The accounts must comply with provision made by the Secretary of State by regulations as to: (a) the form and content of the consolidated balance sheet and consolidated profit and loss account; and (b) additional information to be provided by way of notes to the accounts (s 404(3)).

Section 405(1) provides that where a parent company prepares Companies Act group accounts, all the subsidiary undertakings of the company must be included in the consolidation, subject to the exceptions outlined in s 405(2) and (3). Section 405(2) notes that a subsidiary undertaking may be excluded from consolidation if its inclusion is not material for the purpose of giving a true and fair view. Additionally, under s 405(3) a subsidiary undertaking may be excluded from consolidation where: (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent company over the assets or management of that undertaking; or (b) the information necessary for the preparation of group accounts cannot be obtained without disproportionate expense or undue delay; or (c) the interest of the parent company is held exclusively with a view to subsequent resale.

Section 407 deals with the consistency of financial reporting within a group, with s 407(1) providing that the directors of a parent company must secure that the individual accounts of: (a) the parent company; and (b) each of its subsidiary undertakings, are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

Finally, ss 400–401 of the Companies Act 2006 set out exemptions for companies included in EEA and non-EEA group accounts of larger companies.

The directors' report

The directors are required under s 415(1) to prepare a directors' report for each financial year of the company. Failure to comply with this requirement is an offence committed by every person who was a director of the company immediately before the end of the period for filing accounts and reports for the financial year in question, and failed to take all reasonable steps for securing compliance with that requirement (s 415(4)).

Section 416 goes on to set down the general contents of directors' report, with s 416(1) providing that the directors' report for a financial year must state the names of the persons who, at any time during the financial year, were directors of the company, and the principal activities of the company in the course of the year. Section 416(3) states that except in the case of a company subject to the small companies regime, the report must state the amount (if any) that the directors recommend should be paid by way of dividend.

Furthermore, according to s 417 of the Companies Act 2006, unless the company is subject to the small companies' regime, the directors' report must contain a business review. The purpose of the business review, set down in s 417(2), is to inform members of the company and to help them assess how the directors have performed their duty under s 172 (duty to promote the success of the company). Section 417(3) provides that the business review must contain: (a) a fair review of the company's business; and (b) a description of the principal risks and uncertainties facing the company. In this regard, s 714(4) goes on to state that the review required is a balanced and comprehensive analysis of the development and performance of the company's business during the financial year, and the position of the company's business at the end of that year, consistent with the size and complexity of the business.

This is extended under s 417(5) for quoted companies which must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:

(a) the main trends and factors likely to affect the future development, performance and position of the company's business; and
(b) information about:
    (i) environmental matters (including the impact of the company's business on the environment),
    (ii) the company's employees, and
    (iii) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
(c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

In addition, s 417(6) provides that the review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include: (a) analysis using financial key performance indicators, i.e. factors by reference to which the development, performance or position of the company's business can be measured effectively; and (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters. This provision is relaxed slightly for companies which qualify as medium-sized. Under s 417(7), the directors' report for the year need not comply with the requirements of s 417(6) so far as they relate to non-financial information.

The review must, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts (s 417(8)). However, this section does not require the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company (s 417(10)).

Section 418 goes on to provide details of the statement as to disclosure to auditors and applies to a company unless under s 418(1) it is exempt for the financial year in question from the requirements of Part 16 as to audit of accounts, and the directors take advantage of that exemption. Otherwise, according to s 418(2), the directors' report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved: (a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware (i.e. information needed by the company's auditor in connection with preparing his report); and (b) he has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information. In order to discharge the obligations arising under this subsection, a director must show that he has taken all the steps that he ought to have taken as a director in order to do the things mentioned (i.e. made such enquiries of his fellow directors and of the company's auditors for that purpose, and taken such other steps (if any) for that purpose, as are required by his duty as a director of the company to exercise reasonable care, skill and diligence) (s 418(4)).

Section 418(5) goes on to provide that where a directors' report containing the statement required by this section is approved but the statement is false, every director of the company who (a) knew that the statement was false, or was reckless as to whether it was false; and (b) failed to take reasonable steps to prevent the report from being approved, commits an offence.

Finally, with respect to the approval and signing of the directors' report, s 419(1) states that it must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company. If the report is prepared in accordance with the small companies regime, it must contain a statement to that effect in a prominent position above the signature (s 419(2)).

Publication of accounts and reports

A company is under a duty to circulate copies of its annual accounts and reports for each financial year to every member of the company, every holder of the company's debentures, and every person who is entitled to receive notice of general meetings (s 423(1)). Section 426 of the Act though provides that a company may provide a summary financial statement instead of copies of the accounts and reports required to be sent out in accordance with s 423. Section 426(4) goes on to state that a summary financial statement must comply with the requirements of s 427 (form and contents of summary financial statement: unquoted companies), or s 428 (form and contents of summary financial statement: quoted companies). However, if default is made in complying with any provision of s 426, 427 or 428, or of regulations under any of those sections, an offence is committed by the company, and every officer of the company who is in default (s 429).

With respect to a company's annual accounts and reports, s 424(2) provides that a private company must comply with s 423 not later than the end of the period for filing accounts and reports, or if earlier, the date on which it actually delivers its accounts and reports to the Registrar. A public company must comply with s 423 at least 21 days before the date of the relevant accounts meeting (i.e. the accounts meeting of the company at which the accounts and reports in question are to be laid) (s 424(3)). Section 424(4) goes on to provide that if a public company sends out copies later than this they shall, despite that, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the relevant accounts meeting.

If the company defaults in sending out copies of its accounts and reports, then under s 425 an offence is committed by the company, and every officer of the company who is in default.

Requirements in connection with publication of accounts and reports

Section 433 of the Companies Act 2006 provides that every copy of a document that is published by or on behalf of the company must state the name of the person who signed it on behalf of the board. In the case of an unquoted company, this applies to copies of the company's balance sheet, and the directors' report (s 433(2)). In the case of a quoted company, this section applies to copies of the company's balance sheet, the directors' remuneration report, and the directors' report (s 433(3)). If a copy is published without the required statement of the signatory's name, then an offence is committed under s 433(4) of the Act by the company, and every officer of the company who is in default.

Section 434 states that if a company publishes any of its statutory accounts, they must be accompanied by the auditor's report on those accounts (unless the company is exempt from audit and the directors have taken advantage of that exemption). The term 'statutory accounts'

is defined by s 434(3) as a company's accounts for a financial year as required to be delivered to the Registrar under s 441 (see below).

Section 435 deals with the requirements in relation to non-statutory accounts, which must be published with a statement indicating: (a) that they are not the company's statutory accounts; (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been delivered to the Registrar; and (c) whether an auditor's report has been made on the company's statutory accounts for any such financial year, and if so whether the report: (i) was qualified or unqualified, or included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the report; or (ii) contained a statement under s 498(2) (accounting records or returns inadequate or accounts or directors' remuneration report not agreeing with records and returns); or s 498(3) (failure to obtain necessary information and explanations). Section 435(2) goes on to provide that the company must not publish with non-statutory accounts the auditor's report on the company's statutory accounts.

Finally, it is worth noting that under s 436(2) the term 'publication' is defined as the publishing, issuing or circulating of a document or otherwise making it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

Filing of accounts and reports

Section 441 of the Companies Act 2006 states that the directors of a company are under a duty to deliver to the Registrar for each financial year the accounts and reports required by: (i) s 444 (filing obligations of companies subject to small companies regime); (ii) s 445 (filing obligations of medium-sized companies); (iii) s 446 (filing obligations of unquoted companies); or (iv) s 447 (filing obligations of quoted companies). The period allowed for the directors of a company to comply with their obligation to deliver accounts and reports for a financial year to the Registrar is referred to as the 'period for filing'. Section 442(2)(a) states that for a private company, the period for filing is nine months after the end of the relevant accounting reference period (i.e. the accounting reference period by reference to which the financial year for the accounts in question was determined), while according to s 442(2)(b) for a public company, it is six months after the end of that period. This is subject to s 442(3) (a company's first relevant accounting reference period) and s 442(4) (shortened relevant accounting period due to notice given under s 392: alteration of accounting reference date).

Filing obligations: small companies

Section 444 sets out the filing obligations of companies subject to small companies regime. Section 444(1) notes that the directors must deliver to the Registrar for each financial year a copy of a balance sheet drawn up as at the last day of that year, and may also deliver to the Registrar (i) a copy of the company's profit and loss account for that year; and (ii) a copy of the directors' report for that year. Under s 444(2) they must also deliver to the Registrar a copy of the auditor's report on those accounts and on the directors' report, though this does not apply if the company is exempt from audit and the directors have taken advantage of that exemption. Section 444(4) goes on to state that if abbreviated accounts are delivered to the

Registrar the obligation to deliver a copy of the auditor's report on the accounts is to deliver a copy of the special auditor's report required by s 449.

According to s 444(5), where the directors of a company subject to the small companies regime deliver to the Registrar IAS accounts, or Companies Act accounts that are not abbreviated accounts, and in accordance with this section (a) do not deliver to the Registrar a copy of the company's profit and loss account; or (b) do not deliver to the Registrar a copy of the directors' report, the copy of the balance sheet delivered to the Registrar must contain in a prominent position a statement that the company's annual accounts and reports have been delivered in accordance with the provisions applicable to companies subject to the small companies regime.

Copies of the balance sheet and any directors' report delivered to the Registrar must, under s 444(6), state the name of the person who signed it on behalf of the board. Furthermore, s 444(7) provides that the copy of the auditor's report must state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or if the conditions in s 506 (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

Filing obligations: medium-sized companies

With respect to medium-sized companies, s 445(1) states that the directors must deliver to the Registrar a copy of the company's annual accounts, and the directors' report. They must also deliver to the Registrar a copy of the auditor's report on those accounts (and on the directors' report), though this does not apply if the company is exempt from audit and the directors have taken advantage of that exemption (s 445(2)).

Where the company prepares Companies Act accounts, s 445(3) provides that the directors may deliver to the Registrar a copy of the company's annual accounts for the financial year that includes a profit and loss account in which items are combined in accordance with regulations made by the Secretary of State, and that does not contain items whose omission is authorised by the regulations.

Copies of the balance sheet and directors' report delivered to the Registrar must, under s 445(5), state the name of the person who signed it on behalf of the board. Section 445(6) goes on to provide that the copy of the auditor's report must state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or if the conditions in s 506 are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

Filing obligations: quoted companies

Finally, the filing obligations of quoted companies are covered by s 447 of the Companies Act 2006. According to s 447(1) the directors must deliver to the Registrar for each financial year of the company a copy of the company's annual accounts, the directors' remuneration report, and the directors' report. They must also deliver a copy of the auditor's report on those accounts (and on the directors' remuneration report and the directors' report) under s 447(2). Section 447(3) goes on to provide that the copies of the balance sheet, the directors' remuneration report and the directors' report delivered to the Registrar under this section must state the name of the person who signed it on behalf of the board. Furthermore, under

s 447(4) the copy of the auditor's report delivered to the Registrar under this section must state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or if the conditions in s 506 are met, state that a resolution has been passed and notified to the Secretary of State in accordance with that section.

Failure to file accounts and reports

Under s 451(1) of the Companies Act 2006, if a company fails to file a copy of its annual accounts and reports with the Registrar before the end of the period for filing those accounts and reports, then every person who immediately before the end of that period was a director of the company commits an offence. It is a defence for a person to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period (s 451(2)), though it is not a defence to prove that the documents in question were not in fact prepared as required by this Part of the Act (s 451(3)).

Section 452 goes on to provide that if a company fails to comply with the requirements of s 441 and the directors fail to make good the default within 14 days after the service of a notice on them requiring compliance, the court may, on the application of any member or creditor of the company or of the Registrar, make an order directing the directors to make good the default within such time as may be specified in the order.

Finally, where the requirements of s 441 are not complied with in relation to a company's accounts and reports for a financial year before the end of the period for filing those accounts and reports, the company is liable to a civil penalty under s 453. This is in addition to any liability of the directors under s 451. Furthermore, the penalty may be recovered by the Registrar and is to be paid into the Consolidated Fund (s 453(3)).

Auditors

An audit is a process which is concerned to establish and confirm confidence in the accounting information yielded by the company's records and systems so that an opinion may be given upon the accounts which have been prepared by the company from those records and systems. The audit is carried out primarily for the shareholders as a check upon the directors' stewardship, but it is obviously also of benefit to creditors and potential investors. The statute law relating to auditors in terms of their appointment, rights, remuneration, removal and resignation are to be found in ss 485 to 526 of the 2006 Companies Act.

Appointment of auditors: public companies

At each general meeting at which accounts in respect of an accounting reference period are laid, usually the annual general meeting, the members must appoint auditors who will hold office until the conclusion of the next general meeting at which accounts in respect of an accounting reference period are laid.

In this regard, s 437 of the 2006 Act provides that the directors of a public company must lay before the company in general meeting copies of its annual accounts and reports and this must be complied with not later than the end of the period for filing the accounts and reports

in question. Section 438 goes on to provide that if these requirements are not complied with before the end of the period allowed, every person who immediately before the end of that period was a director of the company commits an offence.

Returning to the issue of appointment, s 489 states that an auditor or auditors of a public company must be appointed for each financial year of the company, unless the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required. Under s 489(4) the members may appoint an auditor or auditors by ordinary resolution: (a) at an accounts meeting; (b) if the company should have appointed an auditor or auditors at an accounts meeting but failed to do so; (c) where the directors had power to appoint under s 489(3) but have failed to make an appointment. Section 489(2) goes on to provide that for each financial year for which an auditor or auditors is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company's annual accounts and reports for the previous financial year are laid. Furthermore, the directors may appoint an auditor or auditors of the company (a) at any time before the company's first accounts meeting; (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next accounts meeting; (c) to fill a casual vacancy in the office of auditor (s 489(4)).

According to s 491, the auditor or auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that they do not take office until the previous auditor or auditors have ceased to hold office, and they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless reappointed.

If no appointment is made by a public company, then under s 490, the Secretary of State may appoint one or more persons to fill the vacancy.

Term of office of auditors of public company

According to s 491(1), the auditors of a public company hold office in accordance with the terms of their appointment, subject to the requirements that: (a) they do not take office until the previous auditor or auditors have ceased to hold office; and (b) they cease to hold office at the conclusion of the accounts meeting next following their appointment, unless reappointed. Section 491(2) goes on to provide that this is without prejudice to the provisions of this Part of the Act as to removal and resignation of auditors.

Removal and other special notice requirements

The members of a company may remove the auditors before the expiration of their office under s 510 of the Companies Act 2006. If this is done the Registrar must be informed within 14 days of removal in accordance with s 512 of the 2006 Act. As regards procedure, s 511 provides that special notice is required for an ordinary resolution at a general meeting.

Section 511(3) states that the auditor may make representations in writing to the company and request their notification to the members of the company. Section 511(4) goes on to provide that the company must: (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and (b) send a copy of the representations to every member of the company to whom notice of the meeting is or has

been sent. If a copy of any such representations is not sent out as required because it was received too late or because of the company's default, the auditor may require that the representations be read out at the meeting in accordance with s 511(5). However, s 511(6) states that copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

Resignation

An auditor of a company may, under s 516 of the Companies Act 2006, resign his office at any time by depositing at the registered office of the company a notice in writing to that effect. The notice is not effective unless it is accompanied by the statement required by s 519 of the Act. The date of his resignation is the date of the notice or such later date as may be specified in the notice (s 516(3)). According to s 519, the notice of resignation must contain a statement of the circumstances connected with his ceasing to hold office.

Section 520 goes on to state that where the statement deposited under s 519 states the circumstances connected with the auditor's ceasing to hold office, the company must within 14 days of the deposit of the statement either (a) send a copy of it to every person who under s 423 is entitled to be sent copies of the accounts; or (b) apply to the court. If the company applies to the court, then under s 520(3), it must notify the auditor of the application. Section 520(4) goes on to state that if the court is satisfied that the auditor is using the provisions of s 519 to secure needless publicity for defamatory matter: (a) it shall direct that copies of the statement need not be sent out; and (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, even if he is not a party to the application. However, if no such direction is made, then under s 520(5) the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days of the court's decision or, as the case may be, of the discontinuance of the proceedings.

On receiving the auditor's notice of resignation, s 517 of the 2006 Act provides that the company must send a copy of it to the Registrar within 14 days. In addition, if the notice contains a statement of circumstances connected with his resignation, s 521 states that a copy must also be sent to the Registrar within 21 days.

Finally, s 523 provides that where an auditor ceases to hold office before the end of his term of office, the company must notify the appropriate audit authority and the notice must inform the appropriate audit authority that the auditor has ceased to hold office, and be accompanied by: (i) a statement by the company of the reasons for his ceasing to hold office; or (ii) if the copy of the statement deposited by the auditor at the company's registered office in accordance with s 519 contains a statement of circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, a copy of that statement. Section 523(3) provides that this must be later than 14 days after the date on which the auditor's statement is deposited at the company's registered office in accordance with s 519. Similarly under s 522, a duty is placed on the auditor to notify the appropriate audit authority. The notice must inform the appropriate audit authority that he has ceased to hold office, and be accompanied by a copy of the statement deposited by him at the company's registered office in accordance with s 519. If the auditor fails to comply with this provision then he commits an offence under s 522(5) of the 2006 Act.

Duties of auditors

An auditor has *two main duties*: (1) *to audit* the accounts of the company; and (2) *to report* to the members of the company on the accounts, i.e. on every balance sheet and profit and loss account and all group accounts, if any, laid before the company in general meeting during his tenure of office. The auditor's report must be open to inspection by any member.

As regards the role of the auditor *in combating corporate fraud*, expectations which the public and some in business have of the auditor often go beyond their role as auditors. Although the term 'fraud' is often mentioned, there is in fact no crime of that name and if auditors are to be responsible for exposing it or reporting on it, then there must first be legislation to define what it is they are to report upon. There are some specific reporting duties in the field of money laundering in connection with drugs or terrorism set out in the Criminal Justice Act 1993. Reporting duties also exist in areas where organisations take deposits of the public's money, e.g. banking, insurance and investment funds, and, in particular, there is a duty on the auditors to a pension scheme to report to the Occupational Pensions Regulatory Authority if they have reasonable grounds to believe that any duty imposed upon the scheme trustees, the employer or any professional adviser is not being complied with and is of material significance. Sections 47 and 48 of the Pensions Act 1995 contain these 'whistleblowing' provisions.

In this connection, workers are protected in terms of whistleblowing on matters arising during their employment by the Public Interest Disclosure Act 1998. In relation to this and to the receipt of information in this way generally, the Institute of Chartered Accountants in England and Wales has issued a discussion paper, i.e. TECH 5/98, *Receipt of Information in Confidence by Auditors* (and see below).

Rights of auditors

The auditors are given wide statutory rights and powers to enable them to obtain whatever information they require for the purposes of their audit. In particular:

(a) they have a right of access at all times to the books, accounts and vouchers of the company and are entitled to require from the officers of the company such information and explanation as they think necessary for the performance of their duties as auditors;
(b) it is a criminal offence for any officer of a company knowingly or recklessly to make a statement which is misleading, false or deceptive in a material particular;
(c) they have a right to receive notices of and other communications relating to general meetings and to attend them. They also have a right to be heard at any general meeting which they attend on any part of the business which concerns them as auditors.

Information and the Companies (Audit, Investigations and Community Enterprise) Act 2004

This Act entitles an auditor to require information from employees and to that extent widens the auditor's sources of information. The right applies to subsidiary companies including

those that are non-GB where the parent company carries the responsibility for obtaining the information.

In addition, it is a criminal offence to fail to provide information or explanations required by the auditor.

The 2004 Act also requires the directors' report to state that so far as *each* director is aware there is no relevant information of which the company's auditors are unaware and that each director has taken all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to ensure that the company's auditors were aware of it.

'Relevant audit information' is defined as information needed by the company's auditors in connection with the preparation of their report.

It is a criminal offence if a false statement is made applying to each director who knew or was reckless as to the existence of undisclosed information. It does not seem possible for the directors to make a qualified report.

Duty of care of the auditor

When carrying out their duties, auditors must exercise skill and care and the degree of skill and care to be shown in particular in relation to the depth of the investigation and the sorts of check to be made is to be found in judicial decisions. The relevant case law is summarised below.

(a) It is not their duty to see that the business is being run efficiently or profitably or to advise on the conduct of the business. The auditors' concern is to ascertain the true financial position of the company at the time of the audit. However, an auditor is not an insurer and does not guarantee that the accounting records show the true state of the company's affairs. Nevertheless, he must be honest and not certify what he does not believe to be true and must take reasonable care and skill before he believes that what he certifies is true.

Re London and General Bank [1895] 2 Ch 166

The greater part of the capital of the bank, which was being wound up, had for some years been advanced to four of the 'Balfour' companies and a few special customers on securities which were insufficient and difficult of realisation. The auditors drew attention to the situation in a confidential report to the directors, stressing its gravity, and ending by saying – 'We cannot conclude without expressing our opinion unhesitatingly that no dividend should be paid this year.' The chairman, Mr Balfour, persuaded the auditors to strike this sentence out before the report was officially laid before the board of directors. The certificate signed by the auditors and laid before the shareholders at the annual general meeting stated that 'the value of the assets as shown on the balance sheet is dependent on realisation'. As originally drawn, it also said – 'And on this point we have reported specifically to the board.' But again Mr Balfour persuaded them to withdraw this statement by promising to mention this in his speech to the shareholders which he did without drawing special attention to it. The directors declared a dividend of 7 per cent.

Held – by the Court of Appeal, affirming the decision of Vaughan Williams J – that the auditors had been guilty of misfeasance, and were liable to make good the amount of dividend paid. It is the duty of an auditor to consider and report to the shareholders, whether the balance sheet exhibits a correct view of the state of the company's affairs, and the true financial position at the time of the audit. He must take reasonable care to see that his certification is true, and must place the necessary information before the shareholders and not merely indicate the means of acquiring it. In the course of his judgment Lindley LJ said:

> An auditor [. . .] is not an insurer; he does not guarantee that the books correctly show the true position of the company's affairs; he does not even guarantee that his balance sheet is accurate according to the books of the company [. . .] but, he must be honest, i.e. he must not certify what he does not believe to be true, and he must use reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of the case.

Theobald, the auditor, stated the true position to the directors, and if he had done the same to the shareholders, his duty would have been discharged.

(b) As we have seen, there is no statutory duty upon an auditor to detect fraud but if suspicions are aroused the auditor has a duty to investigate matters. A standard issued by the Auditing Practices Board (SAS 110) states that an auditor's prime duty is to ensure that the company's accounts give a true and fair view of its position and not to detect fraud. Nevertheless, says the standard, material fraud can distort a company's accounts and auditors should be alert to the possibility of its existence. Other guidelines issued by the APB state that auditors may be barred from auditing financial services companies if they detect fraud and fail to report on it to the relevant regulator, e.g. the Financial Services Authority.

(c) An auditor may have to value shares and in this connection it should be noted that if on the facts of the case the court takes the view that the auditor was employed in the capacity of arbitrator rather than expert there is no liability in negligence. However, in most cases the auditor will be regarded as valuing as an expert because the parties are seldom in dispute with regard to the value of the shares and are simply seeking a professional valuation. Where the auditor values as an expert he will be liable in negligence under the rule in ***Hedley Byrne & Co*** **v** ***Heller & Partners*** [1963] 2 All ER 575 if he reaches a valuation without the exercise of proper skill and care. In addition, the auditors' valuation of shares is generally binding on the parties even if it is wrong. The courts are reluctant to set aside a professional valuation in the absence of fraud, or collusion (***Baber*** **v** ***Kenwood Manufacturing Co*** [1978] 1 Lloyd's Rep 175), and this makes the remedy against the auditors more attractive provided, of course, negligence can be established.

(d) The auditor should be familiar with the company's constitution, i.e. its memorandum and articles (***Re Republic of Bolivia Exploration Syndicate Ltd*** [1914] 1 Ch 139) and must, of course, check and verify the company's accounts (***Leeds Estate, Building and Investment Co*** **v** ***Shepherd*** (1887) 36 Ch D 787).

(e) The auditor is not under a duty to take stock and can accept as honest any statements made by the company's officers and servants so long as he acts reasonably in so doing and the circumstances are not suspicious (***Re Kingston Cotton Mill Co*** (1896), below). In other words, he must act as a reasonably careful and competent auditor would.