

## Ch 6. Directors And Key Managerial Personnel Of A Company.

**Q.1 A Select the correct answer from the option given below and rewrite the sentences:**

**1)..... Comprises of a team of Director.**

**a) Board of Directors b) Board of Trustees c) Board of Managers**

**2) ..... can be a director.**

**a) An Individual b) A Firm c) A Body corporate**

**3) Up to ..... as maximum directors are allowed to a company.**

**a) five b) fifteen c) fifty**

**4) A maximum of..... Directorships are allowed to a person.**

**a) two b) ten c) twenty**

**5) A maximum of ..... Directorships of a public company is allowed to a person.**

**a) one b) ten c) twenty**

**6)..... Is a unique identification number required to be a Director?**

**a) PIN b) DIN c) TIN**

**7)..... Powers are the powers given to Board under the Act.**

**a) Statutory b) Managerial c) Administrative**

**8) Director represents company in his role as.....**

**a) Agent b) Managing Partner c) employee**

**9) Managing Director is appointed for a period of..... Years.**

**a) 5 b) 10 c) 15**

**10) ..... is required to work under superintendence, control, guidance of the Boat**

**a) Government b) ROC c) Managing Director**

**11)..... Is an employee of the company?**

**a) Alternate director b) Non-executive Director c) Whole-time director**

**12) ..... need not be a director of the company.**

**a) Manager b) Managing Director c) Whole-time director**

13) ..... needs a whole time director.  
 a) Listed company b) Partnership c) OPC

14) To provide guidance to Board is ..... duty of company Secretary  
 a) Personal b) General c) Statutory

15) Only a member of..... Can be a practicing Company Secretary  
 a) ICAI b) ACCA c) ICSI

16) ..... is to be prepared in prescribed form MR -3.  
 a) Annual Report b) Auditors Report c) Secretarial Audit Report

**B.1 Match the pairs:**

Sr no	Group A	Answer
1	Board of Director	Extensive power of management
2	Managing director	Substantial power of management
3	Company secretary	Assists and advices the board
4	First director	Appointed by promoter
5	Alternate Director	Nominated by the board

**B.2 Match the pairs:**

Sr no	Group A	Answer
1	Public company	At least 3 directors
2	Private company	At least 2 directors
3	Secretarial auditor	Appointed by the board
4	Casual vacancy of a director	Arises due to death of director
5	Power of the board	Collective powers

**C. Write a word or a term or a phrase which can substitute each of the following statements:**

(1) The organization with distinct feature of separate ownership and management.

**Ans: Joint stock company**

(2) The officer responsible for company's finances.

**Ans: Chief Financial Officer**

(3) The body of elected representatives of company.

**Ans: The Board of Directors**

(4) The officer who is statutory and administrative officer and also acts as co-coordinator of the company.

**Ans: Company Secretary**

(5) Qualification required being a Company Secretary.

**Ans: Member of ICSI**

(6) Agents, Trustees and Managing Partners of the company.

**Ans: The Board of Directors**

(7) Audit which checks compliances of different legislations.

**Ans: Secretarial Audit**

(8) This KMP signs document of company requiring authentication by company.

**Ans: Company Secretary**

(9) The nature of relationship of Director with the company.

**Ans: Fiduciary**

(10) Name the secretarial standard-I

**Ans: Secretarial Standard on meetings of the Board of Directors (BOD)**

(11) Name the secretarial standard-2

**Ans: Secretarié'1 Standard on General Meeting**

(12) Name the secretarial standard-3

**Ans: Secretarial1 Standard on Dividend.**

**D. State whether the following statements are True or False.**

1) Large number of shareholders necessitates company to have separate managerial body.

**Ans: True**

2) Maximum number of Directors allowed to a company are 15 (fifteen).

**Ans: True**

3) A public company should have a minimum of 10 (ten) directors

**Ans: False**

4) DIN is required for Secretary ship.

**Ans: False**

5) Executive Director is called as outside Director.

**Ans: False**

6) Promoter of a company cannot be the Independent Director.

**Ans: True**

7) Only individuals can be directors.

**Ans: True**

8) Casual vacancy of Board is filled by the members.

**Ans: False**

9) To function as per Articles of Association of the company is statutory duty of the Board.

**Ans: True**

10) A Director is an employee of the company.

**Ans: False**

11) Managing Director is appointed by a resolution.

**Ans: True**

12) Minimum and Maximum age to be a Managing Director is 21 and 70; respectively.

**Ans: True**

13) A company may appoint more than one M. D.

**Ans: True**

14) Indian companies prefer a Managing Director over a Manager.

**Ans: True**

**E) Find the odd one.**

1) Woman Director, Promoter, Executive Director.

**Ans: Promoter.**

2) Absent at Board Meeting, failure to disclose interest, DIN.

**Ans: DIN.**

**F) Complete the sentences.**

1) Separate ownership and management is a unique feature of.....

**Ans: Company**

2) Minimum number of Directors for a private company should be .....

**Ans: Two**

3) Minimum number of Directors for a public company should be .....

**Ans: Three**

4) Minimum number of Directors for an OPC should be .....

**Ans: One**

5) First Directors of a company are appointed by .....

**Ans: Promoters**

6) At least one Woman Director is required by ..... company.

**Ans: Listed**

7) Casual vacancy on Board is filled by .....

**Ans: Board**

8) Director is the guardian of interest of company as .....

**Ans: Trustees**

9) First Secretary is appointed by .....

**Ans: Promoters**

10) The audit which checks the compliance of Companies Act is called as.....

**Ans: Secretarial Audit.**

**G) Select the correct option from the bracket:**

<b>Sr no</b>	<b>Group A</b>	<b>Answer</b>
1	Rotational Director	<b>Retire by rotation</b>
2	<b>Appointed in place of a director who is absent</b>	Alternate Director
3	Women Director	<b>Every listed company</b>
4	<b>Appointed by promoters</b>	First Director

**H) Answer in one sentence:**

**(1) Who is the officer responsible for the Company's financial plan?**

**Ans.** The Chief Financial (Finance) Officer (CFO) is responsible for the company's financial plan.

**(2) What is the importance of Secretarial Standards?**

**Ans.** The secretarial standards help the organization to achieve integration, harmonization and standardization of the corporate governance practices across all companies.

**(3) Who provides guidance to the Board of Directors?**

**Ans.** Company Secretary provides guidance to the Board of Directors.

**(4) What is the tenure of 'Managing Director'?**

**Ans.** The tenure of 'Managing Director' is 5 years.

**I) Correct the underlined word and rewrite the following sentences:**

**(1) Public company must have minimum 15 Directors.**

**Ans:** Public company must have minimum 03 Directors

**(2) First Directors are appointed by R0C.**

**Ans:** First Directors are appointed by Promoters

**(3) Secretarial Standards are given by the Companies Act, 2013.**

**Ans:** Secretarial Standards are given by the Institute of companies secretaries of India (ICSI)

**Q.2 Explain the following Terms/ Concepts:**

**(1) Director.**

**Ans.** (1) Section 2 (34) of the Companies Act, 2013 defines “a Director means a director appointed to the Board of the Company”. He is a person appointed to manage, direct, govern or control and supervise the affairs of the company. Only an individual and not a body corporate, association or firm can act as a director. Directors are the men of commercial skill and business tact.

(2) Directors are authorized by the shareholders to utilize the capital, acquire the assets, and appoint capable personnel to conduct the affairs of the Company. A director works in a number of capacities Viz. as an agent, as a trustee and as a managing partner.

**(2) Managing Director.**

**Ans.** (1) According to Section 2 (54) of the Companies Act 2013, Managing Director is a Director who has been entrusted with substantial powers of management under an agreement or by a resolution passed by the company at its general meeting or by the Board of Directors. Appointment of Managing Director is made for a term of 5 years. He is appointed by the Board of Directors.

(2) Managing director works under the superintendence, control and direction of the Board of Directors. He is responsible for the implementation of the policies framed by the Board. He acts as a link between the Board and the staff of the company. He is responsible for the day-to-day administration of the affairs of the company.

**(3) Independent Director.**

**Ans.** (1) As per Section 149 of the Companies Act. 2013. "Any director other than a Managing Director, Whole Time Director or a Nominee Director is an Independent Director." He holds office for a term up to 5 consecutive years and is eligible for reappointment. He is expected to possess skill, experience and knowledge of different fields like law, management. sales, market, administration, corporate governance and technical process (operation) concerning company's business.

(2) In a listed Public Company, 1/3 % of its total number of directors should independent directors. In other public company at least 2 directors should be independent directors. He cannot hold office for more than 2 consecutive terms.

#### **(4) Executive Director.**

**Ans.** (1) An executive director is a chief executive officer, (CEO) or Managing Director of an organization or a company. The title of executive director is widely used in North American Nonprofit organizations. He is a member of Board of an arm who has managerial responsibility. He is working director of an organization 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.

#### **(5) Non-Executive Director.**

**Ans:** (1) A non-executive director is a member of company's Board of Directors who is not part of the executive team. He holds no executive managerial position. A non-executive director does not engage in day-to-day management of the organization but he involved in policy making and planning exercises.

(2) A non-executive director is full time member of company's Board of Directors and responsible as part of the board for the success of the company. The idea behind his appointment is to get new independent ideas, perspective, second opinion and alternate voice to the Board.

#### **(6) Alternate 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 director return to the state.

#### **(7) 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, and resignation etc. of a director. The Board of directors has to fill up the casual vacancy by appointing additional or 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.

### **(8) Chief Financial Officer:**

**Ans.** (1) Chief financial Officer (CFO) is the officer of a company that has primary responsibility for managing the company's finances which include financial planning, management of financial risks, record keeping and financial reporting. In some sectors of the economy CFO is also held responsible for analysis of financial data. He helps in analyzing and recognizing company's financial strength and weaknesses.

(2) CFO is required to provide accurate and timely financial information to the company for decision making process. He may be appointed as a permanent employee in the rolls of the company or for a certain period of time on contractual basis. He need not be the director of the company. He is required to sign audited financial statements of the company.

### **(9) 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 co-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 tem 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.

### **(10) Secretarial Standard.**

**Ans.** (1) Secretarial Standards (SS) means Secretarial standards as issued by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act 1980 and approved by the Central Government through the Ministry of Corporate Affairs. The 85-1 and 88-2 are approved by the Central Government and mandatory to be observed by all companies in (2) The secretarial standard are reviewed by Secretarial Standard Board (888) once in a year or whenever there is substantial change in the law whichever is earlier. Institute of Company Secretaries of India (ICSI) has prepared and issued as many as 10 Secretarial Standards.

### **(11) 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.

### **(12) The Board of Directors.**

**Ans.** (1) The directors are the elected representatives of the shareholders who are appointed for directing, governing or controlling the policy or management of the company. The directors exercise their powers collectively as a Board. Thus, the Board of Directors is the policy-framing and decision-making organ of the company.

(2) The top level management of the company comprises of the Board of Directors which is a group of Directors. The Board of Directors is the highest body of the company with extensive powers, comprising of several Directors who are expert in different fields and appointed as per the provisions of the Companies Act. The Board Of Directors of the company is assisted by the several persons such as managing director, company Secretary Chief Financial Officer, etc. to assure efficient and effective management and administration of the company.

### **Q.3 Study the following case/situation and express your opinion:**

(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 a 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 CFO Ltd. This is because the whole time secretary cannot hold office in more than one company.**

(3) Mr. M wishes to be the Managing director of QRS Ltd:

(a) The age of Mr. M is 30 years. Can he be appointed as MD of a company?

(b) Is it necessary that Mr. M should be one of the directors on the Board of QRS Ltd.?

(c) For how long a period QRS Ltd. can appoint Mr. M. as Managing Director?

**Ans. (a) Mr. M's age is 30 years. He can be appointed as Managing Director (MD) of a company. He is not less than 21 years and more than 70 years of age.**

**(b) Mr. M must be one (necessarily) of the directors on the Board of QRS Ltd.**

**(c) QRS Ltd. can appoint Mr. M as Managing ' Director for a term of 5 years.**

**Q.4 Distinguish between the following:**

**1) Director and Managing Director:**

**Ans:**

Sr no	Director	Managing Director
1	An elected representative 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	A Director is elected and appointed by the shareholders at the Annual General Meeting.	A Managing Director is appointed Directors from amongst themselves'
3	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 directors of 2 companies at a time by resolution by the Board of 2nd company
4	The period of his term is 3 years and the Director is required to retire	He is appointed for a maximum period of 5 years at a time and is

	after 3 years of his appointment by rotation.	not subject to retirement by rotation as long as he holds his office.
5	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 up to Rs 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	A Director works in only one capacity, i.e. as a Director.	He works in two capacities, v12. that of a Dir and that of a Managing Director

## 2) Managing director and Manager

Ans:

Sr no	Managing director	Manager
1	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 in charge of whole or substantially whole management of the company is called manager.
2	Managing Director is entrusted With or enjoys substantial powers of management.	A manager is given routine power of management by the Board.
3	Managing Director must be a Director of the company.	Manager need not be a director of the company
4	A company can have more than one Managing Director.	A company can have only one manager.
5	A Managing Director is first a Director and then an employee.	A manager is a regular employee of the company.
6	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:

Sr no	Managing Director	Whole Time Director
1	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	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	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	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	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 in brief:

##### (1) What is DIN?

**Ans.** DIN stands for Director Identification Number. It is a unique 8 digit Identification number allotted for an existing director or person to be appointed as director. It is compulsory to obtain DIN by every director. DIN is prerequisite for e-filing of company's documents. Director is required to mention his DIN on every document he signs and authorizes. DIN once issued cannot be cancelled even on resignation of a person as director. DIN helps in detection and handling of offences committed by a director.

**(2) State any four powers of Board of Directors. ,**

**Ans.** Powers of Board of Directors:

- (1) Board of Directors has power to borrow money. For expansion, modernization and development of the company by applying to the bank for loan and overdraft facility, by issue of debentures of different types and by issue of bonds.
- (2) It has power to invest surplus or idle funds in short term or long term securities as per the requirement of the company.
- (3) It has power to appoint or remove key managerial Personnel (KMP) such as managing director, company secretary, chief financial officer, etc.
- (4) It has power to fill casual vacancies by appointing additional, alternate or co-opted directors;

**(3) Mention any four ways in which the office of a Director becomes vacant OR Removal of a Director.**

**Ans.** The office of a director becomes vacant in following ways:

- (1) Any disqualification under Section 164 of the Companies Act 2013: If a person adjudicated as insolvent by the court or becomes unsound mind or convicted by the court for any offence cannot be continue as director. He has to vacate his office for such reason.
- (2) Absentee at Board Meeting under Section 167 of the Act: If a director remains absent in the meeting of the Board of Directors held (a period of 12 months with or without taking leave of absence from the Board.
- (3) Contravention of Provisions of Act: If a director is acted in contravention of provision or section 184 which is related to entering into contracts where he is directly or indirectly Interested.
- (4) Imprisonment for an offence : If a director is convicted by a court of law for an offence involving moral grounds or otherwise and for such offence sentenced to imprisonment of 6 months or more, he has to vacate his office.

**(4) State any four powers of Managing Directors.**

**Ans.** The powers of Managing Director:

- (1) Power (Right) to sit on the Board as a presiding officer. He has right to attend Board Meeting and participate in the formation of the policy of the company.
- (2) He has right to vote on all the resolutions passed at the Board Meeting. He has power to assert his voice in all important policy decisions.
- (3) He has power to borrow money for the purpose of conducting business and also has power to invest surplus or idle funds of the company. He has power to make loans in the ordinary course of business.
- (4) He has power to appoint staff in the organization. He has power to supervise and

control entire stall” and organization. He has a power to issue guidelines to departmental heads and senior executives for successful implementation of decisions of the Board.

**(5) State the Statutory duties of a Company Secretary.**

**Ans.** Statutory duties of a Company Secretary:

- (1) To organize and attend all the meetings of the company including Board meetings and furnish relevant statistical information, records, documents, etc. required for the meeting. To assist the Chairman in conducting the proceedings of the meeting smoothly.
- (2) To draft the minutes of the meeting and place the same before the Chairman for his approval.
- (3) To attend, to correspondence with the; shareholders regarding allotment of shares, calls on shares, forfeiture of shares, transfer and transmission of shares, distribution of dividend, notices of general meetings, etc.
- (4) To issue notices and circulars to the members of the company and other stakeholders as directed and guided by the Board.
- (5) To maintain various statutory books of the company such as Register of Members, Register of Directors, Minutes Books, Share Transfer Book. etc. He is personally responsible for maintaining such books.
- (6) To file various returns, statements, balance Sheet and other documents such as reports, resolutions and lease deeds, etc. with the Registrar of Companies within the stipulated time-limit.

**Q.6 Justify the following statement:**

**(1) Directors are Managing Partners.**

**Ans.** (a) 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.

(b) As managing partners, the Directors perform almost all the proprietary 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.

**(2) A Director is an agent of the Company.**

**Ans.** (a) 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.

(b) 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.

**(3) Company has a distinct feature of separate ownership and management.**

**Ans.** (a) In a joint stock company, though shareholders are the owners, the management of the affairs of the company is entrusted to the Board of Directors. The shareholders cannot participate in the management because they are too large in number and are scattered over a wide area.

(b) Shareholders lack the necessary business skill and experience. They are mainly interested in the returns on the shares held by them. The sense of proprietorship of the shareholders is lost due to the changing membership from one shareholder transferor) to another (transferee).

Thus, in a joint stock company, the ownership remains with the shareholders and the management with the Board of Directors.

**(4) DIN helps investors of the company.**

**Ans.** (a) DIN means Director Identification Number. [It is a unique 8 digit identification number allotted to a person who is appointed as a Director. It is compulsory for every director to mention DIN on every document of the company he signs and authorizes. It is also required for e-filing of company's documents. With the help of DIN investors get information of the composition of the top management of the company on the basis of which they take more accurate decision about their investments.

(b) DIN is also helpful to handle and solve the problems that arises due disappearance of the company after collection of money from the public. DIN also helps to detect and handle the offences committed by a director.

**(5) Directors have to work as a team.**

**Ans.** (a) Directors are the elected representatives of the shareholders who are appointed for directing governing and controlling the management of the company. They are the men of commercial skill and business tact. They are authorized by the shareholders to utilize the capital, acquire assets, appoints the personnel to conduct the

affairs of the company for the benefit of the shareholders of the company.

(b) To carry out the functions, assigned to them by the shareholders, the directors exercise their powers collectively as a board. They cannot exercise their powers in their individual capacity. They work together as team. The team of directors, i.e. the Board of Directors is the highest body with extensive powers. It is a policy framing and decision making organ of the company.

**(6) Directors play a triple role.**

**Ans**

(a) Directors work in triple capacities viz;

i) as an agent.

ii) as a managing partner

iii) as a trustee. As agents, the directors can enter into contracts, sign agreements or contracts, carry on the business and perform all the other duties. As agents they must act within the scope of their authority and in the name of the principal i.e. the company.

(2) As a managing partner, directors are entrusted with managerial powers. As a managing partners, they perform almost all the proprietary functions like issue of shares, allotment of shares, making calls, forfeiting shares, etc. The directors are considered as trustees of the company. They stand in fiduciary relationship with their company. As trustee, the directors look after the property, money and other assets of the company.

**(7) Company Secretary plays a triple role.**

**Ans.** (a) A company secretary works in triple capacities viz. (i) as a Statutory Officer of the company, (ii) as a co-coordinator and (iii) as an administrative officer of the company.

As a statutory (principal) officer of a company. a secretary has to sign documents for authentication, to sign and deliver annual returns to the Registrar of companies. He has to maintain different statutory registers like minutes books, Register of members, etc.

(b) As a co-coordinator, a company secretary is required to work as network or connecting link between the Board and different executives at different levels. As external co-coordinator, he is required to create good relationship between company one-to-one hand and shareholders, Government and public at large on the other hand. As administrative officer, a company secretary needs to ensure implementation of the policies of the company. He has to guide, supervise and control different departments of the company.

**(8) A Director cannot be called employee of the company.**

**Ans.** (a) The directors are the elected representatives of the shareholders entrusted with well defined powers and rights. 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.

(b) The full time officers like manager, company secretary etc. are employees appointed to carry out day-to-day activities of the company management. A director can be entitled to a share in the profit of a company including handsome salary. Thus, a director of a company is a managing partner, trustee and agent but cannot be regarded as employees of the company.

**(9) Managing Director has substantial powers of management.**

**Ans.** (a) Managing Director is a Director Who has been entrusted with substantial powers of management under an agreement or by a resolution passed by the company at its general meeting or by the Board of Directors at its Board Meeting. Substantial powers are powers of executive nature like deciding the purchase policy, sales policy, credit policy, investment policy, selection and recruitment procedure, etc.

(b) Managing Director works under the superintendence, control and direction of the Board of Directors. He is responsible for the implementation of the policies framed by the Board. He acts as a link between the Board and the staff of the company. He is responsible for the day-to-day Administration of the affairs of company. He works in two capacities, via, that of a Director and that of a Manager of the company.

**(10) Indian companies prefer to appoint a M. D. than Manager.**

**Ans.** (a) A director Who is appointed from amongst the directors as Chief Executive Officer and entrusted with the substantial powers of management is called managing director. Manager means any individual appointed to manage whole or substantially whole affairs of the company. He works under the supervision, direction and control of the Board of Director. He need not be a director of the company. Managing director must be a director first and then a managing director. A company can have more than one managing directors but have only one manager.

(b) Managing director is more related and he remains constantly in contact with the Board of directors. As like Managing Director, the manager does not have close contact with the Board of directors. He works as an employee of the company and the Board. The Act allows a company to have either managing director or manager. Indian Companies prefer to appoint a managing director than a manager because managing director works in dual capacities viz. as director and as managing director. He is able to influence the Board better than that manager does.

**(11) Pro-tem Secretary is helpful to the company.**

**Ans.** (a) The first Secretary of the company is appointed by the promoters during the promotion stage. Since the company has not yet come into existence, such a Secretary is called a 'pro tem' or provisional Secretary i.e. Secretary for the time being.

(b) A pro-tem secretary plays a very important role prior to the incorporation in his capacity as a pro-tem secretary. He helps the promoters in fulfilling different formalities during formation of the company. He also helps the promoters in preparation and registration of important documents such as Memorandum of Association and Articles of Association and Prospectus.

**(12) Secretarial Standards should be in conformity with the Act.**

**Ans.** (a) Secretarial Standards (SS) means Secretarial

standards as issued by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act 1980 and approved by the Central Government through the Ministry of Corporate Affairs. The 88-1 and 88-2 are approved by the Central Government and mandatory to be observed by all companies in India.

Secretarial Standards are formulated and developed to bring uniformity and to standardize diverse secretarial practices prevailing in the corporate world.

(b) The secretarial standard is reviewed by Secretarial Standard Board (588) once in a year or whenever there is substantial change in the law whichever is earlier. Institute of Company Secretaries of India (ICSI) has prepared and issued as many as 10 Secretarial Standards.

**Q.7 Answer the following:**

**1) Explain the role of director?**

**Ans:** The role of directors:

**i) 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.

## **ii) As managing partners:**

(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 proprietary 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.

**iii) 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.

**(iv) 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 Managing Directors:**

**Ans.** (1] Meaning : A Director who is appointed from amongst the Directors as a Chief Executive Officer and entrusted with the substantial powers of management in addition to the routine administrative powers is called a Managing Director.

**(2) Definition:** According to Section 2(26) of the Companies Act, 1956, "Managing Director is a Director who has been entrusted with substantial powers of management under an Agreement or by a resolution passed by the company at its general meeting or by the Board of Directors".

**(3) Appointment:** In terms of Section 2 (26), a Managing Director can be appointed in any of the four ways, namely:

- (a) By virtue of an agreement with the company,
- (b) By virtue of a resolution passed by the company in general meeting,
- (c) By virtue of a resolution passed by the Board of Directors,
- (d) By virtue of Memorandum/Articles of Association. The appointment is subject to approval by resolution at the next general meeting.

According to Section 269(1) of the Companies Act, it is compulsory for a public company (or a private company which is a subsidiary of a public company) having a paid-up share capital of Rs 5 crores to appoint a Managing Director or Whole time Director.

**(4) Term of appointment:** The maximum for the appointment of a managing director 1. "Years at a time and can be reappointed within the last 2 years of the present term. A person can act as a managing director for the maximum 2 companies of which one must

be a public company

**(5) Qualification:** A person appointed as Managing Director must be a director of the company and he should not be less than 21 year of age and more than 70 years of age. He should not be adjudicated as insolvent by the court of law. He should not be convicted by the court of law for an offence with a sentence of more than 6 months period.

**(6) Remuneration:** The remuneration of the Managing Director should not exceed 5% of net profits without the sanction of the Central Government. The remuneration may be paid either by way of monthly payment or as a specific percentage of the net profits of the company.

**(7) Powers:** Managing Director is given substantial powers. Substantial powers are powers of executive nature like deciding the purchase policy, sales policy, credit policy, investment policy, selection and recruitment procedure, etc.

**(8) Nature of duty:** He works under the super intendance, control and direction of the Board of Directors. He is responsible for the Implementation of the policies framed by the Board. He acts as a link between the Board and the staff of the company. He is responsible for the day-to-day administration of the affairs of the company. He works in two capacities, viz. that Of a Director and that of a Manager of the company' A Managing Director is first a Director and then an employee.

#### **(4) Explain the Company Secretary**

**Ans. (1) Meaning:** Any individual possessing the prescribed qualifications and appointed to perform the duties of a Secretary under the Companies Act and any other ministerial or administrative duties is called a Company Secretary. This definition states that:

(1) Secretary should be an individual and not 3 mm or body corporate. (ii) He should be a member of the Institute of Company Secretaries of India (ICSI).

**(2) Appointment:** The first secretary is appointed by the promoters of the company. He is called pro-tem secretary and subsequent secretaries are appointed by the Board of directors by passing a board resolution to that effect. The listed companies and all other companies with a paid-up share capital of Rs 5 crore or more must appoint whole time company secretary. The Board decides the terms and conditions of his employment. The appointment of secretary must be recorded in the Register of Directors and key managerial personnel and their shareholdings.

#### **(3) Rights of Company Secretary:**

(1) A Company Secretary has a right to supervise and control the working of the department that comes under his jurisdiction. (2) He has right to be indemnified by the company for any loss suffered by him while discharging his duties.

(3) He has a right to sign a document or proceedings requiring authentication of the

company.

(4) He has a right to get remuneration as employee of the company.

#### **(4) Duties of Company Secretary:**

##### **(a) Statutory Duties:**

(1) To organize and attend all the meetings of the company including Board meetings and furnish relevant statistical information, records, documents, etc. required for the meeting. To assist the Chairman in conducting the proceedings of the meeting smoothly.

(2) To draft the minutes of the meeting and place the same before the Chairman for his approval.

(3) To attend, to correspondence with the; shareholders regarding allotment of shares, calls on shares, forfeiture of shares, transfer and transmission of shares, distribution of dividend, notices of general meetings, etc.

(4) To issue notices and circulars to the members of the company and other stakeholders as directed and guided by the Board.

(5) To maintain various statutory books of the company such as register of Members, Register of Directors, Minutes Books, and Share Transfer Book. Etc. He is personally responsible for maintaining such books.

(6) To file various returns, statements, balance Sheet and other documents such as reports, resolutions and lease deeds, etc. with the Registrar of Companies within the stipulated time-limit.

##### **(b) General Duties:**

(1) To advise and guide the Board and Director Of the company with regard to their duties, responsibilities and powers.

(2) To represent the company before different authorities and regulators with discharge of different duties under the act.

(3) To help the Board in the conduct of the affairs of the company.

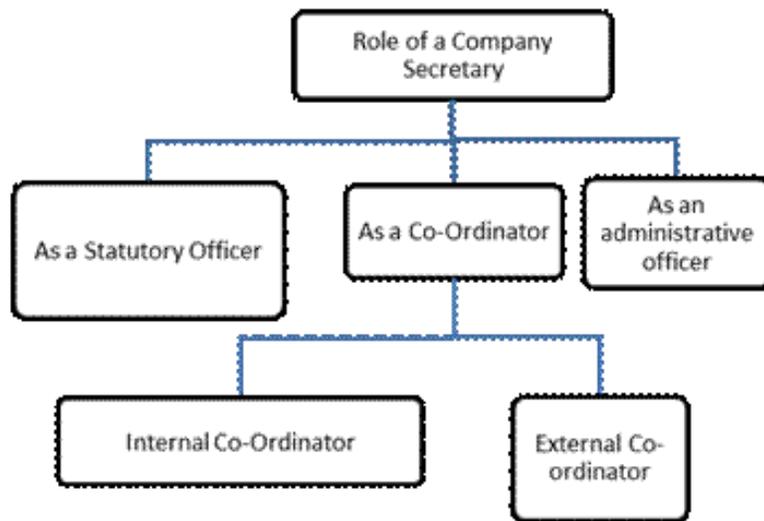
(4) To provide assistance and advise the Board in ensuring good corporate governance.

(5) To carry out and perform all the duties that is assigned to the secretary by the Board from time to time.

**(5) Remuneration:** The Companies Act does not make any provisions as to the remuneration payable to the company secretary. The remuneration of the company secretary is fixed by the company in the contract which. The company enters with him.

#### **(5) 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-coordinator 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-coordinator between the Board and executives at different levels. (a) As internal co-coordinator, 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 coordinator, 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.