

Cooperate law essay



**ASSIGN
BUSTER**

INSTITUTE OF MANAGEMENT STUDIES AND TRAINING CORPORATE LAW

MARKS 100 All questions are compulsory. The first five questions shall be of 16 marks each. And last questions shall be of 20 marks. Q1 (A) How are the first directors of the company appointed? ppointment of First Directors of the Company “ First directors” mean those directors who hold office from the date of incorporation of the company. The first directors are usually named in the articles of association or are appointed by the directors.

The above statement can be inferred by reading section 254 of the Companies Act, 1956 which says that in default of and subject to any regulations in the articles of a company, subscribers to the memorandum who are individuals shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 255. The articles may adopt the provisions of Table A (Regulations for Management of a Company Limited by Shares) of Schedule I to the Companies Act, 1956 in the articles of association of the company.

In that case, regulation 64 provides that the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them. In such a case, the subscribers must determine the names before or at the incorporation of the company and give intimation thereof to the Registrar by Form No. 32 at the time of incorporation or within 30 days thereafter. It is only, if there is no provision in the articles of association of the company regarding the appointment of first directors, the subscribers to the memorandum shall be the first directors of the company.

Generally, the first directors are named in the articles. In such a case, there is no appointment. The general practice is that the promoters of the company select the first directors and name them in the articles. The Department of Company Affairs (Now, Ministry of Corporate Affairs) vide DCA's Circular No. 1/95 14/6/94-CL-V, dated 16 February, 1995 advised that at least one of the promoters of the company, whose names were mentioned in the application for availability of the company's name, must be the first director of the company.

The words “ who are individuals” in section 254 of the Companies Act, 1956 is in accordance with the provisions of section 253. Section 253 says that only individuals can be appointed as directors. Thus, a body corporate, an association of persons or a partnership firm cannot be appointed as director of any company. Thus, only those subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company if the articles do not mention the names of first directors.

If nothing is mentioned in the articles of association of a company regarding the appointment of first directors of a company, the subscribers to the memorandum of association shall be deemed to be the first directors of the company (including a private company which is a subsidiary of a public company). The first directors shall hold office till directors are appointed in accordance with the provisions of section 255 at the first general meeting held after the date of incorporation. However, the meeting shall be held before the date of holding the first annual general meeting of the company.

Procedure for appointment of first directors O Consent of each of the persons proposed to be named as director in the articles of association, seeking his consent to act as director, shall be obtained in the form of a letter. . O Consent of the first directors (unless they are named in the articles of association) in Form No. 29 prescribed under the Companies (Central Government's) General Rules & Forms, 1956 shall be filed with the Registrar of Companies . O Form No. 2 prescribed under the Companies (Central Government's) General Rules & Forms, 1956 in duplicate in respect of the first directors shall be filed with the Registrar, in the case of every company. . O The agreement, if any, which the company proposes to enter into with any individual for appointment as its managing director or whole-time director or manager shall be filed with the Registrar. O Form Nos. 29 and 32 may be filed within 30 days after incorporation.

However, it is advisable to file them at the time of incorporation. The Registrar also insists on it to be filed at the time of incorporation. O Where a director undertakes to take up qualification shares, if any, Form No. 29 should bear requisite stamp duty as applicable under the Stamp Act of the State in which the form is executed. O The particulars required to be entered in the Register of Directors under section 303 will be entered with respect to each director immediately after the incorporation of the company.

O The particulars of the director's shareholding will be entered in the Register of Directors' Shareholdings. . O Information relating to the director's interests in other companies, firms and also names of his relatives for the purposes of sections 297 and 299 of the Act will be obtained. A general notice of the interests under section 299 will also be given in Form

No. 24 AA prescribed under the Companies (Central Government's) General Rules & Forms, 1956. Appointment of first directors at a general meeting

A public company and a private company which is a subsidiary of a public company must hold an extra ordinary general meeting before the first annual general meeting and appoint the first directors by passing ordinary resolutions. For each director, a separate resolution should be passed, unless it has first been agreed by a unanimous resolution that two or more directors shall be appointed by a single resolution (section 263). This meeting can be held on any day before the first annual general meeting.

It can even be held on the date of the first annual general meeting. The only condition is that the meeting shall be held before the beginning of the annual general meeting on that date. Procedure for appointment of first directors at general meeting O Consent of the directors named in the articles of association in Form No. 29 prescribed under the Companies (Central Government's) General Rules & Forms, 1956 shall be filed with the Registrar of Companies .

This is not required in the case of a private company unless it is a subsidiary of a public company. O Form No. 32 prescribed under the Companies (Central Government's) General Rules & Forms, 1956 in duplicate in respect of the first directors shall be filed with the Registrar, in the case of every company. [Section 303]. O The date of appointment of the directors will be entered in the Register of Directors kept under section 303 with respect to each director immediately after the incorporation of the company. [Section 303].

Appointment of directors in the case of a private company which is not a subsidiary of a public company In case of a private company, like in the case of other companies, first directors hold office from the date of incorporation of the company. Also, the first directors need not be appointed at the general meeting held before the date of first annual general meeting of the company in case of a private company which is not a subsidiary of a public company. Therefore, a private company is free to provide in its articles the manner of appointment of first directors.

The articles can also provide that the first directors shall continue to hold office until their office becomes vacant by resignation, removal, and death etc. In the absence of any contrary provision in the articles of association of a private company regarding the appointment of first directors, the first directors who have been appointed under the articles may hold office till they are duly appointed at the general meeting held before the holding of the first annual general meeting of the company.

In the case of *Swapan Dasgupta v Navin Chand Suchanti* (1988) 64 Comp Cas 562 (Cal), the Calcutta High Court held that it is advisable that in the case of a private company there should be clear provisions regarding the appointment of first directors in the articles of association of a company. If the articles are silent or do not specifically provide for appointment of directors otherwise than at a general meeting, and then the directors of such a private company are to be appointed at general meetings. (B) What is the notice period required for a board meeting? Meetings of the Board

The Board should meet at least once in every three months, with a maximum interval of 120 days between any two Meetings such that at least four Meetings are held in each year. Each Meeting should be of such duration as would enable proper deliberations to take place on items placed before the Board. Meetings of Committees Committees should meet at least as often as stipulated by the Board or as prescribed by any other authority. 3. Quorum Meetings of the Board Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present.

The Quorum for a Meeting of the Board should be one-third of the total strength of the Board (any fraction contained in that one-third bring rounded off as one), or two Directors, whichever is higher. Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such requirements. If the number of Interested Directors exceeds or is equal to twothirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting. If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a public holiday, to the next succeeding day which is not a public holiday, at the same time and place.

Meetings of Committees The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated by the Board while constituting the Committee. Certain guidelines, Rules and Regulations framed under the Act or by any statutory authority may contain provisions for the Quorum of a Committee and such stipulations should then be followed.

Illustrations : (a) In the case of the Remuneration Committee, constituted pursuant to the requirements of the Listing Agreement with stock exchanges, all the members of such Committee should be present to form the Quorum. (b) In the case of a Committee constituted to give effect to or implement any of the provisions contained in The Companies (Issue of Share Certificate) Rules, 1960, the Board cannot prescribe a Quorum smaller than what has statutorily been laid down. 4. Attendance at Meetings4. An Attendance Register, containing the names and signatures of the Directors present at the Meeting, should be maintained. If an attendance register is maintained in loose-leaf form, it should be bound at reasonable intervals and may be destroyed after eight years, with the approval of the Board. Leave of absence should be granted to a Director only when a request for such leave has been communicated to the Secretary or to the Board or to the Chairman.

5. Chairman Meetings of the Board

Every company should have a Chairman who would be the Chairman for Meetings of the Board It would be the duty of the Chairman to see that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before it proceeds to transact business. The Chairman should then conduct the proceedings of the

Meeting and ensure that only those items of business as have been set out in the Agenda are transacted and generally in the order in which the items appear n the Agenda.

The Chairman should encourage deliberations and debate and assess the sense of the Meeting. The Chairman should ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit. In the case of a public company, if the Chairman himself is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to any other disinterested Director and resume the Chair after that item of business has been transacted.

Q2 (A) Can a company appoint managing director and manager simultaneously? No company can appoint or employ, at the same time, or, continue the appointment or, employment at the same time, of a Managing Director, as well as a Manager. But, there is no legal prohibition against having a Whole Time Director and Manager, simultaneously, or, Managing Director and whole-time Director, simultaneously. Again, there is no prohibition on a company having more than one Managing Director. This section applies to all companies, public and private.

As per provisions of this section a company cannot apply both managing director and manager at the same time. The term " managing director" and " manager" has been defined in section 2(26) and 2(24) respectively. " managing director is a director who is entrusted with " substantial" powers of management which would not otherwise be exercisable by him. From the

definition of managing director it appears that the company may entrust “substantial” power of management to one or more directors and therefore a company may have more than one managing director.

Further the expression MANAGING DIRECTOR shall also include a director occupying the position of managing director, by whatever name called. For instance, President, CEO , chief operating officer, etc. in the case of MNCs shall be considered as the MANAGING DIRECTOR for the purpose of COMPANIES ACT, although they are not designated as such. (B) Is company allowed to appoint a part-time secretary instead of a Whole-time secretary?

A company secretary is a senior position in a private company or public organisation, normally in the form of a managerial position or above. In the United States it is known as a corporate secretary. The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the Board of Directors are implemented.

[1] Despite the name, the role is not a clerical or secretarial one in the usual sense.

The company secretary ensures that an organisation complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company’s named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law. It is also their responsibility to register and communicate with shareholders, to ensure

that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts.

In many countries, private companies have traditionally been required by law to appoint one person as a company secretary, and this person will also usually be a senior board member. Roles and responsibilities The Company secretaries in all sectors have high level responsibilities including governance structures and mechanisms, corporate conduct within an organisation's regulatory environment, board, shareholder and trustee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executives and trustees, contact with regulatory and external bodies, reports and circulars to shareholders/trustees, management of employee benefits such as pensions and employee share schemes, insurance administration and organisation, the negotiation of contracts, risk management, property administration and organisation and the interpretation of financial accounts.

Company secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. Among public companies in North America, providing advice on corporate governance issues is an increasingly important role for corporate secretaries. Many shareholders, particularly institutional investors, view sound corporate governance as essential to board and company performance.

They are quite vocal in encouraging boards to perform frequent corporate governance reviews and to issue written statements of corporate governance principles. The corporate secretary is usually the executive to assist directors in these efforts, providing information on the practices of other companies, and helping the board to tailor corporate governance principles and practices to fit the board's needs and expectations of investors. In some companies, the role of the corporate secretary as corporate governance adviser has been formalised, with a title such as Chief Governance Officer added to their existing title. 2] In view of the important roles the company secretary plays in business, PLCs and large companies require the company secretary to be suitably trained, experienced and professionally qualified for these responsibilities. In the UK, the company secretary may be qualified by virtue of examination and membership of the Institute of Chartered Secretaries and Administrators (ICSA), which is the only qualification specifically for company secretaries.

ICSA is the only body dedicated to the advancement and recognition of professional administration based on a combination of degree-level studies, carefully vetted experience and sponsorship by two people of professional status. Only a person thus qualified is entitled to be designated a 'Chartered Secretary' or 'Chartered Company Secretary'. In India, the Institute of Company Secretaries of India (ICSI) regulates the profession of Company secretaries. ICSI is a statutory professional body which has more than 29,010 associate members.

Chartered secretaries are employed as chairs, chief executives and non-executive directors, as well as executives and company secretaries. Some

Chartered secretaries are also known in their own companies as corporate secretarial executives/managers or corporate secretarial directors. Chartered Secretaries are the sixth highest paid employees in the UK according to the Office for National Statistics Annual Survey of Hours and Earnings (March 2010). [citation needed]

Many corporate secretaries of North American public companies are lawyers and some serve as their corporation's general counsel. While this can be helpful in the execution of their duties it can also create ambiguity as to what is legal advice, protected by privilege, and what is business advice.

India In India every company having a paid up share capital of Rs. 50 million (5 crores) or more is required to appoint a qualified person as Company Secretary. A qualified Company Secretary should be a member of Institute of Company Secretaries of India. A company having not less than Rs. ne million (10 lacs) paid up capital and not required to appoint a full time company Secretary should file a compliance certificate signed by a practising Company Secretary with the Registrar of Companies. Section 383A of the Companies Act, 1956 provides for the mandatory appointment of a whole time secretary where the paid up capital of the Company exceeds Rs. 50 million (5 crores). If the capital is less than Rs. 50 million (5 crores), the company is required to obtain a secretarial compliance certificate and attach the same to the Directors' Report and file it with the Registrar of Companies.

Statutory declarations of compliance under various other provisions of the Companies Act, 1956 are also to be certified by practising company secretaries. Under the MCA 21 e filing regime several forms (including some, exclusively) are required to be pre-certified by practising company

secretaries. The MCA 21 regime has ushered in a dramatic change in the role and profile of the profession, particularly, the practising side. The annual returns of companies listed on recognized stock exchanges are to be signed by a practising company secretary.

Further, the Securities and Exchange Board of India (SEBI) also recognizes the Company Secretary as the Compliance Officer and the practising company secretary to issue various certificates under its Regulations.

Further, the practising Company Secretaries are also authorised to certify compliance of conditions of corporate governance in case of listed companies. The Reserve Bank of India also authorises company secretaries to issue various certificates. The Institute of Company Secretaries of India is the premier professional body to develop and regulate the profession of Company Secretaries in India.

It was set up by an Act of Parliament in 1980. When the Companies Bill, 2011 will be passed by the parliament and becomes an Act, the National Company Law Tribunal(NCLT) will be given powers of a court and all matters relating to Company Law would be heard before it instead of High Court. A Company Secretary would be eligible to appear before NCLT. This will open more opportunities for a Company Secretary. Q3 (A) Who can fix the remuneration of auditors under the companies act? An overview relating to audit under Companies Act, 1956

Audit of Annual Accounts of a company is compulsory and is indispensable part of incorporated business. Those who carry on business with the other people's money have to be accountable to the so-called owners.

Management and accountancy demands specialised skill. Shareholders are generally laymen. Thus there arises a need of an agency to stand in between the shareholders and management. The agency, viz. , statutory auditors, should be technically qualified for the job and should be independent, and able to withstand the pressure of management.

It is because of this law demands for skill full and independent auditor, who is appointed by the shareholders of the company so that they are reported by a reliable person. Section 224 (1) of the Companies Act, 1956 states that every company whether it is public or private limited shall have an auditor to audit its accounts. The appointment of auditor is mandatory in the Annual General Meeting for the ensuing year. The Auditors appointed at the Annual General Meeting hold the office from the conclusion of the Annual General Meeting at which he is appointed until the conclusion of the next Annual General Meeting.

Thus, the Act seeks to ensure that the appointment of auditors is not in the hands of the directors and is vested in the general body of shareholders. However, the first auditors of the Company are appointed by the Board of Directors within one month from the date of incorporation of a company. The auditors, so appointed, hold the office until the conclusion of the first annual general meeting of the Company. If the Board fails to appoint the first auditor, the company may do so at a general meeting.

The first proviso of Section 224 (5) of the Companies Act, 1956, states that the company may, at a general meeting, remove the first auditor appointed by the board and appoint in its place other auditor of whose nomination a

special notice has been given. As the auditor is appointed from the conclusion of one annual general meeting until the conclusion of the next annual general meeting, the auditor shall not cease to hold the office in case the next annual general meeting is not held in each calendar year as required by Section 166 of the Companies Act, 1956.

Thus, he will continue in office until the next annual general meeting is actually held and concluded. He cannot be deemed to have retired on the date when the meeting ought to have been held. **MAXIMUM NUMBER OF COMPANIES FOR AN AUDITOR** Section 224 (1B) places a ceiling on the number of audits of public companies which a Chartered Accountant not in full time employment, or a firm of Chartered Accountants, can conduct. 1. A person can be appointed as an auditor, who is not in full-time employment elsewhere, of a maximum of 20 companies as described below 2.

Where some companies have paid-up capital of or more than 25 Lacs, a person can be appointed as auditor of only 20 companies out of which not more than 10 companies can have paid up capital of or exceeding Rs. 25 Lacs. 3. In a firm of auditors, total number of 20 companies shall be for every partner of the firm who is not in full-time employment elsewhere. As per the fourth proviso added to sub-section (1B) by the Companies (Amendment) Act, 2000, private companies have been excluded from the existing ceiling of 20 audits per partner and sub-ceiling of 10 audits for companies having a paid up capital of Rs. 5 Lacs or more. Thus, apart from 20 audits of public companies, an auditor may conduct audit of private companies without any ceiling. **CONFIRMATION FROM AUDITOR** Before a company makes an appointment or reappointment of an auditor, a written certificate has to be

obtained from the person concerned stating that the appointment or reappointment, if made, will be within the limits specified above. NOTICE TO THE AUDITOR AND INTIMATION BY THE AUDITOR After appointment/reappointment of an auditor at the annual general meeting, he company shall give intimation to the auditor, so appointed within seven days thereof. On receipt of the intimation from the company, the auditor shall submit a return to the Registrar of Companies within 30 days of the receipt of the intimation, informing the Registrar whether he has accepted or refused to accept the appointment, in Form No. 23B as prescribed by Companies (Central Government's) General Rules and Forms, 1956. However, the first auditors are under no obligation to inform the Registrar.

REAPPOINTMENT OF AUDITORS

At every Annual General Meeting, a retiring auditor shall be reappointed unless:- 1. he is not qualified for re-appointment; 2. He has given the company notice, in writing, of his unwillingness to continue as auditor; 3. A resolution has been passed at an annual general meeting appointing somebody or stating that he shall not be reappointed. Section 224(3) of the Companies Act, 1956 provides that where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.

For this purpose, an application has to be made by the company to the Regional Director (to whom the powers have been delegated), within 7 days of the conclusion of the meeting, for appointment of an auditor and fixing his remuneration. CASUAL VACANCY [Section 224 (6)(a)] A casual vacancy is a vacancy of a temporary nature that may occur during the currency of the

year after the appointment is made by the company at its general meeting. The auditor appointed in a casual vacancy shall hold office till the conclusion of the next annual general meeting.

If the casual vacancy arises, the remaining auditors, if any, will continue to act as the auditors of the company. Where the casual vacancy arises due to death or disqualification, the Board of Directors may appoint another auditor. But where the casual vacancy is caused by resignation of an auditor, the Board cannot fill up the casual vacancy but the vacancy so caused by resignation, shall be filled by the company in general meeting. RESIGNATION OF AUDITOR An auditor may resign before his term of office expires by depositing a notice in writing to that effect at the company's registered office.

His resignation becomes effective on the date he lodges such notice or on such later date as may be specified in the notice. RETIRING AUDITOR CANNOT BE REMOVED BY THE BOARD [Section 224(7)] The Board of Directors of the Company has no power to remove an auditor appointed by the company in general meeting, i. e. , the auditors can be removed only by the company in general meeting and prior approval from the Central Government is also necessary for such removal of the auditors. REMUNERATION OF AUDITORS [Section 224(8)] The Board fixes the remuneration of the First Auditors.

Where the auditor is appointed or re-appointed by the general meeting, the remuneration is fixed by the general meeting, or it may be fixed in any manner as determined by a general meeting. Where Central Government is

approached for appointing the auditor, the Government fixes the remuneration. (This power of the Central Government is delegated to the Regional Director) The remuneration fixed for an auditor is inclusive of all expenses allowed to him so that he cannot claim any amount additional to the remuneration fixed either as expenses or otherwise.

QUALIFICATION & DISQUALIFICATION OF AUDITORS [Section 226] Only individual, possessing the requisite knowledge and skill, can be appointed as auditor of the company. The auditor should be independent in carrying out his work so that he is able to give an unbiased opinion based on an objective assessment of facts. Thus, he should have no interest, financial or otherwise and whether directly or indirectly, in the company and/or its management.

A person, who is Chartered Accountant within the meaning of Chartered Accountants Act, 1949 and holds a certificate of practice, or a partnership firm where of all the partners are Chartered Accountants holding certificates of practice, may be appointed as auditor of a company. However, in the latter case, the appointment as an auditor may be made in the firm name and any of its partners may act in the name of the firm. The following persons cannot be appointed as auditor of a Company: 1. An officer or employee of the company; 2.

A person who is partner with an employee of the company or employee of an employee of the company; 3. Any person who is indebted to a company for a sum exceeding Rs. 1, 000/- or who have guaranteed to the company on behalf of another person for a sum exceeding Rs. 1, 000/-. 4. A person who is holding any security of that company, after a period of one year from the

date of commencement of Companies (Amendment) Act, 2000. If an auditor, after his appointment, becomes subject to any disqualification mentioned above, he shall be deemed to have vacated as such.

SPECIAL RESOLUTION FOR APPOINTMENT OF AUDITOR [Section 224A] This Section provides for appointment or reappointment of auditors at an annual general meeting by a special resolution when 25% or more of the subscribed share capital of the company is held jointly or singly by a public financial institution, a Government company, Central Government, any State Government, any institution established by a State Act in which the State Government holds not less than 51% of the subscribed share capital, a nationalised bank or an insurance company.

Certified copy of the special resolution so passed shall be filed with the Registrar within 30 days of passing, in Form No. 23. It is also to be noted that, if, after notice of the annual general meeting is issued in the usual course and before the holding of meeting, it happens that the holdings of the public financial institutions have reached 25% of the total subscribed share capital, then the meeting has to be adjourned and after issuing notice under this section, necessary special resolution is to be passed for appointing the auditor(s).

SPECIAL NOTICE FOR APPOINTMENT OR REMOVAL OF AUDITORS [Section 225] The Act provides that for appointing a person other than the retiring auditor or for not appointing the retiring auditor, power has been given to a member to serve a special notice on the company of his intention to move a resolution at the next Annual General Meeting. On receipt of the notice, the

company has to send a copy thereof to the retiring auditor. The special notice should be given to the company at least 14 clear days before the meeting.

Further the Company shall also give intimation of the same to all the members of the company immediately and where it is not possible to do so, then the company shall give notice to the members by advertisement in the newspaper circulating in the place of its registered office, not less than seven days before the meeting. Where the retiring auditor makes a representation, the company shall, if it is possible, circulate the same to all the members of the company before the meeting.

If it is not possible to circulate the representation to the members, the auditor may require the same to be read at the meeting. However, on an application by the company or an aggrieved person, the Company Law Board may order that the copies of representation need not be sent to the members or read at the meeting. AUDITORS OF GOVERNMENT COMPANIES Auditor of a Government Company shall be appointed or reappointed by the Comptroller & Auditor General of India. Remuneration of the auditor of a Government Company has to be fixed by the company in general meeting.

However, the general meeting may, instead of fixing the remuneration of auditors, authorise the Board of Directors in this behalf. FOREIGN COMPANIES In case of shipping and airlines companies, the accounts may be audited by the statutory auditors of foreign companies; in case of other foreign companies, the accounts must be audited by the practicing Chartered Accountants in India. AUDIT OF ACCOUNTS OF BRANCH OFFICE

[Section 228] Where a company, whether a public or a private limited, has a branch office, its accounts should also be audited.

The audit of the accounts of branch office can be done either by: i. the company's auditor; or ii. by any other person who is qualified to act as the company's auditor. However, if the branch is situated in a country outside India, a person who is duly qualified to act as auditor of the branch in accordance with the laws of that country, can also be appointed as auditor of branch. If the branch is not being audited by the company's auditor, he is then also entitled to visit the branch office if he considers it necessary to do so for the performance of his duties as the auditor.

He has also a right of access at all times to books, accounts and vouchers of the company maintained at branch office. Only the auditor of the company, or where a firm is so appointed, only a partner in the firm practising in India, may sign the auditors' report. [Section 229] The auditor's report is required to be read out at the Annual General Meeting and shall be open to inspection by any member of the Company. [Section 230] Section 231 of the Companies Act, 1956 confers a right on the statutory auditor to attend and to be heard at any general meeting on matters of his concern.

Thus, the Act seeks to ensure that the appointment of an auditor is not in the hands of the directors but is vested in the general body of shareholders and where the shareholders fails to exercise their power of appointing an auditor, the power vests with the Central Government. Therefore, Auditors are not mere puppets in the hands of the Directors of the Company. The auditor

makes his report to shareholders through the company and is responsible to the company for any failure in the performance of his professional duty.

The auditors carry out such investigation as will enable them to form an opinion on whether proper books have been kept and proper returns adequate for their audit have been received from branches not visited by them and whether balance sheet and profit and loss account are in agreement with the books and returns. In addition to verifying compliance with the Act, the auditors have also to acquaint themselves with their duties under the articles of the company, if any, so as to assure due compliance with them.

The Companies Act lays down detailed provisions regarding various matters and casts an obligation upon officers and directors of the company to carry out the requirements of law. However, where there is contravention of legal requirements by a company which has a bearing on the accounts and transactions of the company, the auditor would in the normal course of his inquiry become aware of them and it would need to be brought to the notice of the shareholders.

The duty of the auditor is that he must be honest; that he must not certify what he does not believe to be true and must take reasonable care and skill before he believes that what he certifies to be true. What is required of auditor is his subjective satisfaction after taking reasonable care and skill. In this process, he is not barred from relying on the tried or trusted servants of the company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care.

Thus, Technical Competence and Professional Independence plays a crucial role in discharging the duties, in practice. It is extremely difficult to precisely define the role, scope, etc. , of the auditors. The above-mentioned provisions of the Act will pave the way to achieve the desired objectives for which they are designed. (B) Write note on –Prohibition of drawl of foreign exchange.

Foreign Exchange Management (Current Account Transactions) Rules, 2000 Notification No. G. S. R. 81(E) dated 3rd May 2000 (as amended from time to time)* In exercise of the powers conferred by Section 5 and sub-section (1) and clause (a) of sub-section (2) of Section 46 of the Foreign Exchange Management Act, 1999, and in consultation with the Reserve Bank, the Central Government having considered it necessary in the public interest, makes the following rules, namely :- 1. Short title and commencement. —(1) These rules may be called the Foreign Exchange Management (Current Account Transactions) Rules, 2000; (2) They shall come into effect on the 1st day of June 2000. 2. Definitions. –In these rules, unless the context otherwise requires :(a) “ Act” means the Foreign Exchange Management Act, 1999 (42 of 1999); (b) “ Drawal” means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability; (c) “ Schedule” means a schedule appended to these rules;(d) The words and expressions not defined in these rules but defined in the n Act shall have the same meanings respectively assigned to them in the Act. . Prohibition on drawal of Foreign Exchange. —Drawal of foreign

exchange by any person for the following purpose is prohibited, namely: a. a transaction specified in the Schedule I; or b. a travel to Nepal and/or Bhutan;

or c. a transaction with a person resident in Nepal or Bhutan. Provided that the prohibition in clause (c) may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order. 4. Prior approval of Govt. of India. –No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India; Provided that this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter. 5. Prior approval of Reserve Bank No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank; Provided that this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter. . (1) Nothing contained in Rule 4 or Rule 5 shall apply to drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter. (2) Notwithstanding anything contained in sub-rule (1), restrictions imposed under rule 4 or rule 5 shall continue to apply where the drawal of foreign exchange from the Exchange Earners Foreign Currency (EEFC) Account is for the purpose specified in items 10 and 11 of Schedule II, or item 3, 4, 11, 16 & 17 of Schedule III as the case may be. 7.

Use of International Credit Card while outside India Nothing contained in Rule 5 shall apply to the use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India. Schedule I Transactions which are Prohibited (see rule 3) 1. Remittance out of lottery winnings. 2. Remittance of income from

racing/riding etc. or any other hobby. 3. Remittance for purchase of lottery tickets, banned/proscribed magazines, football pools, sweepstakes, etc. 4.

Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies. 5.

Remittance of dividend by any company to which the requirement of dividend balancing is applicable. 6. Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco. 7. Payment related to “ Call Back Services” of telephones. 8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme. Q4 (A) Can a company increase its maximum number of directors in its board?

A company, at a general meeting may, by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles. Increase in number of directors to require Government sanction In the case of a public company, or a private company which is a subsidiary of a public company, any increase in the number of its directors, beyond the maximum number of directors permitted by the Articles of the Company as first registered, shall not have any effect unless approved by the Central Government and shall become void if, and in so far as, it is disapproved by that Government.

However, where such permissible maximum is 12 or less, no approval of the Central Government is required provided the increase does not increase the number of directors beyond 12. Additional directors The Board of directors may appoint additional directors if such power is conferred on it by the

articles of the company. Such additional directors shall hold office only up to the date of the next annual general meeting of the company. Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

Filling of casual vacancies among directors In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board.

Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid. Appointment and term of office of alternate director The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held.

An alternate director so appointed shall not hold office for a period longer than the period for which the original director hold office and vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held. Appointment of directors to be voted on individually At a general meeting of public company or of a private company which is a subsidiary of a public company, each director has to be appointed

separately by a separate resolution. However, appointment of more than one director through the same resolution will be valid if it has been passed unanimously.

A resolution moved in contravention of the aforesaid provision shall be void, whether or not objection was taken at the time to its being so moved:

Consent of candidate for directorship to be filled with Registrar A person shall not act as director of a company unless he has, by himself or by his agent authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director within 30 days of his appointment. This provision shall not apply to a private company unless it is a subsidiary of a public company.

Option to company to adopt proportional representation for the appointment of directors If the articles of a company provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional, representation, whether by the single transferable vote or by a system of cumulative voting or otherwise. Such appointments may be made once in every three years and interim casual vacancies being filled by the Board of Directors as Casual Vacancies.

This may enable minority shareholders to have a proportional representation on the Board of Directors of the company. (B) A who is a member of PQR Ltd. Wants to inspect the register of directors share holding. When can he do so?

Q5 (A) How far are (a) title (b) preamble and (c) marginal notes in an enactment helpful in interpreting any of the parts of an enactment? (B) How

can a vacancy caused by resignation of director be filled? What is the tenure of office of such an appointee? Q6 (A) What is the quorum for the meeting of the board of directors of a public company?

Explain what is meant by disinterested quorum. Is this term significant for a general meeting also? The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher. Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested, present at the meeting being not less than 2 shall be the quorum during such time.

Interested director means any director whose presence cannot, by reason of his being interested in some manner in the subject matter of discussion be counted for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter. (B) Why books of account are required to be maintained by a company? Who are the persons responsible for ensuring proper maintenance of books of account? Every company is statutorily required under the Companies Act, 1956 to keep and maintain such books as are necessary to give a true and fair view of the state of affairs of the company.

The Act provides that a company shall keep proper book of accounts in respect of the following:- ? All sales and purchases of goods by the company ? All sums of money received and expended by the company and

the matters in respect of which these have taken place ? The assets and liabilities of the company ? In case of companies which are engaged in production, manufacturing, mining or processing activities, particulars related to utilisation of material or labour or other items of cost as prescribed by Central Government. Provisions relating to Books of Accounts under the Companies Act (Section 209) ?

All books of accounts shall be kept at the registered office of the company. But if they are kept at any other place in India as decided by the Board of Directors, the company shall send a notice in writing (Form 23AA) to the Registrar of that place, mentioning the full address of the place. Such notice shall be filed within seven days of choosing that place. If a company has a branch office, proper books of accounts related to the branch business must be maintained at that office. But, summarized returns of these books shall be sent by the branch to the registered office every three months. The books of accounts together with the vouchers, invoices and other connected documents or records shall be preserved in good order for a period of 8 years (or the entire period, if the company is less than 8 years old). ? The books of accounts must be maintained on accrual basis and according to the double-entry system of accounting. The books cannot be maintained on the cash basis. ? The primary responsibility for making proper books of accounts of a company is that of the managing director or finance manager and all officers and other employees who have been authorised to maintain the books by the Board of Directors.

But, if the company has neither a managing director nor manager, then every director of the company shall have the responsibility. ? If any company

or any person who is responsible for maintaining proper books of accounts fails to take the required steps, it is liable to penalty of imprisonment or fine. ? The Act provides for the inspection of the books of accounts by the Registrar or by any officer authorised by Government to do so. The inspection may be conducted without giving prior notice to the company.

It is the duty of the directors or officers of the company to provide all necessary support to the inspection officers in terms of books of accounts, other books, papers of the company and any other matter. Any default in this regard is a punishable offence. Broadly, the inspections are undertaken to serve one or more of the following objectives:-

- To ensure compliance of various provisions of the Companies Act, 1956 and also to keep a watch on the performance/efficiency of the companies
- To ensure that the company has not falsified its books of accounts or the company's funds have not been misappropriated or the management has not misused its fiduciary position for any personal advantage
- To see whether any unfair practices prejudicial to the public interest are being resorted to by any company
- To examine whether the companies are managed on sound business principles or whether there are acts of mismanagement which may ultimately affect the interests of shareholders, creditors, employees, consumers and the general public and
- To see whether statutory auditors have carried out their duties properly while certifying true and fair view of the State of affairs of the company

Provisions relating to the Auditors in the Companies Act (Section 224 to 233) ? Audit is the process of checking accounting entries as per norms and guideline by the accounting professionals. The Companies Act, 1956 provides for compulsory appointment of an independent person as the

‘ auditor’ of the company whose responsibility is to examine the affairs of the company and to report it to the shareholders.

The Act also contains provisions relating to appointment, removal, duties, etc of a company auditor. ? An Auditor occupies a very important position and has been assigned several duties:-

- He shall submit ‘ Auditors Report’ to the members stating that:-
 - o Whether he has obtained all informations and explanations which are necessary for the purpose of audit;
 - o Whether in his opinion proper books of accounts, as required by law, have been kept by the company;
 - o Whether the company’s balance sheet and profit and loss account are in agreement with the books, accounts and returns; Whether the profit and loss account and balance sheet comply with the accounting standards.
- He should check not only the arithmetical accuracy of books of accounts but also ensure that they show the true financial position of the company.
- He is required to enquire into the following matters:-
 - o Whether loans and advances made by the company have been shown as deposits and have been made on the basis of proper security;
 - o Whether personal expenses have been charged to revenue account;
 - o Whether transactions represented merely by book entries are not prejudicial to the interest of the company;
 - Whether cash has actually been received in respect of the shares that have been allotted for cash, and if no cash has been received, whether the position shown in the books and balance is correct, regular and not misleading.
- He also has the duty to assist the inspector in his investigation by producing all books and papers of the company which are in his custody or power.
- Where ‘ special audit’ has been ordered by the Central Government, he shall make his report to the Government.

? The first auditors

of a company are appointed by the Board of Directors within one month of incorporation.

The auditors so appointed shall hold office until the conclusion of the first Annual General Meeting. They may, however, be removed before the expiry of their term and another person appointed in their place. Subsequent auditors are appointed every year by the shareholders in the Annual General Meeting by passing an ordinary resolution. The auditors so appointed shall hold office until the conclusion of the next Annual General Meeting. ? The Central Government is empowered to appoint auditors in the following cases:- Where no auditors have been appointed at the Annual General Meeting, the company shall intimate the fact to the Central Government within 7 days of the meeting, and thereupon the Central Government will make the appointment. • Where the company was responsible for making the appointments of auditors by passing a special resolution, but the company has failed to do so. ? Appointment of auditors of a government company is made by the Central Government on the advice of Comptroller and Auditor General of India.

There is a special arrangement for the audit of companies where the equity participation by Government is 51 percent or more. The primary auditors of these companies are Chartered Accountants, appointed by the Union Government on the advice of the Comptroller & Auditor General, who gives the auditors directions on the manner in which the audit should be conducted by them. He is also empowered to comment upon the audit reports of the primary auditors. In addition, he conducts a supplementary audit of such companies and reports the results of his audit to Parliament

and State Legislatures. A person can be appointed an auditor only if he is a ' chartered accountant' within the meaning of Chartered Accountants Act, 1949. Only a practicing chartered accountant can be appointed an auditor of a company. None of the following can be appointed as an auditor of a company :-

- A body corporate;
- An officer or employee of the company;
- Partner of the company;
- Person holding securities carrying voting rights of the company;
- Person who is indebted to the company.

? Under the companies Act, an auditor enjoys the following powers:- The auditor shall have access at all times to the books of accounts and vouchers of the company.

- He may obtain from the officers of the company such information and explanations as he may consider necessary.
- If the branch accounts have been audited by a person other than the company's auditors, the latter shall have a right to visit the branch office and have access to all books of accounts, etc, if he considers it necessary for the performance of his duties.
- He has the right to receive notice of and to attend General Meeting.
- He has the right to recover remuneration for auditing the accounts of the company. He also has the right to seek expert opinion from bankers, lawyers, engineers, etc.

? The Central Government has the power to direct special audit of a company's accounts in the following cases:-

- Where the affairs of any company are not being managed in accordance with sound business principles, or prudent commercial practices, or
- Where the company is being managed in a manner which is likely to cause serious injury or damage to the interest of the trade, industry or business to which it pertains, or
- Where the financial position of any company is such as to endanger its solvency.

The Central Government may appoint a chartered accountant or the auditor of the company itself to conduct the special audit. Though his powers and duties shall be similar to that of an auditor of a company, but he must submit his report to the Central Government. On receipt of the report, the Central Government may take such action on the report as it considers necessary.

If no action is contemplated, then it must send a copy of the report with its comments to the company for circulation among members or for reading at the next Annual General Meeting. The expenses of audit, as determined by the Central Government, shall be borne by the company. (C) Explain the provisions of the companies act 1956 relating to the preparation of annual report of a government company.