



Chapter 13

Directors

Section No.	Description
149	Company to have Board of Directors
151	Appointment of Director elected by Small Shareholders
152	Appointment of Directors
161	Appointment of Additional Director, Alternate Director & Nominee Director
153 to 159	Director Identification Number
164	Disqualification for Appointment of Directors
166	Duties of Directors
167	Vacation of Office of Directors
168	Resignation of Directors
169	Removal of Directors
170	Registers of Directors & KMP and their Shareholding
171	Members Right to Inspect
172	Punishment
179	Powers of Board
180	Restriction on Powers of Board (Public Company)
181	Company to Contribute to Bona fide & Charitable Funds, etc.
182	Prohibitions & Restrictions regarding Political Contributions
183	Powers of the Board & other persons to make contributions to National Defense Funds, etc.
196	Appointment of Managing Director, Whole Time Director or Manager (Public Company)
197, Sch V	Overall Maximum Managerial Remuneration & Managerial Remuneration in case of Absence or Inadequacy of Profits (PUBLIC Company)



Section

149

Company to have Board of Directors

Section

149(1)

Minimum & Maximum Directors

Topic	Detailed Discussion
Section 149(1)	Minimum and Maximum Directors Every company shall have a Board of Directors consisting of individuals as directors and shall have – (a) a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and 1 director in the case of a One Person Company; and (b) a maximum of 15 directors.
1st Proviso	Provided that a company may appoint more than 15 directors after passing a special resolution.

Section

149(1)

Woman Director

Topic	Detailed Discussion	
Applicability & Extra Points	1) Every Listed Company	No Limit
	2) Every other Public Company having	PUSC \geq ₹ 100 crores; or
	3) Every other Public Company having	Turnover \geq ₹ 300 crores.
	Note 1:- NEW company, shall comply with such provisions within 6 months from the date of its incorporation. Note 2:- Any intermittent vacancy of a woman director shall be filled-up by the Board not later than immediate next BM or 3 months from the date of such vacancy whichever is later. Note 3:- The PUSC or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.	

Section

149

Independent Director

Topic	Detailed Discussion
Applicability & Extra Points	Listed Public Companies shall have at least 1/3 of its directors as Independent Directors.



Topic	Detailed Discussion						
	<p>The following class or classes of companies shall have at least 2 directors as independent directors -</p> <table> <tr> <td>1) Public Companies having</td><td>PUSC \geq ₹ 10 Crores</td></tr> <tr> <td>2) Public Companies having</td><td>Turnover \geq ₹ 100 Crores</td></tr> <tr> <td>3) Public Companies having</td><td>Outstanding loans, debentures and deposits $>$ ₹ 50 crores</td></tr> </table> <p>Note :- Any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy, whichever is later.</p>	1) Public Companies having	PUSC \geq ₹ 10 Crores	2) Public Companies having	Turnover \geq ₹ 100 Crores	3) Public Companies having	Outstanding loans, debentures and deposits $>$ ₹ 50 crores
1) Public Companies having	PUSC \geq ₹ 10 Crores						
2) Public Companies having	Turnover \geq ₹ 100 Crores						
3) Public Companies having	Outstanding loans, debentures and deposits $>$ ₹ 50 crores						
Section 149(10)	<p>Tenure of the Independent Director</p> <p>Subject to the provisions of section 152, an independent director shall hold office for a term up to 5 consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a SPECIAL RESOLUTION by the company and disclosure of such appointment in the Board's report.</p>						
Section 149(11)	<p>Re-appointment and Cooling Period for Independent Directors</p> <p>No independent director shall hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director:</p> <p>Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.</p> <p>Explanation — Any tenure of an independent director on the date of commencement of this Act shall not be counted as a term.</p>						
Section 149(13)	<p>Independent Directors Shall be non-rotational.</p> <p>The provisions of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.</p>						

Section

149(6)

Meaning of Independent Director

Topic	Detailed Discussion
Section 149(6)	<p>An independent director in relation to a company, means a director other than :-</p> <ol style="list-style-type: none"> (1) a managing director or (2) a whole- time director or (3) a nominee director
Section 149(6)(a)	<p>who, in the OPINION of the BOARD, is a person of INTEGRITY and possesses relevant EXPERTISE and EXPERIENCE;</p>
Section 149(6)(b)	<ol style="list-style-type: none"> who is or was not a PROMOTER of the CHSA (company or its holding, subsidiary or associate company); who is not RELATED to <u>promoters</u> or <u>directors</u> in the CHSA;



Topic	Detailed Discussion
Section 149(6)(c)	<p>who has or had no PECUNIARY RELATIONSHIP, other than :-</p> <ol style="list-style-type: none"> (1) remuneration as such director or (2) having transaction not exceeding 10% of his total income or (3) such amount as may be prescribed, <p>with the CHSA, or their <u>promoters</u>, or <u>directors</u>, during the :-</p> <ol style="list-style-type: none"> (a) 2 immediately preceding financial years or (b) current financial year;
Section 149(6)(d) (Amended)	<p>none of whose RELATIVES—</p> <ol style="list-style-type: none"> (i) is holding any SECURITY of or interest in the CHSA during the 2 immediately preceding financial years or during the current financial year: Provided that the RELATIVE may hold security or interest in the company of face value not exceeding <ol style="list-style-type: none"> (a) ₹ 50 lakh or (b) 2% of the paid-up capital of the CHSA or (c) such higher sum as may be prescribed; (ii) is INDEBTED to the CHSA or their <u>promoters</u>, or <u>directors</u>, in excess of ₹ 50 lakhs during the 2 immediately preceding financial years or during the current financial year; (iii) has given a GUARANTEE or provided any security in connection with the indebtedness of any 3rd person to the CHSA or their <u>promoters</u>, or <u>directors</u> of such holding company, for ₹ 50 lakhs during the 2 immediately preceding financial years or during the current financial year; or (iv) has any other PECUNIARY TRANSACTION or relationship with the CHSA amounting to <u>2% or more of its gross turnover or total income singly or in combination</u> with the transactions referred to in sub-clause (i), (ii) or (iii).
Section 149(6)(e)	<p>who, neither HIMSELF nor any of his RELATIVES—</p> <ol style="list-style-type: none"> (i) holds or has held the position of a KMP or is or has been Employee of the CHSA in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed; Provided that in case of a RELATIVE who is an EMPLOYEE, the restriction under this clause shall NOT apply for his employment during preceding 3 financial years. (ii) is or has been an EMPLOYEE or PROPRIETOR or a PARTNER, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of— <ol style="list-style-type: none"> (A) a firm of AUDITORS or COMPANY SECRETARIES in practice or COST AUDITORS of the CHSA; or (B) any LEGAL or a CONSULTING firm that has or had any transaction with the CHSA amounting to <u>10% or more of the gross turnover of such firm</u>; (iii) holds together with his relatives 2% or more of the total voting power of the company; or (iv) is a CHIEF EXECUTIVE or DIRECTOR, by whatever name called, of :- <ol style="list-style-type: none"> (a) any non-profit organisation that receives 25% or more of its receipts from the <u>company, any of its promoters, directors or its holding, subsidiary or associate company</u> or



Topic	Detailed Discussion
	(b) that holds 2% or more of the total voting power of the company;
Section 149(6)(f)	<p>who possesses such other qualifications as prescribed below.</p> <p>An independent director shall possess appropriate <u>skills, experience and knowledge</u> in one or more fields of :-</p> <ol style="list-style-type: none"> (1) finance, (2) law, (3) management, (4) sales, (5) marketing, (6) administration, (7) research, (8) corporate governance, (9) technical operations or (10) other disciplines related to the company's business.

Section

151

Appointment of Director elected by Small Shareholders

Topic	Detailed Discussion
Section 151	<p>A LISTED company MAY have 1 director elected by SUCH small shareholders in such manner and with such terms and conditions as may be prescribed.</p> <p>Explanation — “small shareholders” means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.</p>

Rules

Manner of Appointment of Small Shareholders Director

Topic	Detailed Discussion
When is Appointment of SSD made?	<p>A listed company, may upon notice of :-</p> <ol style="list-style-type: none"> (a) not less than 1,000 small shareholders or (b) 1/10th of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. <p>A listed company may opt to have a director representing small shareholders suo motu.</p>
Special provisions applicable on SSD and his Tenure	<p>The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-</p> <ol style="list-style-type: none"> (a) such director shall not be liable to retire by rotation; (b) such director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years; and (c) on the expiry of the tenure, such director shall not be eligible for re-appointment.



Topic	Detailed Discussion
Restrictions on holding any other office for SSD	A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

Section	152	Appointment of Directors
---------	-----	---------------------------------

Topic	Detailed Discussion
Section 152(1)	Appointment of First Director Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
Section 152(5)	Consent by the Director to the ROC Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2 . Provided that the company shall, within 30 days of the appointment of a director, file such consent with the Registrar in Form DIR-12 .

Section	152(6) & (7)	Retiring & Rotational Directors for PUBLIC Company
---------	--------------	---

Topic	Detailed Discussion
Section 152(6)(a)	Rotational Director Unless the articles provide for the retirement of all directors at every AGM, not less than 2/3rd of the total number of directors (<u>Upper Rounding off</u>) of a public company shall— (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and (ii) be appointed by the company in general meeting. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Explanation — “Total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company. </div>
Section 152(6)(c)	Retiring Directors At every AGM of a public company, 1/3rd of such rotational directors , or if their number is neither 3 nor a multiple of 3, then, the number nearest to 1/3rd , shall retire from office. (<u>Normal Rounding off</u>)



Topic	Detailed Discussion
Section 152(6)(d)	Who shall retire first? The directors to retire by rotation at every annual general meeting shall be those who have been <u>longest in office since their last appointment</u> , but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be <u>determined by lot</u> .

Section	161	Appointment of Additional Director, Alternate Director & Nominee Director
---------	-----	--

Topic	Detailed Discussion
Section 161(1)	Additional Director (1) The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. (2) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director. (3) Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier
Section 161(2)	Alternate Director (1) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director for a director (original director) during his absence for a period of not less than 3 months from India . (2) A person appointed as Alternate Director shall not be a person who is holding any alternate directorship for any other director in the company or holding directorship in the same company. (3) An alternate director shall not hold office for a period longer than that permissible to the original director and shall vacate the office if and when the original director returns to India.
Section 161(3)	Nominee Director The Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.

Section	153 to 159	Director Identification Number
---------	------------	---------------------------------------

Sections	Detailed Discussion
Section 153	Application for allotment of Director Identification Number



Sections	Detailed Discussion
	Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.
Section 154	Allotment of Director Identification Number The Central Government shall, within 1 month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.
Section 155	Prohibition to obtain more than one Director Identification Number No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.
Section 158	Obligation to indicate Director Identification Number Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

DIN: Rules on Director Identification Number

Topic	Detailed Discussion
Rule 9	Application for Allotment of DIN (1) Every individual, who is to be appointed as director of a company shall make an application electronically in <u>Form DIR-3</u> , to the CG for the allotment of a Director Identification Number (DIN). (2) The applicant shall download <u>Form DIR-3</u> from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically- (i) photograph; (ii) proof of identity; (iii) proof of residence; (iv) Board resolution (BR) proposing his appointment as director in an existing company. (v) specimen signature duly verified.
Rule 10	Allotment of DIN (1) After generation of application number, the CG shall process the applications received, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of 1 month from the receipt of such application.



Topic	Detailed Discussion
	<p>(2) All Director Identification Numbers allotted to individual(s) by the CG before the commencement of these rules shall be deemed to have been allotted to them under these rules.</p> <p>(3) The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.</p>
Rule 10A	<p>Intimation of DIN to Company</p> <p>(1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within 1 month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director as per Form DIR-3B.</p> <p>(2) The intimation by the company of DIN of its directors under <u>section 157</u> of the Act shall be furnished in <u>Form DIR-3C</u> within 15 days of receipt of intimation under <u>section 156</u>.</p>

Section

164(1) Disqualification for Appointment of Directors

A person shall not be eligible for appointment as a director of a company, if —

(a)	Unsound Mind	He is of unsound mind and stands so declared by a competent court;
(b)	Undischarged Insolvent	He is an undischarged insolvent;
(c)	Applied To Be Adjudicated As An Insolvent	He has applied to be adjudicated as an insolvent and his application is pending;
(d)	Convicted By A Court **	<p>He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.</p> <p>Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;</p>
(e)	Court Order Disqualifying him For Appointment**	An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f)	Calls In Arrears	He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call;
(g)	Convicted of The Offence Dealing With Related Party Transactions**	He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding 5 years; or



(h)	Not Obtained DIN	He has not complied with section 152 (3) i.e., if he has not obtained DIN Number.
(i)	Non-Compliance (Amendment)	He has not complied with the provisions of section 165(1).
No postponement of grounds for Disqualification		Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Section

164(2) 5 Years Disqualification for Appointment as Director

A director of a company shall be disqualified from being **re-appointed as a director of that company**
or
appointed in other company **for a period of 5 years** from the date on which the said company fails to do so, if the company of which he is already a director

Has not filed the financial statements or annual returns for any continuous 3 financial years

has failed to repay the **DEPOSITS** accepted by it or pay interest thereon or to redeem any **DEBENTURES** on the due date or pay interest due thereon or pay any **DIVIDEND DECLARED** and such failure to pay or redeem continues for 1 year or more

Section

166 Duties of Director

Topic	Detailed Discussion
Section 166	Duties of Director
	<ol style="list-style-type: none"> (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company. (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of



Topic	Detailed Discussion		
	<p>the company, its employees, the shareholders, the community and for the protection of environment.</p> <p>(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.</p> <p>(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.</p> <p>(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.</p> <p>(6) A director of a company shall not assign his office and any assignment so made shall be void.</p> <p>(7) If a director of the company contravenes the provisions of this section such director shall be punishable as follows:</p> <table border="1"> <tr> <td>On defaulting Director</td><td>$\text{₹ } 1,00,000 \leq \text{Fine} \leq \text{₹ } 5,00,000$</td></tr> </table>	On defaulting Director	$\text{₹ } 1,00,000 \leq \text{Fine} \leq \text{₹ } 5,00,000$
On defaulting Director	$\text{₹ } 1,00,000 \leq \text{Fine} \leq \text{₹ } 5,00,000$		

Section

167

Vacation of Office of Directors

Topic	Detailed Discussion
Section 167(1)	<p>Grounds for Vacation</p> <p>The office of a director shall become vacant in case—</p> <p>(a) he incurs any of the disqualifications specified in section 164; Provided that where he incurs disqualification u/s 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.</p> <p>(b) he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board;</p> <p>(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;</p> <p>(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;</p> <p>(e) he becomes disqualified by an order of a court or the Tribunal;</p> <p>(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months: Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—</p> <p>(i) for 30 days from the date of conviction or order of disqualification;</p>



Topic	Detailed Discussion		
	<p>(ii) where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or</p> <p>(iii) where any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed of.</p> <p>(g) he is removed in pursuance of the provisions of this Act;</p> <p>(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.</p>		
Section 167(2)	<p>Punishment for contravention</p> <p>If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable as follows:-</p> <table> <tr> <td>Punishment</td><td> <p>Imprisonment ≤ 1 year or ₹ 1,00,000 ≤ Fine ≤ ₹ 5,00,000 or both</p> </td></tr> </table>	Punishment	<p>Imprisonment ≤ 1 year or ₹ 1,00,000 ≤ Fine ≤ ₹ 5,00,000 or both</p>
Punishment	<p>Imprisonment ≤ 1 year or ₹ 1,00,000 ≤ Fine ≤ ₹ 5,00,000 or both</p>		
Section 167(3)	<p>Filling up the Collective Vacation</p> <p>Where all the directors of a company vacate their offices under any of the disqualifications specified above,</p> <ol style="list-style-type: none"> (1) the promoter or, (2) in his absence, the Central Government <p>shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.</p>		

Topic	Detailed Discussion
Section 168(1)	<p>Protocol for resignation</p> <p>A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice perform the following actions:-</p> <ol style="list-style-type: none"> (1) Take note of the same and (2) The company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and (3) The company shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. <p>Provided that a director MAY also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation in such manner as may be prescribed.</p>



Topic	Detailed Discussion
Section 168(2)	Effective date of resignation The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later: Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure
Section 168(3)	Filling up the Collective Resignation/ Vacation Where all the directors of a company resign from their offices u/s 168, or vacate their offices under section 167, (1) the promoter or, (2) in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

Section

169

Removal of Directors

Topic	Detailed Discussion
Section 169(1)	Removal by Ordinary Resolution A company may, by Ordinary Resolution , remove a director before the expiry of the period of his office after giving him a reasonable opportunity of being heard. Exceptions: The following directors cannot be removed - (1) A director appointed by the Tribunal under section 242, (2) A director appointed by the principle of proportional representation u/s 163. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Companies (Removal of Difficulties) Order, 2018 An independent director appointed for the second term by passing SR can be removed only by-passing SR and after giving him a reasonable opportunity of being heard. </div>
Section 169(2)	Special Notice A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
Section 169(3)	Company shall inform the concerned Director On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
Section 169(4)	Representation by the concerned director Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to



Topic	Detailed Discussion
	<p>the company and requests its notification to members of the company, the company shall, if the time permits it to do so —</p> <p>(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and</p> <p>(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),</p> <p>and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.</p>

Section

170

Registers of Directors & KMP and their Shareholding

Topic	Detailed Discussion
Section 170(1)	<p>Register at office</p> <p>Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as shown below, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.</p>
Section 170(2)	<p>Return to be filed with ROC</p> <p>A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.</p>

Section

171

Members Right to Inspect

Topic	Detailed Discussion
Section 171(1)	<p>Register u/s 170 open for inspection</p> <p>The register kept under section 170—</p> <p>(a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within 30 days; and</p> <p>(b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.</p>



Section

172

Punishment

Topic	Detailed Discussion		
Section 172	Punishment <p>If a company contravenes any of the provisions from Section 149 to 171 and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable as follows:</p> <table border="1"> <tr> <td>Company and every officer in default</td><td>₹ 50,000 ≤ Fine ≤ ₹ 5,00,000</td></tr> </table>	Company and every officer in default	₹ 50,000 ≤ Fine ≤ ₹ 5,00,000
Company and every officer in default	₹ 50,000 ≤ Fine ≤ ₹ 5,00,000		

Section

179

Powers of Board

Topic	Detailed Discussion
Section 179(3)	BR in BM Board Resolution in Board Meeting only for certain matters <p>The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely :-</p> <ol style="list-style-type: none"> to make calls on shareholders in respect of money unpaid on their shares; to authorise buy-back of securities under section 68; to issue securities, including debentures, whether in or outside India; to borrow monies; to invest the funds of the company; to grant loans or give guarantee or provide security in respect of loans; to approve financial statement and the Board's report; to diversify the business of the company; to approve amalgamation, merger or reconstruction; to take over a company or acquire a controlling or substantial stake in another company; to make political contributions; to appoint or remove key managerial personnel (KMP); to appoint internal auditors and secretarial auditor; DELEGABLE POWERS <p>The Board may, by a resolution passed at a Board meeting, delegate the powers specified in clauses (d) to (f) on such conditions as it may specify, to :-</p> <ol style="list-style-type: none"> Any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office:



Section

180

Restriction on Powers of Board (Public Company)

Topic	Detailed Discussion
Section 180(1)	The Board of Directors of a company shall exercise the following powers only with the consent of the company by a SPECIAL RESOLUTION , namely :—
Section 180(1)(a)	SALE OR LEASE OF SUBSTANTIAL UNDERTAKING To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
Section 180(1)(b)	INVESTMENT OF COMPENSATION RECEIVED FROM AMALGAMATION To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
Section 180(1)(c)	RESTRICTION ON BORROWING POWER OF DIRECTORS To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its { PUSC + FR + SP }, apart from temporary loans obtained from the company's bankers in the ordinary course of business.
Section 180(1)(d)	REMISSION OF LOAN GIVEN TO DIRECTORS To remit, or give time for the repayment of, any debt due from a director.

Section

181

Company to Contribute to Bona fide & Charitable Funds, etc.

Topic	Detailed Discussion
Section 181	The Board of Directors of a company may contribute to bona fide charitable and other funds. Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceeds 5% of its average net profits for the 3 immediately preceding financial years.

Section

182

Prohibitions & Restrictions regarding Political Contributions

Topic	Detailed Discussion
Section 182(1)	Prohibitions & Restrictions regarding Political Contributions Overriding Provision Notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party.



Topic	Detailed Discussion				
	<p><u>Who cannot contribute?</u> The following companies are not allowed to contribute to any political party: (1) a Government company; and (2) a company which has been in existence for less than 3 financial years.</p> <p><u>Maximum Amount of Contribution</u> [Omitted via Finance Act, 2017]</p> <p><u>BR in BM</u> No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.</p>				
Section 182(2)	<p><u>What shall be deemed to be a Political Contribution?</u> The donation may be directly or indirectly. The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose. If the expenditure incurred on advertisement in any publication souvenir, brochure, tract, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.</p>				
Section 182(3A)	<p><u>Disclosure in P & L A/c</u> Notwithstanding anything stated above, the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:</p> <p>Provided that a company may make contribution through any instrument (Electoral Bonds), issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.</p>				
Section 182(4)	<p><u>Punishment for contravention</u> If a company makes any contribution in contravention of the provisions of this section, Punishment for contravention shall be as follows:</p> <table border="1"> <tr> <td>On Company</td><td>Fine ≤ 5 times the amount so contributed</td></tr> <tr> <td>On officer in default</td><td>Imprisonment ≤ 6 months AND Fine ≤ 5 times the amount so contributed</td></tr> </table>	On Company	Fine ≤ 5 times the amount so contributed	On officer in default	Imprisonment ≤ 6 months AND Fine ≤ 5 times the amount so contributed
On Company	Fine ≤ 5 times the amount so contributed				
On officer in default	Imprisonment ≤ 6 months AND Fine ≤ 5 times the amount so contributed				

Section

183

Powers of the Board & other persons to make contributions to National Defense Funds, etc.

Topic	Detailed Discussion
Section 183(1)	<p><u>Overriding Provision</u> The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any</p>



other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Section

196

Appointment of Managing Director, Whole Time Director or Manager

Topic	Detailed Discussion
Section 196(2)	Maximum Tenure No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding 5 years at a time. Provided that no re-appointment shall be made earlier than 1 year before the expiry of his term.
Section 196(4)	Appointment requires Approval Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Part I of Schedule V .
Section 196(4) 1st Proviso	Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
Section 196(4) 2nd Proviso	Provided further that a return in MR-1 shall be filed within 60 days of such appointment with the Registrar.
Rules	Approval of CG shall be obtained (if needed), by filing Form MR-2 . Every such application seeking approval shall be made to the Central Government within a period of 90 days from the date of such appointment.
Private Companies	Section 196(4) and (5) shall not apply to a PRIVATE Company.
Government Companies	<u>Exemption to Government Companies</u> Section 196 (2)(4)(5) shall not apply.



Section	197	Overall Maximum Managerial Remuneration & Managerial Remuneration in case of Absence or Inadequacy of Profits (PUBLIC Company)
Topic	Detailed Discussion	
Section 197(1)	Overall Ceiling Limit	
	The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed 11% of the adjusted net profits u/s 198 except that the remuneration of the directors shall not be deducted from the gross profits.	
Section 197(1) 1 st Proviso	Overall Ceiling Limit exceeded with approval in GM	
	Provided that the company in GENERAL MEETING may authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V.	
Section 197(1) 2 nd Proviso	Separate Limits for Executive and Non-Executive directors	
	Provided further that, except with the approval of the company in general meeting by a SPECIAL RESOLUTION—	
	(i) the remuneration payable to any 1 managing director; or whole-time director or manager shall not exceed 5% of the net profits of the company and if there is more than 1 such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together;	
	(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—	
	(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;	
	(B) 3% of the net profits in any other case.	
Section 197(2)	Sitting Fees excluded.	
	The percentages aforesaid shall be exclusive of any Sitting fees payable to directors.	
Section 197(3)	Remuneration in case of losses or inadequate profits	
	If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration except in accordance with the provisions of Schedule V.	
Section 197(4)	Remuneration in Professional capacity	
	Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—	
	(a) the services rendered are of a professional nature; and	
	(b) in the opinion of the Nomination and Remuneration Committee or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.	



Topic	Detailed Discussion				
Section 197(5)	Sitting Fees <p>A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed ₹ 1,00,000 per meeting of the Board or committee thereof. Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.</p>				
Section 197(6)	Manner of payment <p>A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.</p>				
Section 197(7) (Amendment)	Remuneration of Independent director <p>An independent director shall not be entitled to any stock option and may receive remuneration by way of sitting fees, reimbursement of expenses for participation in the Board and other meetings and Profit Related Commission as may be approved by the members. (Amendment)</p>				
Section 197(9) and (10)	Refund of Excess Remuneration paid to director <p>If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within 2 years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.</p> <p>The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by SPECIAL RESOLUTION within 2 years from the date the sum becomes refundable.</p>				
Section 197(15) (Amendment)	Punishment for contravention <p>Penalty in case of any default in complying with the provisions of this section are:</p> <table border="1"> <tr> <td>For any person</td><td>₹ 1,00,000</td></tr> <tr> <td>For Company</td><td>₹ 5,00,000</td></tr> </table>	For any person	₹ 1,00,000	For Company	₹ 5,00,000
For any person	₹ 1,00,000				
For Company	₹ 5,00,000				



SCHEDULE V (See sections 196 and 197)

PART I - APPOINTMENTS

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

Topic	Detailed Discussion
5 Conditions	No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—
1st Condition (a) Contraventions	<p>he had not been sentenced to imprisonment for any period, or to a fine exceeding ₹ 1,000, for the conviction of an offence under any of the following Acts, namely:—</p> <ul style="list-style-type: none"> (i) the Indian Stamp Act, 1899; (ii) the Central Excise Act, 1944; (iii) the Industries (Development and Regulation) Act, 1951; (iv) the Prevention of Food Adulteration Act, 1954; (v) the Essential Commodities Act, 1955; (vi) the Companies Act, 2013 or any previous company law; (vii) the Securities Contracts (Regulation) Act, 1956; (viii) the Wealth-tax Act, 1957; (ix) the Income-tax Act, 1961; (x) the Customs Act, 1962; (xi) the Competition Act, 2002; (xii) the Foreign Exchange Management Act, 1999; (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985; (xiv) the Securities and Exchange Board of India Act, 1992; (xv) the Foreign Trade (Development and Regulation) Act, 1922; (xvi) the Prevention of Money-Laundering Act, 2002; (xvii) the Insolvency and Bankruptcy Code, 2016; (xviii) the Goods and Services Tax Act, 2017; (xix) the Fugitive Economic Offenders Act, 2018.
2nd Condition (b) Smuggling	he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
3rd Condition (c)	<p>he has completed the age of 21 years and has not attained the age of 70 years.</p> <p>Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the CG shall be necessary for such appointment;</p>
4th Condition (d)	where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;
5th Condition (e)	he is resident of India.



Topic	Detailed Discussion
	<p>Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—</p> <p>(i) for taking up employment in India; or</p> <p>(ii) for carrying on a business or vacation in India.</p> <p>Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time.</p>

PART II – REMUNERATION

Section I — Remuneration payable by companies having profits.

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II — Remuneration payable by companies having no profit or inadequate profit

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person not exceeding the limits given below:-

	Where the effective capital is	Limit of yearly remuneration payable shall not exceed (₹)
(i)	Negative or less than ₹ 5 crores	60 lakhs
(ii)	₹ 5 crores and above but less than ₹ 100 crores	84 lakhs
(iii)	₹ 100 crores and above but less than ₹ 250 crores	120 lakhs
(iv)	₹ 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores.

Provided that the remuneration in excess of above Limits may be paid if the resolution passed by the shareholders is a **special resolution**.

Explanation —It is hereby clarified that for a period less than 1 year, the limits shall be pro-rated.



Question & Answers

Questions:

Fill in the blanks

1. The Board shall have a minimum number of 2 directors in the case of private company.
2. The maximum number of directors shall be 15.
3. Small shareholder means a shareholder holding shares of nominal value not more than **₹20,000**.
4. The company shall, within 30 days of the appointment of a director, file consent of director with the Registrar.
5. DIN stands for Director Identification Number.
6. A return containing the appointment of directors and KMP and changes therein shall be filed with the Registrar within 30 days of such appointment or change by the company.
7. The maximum age limit of Managing Director is 70 years.
8. The total managerial remuneration payable by a public company to its directors, including Managing Director and Whole Time Director in respect of a financial year shall not exceed 11% of the net profits of the company.
9. Sitting fees shall not exceed **₹ 1 Lakhs** per meeting of the Board or Committee.
10. The office of a Director shall become vacant in case he absents himself from all the meeting of the Board of Directors held during a period of 12 months with or without seeking leave of absence of Board.

Choose the correct answer

1. The minimum number of directors for a public company is-
 - (a) 1
 - (b) 2
 - (c) 3
 - (d) 7
2. What is the paid-up share capital fixed for the appointment of a woman director?
 - (a) ₹100 crores;
 - (b) ₹300 crores;
 - (c) ₹500 crores;
 - (d) None of the above.
3. The appointment of an independent director shall be approved by the-
 - (a) Board meeting;
 - (b) General meeting;
 - (c) Registrar of Companies;
 - (d) Central Government.
4. The tenure of director appointed by small shareholders shall be-
 - (a) Up to the date of next AGM;
 - (b) 1 year;
 - (c) 3 years;
 - (d) 5 years.
5. No independent director shall hold office for more than ____ consecutive terms.
 - (a) 2



- (b) 3
 - (c) 4
 - (d) 5
6. Which public company is required to appoint independent director”
- (a) The public company having turnover of ₹100 crores or more;
 - (b) The public company having paid up share capital of ₹10 crores or more;
 - (c) The public companies which have, in aggregate, outstanding loans, debentures and deposits exceeding ₹50 crores;
 - (d) Any of the above.
7. Which one of the following is not the criterion for the appointment of independent director?
- (a) He shall not be a promoter of the company.
 - (b) He shall relate to the promoters of the company;
 - (c) He shall not have any pecuniary relationship with the company or their promoters or directors during two immediately preceding financial year.
 - (d) His relatives have not held any pecuniary relationship with the company amounting to 2% or more of its gross turnover.
8. A director may be elected by small shareholders upon a notice by-
- (a) Not less than 1000 small shareholders;
 - (b) One tenth of the total number of shareholders;
 - (c) Not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower;
 - (d) None of the above.
9. At every AGM, not less than _____ of the total number of directors shall retire by rotation.
- (a) One third;
 - (b) Two third;
 - (c) Three fourths;
 - (d) Half.
10. The minimum age prescribed for the appointment of Managing Director is-
- (a) 18 years
 - (b) 21 years
 - (c) 30 years
 - (d) 70 years.

State whether TRUE or FALSE

- 1. A company may appoint more than 15 directors after passing a special resolution. - TRUE
- 2. All companies are required to appoint one-woman director. - FALSE
- 3. An independent director shall not be entitled to any stock option. - TRUE
- 4. Whole time director is not the employee of the company. - FALSE
- 5. Additional director shall hold office up to the date of next AGM. - TRUE
- 6. The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the new Act. - TRUE
- 7. Non obtaining of DIN does not amount to disqualification of a director. - FALSE
- 8. The Board has the right to refuse the resignation of a Director. - FALSE
- 9. The removed directors shall not be reappointed as director by the Board of Directors. - TRUE
- 10. In any financial year, if a company has no profits or its profits are inadequate, the company shall not pay remuneration to its MD/WT. - FALSE