

Q.2. Explain following terms / concepts. (Any Two)**(4)**

1. Executive Director

Ans. (1) An executive director is a chief executive officer, (CEO) or Managing Director of an organisation or a company. The title of executive director is widely used in North American Nonprofit organisations. He is a member of Board of a firm who has managerial responsibility. He is working director of an organisation usually its full time employee and has to manage and complete specified daily operations of the company.

(2) Executive Director is also called Whole Time Director (WTD). He is responsible for specific program or services that are assigned to him by the board of directors or managing director and are given suitable titles like Marketing Director, Finance Director, etc.

2. Alternative Director

Ans. (1) A director who may act in place of another is called alternate director. He is appointed or nominated by the Board to act in the place of existing director who is absent or sick and unable to attend his normal duties or office. The appointment of alternate director cannot be less than 3 months.

(2) The Board of Directors of the company may appoint alternate director in place of an existing director who is going out of the state and Board meeting cannot be postponed till his arrival. His appointment is valid till the existing directors return to the state.

3. Casual Vacancy of a Director

Ans. (1) Casual vacancy of a director may arise due to different reasons such as death, permanent or temporary disablement, sickness, resignation etc. of a director. The Board of directors has to fill up the casual vacancy by appointing additional or co-opted directors at the Board meeting.

(2) The appointment of additional or co-opted directors is valid only up to the time of the vacating director's incomplete term.

4. Company Secretary

Ans. (1) Secretary is an employee of the company enjoying powers to aid and advise the management. He must be an individual and a member of the Institute of Company Secretaries of India (ICSI). He is a statutory officer, a coordinator and administrative officer of the company. He is full time principal officer of a company. The first secretary of a company is appointed by the promoters of the company. He is called as "Pro tern Secretary". The formal appointment is done by the Board of Directors by passing a board resolution to that effect. This resolution mentions the remuneration and allowances payable to a secretary.

(2) Secretary acts as the agent of the Board and helps the Managing Director to execute the plans and policies of the company. He is responsible for the secretarial work and efficient administration of the company. The

Secretary forms part of the bottom level management. He is considered to be the eyes, ears and hands of the company.

5. Secretarial Audit

Ans. (1) Secretarial Audit is an audit to check implementation (compliance) of various legislations including the Companies Act and other corporate and economic laws applicable to the company. It is a mechanism to monitor compliance requirements. It aims at detecting mistakes or errors in compliance mechanism.

(2) Secretarial Audit helps the company to avoid risks and losses due to non-compliances. It creates confidence among regulators, management and stakeholders that company is following disciplined approach of evaluation and improve effectiveness, risk management, control and governance.

Q.3. Study the following case/situation and express your opinion. (6)

1. Mr. A is a commerce graduate. He has vast experience in the field of finance and financial market. He wishes to become director of PQR co Ltd.

a) Is he required to obtain DIN?

b) Can PQR Co. Ltd. object to his directorship on lack of specialized qualification?

c) If he is appointed as director of PQR Co Ltd, is he entitled to remuneration?

Ans. (a) Mr. A is required to obtain Director Identification Number (DIN) before becoming a director.

(b) PQR Co. Ltd. cannot object to directorship of Mr. A on lack of specialised qualification. This is because the Companies Act has not prescribed any academic or professional qualifications for director.

(c) If Mr. A is appointed as director of PQR Co. Ltd., he is entitled to get managerial remuneration in the form of monthly payment like salary, specified percentage of net profits or commission and sitting fees for attending Board meetings or Committee meetings.

2. Mr. Z is member of institute of company Secretaries of India.

a) Can Mr. Z be appointed as pro-tem Secretary of LMN Ltd. which is under formation?

b) Can Mr. Z work as secretarial Auditor?

c) Mr. Z wishes to be employed as whole time Secretary in companies ABC Ltd. and OPC Ltd. is he allowed?

Ans. (a) Mr. Z can be appointed as pro-tem Secretary of LMN Ltd. as he is a member of Institute of Company Secretaries of India (ICSI).

(b) Mr. Z can work as secretarial auditor as he is a member of ICSI, holding certificate of practice.

(c) Mr. Z is not allowed to work as whole time Secretary in Companies ABC Ltd. and OPC Ltd. This is because the whole time secretary cannot hold office in more than one company.

Q.4. Distinguish Between the following. (Any One)

(5)

1. Director and Managing Director

Ans.

Director	Managing Director
1. Meaning	
An elected represented of the shareholders who is elected for directing, governing or controlling the policy or management of a company is called a Director	A director who is appointed from amongst the Directors as a chief Executive Officer and entrusted with the substantial powers of management is called a Managing Director.
2. Appointment	
A Director is elected and appointed by the shareholder at the Annual General Meeting.	A Managing Director is appointed by the Board of Director from amongst themselves.
3. Number of Companies	
A person can act as a director in 20 companies at a time out of which not more than 10 public companies at a time.	A person can act as a Managing Director of 2 companies at a time by passing unanimous resolution by the board of 2 nd company.
4. Tenure	
The period of his term is 3 years and the Director is required to retire after 3 years of his appointment by rotation	He is appointed for a maximum period of 5 years at a time and is not subject to retirement by rotation as long as he holds his office.
5. Remuneration	
Directors are given remuneration if there is specific provision to that effect made in the Articles. Directors are given fees to attend Board meeting which may be upto ₹1 lakh and other prescribed remuneration.	Managing director is entitled to get monthly salary or 5 per cent commission on net profits earned by the company.
6. Position held	
A Director works in only one capacity, i.e. as a Director.	He works in two capacities, viz. that of a Director and that of a Managing Director.

2. Managing Director and Manager.

Ans.

Managing Director	Manager
1. Meaning	
The Managing Director is the representative or chief Executive Officer of the Board as far as administration and management of the company are concerned.	A Director or a person from the public appointed by the company as a chief Executive Officer or an incharge of whole or substantially whole management of the company is called manager.
2. Powers	
Managing Director is entrusted with or enjoys substantial powers of management.	A manager is given routine power of management by the Board.
3. Position held	
Managing Director must be a Director of the company.	Manager need not be a director of the company.
4. Number of posts	
A company can have more than one Managing Director.	A company can have only one manager.
5. Status	
A Managing Director is first a Director and then an employee.	A manager is a regular employee of the company.
6. Remuneration	
If more than one Managing Director is appointed, the maximum remuneration cannot be more than 10% of net profit of the company.	Maximum remuneration to a manager cannot be more than 5 % of the net profit of the company.

3. Managing Director and Whole Time Director

Ans.

Managing Director	Whole Time Director
1. Meaning	
A Director who is appointed from amongst the Directors as a Chief Executive Officer and entrusted with the substantial powers of management is called a Managing Director.	A Director who is appointed by the company under a special contract of service as a full-time employee is called a Whole time Director.
2. Period of Office	
He is appointed for a period of maximum five years at a time and is not subject to retirement by rotation as long as he holds his office.	He is a full-time employee of the company. The terms and conditions of his appointment are regulated by the contract of service.
3. Number of Companies	
He can work as Managing Director in not more than two companies.	He is a full-time employee of the company and, therefore, cannot work in another company.
4. Powers	
Managing director entrusted with or enjoys substantial powers of management.	Whole time director's powers are defined by the terms of appointment. He does not have discretionary powers to take decision on policy matters.
5. Appointment	
A company may appoint either a Managing Director or a Manager. A Manager cannot be appointed along with the Managing Director. A Manager is generally appointed by small companies, in the place of the Managing Director.	A company can appoint a Whole time Director simultaneously with the Manager or Managing Director. A whole time Director is generally appointed by big companies to assist the Manager or the Managing Director.

Q.5. Answer the following questions: (Any One)**(10)**

1. Explain the Role of Directors.

Ans. The role of Directors:

(1) As an Agent: (1) A company, being an artificial person cannot act on its own. It acts through the Directors. They, therefore, resemble as agents of the company in the eyes of law. As agents, Directors can enter into contracts, sign agreements or contracts, carry on the business and perform all the other duties on behalf of the company. (2) As agents, they must act within the scope of their authority and in the name of the principal (i.e. the company). They would be personally liable if they enter into contract in their own name or use the company's name incorrectly or exceed the powers given to them by the Memorandum of Association or the Articles of Association.

(2) As managing Director: (1) Directors represent owners of the company viz. shareholders. As the Directors are elected representatives of the shareholders, they are entrusted with vast managerial powers. Being primarily shareholders, they are like partners with the other shareholders. In that relation, the Directors are regarded as most active and managing partners and other shareholders as sleeping or dormant partners. (2) As managing partners, the Directors perform almost all the proprietorial functions like issue of shares, allotment of shares, making calls, forfeiting shares, etc. However, their acts are not binding on the shareholders or on each other unless the Articles provide so.

(3) As trustees: The Directors are considered as trustees of the company. They stand in fiduciary relationship with their company. As trustees, the Directors look after the property, money and other assets of the company. They must account for all the company's money and property over which they exercise control. They have to make good the loss caused by improper application of money or property of the company.

(4) As an employee: The Directors are not the employees of the company because they are only required to attend the Board Meeting and set out the general policy of the company. The full time officers like Managing Directors, Manager, Secretary, etc. are employees appointed to carry out the day-to-day activities of the company management. However, under the special contract of service a Director can become a whole time Director (i.e. employee) of the company. A Director can be entitled to a share in the profit of a company including a handsome salary.

2. Explain the duties of Director.

Ans. The duties of Director:

(A) Statutory duty: The duties which are imposed on the directors by the Companies Act are called the statutory duties. The statutory duties are:

- (1) To file returns of allotment with the Registrar within a period of 30 days of allotment of shares.
- (2) To act in accordance with the provisions made in the Articles of Association of the company.

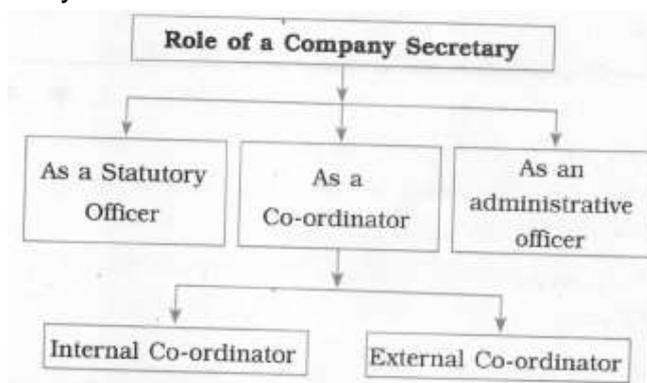
- (3) To disclose interest if the director is directly or indirectly concerned or interested in a contract of the company. He should disclose the nature of interest to the Board in a Board meeting.
- (4) To attend the Board Meetings regularly unless it is impossible to do so for reasons beyond their control.
- (5) To authenticate and approve financial statements.
- (6) To prepare and place before the Annual General Meeting, the Balance Sheet and Profit and Loss Account including the report of the Board of Directors.
- (7) To appoint first auditor or auditors of a company within one month of the date of incorporation of the company

(B) General duties: The general duties include the duties which the Directors are obliged to perform in the capacity of trustees, agents, managing partners and the duties required to be performed under the general law of the country.

- (1) To act in good faith and also for the benefit of the company and not to make any secret profit out of the business of the company.
- (2) To act with such care, skill and diligence as can be expected from men of their knowledge, experience and status.
- (3) To perform their duties personally and not to delegate them to others, unless specifically permitted by the Articles.
- (4) To manage the affairs of the company efficiently so as to avoid the charges of negligence or breach of trust by the members.
- (5) To take proper care of the assets and property of the company.

3. Explain the Role of Company Secretary.

Ans. A company secretary plays an important and crucial role in the administration of the company. The following chart shows a three-fold role of a company secretary:



Role of Company Secretary:

(1) Secretary as a Statutory Officer:

- (1) To sign documents and proceedings for authentication.
- (2) To sign and authenticate annual returns and other documents and form of company and submit them to the Registrar of Companies (ROC).

- (3) To maintain and update various statutory registers such as (a) Minutes of General and Board meetings of the company, (b) Register of Members and Register of Debenture holders, (c) Register of Directors and Key Managerial Personnel (KMP) and their shareholdings.
 - (4) To ensure necessary compliance of provisions of Companies Act and other Acts such as Income Tax Act, 1961, SEBI Act 1992, Securities Contracts (Regulation) Act, 1956, etc.
- (2) Secretary as a Co-ordinator Officer:** The Board of Directors as a supreme managerial authority decides and frames broad policies for the company. Effective implementation of such policies is the duty of company secretary. To achieve the target and implement the policy, a company secretary is required to perform the role of co-ordinator between the Board and executives at different levels, (a) As internal co-ordinator, a secretary is required work as network between the Board, the Managing Director, the chairperson on the one hand and the executives at different levels, trade unions and auditors on the other hand, (b) As external co-ordinator, a secretary is required to create a good relationship between company and shareholders, Government and public at large.
- (3) Secretary as Administrative Officer:**
- (1) To ensure implementation of the policies of the company.
 - (2) To supervise, co-ordinate and control the functioning of various departments of the company.
 - (3) To have an overall view of different aspects of company's administration and develop a strong and efficient institutional set-up.
 - (4) To ensure systematic and proper recruitment, training, remuneration, promotion, etc. of the staff members.