

# **CMA FINAL** **CORPORATE & ECONOMIC LAWS**

## **SEC. A**

## **CHAPTER - APPOINTMENT AND QUALIFICATION OF DIRECTORS**

**Q.1: Who is Director?**

**Ans.:** According to Section 2(34) of Companies Act, 2013, means a Director appointed to the Board of a Company.

Director is that person who is occupying the position of Director by whatever name called.

**NOTE:**

- Director is a person who can think and direct company to achieve its objectives.
- As per Indian Companies Act, Director can only be an individual.

**Q.2: Why Directors are appointed in the Company?**

**Ans.:**

- ✓ A Company is a legal entity and is an artificial person in the eyes of law.
- ✓ It has no physical existence.
- ✓ It has neither soul nor body of its own.
- ✓ As such, it cannot act in its own person.
- ✓ It can do so only through some human agency.
- ✓ The persons who are in charge of the management of the affairs of a company are termed as Directors.
- ✓ They are collectively known as Board of Directors or the Board.
- ✓ The directors are the brain of a company.
- ✓ They occupy a pivotal position in the structure of the company.
- ✓ Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees to achieve its objectives.

**Relationship between Company & Director:** Director in relation to company – can be considered as both agents & trustees.

### **OFFICER – SECTION 2(59):**

- ✓ The definition of Officer inter – alia includes “Director”.
- ✓ Means a Director, at certain times, is also the officer of Company.
- ✓ Officer = Employee, Hence, Director = Employee.

### **COMPANY TO HAVE BOARD OF DIRECTORS (SECTION 149):**

#### ➤ **MINIMUM NO. OF DIRECTORS:**

- In the case of Public company – 3,
- In the case of Private Company – 2; and
- In case of One person company (OPC) – 1.

#### ➤ **MAXIMUM NO. OF DIRECTORS:**

- A co. can have maximum 15 no. of Directors.
- If the company wants to appoint more than 15 directors, it can do so after passing a special resolution.

**Exemption:** This is not applicable in case of Government and section 8 (non profit) company. NPO & Govt. Company can have more than 15 Directors even without passing S.R. (but if defaulted in filing Annual Return Sec. 92 or Financial statement Sec. 137, then this exemption will not be available).

- **RESIDENT DIRECTOR:** Section 149(3) provides that every company shall have at least one director who has stayed in India for a total of 182 days in India.

**NOTE:** Newly incorporated company must fulfill this condition shall apply proportionately at the end of Financial Year.

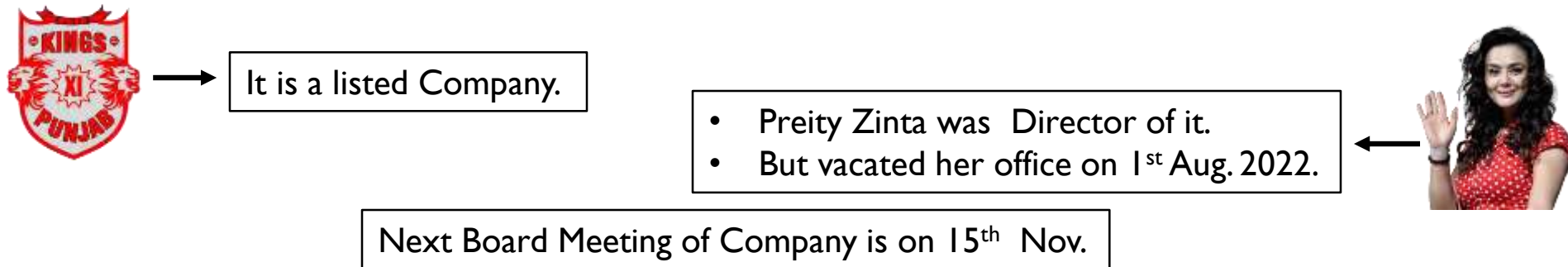
- **WOMEN DIRECTOR:** Following class of companies must have at least one Women Director:
- ✓ All Public Listed Companies;

- ✓ Other Public companies:
  - with paid up capital of Rs. 100 crores or more; or
  - with turnover of Rs. 300 crores or more.

### NOTE:

- Any intermittent vacancy of a woman 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.
- Women Directors can hold a maximum of **twenty directorships** that includes the sub-limit of ten public companies.
- Newly incorporated company must appoint woman director within 6 months from incorporation.

### EXAMPLE:



### Conclusion:

As per law, vacancy to be filled: Within 3 months (i.e. till 31<sup>st</sup> oct., 2022)

Or

till immediate next Board Meeting (i.e. 15<sup>th</sup> Nov., 2022)

Whichever is later. **HENCE, VACANCY MUST BE FILLED TILL 15<sup>TH</sup> NOV.**

**PREVIOUS YEAR QUESTION:**

**Q.:** Excel Ltd. Is a listed Co. with a turnover of Rs. 60 Crores in Financial Year 2016 – 2017. The Company appoints Ms. R as the Women Director on 1<sup>st</sup> March, 2017. Ms. R is already a director in 12 Companies including 10 Public Companies. State briefly whether the apointment of Ms. E in Excel Ltd. Is valid as per provision of the Companies Act, 2013.

➤ **INDEPENDENT DIRECTOR:**

**Q.:** Who is an Independent Director?

**Ans.:**

- ✓ Independent director is a person, who being a director of the company is not a whole time or nominee director, who was or is a promoter of the company or its holding or subsidiary company nor related to promoters, do not have any pecuniary interest in the company or its holding / subsidiary or associated companies, he or his relative holds or has held KMP or employee of the company or its holding /subsidiary company.
- ✓ An independent director is supposed to have skills, experience, knowledge in one or more fields like finance, law, management etc.

<b>CLASS OF CO.</b>	<b>MIN. NO. OF INDEPENDENT DIRECTORS</b>
All Listed Public Co.	At least 1/3 <sup>rd</sup> of total no. of Directors
<b><u>Other Public Co.:</u></b> <ul style="list-style-type: none"> <li>• With paid up share capital of Rs. 10 crores or more or with turnover of Rs. 100 crores or more; or</li> </ul>	At least 2

CLASS OF CO.	MIN. NO. OF INDEPENDENT DIRECTORS
<u>Other Public Co.:</u> <ul style="list-style-type: none"><li>With outstanding loans, debentures and deposits exceeding Rs. 50 Crores.</li></ul>	At least 2

### **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.
- A joint venture, wholly owned subsidiary and dormant company are not required to appoint an independent director even if they meet the criteria.

### **PREVIOUS YEAR QUESTIONS:**

**Q.1:** State briefly with reference to the applicable provisions of Companies Act, 2013, read with rules thereunder whether an unlisted Public Company which is a wholly owned subsidiary company will be required to appoint Independent Directors.

**Q.2:** Every Listed Public Company shall have “Independent Directors” of at least the total number of Directors.

➤ **INTERESTED DIRECTOR:** An interested director is one among the other directors who constitute Board of Directors. In fact, when an existing director becomes interested in a transaction of the company, he called interested director and he need to disclose his interest at the appropriate forum

and he needs to disclose his interest at the appropriate forum and at appropriate time. The provisions regarding interested director are discussed in another Chapter.

### ➤ **Executive and Non - Executive Directors:**

- The Board of Directors may comprise both executive and non-executive directors.
- The executive directors are responsible for managing different business operations undertaken by the company.
- It is their responsibility that the departments which they head operate smoothly. A whole time director and managing director are covered in this category of directors.
- In contrast, the non executive directors participate through Board meetings in discussions relating to framing of policies for the efficient management of the company.
- Professional directors and nominee directors are covered in this category of directors. Independent directors are a type of non - executive directors.
- They are not as active as executive directors on the board of the company. They are held to be liable only if they knowingly consented to the wrongful acts.

### **APPOINTMENT OF DIRECTORS – SECTION 152:**

- ✓ First Director of Company is being appointed as prescribed in Articles of Association.
- ✓ 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. [Section 152 (1)].
- ✓ 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 (1)].



- ✓ Directors other than 1<sup>st</sup> Director, are appointed in General meetings.
- ✓ No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under section 154.
- ✓ Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number (DIN) and a declaration (in e-form DIR-8) that he is not disqualified to become a director under this Act.
- ✓ A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director (in e-form DIR-2) and such consent has been filed with the Registrar within 30 days of his appointment in Form DIR-12.

### **EXCEPTION:**

- 'Furnishing of consent to act as a director' shall not apply on Govt. Co. and Sec. 8 NPO (but if defaulted in filing Annual Return Sec. 92 or Financial statement Sec. 137, then this exemption will not be available).

### **APPOINTMENT OF SUBSEQUENT DIRECTORS:**

Every director other than First Director shall be appointed by the company in general meeting except where the Companies Act expressly provides some other procedure for appointment of directors. [Section 152(2)].

**RETIREMENT OF DIRECTORS BY ROTATION [SECTION 152(6)]:** Applicable on Public Co. and Private Co. which is subsidiary of a Public Co.

- ✓ If AOA of company says that all Directors in every AGM should retire.
- ✓ Otherwise, not less than 2/3rd of the total number of Retiring Directors of a public company shall retire in every AGM.

- ✓ But  $1/3^{\text{rd}}$  of  $2/3^{\text{rd}}$  must actually retire.
- ✓ Any fraction in  $2/3^{\text{rd}}$  will be rounded off to the **next** number. Any fraction in  $1/3^{\text{rd}}$  will be rounded off to nearest number.
- ✓  $2/3^{\text{rd}}$  and  $1/3^{\text{rd}}$  directors which are liable to retire at AGM will be decided by FIFO method. The one who is longest in the office will retire first.
- ✓ If 2 or more directors are appointed on same day then if anyone wants to leave by his own otherwise it will be decided by draw of lot.
- ✓ Vacancy caused by this retirement can be fulfilled in the same AGM either by re-appointment of retiring Director or by new appointment.

### EXAMPLE:



- Total Retiring Directors – 11, from Mr.A to Mr.K.
- AOA of company not authorise for retiring all Directors.
- Mr.A – came most earliest.
- Mr. B – came  $2^{\text{nd}}$  most earliest.
- Mr. C & D – came  $3^{\text{rd}}$  most earliest.

### Conclusion:

- Total Retiring Directors – 11.
- So,  $11 \times 2/3^{\text{rd}} = 7.33$  (Any fraction in  $2/3^{\text{rd}}$  will be rounded off to the **next** number) Hence, 8.
- $8 \times 1/3^{\text{rd}} = 2.66$  (Any fraction in  $1/3^{\text{rd}}$  will be rounded off to nearest number). Means, 3 directors will actually retire.

### VACANCY IN CASE OF RETIRING DIRECTOR [SECTION 152 (7)]:

- ✓ Company can fill the vacancy by re-appointing retired director or by appointing any new one.

- ✓ Company if not want to fill vacancy than can pass resolution expressing not to fill vacancy.
- ✓ But if company not filled vacancy and also not passed resolution than meeting will get adjourned till next week, same day, same time and same place.
- ✓ If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting.
- ✓ But retiring Director will not be deemed re-appointed if any of the following condition occur:
  - At that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost; or
  - The retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed; or
  - He is not qualified or is disqualified for appointment.
- Now, in such case company will intimate to Central Government about non-fulfillment of vacancy, Hence, Central Government will appoint a new Director.
- If Section 162 is applicable to the case i.e. where a single resolution was used to appoint two or more persons as directors without first moving a proposal which was required to be agreed to at the meeting and no vote was being cast against it. In such a case, Section 162 is contravened and two

or more appointments made by a single resolution are void. Consequently, retiring director is not deemed to be re-appointed.

**EXCEPTION:** Provisions of Retire by rotation not apply to following companies:

- A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company.

**EXAMPLE:**

- Directors retired in AGM (1<sup>st</sup> Aug., 2022 – Monday).
- Company neither re-appointed retiring Director nor appointed any new director.
- Nor passed any resolution to not to fill vacancy.
- So, meeting got adjourned for 8<sup>th</sup> Aug., 2022 (till next week, same day, same time & same place).
- In adjourned meeting also, nothing done, So, all retiring directors got re - appointed by default but not one director: Because he shown his unwillingness to get re-appointed.
- So, vacancy was not fulfilled, Hence, Company intimated to Central Government for non-reappointment.
- And than Central Government appointed a director who is not liable to retire by rotation.



### **DIRECTORS NOT LIABLE TO RETIRE BY ROTATION:**

- ✓ Independent Director;
- ✓ Nominee Director;
- ✓ Director appointed by Central Government and Small – Share holder director.

### **PREVIOUS YEAR QUESTIONS:**

**Q.:** The promoters of M/S Soma Limited a listed public company propose to have the strength of the board of directors as 11. They also propose to make the Managing Director and whole time directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act 2013:

- i. How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting?
- ii. For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received After sending the Notice of Annual General Meeting and that too after the working hours of the last day on which nomination should have been received.

### **RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP (SECTION 160):**

- ✓ If any person other than retiring director wants to get appointed as director or member of company wants to nominate any person as director, can do so by giving a notice in writing to company.
- ✓ Notice must be given to Company at least 14 days before the meeting.
- ✓ Such notice must come along with the deposit of Rs. 1,00,000 or such higher amount as may be prescribed.

- ✓ Such deposit shall be refunded to such person or, as the case may be, to the member, if the person proposed get selected as a director or gets more than 25% of the total valid votes.
- ✓ Requirement of deposit shall not apply if:
  - The appointment of director is recommended by nomination and remuneration committee/board [if any under section 178(1)];
  - Director recommended by the Board of Directors, where there is no Nomination and Remuneration Committee;
  - Independent Director.
- ✓ The company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a director either by sending notice or by email and also publishing on website of co.

### **EXCEPTION:**

**Non - Applicability of Section 160:** The above said provisions are not applicable to the following companies:

- A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.
- A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company.
- A Private company.
- Section 8 Company whose articles provide for election of directors by ballot.

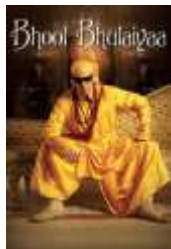
### IMPORTANT POINTS:

- Not all the directors are retiring directors.
- Therefore, if an additional director or an alternate director or a nominee director or a director appointed to fill a casual vacancy, is to be appointed as a regular director at the general meeting, the procedure prescribed by Section 160 is required to be followed.
- Similarly, where a director retires by rotation but instead of re - appointing him, a new person in his place is proposed to be appointed, provisions of Section 160 are attracted.

### MORE IMPORTANT POINTS:

- In case of **Nidhi Company**, the amount of deposit for the purpose of Section 160(1) shall be “**Rs. 10,000**”.
- In case of **Section 8 companies**, their Board of Directors shall decide as to whether the deposit of Rs. 1,00,000 is to be forfeited or refunded if the person proposed as director fails to secure more than 25% of the valid votes.

### EXAMPLE:



- BHOOL BHULAIYAA CO. LTD. is holding its AGM on 15<sup>th</sup> Sep., 2022.
- In its AGM, Akshay Kumar (director of co.) will retire.
- Kartik Aaryan wants to get appointed as Director in this co.



- So, gave notice with his details to company on 31<sup>st</sup> Aug., 2022. (means at least 14 days before the meeting).
- Along with Notice he also gave Rs. 1,00,000 as deposit.
- In AGM of Company, voting was conducted to appoint Kartik Aaryan as Director. But he lost in voting as he got only 37% votes in his favour.

### **Conclusion:**

His deposit amount of Rs. 1,00,000 will be refunded to him as he got more than 25% votes.

### **APPOINTMENT OF DIRECTORS IN BOARD MEETING BY BOARD RESOLUTION THROUGH BOARD OF DIRECTORS:**

- ✓ Normally, in Company Directors are appointed in General Meeting.
- ✓ But there are some directors which can be appointed in Board Meeting through Board of Directors by passing Board Resolution.
- ✓ There are 4 type of such Directors who can be appointed by Board Resolution only.
- ✓ These 4 Directors are
  - Additional Director [Section 161(1)].
  - Alternate Director [Section 161(2)].
  - Nominee Director [Section 161(3)].
  - Director appointed in Casual Vacancy [Section 161(4)].
- ✓ But main condition is AOA of company must authorize for such appointment [not casual vacancy].
- ✓ If AOA not authorize, Company firstly, alter its AOA and authorize for this.



### ❑ APPOINTMENT OF ADDITIONAL DIRECTOR [SECTION 161 (1)]:

**Q.:** Why Additional Director is appointed?

**Ans.:** Whenever, any company have additional work and existing Directors are already occupied in their works and not able to do this additional work than Additional director is appointed.

✓ Section 161(1) of the Companies Act, 2013, provides for appointment of additional director. According to this section:

- a. 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.
- b. A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.
- c. Additional director shall hold office up to the date of the next annual general meeting. ←

**NOTE:** If AGM not held by company than Additional Director will remain till the date AGM must have been held.

#### **EXAMPLE:**



- Trimurti Company has total 11 directors.
- All occupied with their work.
- Now, Company received an additional work and for that additional work, it require additional director as all existing directors don't have time.



→ Rajpal Yadav ji approached to Trimurti company to get appointed as Additional Director.

Rajpal Yadav ji you cannot be appointed as Additional Director because you were earlier rejected to get appointed as director .



→ Paresh Rawal ji approached to Trimurti company to get appointed as Additional Director.

Paresh Rawal ji you cannot be appointed as Additional Director in Board Meeting of Company as AOA not authorize for the same.



**Conclusion:** Company first alter its AOA and then appoint Additional Director.

### PREVIOUS YEAR QUESTION:

**Q.:** A person who fails to get appointed as a director in a general meeting cannot be appointed as:

- Additional director
- Alternate director

- Independent director
- Nominee director.

### ☐ **APPOINTMENT OF ALTERNATE DIRECTOR [SECTION 161 (2)]:**

- ✓ Alternate Director is appointed in place of a director who is temporarily unavailable/leave for a period of not less than 3 months from INDIA.
- ✓ We can say that an Alternate Director is like a substitute for the original Director.
- ✓ The appointment of alternate director must be authorized by the Articles of the company otherwise we need to alter the Article first.

### **Term of alternate director**

- The Alternate Director has to vacate the office as and when the original Director returns to India;  
OR
- The Alternate Director has to vacate the office, when the tenure of the Original Director expires.  
WHICHEVER IS EARLIER.
- If the tenure of the original director on whose behalf the alternate director is appointed is determined before he returns to India, the provision for the automatic re - appointment of a retiring director shall be applied to the original director and not to the Alternate Director.

### **Key points to consider before appointment:**

- ✓ Appointment of alternate director by original director: The original director who is leaving to a place outside India cannot appoint an alternate director in his place. It is the Board which shall make the appointment because the authority for such appointment vests in the Board.

- ✓ The person proposed should not hold any office as Alternate Director of any other Original director in the Company.
- ✓ A Women Director can be appointed as an Alternate Director.
- ✓ The proposed person can be appointed as an alternate director for an independent director only if he is qualified to be appointed as an independent director under the provisions of the Act.

### EXAMPLE:



Mr. Mukesh Ambani, is Director of Co.

But out of India from 3 months.



Independent Director



- So, company wanted to appoint “JETHALAL” as Alternate Director for Mukesh Ambani Ji.
- But, company rejected him because Jethalal was already an alternate director in any other company.



- So, now Popatlal was considered for appointment as alternate director
- But he is also rejected because he not possess qualification of Independent Director.



So, at the end Bhide was appointed as “Alternate Director”.



- Tenure of Mukesh Ambani Ji – 15<sup>th</sup> Sep., 2022.
- But he returned to India on 5<sup>th</sup> Sep., 2022.

Independent  
Director

So, Bhide should also vacate his office on 5<sup>th</sup> Sep., 2022 only.



### **PREVIOUS YEAR QUESTIONS:**

**Q.1:** Comment with reference to the provisions of Companies Act, 2013, in respect of the following:  
Mr. P who is not qualified to be appointed as an Independent director is appointed by the Board of Directors of XYZ Company Limited, for an Independent Director, as an alternate director.

**Q.2:** Which of the following Director is not counted in 15 Directors of Company:

- Additional Director.
- Nominee Director.
- Alternate Director.
- Both b & c.

**Q.3:** Alternate director may be appointed when the additional is out of India for at least \_\_\_\_\_

- 1 month.
- 2 months
- 3 months
- 4 months

### ☐ **APPOINTMENT OF NOMINEE DIRECTOR [SECTION 161(3)]:**

- ✓ Whenever any company take loan from any Bank or F.I. then that Bank or F.I. nominate 1 person among its employees to get appointed as Director in that Company.
- ✓ That Nominated Person is appointed by Company in B.M.
- ✓ Nominee Director remains as Director till loan subsist to ensure 2 things in Company:
  - Company is using amount of loan for the same purpose as mentioned to lender at the time of availing loan; and
  - Company is financially sounding.

### ☐ **APPOINTMENT OF DIRECTOR IN CASUAL VACANCY [SECTION 161 (4)]:**

- ✓ Section 161 (4) of the Companies Act, 2013, provides for appointment of director in casual vacancy.
- ✓ If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by the members in immediately next GM.
- ✓ Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

- ✓ Where a person appointed by Board vacates his office, it is not a casual vacancy and cannot be filled by the Board.

### **NOTE:**

- Retirement through rotation or otherwise is not considered as Casual Vacancy.
- Casual Vacancy means sudden happening *i.e.* something which happened by chance or unexpectedly or unforeseen but not by efflux of time.
- Casual Vacancy means death or attraction of disqualification or tendering of resignation or removal, etc.

### **IMPORTANT NOTE:**

- Appointment of Director in casual vacancy must be approved in next General Meeting.
- Section 161 (4) does not require that articles should expressly empower the Board of Directors for filling a casual vacancy.
- A director appointed to fill a casual vacancy is not a 'casual director'. He enjoys all the powers as well as is required to bear the responsibilities of the director in whose place he is appointed except that where the earlier director was an 'interested director', his 'interest' cannot be attached to the new director filling the casual vacancy.

### **MOST IMPORTANT POINTS:**

- AOA must authorize for appointment of Additional, Alternate & Nominee Director.
- But it is not required in case of Director appointed in Casual Vacancy.

### **PREVIOUS YEAR QUESTIONS:**

**Q.1:** On the ground of conviction for an offence dealing with related party transaction. Mr. BET was disqualified to hold the directorship in XYZ Limited. The board filled the vacancy by appointing Mr. Samarth as a director on 3rd April, 2018, which was subsequently approved by the members in the immediate next General Meeting. Unfortunately Mr Samarth expired on 15th may 2018 after working about 40 days as a director. To fill up the said vacancy by appointing Mr. Ball in the forthcoming meeting of the board. Advise the board on the validity of the following appointments as per the provisions under the Companies Act, 2013:

- i. Appointment of Mr Samarth in place of Mr. Bat.
- ii. Appointment of Mr. Ball in place of Mr. Samarth.

**Q.2:** Mr Kanchi was appointed in Royal Limited with effect from first October 2025 in a casual vacancy by way of circular resolution passed by the board of directors. The next Annual General Meeting of the company was due on 31st March 2016, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr Kanchi and his continuation as additional director beyond 31st March 2016. Advise the company on the complaint made by the shareholders.

### **APPOINTMENT OF DIRECTORS ELECTED BY SMALL SHAREHOLDERS (SECTION 151):**

- A. “Small Shareholders” means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.
- B. A listed company may have one director elected by such small shareholders.



### **The procedure for appointing them is given below:**

- 1. A listed company, may upon notice of not less than 1000 small shareholders or 1/10th of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.**
- 2. Small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting.**
- 3. The notice shall be accompanied by statement of proposed director stating his DIN, that he is not disqualified and his consent to act as director of the company.**
- 4. Such director shall be considered as an independent director subject to being eligible and giving a declaration of his independence in accordance with sub-section (6) and (7) of section 149 of the Act.**
- 5. Ensure that the proposed director shall not hold the position of small shareholder director in more than 2 companies at the same time.**
- 6. Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.**
- 7. Such director shall not be retired by rotation and shall have tenure of continuous 3 years.**
- 8. After completion of tenure small shareholders director shall not be eligible for reappointment.**
- 9. when small shareholders directors cease to be a small shareholder, he ceases to be a small shareholders director.**
- 10. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within 30 days of the appointment.**
- 11. Ensure that said Form is digitally signed by managing director or manager or secretary of the**

company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

12. In case of listed company, the particulars of appointment of director should also be given to the stock exchange where the shares of the company are listed.

### **NOTE:**

- Notice given to company for proposing name of Small Share holder Director must also contain folio number of shares held by him / her.
- No need of giving folio number if proposed person not hold any share in company.
- Small Shareholder Director shall not be appointed in or be associated with such company in any other capacity, either directly or indirectly for a period of **three years** from the date on which he ceases to hold office as a Small Shareholder Director in a company.

### **EXAMPLE:**



Mrs. Daya and Mrs. Madhavi are small share holders of company because they hold shares of not more than Rs. 20,000.

Madhavi ji aapne kabhi socha hai ki hum small share holders hain isliye company me hamari koi baat hi nahi sunta.





Haan Daya ji, jitne bhi directors hain company me wo sab majority share holders ke favour me har kaam karte hain but hum small shareholders ke liye koi director nahi hai jo hamare favour me kuch bole.

Madhavi ji, apni company bhi toh listed hai toh hum bhi company ko notice de dete hain meeting ke 14 days pahle ki ek small share holder director appoint kar do company me.



Par Daya ji agar small share holder director appoint karwana hai toh uske liye 1000 small share holders ya phir 10% of total small share holders (whichever is lower) application denge company ko tabhi appoint hoga.

- Haan toh hamari company me 5,000 small share holders hain.
- Unka 10% hota hai 500 small share holder unse notice lagwa denge.



Ye thik hai. Or phir hum Popatlal ji ko small share holder director ki tarah appoint karwa lenge.


Nahi na popatlal ji nahi ho skate because small shareholder director wo hi ban skata hai jo independent director ki conditions ko fulfill karta ho.





Toh phir Jethalal ji ko appoint kar lenge as small share holder director.


Nahi na Jethalal ji ko bhi nahi kar sakte because wo already 2 companies me small share holder director hain. And as per law ek time par ek person maximum 2 companies me hi small share holder director ho skata hai.



Toh phir Hathi bhai ji ko appoint kar lenge as small share holder director and because wo sirf ek hi company me small share holder director hain.

Nahi na Hathi bhai ji ko bhi nahi kar sakte because wo hain toh sirf ek hi company me small share holder director hain but wo company apni company ki competitor hai means same business karti hai.

And as per law ek person ek time par 2 companies me small share holder director ho skate hai but companies same business na karti ho.



Toh phir Rajnikant ji ko appoint kar lenge as small share holder director and hamesh unhi ko rakhenge.

Haan ye thik hai.

But small share holder director hamesh nahi rehta, sirf 3 years ke liye appoint hota hai and than re-appoint nahi ho skata.



### PREVIOUS YEAR QUESTION:

**Q.:** BB Limited is a listed company and it has been served with notice for appointment of small shareholders director. Referring to the provisions of the Companies Act, 2013, advise on the following what is the tenure of small shareholders director and whether he can be reappointed as such after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure is small shareholders director.

### APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY (SECTION 162):

According to this section:

1. Two or more directors of a company cannot be elected as directors by a single resolution.
2. Separate resolution is passed for appointment of each director.
3. But through a single resolution also 2 or more directors can be appointed if in previous meeting unanimous resolution is passed for this matter.
4. If a single person vote against of it than it will not be allowed.

### EXAMPLE:



Aaltu Faltu  
Co. Ltd.

Company wants to appoint Salman Khan, Arbaaz Khan & Sohail Khan as director by passing a single resolution.



In previous meeting this proposal was placed before members and all voted in favour to appoint both by a single resolution

**So now company can appoint both by just passing a single resolution.**

### Exemption of Section 162:

- a. **A Government company** in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- b. **A subsidiary of a Government company**, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
- c. **Private Company.**

**NOTE:** Above exemption is applicable only if such company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

### OPTION TO ADOPT PRINCIPLE OF PROPORTIONAL REPRESENTATION FOR APPOINTMENT OF DIRECTORS [SECTION 163]:

**As a general rule**, the directors in a company are appointed by simple majority. It implies that the shareholders having voting rights just equal to 51 percent can easily negate the choice of other minority shareholders who have substantial voting rights as high as up to 49 percent in the matter of appointment of directors. Thus, minority shareholders though having sizeable voting rights may not find it possible to appoint even a single director of their own on the Board of Directors. To counter this kind of unpleasant situation which may create confrontation in a company and adversely affect the managerial efficiency. Section 163 chalks out a system by which directors may be appointed by way of proportional representation. The provisions of Section 163 are stated as under:

- i. Section 163 starts with the phrase 'Notwithstanding anything contained in this Act' which implies that **this section has overriding effect** i.e. it overrides all other provisions of the Companies Act, 2013.
- ii. The **articles of a company need to contain provisions** for the appointment of directors by proportional representation. The procedure as contained in the articles must be capable enough to enable the minority shareholders to have a proportionate representation on the Board of Directors.
- iii. The articles need to provide **for the appointment of not less than two-third** (*i.e.* minimum 2/3rd or more) of the total number of the directors in accordance **with the principle of proportional representation**.
- iv. Such appointments to be made in accordance with the principle of proportional representation, may use **following methods of voting**:
  - a. Voting according to the **single transferable vote**. It means, a candidate gets elected if he secures the requisite votes fixed as quota; or
  - b. Voting according to a system of '**cumulative voting**'; or
  - c. **Otherwise i.e. adoption of any other transparent and effective method of voting** if it ensures that the Board shall have fair representation of the minority interest, in case methods stated at (a) or (b) are not adopted.
- v. Such appointments may be made once in every **3 years**.
- vi. **Casual vacancies of such directors shall be filled as provided in Section 161 (4) i.e.** such casual vacancy shall be filled as per the provisions of the articles; and if there is no such provision, then the Board of Directors may fill the vacancy through a board resolution. Later on, such appointment may be regularized by the shareholders at the immediately held general meeting.

### **EXEMPTIONS:**

- ✓ A **Government company** in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- ✓ A **subsidiary of a Government company**, referred to in (1) above, in which the entire paid up share capital is held by that Government company.

Subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

### **DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR (SECTION 164):**

1. A person cannot be appointed as director of a company in any of the following cases:
  - a. He is of unsound mind and stands so declared by a competent court.
  - b. He is an undischarged insolvent.
  - c. He has applied to be adjudicated as an insolvent and his application is pending.
  - d. 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.

**NOTE:** However, 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 in lifetime.

### **EXAMPLE:**



Babu rao ji got convicted in jail on 24<sup>th</sup> May, 2025.  
And released from jail on 15<sup>th</sup> Sep., 2026.





On 7<sup>th</sup> Dec., 2028 Babu Rao Ji approached to MOHIT AGRO CARE COMPANY to become director.

Company refused because Babu Rao Ji cannot be appointed as Director till 15<sup>th</sup> Sep., 2031 (5 years from the date of release from jail).



- e. An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force.
  - f. 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. He has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years; or
  - h. He not possess DIN.
  - i. He has not complied with the provisions of 165(1) relating to holding of maximum number of directorship.
2. No person who is or has been a director of a company which:
- a. has not filed financial statements or annual returns for any continuous period of 3 financial years; or
  - b. 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.

In both the above cases person cannot be appointed as Director for next 5 years.

3. All the above provisions are applicable on Public as well as Private Company but not on Government company.
4. Private Company can add more disqualifications in its AOA.

### **APPEAL AGAINST DISQUALIFICATION:**

- ✓ If any person is disqualified due to clause (d), (e) or (g) and that person feels that disqualification is not valid, Hence, he/she can make appeal against disqualification.
- ✓ Appeal can be made within 30 days of disqualification order to NCLT and NCLT will give reply within those 30 days only.
- ✓ If person is aggrieved from the order of NCLT then can appeal to NCLAT within 7 days from the order of NCLT.
- ✓ NCLAT will give reply within next 30 days.

**NOTE:** During Appeal, Director will be disqualified only. If order come In favour of Director then His/Her position will resume and complete remuneration will be provided.

### **EXAMPLE:**



- Jhony Lever was director of Golmaal Co. Ltd.
- He was disqualified due to clause (d), (e) or (g) on 15<sup>th</sup> Sep., 2026.
- But he felt that disqualification is not Legal, Hence, he appealed to NCLT on 22<sup>nd</sup> Sep., 2026.

- NCLT gave reply on 11<sup>th</sup> Oct., 2026.
- But reply was in against of Jhony Lever.





So, he appealed to NCLAT on 15<sup>th</sup>, Oct., 2026 against NCLT.

Now, NCLAT will give reply till 14<sup>th</sup> Nov., 2026.



### **PREVIOUS YEAR QUESTION:**

**Q.1:** State with reference to the relevant provisions of the Companies Act, 2013, whether the following persons can be appointed as a Director of a Company:

- i. Mr. A, who has huge personal liabilities far in excess of his Assets and Properties has applied to the Court for adjudicating him as an insolvent and such application is pending.
- ii. Mr. B, who was caught red – handed in a shop lifting case 2 years ago, was convicted by a court and sentenced to imprisonment for a period of 8 weeks.

**Q.2:** Mr. Vikram a director of Tubelight limited has made default in filing of annual accounts and annual returns with the registrar of companies for a continuous period of three financial years ending on 31st March 2016. Examine the validity of the following under the Companies Act, 2013:

- i. Whether Mr. Vikram can continue to be a director of Tubelight limited defaulting company and also of green light Limited where he is also a director?
- ii. State whether he can be reappointed as director in these two companies.
- iii. What would be your answer in case Mr Vikram is a nominee director of a public financial institution?
- iv. What would be your answer in case the defaulting company is a private limited company?

### **MAXIMUM NUMBER OF DIRECTORSHIPS [SECTION 165]:**

Section 165 of the Act provides for the maximum permissible directorships that a person can hold.

The provisions are as under:

- ✓ A Person shall not hold office as director, including any alternate directorship, in more than 20 companies at the same time.
- ✓ Further, out of the above limit of 20 companies, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.
- ✓ It may be noted that the limit of public companies (*i.e.* 10) shall include directorship in private companies that are either holding or subsidiary company of a public company.
- ✓ However, the limit of directorships of 20 companies shall not include the directorship in a dormant company; as also in a Section 8 company.
- ✓ Subject to the condition that such a company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the Registrar.

**Punishment for Contravention:** According to Section 165(6), if a person accepts an appointment as a director in contravention of Section 165(1) *i.e.* holding directorship of more than 20 companies or more than 10 public companies (subject to the exemptions, if any), he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

### **PREVIOUS YEAR QUESTION:**

**Q.:** The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of directors in the company shall be 10. Presently the companies having 8 directors. The board of Directors

of the said company desired to increase the number of directors to 16. Advice whether under the provisions of the Companies Act 2013 the board of directors can do so.

**DUTIES OF DIRECTORS – SECTION 166:** Directors appointed in a company have various duties to perform. The foremost duty of the directors is to act honestly and diligently and in the best interest of the company so that the objective of wealth maximization is achieved for the stakeholders. In no case any business opportunity which falls within the ambit of the company be exploited by the directors for their own benefits.

- ✓ He shall **act in accordance with the articles** of the company, subject to the provisions of the the Companies Act, 2013.
- ✓ He shall **act in good faith** in order to promote the objects of the company for the benefit of its members as a whole. Further, he shall act in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- ✓ He shall **exercise his duties with due and reasonable care**, skill and diligence and shall exercise independent judgment.
- ✓ He 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.
- ✓ He shall **not achieve any undue gain or advantage** either to himself or to his relatives, partners, or

associates. In case 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.

✓ He shall not assign his office and if any assignment is so made, it shall be void.

**Punishment for not accomplishing statutory duties:** If any director of the company contravenes the provisions of Section 166, such director shall be punishable with fine which shall not be less than ₹1,00,000 but which may extend to ₹5,00,000.

**SOME OTHER DUTIES:** They are described as under:

- ✓ **To file various documents:** It is the duty of the directors to file various documents required to be filed with the Registrar within the specified time limits. Similarly, wherever required, the requisite documents must also be filed with other statutory bodies.
- ✓ **To convene General Meetings:** As and when required, Annual General Meeting (AGM) and extraordinary general meetings (EGMs) need to be convened by the directors.
- ✓ **To attend Board Meetings.**
- ✓ **To disclose interest.**
- ✓ **To approve the annual financial statements.**

- ✓ To approve and attach Board Report.
- ✓ To appoint first Auditors.

**VACATION OF OFFICE OF DIRECTOR (SECTION 167):** According to Section 167 (1), the office of a director shall become vacant in case:

- a. He incurs any of the **disqualifications specified in section 164**. However, if he incurs disqualification under Section 164(2).
- 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.
- 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.
- 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.
- e. He becomes **disqualified by an order** of a court or the Tribunal.
- f. He is **convicted by a court** of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for 6 months or more.

**Exception:** The office shall not be vacated by the director in case of orders referred to in clauses (e) and (f) if appeal is made against the order within 30 days or within 7 days after expiry of 7 days.

- g. He is removed in pursuance of the provisions of the Companies Act, 2013 like when he is required to vacate office for disqualification incurred under Section 217 (6) (ii) i.e. conviction for committing an offence under Section 217.
- 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.

**NOTE:**

- A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in above.
- 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 in sub-section (1), he shall be punishable with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000.
- Where all the directors of a company vacate their offices under any of the disqualifications, the promoter or, 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.



### EXAMPLE:



John (Director) was removed.



Govinda (Director) was resigned.

Chacha Chaudhary (Director) was Disqualified under section 164.



In all cases office of Director vacated.

Office of all Directors vacated.

So, in this case promoter will appoint new Directors.

But if promoter is not in the company than Central Government will appoint.

**RESIGNATION OF DIRECTOR (SECTION 168):** According to this section:

- ✓ A director may resign from his office by giving a notice in writing to the company.
- ✓ The Board shall on receipt of such notice take note of the same.
- ✓ The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR - 12 and post the information on its website, if any.
- ✓ 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.
- ✓ Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in Form DIR - 11 along with the prescribed fee.

**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

**Liability:** The director who has so resigned shall be liable even after his resignation for the offences which occurred during his tenure.

**All the Directors tendering resignation:** In case all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, 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 general meeting.

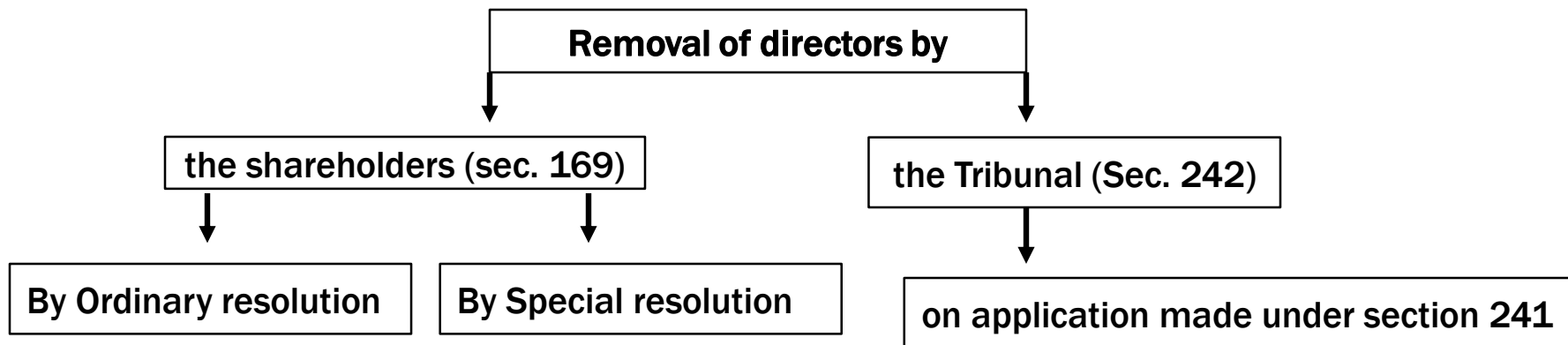
### **PREVIOUS YEAR QUESTIONS:**

**Q.1:** Vijay, a director, resigns after giving due notice to the Company and he forwards a copy of resignation in E – Form DIR – 11 to the ROC within the prescribed time. What would be the status of Vijay if the Company fails to intimate about the resignation of Vijay to ROC?

**Q.2:** Mr. Prasad is Managing Director of Bapi Limited. He gave his resignation letter to the chairman of the board of directors on 31st December 2013 and requested that he should be relieved immediately. when does the resignation of Mr Prasad take effect?

**Q.3:** A Director claims that he may leave the Company any time merely by submitting his resignation without waiting for its acceptance. Discuss whether it is acceptable and valid?

**REMOVAL OF DIRECTORS (SECTION 169):** A director of a company may be removed before completion of his term as director. Removal of director is discussed here under the following heads:



### Removal of Director by the Shareholders:

- 1. Requirement of Ordinary Resolution:** A company may, by **ordinary resolution**, remove a director before the expiry of the period of his office **except the following**:
  - a. When a director is appointed by the Tribunal under Section 242.
  - b. When as per Section 163, 2/3rd or more of the total number of directors are appointed according to the principle of proportional representation, then such directors cannot be removed.
- 2. Requirement of Special Resolution in case of removal of re-appointed independent director:** An independent director re-appointed for second term under Section 149(10) shall be removed by the company only by passing a **special resolution**.

**NOTE:** Under both the clauses 1 and 2 above, the director to be removed shall be given a reasonable opportunity of being heard before his removal.

### Process:

- A special notice as per Section 115 shall be required for proposing any resolution to remove a director.
- Special notice under Section 115 is required to be signed by:
  - i. members holding not less than 1% of total voting power; or
  - ii. members holding shares on which at least Rs. 5,00,000 has been paid in the aggregate.

- Such notice shall be sent by the members not earlier than 3 months but at least 14 days before the meeting at which the resolution is desired to be moved.
- On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to the director concerned, and Concerned Director should give his representations.
- If Special Notice is received in advance (before dispatching notice of General Meeting) then this Special Notice will be dispatched with the notice of General Meeting along with representation of director (if any).
- If representations of director are received later then they will directly be read out in meeting before members.
- The vacancy resulting from the aforesaid removal, may be filled in the same meeting.
- If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy.
- A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed.
- Nothing in this section shall be taken to deprive a person removed under this section of his rights to compensation or damages payable to him in respect of the premature termination of the directorship.

### EXAMPLE:



Jacky bhau apun ko apni company me se ek director ko remove karne ka hai. Abi uska tenure khatm nahi hua hai but remove karne ka hai

Bhidu sirf Ordinary resolution General Meeting me pass karke remove kar sakte hain Director ko.



Par Jacky bhau wo Director jisko remove karne ka hai, usko Tribunal/Govt. ne appoint kiyela hai.

Dekh Bhidu normlly Director ko General Meeting me Ordinary Resolution pass karke remove kar sakte hain but agar Director tribunal.govt. ne appoint kiya ho ya phir Director proportional Representation se appointed hai toh Special Resolution maangta hai bhidu Director ko remove karne ke liye.

### PROCESS OF REMOVAL



BAPUJI Apni company me members ne Special Notice send kiya hai, BAGHA (Director) ko hatane ke liye. Ab kya karun?

Ab Bagha (Concerned Director) ko us speciaal notice ki ek copy send kar de and usse uske representation le le.matlab wo apni safai jawab dega ki kyun BAGHA ko remove na karein.



## Chapter: Appointment & Qualification of Directors



Bagha company ke members tujhe remove karna chahate hain agli meeting me. Tu is special notice ka jawab de ki kyun tujhe remove na karein.

Bapuji Bagha ne apni safai me jo bhi diya members nahi maane and use remove hi karna chahate hain.



Haan toh phir use remove kar de and meeting me koi new director appoint kar le.



Bapuji agar usi meeting me new director appoint nahi ho paaya toh?



Toh phir ye casual vacancy maani jayegi.



### **2. Removal of Director by the Tribunal:**

- According to Section 242, a director may be removed by the Tribunal where an application has been made to it under Section 241 for prevention of oppression and mismanagement in the company.
- The Tribunal is also empowered to terminate, set aside or modify any agreement between the company and any of its directors on such terms and conditions which in the opinion of Tribunal are just and equitable.
- According to Section 243, a director so removed as per the order of Tribunal shall not be entitled to claim any compensation for loss of his office. Further, he shall not be offered appointment as director for a period of **5 years** from the date of the order without first seeking the leave of the Tribunal.

### **PREVIOUS YEAR QUESTION:**

**Q.:** How can the Directors be removed from the office before expiry of their term?

### **INDEPENDENT DIRECTORS:**

- ✓ Independent director is a person, who being a director of the company is not a whole time or nominee director, who was or is a promoter of the company or its holding or subsidiary company nor related to promoters, do not have any pecuniary interest in the company or its holding / subsidiary or associated companies, he or his relative holds or has held KMP or employee of the company or its holding / subsidiary company.
- ✓ An independent director is supposed to have skills, experience, knowledge in one or more fields like finance, law, management etc.



CLASS OF CO.	MIN. NO. OF INDEPENDENT DIRECTORS
All Listed Public Co.	At least 1/3 <sup>rd</sup> of total no. of Directors
<u>Other Public Co.:</u> <ul style="list-style-type: none"><li>• With paid up share capital of Rs. 10 crores or more; or</li><li>• with turnover of Rs. 100 crores or more; or</li><li>• With outstanding loans, debentures and deposits exceeding Rs. 50 Crores.</li></ul>	At least 2

### **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.
- A joint venture, wholly owned subsidiary and dormant company are not required to appoint an independent director even if they meet the criteria.
- A company which was obligated to appoint independent directors, shall not be required to make such appointment if it ceases to fulfill any of the three conditions relating to paid-up share capital or turnover or outstanding loans, etc. [as laid down above in Rule 4(1)] for **3 consecutive years**. It shall again be required to appoint independent directors if it starts meeting any of such conditions.
- If due to composition of audit committee any higher number of independent directors are required,

such higher number shall be applicable.

**Who can become the Independent Director [Section 149(6)]:** In relation to a company, an independent director means a director (other than a managing director or a whole - time director or a nominee director), and who fulfills the following criteria:

1. Who, in the opinion of the Board, is a person of **integrity** and possesses relevant **expertise and experience**.

**NOTE:** In case of a **Government company**, the word "Board" shall be substituted by the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government.

2.
  - A. Who is or was not a promoter of the company or its holding, subsidiary or associate company.
  - B. Who is not related to promoters or directors in the company, its holding, subsidiary or associate company.
3. Who has or had **no pecuniary relationship**, other than remuneration as such director or **having transaction not exceeding 10%** of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the 2 immediately preceding financial years or during the current financial year.

**NOTE:**

- ✓ In case a transaction entered into by an independent director with the company concerned is at par with any member of the general public and at the same price as is payable/paid by such member of public, it would not attract the bar of 'pecuniary relationship' under Section 149(6)(c) and therefore, an independent director will not be said to have 'pecuniary relationship' under this Section.
- ✓ **'Pecuniary Relationship'** does not include:
  - Receipt of remuneration from one or more companies by way of fee provided under Section 197 (5);
  - Reimbursement of expenses for participation in the Board and other meetings;
  - Profit related commission approved by the members, in accordance with the provisions of the Companies Act, 2013.

### EXAMPLE:



चुटिया भाई

- He runs a business of Electronics products in the name of XYZ Electronics.
- Total Income of His business:
  - ✓ In 2024 – 2025: ₹50 Lakhs;
  - ✓ In 2025 – 2026: ₹60 Lakhs.
- In 2025 – 2026, his business entered into a transaction with Reliance Jio for ₹5 Lakhs.
- In 2024 – 2025 his business entered into a transaction with Reliance Jio for ₹7 Lakhs.



- Now, in 2026 – 2027 he wants to get appointed as an Independent Director in Reliance Ind. Ltd. Co.

Reliance Jio is Subsidiary of Reliance Ind. Ltd. Co.

चुटिया भाई

**Conclusion:** He cannot be appointed as an Independent Director because He had pecuniary relationship with its Subsidiary co. (Reliance Jio) in Previous 2 Financial Years of more than 10% of his total income.

#### 4. None of whose relatives:

- i. In the company, its holding, subsidiary or associate company during the **2 immediately preceding financial years** or during the current financial year. However, the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed.

#### EXAMPLE:



*Soorma Bhopali*

- Soorma Bhopali Purchased shares of ₹30 Lakhs of I MG Co. in 2023 – 2024.
- In 2024 – 2025, he purchased additional shares of ₹10 Lakhs.
- In 2025 – 2026, he purchased additional shares of ₹10 Lakhs.
- In 2026 – 2027, he purchased more shares of ₹1 Lakh.



In 2026 – 2027, Hatela bhai (brother of Soorma Bhopali) wants to get appointed as an Independent Director of Tata Co.

I MG Co. is subsidiary of Tata Co.

*Hatela Bhai*

**Conclusion:** Hatela Bhai cannot be appointed as an Independent Director because his relative (Soorma Bhopali his brother) Hold shares of more than ₹50 Lakhs in Current Financial Year.

- ii. **is indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of ₹ 50 Lakhs of the Companies (Appointment and Qualifications of Directors) Rules, 2014 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 third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for exceeding ₹ **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 company, or its subsidiary, or its holding or associate company amounting to **2% or more** of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii).

### **5. Who, neither himself nor any of his relatives:**

- i. holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed. However, 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:**
  - a. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or**
  - b. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;**
- 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 any non- profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.**

### **IMPORTANT NOTE:**

- ✓ Every independent director shall give a declaration that he meets the criteria of independence as**

provided in Section 149 (6):

- At the **first meeting** of the Board in which he participates as a director; and
- Thereafter at the **first meeting of the Board in every financial year**; or
- Whenever there is **any change** in the circumstances which may affect his status as an independent director.

**Q.: How an Independent Director can receive remuneration?**

**Ans.:** An independent director shall not be entitled to any stock option and may receive remuneration by way of:

- Fee provided under Section 197(5),
- Reimbursement of expenses for participation in the Board and other meetings and
- Profit related commission as may be approved by the members.

**Q.: What is the provision for payment of Sitting Fees to an Independent Director?**

**Ans.:** Sitting fee required to be paid to an independent director shall not be less than the sitting fee which is payable to other directors of the company.

**Q.: What is tenure of Independent Director?**

**Ans.:**

- ✓ An independent director is appointed for 1 term. 1 term will not be more than 5 years but could be less than 5 **consecutive** years.
- ✓ He shall be eligible for re - appointment on passing of a Special Resolution by the company and disclosure of such appointment in the Board's report. An Independent Director can be appointed for 2 Consecutive terms. 2 Terms could not be more than 10 years but could be less than 10 consecutive years.

### **NOTE:**

- An independent director reappointed for second term under Section 149(10) shall be removed by the company only by passing a **Special Resolution**.
- An independent director shall not hold office for more than 2 consecutive terms.
- **Cooling period for appointment:** However, he shall be eligible for appointment after the expiration of **3 years** of ceasing to be an independent director.
- However, during the said period of 3 years he shall not be appointed in or be associated with the company in any other capacity, either directly or indirectly.

### **MANNER OF SELECTION OF INDEPENDENT DIRECTORS AND MAINTENANCE OF DATA BANK OF INDEPENDENT DIRECTORS [SECTION 150]:**

- ✓ An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors.
- ✓ Such data bank shall be maintained by any body, institute or association, as may be notified by the Central Government as having the expertise in creation and maintenance of such data bank and put on their website for the use by companies appointing such directors.
- ✓ Interested Person who is qualified to be appointed as an Independent Director can apply online to include his name in Data Bank.
- ✓ He/She can apply to have name in data bank either for 1 year or 5 years or for lifetime.
- ✓ He/She can apply to Renew his/her name in data bank either for 1 year or 5 years or for lifetime.



- ✓ **Provided** that no application for renewal shall be filed by an individual who has paid life - time fees for inclusion of his name in the data bank.
- ✓ **To pass an online proficiency self assessment test:** Every individual whose name is so included in the data bank, shall pass an online proficiency self assessment test conducted by the institute **within a period two years** from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute.
- ✓ **Exemptions from online proficiency self-assessment test:** Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank:
  - **As a director or key managerial personnel**, as on the date of inclusion of his name in the databank, in one or more of the following, namely:
    - a. Listed public company; or
    - b. Unlisted public company having a paid-up share capital of rupees ten crores or more; or
    - c. Body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or

- d. bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more.

**Restoration of names in the databank:** Any individual whose name has been removed from the databank, may apply for restoration of his name on payment of **fees of one thousand rupees** and the institute shall allow such restoration subject to the following conditions, namely :

- i. His name shall be shown in a **separate restored category for a period of one year** from the date of restoration.

**NOTE:** In case he fails to pass the online proficiency self - assessment test within one year from the date of restoration his name shall be removed from the data bank and he shall be required to apply afresh.

### **REGISTER OF DIRECTORS AND KEY MANAGERIAL PERSONNEL AND THEIR SHAREHOLDING [SECTION 170]:**

- ✓ Every company shall keep at its registered office a register containing the prescribed particulars of its directors and key managerial personnel.
- ✓ The prescribed particulars shall include details of securities held by each of them in the company or its holding, subsidiary, subsidiary of its holding companies or associate companies.
- ✓ **Following particulars to be included in the Register:**
  - Director Identification Number (optional for key managerial personnel).
  - Present name and surname in full.

- Any former name or surname in full;
- Father's name, mother's name and spouse's name(if married) and surnames in full;
- Date of birth;
- Residential address (present as well as permanent);
- Nationality (including the nationality of origin, if different);
- Occupation;
- Date of the board resolution in which the appointment was made;
- Date of appointment and reappointment in the company;
- Date of cessation of office and reasons therefor;
- Office of director or key managerial personnel held or relinquished in any other body corporate;
- Membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
- Permanent Account Number (mandatory for key managerial personnel if not having DIN).

**In addition to the above details, the company shall also include in the Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to:**

- The number, description and nominal value of securities;
- The date of acquisition and the price or other consideration paid;
- Date of disposal and price and other consideration received;
- cumulative balance and number of securities held after each transaction;
- Mode of acquisition of securities;
- Mode of holding – physical or in dematerialized form; and
- Whether securities have been pledged or any encumbrance has been created on the securities.

**Filing of Return in Form DIR - 12 with the Registrar:** A Company to file a return in Form DIR - 12 in respect of its directors and the key managerial personnel after paying the prescribed fee as under:

- Within 30 days from the appointment; and
- Within 30 days of any change taking place.

**EXEMPTION:** Section 170 of the Companies Act, 2013 shall not apply to a **Government company** in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Government subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar.

### **MEMBERS' RIGHT TO INSPECT [SECTION 171]:**

- The register kept under Section 170:
  - 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 thirty days**; and
  - 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.
- If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

**EXEMPTION:** Section 171 of the Companies Act, 2013 shall not apply to a **Government company** in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Government subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar.

### **PUNISHMENT [SECTION 172]:**

- ✓ Section 172 of the Act provides that if a company contravenes any of the provisions of Chapter XI containing Sections 149 to 171 and for which no specific penalty or punishment is provided therein.
- ✓ The company and every officer of the company who is in default shall be liable to a **penalty of fifty thousand rupees**,.
- ✓ And in case of continuing failure, with a further penalty of **five hundred rupees for each day** during which such failure continues, subject to a **maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer** who is in default.

### **REQUIREMENTS OF APPOINTMENT OF DIRECTOR:**

- A person shall be appointed as a Director of a company only when he has been allotted DIN under Section 154 or any other number as may be prescribed under Section 153.
- Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number (DIN) or such other number as may be prescribed under Section 153.

- A person appointed as a director shall not act as a director unless he gives his written consent to hold the office as a director. The consent shall be furnished to the company on or before his appointment as a Director in Form DIR - 2.
- The company shall file the consent of the director with the Registrar within 30 days of such appointment in Form DIR - 12 along with the prescribed fee as prescribed [refer Section 152 (5)].

### **DIRECTOR IDENTIFICATION NUMBER (DIN) [SECTION 152 (3) AND SECTIONS 153 TO 159]:**

**Q.: What is DIN?**

**Ans.:**

- ✓ DIN is a unique Director identification number allotted by the Central Government to any person intending to be a Director or an existing director of a company.
- ✓ It is an 8 - digit unique identification number which has a lifetime validity. Through DIN, details of the directors are maintained in a database.
- ✓ DIN is specific to a person, which means even if he is a director in 2 or more companies, he has to obtain only 1 DIN. And if he leaves a company and joins some other, the same DIN would work in the other company as well.
- ✓ Same DIN can be used by the Director in case he changes the company.
- ✓ DIN once allotted can be used “n” number of times and days till the DIN holder surrenders it.

**Q.: How to obtain DIN?**

**Ans.:**

- ✓ DIN can be obtained by filing application to Central Government.
- ✓ Application can be filed to Central Government by filing E – Form DIR – 3.

**NOTE:** DIN can be obtained for maximum of 3 Directors at the time of incorporation of co. through SPICE+ INC – 32.

**Q.: What is the process of filing application to Central Government for obtaining DIN?**

**Ans.:**

- ✓ Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with the prescribed fees.
- ✓ Following Documents must be attached with the application:
  - Photograph.
  - Proof of identity.
  - Proof of residence.
  - Board resolution proposing his appointment as director in an existing company.
  - Specimen signature duly verified.
- ✓ Form DIR - 3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.

- ✓ In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR - 3A.

### **ALLOTMENT OF DIN:**

- ✓ According to section 154, the Central Government shall allot a Director Identification Number (DIN) to the applicant in the prescribed manner **within one month** from the receipt of application.
- ✓ On the submission of the Form DIR - 3 on the portal and on payment of the requisite fees, an application number shall be generated by the system automatically.

Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached alongwith application for Director Identification Number.

- ✓ After generation of application number, the Central Government shall process the applications received for allotment of DIN and 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 **one month** from the receipt of such application.
- ✓ If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application.



- ✓ The applicant shall be directed to rectify the defects or incompleteness by resubmitting the application **within a period of 15 days** of such placing on the website and email.
- ✓ It is provided that the Central Government shall –
  - Reject the application and **direct the applicant to file fresh application** with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
  - **Treat and label such application as invalid in the electronic record** in case the defects are not removed within the given time; and
  - **Inform the applicant** either by way of letter by post or electronically or in any other mode.
- ✓ In case of rejection or invalidation of application, the **fee so paid** with the application shall **neither be refunded nor adjusted** with any other application.

**NOTE:** 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.

### **PROHIBITION ON OBTAINING MORE THAN ONE DIN – SECTION 155:**

- ✓ According to Section 155, no individual, who has already been allotted a DIN under section 154, shall apply for, obtain or possess another DIN.

**DIRECTOR TO INTIMATE DIN:** According to Section 156, every existing director shall, **within one month** of the receipt of DIN from the Central Government, intimate his DIN to the company or all the companies wherein he is a director in E – Form DIR – 3B.

**COMPANY TO INFORM DIN TO REGISTRAR:** According to section 157 (1), every company shall, within **15 days** of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees or additional fees as may be prescribed. Every such intimation shall be furnished in the E – Form DIR – 3C.

**PUNISHMENT FOR FAILURE TO FURNISH THE DIN TO REGISTRAR:** According to Section 157(2) if any company fails to furnish the DIN to Registrar, it shall be liable to a penalty as under:

- Rs. 25,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 1,00,000.

Further, every defaulting officer of the company shall be liable to a penalty as under:

- Minimum penalty of 25,000 and in case of continuing failure, with a further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 1,00,000.

**OBLIGATION TO INDICATE DIN:** According to Section 158, Every person or company, while furnishing any return, information or particulars as are required to be furnished under the Companies Act, 2013, 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.

**PUNISHMENT FOR CONTRAVENTION OF SECTIONS 152, 155 AND 156:** Section 159 provides that if any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty as under:

Penalty upto Rs. 50,000 and where the default is a continuing one, with a further penalty up to Rs. 500 for each day after the first during which such default continues.

### **CANCELLATION OR SURRENDER OR DE-ACTIVATION AND RE-ACTIVATION OF DIN:**

1. The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with prescribed fee from any person, cancel or deactivate the DIN in case:

- ✓ **DIN is found to be duplicated.**
- ✓ **DIN was obtained in a wrongful manner or by fraudulent means.**
- ✓ **Death of the concerned individual.**
- ✓ **Concerned individual has been declared as a person of unsound mind by a competent Court.**
- ✓ **Concerned individual has been adjudicated an insolvent.**
- ✓ **On an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.**

**NOTE:** Opportunity of being heard must be provided before cancelling, de – activating DIN.

2. The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in E - Form DIR - 3 - KYC within the stipulated time in accordance with Rule 12A.

3. The de - activated DIN shall be re - activated only after e - form DIR-3 is filed along with the fee as prescribed under the Companies (Registration Offices and Fees) Rules, 2014.

### **INTIMATION OF CHANGES IN PARTICULARS SPECIFIED IN DIN APPLICATION:**

- ✓ Intimation by Concerned Director to C.G. in E – Form DIR – 6 within 30 days of change. E – Form must be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice.
- ✓ The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
- ✓ The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR - 6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- ✓ **Individual to inform change in particulars to the company/ies:** The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director **within 15 days** of such change.