

APPENDIX B

Comparison of Those Sections of the English Companies Act, 1929 Dealing with Appointment of Auditors and Horace B. Samuel's Suggested Amendments to Those Sections of that Act.

COMPANIES ACT, 1929

"132.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

SAMUEL'S PROPOSED AMENDMENTS¹⁹

"47. Subsection (1) of section 132 of the Principal Act shall be repealed and the following subsection substituted therefor—

(1)(a) Every company shall at its first general meeting appoint an auditor or auditors who shall hold office until removed by an extraordinary resolution of the company, or by the Court, or until he or they resign or die or become otherwise incapable of acting as auditors.

(b) In the event of an auditor resigning, he shall attend personally the next general meeting of the company and explain his reasons for resignation, or, if prevented by illness or other reasonable cause, send a letter to the company explaining his reasons, which letter shall be read to the meeting by the secretary of the company."

¹⁹ Samuel, Horace B., *Shareholders' Money*, Sir Isaac Pitman & Sons, Ltd., London, 1933, pp. 360, 361-362.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being 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 seven days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Board of Trade may be fixed by the Board."

"134.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the

"49. Section 134 of the Principal Act shall be repealed and the following section substituted therefor—

(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet and profit and loss account including documents and statements appended thereto laid before the company in general meeting during their tenure of office, and the report shall state

(a) whether or not they have obtained all the information and explanations they have required,

best of their information and the explanations given to them, and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which was registered after the fifteenth day of August, eighteen hundred and seventy-nine, and which has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Great Britain.

(b) whether in their opinion the said balance sheet, and the said profit and loss account and the said documents and statements are properly drawn up so as to exhibit a full and fair and true view of the state of the company's affairs in relation to existing conditions.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and documents and property of the company, and shall exercise all due diligence and vigilance in examining them and in requiring from the directors and officers of the company such facilities, information and explanations as is within the power of such directors and officers to give, and as may be reasonably necessary in order that the auditor shall be satisfied that the balance sheet and profit and loss account and the documents and statements appended thereto exhibit a full and fair and true view of the state of the company's affairs having regard to existing conditions.

(3) In the event of any director or other officer of a company not giving an auditor the facilities, information and explanations required by this section, such director or officer shall be deemed to have committed an offence under the Principal Act and shall also, on application in a summary way by the auditor by summons to the Judge of the Chancery Division of the High Court of Justice to whom companies business is assigned, be compellable to give such facilities, explanations, or information.

(4) In the event of an auditor apprehending that the books and documents shown to him and the information and explanations given to him are inadequate to enable him to form an opinion as to the financial situation of the company in regard to existing conditions, such auditor shall, if of opinion that it is reasonably practicable so to do, endeavour to obtain such information and explanations elsewhere, and the reasonable expenses involved in so doing shall be payable by the company.

(5) It shall be the duty of the auditors to draw attention in their report to any item or fact either appearing in the accounts, or directly or indirectly reflected therein, which is in their opinion of an artificial or window-dressing character.

(3) "The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts."

(6) (a) It shall be the duty of the auditors of a company to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company.

(b) The auditors at such meeting shall—

(i) be entitled to make any statement or explanation they desire with regard to the said accounts, including the documents and statements annexed thereto;

(ii) be under a duty to make such statements or explanations as they may think reasonable or desirable, in the event of their being of opinion that any statement made by any director or officer of the company may be calculated to mislead the shareholders with regard to the affairs of the company."