AUDIT OF ACCOUNTS

For CA/CS Inter and Final Students

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AUDIT OF ACCOUNTS

This handout deal with certain provisions related to Audit of Accounts like Necessity of audit, Appointment and remuneration of Statutory Auditor along with their powers, duties and removal etc. and various other connected audits like Cost Audit and Special Audits are also dealt with in this handout.

Other features of this handout are:

1. Audit of accounts is compulsory for all types of companies

2. Appointment of Auditors

3. Intimation as to appointment

4. Written certificate from auditor regarding eligibility must be obtained before appointment of auditor at the annual general meeting by a public limited company

5. Limit of Audit

6. Appointment of auditor by the Central Government (Regional Director)

7. Casual Vacancy in the office of Auditor

8. Appointment of other than a retiring auditor

9. Removal of auditors

10. Remuneration of Auditors

11. Internal auditor cannot be appointed as statutory auditor(s)

12. Powers and duties of auditors

13. Qualifications and disqualifications of auditors

Audit of accounts is compulsory for all types of companies

All the companies registered under the Companies Act, 1956, whether public or private and whether having a share capital or not, are required to maintain proper books of accounts under Section 209 of the Companies Act, 1956. Companies have also to get their Books of accounts audited as required under section 224 of the Act.

APPOINTMENT OF AUDITORS

Section 224 governs the appointment of auditors. The auditors are to be appointed by the shareholders of the company in an annual general meeting by passing an ordinary resolution. Kindly note appointment of Statutory under section 224(1) is an ordinary business read with Section 173 of the Companies Act, 1956. However, special resolution is required to be passed when section 224A comes into play. First auditors are to be appointed by the Board of directors within one month of the date of registration of the company as per section 224(5).

A casual vacancy in the office of auditor can be filled up by the Board of directors but where the casual vacancy is caused by the resignation of auditor such vacancy is to be filled up by the company in general meeting as per section 224(6).

Appointment of first auditors

As per section 224(5), the first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting. Following provisions are related to the matter:

(*i*) *Appointment of first auditors in general meeting.*—A company in general meeting may appoint the first auditor or auditors if the Board of directors fails to exercise its power of appointment of first auditors within one month of the date of incorporation of the company.

(*ii*) *Appointment of first auditors through Memorandum and Articles of Association.*— The Institute of Chartered Accountants of India has expressed its opinion *vide* Compendium of Opinion Volume No. 1 that the appointment of first auditors through the Memorandum and Articles of Association of the newly floated private company is not a valid appointment.

(*iii*) *Removal of first auditors.*—The company may, at a general meeting, remove first auditor(s) or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting.

(*iv*) *Tenure of office of the first auditor.*—The first auditor(s) shall hold office until the conclusion of the first annual general meeting of the company and then be eligible for re-appointment.

Appointment of other than first auditors

Section 224(1) state that every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

Appointment of auditor shall be an ordinary business

As per section 173(l)(*a*)(*iv*) of the Act, the appointment of, and the fixing of the remuneration of the auditors shall be an ordinary business to be transacted at an Annual General Meeting of a company. Only an ordinary resolution is to be passed for this purpose except, in the circumstances stated u/s 224A requiring the passing of a special resolution.

Appointment of auditor by passing special resolution in certain cases [Section 224A]

Section 224A stipulates that in case, if not less than 25% of the subscribed share capital of a company is held by specified institutions, whether singly or in any combination of others, appointment of auditors in such companies shall be made by a special resolution passed at the annual general meeting of the company. Specified Institutions means:—
(*i*) a public financial institution or a Government Company or Central Government or any State Government, or
(*ii*) any financial or other institution established by any Provincial or State Act, in which a State Government holds not less than 51% of the subscribed share capital, or
(*iii*) a nationalised bank or an insurance company carrying on general insurance business.

MATERIAL DATE FOR DETERMINATION OF THE 25% OF THE SUBSCRIBED SHARE CAPITAL

The Department has clarified by **Circular No. 2 of 1976, dated 5-6-1976** that the material date for determination of the 25% of the subscribed share capital of the company is held by specified institutions, whether singly or in any combination of others will be the date of the annual general meeting at which the special resolution is required to be passed.

Generally, Articles of Association of companies provide for closure of the Register of members before annual general meeting during a period not exceeding thirty days at any one time, it is unlikely that the position regarding shareholding in the company will be different between the date or issue of notice and the date of the annual general meeting.

Course of Action where a change in the shareholding pattern occurred

In exceptional cases, where a change in the shareholding pattern in the company has taken place, between the date of issue of notice of the annual general meeting and the date of actual passing of the resolution regarding appointment of auditor, the company may either,—

(*i*) adjourn the meeting to another date, and later issue the required notice in accordance with law and thereafter pass the special resolution required to be passed u/s 224A of the Companies Act, 1956;

or

(*ii*) omit or pass over the item on the agenda regarding appointment of auditor.

In the event of the company adopting the procedure at (*i*) above, the situation would be then covered by section 224A(2) of the Act.

- A question has been raised whether, it is only those shares in a company which are beneficially held by a nationalised bank that will be taken into account in calculating the 25% of the subscribed share capital of that company or even those shares of the company which having come into the custody of the nationalised bank as security for loans advanced to the constituents are got transferred by the nationalised bank in its name for making the security effective, will also be taken into account. It is clarified that irrespective of the circumstances in which a nationalised bank is holding shares if the name of the bank is entered in the Register of members of the company as holder of shares, such holding of shares will have to be taken into account, for the purposes of section 224A of the Companies Act, 1956. (The Department's Circular No. 18 of 1974, dated 12-12-1974)

The Department has issued a General Circular No. 14/2001 [No. 6/1/2001-CL.V], dated 16-7-2001 on provisions of section 224A of the Companies Act, 1956 that the Department of Company Affairs had recently received a reference regarding clarification in respect of section 224A of the Companies Act, 1956 which relates to appointment of auditor in certain cases with the approval of the company by special resolution. The clarification had been sought on sub-section (1) of that section which reads as under—

"224A(1) In the case of a company in which not less than 25% of the subscribed share capital is held, whether singly or in any combination, by—

(*a*) a public financial institution or a Government company or Central Government or any State Government, or

(*b*) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than 51% of the subscribed share capital, or

(*c*) a nationalised bank or an insurance company carrying on general insurance business, the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution."

The querist was of the opinion that three clauses (*a*) to (*c*) mentioned in sub-section (1) of that section [section 224A] should be treated as mutually exclusive. According to them, the aggregate holdings of the institutions grouped under either clause (*a*) or clause (*b*) or clause (*c*) of section 224A(1) are to be treated as mutually exclusive and are not to be aggregated with institutions covered by any other sub-clause, for determining the applicability of section 224A.

The Department has examined this matter in consultation with Department of Legal Affairs and Solicitor General of India and found that three sub-clauses (*a*) to (*c*) to sub-section (1) of section 224A are not mutually exclusive. The provisions of sub-section (1) of that section would, therefore, apply to all cases of shareholdings in any combination by any of the Institutions mentioned in the three clauses.

Where any company referred to in section 224(1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor has been appointed by the company at its annual general meeting and then ***Regional Director*** shall have powers under section 224(3) for appointment of auditors.

Comment [a1]: Important provision

The company shall file e-Form 23 electronically along with certified copy of the special resolution and explanatory statement with the Registrar within 30 days of passing of resolution as per section.

Re-appointment of the retiring auditor(s)

As per section 224(2), a retiring auditor shall be re-appointed subject to the limit on maximum number of audits as stated u/s 224(1B). However, in the following cases, a retiring auditor shall not be reappointed:—

(*i*) he is not qualified for re-appointment;

(*ii*) he has given the company a notice in writing of his unwillingness to be re-appointed;

(*iii*) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(*iv*) where notice has been given of an intended resolution to appoint some other person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons as the case may be, the resolution cannot be proceeded with.

Deemed re-appointment == Require some action on the part of the company

As per Department's Circular No. 5/72, dated 21-2-1972, the appointment or reappointment of auditors at the annual general meeting is one of the items of ordinary business to be transacted at such a meeting. As provided by section 224(2) of the Act at any annual general meeting, a retiring auditor shall be re-appointed except, in four types of cases referred to therein. The expression shall be re-appointed, postulates some action on the part of the company resulting in the auditor getting re-appointed or automatically re-appointed at the annual general meeting.

It has been clarified that passing of the resolution for that purpose at the annual general meeting is essential for the re-appointment of the retiring auditor who is still qualified and willing to act. Till this is done, a retiring auditor cannot be said to have been re-appointed as contemplated by the section. In this view, it is not correct to say that in the absence of the resolution to the effect that the retiring auditors shall not be re-appointed; the retiring auditors shall stand re-appointed as auditors of the company.

Appointment of auditor is mandatory at each annual general meeting

The auditor(s) appointed at the last annual general meeting ceases to hold office at the conclusion of the next annual general meeting. Therefore, the auditor(s) must be appointed at each annual general meeting to hold office till the conclusion of the next annual general meeting. It has been held in the case of the ***Institute of Chartered Accountants* v *Jnanendranath Saikia* (1955) 25 Comp Cas 53, 55 (Assam)** that the appointment of auditor is mandatory in the annual general meeting for the ensuing year.

Intimation as to appointment

A company is required to give intimation of appointment to every auditor(s) so appointed within seven days of the appointment as desired by section 224(1). The intimation may be given in form of a letter on the letter head of the company by a responsible officer of the company.

Written certificate from auditor regarding eligibility must be obtained

The company shall, before making any appointment or re-appointment of auditor(s) at any annual general meeting, obtain a written certificate to the effect that the appointment or re-appointment, if made, shall be in accordance with the limits specified in section 224(1B) of the Act. A company or its Board of directors shall not appoint or re-appoint any person who is in full time employment elsewhere or firm as its auditor, if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies. [Section 224(1B)].

Comment [a2]: This provision must be observed during professional working

LIMIT ON NUMBER OF AUDITS

The expression 'specified number' means—

(*i*) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies;

(*ii*) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

In computing the specified number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account in computing the specified number as defined in *Explanation I* of section 224(1C).

The following types of **companies shall be excluded** from reckoning specified limits, in terms of share capital:—

(*a*) Guarantee companies *(Department's Letter No. 8/12/(224)/74-CL-V, dated 28-9-74)*

(*b*) Foreign companies (*Circular No. 21 of TSF No. 35/3/75-CL-III, dated 24-9-1975)*
As mentioned above, as per the Companies (Amendment) Act, 2000 private companies will not be taken into account for counting the 20 number of companies audit as specified as per sub-section (1B) of section 224.

(c) Branch audit of the Indian Companies not counted for calculating the specified number.

The Department is of the view that the branch auditor appointed under section 228 of the Act audits the accounts of the particular branch only and forwards his report to the auditor appointed u/s 224 of the Act and hence he cannot be equated with the company auditor appointed u/s 224 of the Act who has to report to the AGM on the accounts of the company as a whole including the branches audited by a branch auditor. Hence the branch audits are not to be included while calculating the specified number of 20 units.

(d) Foreign Company

Foreign companies are outside the scope of section 224 since the definition of the company u/s 3 of the Companies Act, 1956 does not include a foreign company. Hence the audit of the accounts of foreign companies is also not to be included within the specified number of 20 as laid down under *Explanation* I to sub-section (1C) of section 224 of the Act. ***[Circular No. 21 of 1975, dated 24 September, 1975]***

Obligation on the auditor to give intimation to the Registrar
Every auditor appointed under section 224(1) by a company in annual general meeting shall inform the Registrar in writing that he has accepted, or refused to accept the appointment [Section 224(1B)]. The information shall be given in e-Form 23B within a period of thirty days from the date of appointment.

It is worth noting here that only the auditors appointed under section 224(1) are obliged to give notice of their appointment to the Registrar in e-Form No. 23B. Therefore, first auditors appointed by the Board of directors of a company pursuant to section 224(5) are under no obligations to give notice of their appointment to the Registrar.

Comment [a3]: Very important for practical problems.

Appointment of auditor by the Central Government (Regional Director)
Section 224(3) provides that if no auditors are appointed or re-appointed at an annual general meeting of a company, the Central Government may appoint a person to fill the vacancy. Therefore, the power of the Central Government to appoint auditors becomes exercisable when no auditors are appointed or reappointed at an annual general meeting of a company.

The Company is required to give intimation electronically to the Regional Director (Powers of the Central Government were delegated to the Regional Director) *vide* Notification No. GSR 288(E) dated 31st May, 1991) in new e-Form 24A prescribed by Notification No. GSR 56(E) dated 10th Feb., 2006.

Obligation has been cast on the company that within seven days of the Central Government's power u/s 224(3) becoming exercisable, it shall give a notice of that fact to that Government; and if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Consequences of failure to pass a special resolution at an AGM for appointment of an auditor under section 224A:—

(*a*) it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting; and

(*b*) the power of the Central Government under section 224(3), to appoint auditors becomes exercisable.

Circular No. 5 of 1972, dated 21-2-1972 *inter alia* provides that the Government's power to appoint auditors under section 224(3) becomes available where at an AGM no auditors are appointed or re-appointed. Where auditors are not appointed or re-appointed in accordance with the provisions of the Act including section 224(2), as read with sections 225 and 190, section 224(3) becomes attracted in the matter.

No fee is required to be paid for intimation under section 224(4)

As per the Department's Letter No. 35/16/69-CL-III, dated 1-11-1971 the Department is of the view that notices under section 224(4) cannot be considered as applications under the Companies (Fees on Application) Rules and as such are not chargeable with the prescribed fees.

On receipt of such notice in the prescribed e-Form 24A, it is the statutory duty of the Regional Directors to appoint auditors under section 224(3). No fee is chargeable on such notices for appointment of auditors under section 224(3).

CASUAL VACANCY [Section 224(6)]

Meaning of casual vacancy in the office of auditor(s)

The expression 'casual vacancy' has not been defined in the Companies Act, 1956. Simply stated, a casual vacancy in the office of an auditor means a vacancy caused in the office of an auditor by his death, disqualification, resignation, etc. It has been held in the case of the ***Institute of Chartered Accountants of India* v *Jnanendranath Saikia* (1955) 25 Comp Cas 53, 56 (Assam)** that casual vacancy is not a vacancy created by any deliberate omission on the part of the company to appoint an auditor at its annual general meeting.

Section 224(6) governs this aspect and relevant provisions are stated hereunder:—

(*a*) The Board may fill any casual vacancy in the office of an auditor, but while any such vacancy continues, the remaining auditor or auditors, if any, may act.

(*b*) If any casual vacancy in the office of an auditor is caused by the resignation of an auditor, such vacancy shall only be filled by the company in general meeting.

(*c*) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Powers of the Board to fill up the casual vacancy only in case of death or disqualification of auditors

In terms of section 224(6)(*a*) where a casual vacancy arises in the auditors appointed by a company due to death or disqualification, the Board of directors may appoint another auditor.

Only members in general meeting may fill up the casual vacancy caused by resignation of auditors

Where the casual vacancy is caused by resignation of an auditor, the Board cannot fill up the casual vacancy but place the matter before the company in the extraordinary general meeting for appointing an auditor in respect of the casual vacancy.

Casual auditors shall hold office till the conclusion of the next annual general meeting

The auditor appointed in a casual vacancy shall hold office till the conclusion of the next annual general meeting. If a casual vacancy arises, the remaining auditors if any, will continue to Act.

APPOINTMENT OTHER THAN A RETIRING AUDITOR [Section 225]

As per section 225 a special notice of a resolution to be moved at an annual general meeting for appointing an auditor other than the retiring auditor or removing of an existing auditor is given to the company in the manner as prescribed under the Act.

Requirement of special notice to the company

Section 225(1) provides that special notice shall be to be given by a member and such special notice must comply with the requirements of section 190. Following two types of resolutions or notice may be given under section 225 of the Act:—

(*a*) resolution at an annual general meeting for appointment of a person other than a retiring auditor as auditor; and

(*b*) resolution at an annual general meeting providing expressly that retiring auditor shall not be reappointed. Special notice has to be given to the company at least 14 days before the date of the meeting. The period of 14 days is exclusive of both the day of meeting and the day of notice. Moreover, special notice has to be given 14 days before the date of the original meeting and not adjourned meeting.

Thus, special notice received after the adjournment of original meeting cannot be taken and acted upon by a company.

In the case of ***Santosh Mani* v *New Delhi YMCA* (1995) 19 CLA 178 (Del), it** was held that even though the resolution moved by a shareholder not to re-appoint a retiring auditor failed to comply with requirement of section 188, yet since it was passed in annual general meeting when notice of resolution was given by company to all members and was carried by a majority, the same could be implemented.

As per Department's Circular **No. 5 of 1972, dated 21-2-1972** special notice shall be required for such resolution. Any non-compliance with the provisions of the said section would render such a resolution illegal and ineffective. Section 190 which provide a resolution requiring special notice applies to special notice under section 225.

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COMPANY'S DUTY ON RECEIPT OF NOTICE

1. **Intimation shall be given by the company to all members on receipt of notice or draft of resolution**

The company shall on receipt of a notice or draft resolution from a member give intimation of the same to all the members immediately and where it is not possible to do so then 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.

2. **Intimation shall be given by the company to the retiring auditor**

On receipt of notice under section 225(1) of the Act, for the removal of a retiring auditor the company shall send a copy of the notice to the retiring auditor forthwith. It is advisable to send the same by registered post with acknowledgement due.

Circulation of the retiring auditors' representation to all the members

Where the retiring auditor makes a representation on the notice or resolution for their removal, the company shall circulate the same to all the members of the company, if it is possible to do so 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, unless the Central Government on an application by the company or an aggrieved person orders that copies of the representation need not be sent to members nor read at the meeting.

Following are the other relevant provisions in this regard:—

(*i*) In case where the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall do the following:—
(*a*) the company shall state the fact of the representations having been made, in any notice of the resolution given to members of the company;
(*b*) the company shall send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;
(*c*) the company is not bound to send the copy of representations to members, if the representations are received by it too late to do so;
(*d*) if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may require that the

representations shall be read out at the meeting. This right is in addition to the right of auditor to be heard orally at the meeting.

(*ii*) Section 225 applies to all companies, whether public or private.

(iii) Any resolution requiring special notice must comply with the requirements of section 190.

Contravention of the provision of section 225 would attract penalty to the company under section 629A.

(i*v*) Acceptance of the position as auditor previously held by a retiring auditor without first communicating to the existing auditor shall be deemed to be guilty of professional misconduct as contemplated by clause (8) of the First Schedule to the Chartered Accountants Act, 1949.

Comment [a4]: Very important

REMOVAL OF AUDITORS [Section 224(7)]

Board of directors has no power to remove an auditor

The Board of directors of a company has no powers to remove an auditor appointed by the company in general meeting. Accordingly, the said auditor can be removed only by the company in general meeting after receiving the previous approval of the Central Government under section 224(7). Powers has been delegated to the Regional Director *vide* Notification No. GSR 288(E), dated 31-5-1991.

Removal of auditor(s) at a general meeting with the prior approval of the Central Government

As per Section 224(7) an auditor can be removed before expiry of his term only by the company in general meeting after obtaining the previous approval of the Central Government (Power has been delegated to the Regional Director).

Procedure for removal of auditors

The company shall take further action as prescribed in section 225 and make an application to the concerned Regional Director in eForm 24A as prescribed by the Notification No. GSR 56(E) dated 10th Feb., 2006 for his approval.

Time limit

The application has to be filed for appointment within seven days of the annual general meeting and for removal before general meeting.

Guidelines

(*i*) The power of the Central Government to appoint auditors become exercisable when no auditors are appointed or re-appointed at an annual general meeting of a company.

(*ii*) Obligation has been cast on the company that within seven days of the Central Government power becomes exercisable; it shall give a notice of that fact to the Central Government in the prescribed e-Form 24A electronically.
(*iii*) The powers of the Central Government under section have been delegated to the Regional Directors of the Department of Company Affairs.

(*iv*) Reasons for not appointing any auditor at the annual general meeting and other relevant details should be furnished.

(*v*) Only the company in general meeting after obtaining the previous approval of the Central Government (Regional Director) can remove an auditor before expiry of his term.

(*vi*) The remuneration of auditors appointed by the Central Government may be fixed by the Central Government. But if the Central Government does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(*vii*) The remuneration which has been fixed for an auditor is considered to be inclusive of all expenses allowable to him and consequently, he cannot claim any amount in addition to the fixed remuneration.

Consequences
Omission or failure to pass a special resolution at an annual general meeting for appointment of an auditor u/s 224A has under mentioned two consequences:

(*i*) It shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting;

(*ii*) The power of the Central Government under section 224(3) to appoint auditors becomes exercisable.

REMUNERATION OF AUDITORS [Section 224(8)]
Section 224(8) discusses the manner of fixation of remuneration of auditors. Following are the provisions in this regard:

Remuneration of first auditors
The remuneration of the first auditors appointed by the Board may be fixed by the Board, if the Board does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration of other than first auditors

Appointment of an auditor at an annual general meeting is an ordinary business to be transacted thereat. The remuneration of auditors other than first auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration of auditors appointed to fill up causal vacancy

The casual vacancy in the office of an auditor caused by any reason except, resignation can be filled up by the Board of directors and the remuneration of the auditor appointed to fill up causal vacancy may be fixed by the Board of directors. If the Board does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
The casual vacancy caused by resignation of an auditor may be filled up only by the company in general meeting and the remuneration of auditor so appointed shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration of auditors appointed by the Central Government

The Central Government may appoint a person to fill the vacancy in case where no auditors are appointed or re-appointed at an annual general meeting. The remuneration of auditors appointed by the Central Government may be fixed by the Central Government. But if the Central Government does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration of auditor of the Government companies

Section 224(8)(*aa*) provides that in the case of an auditor appointed u/s 619 by the Comptroller and Auditor General of India, remuneration shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

Remuneration includes all expenses allowed by the company

For the purposes of section 224(8), any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".
The remuneration which has been fixed for an auditor is considered to be inclusive of all expenses allowable to him and consequently, he cannot claim any amount in addition to the fixed remuneration.

Internal auditor cannot be appointed as statutory auditor(s)

Circular No. 29 of 1976, dated 27-8-1976 states that the internal auditor is appointed by the management and hence is in the position of an employee, whereas the statutory auditor is appointed by the company under section 224 and is required to perform the duties imposed on him under section 227 and the Rules/Orders issued thereunder.

Comment [a5]: Very important provision

In this connection, refer to para 4(*vi*) of the Manufacturing and Other Companies (Auditor's Report) Order, 1975 (Now, 1988) in CSR No. 533(E), dated 7-11-1975 notified by Department in accordance with which the statutory auditor has to include in his report under section 227, whether there is adequate internal control procedure commensurate with the size of the company and the nature or its business for the purchase of stores, raw materials including components, plant and machinery, equipment and other assets and in the case of companies (having Rs. 25 lakhs or more paid-up share capital) whether there is any internal audit system commensurate with its size and nature of business. It is, therefore, obvious that if the statutory auditor of the company is also the internal auditor, it will not be possible for him to give an independent and objective report under section 227 read with the order under sub-section (4A) thereof. As such, in the opinion of the Department, a statutory auditor of a company cannot also be its internal auditor.

Statutory Auditor cannot write books of account of the company

An issue can be raised whether there could be any objection in case the statutory auditor of a company undertakes the work of writing the books of account and drawing up the final accounts for which he might receive some extra remuneration from the company over and above the fees payable to him as statutory auditor. The acceptance of the book keeping work of the above nature is likely to place the statutory auditor in a rather vulnerable position in the matter of free expression of his professional opinion as an auditor on the annual accounts of the company. Such a practice deserves to be discouraged.

POWERS AND DUTIES OF AUDITORS

Powers of auditors to access books of accounts and to require information and explanations

Following are the rights of an auditor as detailed under section 227(1) of the Companies Act, 1956:—

(*i*) Right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere.

(*ii*) Entitlement to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as an auditor.

[Section 231] Powers to receive all notices of general meetings and to attend it **section 231** provides that auditor shall be furnished with copies of all notices of and other communications relating to any general meeting of the company which any member of the company is entitled to have sent to him. The auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as an auditor.

[Section 232] Default in complying with the provisions of sections 225 to 231 makes the company and every officer of the company who is in default punishable with fine which may extend to Rs. 5,000.

Duties of auditors to enquire and make report

Sections 227(1A) and 227(4A) lay down certain important duties of the auditors of a company. The auditor has mandatory duties to inquire and report the following:—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures, and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

The auditor shall make a report to the members of the company on the accounts examined by him, and on every other document declared by Companies Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office. The auditor has duty to state in his report that whether in his opinion and to the best of his information and according to the explanations given to him, the accounts give the information required by the Companies Act, 1956 in the manner so required and give true and fair view.

Duties towards comments on the compliance of the Accounting Standards

Section 227(2)(*d*) requires that the auditor to make comments whether, in his opinion, the profit and loss account and balance sheet complied with the Accounting Standards referred to in section 211(3C) of the Companies Act, 1956.

Duties to report certain matters in thick type or italics in the Auditors' Report

It is an obligation on the auditors to make comments in his report in thick type or in italics the observations or comments, which have any adverse effect on the functioning of the company. [Section 227(2)(*e*)]

Duties to report disqualification of directors in certain cases

It is an obligation on the auditors to make comments in his report whether any director is disqualified from being appointed as director under section 274(1)(*g*) of the Act.

The auditors are required to make independent investigation as to disqualification of directors if any. Before reporting a particular person is disqualified or not he must seek for the view and/or representation of the director concerned or any of the person as to whether he was a director of the defaulting company as mentioned in section 274.

Duty to report regarding payment of Cess

As per the Companies (Second Amendment) Act, 2002, the Auditors are required to comment whether the cess payable under section 441A has been paid and if not the details of the amount of cess not paid. (Notification for implementation of section 441A is yet to be issued by the Central Government)

Duties to report for non reporting of the diversion of funds

The Reserve Bank of India has directed the banks to crack down on negligent auditors in case of falsification of accounts on the part of the borrower company, it has been also directed to the banks and financial institutions to lodge a formal complaint against the auditors with the Institute of Chartered Accountants of India, it is observed that auditors were negligent or deficient in conducting to enable the Institute to examine and fix accountability of the auditors.

Duties to verify accuracy of balance sheet

It is the duty of an auditor to verify not merely the arithmetical accuracy of the balance sheet but its substantial accuracy and to see that it includes the particulars required by the articles and the statute and contains a correct representation of the state of the company's affairs.

However, an auditor is not an insurer; he does not guarantee that the books do correctly show true position of company's affairs or he does not even guarantee that his balance sheet is accurate according to the books of the company

Liability in case of providing comfort to the company and its management by the auditors

The Expert Group of the Ministry of Company Affairs, will make random scrutiny of the balance sheet and profit and loss accounts submitted by the companies to the Registrar of companies to ensure, whether the auditors have given comfort to the company or its management this will reveal if the auditors report and notes accurately pointed out or not regarding departures from the statutory disclosures and other requirements pertaining to treatment of expenses for profitability calculation in their qualifications.

QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS [Section 226]

Section 226 of the Companies Act, 1956 contains provisions as regards qualifications and disqualifications of auditors. It applies to all types of companies, whether public or private and also to section 25 company and a Government Company.

Must be a Chartered Accountant for appointment as auditor

A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

A Chartered Accountant's firm may be appointed as auditor

A firm whereof all the partners are practicing chartered accountants in India are qualified for appointment as aforesaid, may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.
In such case the appointment of a firm as auditors shall be made in the name of the firm whereas the appointment of a proprietary concern as auditor shall be made in the name of the individual *i.e.*, the proprietor. [*Vide* Circular No. 8/229/56-PR, dated 20-3-1957]

Certain category of persons not qualified for appointment as auditor

Section 226(3) states that none of the following persons shall be qualified for appointment as auditor of a company:—
(*a*) a body corporate;
(*b*) an officer or employee of the company;
(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;
(*d*) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;
(*e*) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000 *i.e.* 13th December, 2000;
(*f*) For the purposes of section 226, "security" means an instrument, which carries voting rights;
(*g*) a person if he is, by virtue of section 226(3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or subsidiary of that company's holding company. [Section 226(4)]

A Chartered Accountant working on retainership basis or on fixed periodical remuneration is disqualified for appointment as an auditor

Circular No. 8/1/57-PR, dated 11-7-1957 provides that the Government have examined the question whether on his engagement as the income-tax consultant of a company either on payment of *ad hoc* fee or fees plus retainer or on fixed periodical remuneration, then he will be regarded as an officer or employee of the company for the purpose of section 226(3)(*b*) of the Act, and consequently as being disqualified for appointment as an auditor of the company.

Appointment of a relative of a director as an auditor should not be made
In the legal sense a relative of a director of a company is not disqualified for appointment as an auditor of the company. However, special resolution under section 314 shall be passed if the remuneration of auditor exceeds the limits specified in section 314.

However, the council of the Institute of Chartered Accountants of India has suggested that a chartered accountant shall not accept the audit of a company where he is relative of the company's managing director or whole-time director and he believes that he would not be in a position to express his independent opinion.

Comment [a6]: Very important provision

Deemed vacation of office of an auditor in case of disqualifications
According to section 226(5), if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sections 226(3) and 226(4), he shall be deemed to have vacated his office as such.

COST AUDIT [Section 233B]

Requirement to maintain cost records
Section 209(1)(*d*) states that if the company pertains to any class of companies engaged in production, processing, manufacturing or mining activities and the class of companies is required by the Central Government to include such particulars in the Books of accounts shall keep at its registered office proper Books of accounts with respect to utilisation of material or labour or to other items of cost as may be prescribed by the Central Government to include such particulars in the Books of accounts.

Requirement for audit of cost accounts in certain cases
Section 233B deals with the cost audit. Accordingly, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in the specified manner by an auditor who shall be a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959.

However, if the CG is of the opinion that sufficient number of qualified cost accountants are not available, the CG may, by notification direct that for such period as may be specified in the said notification, such CA may also conduct the audit of cost accounts of companies and thereupon a chartered accountant may be appointed to audit the cost accounts of the company.

APPOINTMENT OF COST AUDITOR

Compulsory requirement for certain class of companies to maintain cost records

Pursuant to section 209 of the Act, the Central Government has power to prescribe that any class of companies specified by the Government shall keep books of accounts relating to utilisation of material or labour or to other items of cost as may be prescribed.

The company shall keep at its registered office proper books of account including cost records. The Central Government has prescribed Rules for maintenance of cost records in respect of certain types of industries.

Order by the Central Government to direct for cost audit

The Central Government may, by order, direct that an audit of cost accounts of a company shall be conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959.

Appointment of cost auditors shall be made with the previous approval of the Central Government

On receipt of an order from the Central Government, the cost auditor shall be appointed by the Board of directors of a company in accordance with the provisions of section 224(1B) with the previous approval of the Central Government. [Section 233B(2)]

The Board shall obtain a certificate of eligibility from the cost auditor

Before the appointment of cost auditor is made by the Board, a written certificate shall be obtained from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.

Application for approval of the Central Government

For process for approval for appointment of the cost auditors, the Board of directors shall suggest a name of cost auditor for the approval of the Central Government and also shall fix his remuneration. The company shall make an application to the Central Government electronically in e-Form 23C.

Central Government has powers to notify for cost audit by Chartered Accountants

If the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that for such period as may be specified in the said notification, such chartered accountant within the meaning of the Chartered Accountants Act, 1949, as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a chartered accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company. [Proviso to section 233B(1)]

Cost audit shall be in addition to the statutory audit

The cost audit conducted by cost auditor under section 233B shall be in addition to an audit conducted by statutory auditor appointed under section 224. [Section 233B(3)]

Obligation on a company to provide facilities for conducting cost audit

Upon receipt of an order for cost audit under section 233B(1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company. [Section 233B(6)]

Cost auditor shall have same powers and duties as of the statutory auditors

A cost auditor shall have the same powers and duties in relation to the cost audit conducted by him under section 233B as the statutory auditor of a company. [Section 233B(4)]

Report by cost auditor to the Central Government

The cost auditor shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company. [Section 233B(4)]

Duty of the company to furnish the Central Government, explanation in case of qualification made in his report by the Cost Auditors

The company shall, within thirty days from the date of receipt of a copy of the report under section 233B(4) of the Act, furnish the Central Government with full information and explanation on every reservation or qualification contained in such report. [Section 233B(7)]

The Central Government shall have powers to call for such further information and explanations and thereupon the company shall furnish the same within such time as may be specified by the Central Government.

Central Government may direct for circulation of the cost audit report to the members

The Central Government may direct the company whose cost accounts have been audited to circulate to its members alongwith the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf. [Section 233B(10)]

Persons not to be appointed as the Cost Auditor [Section 233B(5)]

Following persons cannot be appointed as an auditor for conducting the audit of the cost accounts of a company:—

(*i*) A person referred to in sections 226(3) and 226(4) shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(*ii*) A person appointed under section 224 as an auditor of a company, shall not be appointed or reappointed for conducting the audit of the cost accounts of that company.

(*iii*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of section 233B(5), he shall on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

Penalty

If default is made in complying with the provisions of section 233B, the company shall be liable to be punished with fine which may extend to fifty thousand rupees and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both. [Section 233B(11)]

Cost auditor will not be appointed as internal auditor of a company

Comment [a7]: Important

Circular No. 1/83, dated 20-1-1983 states that a question has now been raised whether a cost auditor of a company can also be its internal auditor, which has been carefully examined in this Department. Since the cost auditor is required to comment on the scope and performance of internal auditor as per the provisions of the Cost Audit (Reports) Rules, 1968, it would tend to militate against proper and dispassionate discharge of the duties of the cost auditor if he was also the internal auditor of the company for the same period for which he is conducting the cost audit. The Department is, therefore, of the view that the cost auditor should not also be the internal auditor of a company for the period for which he is conducting the cost audit.

Disclosure of full details in the Cost Audit Report

Circular No. 3/83, dated 18-3-1983 states that the duties of the cost accountants appointed to conduct an audit of cost accounts of the company flow directly from the above provisions and as such they should in strict compliance therewith ensure that full and complete details in respect of the cost accounts of the company are furnished in their reports. Any request that certain details may not be disclosed in the report (on any ground whatsoever) should be discouraged as such non-disclosure will be inconsistent with the object and purpose of the Cost Audit Report Rules and the requirements thereunder. The cost auditors should if necessary, bring such instances to the notice of the Government by a specific note in their reports.

Department of Company Affairs clarification

Participation of Cost Auditor in the meetings of Audit Committee constituted under section 292A of the Companies Act, 1956 – clarification reg.

The Department of Company Affairs has issued a Circular No. 5/21/2001-C.L.V 52/323/CAB-87, dated 9th January, 2003 which states:—

1. The Department has examined whether the cost auditor appointed u/s 233B of the Companies Act, 1956, could or should be invited to the audit committee constituted in compliance with section 292A. It was clarified *vide* Circular No. 6/2001, dated 20-8-2001 that the cost auditor, wherever appointed, shall also attend and participate at the meetings of the audit committee, but shall not have the right to vote.

2. It has been mentioned in the circular that the presence of cost auditor in such committees will ensure overall cost management besides proper pricing of inter-unit/inter-company transfer and valuation of inventories. The intent of the Department was to impress upon the need for the presence of 'cost auditor' in audit committee meetings, as an auditor, but not as a member. The legislative intention is to constitute audit committees only from directors. As such the usage of these phrases should not be construed to mean that cost auditors are to be members of audit committees.

3. Sub-section 5 of section 292A provides that the auditors, internal auditors, if any, and the directors, incharge of finance, shall attend and participate at the meetings of audit committees without voting rights. The intention of providing for attending the meetings by auditors and internal auditors is to give an opportunity to the audit committee to hear their views. The cost auditor in his capacity as internal auditor can similarly participate in the meetings of the audit committee.

4. However, it has come to the notice of the Department that an interpretation is being made that cost auditor can be a member of audit committee. It is reiterated that the cost auditor cannot become a member of audit committee and wherever appointed, can only attend and participate in the meeting without voting rights. Any other interpretation will be outside the purview of section 292A and incorrect.

BRANCH AUDIT [Section 228]

Meaning of "Branch Office"

Section 2(9) of the Companies Act, 1956 defines the expression "Branch office" and accordingly, "Branch Office" in relation to a company means—

(*a*) any establishment described as a branch by the company; or (*b*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or

(*c*) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8.

Vide Circular F. No. 8/16(1)/61-PR, the term "branch office" includes any establishment engaged in any production, processing or manufacture. Branch Office of a company registered under the Companies Act, 1956 may be located in India or elsewhere.

Power of the Central Government to declare an establishment not to be a branch office

The Central Government may, by order, declare that in the case of any company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or any establishment engaged in any production, processing or manufacture, shall not be treated as a branch office of the company for all or any of the purposes of the Companies Act, 1956. [Section 8]

Appointment of auditor for branch office in India

Where a company has a branch office, the accounts of that office shall be audited by the company's auditor appointed under section 224 or by a person qualified for appointment as auditor of the company under section 226.

Appointment of auditor of branch office situated outside India

In case a company has a branch office and branch office is situated outside India, the accounts of such office shall be audited by any of the following persons:—

(*a*) company's auditor, or

(*b*) a person qualified for appointment as auditor of the company under section 226, or

(*c*) an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of the country.

Right of company's auditor in relation to branch audit

Where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor—

(*a*) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor; and

(*b*) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office.

Members in general meeting may appoint separate branch auditor

Where a company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situated in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor. [Section 228(3)(*a*)]

Branch auditor shall have the same powers and duties as the company's auditor

The person appointed as branch auditor shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same. [Section 228(3)(*b*)]

Books of accounts of branch office

An enquiry was made as to the true meaning of the word "accounts" in terms of section 228(3)(*c*) of the Companies Act, read with rule 6(*a*) of the Companies (Branch Audit Exemption) Rules, read with section 209. It was felt that the accounts maintained in the branch office would necessarily depend largely on the type of business or activity carried in the branch, and no principles of universal applicability could obviously be laid down. However, it was pointed out that the auditor concerned must satisfy himself that proper books of account under section 209 were being maintained at the branch. It was also felt that the formal audit certificate in respect of the audit of the branch office account should be worded, where a branch was run as an independent unit carrying on manufacturing business or trading activities in the same form as visualised in sections 227(2) and (3) as if the branch itself were a separate company.

In respect of branches where only a certain type of activity was carried on *e.g.*, sales depot, or purchase depot, the form of the audit certificate prescribed in sections 227(2) and (3) of the Act would have to be modified or adopted to suit the type of activity carried on at the branch, the books of account maintained there and the nature of returns sent from the branch to the registered office of the company. It was felt that, in any case, two requirements in addition to the other requirements of section 227 that might be applicable to any particular branch would have to be complied with, namely the auditor should certify that:—

(*i*) proper books of account have been kept at the branch;

(*ii*) that the accounts of returns of the branch show a true and fair view of the working of the branch.

Report of branch auditor

The branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor, who shall, while preparing the auditor's report, deal with thesame in such manner, as he considers necessary. [Section 228(3)(*c*)]

Vide Circular No. 10(l)-CL-VI/6l, dated 27-4-1961, the branch/internal auditor shall forward his report on the accounts of the branch direct to the statutory auditor. If the statutory auditor required any explanation/comments from the management in regard to the branch audit report, he would no doubt do so before making the observations in his audit report. He should also sent a copy of the branch audit report to the Board of directors simultaneously with the the statutory auditor.

Remuneration of branch auditor

The branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors of so authorised by the company in general meeting. [Section 228(3)(*d*)]

Power of the Central Government to grant exemption from branch audit

Section 228(4) vests overriding powers in the Central Government to make rules providing for the exemption of any branch office from the provisions of section 228 to the extent specified in the rules. In making such rules, the Central Government shall have regard to all or any of the following matters, namely:—

(*a*) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company;

(*b*) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of section 228;

(*c*) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office;

(*d*) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of section 228.

SPECIAL AUDIT [Section 233A]

Central Government's order for a special audit

The Central Government may order for a special audit, if it is of the opinion:—

(*a*) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(*b*) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade or business to which it pertains;

(*c*) that the financial position of any company is such as to endanger its solvency;

Who may conduct special audit

The Central Government may, by the same or different order, appoint either a chartered accountant or the company's auditor himself to conduct such special audit under section 233A. Further, the aforesaid chartered accountant may or may not be a chartered accountant in practice within the meaning of the Chartered Accountants Act, 1949.

Vide Letter No. 8/16(1)/61, dated 9-5-1961, power conferred by section 233A will be exercised not as a matter of routine but in special circumstances and after making such enquiry as the Central Government might consider necessary on the facts and circumstances of each case. As regards the appointment of a person not in practice, this might be required by the special circumstances of the case. It may also be mentioned that Government will themselves consider as to who should be appointed as special auditor. The Central Government has been empowered to appoint a Chartered Accountant who is not in practice for the special audit of a company. Even though the auditor appointed by a company is required to audit its books of account in accordance with law, in fact, however, cases may occasionally arise when the said auditor may not be considered suitable for the purpose of special audit, the Government has to exercise its discretion in such cases.

Powers and duties of special auditors

The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227. [Section 233A(3)]

Contents of report by the special auditor

The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government. [Section 233A(4)]

Report by the special auditors to the Central Government

The special auditor shall, instead of making his report to the members of the company, make the same to the Central Government. [Proviso to section 233A(3)]

Action by the Central Government on report of special auditor

On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act "or any other law for the time being in force": [Section 233A(6)]

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting. [Proviso to section 233A(6)]

Central Government's powers to direct for furnishing information to the special auditor

The Central Government may, by order, direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit and on failure to comply with such order such person shall be punishable with fine which may extend to five thousand rupees. [Section 233A(5)]

Expenses in connection with special audit shall be determined by the Central Government

The expenses of, and incidental to, any special audit under section 233A (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the and in default of such payment shall be recoverable from the company as arrears of land revenue.

AUDITOR'S REPORT

Auditor has to compulsorily inquire and comment in his Report

Section 227(1A) requires auditor to inquire and report on the following matters:
Contents of auditor's report are discussed below:—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures, and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether the loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and papers of the company that any securities have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

2. Auditor shall report whether the accounts give a true and fair view

The auditor has an obligation towards the members of the company to make a report to them on the accounts examined by him, and on every balance sheet and profit and loss account, which are placed before the company in annual general meeting during his tenure of office. The auditor has to state whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view:—

(*i*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*ii*) in the case of the profit and loss account, of the profit or loss for its financial year.
The auditor's report shall also state:—
(*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by section 228(3)(*c*) and how he has dealt with the same in preparing the auditor's report;

(*d*) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;

(*e*) whether, in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in section 211(3C);

(*f*) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company;

(*g*) whether any director is disqualified from being appointed or re-appointed as director under clause

(*g*) of sub-section (1) of section 274;

(*h*) whether the cess payable under section 441A has been paid and if not, the details of amount of cess not so paid;

Moreover, where matters as stated in (*a*)(*b*) and further in (*a*) to (*e*) are answered in negative or with qualification, the auditor's report shall state the reasons for the answer.

Requirement to give comments in the Auditors Report as per the Companies (Disqualification of Directors under section 274(1)(*g*) of the Companies Act, 1956) Rules, 2003

As per the Companies (Disqualification of Directors under section 274(1)(*g*) of the Companies Act, 1956) Rules, 2003 it is provided in rule 4 that:—

(*a*) it shall be the duty of the statutory auditor of the appointing company as well as the disqualifying company, as required under section 227(3)(*f*), to report to the members of the company whether any director is disqualified from being appointed or re-appointed as director under section 274(1)(*g*) and to furnish each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment or reappointment as a director or not.

(*b*) it shall be the duty of the statutory auditors of the disqualifying company as required in section 227(3)(*f*) to report to the members of the company whether any director in the company has been disqualified during the year from being appointed or re-appointed as director in another company under section 274(1)(*g*) of the Act.

Auditors are required to make independent investigations as to disqualification of director u/s 274(1)(*g*)

It was held in the case of ***Pawan Jain* v *Hindustan Club Ltd*. (2005)** that from a careful perusal of section 227, which provides for the power and duties of the auditors, it appears that the auditor cannot submit a report on the basis of the statement supplied by the company alone. He has to examine and even he has to make an independent enquiry about the collected materials from other sources to submit a report regarding clause (*f*) of sub-section (3) about the disqualification of the directors under section 274(1)(*g*).

Before reporting a particular person as being disqualified, an auditor must seek for the views and/or representations of the director concerned or any person as to whether he was a director of the defaulting company as mentioned in section 274. Auditor's report really affects a particular persons right as his civil rights or status is necessarily declared in a negative way by the auditor by his fact finding. The rules of natural justice demand that before a person's right is affected, he/she should be given opportunity to explain his or her position.

Obligation on the Auditors to comment on the compliance of the Accounting Standards, in the caseof failure, the Auditor has to face the consequences

The Department has issued a Press Note No. 7/99, dated 23-7-1999 which states that the provisions of section 227 of the Companies Act, 1956 have been amended with effect from 31-10-1998, with an obligation on the part of the auditors of the companies to include a para in their report under section 227 of the Act to the members of the company, stating whether in their opinion the Profit and Loss Account and the balance sheet comply with accounting standards referred to in sub-section (3C) of section 211. It has, however, been observed from the published balance sheet of a number of companies as at 31-3-1999 that such a certification by the auditors is missing in their reports. It further states that auditors of the companies are, therefore, advised to ensure that such a clause is added to their reports to the members failing which this Department will be constrained to take penal action against the auditors as well as refer the matter to the ICAI for initiating disciplinary proceedings against them.

Signature on the Auditor's Report, etc.

Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the Auditor's Report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor. [Section 229]

COMPANIES (AUDITOR'S REPORT) ORDER, 2003

The Auditor's Report shall include a statement on the matters specified in Companies (Auditor's Report) Order, 2003 (CARO).

The Central Government has issued on 12th June, 2003, Companies (Auditor's Report) Order, 2003 effective from 1st July, 2003 which has superceded the earlier Manufacturing and Other Companies (Auditor's Report) Order, 1988. The Central Government *vide* Notification dated 25th November, 2004 has also made certain amendments in the CARO.

Applicability

Earlier, companies were categorised as (*a*) Manufacturing, mining, processing, (*b*) Supplying & rendering of service, (*c*) Trading, and (*d*) Financing, Investment, Chit Fund Nidhi, Mutual Benefit Societies. Now, this classification/categorisation is done away with, implying that the order is applicable to all types of companies irrespective of the nature of business unless otherwise specifically continued to be exempted such as (1) Banking Company, (2) Insurance Company, (3) section 25 Company. In addition to the three types of companies, the Central Government has also liberalized the norms for exemptions for small private limited companies *vide* Notification, dated 25th November, 2004.

Now a small private limited company shall be exempted from the provisions of CARO, if it fulfills all the following conditions:—

1. Paid-up capital and reserves shall not exceed Rs.50 Lakh,
2. Outstanding loans from Bank/Financial Institution shall not exceed Rs.25 Lakhs, and
3. Turnover shall not exceed Rs.5.00 Crore.

Obligation to report the breach of law

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 the law. Generally speaking, it is the duty of the directors and the management to ensure that the provisions of the Companies Act have been complied with. However, where there is contravention of legal requirement 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 auditor should, however, not merely state the facts, leaving it to be inferred that a contravention of legal requirements has taken place, but he should clearly point out that in his opinion a contravention of the law has occurred. For example if any loans are given in contravention of section 295 of the Act, the auditor should report the matter irrespective of the fact that the concerned loans have been repaid after the balance-sheet date.

AUDIT REPORT VS. POLITICAL CONTRIBUTION

Where a company contributes any amount directly or indirectly to any political party and the auditor is satisfied that political contribution has been made in excess of the limit prescribed in section 293A, he should qualify his audit report, mentioning the excess amount involved, if ascertainable. Also where such contributions made by the company are within the limit but the facts regarding such contributions are not properly disclosed, the auditor should qualify his report and state the relevant facts. Where he is in doubt about the applicability of section 293A, he should disclose this fact in his report. An auditor's duty as such is to examine and report on the accounts of the company in accordance with the requirements of section 227. The auditor therefore has no specific duty to make any special enquiry to unearth cases of unauthorised political contributions if they are not readily apparent from the examination of the accounts made in the normal course of the audit. If any unauthorised political contribution (or such contribution in excess of the permissible limit, as the case may be) has been skillfully concealed by a company or it has not come to the notice of the auditor in the normal course of his audit, an auditor would be responsible only to the extent it can be established that in the conduct of the audit he acted without reasonable care and skill.

Views of the Department

(1) According to a Press release, dated 18th June 1962, the Department has impressed upon the Chartered Accountants, acting as statutory auditors of companies, through the ICAI, that it was their duty to comment on all such material violations of the law or sound accounting practice as might reasonably be expected to affect directly or indirectly the fortunes of the company's accounts.

(2) "The requirements of the Act are that the auditors should specifically certify whether the published accounts give a 'true and fair' view of the company's state of affairs and of the profit and loss for the financial year (as compared with the requirements of certification as true and correct under the 1913 Act).

Specimen of Notices, Resolutions and Letter connected with Statutory Auditor

SPECIMEN OF LETTER OF INTIMATION TO THE AUDITOR FOR APPOINTMENT

To,
M/s ABC & Associates
Chartered Accountants
Lucknow (UP)

Sub: **Appointment as the auditors of the company**

Dear Sir,

We are pleased to inform you that the Board of directors of the company at their first Board meeting held on 29th May, 2002 have appointed your firm as the Statutory Auditors of the company and to hold office upto the conclusion of the first annual general meeting of the company on such remuneration as may be decided by the Board.

You are requested to confirm your acceptance for our further needful.

Thanking you,
Yours faithfully,
For, **AFA LIMITED**

(ACME)
DIRECTOR
Encl.: Certified copy of the Resolution

SPECIMEN OF LETTER FOR ELIGIBILITY U/S 224(1B) OF THE COMPANIES ACT

To
The Board of directors
XYZ Ltd.
Lucknow (UP)

Dear Sir,

In reference to the discussion had with Shri AB, a member of the company, we would like to inform that pursuant to the provisions of section 224(1B) of the Companies Act, 1956, if the appointment made by the members at the annual meeting of the company, it shall be within the ceiling prescribed under the Companies Act, 1956.

Thanking you

Yours faithfully

For ABC & ASSOCIATES
CHARTERED ACCOUNTANTS
Mr. Ramesh
PARTNER

SPECIMEN OF BOARD RESOLUTION FOR APPOINTMENT OF THE FIRST AUDITORS

The Chairman informed that the first auditors of the company are to be appointed in the Board meeting within one month from the date of incorporation of the company. He informed that he had got consent of M/s A Jain & Associates, Chartered Accountants, for their appointment as the first auditors of the company. The Board considered and passed the following resolution unanimously:

"RESOLVED THAT pursuant to the provision of section 224 of the Companies Act, 1956, M/s A Jain & Associates, Chartered Accountants of Meerut from whom certificate pursuant to section 224(1B) of the Companies Act has been received, be and are hereby appointed as the first auditors of the company to hold office until the conclusion of the first annual general meeting of the company at a remuneration to be determined by the Board of directors of the company.

SPECIMEN OF THE RESOLUTIONS PASSED BY THE MEMBERS

I. FOR APPOINTMENT OF AUDITORS AT THE ANNUAL GENERAL MEETING

"RESOLVED THAT M/s ABC & Co. Chartered Accountants, the retiring Auditors be and are hereby reappointed as Auditors of the Company to hold office until the conclusion of the next Annual General Meeting and that they be paid a fee of Rs. 6,500 (Rs. Sixty Five Hundred Only) for Auditing the Accounts of the Company plus out of Pocket Expenses incurred by them."

II. ORDINARY RESOLUTION PASSED AT THE EGM FOR REMOVING EXISTING AUDITORS SUBJECT TO APPROVAL OF REGIONAL DIRECTOR

"RESOLVED THAT pursuant to the provision of section 224(7) of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director), M/s ABC & Co., Chartered Accountants of Kanpur, who were appointed as the Auditors of the Company at the last Annual General Meeting to hold office up to the conclusion of the next Annual General Meeting of the Company, be and are hereby removed from such office of the Auditors, before the expiry of their term."

III. ORDINARY RESOLUTION PASSED AT THE EGM FOR APPOINTING NEW AUDITORS SUBJECT TO APPROVAL OF REGIONAL DIRECTOR

"RESOLVED THAT pursuant to the provision of section 224, 224(1B) and 225 of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director) for the removal of the existing Auditors of the Company, M/s Jain & Co., Chartered Accountants of Mysore, M/s Malhotra & Associates, Chartered Accountants of Kanpur, be and are hereby appointed as the Auditors of the Company to hold office from the date of order of removal of the Auditors as approved by the Regional Director up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. 6,500 plus out of pocket expenses.

SPECIMEN OF THE BOARD RESOLUTION FOR AUTHORIZING TO FILE APPLICATION

"RESOLVED THAT an application in the prescribed e-Form 24A for approval for the removal of Auditor u/s 224(7) of the Companies Act, 1956 be made to the Regional Director, Ministry of Company Affairs, Western Region, Mumbai.

RESOLVED FURTHER THAT Mr. Manoj, Director and/or Company Secretary of the Company be and is hereby authorised to sign the application on behalf of the Board and execute an affidavit verifying the contents of the application.

RESOLVED FURTHER THAT Company Secretary be and is hereby authorised to file the above said application with the Regional Director, Western Region, Department of Company Affairs and to appear before the Regional Director on behalf of the Company and to do all such acts, deeds and things as may be required in the matter and to give all details, statements as may be required by the Regional Director."

SPECIMEN OF THE SPECIAL NOTICE/REQUISITION RECEIVED FROM A MEMBER TO CALL AN EGM

From:
Raj Verma
Member,
Cipla Ltd.
Lane-34, Ist Floor
Meerut (U.P.)

To.
The Board of Directors,
Cipla Ltd.
Z-4, Borivilly,
Mumbai (M.H.)

Sub: Requisition for calling an Extraordinary General Meeting u/s 169

Sir.

I, the under signed member of the Company holding 37.20% of the paidup share capital issued by the Company as set out in the Schedule hereto requires you in terms of section 169 of the Companies Act, 1956 and Article 129 of the Articles of Association of the Company to convene an Extra Ordinary General Meeting of the members of the Company, to transact the following businesses by Ordinary Resolution:

(1) REMOVAL OF AUDITORS

RESOLVED THAT pursuant to the provision of section 224(7) of the Companies Act. 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director), M/s Jain & Co., Chartered Accountants of Kanpur, who were appointed as the Auditors of the Company at the last Annual General Meeting to hold office up to the conclusion of the next Annual General Meeting of the Company be and are hereby removed from such office of the Auditors, before the expiry of their term.

(2) APPOINTMENT OF NEW AUDITORS:
RESOLVED THAT pursuant to the provision of sections 224, 224(18) and 225 of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director) for the removal of M/s Jain & Co., Chartered Accountants, the existing Auditor s of the Company, M/s malhotra & Associates,. Chartered Accountants of Meerut be and are hereby appointed as the Auditors of the Company to hold office from the date of Order of Removal of the Auditors as approved by the Regional Director up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. 6,500 plus of out of pocket expenses.

Name of the requisitionist: Raj Verma
L. F. No.: 253
Shares held: 1,02,8 00
% Holding: 37.20%
Signature:
PLACE: Meerut
DATED:

SPECIMEN OF ELIGIBILITY CERTIFICATE OF PROPOSED AUDITORS U/S 224(1B)

ABC & Associates,
Chartered Accountants
Lane-5, Bada Chowk,
Meerut (U.P.)

To,
The Board of Directors,
ABC Private Limited,
Meerut.

Reg.: Appointment as Statutory Auditor of your Company "Consent and Eligibility"

Dear Sir,
With reference our discussion and your offer for our appointment as the Statutory Auditors of your Company, we do hereby declare and confirm that we are duly qualified and eligible for this appointment as per the provisions of section 224(1B) and 226(1) of the Companies Act, 1956.

Thanking you

Yours Sincerely

For ABC & ASSOCIATES

CHARTERED ACCOUNTANTS
Mr. Ramesh
PARTNER

SPECIMEN OF GENERAL MEETING RESOLUTION FOR FILING THE CASUAL VACANCY CAUSED BY RESIGNATION OF THE AUDITORS

The Chairman took the matter for appointment of M/s Ram & Shyam, Chartered Accountants, Rampur, in place of M/s Rohit & Mohit, Chartered accountant, the retiring Auditors who have expressed their unwillingness for re-appointment and who has to vacate their office at the conclusion of this Meeting.
The Chairman informed that the Company has obtained an eligibility letter from M/s Ram & Shyam in terms of section 224(1B) of the Companies Act, 1956 and proposed the resolution for approval of the members:

"RESOLVED THAT M/s Ram & Shyam, Chartered Accountants of Rampur, be and are appointed as the Auditors of the Company, in place of M/s Rohit & Mohit, Chartered Accountants, to hold the office of Auditors from the date of this Meeting to the conclusion of the next Annual General Meeting of the Company on such remuneration and out of pocket expenses as may be decided by the Board.

Explanatory Statement
M/s Rohit & Mohit, Chartered Accountants, the existing Auditors of the Company has resigned from the office of Auditor of the Company, therefore creating casual vacancy in the office of Auditors. The Company has received a notice from member alongwith a letter u/s 224 of the Companies Act, 1956 informing the eligibility signifying his intention to appoint M/s Ram & Shyam, Chartered Accountants, to fill the casual vacancy. In terms of the provision of section 225 of the Companies Act, the appointment of Auditors in place of existing Auditors of the Company requires the approval of General Meeting by way of Ordinary resolution.
Therefore, the Board recommend to pass necessary resolution by way of ordinary resolution to appoint M/s Ram & Shyam, Chartered Accountants, as the casual Auditors of the Company in place of M/s Rohit & Mohit, Chartered Accountants to hold office of the Auditors of the Company till the conclusion of the next Annual General Meeting on the remuneration as may be fixed by the Board.
A copy of the resignation tendered by the Auditors and eligibility letter as referred elsewhere are available for inspection of the members till the date of the meeting during business hours.
None of the director of the Company is concerned or interested in the proposed resolution.

SPECIMEN OF SPECIAL NOTICE FOR APPOINTMENT OF AUDITORS OTHER THAN THE RETIRING AUDITORS

From .... (Member) Dated 17th May, 2008

To
The Board of directors
Cipla Ltd.
Kanpur (UP)

Sub: **Notice under section 225(1) of the Companies Act, 1956 for appointment of auditors M/s Subash & Co., Chartered Accountants, in place of M/s Agarwal & Co. Chartered Accountants.**

Dear Sir/s

This has in reference to your notice, dated 12th May, 2008 for the 17th Annual General Meeting of the Company to be held on 9th June, 2008.
I, would like to inform that I have .... Equity Shares of the company constituting ...... % of the total paid up capital of the company and in reference to the provisions of section 225(1) read with the provisions of section 190 of the Companies Act, 1956, I hereby give a notice that M/s Subash & Co., Chartered Accountants of Kanpur be appointed in place of M/s Agarwal & Co. Chartered Accountants, the retiring auditors of the company.

I hereby submit a draft of the resolution for approval at the annual general meeting to be held on 9th June, 2008.

You are requested to please do the needful as per provisions of the Companies Act, 1956.

Thanking you

Yours faithfully
(……………..)

Member, Folio No……..

Encl.: 1. Draft of the resolution
2. Eligibility letter given by M/s Subash & Co., Chartered Accountants.

SPECIMEN OF THE RESOLUTION TO BE SUBMITTED BY MEMBER'S ALONGWITH THE NOTICE

"RESOLVED THAT M/s Subash & Co., Chartered Accountants of Kanpur be and is hereby appointed as the auditors of the company in place of the retiring auditors M/s Agarwal & Co., Chartered Accountants to hold the office of the auditors till the conclusion of the next annual general meeting on such remuneration as may be determined by the Board of di rectors of the company."

SPECIMEN OF LETTER FOR NOTICE TO THE RETIRING AUDITOR BY THE COMPANY

20th May, 2008

To,
M/s Agarwal & Co.,
Chartered Accountants
Kanpur (UP)

Sub: Notice under section 225(1) of the Companies Act, 1956 received from a member for appointment of auditors M/s Subash & Co., Chartered Accountants, Kanpur in place of retiring auditors.

Dear Sir/s

Kindly find enclosed a copy of the notice received from .... a member of the company under section 225(1) read with the provisions of section 190 of the Companies Act, 1956 regarding notice for appointment of M/s Subash & Co., Chartered Accountants of Kanpur in place of retiring auditors.
In terms of the provisions of section 225(2) of the Companies Act, 1956, we hereby submit a copy of the notice for your kind information.

Kindly acknowledge the receipt of letter for our reference and record.

Thanking you,

Yours faithfully
For, Cipla Ltd.
DIRECTOR
Encl.: a/a

SPECIMEN OF INTIMATION LETTER BY THE NEW AUDITORS TO THE EXISTING AUDITORS FOR APPOINTMENT AND SEEKING THEIR NO OBJECTION LETTER

14th June, 2008

To,
M/s Agarwal & Co.,
Chartered Accountants
Kanpur (UP)

Sub: Appointment as the auditors of M/s Cipla Limited

Dear Sir,

We would like to inform that we have received a letter from Cipla Limited informing that the company at their annual general meeting held on 9th June, 2008 has appointed our firm as the Statutory Auditors of the company.
Being the retiring auditors, kindly give us your no objection letter to accept the assignment by us. In case if you have any observation or reservation, please inform us accordingly.

Thanking you,

Yours faithfully
M/s Subash & Co.
CHARTERED ACCOUNTANTS
PROPRIETOR

SPECIMEN OF RESOLUTION FOR FIXING REMUNERATION OF AUDITOR OF GOVERNMENT COMPANY

"**RESOLVED THAT** pursuant to the requirement of sub-section 8(*aa*) to section 224 of the Companies Act, 1956, the Board of Directors of the Company be and are hereby authorized to fix the remuneration and other terms and conditions, including reimbursement of out of pocket expenses in connection with the audit work, to the Statutory Auditors as appointed by the Comptroller and Auditor-General of India for the year 2001-2002."

Explanatory Statement to the above Resolution
As per section 619 of the Companies Act, 1956, the Statutory Auditors of a Government Company are appointed by the Comptroller and Auditor General of India (C&AG). The sub-section 8(*aa*) to section 224 of the Companies Act, 1956 requires that the remuneration of an auditor appointed under section 619 of the Companies Act, 1956 shall be fixed by the Company in general meeting or in such manner as the Company in general meeting may determine.

The Statutory Auditors for the Company for the financial year 2001-2002 is yet to be appointed by the C&AG.
Necessary resolution has been placed before the members for authorizing the Board of Directors to fix up the remuneration and reimbursement of other out of pocket expenses to the Statutory Auditors of the Company for the financial year 2001-2002, as and when the appointment is made by the C&AG. None of the Directors is interested in the resolution. Directors recommend the resolution as proposed in the Notice for Member's approval.

SPECIMEN OF GENERAL MEETING RESOLUTION FOR APPOINTMENT OF COMPANY'S AUDITOR OR ANY OTHER QUALIFIED PERSON AS BRANCH AUDITOR

"RESOLVED THAT the Board of Directors be and is hereby authorized to appoint the Company's Auditors and/or in consultation with Company's Auditors any person or persons qualified for appointment as auditor or auditors of the Company under section 226 of the Companies Act, 1956, so far as branch offices of the Company situated in countries outside India, in accordance with the law of the country in which the branch offices of the Company are situated, to audit the accounts for the year ending of such Company's Branch offices in India and abroad respectively and to fix the remuneration (which in the case of the Company's Auditors shall be in addition to their remuneration as the Company's Auditor) and the terms and conditions on which they shall carry out the audits.

Explanatory Statement

The Company has branch (sales) offices at different places in India, namely, Kanpur, Ratlam, Mumbai, Delhi, Kolkata and it is proposed to authorize the Board of Directors to appoint the Company's Auditor and/or, in consultation with the Company's Auditors, persons other than the Company's Auditors qualified for appointment as Auditors of the Company under section 226 of the Companies Act, 1956, to audit the accounts of all branch (sales) offices in India at such remuneration and upon such terms and conditions as the Board of Directors deem fit, pursuant to the provisions contained in sub-section (3) of section 228 of the Act.
The Company has a branch office in Canada and depending upon the development of business the Company may open branches in some other countries. For the branches of the Company situated outside India, it is proposed to authorize the Board of Directors to appoint persons qualified for appointment as auditors or duly qualified accountants as envisaged under the provisions of section 228 of the Act to audit the accounts of such branches upon such terms and conditions as the Board of Directors may deem fit.
The resolution is proposed to give the necessary authority to the Board of Directors in this behalf. No director is interested or concerned in the resolution.

SPECIMEN OF BOARD RESOLUTION FOR TAKING ON RECORD THE APPOINTMENT OF SPECIAL AUDITOR

"RESOLVED THAT appointment of special auditor and fixation of his remuneration by the Central Government *vide* its Order No. ________dated _________ in accordance with the provisions of section 233A, a copy of which has been placed before the meeting and initialed by the Chairman for the purpose of identification, be and is hereby noted.

RESOLVED FURTHER THAT all expenses of special audit pursuant to the order of the Central Government be borne by the Company."

SPECIMEN OF BOARD RESOLUTIONS

For appointment of Cost Auditor

"RESOLVED THAT pursuant to the provisions of section 233B of the Companies Act 1956 and the Central Government's order, directing the audit of Company's Cost accounts relating to _______ for the year ended _______, M/s Mittal & Co, Cost Accountants be and are hereby appointed the cost auditors of the Company at a remuneration of Rs. 3,500.

RESOLVED FURTHER THAT an application be made in Form 23C to the Central Government and that Company Secretary be and is hereby authorised to submit the application to Central Government, obtain the certificate under section 233B from the proposed appointee and to comply with all other formalities in this regard."

II. For submission of cost audit report to the Central Government

"RESOLVED THAT the report of the Cost Auditors for the financial year 2001-02, placed before the meeting and initialed by the Chairman for the purpose of identification, be and is hereby recorded.

RESOLVED FURTHER THAT the report together with detailed reply of the Company, be forwarded to the Central Government and that Company Secretary be and is hereby authorised to forward the report to Central Government and comply with all other formalities in this regard."