

Directors

[Sections- 149 to 205]

* Introduction :

1. Director is an individual appointed to the Board of Company.
2. Board means collective body of Directors who are most powerful in the company to take decision.
3. In simple words, Board of Directors is a team of people who have duties under section 166 and powers under section 179.
4. It means any person who becomes the member of board becomes director.

* Duties of Directors under section 166 :

1. They should act as per articles of company.
2. They should work in good faith, to promote objects of the company for the benefit of all members including employees, shareholders, community and the environment.

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3. They should work with reasonable care, skill and diligence, should have independent judgement.
 4. They should not have direct or indirect conflict of interest with the company.
 5. They should not achieve any undue advantage of their position, either for themselves or any other connected person.
 6. They cannot assign their office of Directorship to any other person.
 7. If any of such duties are not performed, Director will be liable for minimum fine ₹ 1 Lakh and maximum fine ₹ 5 Lakhs.

* Powers of Director under Section 179

1. There are 13 powers of Board of Directors as per this section.
2. These powers are called absolute powers because they are always available to the Board.
3. They need not to take shareholders approval before exercising such powers.
4. It is true that these are absolute powers but it does not mean that Board of Directors can go beyond Memorandum, Articles and Company Law itself.

5. Out of 13 powers, Power no. 4, 5 & 6 can be delegated to group of Directors, Managing Directors, Company officers and Branch Officers, and all other powers have to be exercised only at the duly convened Board Meeting.
6. 13 powers are as follows:
- i) To make calls on share
 - ii) To authorise buy-back upto 10% of paid up share capital and free reserve.
 - iii) To issue securities including debentures whether in India or outside India.
 - iv) To Borrow money otherwise than on Debentures
 - v) To invest the funds of Company.
 - vi) To Give loan or guarantee or security.
 - vii) To approve financial statement and Board Report.
 - viii) To Diversify the Business of Company.
 - ix) To approve amalgamation, merger or reconstruction
 - x) To take over a company or substantial interest.
 - xi) To make political contribution

xii) To appoint or remove key managerial personnel.

xiii) To appoint internal auditor and secretarial auditor

* Restriction on powers of Board under section 180

1. It contains 4 powers.
2. These powers are not absolute because they can be exercised only if the company has passed special resolution.
3. These 4 powers also belong to Board of Directors but their exercise is dependent on SR.
4. Special Resolution can be passed either conditionally or unconditionally.
5. Special Resolution can allow such powers either one time or for all future transactions.
6. These 4 powers are as follows:
 - (i) 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 undertaking.
 - a) Let us first understand what do we mean by undertaking.

b) undertaking means one of the two things :

- Any asset whose value is 20% or more of the Net worth of company

OR

- Any Asset whose value is not 20% or more of the Net worth still it is producing income which is 20% or more of total income.
- c) If the Company sells, leases or disposes undertaking of company, SR is required.
- d) SR is required in both cases whether the whole undertaking is the subject of transaction or even when a substantial part is involved in the transaction.
- e) Now the question arises what is substantial part.
- f) Substantial part of undertaking means 20% or more of value of assets.
- ii) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation.
- a) Suppose a company has some shares or securities in some other company which is getting amalgamated with some other company.

- b) It is natural that it will entitle us to receive compensation for selling such shares and securities to the acquirer.
- c) This money received upon amalgamation can be invested only after passing special resolution.
- d) However if the amount is invested only trust securities, such special resolution is not required.

iii) To borrow money, where the money to be borrowed together with the money already borrowed by the company will exceed aggregate of its paid up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

- Borrowing powers are present in section 179 as well as 180.
- Section 180 prescribed a limit within which borrowing powers can be exercised by Board of Directors without SR.
- If the borrowings already done and to be done, in aggregate exceeds the specified limit, SR is compulsory to do the borrowings.
- The limit specified u/s 180 is 100% of paid up share capital + free reserve + securities premium account.
- This limit does not include temporary loans.
- It means temporary loans can be taken without SR even if they go beyond limit.

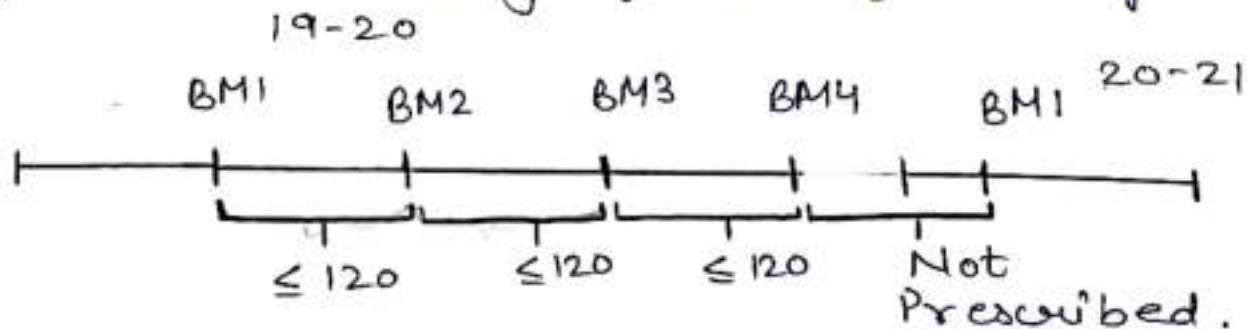
- However temporary loan does not include that temporary loan which is of capitalized nature.
 - Maximum tenure of temporary loan shall be 6 months.
- iv) To permit, or give time for the Repayment of any debt due from a director.
- If there are some dues to be paid by director, it may be waived off or its time of repayment can be extended.
 - The only restriction is that SR should be passed to this.

* Section : 173 - Meeting of Board :

1. Director has no power.
2. Directors have all the powers.
3. All the powers specified in section 179 and 180 can be exercised only at the duly convened board meeting.
4. Board Meeting is the meeting of Directors in which share holders cannot sit even if majority shareholders decide to do so.
5. Board meeting has certain rules as specified in section 173, 174, 176 and secretarial standard issued by ICSI.

* Rules regarding Board Meeting :

1. **First Board Meeting :** First Board Meeting is compulsory in every company, to be done by Board of Directors within 30 days of incorporation. 30 days will be counted from the date of incorporation as specified in the c of incorporation.
2. **Subsequent Board Meeting :** All Board meetings after 1st Board meeting are called Subsequent Board Meeting.
 - There should be minimum 4 Board Meetings in every year.
 - It is not necessary that every quarter should have one board meeting.
 - Maximum Gap between 2 Board meetings in one year should be 120 days.
 - Maximum Gap between 2 Board meetings apply on all the Board meetings of one financial year but there is no time gap prescribed between last board meeting of one financial year and first board meeting of next financial year.



⇒ Special Rule for one person company, small company, Dormant company & a private company if such private company is a start-up.

- It is sufficient if one board meeting takes place in half of the calendar year.
- It means the whole calendar year will have just 2 Board meetings at its minimum.
- Minimum gap b/w 2 board meetings shall be 90 days.
- If we take it mathematically, there will be maximum 4 board meetings in the calendar year.
- In simple words, there is a lesser compliance for these companies.

⇒ Special rules for charitable company:

- There should be at least one board meeting in every six calendar months.
- Six calendar months means every six months starting from January to June, February to July, and so on.
- It means whenever we start, we should have one board meeting in every block of six months.

- There is no minimum or maximum gap prescribed by the Law.

=> Participation in the Board Meeting :

- Participation of Directors can be done either in person or through video conferencing or through other audio visual means.
- Video Conferencing and audio visual means should be capable enough to record and recognise participation of Directors along with the proceedings.
- Recording should be done with Auto mention of date and time.
- If the Board meeting has sufficient quorum through physical presence, any other director may participate through video conferencing and other audio visual means.

⇒ Notice of Board Meeting :

- Notice means invitation of the Board meeting.
- It will be given to every Director.
- Every Director means every Director even if he is declaring that he will not come.
- Notice should be given atleast 7 days in advance.
- Notice will be given to that address of Director which is available with the company.
- Notice can be given either by hand delivery or by post or by electronic means.
- Board meeting can be called at a shorter notice to transact some urgent business but there must be atleast one Independent Director present at the meeting.
- If Independent Director is unavailable at the meeting, meeting can still be carried out but following 2 conditions should be fulfilled :
 - i) The matter should be circulated to all directors.
 - ii) It should be approved by independent directors of the company. If company does not have Independent Director, there is no need of approval by him.

⇒ Board Meeting by one person company:

- One person company is not exempted from the concept of Board Meeting.
- If one person company has just one Director then there is no concept of Board meeting.

⇒ Key Points for Video Conferencing:

- 1) Every Company shall make necessary arrangement to avoid failure of connection or signals.
- 2) Chairman and Company Secretary have following duties in this regard:
 - To safeguard integrity of meeting by insuring security and identification procedure.
 - To ensure availability of equipments and transmission facilities.
 - To arrange recordings and preparations of minutes of meetings.
 - To store recordings in a safe manner and make it a permanent part of company records.
 - To ensure that only concerned Director is attending the proceedings
 - To ensure that all participants can hear and see each other

3) Differently abled person can accompany one person with him during the proceedings.

⇒ Rules regarding Notice :

- Notice should inform that there is an option available to participate through video conferencing.
- Director should communicate to company well in advance that he is choosing the option of video conferencing.
- Such declaration can be given once for the whole calendar year or remaining calendar year.
- If Director does not inform anything, it will be assumed that he will attend the meeting in person.

⇒ Rules contained in SS-1 (Secretarial Standard-1)

- Director has authority to specify a particular mode of delivery for dispatch of notice.
- Notice is issued by company secretary but if company does not have company secretary, by any person authorised by Board of Directors.
- Notice should contain serial no. of the meeting, date, time and complete address of the venue.

- Notice should contain contact details of someone to whom declaration will be given regarding participation.
- Agenda should be sent along with notice.
- Each item of the agenda should have serial no.
- Company should maintain proof of Dispatch.
- Every meeting shall have a serial no.
- Board meeting can be convened at any time, at any place, even outside India but not on a National Holiday.

* **Section: 174 - Quorum for Meetings of Boards**

1. Quorum means minimum no. of members to be present in any meeting to make it valid.
2. In case of Charitable Company, Quorum is 25% of total Directors or 8 Directors, whichever is less.
3. In all other companies, Quorum is $\frac{1}{3}^{\text{rd}}$ of Total Directors or 2 Directors, whichever is higher.

4. Quorum is required through out the meeting and not necessarily at the beginning. (SS-1)
5. In simple words, Quorum will be separately counted before every voting on any resolution.
6. During the counting of quorum, any fraction will be rounded as one.
7. If total no. of Directors in the company fall below minimum, these remaining directors can either increase no. of directors themselves or they can call General meeting to do such appointments.
8. General meeting so called cannot discuss any other matter except the appointment.
9. Interested Directors u/s 184 is not eligible to participate and vote at the Board meeting. So, quorum will count non-Interested directors.
10. If the quorum is not present, Board meeting will automatically stand adjourned to the next week same time, same day, same place.
11. If meeting have to be adjourned, adjourned meeting is considered as extension of the original meeting.

12. It means if the original Board Meeting was called within the time gap of 120 days but adjourned Board meeting is crossing maximum gap of 120 days, it is not a non-compliance.

* Section: 175 - Passing of Resolution by Circulation:

1. Circulation means there is no Board meeting and resolution is being passed through voting either by post, hand delivery or electronic means.
2. Such passing of resolution by circulation will become part of minutes of meeting at the next Board Meeting.
3. If $\frac{1}{3}$ rd or more Directors demand, circulation can not take place and such matter will have to be discussed at the Board Meeting.
4. As per SS-1, minimum 7 days time should be given to every Director to respond.
5. As per SS-1, following are the matters cannot be passed through circulation:
 - i) General Business items:
 - Discussion over Audit Committee and other Committee Meetings.
 - Approval of financial statements and Board report.

- Consideration of compliance certificate for compliance of applicable laws.
- To consider list of laws applicable on the company.
- Appointment of secretarial auditors and internal auditors.

ii) Specific items :

- Borrowing money otherwise than debentures.
- Investing funds of company.
- Giving loans or giving guarantee or security.
- Political contribution.
- To make calls on shares.
- Remuneration of Managing Director, whole time Director and manager.
- Appointment or removal of KMP.
- Appointment of a person as MD or manager in more than one company.
- Sanction of Related party transactions.
- Purchase and sale of assets which are not in the ordinary course of business.

- Approval of payment to Directors for loss of office.
- Items decided by Independent Directors.

iii) Corporate Actions :

- Buy back of securities.
 - Issue of securities including Debentures.
 - Amalgamation, merger or reconstruction
 - Diversification of Business.
 - Take over of another company.
- iv) Additional list of items in case of listed Companies:
- Approval of annual operating plans and budgets.
 - Capital Budget and any updation in that.
 - Information on Remuneration of KMP.
 - Notice which are materially important such as show-cause notice, demand notice, prosecution notice, penalty notice etc.
 - Serious accidents, dangerous occurrence, any other material pollution problem.

- Material default in financial obligations either by Company or by outsiders.
- Any issue which involves public liability or product liability.
- Any claim on the conduct of Company which is substantial by nature.

* Minutes of meeting - [Section: 118] :

1. It is compulsory for every company to maintain minutes of every meeting, attended by anyone, whether shareholders or Directors or even creditors.
2. Minutes are fair and correct summary of the proceedings of meeting.
3. Minutes work as evidence in the court of Justice.
4. Minutes must be maintained as per SS-1 and SS-2.
5. Chairman has authority to include or exclude any matter in the minutes.

⇒ Other Statutory requirements relating to keeping of Minutes of meeting :

- They should be fair and correct.
- They should record all appointments done.

- They should contain names of people present (only for Board Meeting)
- They should contain specific mention of cases where there was dissent. (only for Board Meeting)
- Chairman will have to declare whether the particular item which was removed was defamatory or irrelevant or immaterial or detrimental.
- Draft minutes will be circulated among all the Directors within 15 days, so that, they can raise their objections if any.
- If person is found guilty of tampering with minutes, punishments is as follows:-
 - Minimum fine ₹ 25,000.
 - Maximum fine ₹ 1,00,000.
 - Maximum imprisonment 2 years.

* Section 119 - Inspection of Minutes:

1. Minutes of meeting should be kept available at the Registered office of Company.
2. They must be open for inspection during business hours.

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3. Such inspection must be allowed free of cost.
 4. If a Company does not want the inspection to be done whole day, it can fix a particular time slot for inspection where it should be minimum of 2 hours.

Contribution by Company - Sections 181, 182, 183

* Section 181 - Charitable Contribution :

1. It is absolutely voluntary contribution.
2. It can be given by Board of Directors without any approval from shareholders.
3. However if charitable contribution exceeds 5% of last 3 years average net profits, company will have to pass ordinary resolution.

* Section 182 - Political Contribution :

1. Board of Directors can make political contribution without any maximum limit.
2. No approval of shareholders is required for any amount of political contribution.
3. However political contribution is prohibited for following two companies?
 - a) Government Company
 - b) Any Company which has not completed 3 years from Incorporation.

4. Political contribution can be in cash or in kind.
5. Cash means monetary terms of payment which includes Banking channel as well.
6. It is interesting to note that if it is made through cheque, it should be Account payee cheque.
7. If political contribution is in kind, it can be any kind of Direct and indirect support for the political party.
8. Indirect support can be done in various manner such as giving advertisement in the magazine or journal published by political party or doing anything which brings public support for the political party.
9. Company must disclose political contribution in P/L Account along with the details of political party.
10. In case of non-compliance of Sec-182, following punishment will apply:
 - a) Company will pay fine upto 5 times of the amount contributed.
 - b) Officers in default will pay fine upto 5 times of the amount contributed
 - c) Maximum Imprisonment 6 months.

* Section : 183 - Defence Contribution :

1. Board of Directors or person authorised by Board of Director can contribute any amount to national defence fund or any other notified fund.
2. Defence contribution must be disclosed in profit and loss A/c.

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* Section : 161 - Appointment of Additional Director, Alternate Director and Nominee Director:

1. Additional Director 161(1) :

- i) Additional Director is a temporary director appointed by Board of Directors.
- ii) He is appointed to share the burden of work of Board of Directors.
- iii) He retires from office at the next AGM or due date of AGM, whichever is earlier.
- iv) All the powers, duties and liabilities of additional Director will be same as any other Director.
- v) Although any person who is not disqualified u/s 164 can become additional director but a person who has contested elections of becoming director, who lost it and could not become Director, cannot be appointed as additional director.

2. Alternate Director 161(2):

- i) If any only if a Director is away from India for minimum period of 3 months, an alternate director can be appointed in his place.
- ii) Person appointed as alternate director is not representative of original director, he has duties, powers and liabilities in his individual capacity.
- iii) A person who is already a Director in a same company can not become alternate director for anyone in that company.
- iv) One single person can work as alternate director only for one director at one time in the same company but can become alternate director for different directors in different companies.
- v) Alternate director for independent director must be qualified to become independent director.
- vi) Sometimes the original director gets retired or has to leave office without even coming back to India, in such case alternate director will leave office whenever original director will have to leave office.
- vii) In simple words, automatic reappointment without voting can apply on original director but if a company wants to keep the same

person as alternate director, Board Meeting and Board Resolution are compulsory.

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vii) Just like additional director, alternate director is also temporary because he leaves the office as and when original director returns to India.

ix) Sometimes the original director is reappointed immediately after retirement, in such case, alternate director can not be reappointed automatically

3. Nominee Director 161(3)

- i) Nominee Director is the representative of some external agency with which company is making a contract.
- ii) He will work as a regular director, having all powers, duties and liabilities as any other director.
- iii) Company cannot remove nominee director because his tenure is dependent on the contract with external agencies.
- iv) He will also be entitled for Remuneration as any other director.
- v) He is actually a temporary director because he is appointed by Board of Directors.

4. Casual Vacancy 161(4):

- i) If a director has to leave office before expiry of his tenure, it is called casual vacancy.
- ii) It can be filled by Board of Directors.
- iii) Appointment done by Board of Directors to fill the vacancy must also be approved by shareholders in the next General Meeting.
- iv) If shareholders do not agree with the appointment done by Board of Directors he has to leave office subject to payment of proportionate remuneration.
- v) Person appointed to fill casual vacancy will complete only the remaining tenure originally allowed to Director in whose place he has appointed.

* Section : 165 - Number of Directorship:

1. One single individual can become Director in maximum 20 companies at the same time.
2. Out of these 20 companies, Public companies cannot be more than 10.
3. All 20 companies can be private but all 20 companies cannot be public.
4. Public company means following Companies:
 - a) Public Company.
 - b) Private Company which is subsidiary of Public Company.
 - c) Private Company which is holding of Public Company.
5. In calculation of no. of Directorship, Dormant company will not be included but there is one more exception.
6. Section-165 does not at all apply on Charitable Company which means Directorship and Dormant as well as charitable will not be counted in the limit of 20.
7. Company can put restrictions on maximum no. of Directorship lesser than the limit of 20 but for this special resolution is compulsory.

8. If a person becomes director in more than the specified limit, the punishment is ₹ 2000 per day from the date of accepting the appointment till the continuation of offence, subject to a maximum of ₹ 2 Lakhs.

* Section: 160 - Right of persons other than Retiring Directors to stand for Directorship:

1. Generally, Retiring Directors are reappointed automatically or Board of Directors present their own candidate to contest elections.
2. If the candidate is recommended by nomination and remuneration committee, there is no requirement of filling any nomination or nomination fees.
3. If any person who is neither Retiring Director nor recommended by nomination and remuneration committee wants to become Director, he has to file nomination at least 14 days before the date of meeting.
4. He has to pay security deposit of ₹ 1,00,000 along with his nomination.
5. In case of Nidhi Company, this amount shall be ₹ 10,000.
6. Security Deposit shall be refunded to the candidate if minimum 25% votes are put in his favour.

7. When a person files his nomination, company must inform all the shareholders about such nomination atleast 7 days before the meeting.

8. Section-160 does not apply on government company, charitable company and private company.

* Section: 164 - Disqualifications for Appointment of Directors :

1. Any individual can become director without any qualifying criteria.
2. A Director need not to be a shareholder of the company.
3. He may or may not be having any connection with the company at present or in past.
4. The only requirement is that he should have DIN (Director Identification Number).
5. Following are the disqualifications prescribed under section 164 for the people who cannot become director even if they have DIN :
 - a) Any person who has applied for insolvency but his application is still pending.
 - b) Any person who has not paid calls on his shares for 6 months or more

- c) Person disqualified by court or Tribunal.
 - d) Any person convicted for minimum 6 months cannot become Director for the period of imprisonment and for 5 years after imprisonment.
 - e) Any person convicted for 7 years or more cannot become Director in his life time.
 - f) A person who is already a director in maximum no. of companies permitted u/s 165.
6. There is a special disqualification which applies on all the existing directors.
7. If a company has not filled annual accounts or annual returns for consecutive 3 financial years or has not made payment of Dividend, Debentures, Deposits or Interest but not bank interest, for one year or more, special disqualification will apply.
8. When special disqualification arises, following consequences will happen:
- a) All Directors of defaulting company will continue wherever they are Directors, including defaulting company.
 - b) All Directors of defaulting company can not be reappointed only in defaulting company, for next 5 years.

c) They cannot be appointed in any other company as fresh appointment for next 5 years.

9. Special disqualification will not apply on the Director who has just joined the company in last 6 months.

* Section: 167 - Vacation of office of Directors.:

1. Vacation means automatic vacation.

2. Automatic vacation means there is no need to perform removal procedure.

3. Such director will lose office and all the powers immediately.

4. In simple words, such director will lose his signature power then and there, any document signed by him will be void-ab-initio.

5. Automatic vacation takes place in following situations:

a) whenever section 164 applies.

b) A Director who has been absent in all the board meetings which took place in 12 months period, whether with leave approval or without leave approval.

- c) Director disqualified u/s 184 or 188.
- d) If the Director is removed from his position
- e) If an employee was appointed as Director, who leaves employment, will also vacate Directorship.
- f) If a person is convicted u/s 164, he cannot at all become Director in the company but if the Director is convicted u/s 167, he does not lose office immediately he is given 30 days to file appeal and will continue to remain as Director unless the appeal is disposed against him.
- g) Even if the appeal is disposed off against him he is given 7 more days to file further appeal and will continue to remain as Director, unless appeal is disposed against him.
- h) He will lose office if he loses second appeal as well.

⇒ 100% Disqualification u/s 164 or 100% vacation u/s 167.

If all the Directors leave the office, promoters come into picture, they get powers to appoint Directors so that Company can have minimum no. of Directors.

If promoters are unavailable, CGI will do such appointment.

Such directors appointed by promoters, C1 will hold office only upto the next General meeting, in which fresh Directors shall be appointed by shareholders.

⇒ Additional Grounds for vacation of office of Director u/s 167:

Private Companies can prescribe additional grounds for vacation of office of Director, in addition to those which are already prescribed in that section. However public company is not allowed to do so.

* Section 151 - Appointment of Director elected by small shareholders:

1. Small shareholders means that shareholder who has shares upto ₹ 20,000 as per face value.
2. Small shareholder Directors means a Director elected by small shareholders.
3. It means SSD works as representative of SS.
4. SSD will work for welfare of SS.
5. Only listed companies are required to appoint SSD.
6. SSD is appointed only if demanded by SS.
7. Demand should come from 1000 SS or 1/10th of total SS, whichever is lower.

8. Demand should be deposited with company at least 14 days before the General meeting.
9. If the Demand is deposited with company at least 14 days before, company will inform all the members whether SS or Non-SS, at least 7 days before General meeting.
10. SSD will be elected only by SS, with a simple majority of 51%.
11. Tenure of SSD is maximum 3 years.
12. He can never be reappointed as SSD in the same company, however the same person can be appointed in some other post but only after 3 years cooling off period.
13. Single Individual can become SSD in maximum 2 companies at the same time, but these 2 companies should not be in competition or conflict with each other.
14. SSD is treated as independent director, so he has to fulfill conditions of Independent Director 4/s 149(6).
15. SSD is not liable to retire by rotation 4/s 152.
16. SSD need not to be SS and not even a normal shareholder.

* Section : 162 - Appointment of Directors to be voted Individually :

1. More than one Director cannot be appointed by passing single resolution.
2. There must be separate resolution and separate voting for every candidate.
3. However, it is possible if 100% shareholder agree to appoint them together.
4. Section - 162 of Individual voting does not apply on private company.

* Section : 168 - Resignation of Director :

1. Director can resign any time, whether executive or non-executive.
2. Section is silent on the concept of notice period, which means law does not require any notice period, it can be a private agreement between company and the Director.
3. Resignation must be in writing.
4. Director will also file a copy of resignation in DIR-11 within 30 Days to ROC. (It has become voluntary now).

5. Company shall also file intimation to ROC in DIR-12 within same 30 days period.
6. If the company has any website, Resignation will also be uploaded on the website.
7. Resignation will come into effect on the Date of giving resignation or the date is specified in the resignation, whichever is later.
8. If 100% Director resigned together, Promoters or in their absence CGI will do appointment of minimum no. of Directors, who will leave office upto next General Meeting in which shareholders will do necessary appointments.

* Section: 169 - Removal of Directors:

1. Removal of Director can be done by shareholders at the General Meeting.
2. Ordinary Resolution is sufficient for removal but to remove that Independent Director who has reappointed, special resolution is required.
3. Shareholders cannot remove following 2 Directors:
 - a) Director nominated by National Company Law Tribunal.

- b) Director appointed by proportional representation u/s 163.
4. Special notice is compulsory for removal of a Director, to be given either by Company to members or members to company.
 5. It means General Meeting in which removal is to be decided, will be called either by Board of Directors sole-motto or upon request from 1/10th shareholders.
 6. Company will also inform the concerned Director about his removal well in advance that he can submit his representation to safeguard himself.
 7. Company will circulate representation given by Director among all the shareholders.
 8. If the representation is submitted late and it cannot be circulated, it shall be read out at the meeting.
 9. If the representation is found to be defamatory, company can take prior approval of NCLT for not circulating the representation among members.
 10. Vacancy arises after removal, can be filled by shareholders at the same General Meeting or they can decide that it will be filled by Board of Directors later on.

11. If shareholders are doing the appointment, they can even appoint the Director just removed.
12. Director appointed by Board of Director with hold office only upto the remaining tenure of original Director.
13. Director appointed by shareholders will began a fresh term from the date of appointment.
14. If shareholders do not fill the vacancy, it will be filled by Board of Directors as a Casual Vacancy.
15. The Director so removed can claim compensation subject to the provision of section - 202.

* **Section : 170 - Register of Directors and Key Managerial Personnel and their Shareholding :**

1. Every company shall maintain a Register of Directors and Key Managerial Personnel separately.
2. Such registers shall be maintained at Registered office of Company.
3. Following are the particulars to be put in this register :
 - a) Director Identification Number (DIN).

- b) Present name and surname.
- c) Former name and surname.
- d) Father's name, Mother's name, Spouse Name and Surname.
- e) Date of Birth
- f) Residential address, Both present and permanent.
- g) Nationality
- h) Occupation
- i) Date of Board Resolution on which appointment
- j) Date of Appointment and reappointment
- k) Date of leaving the office at earlier occasions with reasons.
- l) Directorship or KMP ship in any other companies.
- m) Membership Number of ICSI.
- n) Permanent Account Number

4. Whenever there are changes, they shall be communicated to ROC within 30 days in DIR-12

* Section: 171 - Members Right to inspect :

1. Section-171 talks about inspection of Register maintained u/s 170
2. Such inspection will be done by shareholders at the Registered office.
3. Such register must be available for inspection during Business hours for minimum 2 hours.
4. Such inspection shall be allowed free of cost and they can even demand photocopies of the Register, which will also be provided free of cost within 30 days of Demand.

5. If inspection is not allowed or copies are not provided ROC will order immediate inspection and providing copies.

* Section : 172 - Punishment. :

If section 149 to 171 are not followed, company and every officer in default will be liable for fine which is as follows :

- a) Minimum fine - ₹ 50,000
- b) Continuing offence - ₹ 500 per day
- c) Subject to maximum - ₹ 3 lakhs for Company and ₹ 1 lakh for officer in default.

* Section : 192 - Restriction on Non-cash transactions involving Directors :

1. Company cannot enter into any transaction which is non-cash with the Directors.
2. It means there will be no settlement of transaction b/w Company and Director among Receivable and payable.
3. However, if Company has passed ordinary resolution in the meeting of shareholders, non-cash transactions can be undertaken.

* Section: 193 - Contract by One Person Company:

1. Sole member and Director may make any contract with the company or ~~or~~ on behalf of company.
2. The only requirement is that such contract must be communicated to ROC.
3. If it is not communicated to ROC, such agreement will be void-ab-initio.
4. ROC filing should be done within 15 days of making contract.

* Section: 194 - Prohibition on forward dealings in securities of company by Director or KMP.

Omitted

* Section: 195 - Prohibition on Insider trading of securities:

Omitted

* Section 149 - Company to have Directors :

1. Minimum no. of Directors :

- a) One Person Company should have minimum one Director.
- b) Private Company should have minimum two Directors.
- c) Public company should have minimum three Directors.

2. Maximum no. of Directors :

- a) All companies can have maximum 15 Directors except Charitable company.
- b) If company wants to appoint more than 15 Directors, it will have to pass special resolution to decide about it.
- c) Once it is decided by SR, appointments shall be done by Ordinary Resolution itself.
- d) SR can work to increase number of positions but appointment will still require OR.
- e) Such increase can be done for one or more position together.
- f) Articles can prescribe a lesser limit for number of Directors, which can be amended by passing Special Resolution.

3. Women Director :

- a) At least one women director is compulsory in following companies
- Listed Company.
 - Every public company with paid up share capital of ₹100 Crores or more.
 - Every public company with turnover of ₹300 Crores or more.
- b) In case of casual vacancy, it will be filled by Board of Directors at the next Board Meeting or 3 months, whichever is later.

4. Resident Director :

- a) At least one resident director is compulsory in every company
- b) Resident Director means a Director who has stayed in India in the current year itself for minimum 182 days.
- c) If a company is newly incorporated, the requirement of no. of days will be proportionately reduced.

5. Individual to become Director :

- a) It is quite possible that one company is becoming shareholder of another company.

- b) However, Directorship cannot be given to any non-individual.
- c) If holding company, which has majority shares in the subsidiary company, wants to appoint its Representative, he has to be an individual.

6. Independent Director :

To be discussed separately.

* Section : 152 - Appointment of Directors :

1. First Director :

- a) First Director must be specified in the Articles of association of the company.
- b) If articles do not contain name of first Director, it can contain method to appoint first Director.
- c) If articles of association do not contain name and methodology to decide the names, & subscribers to the Memorandum who are individual shall automatically become first director.
- d) Such Directors who were originally subscribers will remain in office unless Directors are appointed by shareholders in general meeting.

2. Appointment of Subsequent Director :

- a) All Directors other than first directors are appointed by shareholder in General Meeting.
- b) Appointment done at General Meeting can be a replacement of retiring director or it can be an additional appointment.
- c) It is not compulsory for general meeting to do the appointment every year, but it is compulsory to do the retirement every year.
- d) Every appointment has to fulfill following formalities :
 - He must have Director Identification Number (DIN)
 - He must give a declaration of consent and non-disqualification.
- e) Such declaration of consent will be in FORM DIR-2, to be given by Director to company.
- f) Company will file consent to ROC within 30 days in FORM DIR-12.
- g) If a candidate wish to become Director but does not have DIN, Board of Directors will pass a provisional resolution to appoint him as Director because DIN application i.e., DIR-3 cannot be filled without this resolution.

b) All the appointments are done by ordinary resolution.

3. Retirement of Directors :

a) Retirement is a compulsory affair for every General Meeting.

b) Out of total Directors company can provide protection from retirement to maximum $1/3^{\text{rd}}$ of them.

c) It means $2/3^{\text{rd}}$ of the total, who are actually retiring will be decided as per following principles :

- Director who has been longest in office will retire first.

- If all such Directors have completed equal term, their retirement shall be decided by agreement among themselves.

- If mutual agreement could not be arrived, retirement will be decided by draw of lots.

- Total does not include independent directors.

- Articles of Association of company can provide that 100% of Director shall be rotational in nature.

4. What after Retirement?

- a) Shareholders can fill vacancy in the same General Meeting either by reappointing the same person or someone else.
- b) If shareholders could not fill this vacancy and they don't decide to keep it vacant, General meeting shall stand adjourned.
- c) If no appointment could be done even at the end adjourned General Meeting, the Retiring Director shall be deemed to have been Reappointed.
- d) Such automatic reappointment is not possible in following situations:
 - He is not ready to file his consent.
 - Shareholders are not ready to get him reappointed.
 - He has become disqualified for appointment
 - Shareholders have resolved to appoint someone else.
- e) If Shareholders decide to keep the position vacant, Board of Directors will not fill it unless the same is needed to maintain minimum no. of Directors.

f) Such retirement by rotation applies only on public company.

⇒ Section : 153 to 159 - Rules regarding DIN :

* Section : 153 - Application for DIN :

1. DIN is a 10 digit identification number allotted to every person who intends to become Director.
2. DIN application is done to Central Government in FORM DIR-3.
3. Following are the attachments of DIR-3 :
 - a) Photograph
 - b) Identity Proof
 - c) Residence
 - d) Board resolution of an existing Company to propose his appointment
 - e) Specimen signature duly verified.
4. It is compulsory for the applicant to have surname and if he does not have surname, his father's surname or grand father's surname shall be used.
5. To use father's surname or grandfather's surname, declaration is required in FORM DIR-3A.

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6. Once DIR is submitted by using Digital signature of the applicant, it shall be verified by whole time company secretary or managing Director or any Director or CEO or CFO of that Company in which he is intended to become Director.
 7. In case of new company, maximum 3 Directors can be appointed without having DIN, whose particulars shall be uploaded in INC-32 (spice)

* Section 154 - Allotment of DIN *

1. DIN is processed and allotted by Central Government within 1 month.
2. Once the application is submitted, application number shall be generated online automatically.
3. If the application is verified and found correct DIN shall be allotted but if the application is found to be Defective or incomplete, CoA will give 15 days time to do the rectification.
4. If the application is rectified, it is all right otherwise DIN application shall be rejected.
5. If DIN application is rejected, fee once paid shall not be refunded or adjusted with any other application.

6. DIN once allotted shall remain valid for the life time of the applicant and will never be allotted to any one else.
7. DIN shall not be allowed to a national of a country which shares land borders with India unless cleared by Ministry of Home Affairs.
- * Section 155 - Prohibition to obtain more than one DIN:

1. One individual is allotted only one DIN.
2. A person already having DIN can neither apply nor obtain nor possess more than one DIN.

* Section 156 - Director to intimate DIN:

1. Every Director who was not having DIN as on 1st April 2014, should first obtain and then inform his DIN to the companies in which he is Director.
2. Such communication has no prescribed format.
3. It should be communicated within one month from the date of receipt of DIN.

* Section : 157 - Company to inform DIN to Registrar :

1. Once Director informs his DIN to his company u/s 156, company should inform such DIN to the ROC.
2. This communication shall be done in FORM DIR-3C within 15 Days of the receipt.
3. If such communication is not done by company to ROC, punishment will be as follows:
4. Rs. 25,000 for first failure, to be paid by Company.
5. In case of Repetitive offence, ₹ 100 per day subject to maximum of ₹ 1,00,000.
6. Officer and default will also be liable for equal amount of fine.

* Section : 158 - Obligation to indicate DIN :

1. Director as well as the company will mention DIN of the Director where ever he is referred.
2. Such mention is necessary only if his name is treated as Director and not otherwise.

* Section : 159 - Punishment :

1. If section - 152, 155 and 156 are not followed, such individual shall be liable for punishment u/s 159.
 2. Punishment is as follows:
 - a) Maximum fine ₹ 50,000.
 - b) In case of continuing default, there will be additional fine of maximum ₹ 500 per day.
- ⇒ Cancellation or surrender or Deactivation of DIN :

1. Cancellation or surrender or Deactivation shall be approved by Regional Director New Delhi only
2. Cancellation and Deactivation are done by authorities and surrender is done by person himself.
3. Authorities will cancel and deactivate DIN in following situations :
 - a) If it is duplicate DIN
 - b) If it was obtained by fraud.
 - c) Death of the concerned person.
 - d) Declaration of insolvency.
 - e) Declaration of unsound mind.

b) Application by person in DIR-5.

4. DIR-5 cannot be filled if a person was Director in same company.
5. It means surrender application can be filled only if such person has never been appointed as Director.

⇒ Intimation of changes in particulars specified in DIN application.

1. Every individual having DIN will inform any changes to the central government within 30 days of change in DIR-6.
2. DIR-6 shall be uploaded along with the necessary documents in scanned format.
3. DIR-6 must be verified by practicing CA, CMA or CS.
4. Central Government will process DIR-6 and upon successful verification, it shall be informed by central government to the individual as well as concerned ROC.
5. Once the individual receives confirmation from CG, he will communicate this to his company within 15 days.

* Section 176 - Defects in appointment of Directors not to invalidate actions taken :

1. Even if there are thousand defects in the appointment of Directors, all the past decisions and actions will remain valid.
2. It does not mean that such Director will continue in office, he will definitely vacate but whatever has happened cannot be challenged.

* Section 177 - Audit Committee :

=> Meaning of Audit Committee :

1. It is a group of Directors appointed to take care audit matters and matters of financial propriety.
2. This committee performs specified functions and provide recommendations to Board of Directors, as prescribed in section 177(4).

=> Composition of Audit :

1. It should have maximum 3 Directors.
2. Majority members of audit committee should be independent Directors.
3. Majority members of Audit committee and Chairperson should be able to read and understand financial statements.

=> Requirement of Audit Committee :

1. Audit Committee is required only in the following companies :
 - a) Listed company.
 - b) Public Company with paid up share capital of ₹ 10 crore or more.
 - c) Public Company with turnover of ₹ 100 crore or more.
 - d) Public Company with outstanding deposits, debentures and loans of ₹ 50 crore or more.

=> Function and Power of Audit Committee :

1. Audit Committee can call auditors to demand their comments about internal control of Company.
2. It can discuss relevant issues with management, Internal auditor and statutory auditor.
3. It has authority to investigate in any matter related to its functions or matter referred by Board of Directors.
4. It can obtain professional advice from external sources.
5. It has full access to the records of company.

6. Auditors and key Managerial Personnel have right to speak at the audit committee meetings but cannot vote in such meeting.

⇒ Disclosure in Board Meeting :

1. Board Report shall disclose matters prescribed u/s 177(8), in addition to section 134.

2. Matters prescribed u/s 177(8) are as follows:

a) Composition of audit committee.

b) Cases where Board of Directors did not accept recommendations.

* Section 177(4) - Prescribed Functions :

1. Recommendation for appointment, remuneration, and terms of appointment of company auditors.

2. Review and monitor auditors independence, performance, and effectiveness.

3. Examination of the financial statement and audit report.

4. Approval of related party transactions (also read section 188).

5. Scrutiny of Inter corporate investments and loans.

6. Valuation of undertaking or assets of company, wherever it is necessary.
7. Evaluation of internal financial control and risk management system.
8. Monitoring the end use of funds raised through public offer.

⇒ Vigil Mechanism :

1. Vigil and Vigilance are related.
2. Vigil Mechanism is a system in which company keeps a watch on the actions of Directors and employees.
3. Companies which already have audit committee need not to establish vigil mechanism separately.
4. If Company does not have audit committee, but has accepted deposits from public of any amount, need to establish vigil mechanism.
5. Vigil mechanism will be run by a single director, as authorised by Board of Directors, who will play the role of audit committee.
6. All the Directors and employees will report their concerns to such persons.

7. Such person will provide safe guard to people who use vigil mechanism, so that they do not become victims of company.
8. If a person files frivolous complaints, such Director who plays the role of vigil mechanism, can take appropriate action.
9. Details of vigil mechanism shall be uploaded on the company website.

* Section : 178 - Nomination and Remuneration Committee and Stakeholders Relationship Committee :

1. NCR :

a) It is required only in following companies :

- (i) Listed Company.
 - (ii) Public Company with paid up share capital of ₹ 10 crore or more.
 - (iii) Public company with turnover of ₹ 100 crore or more.
 - (iv) Public company with O/S deposit, debentures and loan of ₹ 50 crore or more.
- b) This committee consist of 3 or more Non-Executive Directors, out of which half should be Independent Directors.

- c) Chairman of company cannot become chairman of this committee but he can be member.
- d) This committee shall identify suitable candidates for the post of Director and other senior management positions.
- e) This committee will establish criteria to determine qualification, positive attributes, independence of the candidate and to decide and increase remuneration for them.
- f) It will specify manner for effective evaluation of performance of Directors, individually as well as collectively.
- g) It will Draft Remuneration policy keeping in mind following factors :-
 - (i) Reasonable nature of Remuneration.
 - (ii) How much is sufficient to attract, retain and motivate directors.
 - (iii) Relationship b/w Remuneration and performance.
 - (iv) Balance b/w fixed and incentive pay.
 - (v) This remuneration policy should be uploaded on company website and Board Report u/s 134.

2. SRC :

- a) This committee is established to resolve grievances of the security holders of company.
- b) It is established only if company has more than one thousand shareholders, Debenture holders, Depositors and any other security holder at any time during a financial year.
- c) This committee should be headed by a Non-Executive Director.
- d) No. of members of this committee shall be prescribed by Board of Directors.

⇒ Common Provisions of SRC and NRC :

- Chairman of both these committees shall attend General Meeting compulsory. If chairman is unable to attend, he can send any other member of the committee to attend on his behalf.

⇒ Non-Compliance of section 177 and 178 :

- following are the punishment in this regard :

(i) Company will pay ₹ 5 lakhs.

(ii) Officer in default will pay ₹ 1 lakh.

* Section: 184 - Disclosure of Interest by Board:

- i) Disclosure of Interest means declaration made by Directors that he has his some personal benefit in a transaction done by company.
- ii) Whenever a Director is interested he must disclose it to the Company at the Board Meeting.
- iii) In case of a new Director, he will disclose at the first Board meeting after his appointment.
- iv) In case of existing Director, he will disclose in that meeting in which such discussion takes place.
- v) If interest was present but came to the knowledge of Director later on, it should be disclosed at the immediate next Board meeting.
- vi) In case of a public company, interested Director can neither participate nor vote at the meeting on such matter.
- vii) In case of Private Company, interested Director can participate as well as vote.
- viii) If the interest is not disclosed, following punishments will arise:
 - a) He will vacate his office u/s 167.
 - b) Fine of maximum ₹ 1,00,000.

⇒ Meaning of Interested Director :

- i) Interested Director is Director of one company who has connection with other entity with which company is entering into a contract.
- ii) Connected means following connections :
 - a) Director of our company is Director of that Company.
 - b) Director of our Company is shareholder of that Company but beyond 2% (Only public Company)
 - c) Director of our Company is shareholder of that company, any quantity (Private Company).
 - d) Director of our Company is controller of that other entity, by whatever name called such as proprietor, partner, etc.
 - e) Director of our company is somewhere connected with some other entity where he can influence Decision making.

⇒ How to disclose interest ?

- i) All disclosures shall be done in FORM-MBP-1.
- ii) All such notices received by company shall be kept preserved for 8 years from the end of financial year to which they related.
- iii) Responsibility to preserve belongs to company secretary.

* Section 185 - Loan to Directors :

1. Prohibition on loan to Directors :

- a) Company cannot give loan to its Directors.
- b) Loan which is prohibited also includes Guarantee in favour of Director or security for the loan taken by Directors.
- c) Loan to Director which is prohibited also prohibits loan to following people :
 - i) Director himself .
 - ii) Relative of Director .
 - iii) Partnership firm in which Director or Relative is partner .
- d) However, company can give loan, Guarantee or security in favour of any person specified below :
 - i) Private company in which Director of our company is Director or shareholder .
 - ii) Any body corporate such as LLP or public company in which minimum 25% voting power is held by Director of our company .

⁰⁰⁰
iii) Any body corporate, which is accustomed to act as per instructions of Directors of our Company.

e) It means loan to Director, Relative of Director and partnership firm of connected nature is absolutely prohibited, but loan to private company of connected nature and public company of connected nature and any other body corporate of connected nature, can be given subject to certain conditions.

f) Following are the certain conditions:

i) Company should pass special resolution.

ii) Loan shall be utilized by borrowing company in principal business activities.

g) Section-185 does not apply on following loans:

i) Loan to Managing Director or whole time director as part of their working conditions but if it is not specified in the terms of appointment, SR is required.

⁰⁰
ii) Loan given by a company which has principal business of giving loans only.

⁰⁰⁰
iii) Loan given by holding company to wholly owned subsidiary.

- iv) Guarantee or security given by holding company in favour of subsidiary, whether wholly owned or not.
- h) In case of Non-compliance of section 185, punishment is as follows:
- i) Company will pay minimum ₹ 5 lakhs and maximum ₹ 25 lakhs.
 - ii) Officer in default will pay minimum ₹ 5 lakhs and maximum ₹ 25 lakhs and maximum imprisonment of 6 months.
 - iii) Person to whom loan is given will pay minimum ₹ 5 lakhs, maximum ₹ 25 lakhs and maximum imprisonment of 6 months.

* Section 186 - Loans and Investment by Company:

1. Applicability and Non-Applicability:
 - a) This section applies only on Inter Corporate Investment and Loans which means if the company is entering into transactions with a non-corporate entity such as proprietorship or partnership, section 186 will not apply.
 - b) This section equally applies on public and private companies.
 - c) This section does not apply on Government Company which is engaged in defence production.

d) This section does not apply on unlisted Government Company as well.

2. Layer of Investment:

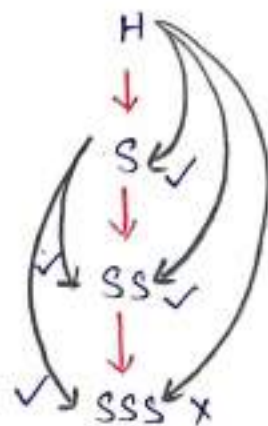
a) Holding subsidiary relationship can arise in the form of chain relationship as well.

b) This chain relationship will be valid only upto 2 layers in India.

c) However, more than 2 layers are permitted in the following cases:

i) If such relationship is arising outside India.

ii) If more than 2 layers are compulsory in some other law for the time being in force.



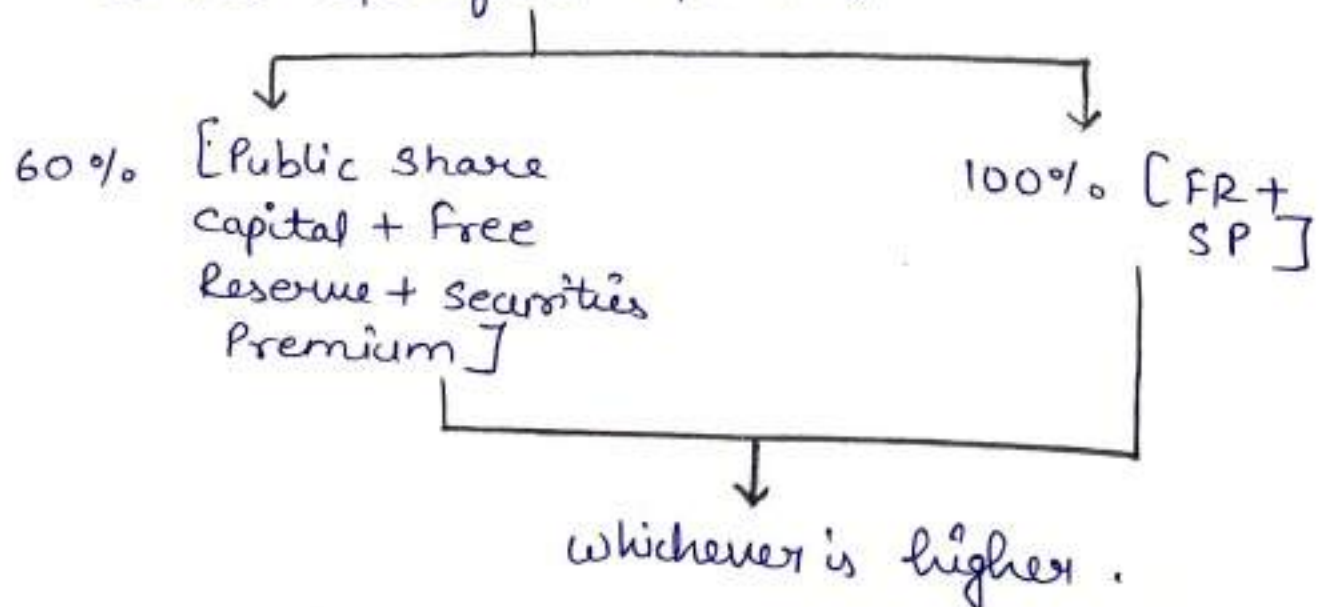
3. Inter Corporate Investment and Loans:

a) If one Company is giving loan to another company or one company is giving guarantee or security in favour of another company or one company is

acquiring securities of another company, Limits u/s 186 shall be verified.

- b) If such transactions in aggregate do not cross the specified limit, they can be performed by Board of Directors without asking shareholders.
- c) If such transactions in aggregate go beyond the specified limit, following formalities become compulsory:
 - i) 100% Consent of Board of Directors at the Board Meeting.
 - +
 - ii) Special Resolution in the meeting of Shareholders.
 - +
 - iii) No-objection certificate from public financial institutions, only if there is a default in repayment.

3. Limits specified u/s 186



- a) These limits will be verified before every next transactions.
- b) All the transactions already performed and proposed to be performed will be aggregated to verify the limit.
- c) It means all investment and Loans already given will be reduced from the overall limit.
- d) Transactions u/s 186 always permitted, whether without SR or with SR.

4. Register of Transactions u/s 186?

- a) All transaction u/s 186 shall be recorded in separate register in format MBP-2.
- b) This register shall be maintained chronologically in the order of occurrence.
- c) This register shall be kept at the registered office in the custody of company secretary or any other person authorised by Board of Directors.
- d) Such register shall be kept open for inspection by members free of cost, but Company can charge maximum ₹10 per page for giving copies.

5. Exempted Transactions :

- a) If the holding company is purchasing more shares in subsidiary company as right shares it is allowed without verification of limits.
- b) When some bonus shares are allotted to us free of cost, they are allowed without verification of limits.
- c) If the company has principal business of making investments or giving loans, it is permitted without verification of limits.

6. Punishment for non-compliance of Section 186

- a) Company will pay minimum ₹ 25,000 and maximum ₹ 5,00,000.
- b) Officer in default will pay ₹ 25,000 minimum and ₹ 1,00,000 maximum.
- c) Maximum imprisonment shall be 2 years.

* Section : 187 - Investment of Company to be made in its own name:

1. Basic Rule :

- All the investments whether made in shares, securities, properties or other assets, they should be kept and held in the name of company only. It is on the basis of concept

of separate legal identity enjoyed by company. However, in case of wholly owned subsidiaries one or more shares can be kept in the name of one or more nominees, just to maintain minimum no. of members in the subsidiary company u/s 3A.

2. Register maintained u/s 187 :

- Every Company shall maintain a register in Form MBP-3 in which all the transactions will be recorded where investments were not held in the name of Company. Register will also describe reasons for all such transactions. All the rules regarding preservation are same as any other register.

3. Exemptions of Section 187 :

- If a company is depositing some shares or debentures with the bank for the purpose of collection of dividend or interest. This temporary transfer in the name of bank is allowed.
- When Company wants to sell its investment but it is not ready to do it on its own. Company is giving such investments to the bank to sell it further but if the bank becomes unable to sell it further investment will come back to the company after 6 months. This temporary transfer is allowed.

- When Company is pledging its investment with the bank or some NBFC, upon the condition of provisional attachment upon non-payment of dues but once the dues are clear, investment should come back.
- When Company transfers its investment in the name of someone else because company was only a caretaker of some investment and the person to whom we are transferring is the real owner.

* Section 188 - Related Party Transactions :

=> Introduction :

- Transaction with related party can never be abolished. Related party transactions upto a certain limit are allowed without any formalities. Once the transactions goes beyond the specific limit, some formalities are required which are as follows:

- a) Ordinary Resolution
- b) Approval of Audit committee.

So, it is clear that related party transactions are not forfeited. They are not just regulated u/s 188. To understand these regulations, we must obtain answer to the following questions:

- i) Who are considered to be Related party?

- ii) What are the specific transactions?
iii) What is the amount of transactions being done with the Related Party?

So, it is clear that if a transaction satisfy all the three criteria, then only section 188 will apply.

⇒ Anni Approval of Audit Committee:

Generally Audit Committee approval should be taken before performing related party transactions. However, if the transaction is bit urgent, transaction can be performed without audit committee approval subject to following 2 conditions:

- transaction should be approved by Audit committee whenever it meets next.
- Value of the transaction on the standard basis does not exceeds ₹ 1 crore.

⇒ Arm's Length Price:

Generally transactions covered into by Co. with related parties should be done at Arm's length price only. However, it has no impact on the applicability of section 188. The only relevance of Arm's Length Price is that the satisfied limits will be compared on Arm's length price only.

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=> Meaning of Related Party u/s 2(76)

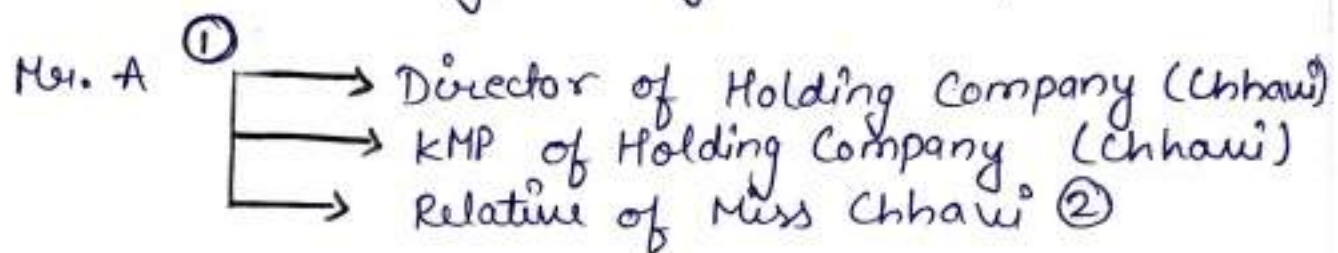
1. Director or his relative.
2. KMP or his relative.
3. Partnership firm in which director, manager or his relative is a partner.
4. Private Company in which director, manager or his relative is a member or director.
5. A Public Company in which director, manager or his relative is a director as well as holds more than 2% of PSC.
6. Any Body Corporate such as co-operative society or LLP whose Board of Directors, M.D. or manager work in accordance with advice, direction or instruction of our director or manager.
7. Any person on whose advice, directions and instructions a director or manager is accustomed to act.
8. Any Body Corporate which is holding, subsidiary, associate sister concern or investing company of our company.
9. Such other person as may be prescribed.

⇒ Other prescribed Related Parties :

It includes a director other than Independent director, KMP or his relative, or the holding company shall be Related Party for subsidiary company.

Eg :- Holding Company → Chhawi

Subsidiary Company → Deepali



1 & 2 are related party

⇒ Definition of Relative u/s 2(77)

i) If there is HUF, All members of HUF.

ii) Husband and Wife of each other.

iii) Father including step-father.

iv) Mother including step-mother.

v) Son including step-son.

vi) Son's wife

vii) Daughter

- ⁰⁰⁰viii) Daughter's husband
- ⁰ix) Brother including step brother
- ^x) Sister including step-sister

⇒ Transactions covered u/s 188 :

- ⁰i) Sale purchase or supply of any goods or materials.
- ⁰⁰ii) Selling or otherwise disposing off or buying property of any kind.
- ⁰⁰⁰iii) Leasing of property of any kind
- ⁰iv) Availing or lending of any service.
- ^v) Appointment of any agent for purchase or sale of goods, material, services of property.
- ⁰vi) Such related party appointment to any office or place or profit in the company, its subsidiary company, or associate company.
- ⁰⁰vii) Underwriting the subscription of any securities or derivatives theory of the Company.

⇒ Specific limits of Transactions covered :

- ⁰i) T1 → 10% of turnover of Company or ₹ 100 crore, whichever is less.
- ⁰⁰ii) T2 → 10% or more of networth or ₹ 100 crore, whichever is less.

⁰⁰⁰
iii) T3 → 10% or more of networth or 10% of turnover or ₹ 100 crore, whichever is less.

⁰
iv) T4 → 10% or more of the turnover or ₹ 50 crore whichever is less.

v) T5 → Respective Limit of Respective Transaction

⁰
vi) T6 → Monthly Remuneration of ₹ 2.5 Lakhs.

⁰⁰
vii) T7 → 1% of the net worth

⇒ Miscellaneous rules for Related Party Transactions:

i) While passing ordinary Resolution interested members will not vote.

⁰⁰
ii) If 90% or more shareholders in no. are relative of promoters, Ordinary Resolution is not needed.

⁰⁰⁰
iii) Sec 188 does not apply on transactions between Holding Company and its 100% Subsidiary Company.

⁰
iv) Amount of prerequisites will not be added in computing the limit of ₹ 2.5 lakhs monthly Remuneration.

v) In case of Non-Compliance, Punishment is as follows:

a) Any director or any other employee of a company

who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall:

- In case of listed company, be liable to a penalty of ₹ 25 Lakhs.
- In case of other company, be liable to a penalty of ₹ 5 Lakhs.

* Section: 189 - Register of Contracts or Agreements in which Directors are Inreserved:

- i) Every Company shall maintain corporate registers for transactions undertaken u/s 184 and 188.
- ii) Such register shall be maintained in FORM MDP-4.
- iii) Entries in the register shall be authorised by CS or any authorised person.
- iv) Such register shall be maintained at Registered office of Company.
- v) This Register shall be preserved permanently in the custody of CS or any person authorised by Board.
- vi) Members can demand copies of such registers and Company can charge fees maximum ₹ 10 per page.
- vii) Copies of Register shall be provided to member within 7 days of request.

⁰⁰⁰
viii) This Register shall be present to Directors at every Board Meeting and to shareholders at every General Meeting.

⁰
ix) This register shall be kept available for inspection by a member during business hours for maximum 2 hours every day.

* Section : 191 - Payment to Director for loss of office, etc. in connection with transfer of undertaking, property or shares :

1. Whenever Company sells or otherwise transfer its undertaking, property or investment due to which some director is losing office, no compensation will be paid to such directors.

2. However, compensation is paid in following situations :

a) If it is prescribed in their terms of appointment

OR

b) If Ordinary Resolution is passed by shareholders at General Meeting

c) If a Director wrongly receive some compensation following consequences will arise :

⁰
i) He will pay back the compensation received

⁰⁰
ii) He will pay penalty of ₹ 1,00,000.

* Section : 204 & 205 - Role of Company Secretary :

i) Company Secretary can be a whole time CS and practicing Company Secretary. Company Secretary who is appointed as an employee has to perform functions as specified in section 205. Practicing Company Secretary has various role in various sections but section 204 is dedicated for Secretarial Audit. This Secretarial Audit can be done none other than Practicing Company Secretary.

⁰⁰
ii) As per section 2(24) Company Secretary or Secretary means a Company Secretary as defined in section 2 of Companies Secretaries Act, 1980 who is appointed by a Company to perform the functions of a Company Secretary.

⁰⁰⁰
iii) As per section 2(25), Company Secretary in practice means Company Secretary in practice as defined in section 2 of Company Secretaries Act, 1980.

* Section : 204 - Secretarial Audit for Bigger Companies :

1. Secretarial Audit means verification of compliance of company and other corporate laws.
2. Secretarial Audit is performed only in following companies :
 - a) Listed Company.

- b) Public Company with paid up share capital of ₹ 50 crore or more.
 - c) Public Company with turnover of ₹ 250 crore or more.
 - d) Every Company having outstanding loans or borrowing from banks or public financial institutions of ₹ 100 crore or more.
3. Secretarial Audit is performed by practicing CS only.
 4. Secretarial Audit Report is issued in FORM NO. MR3.
 5. It is the Duty of Company to give all assistance and facilities to the Secretarial Auditor.
 6. Board of Directors will have to give their reply on every remark made by Secretarial Auditor.
 7. Non-Compliance of this section will attract fine of ₹ 2 Lakhs.

Meaning

* **Meaning of Key Managerial Personnel -**

Section-2(57) :

- a. Key Managerial Personnel in relation to a Company means :
 1. The chief executive officer or the managing director or the manager.

2. The Company Secretary.
3. The whole time Director
4. The Chief Financial Officer.
5. Such other officer, not more than one level below the Director who is in whole time employment, designated as the Key Managerial personnel by the Board, and others.
6. Such officer as may be prescribed.

* Section 203 - Requirement of CS :

Although all KMP are appointed when paid up share capital of a public company is ₹ 10 crore or more or a company is a listed company, however, a whole time CS is needed in that company which has paid up share capital of ₹ 5 cr. or more, whether public or private, whether listed or unlisted.

* Section 205 - Functions of Company Secretary :

1. To report to the Board of Directors about compliance of company and other corporate laws.
2. To ensure that company follows all secretarial standards.
3. To discharge such other duties as may be prescribed.

4. Other prescribed duties :

- a) To provide guidance to Directors about the duties.
- b) To facilitate meetings in the company.
- c) To obtain approval from Govt. and other authorities.
- d) To represent company before authorities.
- e) To assist Board of Directors in conduct of the affairs.
- f) To assist and advice Board of Directors in implementation of Corporate Governance.
- g) To Discharge other duties specified by the act.
- h) Such other duties as may be assigned by BOD from time to time.

* Section : 203 - Appointment of KMP :

1. KMP except CS are appointed in following companies :
- a) Listed Company.
- b) Public Company with paid up share capital of ₹ 10 crore or more.

2. An individual cannot be appointed at the same time at more than one post of following combinations :

a) Chairman and Managing Director

b) Chairman and CEO

3. However these prohibited combinations will become permitted if any of the following condition is fulfilled :

a) Articles of Association permit this

b) If Article do not permit this and they are silent about it, company should not carry multiple business.

4. So, it is clear that if a company does not carry on multiple businesses, simultaneous appointment is permitted.

5. If Company has multiple businesses but it does not cross paid up share capital of ₹ 100 crore and turnover of ₹ 100 crore, such multiple businesses have no significant value, so, simultaneous appointments are allowed.

6. If a company has multiple businesses as well as has crossed specified limits of paid up share capital and turnover can have simultaneous appointment only if separate CEO is appointed for separate business.

7. Separate Businesses shall mean those segments of a company which are reported separately as per appropriate accounting standards.
8. Every KMP shall be appointed by BOD.
9. One person can become KMP in only one company at one point of time.
10. However, some person can become KMP in more than one company at the same time if these companies are holding and subsidiary to each other.
11. If casual vacancy arises in the office of KMP, it will be filled by BOD in next 6 months.
12. In case of Non-Compliance punishment is as follows:
 - a) Company will pay penalty of ₹ 5 Lakhs.
 - b) Officer in default will pay ₹ 50,000.
 - c) In case of repeated offence, ₹ 1000 per day upto maximum of ₹ 5 Lakhs, to be paid by officer in default.

* Section: 196 - Appointment of Managing Director, whole time director or Manager:

⇒ Introduction:

1. Managing Director is defined in section 2(54) as a Director who, by virtue of the articles of a company or an agreement with a company or a resolution passed in its General Meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of MD, by whatever name called.
2. So it is clear that powers available with managing Director are substantial in nature.
3. What constitutes substantial and what is not substantial is something to be decided by BOD.
4. MD can be given powers from following 4 sources:
 - a) Provisions prescribed in Articles of Association
 - b) Terms and conditions of his appointment.
 - c) Resolution passed by General Meeting.
 - d) Resolution passed by Board of Directors.
5. It means these 4 authorities will draft the criteria to establish substantial powers.

6. However routine administrative powers such as these specified below will not be treated as substantial :
- a) Power to affix the common seal of the company
 - b) To Draw and endorse any cheque on the account of the company in any bank.
 - c) To Draw and endorse any negotiable instruments.
 - d) To sign any certificate of share.
 - e) To Direct Registration of transfer of any share.
7. Due to the substantial nature of position of MD, his appointment has been put in the separate section 196 and not section 203 which talks about KMP.
8. Section 196 also talks about whole time director who is defined in section 2(94) as a director in the whole time employment of the company.
9. It means all the conditions of appointment of MD and WTD are absolutely same due to common applicability.
10. Section also talks about a person to be appointed as manager who is substitute of managing director, he is a person authorised by Board of Directors to manage entire company or substantially the entire company, subject to the control of BOD.

11. Power of MD and Manager are almost equivalent with the only exception that MD does not report to Board and Manager report to Board.
12. So, if a company does not find any Director to be promoted as MD, any person found to be suitable can be appointed as manager.
13. Manager is defined in section 2(53), means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

⇒ MD VS Manager :

1. MD and Manager are substitute of each other.
2. Only one of them can be appointed.
3. It is not a choice, it is prohibited to appoint both of them together.

⇒ Tenure of MD and WDT

1. They can be appointed for maximum 5 years at one time.
2. Reappointment can take place any no. of time.
3. However, Decision of reappointment shall be done only in the last year of service.
4. However private company can appoint him for life time as well.

⇒ Conditions of Appointment :

1. Minimum age should be 21 years and there is no solution if age is less than 21.
2. Maximum permissible age is 70 years but if age of candidate is more than 70, any one of the following options can be selected:
 - a) Company can appoint him after passing Special Resolution.
 - b) Company can appoint him by passing ordinary resolution and after taking CA approval.
3. Candidate should not be declared insolvent at any time in past.

4. Candidate should not have suspended payment to his creditors and should not have made compromise with them.
5. Candidate should not have been convicted for any offence for six months or more.

=> Conditions of appointment as per schedule V :

1. It does not apply on Private Company.
2. If a candidate fulfilling the conditions of schedule V is being appointed, no approval is required from any authority.
3. However if a candidate could not fulfil the conditions of schedule V, he can still be appointed subject to the approval of CG.
4. Candidate should not be fined for ₹ 1000 or more OR should not have been imprisoned even for a single day under specified 19 Acts.
5. Candidate should not been detained for any period under conversation of foreign exchange and prevention of smuggling activities Act 1974.
6. Candidate should be minimum 21 years in age.
7. Maximum permissible age is 70 years but if age is more than 70, appointment is still allowed subject to special resolution or ordinary resolution with CG approval.

8. Candidate should be Indian resident where resident means person staying in India for continuous 12 months immediately prior to his appointment.

⇒ Manner of Appointment :

1. Appointment shall be done by Board of Directors themselves.
2. Candidates so appointed will start working then and there but this appointment is actually a provisional appointment.
3. Such provisional appointment will become final only if approved by shareholders at General Meeting.
4. When the appointment becomes final in General Meeting company must file return of appointment as per section 201 in FORM no. MR-3 within 60 days.
5. If General Meeting does not approve his appointment, he will have to leave office without compensation because he was appointed provisionally.
6. However all the past actions and decisions already done by him shall remain valid.

* Section 197 - Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or inadequacy of profit:

1. Section 197 does not apply on private company.
2. Managerial Remuneration specified in this section includes only the directors and not KMP. other than Directors.
3. Maximum permissible managerial remuneration u/s 197 is 11% of net profits.
4. This overall limit of 11% can be increased by company by passing ordinary resolution.
5. Following are the individual limits for different categories of directors, which can be increased by company by passing special resolution.
 - a) Maximum 5% to MD or WDT, if there is only one MD or WDT.
 - b) Maximum 10% to MD or WDT, in aggregate, if there are more than one MD and WDT
 - c) If company has WDT's whether one or more, remuneration to non-executive directors shall be 1% of net profit.

- d) If Company does not have any MD and WDT, Remuneration to non-executive directors shall be 3% of net profit.
6. These limits of 1%, 3%, 5%, 10% can be increased by SR but if there is a default in payment of dues to any bank, public financial institution, non-convertible debentures or any other secured creditors, limits cannot be increased without their prior approval.
7. Limits of Remuneration as prescribed in this section are exclusive of sitting fees payable to them which is maximum ₹ 1 Lakh per person per meeting.
8. Remuneration shall be decided by one of the following ways:
- a) Provisions already prescribed in Articles of Association.
 - b) Resolution passed in General Meeting which shall be ordinary resolution only.
 - c) Terms of appointment decided under time of appointment.
9. Remuneration paid to a Director shall be exclusive of any professional charges paid to him for his professional services.
10. Net profits which will be utilised in computing remuneration is calculated as per section 198.

11. If a person has received remuneration in excess of the specified limits, he has to refund such remuneration within 2 years, till then it will be kept by him interest for the Company.
12. Articles of Association may prescribe a lesser period than 2 years to do the Recovery.
13. If Company wants to waive the recovery, it is possible after passing special resolution.
14. If there is a default in re-payment of dues to any bank, public financial institution, non-convertible debentures, any other secured creditors, their approval is also needed before waiving the recovery.
15. Every listed company shall disclose following details regarding managerial remuneration in Board Report:
 - a) Ratio of remuneration of each director to the median remuneration of the employees of the company for the financial year.
 - b) Percentage increase in the remuneration of each Director, CFO, CEO, CS and manager.
 - c) Percentage increase in the median remuneration of employees.

- d) No. of permanent employees on the rolls of company.
- e) Average percentile increase already made in the salaries of employees other than managerial people with the comparison with managerial remuneration.
- f) Declaration that remuneration is as per Remuneration Policy.
- g) Names of top 10 employees in terms of remuneration.
- h) Details of those employees who receive remuneration equal to more than ₹ 1 crore or 2 Lakhs per annum but if an employee was employed for less than 1 year period, relevant remuneration shall be ₹ 2 Lakhs 50 Thousand per month.
- i) Names of those employees whose remuneration was more than the remuneration of MD and WDT.
- j) Names of those employees who hold minimum 2% or more equity shares of the company along with spouse and only dependent children.
- k) If an employee is posted outside India who is not the Director or his relative, getting more than ₹ 60 Lakhs per financial year or

₹ 5 Lakhs per month shall be added in the Board Report but will not be circulated to members.

16. All such information shall be made available to any shareholders who demands within 3 days from demand but if demand is raised after AGM, 3 days will become 7 days.
17. Sometimes Company purchases insurance for MD, WDT, Manager, CEO, CFO or CS for fidelity, premium paid on such policy cannot be deducted from their remuneration but if they are found guilty of Breach of trust, such premium amount will be recovered from them.
18. Some times Directors received profit based commission, which will always be exclusive of Managerial Remuneration.
19. Punishment for non-compliance of this section is minimum ₹ 1 Lakh and maximum ₹ 5 Lakhs to be paid by officer in default.
20. As per section 143 regarding Audit Report, auditor will have to give his comments whether remuneration paid to Directors are within limits or not.

⇒ Managerial Remuneration payable by Companies having no profit or inadequate profit:

1. If the Company has lack of profits or no profits at all, remuneration can still be paid but to all directors including Independent Director.
2. Such remuneration shall be based on effective capital and not the profits.
3. Remuneration to be paid shall be as per the following slab:

Effective Capital	Limit of yearly Remuneration Payable.
a) Negative or less than 5 Crore	60 Lakhs.
b) 5 crore and above but less than 100 crore	84 Lakhs.
c) 100 crore and above but less than 250 Crore.	120 Lakhs
d) 250 crore and above	120 Lakhs + 0.01% of the effective capital in excess of 250 Crore.

4. Such limits are per person per year.
5. Such limits are maximum limits so Company can even pay no remuneration.
6. Such limits can be increased by passing Special Resolution.

⇒ Meaning of Effective Capital:

1. Items to be added are paid up share capital, securities premium account, Reserve and Surplus, Long Term Loans, Deposits of more than one year.
2. Items to be deducted are application money due for refund, money received in advance, Revaluation Reserve, working capital, Loan, overdraft, Investment, Accumulated losses, Preliminary expenses not written off.

* Section 199 - Recovery of Managerial Remuneration in certain cases:

1. If remuneration is paid which was not an entitlement of the Director, the same can be recovered from him.
2. This can happen for 2 reasons:
 - a) Remuneration was wrongly calculated.
 - b) Profit was wrongly calculated, so, it is now recalculated.

3. This Recovery can be done even after the Retirement.

* Section : 200 - Central Government or Company to fix limit with regard to Remuneration :

1. Whenever Company decides remuneration, with or without CG approval, this section will apply.
2. This section provides us a list of factors to be considered at the time of fixing and Revising Remuneration.
3. Following are the factors :
 - a) Financial position of the Company.
 - b) Remuneration already drawn by him in some other capacity.
 - c) Remuneration drawn by him from other companies.
 - d) Professional qualification and experience of such persons.
 - e) Financial and operating performance of the Company in last 3 years.
 - f) Relationship b/w Remuneration and performance.
 - g) Comparison of managerial remuneration with other executives of company.

- h) Whether the Remuneration Policy for Directors and other employees is different or not.
- i) Whether the Director holds some securities or not.
- * Section : 163 - Option to Adopt Principle of Proportional Representation for Appointment of Directors:

This section was inadvertently missed in the original set of Notes, following is the text of the said section:

Notwithstanding anything contained in this Act, the articles of the company may provide for the appointment of not less than two-thirds of the total number of the Directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such Directors shall be filled as provided in sub-section (4) of section 161.

* Section: 201 - Forms of, and Procedure in Relation to, certain Applications:

This section was inadvertently missed in the original set of notes. Following is the text of the said section:

1. Every application made to the Central Government u/s 196, shall be in MR-2 Form. Every such application seeking approval shall be made to the Central Government within a period of 90 days from the date of such appointment. Before any application is made by a company to the Central Government u/s 196, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.
2. Such notice shall be published at least once in a newspaper in the principle language of the district in which the registered office of the company is situated and circulating in that district, and at least once in English in an English Newspaper circulating in that district.
3. The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

* Section 202 - Compensation for loss of office of Managing or Whole time Director or Manager.

1. A Company may make payment to a MD or WTD or manager, but not to any other director, by way of Compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement.
2. No payment shall be made u/s 202(1) in the following cases:
 - a) where the director resigns from the office as a result of the reconstruction of the Company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole time Director, manager or other officers of the reconstructed company or of the body corporate resulting from the amalgamation.
 - b) where the director resigns from his office otherwise than on the reconstruction of the Company or its amalgamation as aforesaid.
 - c) where the office of the director is vacated under section 167(1).
 - d) where the company is being wound-up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director.

- e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof,
- f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.
3. Any payment made to a MD or WTD or ~~any~~ Manager in pursuance of section 202(1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of 3 years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than 3 years, during such period.

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within 12 months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

4. Nothing in this section shall be deemed to prohibit the payment to a MD or WTD or manager, of any remuneration for services rendered by him to the company in any other capacity.

* Computation of Net Profits u/s 198 :

Computation of Net Profits : In Computing "Net Profits"	
Treatment	Items
A. Credit shall be given for	Subsidies received from Government/ Public Authority.
B. Credit shall not be given for	<ol style="list-style-type: none"> 1. Premium on Issue or Sale of Shares or Debentures unless the company is an Investment Company as per section 186 (a). 2. Profit on sale of forfeited Shares. 3. Profits of capital nature, including profit from sale of whole or part of undertaking(s) 4. Profits from sale of any Immovable Property or fixed assets of Capital Nature. 5. Change in carrying amount of an assets or liability recognised in Equity reserves, including surplus in P/L A/c, on measurement of the Assets or Liability at fair value. 6. Amount representing Unrealised Gains, Notional Gains or Revaluation of Assets.
C. Deductible items.	<ol style="list-style-type: none"> 1. All usual working charges. 2. Directors Remuneration.

3. Bonus or commission payable to Employees / Technicians, etc.
4. Any tax on excess or abnormal profits notified by Central Government.
5. Any tax on business profits imposed for special reason and notified by Central Government.
6. Interest on debentures issued by the company
7. Interest on Mortgages executed by the company
8. Interest on Loans & Advances secured by a charge on its fixed or floating Assets.
9. Interest on Unsecured Loans and Advances.
10. Expenses on Repairs (excluding Repairs of capital nature).
11. Outgoings including contribution to Charitable funds u/s 181.
12. Depreciation to the extent specified u/s 123, i.e., in the manner specified in schedule II.
13. Brought forward Unabsorbed Losses of earlier years [Loss of earlier years shall be computed in accordance with sec. 198]
14. Compensation or Damages paid on account of any legal liability including a liability arising from a breach of contract.

	<p>15. Insurance against risk of meeting liability arising from breach of contracts.</p> <p>16. Bad debts written off or adjusted.</p>
<p>D. Non-Deductible Items.</p>	<ol style="list-style-type: none"> 1. Income Tax, Super Tax or any other Tax or Income payable. 2. Any compensation, damages or payments made voluntarily. 3. Loss of capital nature, including loss on sale part or whole of undertaking(s) other than loss on sale of assets where $WDV > \text{Sale Value}$. 4. Change in carrying amount of an Asset or Liability recognised in Equity reserves, including surplus in P/L A/c, on measurement of the Asset or Liability at Fair Value.

Independent Director

Number of ID :- As per Company Law.

- 1) Listed companies - 1/3rd of total directors.
 - 2) Public companies - 2 Independent Directors
with :-
 - PSC \geq ₹ 10 cr
 - OR
 - TIO \geq ₹ 100 cr
 - OR
 - outstanding loan,
debentures, deposit
 \geq
₹ 50 cr.
- subject to exemption available to :-
- 1.) Joint Venture Co.
 - 2.) Wholly owned subsidiary
 - 3.) Dormant Co.
 - 4.) Charitable Co.
 - 5.) IFSC Public Co.

Number of ID :- As per SEBI (LODR) 2015

1. Where chairman is Non Executive Director
At least $\frac{1}{3}$ rd of Total Directors.
2. Where chairman is Executive Director
At least $\frac{1}{2}$ of Total directors
3. Where chairman is Non Executive Director and
Also, Promoter
or Related to Promoter
or Related to Management Position Holder at BOD Level
or Related to Management Position Holder at one level Below BOD Level

Continuous applicability in case of unlisted public companies.

Q. If once ID is appointed, he has to be

1. If once applicable, requirement of ID will remain applicable for next 3 years.
2. It means if none of the limits is crossed for consecutive 3 years, Requirement of ID will get removed.

Casual vacancy in the office of ID

1. To be filled by BOD

2. Time limit :-

Next Board Meeting
OR
3 months

} whichever is later.

Number of ID as per Section 177 vs 149 vs Rule 4 vs. LODR

Section 177 = Majority of Audit Committee member must be ID

Section 149 = 2/3rd (one third)

Rule 4 = 2 (Two)

LODR = 1/2 and 1/3.
(Half) (one third)

whichever is higher should be appointed.

If the same company gets covered in multiple section / provisions specified above, higher of all number of ID shall be appointed.

Declaration by ID

What to declare? That he meets the eligibility criteria.

When to declare?

1. First BM when he attends after appointment
2. First BM in Every F.Y.
3. Whenever there is any change in the circumstances which may affect his status as ID.

Remuneration of ID

1. Allowed :-
 - 1) Sitting fee
 - 2) Reimbursement of expenses
 - 3) Profit related commission
 - 4) Remuneration when no profit or low profit

2. Not allowed :- Stock option

Tenure of ID

1. Maximum one time tenure = 5 years
2. Consecutive terms without Break = Max. 2 times
3. Cooling off period mandatory after consecutive 2 terms = 3 years
4. His role during 3 years = No role in any capacity.
5. Reappointment requires = special Resolution
6. Performance Evaluation = Required before Reappointment.
7. Retirement by Rotation = Does not apply on ID.

Presence of ID in various committees

Audit Committee :- Majority members must be ID

Nomination & Remuneration Committee :- One Half should be ID

Corporate Social Responsibility Committee :- Minimum 1 should be ID.

Separate Meeting of ID

1. ID shall hold at least 1 meeting of ID without presence of other directors.
2. All ID should be present in this meeting.
3. Functions of the meeting :-
 - 1) Review performance of non ID and BoD as a whole.
 - 2) Review performance of chairperson
 - 3) Assess quality, quantity and timeliness of flow of info. Between Mgmt and BoD.

Manner of Appointment of ID

1. BOD to find suitable candidate.
 ↓
 Balance of skills, experience and knowledge in the Board
2. Appointment to be approved by shareholders.
3. Appointment letter to be open for inspection at Registered office by any member during Business hours.
4. Appointment letter shall be posted on company website as well.

Resignation and Removal

Resignation and Removal shall take

place as per normal procedures.

↓
 Section 168
 Resignation

↓
 Section 169
 Removal

Liability of ID

shall be liable only for those acts of omission or commission which had occurred :-

- with his knowledge,
- attributable through Board processes,
- with his consent or connivance or
- where he had not acted diligently.

Guidelines of Professional Conduct

1. Uphold ethical standards of integrity & probity.
2. Act objectively and constructively.
3. Exercise responsibilities in bonafide manner.
4. Devote sufficient time and attention.
5. Not allow any extraneous considerations.
6. Not abuse his position to detriment of company or shareholders or to gain undue advantage.
7. Not perform any action against independence.
8. Inform Board when independence is compromised.
9. Assist Company in Good Governance.

Eligibility criteria of ID Section 149 (6)

Condition 1

Person of Integrity, relevant industrial expertise and experience,
(in the opinion of BoD)

Condition 2

Should not be

- Promoter
 - Relative of Promoter
- } of Company or Group Companies.

Condition 3

Should not have or had Pecuniary Relationship

<u>with</u>	<u>In</u>	<u>except</u>
Company	Last F.Y.	(1) Director Remuneration
Group Cos.	Current F.Y.	&
Promoters	or Last 2	(2) Transaction upto
Directors	F.Y.	10% of MIS total income.

Condition 4

Relative of candidate should not fall in any of the following categories :-

①

Holding security in Company or Group Companies more than Fair value ₹ 50 Lakh or 2% of PSC during current F.Y. or previous 2 F.Y.

②

Indebted to the Company or Group Companies or Promoters or Directors during current F.Y. or previous 2 F.Y.
↓
₹ 50 Lakh or more

③

Has given guarantee or security for loan taken by anyone to Company or Group companies or Promoters or Directors during current F.Y. or previous 2 F.Y.
↓
₹ 50 Lakh or more

④

Has any other pecuniary Relationship with Co. or Group Companies of 2% or more of turnover.

Condition 5

Candidate and his relative should not fall in any of the following 4 Categories:-

- | | | | |
|--|---|---|---|
| ① | ② | ③ | ④ |
| Should not be KMP of Company or Group Companies in Current F.Y. or last 3 F.Y. | Should not be Employee or Proprietor or Partner in current Year or last 3 F.Y. in | Holds 2% or more voting power of the Company. | CEO or Director or Controller of NGO which receives 25% or more of its receipts from Company, Group companies, Promoters, directors or anyone who holds 2% or more voting power of company, |
| + | <ul style="list-style-type: none"> → Audit Firm → CS Firm → Cost Audit firm → Legal or consulting firm earning 10% or more turnover from this company or Group Companies. | | |
| + | Candidate should not be Employee of Co. or Group Companies in current F.Y. or last 3 F.Y.
Relative should not be Employee at present but <u>can be Employee</u> in last 3 years. | | |

Condition 6

Candidate should possess :-

- appropriate skills
- experience
- knowledge

In one or more fields of

- Finance
- Law
- Management
- Sales
- Marketing
- Administration
- Research
- Corporate Governance
- Technical operations.
- Other related disciplines.

Section 150. Manner of selection of independent Directors and maintenance of databank of independent directors

To be selected from Data bank maintained by IICA	Responsibility of exercising Due Diligence rests with the company.
ID to be appointed by GM	IICA to receive applications from persons who are willing to become ID with or without DIN.
Applications can be given for 1 year, 5 years, Lifetime.	Renewal to be done in 30 days after expiry.
online proficiency self-assessment test to be passed by ID candidate within 2 years of taking enrolment.	Restoration of name possible in Rs. 1000, provided he passes the test in next 1 year.
<p>Exemptions from Test upon having 3 years' experience:</p> <ol style="list-style-type: none"> 1. Director or KMP in listed company, Unlisted public co. with PSC of 10 cr or more, Listed company abroad as member of FATF, Companies abroad with PSC of USD 2 million or more, Statutory Corporations. 2. Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises with experience in corporate law matters. 	<p>Passing percentage is 50%</p> <p>No limit on the number of attempts.</p>

<p>3. Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority with experience in corporate law matters.</p>	
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