated marketplace for impact-driven investments.

(b) *The Ministry of Corporate Affairs (MCA) issued a notification on June 1, 2022, announcing the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022. These rules became effective on the date of their publication in the Official Gazette. The key amendments include:*

i) Security Clearance for Directors from Neighboring Countries:

- *If an individual applying for directorship is a national of a country that shares a land border with India, they are now required to obtain necessary security*

clearance from the Ministry of Home Affairs. This clearance needs to be provided along with their consent, as indicated in Form DIR-2.

This amendment is aimed at ensuring that individuals appointed as directors from neighboring countries meet necessary security criteria, contributing to enhanced governance and security measures within the corporate sector. This step reinforces regulatory measures for director appointments, particularly for individuals from countries with which India shares a land border

Consequence of Non-compliance - No application number shall be generated in case of the person applying for Director Identification Number (DIN) is a national of a country which shares land border with India, unless necessary security clearance from Ministry of Home Affairs has been attached along with application for DIN (Form DIR3).

In form DIR-12 a declaration is inserted to be opted by person seeking appointment as director as to whether the national of a country which shares land border with India has sought necessary security clearance from Ministry of Home Affairs or not.

(c) *The Ministry of Home Affairs has issued the Foreign Contribution (Regulation) Amendment Rules, 2022, to make further amendments to the Foreign Contribution (Regulation) Rules, 2011. These amended rules came into effect on the date of their publication in the Official Gazette, which is July 1, 2022.*

One of the notable changes in this amendment is related to Rule 6, which pertains to the intimation of receiving foreign funds from relatives. The amendment states that the timeframe for notifying the government about the overseas transaction has been extended from 30 days to three months.

Accordingly, any individual or entity receiving a foreign contribution exceeding Rs. 10 lakh or its equivalent in a financial year from any of their relatives is required to inform the Central government about the details of the funds. This notification

should be made using FORM FC-I within three months from the date of receiving such contribution.

This amendment aims to provide more time for individuals or entities to comply with the reporting requirement, ensuring a smoother process for those receiving foreign contributions from relatives.

(d) The Ministry of Corporate Affairs (MCA) issued a notification on August 18, 2022, introducing "The Companies (Incorporation) Third Amendment Rules, 2022". These rules became effective on the date of their publication in the Official Gazette. The amendment introduces Rule 25B in the Companies (Incorporation) Rules, 2014, outlining the process for the physical verification of a company's registered office. Here are the key provisions:

1. **Registrar's Verification Visit**:
- The Registrar, relying on the information or documents available on MCA 21, is empowered to visit the address of the registered office of the company. The purpose of this visit is to conduct a physical verification in accordance with sub-section (9) of section 12 of the Companies Act, 2013.
2. **Presence of Witnesses**:
- During the verification, the Registrar may be accompanied by two independent witnesses from the local area where the registered office is located. This is to ensure the integrity and impartiality of the verification process.
3. **Assistance of Local Police**:
- If necessary, the Registrar can seek the assistance of local law enforcement (Police) in conducting the verification.
4. **Document Verification**:
- The Registrar is required to bring along the documents filed on MCA 21 that support the registered office address. These documents will be cross-verified with the copies of supporting documents collected during the physical

verification. These supporting documents need to be duly authenticated by the occupant of the property where the registered office is situated.

5. **Photograph of Registered Office**:

- A photograph of the registered office of the company is to be taken during the physical verification.

6. **Report of Physical Verification**:

- The Registrar is obligated to submit a report detailing the findings of the physical verification. This report must adhere to a prescribed format.

This amendment aims to strengthen the verification process of a company's registered office, ensuring that the provided address is genuine and accurate. It introduces measures to enhance the authenticity and reliability of registered office details as submitted to the Registrar.

(e) The audit fee charged by an auditor is influenced by various factors, which include:

1. **Size of the Organization**:

- Larger organizations with more complex operations typically require more extensive audits, which may result in higher fees.

2. **Nature of Business**:

- Certain industries or sectors may have specific regulatory requirements or complexities that can impact the scope and intensity of the audit.

3. **Internal Control Systems & Technology Adopted**:

- Organizations with robust internal control systems and advanced technological infrastructure may require less manual effort in the audit process, potentially affecting the fee.

4. **Scope of Audit**:

- The extent of the audit, which may include financial statements, internal controls, compliance, or other specific areas, will influence the fee.

5. ***Frequency of Audit:***

- *Regular audits, such as annual audits, may have a different fee structure compared to less frequent or one-time audits.*

It is crucial for auditors to avoid accepting fees that are too low due to aggressive competition for business. Engaging in price competition is discouraged in the profession, as it can compromise the auditor's independence and potentially lower the quality of the auditing service.

However, it's important to note that charging a lower fee than what was previously charged by another auditor for similar work is not restricted by law. This provides flexibility for auditors to make fee arrangements that are fair and reasonable based on the specific circumstances of each engagement.

Q8. Neha, a Practicing Company Secretary was appointed as the Secretarial Auditor of Nex Ltd. Neha was issued an engagement letter, soon after his appointment. Later, the Management of the company reached out to Neha, seeking some changes to the engagement letter. Describe the details which should form part of the engagement letter. Can an engagement letter be changed after being issued ?

(June 2021 5 marks each)

The Audit Engagement Letter shall inter alia include:

a. *The objective and scope of the audit;*
b. *The responsibilities of the Auditor and the Auditee;*
c. *Written representations provided and/or to be provided by the Management to the Auditor, including particulars of the Predecessor or Previous Auditor;*
d. *The period within which the audit report shall be submitted by the*

Auditor, along with milestones, if any;

e. The commercial terms regarding audit fees and reimbursement of out-of pocket expenses in connection with the audit; and

f. Limitations of audit, if any.

Where the objective and scope of the audit and responsibilities of the Management and of the Auditor have been established by law, the Audit Engagement Letter shall give a reference to the provisions of the relevant law along with a statement that the Management acknowledges and understands its responsibilities for preparation and maintenance of records and for devising proper systems to ensure compliance with the provisions of applicable laws, acts, rules, regulations and standards for the time being in force.

Q. Draft a model engagement Letter.

Specimen Audit Engagement Letter

To, ABC & Associates (name of Audit firm)

Company Secretaries (Address)

Dear Sir,

This engagement letter is provided in connection with (type of audit) of XYZ Ltd.

I. Scope of work

The scope of the Audit shall include. (For example, in case of Secretarial Audit , the scope of audit shall be as specified in Section 204 of the Companies Act, 2013)

II. Responsibilities of Auditor

The Auditor shall carry out the audit with utmost integrity in terms of this Audit Engagement Letter adhering to the highest level of ethics and standards. The Audit shall be conducted in accordance of the requirements of the Act.

III. *Duties of Auditee*

Auditee acknowledges its responsibility for maintenance of Records and compliances under the applicable laws, acts, rules and regulations. Auditee acknowledges its responsibility to provide the Auditor access to Records and documents of the Auditee, reports of third party and information as may be sought by the Auditor. The Auditee shall be responsible for the correctness and appropriateness of the Records, documents and information of the Auditee.

IV. *Timeline*

The Auditor shall submit the Audit Report for the F.Y. 20XX-XX within days of the end of the financial year. Auditor may also submit a quarterly/half-yearly review report in which the audit observations of the Auditor made during the quarter for timely redressal.

V. *Commercial Terms*

Audit fees for the F.Y. 20XX-XX is fixed at Rs. XXXXXXX plus applicable taxes. Fees will be billed as the work progresses.

Out-of-pocket expenses by the Auditor shall be reimbursed on actual basis.

VI. *Confidentiality*

The Auditor shall not disclose the information obtained during the course of Audit without proper and specific authority or unless there is a legal obligation or duty to disclose.

VII. *Indemnity*

During and after the term of this Engagement, both Parties agree to protect, indemnify, defend and hold harmless other Party, and to extent required

from time to time non defaulting party, its officers, agents, and employees, from and against any and all expenses, damages, claims , suits, losses, actions, judgments, liabilities, and costs whatsoever (including legal fees on a full indemnity basis) arising out of, connected with, or resulting from, defaulting Party's negligence, misrepresentation or the breach of any obligations to be performed by the other party and/or its representatives under this Engagement. In no event will either party's liability towards other party arising from the terms of this Engagement exceed the total sum of fees paid under this Engagement.

VIII. *Any other term as may be agreed between the Auditor and the Auditee, if any*

For XYZ Limited

DIRECTOR

PLACE

TIME

Questions from Module

1. In the Audit engagement process the acceptance of the Audit Engagement by the professional is mandatory, Comment.
2. What is the scope of CSAS-1 and what does it deal with?
3. Write the examples where an auditor is assumed to have interested in the auditee's business or enterprise.
4. Draft an Audit engagement letter for the Secretarial Auditor.
5. What is the meaning of Confidentiality, Why it is necessary for the auditor to maintain confidentiality.
6. What documents are required at the time of audit engagement?
7. What is substantial conflict of interest?
8. The Board of Directors of ATP Ltd. authorized its one of the Directors X to appoint Secretarial Auditor of the Company. Can X do so as per the provisions of the Companies Act, 2013 ? Also explain preengagement meeting in the Audit Engagement Process.
9. X, Y and Z are three partners in JK LLP, a firm of Practicing Company Secretaries. X holds 1% paidup share capital in ABC Ltd. Y holds shares of nominal value of Rs. 70,000/- in ABC Ltd. Referring the provisions relating to ICSI Auditing Standards, advise whether JK LLP can be engaged for the Secretarial Audit of ABC Ltd.

10. Audit Principles and Techniques

Past year Papers

Q1. What is materiality concept in auditing? Explain

(December 2019 3 marks)

1. Materiality means important and essential. It is the duty of the auditor to consider materiality of the records and documents. There should be neither suppression of material facts nor mis-statements. A matter is considered to be material if its omission or mis-statement would influence the decision of the auditor in the audit report. The concept of materiality is used both at the planning stage of the audit, when deciding what and how much work need to be done and in evaluating the result of the audit.
2. Materiality should be considered by auditor while determining the nature, timing and extent of audit procedures and while the evaluating the effect of misstatement.
3. During the planning process, information about the entity is gathered to assess risk and take decision of materiality levels for designing audit procedures. In formulating audit opinion or report, the auditor should give due regard to the materiality of the matter keeping in view the amount, nature and context.
4. Materiality is determined for:
    1. Planning purposes
    2. For the purpose of evaluating evidence
    3. Purposes of reporting the results of the audit work
5. Issues that may be considered as material are as following:
    1. Materiality by value
    2. Materiality by nature

3. Materiality by context:

i. Fraud

ii. Intentional unlawful acts or non-compliances

iii. Incorrect or incomplete information to executive or auditor

iv. Intentional disregard to the executive, authoritative bodies or auditors

v. Events and transactions made despite the knowledge that such transactions lack legal basis

Q2. What is Audit Trail and why there is a need of creation of Audit Trails ?

(December 2019 5 marks each)

1. While conducting audit, it is necessary for an auditor to prepare working papers. Working papers contains the information about the work done by the auditor and the conclusions that he has reached with respect to significant matters. Working papers supports the auditor's report and ensures that the auditing standards have been followed while conducting the audit.
2. Working papers are records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of working papers are audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. Working papers also may be in the form of data stored on tapes, films, or other media.
3. Working paper should include documentation showing:
   a. The work has been adequately planned and supervised.
   b. An understanding of internal control has been obtained to plan the audit and determine the nature and extent of tests to be performed.
   c. The evidence obtained, the procedures applied and the tests performed are sufficient to form a reasonable opinion.

4. *Working papers are the property of the auditor. It may sometimes serve as a useful reference for his client, but the working papers should not be regarded as a part of, or a substitute for, the client's accounting or other records. The auditor should adopt reasonable procedures for safe custody of his working papers and should retain them for a sufficient period.*
5. *Audit working papers provide evidence of audit coverage and documentation of audit trails, hence, they should be properly filed and stored.*

Q3. "Working papers should be prepared using the appropriate cross referencing." Justify.

(December 2020 5 marks)

1 *Working papers should be prepared using the appropriate cross referencing. A cross reference from the Audit Procedures to the primary working paper provides a reference to, from where the work was performed. It is not necessary to cross refer all work papers to the Audit Procedures, only the primary work paper should be cross referred. The primary work paper will then contain cross-references to other, supporting working papers, which provide additional information regarding the audit procedures performed, results, and conclusions reached.*

2 *Cross-references should be used to refer information useful in more than one place or to other relevant information including the source of information, composition of summary totals, or other documents or examples of transactions. To encourage conciseness of documents/information, only single copy of the working papers should be placed in working file for cross referencing.*

Q4. Mehar, a Chartered Accountant was working as a Manager in Finance team of Sita Mining Ltd. Mehar was curious to know about the Secretarial Auditor comments on compliance with applicable laws and regulations. In the preliminary

meeting, he asked Rohan, the Secretarial Auditor about the process of identification of applicable laws to the Company. Explain the process.

(June 2021 5 marks)

1) *The identification of the compliance requirements under applicable laws is just one part of the auditor, but for the management of the company it is necessary to make sure there is sufficient evidence that the company is compliant with each and every one of them. For ensuring the compliance of the applicable laws the company:*
   a) *should have a documented inventory of every applicable law, regulation, contractual obligation and any other form of compliance requirement which needs to comply;*
   b) *should publish its compliance policy which should be supported by standards, procedures, and guidelines;*
   c) *should exchange emails with legal\compliance team, functional heads, compliance officers and others with information on compliance obligations and skills (e.g., Privacy, Procurement, HR, Finance, IT) concerning compliance matters in the information security context;*
   d) *should share related agendas, minutes or notes of meetings with those people on related matters;*
   e) *should place Internal reports concerning applicable compliance obligations, ideally with evidence that management is actively engaged in assessing the extent to which compliance is needed and aware of the risks of non-compliance;*
   f) *should conduct Compliance assessment\review\audit reports, noting the content, form, distribution, status.*

2) For an auditor and the company, it is required to identify the applicable legal requirement of act, regulation but should also identify the sections applicable under such regulation.
3) Further, the legal compliance for a holding company/ subsidiary company/ joint venture company with diverse operations, the compliance requirement will vary from operation to operation based on the nature of the operations and the locations of the different operation and also based on the applicable legal instruments, and the applicable sections of the relevant laws referred in those legal instruments. The diverse operation and different geographical location may create a complexity in compliance.
4) Dealing with the amendment in the laws is another concern in fulfilling compliance requirement, which requires that the company should keep up to date information on the compliance requirement with an information of the changes in the laws and regulations. Further, the legal team of the company should continuously communicate the effect of such changes on the Company, its holding, subsidiary, Joint Venture Company or any of the geographical area where the company operates.

Some of the regulators like MCA, RBI, SEBI, from time to time issue the Master Circulars, and Master Direction, Removal of Difficulties Order etc. which helps in identifying and figuring out the actual requirement of the law which needs to be complied with.

Q5. Why is there a need of external experts' opinion on various technical matters to auditors?

(June 2019 5 marks)

The Auditor may take Expert's opinion on various technical matters and use it in the form of audit evidence. The Auditor will rely on the opinion expressed by the external expert on the basis of his credibility, competency with information and

independence. The Auditor shall evaluate adequacy of Expert's work after considering following:

a) *Relevance and Reasonableness of expert's conclusions and consistency with other audit evidence.*
b) *Relevance and Reasonableness of methods used in expert's work.*
c) *Relevance and Reasonableness of source data used in the work of expert.*
d) *Performance of additional appropriate audit procedures in case Expert's work is found to be inadequate for Audit purpose.*
e) *Agreement with the expert on the nature and extent of further work by the expert in case expert's work is found to be inadequate for audit purpose.*

Q6. What do you mean by Audit Sampling ?

(December 2021 3 marks each) Or

"Auditor draws conclusions about the large volume of data (population) by selecting a sample out of such data. The sample size determines the quantum of risk that the auditor is ready to accept." In light of the above given statement explain the concept of Audit Sampling.

Auditor draws a conclusion about large amount of data by selecting a sample out of such data. However, the size of sample is base on the experience and professional judgement of the auditor. The sample design and sample size should meet following criteria:

a) *Purpose of the audit procedure and population characteristics shall be considered for designing an audit sample.*
b) *Sample size shall be so chosen as to reduce sampling risk to an acceptable low value.*

c) Random sampling, whenever practicable, shall be considered so that each sampling unit shall have reasonable chance of selection.

d) For sampling, use of stratification and value-weighted selection will increase audit efficiency.

Q7. Differentiate between Audit Plan and Audit Programme.

(June 2019 3 marks each)

Audit Plan	**Audit Programme**
Audit Plan lays down the audit strategies to be followed for conducting an audit such as identifying the areas where special audit consideration and skills may be necessary, obtain the knowledge of business etc.	Audit Programme is an outline of how the audit is to be done, who is to do what work and within what time.
Plans should be made to cover the following among other things: (i) Acquiring knowledge of accounting systems, policies and internal control procedures (ii) Establishing the expected degree of reliance to be paced on the internal control (iii) Determining the nature, timing and extent of the audit procedures to be performed (iv) Co-ordinating the work to be done.	It lays down the following audit procedure to be followed : (i) Evaluation process (ii) Ascertaining accuracy (iii) Verification of Document (iv) Scrutiny of supporting Documents (v) Checking of overall disclosure and presentation of all items in the audit completion. (vi) Preparation and submission of audit report.

Q8. Raj, the Secretarial Auditor of Netcap Ltd. wants to seek external confirmations. Guide Raj about the steps involved in obtaining external confirmations.

(June 2021 3 marks each)

External confirmation means Audit evidence obtained as a direct written response to the auditor from a third party (confirming party) on paper or electronic media or in any other form. External confirmation seeking steps are:

a. Determine information to be confirmed / requested.
b. Select appropriate confirming party.
c. Design/format confirmation request.
d. Send the request with follow up.

Q9.There are various provisions in the Corporate Laws, where the material information is required to be disclosed. It serves the purpose of the law makers to bring the transparency and to protect the interest of stakeholders. In view of this, describe the concept of materiality. (5 marks)

Answer: Materiality is a fundamental concept in auditing and accounting that pertains to the significance or importance of an amount, transaction, or discrepancy in a company's records. It can be defined as the magnitude of an omission or misstatement of information that, given the circumstances, is likely to affect the judgment of a reasonable person relying on that information. In essence, materiality serves as a threshold beyond which missing or incorrect information is considered to impact the decision-making process of an auditor.

Here are some key points regarding the concept of materiality:

1. Impact on Decision Making:

- Materiality is the level at which a missing or incorrect piece of information could potentially influence the judgment of someone relying on that information. It helps in determining what information is significant enough to warrant attention.

2. Role in Audit Process:

- Materiality is a critical factor in the entire audit process. Users of the audit report do not expect absolute precision, but they do rely on the auditor to identify and report on matters that could materially affect their decisions.

3. Consideration in Audit Procedures:

- The auditor takes materiality into account when deciding what audit procedures to perform, when to perform them, and to what extent. This helps in allocating resources effectively and focusing on areas of higher risk or greater importance.

4. Quantitative and Qualitative Factors:

- Materiality encompasses both quantitative (monetary value) and qualitative (nature or characteristics) factors. While monetary value is often a primary consideration, the nature of an item or group of items may also make them material.

5. Professional Judgment:

- Determining materiality is a matter of professional judgment and depends on the auditor's interpretation of the needs of the intended users. It is based on the auditor's understanding of what information would influence their decisions.

6. Purpose in Audit Planning and Reporting:

- Materiality is established for various purposes, including planning the audit, assessing the evidence gathered, evaluating the impact of identified misstatements or non-compliances, and reporting the results of the audit work.

In summary, materiality serves as a guiding principle for auditors to focus on information that is of genuine significance to users. It ensures that important matters are disclosed and allows stakeholders to make informed business decisions based on reliable financial information.

Questions from Module

1. List down various Audit Techniques.
2. Define testing Methods used during audit procedures.
3. What is Audit Sampling? What is the purpose of Audit Sampling?
4. What is substantive Checking? How does sunstantive testing work?
5. Explain Audit trials. What are benefits of Audit Trials?

II. Audit Process & Documentation

Past year Papers

Q1. What are the special events which are required to be reported under Secretarial Audit Report?

(3 marks) (dec2022)

Reporting of Specific Events in a Secretarial Audit Report involves the disclosure of significant events or actions that have a major impact on the company's affairs and governance, in accordance with applicable laws, rules, regulations, guidelines, and standards. Here are the types of events/actions that are considered to have a major bearing on the company's affairs:

1. *Events/Actions Altering Charter Documents:*

- *This includes any changes made to the company's charter documents, such as the Memorandum of Association (MOA) or Articles of Association (AOA). These documents outline the company's objectives, rules, and structure.*

2. *Changes in Capital Structure:*

- *Any alterations to the company's capital structure, such as changes in authorized share capital, issuance of new shares, or buyback of shares, are considered significant events.*

3. *Change in Affairs/Management:*

- *This pertains to changes in the key individuals responsible for managing the company, including directors, managing director, CEO, and other top-level executives.*

4. *Change in Licensing or Permissions:*

- This involves any modifications or updates to the licenses or permissions required for the company's business operations. It is crucial for ensuring compliance with legal and regulatory requirements.

5. Capacity Expansion and Utilization:

- Any plans or actions related to expanding the company's production capacity or changes in how existing capacity is utilized are considered significant.

6. Sale/Disposal of Substantial Assets:

- This encompasses the sale or disposal of significant assets owned by the company. Such transactions can have a major impact on the company's financial position.

7. Entering into Joint Ventures Agreements:

- The formation of joint ventures involves collaboration with other entities for a specific business purpose. This is a substantial decision that can significantly impact the company's operations and financials.

Reporting these specific events in the Secretarial Audit Report ensures transparency and compliance with legal and regulatory requirements. It also helps stakeholders, including shareholders and regulatory authorities, to be informed about key developments that may affect the company's governance and overall performance.

Q4. Explain various points the Auditor should go through while conducting the audit relating to each of the following:

(i) Audit Committee

(ii) Nomination and Remuneration Committee

(iii) Stakeholder Relationship Committee

(Old syllabus)(5 marks)(june2023)

Answer: *When conducting an audit, the auditor should pay special attention to the following points related to various committees within the organization:*

(i) Audit Committee:

- ***Brief Description of Terms of Reference:***

  Understanding the scope and responsibilities assigned to the Audit Committee helps in assessing its effectiveness.

- ***Composition, Names of Members, and Chairperson:***

  Identifying the members and chairperson of the Audit Committee ensures that it is appropriately constituted with individuals possessing the requisite expertise.

- ***Meetings and Attendance During the Year:***

  Reviewing the records of meetings held and attendance of members helps in evaluating the committee's level of activity and participation.

(ii) Nomination and Remuneration Committee:

- ***Brief Description of Terms of Reference***

  Understanding the committee's role in nominating and determining remuneration helps in assessing its effectiveness.

- ***Composition, Names of Members, and Chairperson:***

  Identifying the members and chairperson of the committee ensures that it is appropriately constituted with individuals possessing the requisite expertise.

- ***Meeting and Attendance During the Year:***

Reviewing the records of meetings held and attendance of members helps in evaluating the committee's level of activity and participation.

- ***Performance Evaluation Criteria for Independent Directors:***

  Understanding the criteria used for evaluating independent directors ensures that the process is objective and transparent.

(iii) Stakeholder Relationship Committee:

- ***Brief Description of Terms of Reference:***

  Understanding the scope and responsibilities assigned to the Stakeholder Relationship Committee helps in assessing its effectiveness.

- ***Composition, Names of Members, and Chairperson:***

  Identifying the members and chairperson of the committee ensures that it is appropriately constituted with individuals possessing the requisite expertise.

- ***Meeting and Attendance During the Year:***

  Reviewing the records of meetings held and attendance of members helps in evaluating the committee's level of activity and participation.

By examining these aspects, the auditor gains insights into the functioning and effectiveness of these committees, which are integral to the governance framework of the organization. This evaluation contributes to the overall assessment of the organization's internal controls and compliance mechanisms.

Q4. Describe auditing risk and its components.

(old syllabus)(December 2020 5 marks)

Auditing risk means that an auditor accepts/presumes some level of uncertainty in performing the audit work, which means that the auditor accepts the risk that the auditor opinion given by the auditor might be wrong. Comment

1. *Audit risk means that an auditor presumes that there may be some level of uncertainty in performing the auditor work. It means that the auditor accepts the risk that the audit opinion given by the auditor might be wrong. The audit risk has three components:*

   1. ***Inherent risk:*** *Inherent risk is the possibility that a misstatement could occur, in the absence of internal controls. For example, Genuineness of the related party transactions.*

   2. ***Control risk:*** *Control risk is a risk that misstatements which can be material, cannot be detected or prevented and corrected on a timely basis by the internal control systems. For example, delay in the filing of forms.*

   3. ***Detection risk:*** *Detection Risk is the risk that an auditor's audit procedures will not detect a misstatement that exist in class of transactions that could be material. For example, while certification of eform, the auditor has overlooked the compliance of the Secretarial Standards.*

2. *The auditor should maintain the high level of the assurance/confidence while expressing the audit opinion, and this is the most important steps*

   in the audit planning to ensure that the audit team will gather competent, relevant and reasonable audit evidence at minimum cost.

There is an inverse relationship between materiality and the level of audit risk, that is, the higher the materiality level, the lower the audit risk and vice versa, Auditor should take note of the inverse relationship between materiality and audit risk when determining the nature, timing and extent of audit procedures.

Q10. "The audit checklist assists auditors in conducting a thorough, systematic and consistent audit." Briefly highlight the benefits of checklist.

(June 2021 5 marks each)

1. The audit checklist assists auditors in conducting a thorough, systematic and consistent audit. The checklists are used to guide and help the auditor to assess whether evidence meets audit criteria.
2. It is important to remember that checklists are used to guide the auditor's and do not rigidly dictate exactly what is to be audited as in various event the auditor need to check beyond the checklist and the compliance requirement is different according to the nature and business of the company.
3. It is important to remember that checklists are used to guide the auditor's and do not rigidly dictate exactly what is to be audited as in various event the auditor need to check beyond the checklist and the compliance requirement is different according to the nature and business of the company.
4. The benefits of the audit checklists are as under:
    1. Promote planning for the audit.
    2. Ensure a consistent audit approach.
    3. Act as a sampling plan and time manager.
    4. Serve as a memory aid.
    5. Provide a repository for notes collected during the audit process (audit field notes)
    6. Audit checklists provide assistance to the audit process.
    7. Auditors need to be trained in the use of a particular checklist and be shown how to use it to obtain maximum information by using good questioning techniques.
    8. Checklists assist an auditor to perform better during the audit process.

9. *Checklists help to ensure that the audit is conducted in a systematic and comprehensive manner and adequate evidence is obtained.*
10. *Checklists provide the structure and continuity to the audit and ensure that the audit scope is being followed.*
11. *Checklists provide a means of communication and a place to record data for use for future reference.*
12. *A completed checklist provides objective evidence that the audit was performed.*
13. *A checklist provides a record.*
14. *Checklists can be used as an information base for planning future audits.*
15. *Checklists can be provided to the auditee ahead of the onsite audit.*

Q12. The Audit plan describes the processes and activities that are to be carried out in connection with a particular audit and for improving the quality of audit. For an effective audit, the availability of resources and skilled manpower is required. In view of above, mention the elements to be included in audit planning.

(old syllabus)

The process of audit planning is a critical phase in the audit engagement and involves several key elements:

1. *Purpose and Objectives:*

- *Establishing the purpose and specific objectives of the audit engagement provides a clear direction for the audit team.*

2. *Legal Framework:*

- *Understanding the legal and regulatory framework under which the audit is conducted ensures compliance with relevant laws and regulations.*

3. *Significant Areas and Issues:*

- Identifying and prioritizing significant areas and issues to be addressed during the audit helps in allocating resources appropriately.

4. Audit Process and Techniques:

- Determining the specific processes, methods, and techniques to be employed during the audit helps in ensuring thorough and effective examination.

5. Check Points Activities:

- Setting up checkpoints and specific activities within the audit process helps in monitoring progress and ensuring completeness.

6. Work Allocation:

- Allocating tasks and responsibilities among audit staff based on their skills and expertise ensures that the audit is conducted efficiently.

7. Time Schedules:

- Establishing timeframes for the completion of various tasks and phases of the audit helps in managing the audit timeline effectively.

8. Draft Report Submission:

- Determining timelines for submitting draft reports, conducting discussions with the auditee, and submitting the final report ensures a structured reporting process.

9. Risk-Based Classification:

- Classifying audit areas based on their level of risk allows for the allocation of appropriate resources to areas with higher risk levels.

10. Extent of Detailed Examination:

- Deciding on the level of detail required for examination and coverage in terms of volume helps in focusing efforts on critical areas.

11. Evaluation of Internal Controls:

- Assessing the effectiveness of internal controls and considering work conducted by other experts or agencies helps in determining the level of reliance that can be placed on them.

12. Materiality Considerations:

- Establishing materiality thresholds helps in identifying significant items or issues that require special attention.

13. Report Structure and Contents:

- Planning the structure and content of the audit report ensures that it effectively communicates findings, conclusions, and recommendations to stakeholders.

These elements collectively form a comprehensive audit plan, providing a roadmap for the audit team to conduct a thorough and effective examination of the organization's financial and operational processes.

Questions from Module

1. *'The audit process can be broadly grouped in three phases'. Prepare a note to substantiate the statement.*
2. *The interview is the most reliable source for obtaining the information for the auditor. Comment.*
3. *"The audit checklist assists auditors in conducting a thorough, systematic and consistent audit." Briefly highlight the benefits of checklist.*
4. *The Audit documentation is important for several reasons. Explain.*
5. *The Auditor shall evaluate the Audit Evidence to arrive at the conclusion. The Auditor shall verify compliance with applicable laws, rules and regulations and highlight deviations, if any. Elucidate.*

12. Formation of Opinion and Reporting

Past year Papers

Q1. Is there a need to obtain a Management representation letter from the Auditee Company ? Describe.

(old syllabus)(December 2019 5 marks)

1. *A management representation letter is a form letter written by a company's external auditors, which is signed by senior company management. The letter attests to the accuracy of the financial statements that the company has submitted to the auditors for their analysis.*
2. *The auditor may obtain a management representation letter from the auditee company. The letter may be signed by Managing Director/Company Secretary/Senior Management who would normally have authority to issue the same. The Auditor can use this letter of representation as part of his audit evidence.*
3. *However, it is advised to exercise all possible care, reasonable skill & due diligence.*
4. *Adequate enquiries should be made in respect of matters which are capable of direct verification.Mere getting certification from management may defeat the purpose of the audit.*

Q2. What do you mean by an unqualified/unmodified opinion by an auditor ?

(December 2019 5 marks)

1. *An opinion can be of two types: unmodified opinion or modified opinion. Modified opinion is further classified as modified opinion, adverse opinion or disclaimer of opinion.*

2. An unmodified opinion is also known as clean opinion. The auditor shall report an unqualified opinion if the affairs of the company are found to be free from material misstatements and when there exists effective internal control system in the organisation as claimed by the management and tested by the auditor.
3. The auditor should express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:
   1. There is compliance with the applicable law.
   2. The records are free from misstatement and maintained in accordance with applicable laws.
   3. The information on the affairs of the company are in accordance with the applicable reporting framework.

Q3. Highlight inclusion of Emphasis of Matter (EOM) in an audit report.

(December 2020 5 marks)

Emphasis of Matter or EOM is included in the audit report to bring readers attention on specific instance which are not in general course of business of the company. Ideally, such matters should be the part of the Directors' Report or the Management Discussion and Analysis report prepared by the company. If the same is not disclosed by the company in the Directors' report or in Management Discussion and Analysis Report, the auditor may disclose the same in the Auditor's Report. Following are examples of same:

1. An uncertainty relating to outcome of litigation or regulator action in future.
2. Adoption of new technology.
3. Changes in rules and regulations.
4. A major catastrophe which may have had a major effect on the financial position of the company.

5. Early adoption of new accounting standards.

Q4. Define the term 'modified opinion and unmodified opinion' as per Auditing Standard 3-on forming an opinion' (CSAS-3) issued by the ICSI.

(December 2021 3 marks)

Modified Opinion

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

a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines or process; or
b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or
c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process;or
d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws. Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

a. there is due compliance with the applicable laws in terms of timelines and process; and

b. the records as relevant for the audit verified by him as a whole are free from misstatement and maintained in accordance with the applicable laws.

Q5. What do you understand by reporting with qualification ?

(December 2021 5 marks)

Reporting with Qualification

1. A qualification, reservation or adverse remarks, if any, should be stated by the auditor at the relevant places in his report in bold type or in italics.
2. If the auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons therefor.
3. If the scope of work required to be performed is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books or papers being in the custody of another person who is not available or a government authority), the report should indicate such limitations.
4. If such limitations are so material that the Auditor is unable to express any opinion, the Auditor should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to such areas by the company.

Further, the board of directors, in its report prepared under section 134(3) of the Companies Act, 2013, shall provide and explanation in full on any qualification or observation or other remarks made by the company secretary in practice in the secretarial audit report.

Q6. "After the exit meeting and the completion of the audit procedures, the auditor should prepare an executive summary of audit finding". Comment and list out points which should form part of executive summary.

(June 2021 5 marks)

1. *After the exit meeting and the completion of the audit procedures, the auditor should prepare an Executive summary of audit findings. The summary explains the key audit issues, the category of risk, their resolution, agreed adjustments. After discussing the executive summary the audit certificate should be signed by the auditor and by the management or person authorized by the management of the company.*
2. *The executive summary is a high-level summary, which explains audit findings, while it is a concise document; it should contain sufficient information to stand alone as a summary of the evidence which supports audit team's conclusion on the appropriate form of audit certificate.*
3. *The executive summary should include:*
   i. *a summary of the auditee's operations and purpose;*
   ii. *a summary of the regularly framework within which the auditee operates;*
   iii. *an explanation of the audit approach and the balance between test of controls and substantive procedures;*
   iv. *a summary of the key risk identified;*
   v. *a commentary on key balances;*
   vi. *a commentary on the accounting policies and significant account areas;*
   vii. *a summary of the result of audit procedures;*
   viii. *details of areas where difficult questions of principle or judgement were involved;*
   ix. *matters brought forward from previous year audit;*
   x. *a summary of other important matters for attention;*
   xi. *outstanding matters, for example, outstanding reappointment orders or letter*
   xii. *authorizing agreed amendments to the financial statement;*

xiii. a summary of matters carried forward to the next years audit; and

xiv. a conclusion on the appropriate form of audit certificate.

4. The report should clearly mention the process name; significant findings with respect to the criteria, analysis of the consequences of the findings; and recommendations of the auditor. Each observation should be supported by a set of facts and each recommendation to the management should be supported by a business reasons for implementation.
5. Further, the replies on the auditor's observations and recommendation /comments of the management of the Auditee's company should be obtained and should be recorded in the audit file. Also, in case where the auditor opinion is other than the unmodified opinion, the full rationale should be given in the executive summary.

Q7. J Ltd., having paid up capital of ` 150 crore and turnover of ` 1000 crore, has appointed a Company Secretary in Practice to carry out its Audit as per provisions of the Companies Act, 2013. Name the applicable Secretarial Auditing Standard and explain in detail with respect to Forming of Opinion and Third Party Report or Opinion (including the situation(s) requiring Third Party Report) as per the applicable Standard.

(5 marks each) (dec2022)

CSAS-3, the Auditing Standard on Forming of Opinion, is applicable to auditors conducting audits under various laws, including the Companies Act, 2013 and the SEBI Act, 1992. This standard provides guidance on how auditors should form their opinions on the subject matter of the audit.

Here's a detailed explanation of the key points covered in CSAS-3:

1. Applicability:

CSAS-3 is applicable to auditors performing audits under different laws, including the Companies Act, 2013 and SEBI Act, 1992.

2. Basis and Manner for Forming Opinion:

This standard outlines the principles and procedures that auditors should follow when forming their opinions on the subject matter of the audit.

3. Process for Forming Opinion:

The process of forming an opinion is a critical component of any audit. It involves presenting the outcome of the audit in the form of an audit report to the intended users. This process also includes reporting on compliance with applicable laws or identifying deviations from them.

4. Consideration of Materiality:

Auditors must consider materiality while forming their opinions. This involves evaluating the significance of audit evidence and ensuring that all relevant information has been taken into account before issuing the report.

5. Principles to Adhere to:

The auditor should adhere to the following principles:

a) Completeness: Consider all relevant audit evidence before issuing a report.
b) Objectivity: Apply professional judgment and skepticism to ensure factual correctness and appropriate presentation of findings.
c) Timeliness: Prepare the report in a timely manner.
d) Contradictory Process: Verify the accuracy of facts and incorporate responses from concerned parties. This involves considering different perspectives, clarifications, and potentially conflicting interpretations.

6. Use of Third-Party Reports or Opinions:

In certain situations, due to factors like geographical constraints or lack of expertise, auditors may need to rely on third-party reports or opinions. When doing so, the auditor must: a) Clearly state the use of third-party reports or opinions and explain the circumstances necessitating their use. b) Specify if the third-party report or opinion was provided by the auditee. c) Consider important findings or observations from the third party. d) If feasible, conduct additional tests to verify the accuracy of the third-party report or opinion.

Overall, CSAS-3 provides comprehensive guidance to auditors on how to approach the process of forming their opinions during an audit, ensuring that their conclusions are well-founded, objective, and in compliance with applicable laws and regulations. This standard helps maintain the integrity and quality of audit reports.

Q8. The Auditor's Report shall include a section with heading "Auditor's Responsibility". In this context explain the Auditor's Responsibility.

Answer: The "Auditor's Responsibility" section in the auditor's report outlines the duties and obligations of the auditor in relation to the audit engagement:

1. Expressing an Opinion:

   The auditor's primary responsibility is to express an opinion on the compliance with applicable laws and the maintenance of records based on the audit.

2. Conducting the Audit:

   The report states that the audit was conducted in accordance with applicable auditing standards. These standards necessitate compliance with statutory and regulatory requirements, as well as thorough planning and execution of the audit to obtain reasonable assurance about compliance with laws and record-keeping.

3. Inherent Limitations of an Audit:

The report acknowledges that despite proper planning and execution, there are inherent limitations to an audit, including internal, financial, and operating controls. This means that there is a risk that some misstatements or material non-compliances may not be detected.

4. Risk Assessment:

   The auditor has a responsibility to perform procedures to identify, assess, and respond to the risk of material misstatement or non-compliance arising from the auditee's failure to appropriately account for or disclose an event or transaction.

5. Compliance with Auditing Standards:

   The report confirms whether the audit has been conducted in accordance with the applicable auditing standards.

6. Reasonable Assurance:

   The auditor states whether they have obtained reasonable assurance about whether the statements, documents, or records maintained by the auditee are free from misstatement.

7. Responsibility for Opinion:

   The auditor emphasizes that they are responsible for expressing an opinion solely based on the evidence collected, information received, and records maintained by the auditee or provided by the management.

8. Compliance with Applicable Laws and Regulations:

   The report specifies whether the auditee has followed applicable laws, acts, rules, or regulations in maintaining their records, documents, statements, or complied with applicable laws or rules while performing any corporate action.

This section serves to inform stakeholders of the auditor's duties and the scope of their responsibilities in conducting the audit. It provides transparency about the limitations of the audit process and the efforts made to mitigate risks associated with misstatements or non-compliances.

Questions from Module

1. What do you mean by Audit Opinion and describe the various forms of Auditor's Opinion?
2. Explain under what circumstances the Auditor should express the Qualified Opinion and how the Auditor should express the same in the audit report.
3. Explain the manner for signing of secretarial audit report.
4. "Materiality" is the threshold above which missing or incorrect information is considered to have an impact on the decision making of the Auditor. In context of the above lines explain the concept of materiality.
5. Threats to objectivity can arise in a number of ways, some general in nature and some related to the specific circumstances of an assignment or role. Explain the threats to objectivity.
6. The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit. Elucidate.
7. Objectivity is essential for any Secretarial Auditor in exercising professional judgement during the audit. In light of above statement, explain the term objectivity and various threats to Auditor's Objectivity in detail.

13. Secretarial Audit

Past year Papers

Q1. What are the circumstances that calls for the Investigation by Serious Fraud Investigation Office (SFIO).

(Old Syllabus) (December 2021 5 marks)

1. SFIO is a multi- disciplinary organization under the Ministry of Corporate Affairs, of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation etc. for detecting and prosecuting or recommending for prosecution while collar crimes/frauds.
2. SFIO is headed by a Director, who is holding a post of not less than joint secretary with Government of India. He is further assisted by Additional Directors, Joint Directors, Deputy Directors, Senior Assistant Directors, Assistant Directors, Prosecutors and other secretarial staff.
3. The Headquarter of SFIO is at New Delhi, with five Regional Offices at Mumbai, New Delhi, Chennai, Hyderabad & Kolkata.
4. As per Section 212 (1) of the Companies Act, 2013, Investigation into the affairs of a company is assigned to Serious Fraud Investigation Office (SFIO), where Government is of the opinion that it is necessary to investigate into the affairs of a company –
    1. on receipt of a report of the registrar or inspector under section 208 of the Companies Act, 2013;
    2. on intimation of a special resolution passed by a company that its affairs are required to be investigated;

3. *in the public interest; or*
4. *on request from any department of the Central Government or a State Government*

Q2. You are appointed as a Secretarial Auditor for audit of Group Companies comprising of 20 plus companies. There are numerous transactions between the group companies and lot of Inter Company Transfer of funds had taken place during audit period besides frequent resignations of Directors and change in shareholders. During the audit you suspect something is wrong. List out at least six transactions that could be suspicious in your opinion to investigate during audit.

(Old Syllabus) (December 2021 5 marks)

Suspicion is the positive tendency to doubt the trustworthiness of appearances and therefore to believe that one has detected possibilities of something unreliable, unfavorable. The following transactions relating to company formation and management may be considered as the suspicious transactions which may or may not be with the group companies, where the detailed audit is need to be performed are:

1. *subsidiaries which have no apparent purpose;*
2. *companies which continuously make substantial losses;*
3. *complex group structures without cause;*
4. *uneconomic group structures for tax purposes;*
5. *frequent changes in shareholders and directors;*
6. *unexplained transfers of significant sums through several bank accounts;*
7. *use of bank accounts in several currencies without reason;*
8. *purchase of companies which have no obvious commercial purpose;*

9. *sales invoice totals exceeding known value of goods;*
10. *makes unusually large cash payments in relation to business activities which would normally be paid by cheques, banker's drafts etc; and*
11. *transferring large sums of money to or from overseas locations with instructions for payment in cash.*

Q3. If the amount of a fraud detected by a Secretarial Auditor during the course of his work in a company is ` 50 lakh, explain his duties to report.

(June2019 3 marks)

1. *In case of fraud involving an amount less than Rs. 1 Crore, the auditor shall report the matter of fraud to the audit committee or to the board within 2 days of his knowledge of the fraud.*
2. *The report should specify the nature of the fraud with description, approximate amount of the fraud and parties involved in the fraud.*
3. *The following details of each of the fraud reported to the Audit Committee or the Board during the year to be disclosed in the Board's Report: -*
   1. *Nature of fraud with description*
   2. *Approximate amount involved*
   3. *Parties involved, if remedial action not taken; and*
   4. *Remedial actions taken.*
4. *In the instance case ,*

   The Secretarial Auditor shall report the same to the Audit Committee or to the Board of the company within 2 days of his knowledge of fraud.

Q4. A fraud is punishable offence whereas the non-compliance also attracts the penalties. Differentiate between the two concepts i.e. Fraud and Non-Compliance

(June2019 5 marks)

OR

Q. Analyse the difference between Fraud and noncompliance.

1. *Fraud: Any person who is found to be guilty of fraud shall be punishable with imprisonment and shall also be liable to fine as prescribed under section 447 of the Companies Act, 2013.*
2. *The term fraud can be defined as an act or course of deception, an intentional concealment, omission, or perversion of truth, to*
   a. *Gain unlawful or unfair advantage,*
   b. *Induce another to part with some valuable item or surrender a legal right, or*
   c. *Inflict injury in some manner.*
3. *Non Compliance : The term non-compliance refers to failure to comply with the laws, rules regulations etc. The term non-compliance is commonly used in regard to a failure to meet the compliance requirements, be it the failure in following procedures, filing of information, eligibility conditions, reporting etc.*
4. *The relationship between fraud and the Non –compliance can be constructed as the Non- compliance in the company may lead to a fraud. However the fraud can also be made in the compliant company.*

Q5. As a Company Secretary, how would you deal with a complaint by the Registrar of Companies (ROC) and the Serious Fraud Investigation Office (SFIO) in a Special Court.

(Old Syllabus) (June 2021 5 marks)

1. *The ROC and SFIO, both have rights to file a complaint against the company before a magistrate, if it has violated the provisions of Companies Act, 2013. They can file a complaint under section 190 of the Criminal Procedure Code, 1973. But the difference lies in how the complaint is treated.*

2. The complaint of SFIO is treated as police report under section 173 of the Criminal Procedure Code, 1973. Whereas, the complaint filed by the Registrar of Companies is not considered as a police report but a private complaint under section 190 of the Criminal Procedure Code, 1973.
3. The complaint by the registrar of companies has to pass through the hurdle of pre-trial evidence on the same platform as that of the complaint of SFIO.
4. After a complaint has been filed by the SFIO it is treated as police report and it directly proceeds to the section 204 after which summons or warrants are issued. However, the complaint filed by the Registrar of Complaints has to pass through the procedure mentioned under section 200 to 203 which causes a delay in the prosecution initiated by the registrar of companies.
5. Under Section 200 Criminal Procedure Code, 1973, the magistrate has to record the statement of the complainant on oath, and also of other witnesses, if any. As the large number of complaints are filed by private individuals, many of which may be frivolous complaints. Therefore, it is considered necessary to verify the details of such complaints by examining the complainant on oath under Section 200 of Criminal Procedure Code, 1973. In certain "complaint" cases, action may have to be taken by the magistrate under the provisions of Section 202 Criminal Procedure Code, 1973, i.e., an inquiry by the magistrate himself or an investigation by police, etc.
6. After these steps, if the magistrate does not find sufficient ground or finds no prima facie case to proceed further, he may dismiss the complaint under Section 203 of Criminal Procedure Code, 1973; on the other hand, if he finds sufficient ground to proceed, he may issue process under Section 204 of Criminal Procedure Code, 1973.

Q6. Define Speculation. How Suspicion is different from Speculation ?

(June2021 3 marks)

OR

Q.7 Define the term Suspicion and Speculation.

(Old Syllabus)

The term Speculation is defined as act of trading in an asset or conducting a financial transaction that has a significant risk of losing most or all of the initial outlay with the expectation of a substantial gain. With speculation, the risk of loss is more than offset by the possibility of a huge gain, otherwise there would be very little motivation to speculate. It may sometimes be difficult to distinguish between speculation and investment, and whether an activity qualifies as speculative or investing can depend on a number of factors, including the nature of the asset, the expected duration of the holding period, and the amount of leverage.

1. *Such as the Foreign Exchange Market, Bond Market, Stock Market and Specially the derivatives segment which comprises of futures and options contracts which is typically used by brokerages and high net worth individuals to bet on the direction of the markets. Due to this the Indian capital markets have tilted towards speculative instruments having implications of a high level of speculative trading activity compared to investment activity.*
2. *On the other hand, the term Suspicion is the positive tendency to doubt the trustworthiness of appearances and therefore to believe that one has detected possibilities of something unreliable, unfavorable.*

Examples of information which could be classified as suspicion are: Recurring negative cash flows from operations or an inability to generate cash flows from operations while reporting earnings and earnings growth.

Q8. Explain how each of the following major frauds can be taken place in case of loans/ funds transactions:

(i) Shot gunning

(ii) Concealing Liabilities

(iii) Misstatement

(iv) Advances Portfolio Accounts

(v) Higher lag time.

(Old Syllabus) (5 marks)(dec2022)

Answer: *Incomplete Know Your Customer (KYC) processes can lead to various types of fraud in the financial sector. Here are some major frauds that can occur due to incomplete KYC:*

1. *Shot gunning:*

   This type of fraud involves obtaining multiple loans for the same property simultaneously, often for an amount far greater than the actual value of the property. Incomplete KYC may make it easier for individuals to engage in this fraudulent activity, as proper verification of ownership and valuation may not occur.

2. *Concealing Liabilities:*

   Borrowers engaged in this type of fraud deliberately hide existing obligations, such as mortgage loans on other properties or recently acquired credit card debts. This is done to lower the declared monthly debt on loan applications, which can lead to the borrower being approved for a larger loan amount than they would be otherwise.

3. *Misstatement:*

   Misstatement fraud involves intentionally providing inaccurate information about the appraised value of a property. Incomplete KYC may lead to

inadequate verification of property values, making it easier for borrowers to exaggerate or understate the value for fraudulent purposes.

4. *Advances Portfolio Accounts:*

   Frauds related to advances portfolio accounts form a significant share of the total amount involved in banking sector frauds in India. Incomplete KYC may contribute to the lack of proper due diligence in evaluating loan requests, making it easier for fraudulent loans to be approved.

5. *Higher lag time:*

   Incomplete KYC processes can lead to delays in detecting and declaring fraud. This lag time provides borrowers with additional time to use the funds fraudulently obtained before the fraud is identified. It allows them an opportunity to erase the money or engage in further illicit activities.

In summary, incomplete KYC processes create vulnerabilities in the system, making it easier for individuals to engage in various types of fraudulent activities related to loans and property transactions. It's crucial for financial institutions to have robust KYC procedures in place to mitigate these risks and maintain the integrity of the financial system.

Q9. Z Ltd. is a listed Company, in pharma sector. During the Covid-19, for expansion, it acquired M Ltd., which is an unlisted Company. The medicine in Highly demand named 'ROLO' was produced by M Ltd. in large quantity. During the investigation, it was found that there was big scam, where the merged entity has given huge incentives amounting `2000 Crore approximately to medical professionals for recommending the ROLO. The government has also constituted a special committee to report on the same. A Company Secretary firm was engaged to report on fraud. In view of this type of cases, what other types of

transactions to be noticed under the term of 'Fraud'. Who is considered as an Auditor for fraud reporting? (5 marks)(dec2022)

Answer: *The given case highlights various types of transactions that have historically been associated with fraudulent activities. These transactions are susceptible to fraud due to their complexity, the involvement of multiple parties, and potential for financial gain through illicit means. Here are the specific types of transactions mentioned:*

1. Related Party Transactions:

Fraud can occur when transactions involve parties that have a pre-existing relationship with the company, such as directors, major shareholders, or their relatives. These transactions may be conducted at non-market rates or with undisclosed conflicts of interest.

2. Excessive Managerial Remuneration:

Fraudulent activities can take place when executives or managers receive compensation that is disproportionately high compared to industry standards or the company's financial performance.

3. Insider Trading:

Fraudulent insider trading involves individuals within a company using non-public, material information to buy or sell securities for personal gain or to share with others for financial benefit.

4. Inter-Company Transactions:

Transactions between different entities within a corporate group can be susceptible to fraud if they are not conducted at arm's length, or if they involve manipulation of prices, quantities, or terms.

5. Mergers/Demergers/Acquisitions:

Fraud can occur in the process of mergers, demergers, or acquisitions when there are misrepresentations of financial statements, hidden liabilities, or manipulation of valuation metrics.

6. IPO Frauds:

Initial Public Offerings (IPOs) can be susceptible to fraudulent activities, such as misrepresenting the financial health of the company to inflate stock prices.

Other means of corporate fraud mentioned in the text include:

7. Inadequate Disclosures:

Providing incomplete, misleading, or false information in financial reports, disclosures, or public statements.

8. False or Misleading Information:

Circulating inaccurate or intentionally deceptive information about the company's financial performance, prospects, or activities.

9. Theft of Assets:

Unauthorized or fraudulent removal of company assets for personal gain or for resale.

10. False Expenses:

Submitting fictitious or inflated expense claims for reimbursement.

11. Corruption:

Engaging in unethical practices, such as bribery or kickbacks, to gain unfair advantages.

12. Theft of Information:

Illegally obtaining and using proprietary or confidential information for personal or competitive advantage.

13. Fraudulent Applications:

Providing false or misleading information in applications for loans, grants, or other financial benefits.

14. Misuse of Assets:

Utilizing company resources or assets for personal purposes without proper authorization.

15. Dishonest Business Partners:

Collaborating with business partners who engage in fraudulent activities, such as submitting false invoices or misrepresenting transactions.

16. Fraudulent Billing:

Sending invoices for goods or services that were not provided, or intentionally inflating the charges.

It's important to note that these are examples provided to guide fraud detection, and there may be other types of fraudulent activities not explicitly mentioned. Vigilance, thorough internal controls, and adherence to ethical business practices are crucial in preventing and detecting fraud in any organization.

Who is considered as an Auditor for Fraud Reporting?

The auditor includes the: ·

- Statutory Auditors of the company appointed under section 139 of the Companies Act, 2013,
- Company Secretary in Practice conducting Secretarial Audit under section 204 of the Companies Act, 2013, ·

- *Cost Accountant in practice conducting Cost Audit under section 148 of the Companies Act, 2013 and*
- *the Branch Auditors referred to in section 143(8) of the Companies Act, 2013.*
- *However, the Internal Auditor or such other professionals appointed under any other statutes rendering other services to the company such as a tax auditor appointed under Income Tax Act, GST auditors appointed under the respective GST legislations are not covered under section 143 of the Companies Act, 2013.*

Q10. What are the penal provisions under the Companies Act, 2013 for giving incorrect Secretarial Audit Report or making false statements therein

(December 2019 5 marks)

1. *Section 448 of Companies Act 2013 deals with penalty for false statements. The section provides that if in any return, report certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement-*

   (a)which is false in any material particulars, knowing it to be false; or

   (b)which omits any material fact, knowing it to be material, he shall be liable under section 447.

2. *Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, involving an amount of at least ten lakh rupees or one percent of the turnover of the company, whichever is lower shall be punishable with*

   (a)imprisonment for a term which shall not be less than six months but which may extend to ten years and

(b) fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

(c) In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years

3. In case where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with

(a) imprisonment for a term which may extend to five years or

(b) fine which may extend to Fifty lakh rupees or

(c) both .

4. In view of this, a company secretary in practice will be attracting the penal provisions of section 448, for any false statement in any material particular or omission of any material fact in the Secretarial Audit Report. However, a person will be penalised under section 448 in case he makes a statement, which is false in any material particular, knowing it to be false, or which omits any material fact knowing it to be material.

5. It is pertinent to note that section 448 applies to "any person". In view of this, a company secretary in practice, who is an independent professional, will be attracting the penalty, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

Q11. Explain compliances specified in the Regulation 24A regarding applicability of secretarial audit under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Also state the exemptions provided from this Regulation.

(December 2020 5 marks)

Regulation 24A of SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015 specifies the provisions related to Secretarial Audit as under:

1. *Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019.*
2. *The terms "listed entity" means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).*
3. *Material subsidiary mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.*
4. *According to Regulation 15 of SEBI (LODR) Regulations, 2015 the compliance specified in regulations 24A, shall not apply, in respect of –*
    a. *the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year*
    b. *the listed entity which has listed its specified securities on the SME Exchange.*

However, in case of other listed entities, which are not companies, but body corporate or are subject to regulations under other statues, the provisions of regulation 24A shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities

Q12. "The Secretarial Audit lays the groundwork for the establishment of an ongoing Secretarial and Legal Compliances." Being a practicing Company Secretary what would you do while :

(i) Communicating to the earlier incumbent and

(ii) Submission of Secretarial Audit Report

(December 2021 5 marks)

(i) Communicating to the earlier incumbent

1. *Whenever a company secretary in practice is engaged as a secretarial auditor in place of an earlier incumbent, he shall communicate to the earlier incumbent about the proposed engagement in writing to be sent by registered/ speed post or any other mode of delivery, as may be recognised by the Institute of Company Secretaries of India.*
2. *The Council of ICSI at its meeting held on 16th March, 2019 has made amendments in Guidelines wherein for Practice Company Secretaries, communication to previous incumbent would be mandatory before accepting the assignment, in terms of Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980.*
3. *The Council has approved the some services in respect of which it shall be mandatory to communicate to the previous incumbent (Company Secretary) before accepting the assignment in terms of terms of clause (8) of part I of the First Schedule to the Company Secretaries Act, 1980, which includes the Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013 and Issue of Secretarial Audit Report to material unlisted subsidiaries of Listed entities (whose equity shares are listed) under Regulation 24A of SEBI (LODR) Regulations, 2015.*

2) Submission of Secretarial Audit Report

1. After considering the clarifications/replies of the management, the secretarial auditor shall prepare the secretarial audit report in Form No. MR.3 under section 204 of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
2. The report is addressed to the members but is to be submitted to the Board. The report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out/not carrying out due compliances of the applicable provisions of the various laws. The report shall be provided with or without qualifications.

Q13. Jain Ram & Co., Practicing Company Secretary, during the secretarial audit wants to evaluate the function of Internal Audit. Does this come under the function of the Secretarial Auditor ? Prepare a note

(December 2021 5 marks)

(This question is a mixup of chapter 13&14)

3. Secretarial audit is the audit of non-financial aspects of the company. It involves verification of books, record and accounts of the company to ensure company is in compliance with all applicable corporate laws. It helps the company to assess the risk and mitigate the same by incorporating effective measures. It improves company's effectiveness, control and governance as non-compliance of law attracts heavy penalties and fines.
4. During the performance of the Secretarial Audit, the secretarial auditor also needs to report on the adequacy of systems and process in the company. The internal audit function greatly assist the Secretarial auditor in determining the extent to which he can place reliance upon the work of the internal auditor. The Secretarial auditor also needs to report on the adequacy of the systems

and processes prevalent in the company. The important aspects to be considered in this context are:

1. ***Organisational Status*** *- Whether internal audit is undertaken by an outside agency or by an internal audit department within the entity itself. The internal auditor reports to the management, in an ideal situation he reports to the highest level of management and is free of any other operating responsibility. Any constraints or restrictions placed upon his work by management should be carefully evaluated. In particular, the internal auditor should be free to communicate fully with the external auditor.*

2. ***Scope of Audit Function*** *- The secretarial auditor should ascertain the nature and depth of coverage of the assignment. He should also ascertain to what extent the management considers, and where appropriate acts upon internal audit recommendations.*

3. ***Technical Competence*** *- The secretarial auditor should ascertain that internal audit work is performed by persons having adequate technical training and proficiency.*

4. ***Due Professional Care*** *- The secretarial auditor should ascertain whether internal audit work appears to be properly planned, supervised, reviewed and documented. An example of the exercise of due professional care by the internal auditor is the existence of adequate audit manuals, audit programmes and working papers.*

5. ***Monitoring of internal control*** *- The internal audit function may be assigned specific responsibility for reviewing controls, monitoring their operation and recommending improvements thereto.*

6. ***Examination of financial and operating information*** *- The internal audit function may be assigned to review the means used to identify, measure, classify and report financial and operating information, and to make specific inquiry into*

individual items, including detailed testing of transactions, balances and procedures.

7. ***Review of operating activities*** *- The internal audit function may be assigned to review the economy, efficiency and effectiveness of operating activities, including non- financial activities of an entity.*

8. ***Review of compliance with laws and regulations*** *- The internal audit function may be assigned to review compliance with laws, regulations and other external requirements, and with management policies and directives and other internal requirements.*

9. ***Risk management*** *- The internal audit function may assist the organization by identifying and evaluating significant exposures to risk and contributing to the improvement of risk management and control systems.*

10. ***Governance*** *- The internal audit function may assess the governance process in its accomplishment of objectives on ethics and values, performance management and accountability, communicating risk and control information to appropriate areas of the organization and effectiveness of communication among those charged with governance, external and internal auditors, and management.*

Q14. Define what are designated securities for the purpose of Listed entity and Material unlisted subsidiaries as defined by SEBI in LODR Regulation.

(December 2021 3 marks)

According To SEBI(LODR) Regulations ,

1. *Listed Entity means an entity whose designated securities are listed, on a recognised stock exchange(s), in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s).*
2. *Designated Securities includes the equity shares, convertible securities, non-convertible debt securities, nonconvertible redeemable preference shares,*

perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, security receipts, units issued by mutual funds and any other securities as may be specified by the Board.

3. *Material subsidiary mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.*
4. *Subsidiary means a company in which the holding company –*
   a) *controls the composition of the Board of Directors; or*
   b) *exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies*

Q15. FKZ Ltd. is a public limited company carrying business of manufacturing the electric products having a paid up capital of `75 crore and turnover of `250 crore as per latest audited financial statement. Answer the following :

1. **Explain the applicability of Secretarial Audit to this company.**
2. **Define 'Turnover' as per section 2(91) of the Companies Act, 2013.**
3. **Explain the provision regarding appointment of the Secretarial Auditor.**
4. **In case, 'S' a Secretarial Auditor, is found involved in the fraud amounting of `3 lakh (does not involve any public interest), then state the penalty for such action.**

(June 2019 2+1+1+1=5 marks)

1. *Secretarial audit is the audit of non-financial aspects of the company. It involves verification of books, record and accounts of the company to ensure company is in compliance with all applicable corporate laws. It helps the company to assess the risk and mitigate the same by incorporating effective measures.*

2. ***Section 204(1)*** *of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that*

   a) *Every listed company;*
   b) *Every public company having a* ***paid-up share capital of fifty crore rupees or more; or***
   c) *Every public company having a* ***turnover of two hundred fifty crore rupees or more***
   d) *Every company having* ***outstanding loans or borrowings*** *from banks or public financial institutions of* ***one hundred crore rupees or more.***

   Shall attach the Secretarial report along with its board report in ***form MR-3.***

3. *As per section 2(91) of the Companies Act, 2013, "Turnover" mean the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.*
4. *Only a Company Secretary who has obtained certificate of Practice can conduct a secretarial audit.As per rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, secretarial auditor is required to be appointed by means of resolution at a duly convened meeting of the Board of Directors of the company. He should be appointed at the beginning of the financial year and as a good practice, the Secretarial Auditor should submit a report to the Board at the end of each quarter reporting about the compliances of the company.*
5. *In the instant case since the fraud is of Rupees 3 Lakh which is less than Rupees 10 Lakh and does not involve public interest , the Secretarial Auditor 'S'*

shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to Rupees 50 Lakh or with both.

Q16. The Board of Directors of ATP Ltd. authorized its one of the Directors X to appoint Secretarial Auditor of the Company. Can X do so as per the provisions of the Companies Act, 2013 ? Also explain pre-engagement meeting in the Audit Engagement Process.

(5 marks)(dec2022)

Section 179(3)(k) of the Companies Act, 2013, in conjunction with Rule 8(4) of the Companies (Meeting of Board and its Powers) Rules, 2014, specifies that the appointment of the Internal Auditor and Secretarial Auditor of a company must be made through the passing of a resolution at a duly convened meeting of the Board. This means that the appointment cannot be made through a resolution circulated among board members, nor can it be delegated to Key Managerial Personnel or Senior Management, even if authorized by the Board.

In practical terms, this means that X, in this context, cannot appoint the Secretarial Auditor of ATP Ltd. even if authorized by the Board.

Regarding the pre-engagement meeting in the audit engagement process, it is a crucial step before accepting an audit engagement. During this meeting, the auditor and the auditee (the company being audited) discuss various aspects related to the audit, including:

1. Terms of Engagement:

This includes discussing the scope of the audit, the responsibilities of the auditor and the auditee, and any specific requirements or expectations.

2. Prior Year Audit Findings and Conclusions:

Reviewing the findings and conclusions from previous audits helps provide context and identify areas of focus for the current audit.

3. Appropriateness of Reporting Framework:

Determining the reporting framework (e.g., IFRS, GAAP) ensures that the financial statements will be prepared in compliance with the relevant accounting standards.

4. Understanding Auditee's Business Operations and Environment:

This involves gaining insight into the company's industry, operations, and the external factors that may impact its financial statements.

5. Internal Control System:

Assessing the effectiveness of the internal control system helps the auditor plan the audit procedures and identify potential areas of risk.

6. Commercial Terms of the Audit:

Discussing the fees and other commercial terms associated with the audit engagement.

7. Timelines and Milestones:

Establishing the timelines and milestones for conducting the audit and submitting the audit report ensures that both parties have clear expectations regarding the audit process.

During the pre-engagement meeting, the auditor is also obligated to disclose any conflicts of interest with the auditee. Additionally, any information obtained during this meeting is subject to confidentiality obligations, ensuring that sensitive information is handled with the utmost care and discretion.

Q17. How would you identify the events having major bearing on affairs of the Company during secretarial audit? (5 marks)(dec2022)

Answer: The text outlines the responsibilities of an auditor in identifying and reporting events or actions that significantly impact a company's affairs and governance. These events have a substantial bearing on the company's operations, financial performance, and compliance with relevant laws and regulations. Here are the key points:

1. Identification and Reporting of Significant Events:

- The auditor is tasked with identifying and reporting all events or actions that have a major impact on the company's affairs, governance, and financial performance. This includes events that are significant according to applicable laws, rules, regulations, guidelines, and standards.

2. Relevance of Information:

- The auditor should consider all information that is pertinent to the company's performance and operation. This encompasses data that may be price-sensitive (information that could influence the company's stock price), affect the payment of interest or dividends on financial instruments like non-convertible preference shares or debt securities, or have a significant impact on the company's overall financial health.

3. Examples of Significant Events/Actions:

- The text provides a list of situations that are considered to have a major bearing on the company's affairs. These include: a) Alterations to the company's incorporation documents. b) Changes in the company's capital structure. c) Changes in the affairs or management of the company. d) Changes in licensing or permissions required for the company's operations. e) Actions related to capacity expansion and utilization of the company. f) Sale

or disposal of substantial assets owned by the company. g) Entering into joint venture agreements or similar collaborations.

In summary, the auditor's role is to thoroughly assess and report on events or actions that significantly influence the company's operations, governance, and financial performance. This encompasses a wide range of situations, from changes in management to significant business transactions. These reports are vital for stakeholders and regulators in understanding the company's financial health and compliance with legal and regulatory requirements.

Q18. You are in the process of doing due diligence of ABC Ltd. a listed company on an assignment. (i) How will you check the correctness of the Constitution of the Board, based on the status (executive/non-executive) of the Chairperson. (3 marks)(june2023)

Answer: Regulation 17(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 outlines specific points that need to be checked based on the status of the Chairperson of a company. These points are crucial for ensuring a balanced and independent composition of the Board of Directors. Here's an explanation of each point:

1. Is the Chairperson an Executive Chairperson?

- This question aims to determine whether the Chairperson is actively involved in the day-to-day operations and management of the company. An executive Chairperson typically holds an executive position within the company in addition to their role as Chairperson.

2. If the Chairperson is executive, does 50% or more of the Board consist of Independent Directors?

- If the Chairperson is also an executive, this question addresses the independence of the Board. It emphasizes the need for a significant proportion (50% or more)

of the Board to be comprised of Independent Directors. This is important for maintaining checks and balances within the company's decision-making processes.

3. *If the Chairperson is non-executive and is a promoter of the Company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, does 50% or more of the Board consist of Independent Directors?*

- *In this scenario, where the Chairperson is non-executive and has affiliations with the company's promoters or key management positions, it's again crucial to ensure that the majority of the Board (50% or more) is composed of Independent Directors. This helps prevent undue influence in the decision-making process.*

4. *If the Chairperson is non-executive and is not a promoter of the Company or is not related to any promoter or person occupying management positions at the Board level or at one level below the Board, does one third or more of the Board consist of Independent Directors?*

- *In cases where the Chairperson is non-executive and has no direct affiliations with the promoters or top management, the requirement is for at least one third of the Board to be Independent Directors. This ensures a level of independent oversight and governance.*

These checks are important for ensuring corporate governance and transparency within the company. They aim to strike a balance between executive and independent oversight, thereby safeguarding the interests of shareholders and stakeholders. Compliance with these provisions is essential for companies listed on stock exchanges to maintain regulatory standards.

Q19. " Secretarial audit is prevention rather than post-moterm." In light of this statement explain the need of secretarial audit particularily with reference to corporate law compliances.

(June 2015 5 marks)

1. A company has to comply with various acts, rules, regulations and schedules. Every Company, while pursuing its business activities, has to comply with the laws relating to the Companies Act, Securities laws, FEMA, Industry Specific and General laws like Labour laws, Competition law and Environmental and Pollution related laws. Secretarial audit is conducted to ensure company's compliance with the same.
2. Secretarial audit is based on the principle of "Prevention is better than cure" rather than post-mortem exercise and to find faults which means that it is conducted to ensure company is in compliance with various regulations to avoid compliance risk. It improves company's effectiveness, control and governance as non-compliance of law attracts heavy penalties and fines. Secretarial audit is required for following purposes:

   a) To ensure that the legal and procedural requirements are complied.
   b) Provides a level of confidence to the directors & key managerial personnel etc
   c) Directors can concentrate on important business matters
   d) Strengthen the image and goodwill of a company in the minds of regulators and stakeholders
   e) It helps the investor in analyzing the compliance level of companies.

Questions From Module

1. Indicate the scope of secretarial audit, which should be taken into consideration by a Practicing Company Secretary, to examine and report the compliance of various laws/regulations as specified in the form MR-3, for submission in Secretarial Audit Report.
2. Elucidate the Importance of Auditing Standard on Secretarial Audit
3. Define the risk of Secretarial Auditor & code of conduct.
4. Explain reporting of specific event under Secretarial Audit Report
5. Mehar, a Chartered Accountant was working as a Manager in Finance team of Sita Mining Ltd. Mehar was curious to know about the Secretarial Auditor comments on compliance with applicable laws and regulations. In the preliminary meeting, he asked Rohan, the Secretarial Auditor about the process of identification of applicable laws to the Company. Explain the process.
6. Explain compliances specified in the Regulation 24A regarding applicability of secretarial audit under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Also state the exemptions provided from this Regulation.
7. You are appointed as a Company Secretary of Aparana Pvt Ltd. You have to conduct the audit for the financial year 2019-20. Draft the guidelines for verification of Board Composition & Board Process as per the CSAS-4 (Auditing Standard on Secretarial Audit).
8. Z, one of the director of Shyam International Ltd. leaked an insider information in the market for personal benefit. Ram, Secretarial auditor of the company, in the course of performance of his duties find out this offence which involved the amount of Rs. 2.40 crore. As a Secretarial Auditor of the company how would Ram report about this ? Also state the consequences of non-compliance by the Auditor under the Companies Act, 2013.

14. Internal Audit

Past year Papers

Q1 Define Internal Audit. Describe core principles of Internal Audit.

(December 2019 5 marks)

1. *According to the Institute of Internal Auditors, Internal Auditing is an independent objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.*
2. *The Internal audit assesses the following:*
   a. *Effectiveness and efficiency of internal control system.*
   b. *Achievement of goal.*
   c. *Corporate governance practices.*
   d. *Compliance with laws, regulations, and contracts.*
3. *An effective internal audit activity is a valuable resource for management and the board and the audit committee due to its understanding of the organization and its culture, operations, and risk profile and it provides assurance to other stakeholders such as regulators, employees, providers of finance, and shareholders.*
4. *Internal Audit is performed by professionals with an in-depth understanding of the business culture, systems, and processes. Internal audit activity provides assurance that internal controls in place are adequate to mitigate the risks, governance processes are effective and efficient, organizational goals and objectives are met and organisation is in compliance with applicable laws.*

5. *The act does not prescribe any specific time frame for conducting internal audit but it is considered a good practice to conduct the audit on a quarterly basis so that the compliances are monitored properly and there are no frauds or deviations in the company.*
6. *Core principles enhance the internal audit and failure to achieve any of the core principles implies that an internal audit activity is not as effective as it could be in achieving internal audit's mission. Following are the core principles:*
   a. *Independent exercise*
   b. *Integrity*
   c. *Competence and due professional care*
   d. *Appropriately positioned and adequately resourced*
   e. *Aligns with the strategies, objectives, and risks of the organisation*
   f. *Demonstrates quality and continuous improvement*
   g. *Provides risk-based assurance*
   h. *Future-focused*
   i. *Promotes organisational improvement*
   j. *Communicates effectively*

Q2. Appraisal of management decisions involves a number of steps. Enumerate them.

(December 2020 5 marks)

Steps in Appraisal of Management Decision

In appraisal of management decision the following steps should be considered by the auditor:

1. *Whether the management decision are well defined or not.*

2. *Whether the Objectives and desired output has been set out clearly and relate explicitly to the policy or strategy adopted by the company to help in post event evaluation of the management decisions. Ideally the objectives of every management decision should be specific, measurable, agreed, realistic and time-bound.*

3. *While taking decision, whether the management has considered the effect of the associated risks; time availability; scale and location; scope for alternative arrangements with other public bodies; degree of involvement of regulators and civic bodies; capacity of the market to deliver the required output; alternative asset uses; use of new or established technology; and environmental issues.*

4. *In case of the major investment decision, whether various possible options were considered and whether such potential options are analyzed and reviewed in terms of value, costs, benefits, risk and uncertainties of options.*

5. *Whether the options are selected after due analysis and a consensus decision is taken.*

6. *Whether the selected alternative has been implemented efficiently.*

7. *Whether ongoing review of management decision control and evaluation system is monitored.*

Q4. Internal audit is applicable to every company. Comment.

(June 2019 5 marks)

Section 138 of Companies Act, 2013 makes it mandatory for following companies to have an internal audit:

***Section 138** of Companies Act, 2013 makes it mandatory for following companies to have an internal audit:*

1. *Every listed company;*
2. *Every unlisted public company having-*
   a) *paid up share capital of fifty crore rupees or more during the preceding financial year; or*
   b) *turnover of two hundred crore rupees or more during the preceding financial year; or*
   c) *outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or*
   d) *outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and*
3. *Every private company having-*
   a) *turnover of two hundred crore rupees or more during the preceding financial year; or*
   b) *outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year*
4. *Hence, the companies that fall in the above threshold are required to appoint an internal auditor which shall either be individual or partnership firm or body corporate.*

QS. "To be efficient and effective, the internal auditor must have adequate independence." Comment.

(June 2021 3 marks)

1. *Internal Auditing is an independent objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined*

approach to evaluate and improve the effectiveness of risk management, control and governance processes.

2. Under the provisions of Companies Act, 2013, internal auditor may or may not be an employee of the company, but he evaluates the functioning of the management at different levels. Therefore, to be efficient and effective, the internal auditor must have adequate independence.
3. It may be noted that by its very nature, the internal audit function cannot be expected to have the same degree of independence as is essential when the external auditor expresses his opinion on the financial information.
4. To ensure his independence he is made responsible directly to the board of directors through audit committee. Such a channel of communication provides an independent mode whereby an internal auditor can communicate and share his views on the scope of internal audit, findings, etc.
5. If internal auditor is made subordinate to lower-level management, his independence will be affected which will affect his functioning and effectiveness. An outsider, like a Chartered Accountant or a Company Secretary or a firm of Chartered Accountants or a firm of Company Secretaries, if acting as internal auditor, is likely to be more independent than an employee of the organization.

(TIP: Factors impairing the independence of internal auditor- Can also be added in the answer)

Q6. Mayank has recently started as a Company Secretary in Practice. He has got an assignment of internal audit. Advise Mayank about internal audit and its stepwise approach.

(June 2021 5 marks)

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an

organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

Step-wise process

a. Establish and communicate the scope and objectives for the audit to appropriate management.
b. Develop an understanding of the business area under review. This includes objectives, measurements and key transaction types. This involves review of documents and interviews. Flow charts and narratives may be created if necessary.
c. Describe the key risks facing the business activities within the scope of the audit.
d. Identify control procedures used to ensure each key risk and transaction type is properly controlled and monitored.
e. Develop and execute a risk-based sampling and testing approach to determine whether the most important controls are operating as intended.
f. Report issues and challenges identified and negotiate action plans and solutions with management to address the problems.
g. Follow-up on reported findings at appropriate intervals. Internal audit departments maintain a follow-up database for this purpose

Q7. Can a Company Secretary be appointed as an Internal Auditor of the Company? Explain the role of Internal Auditor. (3 marks) (dec2022)

Answer: The provisions of the Companies Act, 2013 state that an internal auditor appointed under section 138 can be either a Chartered Accountant, a Cost Accountant, or any other professional (including Company Secretaries) as decided by the board to conduct the internal audit of a company. This means that a Company Secretary can indeed be appointed as an Internal Auditor of a Company.

The role of an internal auditor in a company is crucial for ensuring good governance and maintaining a robust internal control framework. Here are the key responsibilities and functions of an internal auditor:

1. Evaluation of Efficiency and Effectiveness of Controls:

- The internal auditor is tasked with assessing the efficiency and effectiveness of the existing internal controls within the company. This involves reviewing processes, procedures, and systems to ensure they are operating as intended.

2. Recommendation of New Controls or Discontinuation of Unnecessary Controls:

- Based on their assessment, the internal auditor may recommend the implementation of new controls where deficiencies are identified. Conversely, if certain controls are deemed unnecessary or redundant, the auditor may recommend discontinuing them to streamline operations.

3. Using Control Frameworks:

- Internal auditors often utilize established control frameworks (such as COSO or COBIT) to evaluate and strengthen the internal control environment. These frameworks provide standardized guidelines for assessing and enhancing controls.

4. Developing Controlled Self-Assessment Techniques:

- The internal auditor may develop controlled self-assessment techniques for the company. This involves creating tools and methods that enable management and employees to self-assess their compliance with controls and identify areas for improvement.

Overall, the internal auditor plays a vital role in enhancing the company's internal control structure and promoting better corporate governance. By conducting thorough assessments, making recommendations for improvements, and utilizing established frameworks, the internal auditor helps ensure that the company's operations are conducted efficiently, effectively, and in compliance with applicable laws and regulations. This, in turn, contributes to the overall success and sustainability of the company.

Q8. Explain the role of an Internal Audit in the internal control mechanism of a company. (dec2022)

Answer: Internal audit is a crucial component of an organization's internal control mechanism. It plays a vital role in ensuring transparency and accountability within the company. Here's a detailed explanation of the key points regarding internal audit and the role of the audit committee:

1. Audit committee provides assistance to Board of Directors in following

a. Integrity of Financial Statements

b. Compliance with laws, rules and regulations

c. Effectiveness of internal audit

d. Risk assessment

2. Role of Internal Auditor:

- The internal auditor contributes to the ongoing effectiveness of the internal control system through evaluation and recommendations. However, it's important to note that the primary responsibility for designing, implementing, maintaining, and documenting internal control lies with management.

3. Key Functions of Internal Auditor:

- The role of the internal auditor encompasses several critical functions:

a. Evaluation of the efficiency and effectiveness of controls

b. Recommending the implementation of new controls where necessary or discontinuing unnecessary controls.

c. Utilizing control frameworks to assess and improve control mechanisms.

d. Developing control self-assessment techniques to ensure ongoing compliance and effectiveness.

In summary, internal audit plays a pivotal role in evaluating and enhancing an organization's internal control system. While the audit committee assists the board of directors in oversight responsibilities, management holds primary responsibility for key areas like financial reporting, compliance, and risk management. The internal

auditor's functions focus on evaluating controls, recommending improvements, and contributing to better corporate governance.

Q9. How will you appraise each of the following as an internal auditor:

(i) Management decisions

(ii) Investment Decisions.

(Old syllabus) (5 marks each)

Answer: *When appraising management's general decisions, it's important to consider several critical factors to assess their effectiveness and impact. Here's an explanation of the steps to be considered:*

1. *Well-Defined Decisions:*

- *This step involves evaluating whether the management decisions are clearly and precisely defined. This ensures that everyone understands what the decision entails, reducing the potential for misinterpretation or confusion.*

2. *Clear Objectives and Output:*

- *It's essential to ascertain if the objectives and desired outcomes of the decisions have been explicitly set out. These should be closely related to the policies or strategies adopted by the company. This linkage facilitates a post-event evaluation to determine the success of the decisions.*

3. *Specific, Measurable, Agreed, Realistic, Time-Dependent (SMART):*

- *The decisions should meet the criteria of being specific, measurable, agreed upon by relevant stakeholders, realistic, and time-bound. This ensures that the decisions are well-structured and have clear performance indicators.*

4. *Risk Assessment:*

- Management should consider the associated risks with the decisions. This includes factors like time constraints, scale and location considerations, and the availability of alternative arrangements in case the initial plan encounters challenges.

5. Regulatory and Civic Involvement:

- The level of involvement of regulatory bodies and civic authorities in the implementation of the decisions should be evaluated. Understanding the regulatory framework ensures compliance and avoids potential conflicts.

6. Market Capacity:

- It's crucial to assess whether the market has the capacity to deliver the required output. This involves considering factors like supply chain capabilities, production capacities, and demand levels.

7. Alternative Asset Utilization:

- Management should explore alternative uses for assets to maximize their value and contribution to the company's objectives. This can involve repurposing existing resources for new opportunities.

8. Use of Established Technology:

- The decisions should consider the utilization of established and proven technologies. This ensures that the chosen technological solutions are reliable, efficient, and have a track record of success.

9. Environmental Considerations:

- Environmental issues are increasingly important in decision-making. The management should assess the environmental impact of their decisions, ensuring compliance with regulations and promoting sustainable practices.

By systematically evaluating management decisions based on these steps, companies can enhance their decision-making processes, improve the likelihood of successful outcomes, and ensure that their actions align with organizational objectives and broader societal concerns. This comprehensive assessment helps in driving effective and responsible decision-making.

(ii) When appraising investment decisions, it's essential to follow a structured approach to ensure that the chosen investments align with the company's objectives and yield the desired returns. Here's an explanation of the steps to consider:

1. **Consideration of Various Options**:

The first step involves assessing whether a comprehensive range of potential investment options were considered. This includes evaluating various alternatives, which could include different asset classes, projects, or financial instruments.

2. **Analysis and Review of Potential Options**:

Once the potential options have been identified, it's crucial to thoroughly analyze and review them. This involves assessing the value, costs, benefits, risks, and uncertainties associated with each option. This analysis provides the necessary information to make informed decisions.

3. **Consensus Decision-Making**:

After the analysis, a consensus decision should be reached. This means that all relevant stakeholders, including decision-makers and key stakeholders, have had an opportunity to contribute to the decision-making process. This ensures that diverse perspectives are considered.

4. **Implementation Efficiency**:

Once an investment option has been selected, it's important to focus on the efficient implementation of the chosen alternative. This involves putting in place

the necessary resources, processes, and systems to execute the investment plan effectively.

By following these steps, companies can enhance their investment decision-making process and increase the likelihood of successful outcomes. This structured approach helps ensure that investments are thoroughly evaluated and aligned with the company's strategic goals and risk tolerance. Additionally, it promotes transparency and accountability in the decision-making process

Questions from Module

1. ABC Ltd. has to appoint the internal auditor for the financial year 2022-23. The company called a board meeting on 28th April, 2022 to appoint the internal auditor, but due to non-finalisation of audit firm, the Board of directors deferred the matter of appointment of internal auditor for next board meeting. Subsequently, the company has finalized the proposal of a practising Chartered Accountants firm for appointment as internal auditor. Now, in view of urgency, the directors of the company want to appoint the internal auditor by calling a board meeting at shorter notice. Examine whether the appointment of internal auditor in this manner is permissible under the Companies Act, 2013.
2. Can a Company Secretary be appointed as an Internal Auditor of the Company ? Explain the role of Internal Auditor.

3. List out the Companies which are required to appoint Internal Auditor under section 138 of the Companies Act 2013 read with Rule 13 of the Companies Accounts Rules 2014.
4. "To be efficient and effective, the internal auditor must have adequate independence." Comment.
5. Mr. Raju has recently started as a Company Secretary in Practice. He has got an assignment of internal audit. Advise Mr. Raju about internal audit and its stepwise approach.
6. Explain internal audit and its, objectives and scope.
7. What are the different techniques of internal audit?
8. Explain the role of internal audit in corporate governance, risk management and internal control.

15. Peer Review & Quality Review

Past year Papers

Q1 What are the benefits which a practice unit will obtain in undergoing a peer review ?

(December 2019 3 marks)

There are significant benefits which a Practice Unit (PU) will obtain in undergoing a Peer Review. These may be summarised below:

1. *A successful peer review will provide comfort to the PU that he has adhered to various statutory, documentary and other regulatory requirements.*
2. *If deficiencies are noticed and corrective measures suggested, the PU will have an opportunity to correct the deficiencies and thereby enhance his professional competence.*
3. *If a Peer Review Certificate is issued in favour of the PU it enhances his credibility in the eyes of the general public.*
4. *Since a Chinese wall exists between the Peer Review Process and the Disciplinary Proceedings, the PU will benefit from peer review without any apprehension of any disciplinary proceedings being initiated against him for any deficiencies noticed on his part.*
5. *Clients of the PU will benefit from knowing that their PU is periodically reviewed by the ICSI.*

Q2. Write a note on establishment and functions of Quality Review Board under the Company Secretaries (Amendment) Act, 2006.

(December 2020 5 marks)

Section 29A of the Company Secretaries Act, 1980(as amended by Company Secretaries (Amendment) Act, 2006) provides the provisions relating to establishment of Quality Review Board. They are as under:

1. *The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.*
2. *The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.*
3. *Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.*

Section 29B of the Company Secretaries Act, 1980 (as amended by Company Secretaries (Amendment) Act, 2006) provides the provisions relating to functions of Quality Review Board. They are as under: The Quality Review Board shall perform the following functions, namely:

1. *to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;*
2. *to review the quality of services provided by the members of the Institute including secretarial Audit services; and*
3. *to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.*

Q3. Explain the planning stage of peer review process.

(December 2020 5 marks)

OR

Q4. 'The methodological approach involved in peer review can be described in four stages''. Explain the planning process of the peer review.

(December 2021 5 marks)

On acceptance of the peer review by the selected reviewer, the Practice Unit will be notified. The reviewer may also require the Practice Unit to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

Sample of Attestation services Engagements

(a) Sample selection is an important step in Peer Review Process. The selection shall be done diligently. An initial sample shall be selected by the reviewer from the complete attestation services client list. Practice units will be notified of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.

(b) The initial sample may be reduced to a smaller actual sample for review at the stage of execution. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

Confirmation of visit

In consultation with the practice unit, date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that practice units are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of notification

Q5. A firm of Company Secretaries is to be engaged as professional experts in due diligence process. What are the preconditions of accepting the professional engagement by the firm to maintain the quality ?

(June 2019 3 marks)

(This question is a mix of auditing standards-Chapter 9)

Prior to acceptance of any engagement, the firm, in order to establish whether the preconditions for a professional assignment are present, shall:

(a) Determine whether the reporting framework to be applied in the preparation, audit, review of the secretarial/ non-financial statements is acceptable; and

(b) Obtain the agreement of management that it acknowledges and understands its responsibility:

i. For the preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework, including where relevant their fair presentation;

ii. For such internal control/systems/procedure as management determines is necessary to enable the preparation of secretarial/ non- financial statements that are free from material misstatement, whether due to fraud or error; and

iii. To provide the firm with:

a) Access to all information of which management is aware that is relevant to the preparation/audit/review etc. of the secretarial/ non-financial statements such as records, documentation and other matters;

b) Additional information that the firm may request from management for the relevant purpose; and

c) Unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence.

Q6. "A Peer Reviewer has to report under certain guidelines as prescribed by ICSI. The reporting is to done in three different forms". Discuss in brief the statement as given in the guidelines.

(June 2021 5 marks)

The Peer Review Guidelines contains following provisions for reports of Peer Reviewer. The reporting is to be done in three different forms explained as under:

(i) Preliminary Report of Reviewer

(a) *At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the Practice Unit (in case he/she finds any deficiency in the systems and procedures of the Practice Unit in rendering Professional Services to the clients). The Reviewer shall report on the areas where systems and procedures had been found to be deficient or where noncompliance with reference to any other matter was noticed.*

(b) *The Practice Unit shall make submissions or representations, in writing to the Reviewer, concerning the preliminary report within 15 (fifteen) days from the date of receipt of preliminary report from Reviewer.*

(ii) Final Report of Reviewer

(a) *The Reviewer will submit a Final Report to the Board with a copy to the Practice Unit (the Reviewer's Report), incorporating the findings. The Final Report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed Practice Unit. The model forms of such Final Reports shall be communicated to theReviewer by the Board.*

(b) *The Board may, if deems fit, issue Peer Review Certificate to the Practice Unit.*

(c) *The Board, having regard to the Report and any submissions or representations attached to it, may make recommendations to the Practice Unit concerned*

regarding the application by it of Technical Standards; if it is of the opinion that:

i. *In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;*

ii. *In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards; Then;*

iii. *Issue instructions to the Reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further Peer Review as regards the Practice*

Unit to which the report relates; and iv. Specify in the instruction, the matters as regards which the review is to be carried out;

(d) *The Board will make recommendations to the Practice Unit where: Based on the report of the Reviewer, it appears that the Practice Unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and Based on the report of the reviewer, it appears that the Practice Unit has satisfied the major key control objectives but some weaknesses exist in others. The Practice Unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.*

(e) *A follow up review will be required where the Practice Unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of engagements of the Practice Unit. In such cases the Board will also make*

recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

(f) *The Reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him/her or by a partner or an employee of his/her firm.*

Q7 Explain "Statement of Confidentiality" in Peer Review in detail. Who is required to file it and what are the consequences of non-compliance in this regard? (5 marks)(dec2022)

The process of Peer Review in the context mentioned requires a high level of integrity from the Peer Reviewer and any Qualified Assistant who may be involved in the review process. To ensure confidentiality and maintain the integrity of the review process, the Board has established a Statement of Confidentiality. Here's an explanation of the key points:

1. *Purpose of Statement of Confidentiality:*

   The Statement of Confidentiality serves as a formal document that outlines the obligation of confidentiality for those involved in the Peer Review process. It is a commitment to uphold secrecy and protect sensitive information related to the review.

2. *Signing of Statement of Confidentiality:*

   Before accepting to conduct a Peer Review, both the Reviewer and any Authorized Assistant who may assist in the review process are required to sign this Statement of Confidentiality. This document is then submitted to the Peer Review Board.

3. *Scope of Statement:*

   The Statement of Confidentiality applies to individuals responsible for the conduct of the Peer Review, including Reviewers, Qualified Assistants, members of the Committee, and others involved in the process.

4. *Responsibility of Reviewer:*

   The Reviewer is accountable for obtaining this undertaking from any Qualified Assistant who assists or is likely to assist in the Peer Review process. The Reviewer then submits this document to the Committee.

5. *Confidentiality Obligations:*

   Those bound by the secrecy provisions must maintain strict confidentiality regarding any information or matters they become privy to during the Peer Review process. This includes both direct and indirect functions related to the review.

6. *Prohibition on Communication:*

   Those under the secrecy provisions are prohibited from disclosing any such information to any other person. They are also not allowed to grant access to any records, documents, or materials in their possession or under their control as a result of their involvement in the review.

7. *Professional Misconduct for Non-Compliance:*

   Failure to comply with the secrecy provisions outlined in the Statement of Confidentiality is considered professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.

In summary, the Statement of Confidentiality is a crucial document that reinforces the importance of maintaining confidentiality and upholding professional integrity in the Peer Review process. It ensures that sensitive information remains protected

and secure throughout the review process. Non-compliance with these confidentiality provisions can have serious professional consequences.

Q8. What types of information with respect to 'Maintenance of Professional Skills and Standards' are sought by Quality Review Board during the peer review of Practicing Company Secretary/Firm.

(Old syllabus-only for reference) (3 marks)(dec2022)

The Maintenance of Professional Skills and Standards is a critical aspect of ensuring that a Practice Unit (PU) consisting of Company Secretaries maintains the highest level of professional competence and ethical standards. Here's an explanation of the various elements mentioned:

1. *Misconduct Orders: The PU should check if any partner, employee, or associate who is a member of the Institute of Company Secretaries has received any order under Chapter V of the Institute of Company Secretaries Act, 1980 for misconduct. Chapter V of the Act deals with disciplinary proceedings against members. It's essential to ensure that members within the PU have a clean record in terms of professional conduct.*
2. *Compliance with Professional Development Program Guidelines: The PU should mandate that all Company Secretaries employed by it comply with the Guidelines for Compulsory Attendance of Professional Development Programmes by the Members issued by the Institute of Company Secretaries of India (ICSI). This ensures that professionals within the PU stay updated with industry best practices and regulations.*
3. *In-House Mechanism for Continuing Professional Education: The PU should have an in-house mechanism for continuing professional education. This means that the PU should provide resources and opportunities for its members to further their professional development, such as training sessions, workshops, or courses.*

4. *Monitoring Continuing Professional Education: The PU should also monitor the continuing professional education of its members by maintaining records. This involves keeping track of the training and development activities that members undertake to ensure they are meeting the required standards for professional competence.*
5. *Sponsorship for Professional Development Programs: The PU should sponsor the Company Secretaries it employs for various Professional Development Programmes organized by ICSI and other professional bodies. This financial support helps members participate in relevant training and development activities.*
6. *Maintaining a Repository or Library: It's essential for the PU to maintain a repository, library, or e-library containing case studies, journals, magazines, books, and other reference materials related to the field of Company Secretaries. This resource helps members stay updated on current trends, legal updates, and industry best practices.*

In summary, the Maintenance of Professional Skills and Standards is about ensuring that the PU and its members continuously develop their professional competencies, comply with regulatory guidelines, and uphold ethical standards. This is crucial for delivering high-quality services and maintaining the trust of clients and stakeholders.

Q9 X has been appointed as the Peer Reviewer of AB LLP, by the Quality Review Board. Disputes arose between X and AB LLP, on the process and conclusions reached during the process of review. Explain the remedy points on the dispute for referrals to the ICSI.

(5 marks)(june2023)

This passage outlines a process for handling disputes related to the powers and decisions of Reviewers during a review process. Here's a breakdown of the steps:

1. *Initiation of Dispute: If a dispute arises regarding the powers of Reviewers, the review process, or any other matter related to the review, either the Practice Unit (the entity responsible for the review) or the Reviewer can formally raise the dispute in writing.*
2. *Referral to Quality Review Board (QRB): The dispute must be referred to the Quality Review Board within two months of the occurrence of the issue in dispute. The specific manner in which this referral should be made is determined by the QRB.*
3. *Review and Decision by QRB:*
   - *The QRB will consider any written submissions or representations made by the Practice Unit and/or the Reviewer.*
   - *The QRB must reach a decision within six months of receiving the referral.*
   - *The decision will be communicated to all parties involved in the dispute simultaneously.*
4. *Directions and Compliance:*
   - *If necessary, the QRB may issue specific directions to the Practice Unit or the Reviewer involved in the dispute.*
   - *The Unit or Reviewer must comply with these directions within 30 days and provide a report to the QRB within 15 days of compliance.*
5. *Communication of Decision:*
   - *The QRB will convey its decision to each party within 15 days from the date of the decision.*
6. *Appeal to Council of ICSI:*

- *If either party is dissatisfied with the decision of the QRB, they have the option to refer the matter to the Council of the Institute of Company Secretaries of India (ICSI) within two months. The specific manner of referral will be determined by the Council.*

This process provides a structured way to resolve disputes arising from the review process and ensures that decisions are made in a timely manner. If parties remain dissatisfied after the QRB's decision, they have the option to escalate the matter to a higher authority, the Council of ICSI.

Questions from Module

1. "The Peer reviewer is expected to examine the office systems and procedures with regard to compliance of attestation services provided by a practice unit." Comment.
2. Explain "Statement of Confidentiality" in Peer Review in detail. Who is required to file it and what are the consequences of non-compliance in this regard ?
3. What types of information with respect to 'Maintenance of Professional Skills and Standards' are sought by Quality Review Board during the peer review of Practicing Company Secretary/Firm?
4. "The methodological approach involved in peer review can be described in four stages". Explain the planning process of the peer review.
5. "A Peer Reviewer has to report under certain guidelines as prescribed by ICSI. The reporting is to done in three different forms". Discuss in brief the statement as given in the guidelines.
6. What are the benefits of Peer Review?
7. Describe the Scope of Peer Review.
8. Who can be empanelled as Peer Reviewer.
9. What is the Process for Peer Review.
10. Define Quality Review Board (QRB).
11. What are the Objectives of Quality Review Board (QRB)

16. Due Diligence

Past year Papers

Q1 . Explain the due diligence for issue of securities by a Company.

(December 2019 5 marks)

1. *A public company may issue securities to public through prospectus, private placement, right issue or bonus issues. However, a company which is listed or intends to be listed on any of the stock exchange has to abide with the following regulations of SEBI:*
   1. *The SEBI (Issue of Capital and Disclosure Requirement), Regulations, 2009/2018.*
   2. *The SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015.*
2. *SEBI (ICDR) Regulations provides guidelines for Initial Public Offering, Further Public offering, pricing, conditions governing promoters contribution, restriction on transferability of promoter's contribution, minimum offer to public etc. SEBI (LODR) Regulations, 2015 lays down the periodic disclosure to be given by the listed entities operating in different segments of capital markets.*
3. *Issue of Securities due diligence is important not only from a legal prospective to avoid liability but also from a reputational perspective as the reputation of the company, its promoters and other participants may be significantly vanished, if later it appears that the company and other participants have failed to disclose critical issues relating to the issuer or the Securities to prospective investors.*

Q2. Snehal Sansthan a non-profit organization registered under Section 8 of the Companies Act, 2013 is enlisted under the Foreign Contribution (Regulation) Act, 2010 (FCRA) to procure foreign money. The organization is actively engaged in development of children of slum areas of Mumbai. For this purpose the

organization is getting donation of $100K from Helping Hands, a social organization of California. As a Company Secretary in Practice, guide the organization about procurement and utilisation of this donation. Also state the due diligence and reporting requirements.

(December 2020 5 marks)

The guidelines for Foreign Funding are as under:

1. *As per Section 17 of Foreign (Contribution) Regulation Act, 2010, NGOs have to open and maintain bank accounts, which will exclusively deal with the receipt and utilization of foreign contributions.*
2. *A separate set of accounts and records must be maintained, exclusively for these transactions.*
3. *The FCRA also mandates that foreign contributions must be utilized only for the purpose for which they were received.*
4. *Under Section 7 of Foreign (Contribution) Regulation Act, 2010, the transfer of contributions is not allowed. A person or entity is prohibited from transferring contributions to any other person, unless such transferee is authorized by the government to receive foreign contributions. Or*

4. *Under Section 7 of the Foreign Contribution (Regulation) Act, 2010 (as amended by the Foreign Contribution (Regulation) Amendment Act, 2020) No person who is registered and granted a certificate or has obtained prior permission under this Act and receives any foreign contribution, shall transfer such foreign contribution to any other person.*

The Due Diligence & Reporting Requirements are as under:

The most important reporting requirement under FCRA is the submission of annual returns. All NGOs are required to submit their annual returns online with scanned

copies of income and expenditure statement, receipt and payment account and balance sheet within nine months from the closure of the previous financial year. This return has to include all the details of the contributions received, namely:

- Source and manner in which it is received;

- Purpose for which it was received; and,

- Manner of usage of the contributions.

It is necessary for the entities who receive foreign funding to review the updated FCRA norms and meet their compliance obligations meticulously to avoid any regulatory actions. As once an entity appears under the government scanner for non-compliance, such organizations may face all manner of restrictions and regulatory obstacles.

Q3. Whether Intellectual Property Due Diligence can be considered as Technical Due Diligence ? Prepare a brief note.

(December 2021 5 marks)

Technical due diligence includes intellectual property due diligence and technology due diligence.

Intellectual Property Due Diligence:

Any company which owns intellectual property use it to earn money. Though intellectual property is an intangible asset, the valuation of IPs like copyright, patent, trademark etc are gaining importance as these IPs are often sold and purchased. The main objective of intellectual property due diligence is to ascertain the nature and scope of target company's right over the intellectual property, to evaluate the validity of the same and to ensure whether there is no infringement claims. Following should be seen while conducting due diligence:

1. *Schedule of patents and its application*
2. *Pending patents clearance documents*
3. *Schedule of copyrights, trademarks and brand names*
4. *Any pending claims case by or against the company in violation of intellectual property.*

Q4. ABC Ltd. has got the licence for setting up of a Rubber enterprise in State of Tamil Nadu. While providing the environmental clearance, Ministry of Environment, Forest and Climate Change imposes the condition for audit to check the compliances of norms issued with respect to environment. The company engages C & Co. Practicing Company Secretary (PCS) for this specific purpose. Prepare a note on Environmental Due Diligence as the PCS.

(June 2019 5 marks)

To,

ABC Ltd.

Subject: Environment Due Diligence for setting up of a Rubber enterprises in the State of Tamil Nadu.

We need your kind attention that audit of the compliance of environment norms and the environmental due diligence is scheduled on _____. In this regard, we request you to please avail the following documents and records for audit on the schedule dates:

1. List of environmental permits and licenses and validities of the same

2. All correspondence and notices with Environment Protection Agencies, state, or local regulatory agencies

3. Whether the company's disposal methods of various by products are in sync with the regulatory guidelines.

4. Whether there are any contingent environmental liabilities or continuing indemnification obligations.

We further inform you that as a part of the Environmental due diligence process, we will also review and prepare the detailed assessment report based on the historic, current and potential future environmental risks associated with the proposed locations at Tamil Nadu and for its operations. The process involve the risk identification and assessment with respect to:

1. Environmental setting and history of the site

2. Assessment of the site conditions

3. Operations and management of sites

4.Confirmation of legal compliance and pollution checks from regulatory authorities etc.

Accordingly, We request you to please provide the records and available for the Audit on the scheduled dates.

Regards,

CS__

____

C &

Co.

Company Secretary in Practice

Q5. There are various heads under which due diligence of Competition Law can be carried out. Explain.

(June 2019 5 marks)

Competition law due diligence is conducted to ensure compliance with Competition laws and detect any risks and liabilities, if exist. Due diligence of competition law may be made under the following heads:

1. Due diligence of various agreements:

- *a. Agreements relating to production, supply and distribution of goods or services.*
- *b. Agreements with customers and distributors*
- *c. Purchase agreements*
- *d. Agreement with competitor relating to production, marketing or bidding, price etc.*
- *e. Technology transfer/technical know-how agreements.*
- *f. Concession agreements*

2. Due diligence on dominance and its abuse:

- *a. Examination of existence of dominance*
- *b. Examination of relevant market*
- *c. Cases of abuse.*

3. Due diligence on combinations:

- *a. Nature of combination.*
- *b. Acquisition of share, voting rights, assets or control or merger/amalgamation etc.*

c. *Examination of total value of Assets or Turnover and the valuation methodology.*

d. *Status of merger notification to be filed with CCI.*

e. *Status of dominance after merger.*

Q6. Mega Ltd. has identified Helping Hands, a reputed NGO for executing its CSR activities as an implementation agency. However, one of the directors suggested it would be better if the company considers to go for a FCRA due diligence before finalizing and appointing the NGO. Explain in brief about the FCRA due diligence.

(June 2021 5 marks)

1. *Foreign Contribution Regulation Act, 2010 was incorporated to regulated the inflow of foreign funds received by NGO's. The FCRA legislation state that an organization cannot receive funding from a foreign source, unless it is registered under the Foreign Currency (Regulations) Act, 2010 or has obtained special government approval for a specific project. Also, the registered NGOs need to comply with various post-registration requirements, provided in the Act.*
2. *A NGO can be formed in the form of Society under the Registrar of Societies, Public trust through the execution of a trust deed or Limited company under Section 8 of the Companies Act, 2013.*
3. *The Income Tax Department (IT Department) and Ministry of Home Affairs regulate registration, and require all NGOs to file annual tax returns and submit audited account statements to their respective agencies. If it is formed for charitable purpose, it may be eligible for certain tax exemptions.*
4. ***Scope of the Act:** FCRA governs foreign contributions received from foreign sources. It clearly provides that foreign contributions should not be received in the form of donations, delivery, foreign securities, debentures, bonds, shares, if*

value of contribution exceeds US$387 (Rs 25,000), either in Indian Currency or Foreign Currency.

5. **Registration:** Before accepting any foreign funds, NGOs are required to obtain approval from Ministry of Home Affairs under FCRA. To obtain this eligibility, NGOs can either opt for special permission or go for a long-term registration that is valid for a period of five years. In the case of former, approval of Ministry of Home Affairs must always be required before receiving contributions. In the case of the latter, NGOs only have to apply for renewal, six months prior to the ending of the registration period.
6. **Foreign Funding:** NGOs have to open and maintain bank accounts, which will exclusively deal with foreign contributions. These contributions should be utilised only for the purpose for which they are received.
7. **Due Diligence and Reporting Requirements:**

   All NGOs are required to submit their annual returns to the federal government within nine months from the closure of the previous financial year. This return has to include all the details of the contributions received including:

   a) Source and manner in which it is received

   b) Purpose for which it was received and

   c) Manner of usage of the contributions

   They should review the updated FCRA norms and meet their compliance obligations to avoid any regulatory actions, because once company comes under the eyes of the Government for non-compliance it has to face many obstacles and restrictions.

Q7. You have made a presentation to the Risk Management Committee of your company about the various risks and the mitigation plans thereof. The committee has asked you to formulate the action plan to address the identified risks. Explain the points to be considered while formulating the action plan.

(June 2021 5 marks)

1. *Once risks are identified, industry members must make a proper assessment of the issues that would arise if incidents occur, and take proportionate steps to minimise the likelihood of such issues resulting in consumer harm. Steps taken need not involve significant resources in advance.*
2. *Once risks are identified, industry members must make a proper assessment of the issues that would arise if incidents occur, and take proportionate steps to minimise the likelihood of such issues resulting in consumer harm. Steps taken need not involve significant resources in advance.*
3. *The formulation of an action plan could be based on the following:*
   a) *To periodically test and/or monitor certain 'risks' that would normally be associated to a particular service category (e.g., for a subscription service, it may be prudent to test the clarity of promotions, whether reminder messages have been sent, with delivery confirmation noted, and that 'STOP' commands have been properly processed);*
   b) *The frequency of such testing should reflect the risk posed by both the client and the service type. For example, a client with no breach history, or where none of the directors are linked to other companies with breaches, and low-risk service types (such as football score updates), would require far less monitoring than a client with an extensive breach history that provides a high- risk category of service (e.g., a subscriptionbased lottery alerts system with a joining fee);*
   c) *'Mystery shopper' testing could be used as, and when, appropriate;*
   d) *Internal mechanisms to enable 'whistle-blowing' by staff, where appropriate;*
   e) *Putting in place internal checks that correlate with unusual patterns of activity which may indicate consumer harm (e.g., spikes in traffic and/or consumer complaints made directly to the provider about one specific service);*

f) Having a procedure to alter and address instances of non-compliant behavior;

g) Monitoring of the client's service to ensure that any directions given by the Phone-paid Services Authority have been complied with;

h) Producing a compliance file, comprising of a written record of the assessment, the subsequent action plan and evidence of any monitoring and/or testing required by the plan having taken place. This record does not necessarily need to be lengthy (although this will depend on the client and the actions taken under the plan), but should be made available to the Phone-paid Services Authority upon request.

Q8. Opening of an Escrow Account is mandatory in certain corporate actions. State the forms in which an Escrow Account can be maintained as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for settlement in the course of corporate actions.

(2 marks)(dec2022)

Answer: Regulation 17(3) outlines the permissible forms in which an Escrow Account can be established under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations of 2011, specifically for settlements during corporate actions. Here are the approved forms:

1. Cash Deposit with a Scheduled Commercial Bank: This form involves placing cash in an Escrow Account, which is held by a scheduled commercial bank. This ensures that the funds are secure and can be utilized for settlements related to corporate actions.

2. Bank Guarantee in Favor of the Manager to the Open Offer: In this form, a bank guarantee is provided in favor of the manager responsible for overseeing the open offer. This guarantee is issued by a scheduled commercial bank,

serving as a commitment to fulfill the obligations of the open offer. This acts as a form of security for the parties involved.

3. Deposit of Frequently Traded and Freely Transferable Equity Shares or Other Freely Transferable Securities with Appropriate Margin: This option allows for the deposit of shares or other securities that are actively traded and easily transferable in the market. These securities must meet the requirements specified in the SEBI Regulations. Additionally, an appropriate margin (a percentage of the value of the securities) may be required to be deposited along with these securities.

It's worth noting that the purpose of establishing an Escrow Account in any of these approved forms is to provide a secure mechanism for handling funds and securities during corporate actions, ensuring compliance with the SEBI regulations governing substantial acquisition of shares and takeovers. This helps to safeguard the interests of stakeholders involved in such transactions.

Q9. State the major points of coverage in the process of FEMA due diligence.

(3 marks)(dec2022)

Answer: The process of FEMA (Foreign Exchange Management Act) due diligence involves a thorough examination and verification of various aspects related to foreign exchange transactions and compliance with regulations. Here are the major points covered under FEMA due diligence:

1. Capital Account Transactions: This includes a review of transactions related to capital movements, such as investments, loans, and other financial instruments that have an impact on the capital account of India's balance of payments.

2. Current Account Transactions: This involves examining transactions related to the current account, which primarily deals with day-to-day business activities

like trade in goods and services, income from investments, and unilateral transfers.

3. Currency Transactions: This pertains to scrutinizing transactions involving foreign currency, including conversions, exchanges, and dealings in foreign exchange.

4. Regulations, Master Directions, and Circulars issued by RBI: This covers an assessment of compliance with the regulations, master directions, and circulars issued by the Reserve Bank of India (RBI) under the FEMA framework. This ensures that all transactions and activities are in line with regulatory guidelines.

5. FDI (Foreign Direct Investment) / ODI (Overseas Direct Investment) Policy and Approvals: This involves a review of compliance with policies and approvals related to foreign direct investments made by Indian entities abroad or foreign entities in India. This includes examining the terms and conditions specified by the government.

6. Setting up of Business Entities: This encompasses due diligence on the establishment of various types of business entities in India, such as liaison offices, branch offices, project offices, wholly-owned subsidiaries, joint ventures, foreign institutional investors, and foreign venture capital investors. This ensures that the setup process adheres to FEMA regulations.

7. Non-Resident of India / Person of Indian Origin: This involves an examination of transactions and activities involving non-resident individuals or persons of Indian origin. It ensures that such individuals are in compliance with FEMA regulations regarding their financial interactions in India.

(Tip: you don't have to explain all the points in detail)

Overall, FEMA due diligence is a critical process to ensure that all foreign exchange transactions and activities are conducted in accordance with the regulatory framework set forth by the Reserve Bank of India. This helps maintain the stability and integrity of India's foreign exchange management system.

Questions from Module

1. *What are the stages of M&A due diligence?*
2. *Whether Intellectual Property Due Diligence can be considered as Technical Due Diligence? Prepare a brief note.*
3. *Draft the confidentiality clause of the non-disclosure agreement?*
4. *What do you mean by the term Non-Disclosure Agreement (NDA)? Explain its functions and content.*
5. *Describe various heads of Due Diligence of Competition Law?*
6. *Prepare a brief note on Right to Access Records and Methodology for Diligence Reporting.*
7. *Mega Ltd. has identified Helping Hands, a reputed NGO for executing its CSR activities as an implementation agency. However, one of the directors suggested it would be better if the company considers to go for a FCRA due diligence before finalizing and appointing the NGO. Explain in brief about the FCRA due diligence.*

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& many more

CS Muskan Gupta

Muskan is a graduate from ILS Law College, Pune. She Qualified as a Company Secretary at the age of 21 with AIR 15 in Foundation Programme. She has completed her masters in Constitutional Laws from Bhartiya Vidyapeeth, Pune.

She has worked with esteemed lawyers and firms and has always shown great interest in subjects like Crpc, CPC, Constitution of India and Corporate Laws.

She has authored and published research papers in the field of Intellectual Property Rights, Cyber Law, Corporate Laws, etc. She has an inherent passion for teaching and firmly believes-

"Keep working hard, until you are insanely proud of yourself"

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