

KEY CONCEPTS

- Director ■ DIN ■ Independent Director ■ Resident Director ■ Inter-Corporate Loan ■ Managing Director
- Whole-time Director ■ IICA ■ Nominee Director

Learning Objectives

To understand:

- Concept of Directors
- Manner of appointment of Directors
- Procedure for obtaining DIN
- Provisions regarding: disqualifications; resignation; removal; duties and liabilities of Directors
- Vacation of office of Director
- Loans to Directors
- Rights and Duties of Director

Lesson Outline

- Introduction
- DIN requirement
- Types of Directors
- Appointment / Reappointment of Directors
- Disqualifications, Vacation of Office, Retirement, Resignation and Removal of Directors
- Loans to Directors
- Disclosure of Interest of Directors
- Duties and Rights of Directors
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 (Sections 149-171, 184 & 185)
- The Companies (Appointment and Qualification of Directors) Rules, 2014
- The Companies (Meetings of Board and its Powers) Rules, 2014
- Schedule IV of the Companies Act, 2013
- The Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019
- SEBI (LODR) Regulations, 2015

INTRODUCTION

The Companies Act, 2013 contemplates various provisions related to Directors. A Company having separate legal existence in the eyes of law, is an artificial person. The Company has an intangibility i.e. it cannot be touch as it is not a natural person. As such, it cannot act on its own. It acts through only with human intervention.

The Directors are the individuals who are in charge and manage the day to day affairs of the Company. Where the Company needs to have more than one Director, then the total number of Directors are termed as Board of Directors of the Company. Whenever a Company needs to take decision, it will take the decision through the Board of Directors only as it cannot act on its own. For various decisions and managing the day to day affairs, the Board of Directors are required to meet occasionally as well as periodically for taking those decisions by way of passing of resolutions depends on the nature of decision.

For example, ABC Ltd wants to change its registered office from North Delhi to South Delhi. It will have to convene the Board Meeting and has to pass the Board Resolution for such shifting as required by the Companies Act, 2013.

The Companies Act, 2013 defines the term Director in Section 2(34) which prescribed that “director” means a director appointed to the Board of a company.

Section 2(10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

By virtue of Section 149 of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director.

Section 166 (6) of Companies Act, 2013, prohibits assignment (transfer) of office of director to any other person. Any assignment of office made by a director shall be void.

Illustration 1- XY Limited, a Company registered under the Companies Act, 2013, appointed Mr. X and Mr. Y as Directors. Now, XY Limited conducts the Board Meeting and decided to appoint MNO LLP as its Director. XY Ltd by virtue of Section 149 cannot do so.

Illustration 2- XY Limited, a Company registered under the Companies Act, 2013, appointed Mr. X and Mr. Y as Directors. Now, Mr. X wants to transfer his office to Mrs. A, his spouse, for his place Mr. X by virtue of Section 166(6), if do so, will be VOID.

DIN REQUIREMENT

Director Identification Number (DIN) is a unique identification number allotted by the Ministry of Corporate Affairs, Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company.

DIN is specific to a person, which means even if he is a director in two or more companies, he has to obtain only one DIN and if he leaves a company and joins some other, the same DIN would work in the other company as well.

“Director Identification Number” (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 and rules made thereunder.

ONE PAN can be obtained by an individual. Likewise, only ONE DIN can be obtained by one individual. If an individual generates two DINs inadvertently, he has to surrender his unused DIN immediately.

Section 152 (4) mandates that every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under section 153 and a declaration that he is not disqualified become a director under this Act.

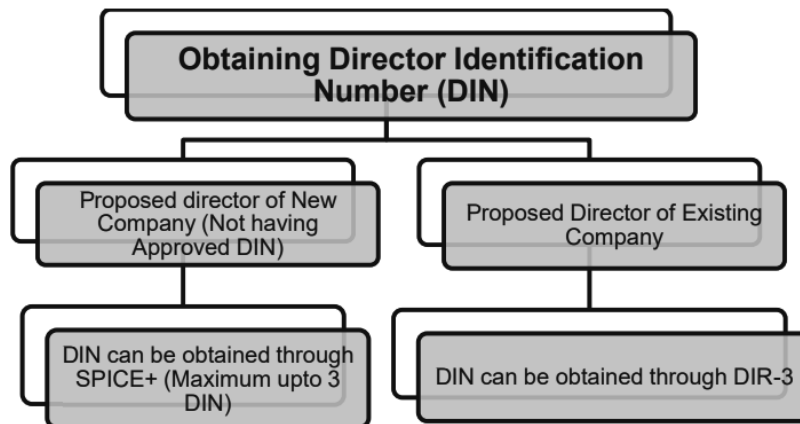
As per Section 153 of the Act, every individual intending to be appointed as director in an existing company shall make an application electronically in Form DIR-3 for allotment of director Identification Number to the Central Government along with the prescribed fees.

Further, DINs to the proposed first directors (not having approved DIN) in respect of new companies would be mandatorily required to apply for it in web form SPICE+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) forms and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICE).

However, the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of section 153 shall not apply or apply in such manner as may be prescribed.

Prior to the date, 26th January 2018, the Form DIR-3 needs to certified by the Practicing Professional but the Ministry of Corporate Affairs by virtue of notification dated, 26th January, 2018, omits the requirement of certification from the Practicing Professional. Now, the Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital signature certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.

Illustration 1- Mr. X wants to obtain DIN. He is interested in his appointment as a Director. He wants to obtain DIN for his future appointments. But, at present, he has no offer from any Company for Directorship. He cannot obtain DIN as there is no Company which offers him Directorship and Form DIR-3 cannot be filed because it needs to be certified/ verified from the officials at the employment of the Company by virtue of MCA notification dated 26th January, 2018. But prior to such date, the form can be filed with the Practicing Professional’s certification.



DOCUMENTS REQUIRED FOR OBTAINING DIN

DOCUMENTS TO BE ATTACHED IN E-FORM DIR-3	DESCRIPTION
Proof of identity of applicant	<p>In case of Indian nationals, duly attested copy of:</p> <ol style="list-style-type: none"> 1. Income-tax PAN; and 2. Voters Identity Card/ Passport/ Driving License are mandatory requirement for proof of identity. <p>In case of foreign nationals, duly attested copy of passport is a mandatory requirement for proof of identity.</p> <p>Proof of father's name is not required in the case of foreign nationals.</p> <p>In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.</p>
Proof of residence of applicant	<p>Duly attested Address proofs- ANY ONE of the below is mandatory:</p> <p>Latest (not more than two months old) Bank Statement/ Electricity Bill/Telephone Bill/ Mobile bill etc., shall be attached and should be in the name of applicant only.</p> <p>(In case of proofs which are in languages other than Hindi / English, the proofs should be translated in Hindi / English from professional translator carrying his details (name, signature, address) and seal. In the case of foreign nationals, translation done by the notary of home country is also acceptable.)</p>
Photograph	In JPEG
Board resolution	A Board Resolution proposing his appointment as director in an existing company
Specimen signature	A specimen signature duly verified
Digital Signature	<p>Obtain Digital Signature Certificate before applying for DIN and ensure that the applicant does not have any DIN allotted earlier as the Companies Act, 2013 prohibits to obtain and retain more than 1 DIN (Section 155).</p> <p>The Digital Signature Certificate is required and the Form will be signed digitally by the applicant.</p>

Illustration- Mr. X has filed on 01.11.2022, the Form DIR-3 for obtaining the DIN from MCA. He has faced the objection regarding the address proof i.e. Bank Statement should not be older than two months. He had attached the bank statement for the period 01.06.2022 to 31.07.2022. Then, he had resubmitted the Form DIR-3 on 02.11.2022 with attaching the revised Bank Statement for the period 01.09.2022 to 31.10.2022. The Form got approved and DIN allocated successfully.

Procedure for application for allotment of DINs to the proposed first Directors in respect of new companies: e-Form SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32)

Any person (not having approved DIN) proposed to become a first director in a new company shall have to make an application through web form SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) for allotment of DIN.

SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) is an integrated Web form offering multiple services such as: Name Reservation, Incorporation, DIN allotment, Mandatory issue of PAN, Mandatory issue of TAN, Mandatory issue of EPFO registration, Mandatory issue of ESIC registration, Mandatory issue of Profession Tax registration (Maharashtra), Mandatory Opening of Bank Account for the Company and Allotment of GSTIN (if so applied for).

Allotment of Director Identification Number (DIN) to maximum of three proposed directors shall be permitted in case of proposed directors not having approved Director Identification Number. The applicant is required to attach the proof of Identity and address along with the application. DIN would be allocated to User only after approval of the form. [Section 153 read with rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

Once the SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) is processed and found complete, company would be registered and CIN would be allocated. License Certificate shall also be issued in case of incorporation of a Section 8 company. Also DINs gets issued to the proposed Directors who do not have a valid DIN.

Illustration- Mr. A, Mr. B, Mr C and Mr. D intends to incorporate an Indian Company as Director and Shareholders. At present, they don't have DIN. They have to file the application in SPICe+ for incorporation. Now, as they are FOUR in number, they can't fill the particulars of all FOUR as allocation of DIN is limited to maximum of three proposed directors in case of proposed directors not having approved DIN. They need to incorporate the Company any THREE directors and after the incorporation, they can file Form DIR-3 for obtaining the DIN of FOURTH person.

Procedure for application for allotment of DIN before Appointment in an existing Company - Section 153 read with Rule 9 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

Every individual, who is to be appointed as director of an existing company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as may be prescribed.

MCA 21 portal facilitates submission of application for the allotment of DIN.

The applicant shall fill e-Form DIR-3 by inserting the required particulars and attaching photograph; proof of identity; proof of residence; board resolution proposing his appointment as director in an existing company and specimen signature duly verified and sign the form digitally.

In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with declaration in Form-DIR-3A. This declaration will be submitted along with Form DIR-3.

Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a Company Secretary in full time employment of the company or by the Managing Director or Director or CEO or CFO of the existing company in which the applicant is intended to be appointed as a director.

Procedure for Application of DIN for foreign national

Details of a valid passport should be filled and a certified copy of same should be attached with the application. All supporting documents including photograph should be certified by the Indian Embassy or a notary in the home country of the applicant. If a foreign director has a valid multiple-entry Indian visa or Person of Indian Origin card or Overseas Citizen of India card, then the attestation could also be done by Public Notary / Gazetted Officer in India.

Procedure for generation of DIN- Section 154 read with Rule 10 & 10A of the Companies (Appointment and Qualifications of Directors) Rules, 2014

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as mentioned below:

- (1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically.

As per the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 notified on June 01, 2022, no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached alongwith application for Director Identification Number.

- (2) After generation of the application number, the Central Government shall process the applications received for allotment of DIN under Sub-rule (2) of Rule 9 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 decide on the approval or rejection thereof and communicate the same to the applicant along with DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within a period of one month from the receipt of such application.
- (3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email. Provided the Central Government shall:
 - (a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
 - (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
 - (c) inform the applicant either by way of letter by post or electronically or in any other mode.
- (4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.
- (5) All director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.
- (6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.
- (7) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B.
- (8) The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.

Intimation of changes in particulars of Director- Rule 12 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

There may be a situation when a DIN holder has changed its personal particulars like:

Address; Name; Father's name; Nationality; Date of birth; Gender; Income-tax PAN; Voters Identity card number; Passport number; Driving license number; Permanent residential address; Present residential address; Photograph of Director/ Designated partners; Residential Status; and/or Aadhaar number.

Every individual who has been allotted a DIN in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 (Intimation of change in particulars of Director to be given to the Central Government).

The applicant shall fill in the relevant changes in Form DIR-6, verify the form and attach duly scanned copy of the proof of the changed particulars and submit electronically. Form requires pre-certification by the professional CA/CS/CMA in practice.

The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

The DIN cell of the MCA shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

<i>Question</i>	<i>Answer</i>
Which Form to be filed form for change in particulars	Form DIR-6
Time-limit within which form to be filed	30 days
Mode of filing	Electronically
Certification	By Practicing Professional (No need of certification from Company officials)

Cancellation/Surrender/Deactivation of DIN- Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

The [Central Government/RD (North), Noida/ Authorised Officer by the RD] may, upon being satisfied on verification of particulars or documentary proof attached with the application along with specified fee received from any person, cancel or deactivate the DIN in case –

- the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;
- the DIN was obtained in a wrongful manner or by fraudulent means;
- of the death of the concerned individual;
- the concerned individual has been declared as a lunatic or of unsound mind by a competent Court;
- if the concerned individual has been adjudicated an insolvent;

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

- (f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN but after verification of e-records.

Once a person is appointed as a Director in any company as per the Companies Act 2013, he cannot relinquish his DIN in the future. Even if he/she doesn't remain a director anymore in that company or in any other company, his/her DIN will exist as it is.

Illustration- Mr. Amit has obtained two DINs inadvertently and both DINs got used in two different appointments as Director. Now, it came into his knowledge. He wants to surrender his second DIN and merge his both appointments in single DIN. Can he do so?

The Answer is NO. Because only an unused DIN can be surrendered by filing the Form DIR-5.

Impact of Non Compliance of DIR-3 KYC/DIR-3 KYC Web

The Central Government or Regional Director (Northern Region), or any officer authorized by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC 3 [or the web service DIR-3-KYC-WEB as the case may be] within stipulated time in accordance with rule 12A.

The de-activated DIN shall be re-activated only after e-form DIR-3-KYC 3 [or the web service DIR-3-KYC-WEB as the case may be] is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

General Provisions Regarding DIN

Prohibition to obtain more than one DIN

According to Section 155, no individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154.

Director to intimate DIN

Section 156 stipulated that every existing director shall intimate his DIN to the company or all companies wherein he is a director within one month of the receipt of DIN from the Central Government.

Company to inform DIN to Registrar

Section 157 (1) provides that every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with requisite fee in Form DIR-3C.

If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

Obligation to indicate DIN

Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under the Companies Act, 2013, in case such return etc. relate to the director or contain any reference of any director.

Rule 12A of the Companies (Appointment and Qualifications of Directors) Rules, 2014 – Directors KYC

Every individual who holds a Director Identification Number (DIN) as on 31st March of a financial year as per the Companies (Appointment and Qualifications of Directors) Rules, 2014 shall, submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year.

Where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year.

Provided also that in case an individual desire to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only.

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

With effect from 01st day of August, 2024, in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only on or before 30th September of the financial year.

If an individual intends to update his personal mobile number or the email address again at any time during the financial year in addition to the up-dation allowed under the third proviso, he shall update the same by submitting e-form DIR-3 KYC on payment of fees of five hundred rupees

Illustration 1- Mr. Pramod has obtained the DIN on 30th March, 2022. He has to file the web-form DIR-3 KYC-WEB before 30th September, 2022. He has to enter OTP sent on both registered email id and mobile number.

Illustration 2- Mr. Saurabh has obtained the DIN on 10th March, 2022. Thereafter, he changed his mobile number. He has to file eForm DIR-3 KYC for change of mobile number. Otherwise, he will not be able to file his DIR-3 KYC-WEB because while filing it, the OTP is to be sent on registered mobile number only. After filing the eForm DIR-3 KYC, the mobile number gets auto populated in DIR-3 KYC-WEB.

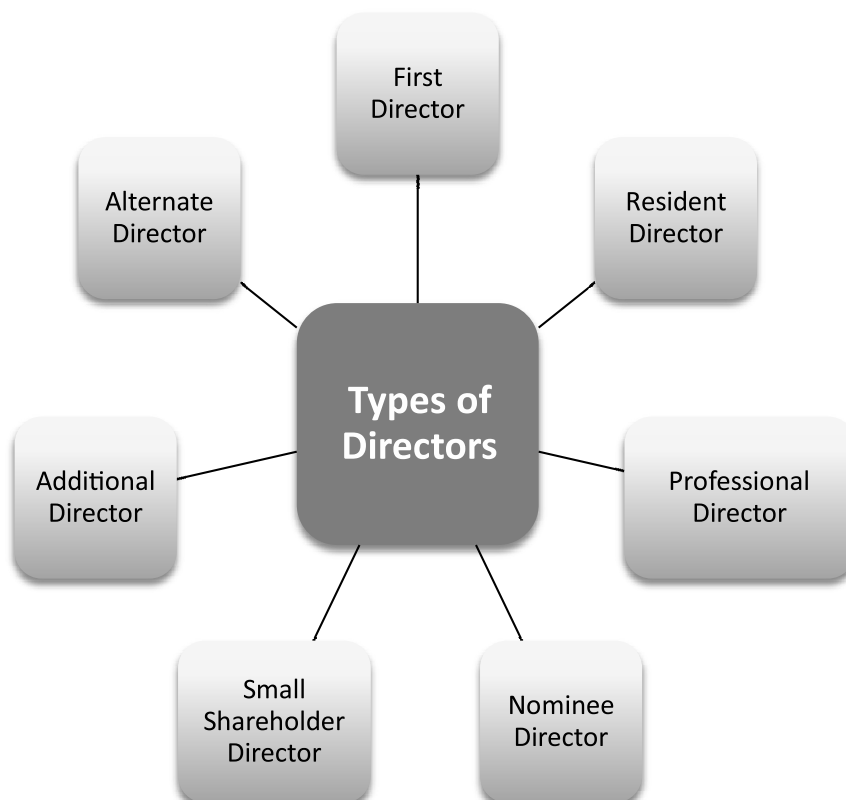
<i>DIR-3 KYC</i>	<i>DIR-3 KYC Web</i>
One-time filing	Annually filing
Filing in case of change of mobile number and email id	Annually filing
OTP required on personal email id and mobile number	OTP required on personal email id and mobile number
If not done DIR-3 KYC WEB within due date, then DIR-3 KYC is required to filed and the fee of Rs. 5000 shall be payable.	No fees
It is filed for two purposes: 1. When there is a change in mobile number and email id 2. The DIN holder didn't file DIR-3 KYC WEB within due date	Annually filing

Summary of DIN Forms

<i>Forms</i>	<i>Purpose</i>
DIR-3	Application for allotment of Director Identification Number before appointment in an existing company
DIR-6	Intimation of change in particulars of Director to be given to the Central Government
DIR-5	Application for surrender of Director Identification Number
DIR-3B	Intimation of DIN to Company (By every director, functioning as a director in one or more companies on or before the 30th June, 2007 & not yet intimated his DIN)
DIR-3C	Intimation of Director Identification Number by the company to the Registrar DIN services
DIR-3 KYC/DIR-3 KYC Web	Application for KYC of Directors

TYPES OF DIRECTORS

A director to the Board may be appointed as:



First Director

Section 152 of the Act provides that where there is no provision made in Articles of Association of the company for appointment of first directors then the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. Section 152(1) of the Act is applicable to all companies, whether public or private. In case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

Resident Director

Section 149(3) provides that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days during the financial year. However, in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated. This sub-section shall apply to a Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation.

Woman Director

Second proviso to Section 149(1) read Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one Women Director:

All Listed Companies;

Public companies with paid up capital of Rs. 100 crore or more; or
with turnover of Rs. 300 crore or more.

Additionally for listed entities as per Regulation 17 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, the Board of directors of the top 1000 listed entities shall have at least one independent woman director.

In Re Jalpower Corporation Ltd. v. Registrar of Companies C.A. NO. 13/621A (HYD.) OF 2016, it was held that where there was delay of 180 days approximately in appointing woman director and application was filed for compounding of offence, same was permitted for company. All directors had to pay fine and ROC should bring issue of compounding of offence to notice of Special Judge for Economic Offence.

Director elected by Small Shareholders [Section 151]

According to Section 151 of the Act, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed.

“Small shareholder” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Here, the ‘nominal value’ of shares is relevant. It does not matter how much is the ‘paid up value’ or ‘market value’ of shares. However, a small shareholder may be a holder of equity shares or preference shares or both.

Illustration

Mr. A holds 5000 equity shares of Rs. 10 each (Rs. 4 paid up) in XYZ Ltd. However, Mr. A cannot be considered as small shareholder since the nominal value of shares held by him (i.e. Rs. 50,000) exceeds Rs. 20,000.

Terms & Conditions for Small Shareholders' Director

Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholders' director, which are as under:

(i) Election of small shareholders' director:

A listed company, may upon notice of not less than:

- (a) One thousand small shareholders; or
- (b) one-tenth of the total number of such shareholders,

whichever is lower; have a small shareholders' director elected by the small shareholder.

A 'Small Shareholder's Director' may be elected voluntarily by any listed company. Thus, a listed company, may, on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required.

(ii) Notice of intention to propose a candidate:

The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a signed notice of their intention with the company at least 14 days before the meeting under their signatures specifying their details and proposed director's details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(iii) Statement by the proposed small shareholders' director:

The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders' director stating:

- (a) his Director Identification Number;
- (b) that he is not disqualified to become a director under the Act; and
- (c) his consent to act as a director of the company.

(iv) Small shareholders' director to be an independent director:

Small shareholders' director shall be considered as an independent director, if-

- (a) he is eligible for appointment as an independent director as per sub-section (6) of section 149; and
- (b) he gives a declaration of his independence as per sub-section (7) of section 149.

(v) Tenure of office and no retirement by rotation:

The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

(vi) Grounds of disqualification:

Disqualifications of a small shareholders' director are the same as that of any other director specified under section 164 of the Act.

(vii) Grounds of vacation of office:

A Small shareholders' director shall vacate the office if –

- (a) he ceases to be a small shareholder, on and from the date of cessation;
- (b) he incurs any of the disqualifications specified in section 164;
- (c) the office of the director becomes vacant in pursuance of section 167;
- (d) he ceases to meet the criteria of independence as provided section 149(6).

(viii) Number of small shareholders' directorship:

A person shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company, he shall not be appointed in second company.

(ix) No association with the company for next 3 years:

He shall directly or indirectly not be appointed or associated in any other capacity with the company either directly or indirectly for a period of 3 years from the date of cessation as a small shareholder's director.

Note:

- a) A small shareholders' director may be removed by passing an ordinary resolution in the general meeting in accordance with the provisions of section 169 of the Act. At the time of voting on such resolution, every equity shareholder shall have a right to vote irrespective of the fact as to whether he is a small shareholder or not.
- b) A small shareholders' director shall be included in the 'total number of directors' as prescribed under section 152 (6) of the Act.

Independent Directors

Section 149(4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides following companies to have specified number of independent directors.

Class of Companies	Minimum Number of Independent Directors
All listed public companies	At least 1/3rd of total number of Directors or such other number as provided. (Any fraction contained in such one-third number shall be rounded off as one).
(i) Public companies having: <ul style="list-style-type: none"> a. with paid up capital of Rs.10 crore or more, or with turnover of Rs.100 crore or more, or b. with outstanding loans, debentures and deposits of Rs.50 crore or more 	At least 2 independent Directors.

However, the following classes of unlisted public company shall not be covered under sub-rule as above:

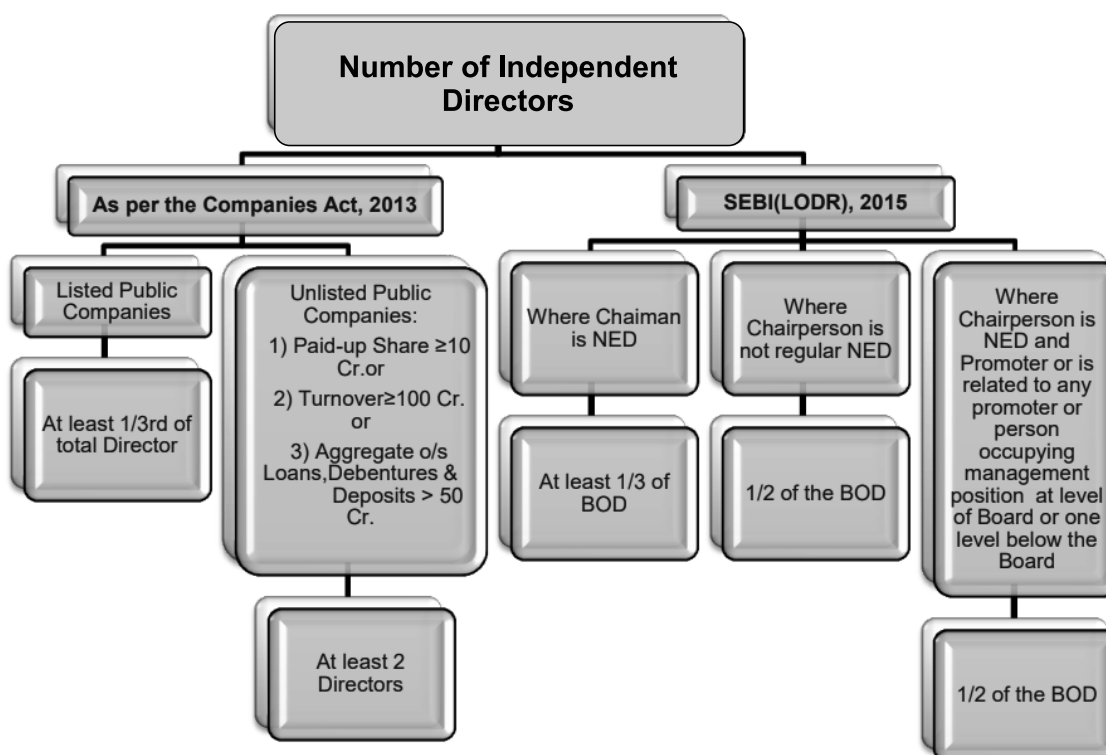
- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

In case a company covered under this rule is required to appoint higher number of independents directors due to composition of its audit committee and then they shall appoint such higher number of independent directors.

In case of section 8 companies and specified IFSC public companies this sub section is not applicable.

Further, if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

Once the company covered under above sub-rule (i) to (iii) of Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, ceases to fulfil any of three conditions for three consecutive years then it shall not be required to comply these provisions until such time as it meets any of such conditions.



Definition of an Independent Director –

Section 2(47) of the Companies Act, 2013 provides that the “independent director” means an independent director referred to in sub-section (6) of section 149 of the Companies Act, 2013.

An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/ directors. Basically, an

independent director is a non-executive director. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows:

- (a) Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience;
- (b) Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company;
- (c) Such individual who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives—
 - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
 - (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or
 - (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii).
- (e) He must not either directly or any of his relatives -
 - (i) hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm.
 - (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its

holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

- (f) who possesses such other qualifications as prescribed in Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014 i.e. as an independent director he shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149:

- (i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
- (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”

In case of Government company – clause (c) of Section 149(6) shall not apply i.e. no such restriction levied on Government Company related to Pecuniary relationship of Independent director - Notification dated 5th June, 2015.

Issue: Whether the spouse of Secretarial Auditor or Statutory Auditors of the company, be appointed as an independent director in the company?

View: According to Section 149(6)(e)(ii) of the Act, an independent director in relation to a company, means who neither himself nor any of his relatives is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company. Hence such a person whose spouse is the secretarial auditor/ statutory auditor of the company cannot be appointed as an independent director in that company.

Issue: Can a friend of a director be considered as independent?

View: Law does not prohibit the appointment of a friend of a director of the company as an independent director, if he fulfils all the legal requirements.

Issue: Can a Spouse of an independent director be appointed as an independent director?

View: No, a Spouse of an independent director cannot be appointed as an independent director. Refer to Section 149(6)(b)(ii) which provides that an independent director in relation to a company means one who is not related to promoters or directors in the company, its holding, subsidiary or associate company.

Declaration by an Independent Director- Section 149 (7)

Section 149 (7) of the Act, prescribed that every independent director shall give a declaration that he meets the criteria of independence when:

- (a) he attends the first meeting of the Board as a director;
- (b) thereafter at the first meeting of the Board in every financial year; and
- (c) whenever there is any change in the circumstances which may affect his status as an independent director.

Additionally for listed entities SEBI vide notification dated 9th May, 2018 (effective from April 1, 2019) provides that every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence. The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director after undertaking due assessment of the veracity of the same.

The top 1000 listed entities by market capitalization shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

"Nominee Director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government or any other person to represent its interests.

Remuneration of an Independent Director- Section 149(9)

As per section 149(9) of the Act an independent director shall not be entitled to any stock option. He may receive remuneration by way of fee as provided under section 197(5) of the Companies Act, 2013, reimbursement of expenses incurred for participation in the Board and other meetings and profit related commission as may be approved by the members.

Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.

Exemptions:

MCA has exempted section 8 companies vide notification dated June 05, 2015 and Specified IFSC public company vide notification dated 4th January 2017 from the provisions of section 149(4) to (11), Section 149 (12) (i) and Section 149(13). This means all the provisions relating to requirement of independent directors, definition of independent directors and other provisions shall not be applicable to section 8 companies and Specified IFSC public companies.

Term of an Independent Director- Section 149(10)

Subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. However, in case of his reappointment for further five year then special resolution passed in general meeting and disclosure of such appointment is made in the Board's report shall be required [Section 149(10)].

Further independent director can be considered for re-appointment (after two consecutive terms) only after expiration of three years of ceasing to become an independent director but he must not be appointed/associated with the company directly or indirectly in any other capacity during the said period of three years. Any tenure of an independent director on the date of commencement of this Act is not considered for the above term [Section 149(11)].

It has been clarified that as such while appointment of an ID for a term of less than 5 years would be permissible, appointment for any term (whether for 5 years or less) is to be treated as a one term under section 149(10) of

the Act. Further, under section 149(11) of the Act, no person can hold office of ID for more than two consecutive term's such a person shall have to demit office after two consecutive terms, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of 3 years.

Section 149(12) of the Companies Act, 2013 is a non-obstante clause which provides that an independent director and a non-executive director not being promoter or key managerial personnel shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

In Re V. Selvaraj vs. Reserve Bank of India, Madras High Court W.P. NO. 43433 OF 2016, in this matter Petitioner was non-executive independent director on board of respondent company, the RBI conducted annual inspection in year 2013 into books of account of respondent company and found accounting malpractices in company and issued various directions in order to protect public interest. Petitioner had been classified as a wilful defaulter. Petitioner filed writ petition for direction to respondents to declassify petitioner from list of wilful defaulters. Petitioner stated that he had no role in either verifying accounts or in maintaining accounts of company and where no materials had been brought on record to show that petitioner actively participated in day-to-day affairs of company or in board meeting and commissions and omissions alleged against company had taken place with knowledge, consent or connivance of petitioner to satisfy ingredients of section 149(12). It was held that since there was absolutely no evidence available to declare petitioner as a wilful defaulter, petitioner was to be declassified from list of wilful defaulters.

The provisions of retirement of directors by rotation are not applicable on Independent director [Section 149 (13)].

Further, in case of independent directors, the explanatory statement relating to their appointment should contain a declaration from the Board that in their opinion, the independent directors satisfy the conditions provided in the Act for such appointment. [Proviso to Section 152 (5)].

Requirement for Independent Director:

1. Applicable on Listed Companies: 1/3rd of total directors be the Independent Director.
2. Public companies having capital more than 10 crore: At least 2 directors as Independent Directors.
3. Appointment Term of Independent Director: Term shall be of maximum 5 years. And term shall not be more than 2 consecutive terms. And shall be re-appointed only by Special Resolution by the company.
4. Remuneration of Independent Director: may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
5. Retirement by Rotation of Independent Director in AGM: shall not be applicable to appointment of independent directors.
6. Vacancy of Independent Director: To be filled in the very next Board Meeting or within 3 months of such vacancy, whichever is later.
7. Separate Meeting of Independent Director: The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management.

Presence of Independent Director in Committees	
Name of the Committees	Composition
Audit committee	The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.
Nomination and Remuneration Committee	The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.
Corporate Social Responsibility	Corporate Social Responsibility Committee shall consist of three or more directors out of which at least one should be an independent director.

PAYMENT OF SITTING FEE/COMMISSION

According to Section 149(9), the independent director is entitled to receive:

- (a) sitting fee for Board/Committee meetings as may be prescribed under second proviso under Section 197(5). Sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof shall not exceed one lakh rupees per meeting of the Board or committee thereof;
- (b) reimbursement of expenses for attending the board/committee meetings;
- (c) commission related to profits of the company subject to the provisions of Section 197 and 198 (one percent of the net profits if there is a Managing Director or Whole-Time Director or Manager and three percent of the net profits in any other case). The net profits shall be computed in accordance with Section 198. The independent director, however, shall not be entitled to receive any “stock option”.

Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.

Role of Independent Director:

Independent directors are required because they perform the following important role:

- (i) Balance the often conflicting interests of the stakeholders.
- (ii) Facilitate withstanding and countering pressures from owners.
- (iii) Fulfill a useful role in succession planning.
- (iv) Act as a coach, mentor and sounding Board for their full time colleagues.
- (v) Provide independent judgment and wider perspectives.

As per Schedule IV (Code for Independent Directors) of the Companies Act, 2013, the Independent Director shall –

1. Uphold ethical standards of integrity and probity;
2. Act objectively and constructively while exercising his duties;
3. Exercise his responsibilities in a bonafide manner in the interest of the company;
4. Devote sufficient time and attention to his professional obligations for informed and balanced decision making;
5. Not allow any extraneous considerations that will vitiate his exercise of objective independent

judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

6. Avoid abusing his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
7. Refrain from any action that would lead to the loss of his independence;
8. Inform the Board immediately whose circumstances arise which makes an Independent Director lose his independence;
9. Assist the company in ensuring best corporate governance practices.

Separate Meeting of Independent Director:

The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management.

Additional Director

Section 161(1) of the Companies Act, 2013, provides that the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

In case of default in holding annual general meeting, the additional director shall vacate his office on the last day on which the annual general meeting ought to be held. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director. Section 161(1) of the Act applies to all companies, whether public or private.

The Company is required to file e-Form DIR-12 for appointment of Director with duly attached the board resolution, consent of director in Form DIR-2 with KYC, interest in other entities etc.

Illustration- Mr. Sumit was appointed as an Additional Director in Ramesh Suresh Limited on 10th January, 2022 by the Board of Directors in their meeting held on 10th January, 2022. Mr. Sumit is appointed till the date of next Annual General Meeting. The Company convened the AGM on 30th September, 2022. In the AGM Mr. Sumit was regularized as Director.

CASE LAWS

<i>January 20, 2023</i>	<i>Surendra Kumar Singhi (Petitioner)</i> <i>vs.</i> <i>Registrar of Companies (Respondent)</i>	<i>High Court of Calcutta</i>
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Additional Directors equally responsible for company affairs as other Directors

Facts of the Case:

The petitioner's case is that the Opposite party has filed a complaint before the learned Chief Metropolitan Magistrate, Kolkata against the petitioner stating there in that, M/s Mani Square Limited was incorporated under the Companies Act, 1956 and according to the provisions of Section 217(3) (Board's Report) of the Companies Act, 1956, the Board of the company was bound to give fullest information and explanation in its report on every reservation, qualification or adverse remark contained in Auditor's report.

Opposite party upon scrutiny of the Balance-sheet and other documents found that the Board of Directors did not furnish fullest information and explanation in their Director's report with respect to the Auditors in their report on Balance Sheet on their remark of that "there are no dues of Service Tax, VAT, Provident Fund, ESIC which had been deposited on account of any dispute except disputed amount of WBST/VAT". This has resulted in violation of provisions of Section 217(3) of the Companies Act, 1956 and the said violation was pointed out to the Directors of the company vide Show Cause Notice. On account of receipt of not satisfactory reply, the competent authority has issued instruction to launch prosecution for the aforesaid violation.

Consequently, the petitioner being a director of a company was accused of violating the provisions of Section 217(3) of the Companies Act. The Metropolitan Magistrate issued summons against the petitioner and other accused persons. The petitioner stating himself to be innocent and having no connection with the circumstances of the case chose not to take the course adopted by the rest of the accused persons and prayed for discharge by filing a petition but the same got rejected.

Following were the two issues before the High Court:

1. What post was held by the petitioner on the date of filing the report?
2. Whether the petitioner is responsible/liable for the offence alleged?

The High Court with regard to the first issue noted, "Form No. DIR – 11 clearly shows that on the date of resignation (30.12.2016) the petitioner was the "Director" of the Company..... In spite of being shown on the portal as "Additional Director /Director" the petitioner did not lodge any complaint with the Ministry about the alleged wrong information. There is no case that the petitioner had filed any objection to the said wrong information (as alleged) on the portal."

With regard to the second issue, the Court said that from the records it is seen that the petitioner was then an "Additional Director" of the Company and that admittedly the other accused persons pleaded guilty.

"ROC must be informed by filing a new Form DIR 12 that the additional director has been regularized as a director in the Company", the Court further said.

It was further observed by the Court that the petitioner was an Additional Director on the date the board report was filed and that to counter the same, the evidence is required to be adduced during the trial.

Decision:

The Court, therefore, held, "The responsibility of an Additional Director being the same as that of a director they remain responsible, as the statute provides for the same. Thus to quash the proceedings by exercising this Courts inherent powers would amount to an abuse of the process of Court and would also amount to serious miscarriage of justice."

Accordingly, the Court dismissed the plea of the petitioner.

Alternate Director

Section 161(2) of the Act empowers the Board, if so authorized by its articles or by a resolution passed by the company in general meeting, to appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India: The provisions applicable to an alternate director are as follows:

(i) Applicability:

Section 161(2) of the Act applies to all companies, whether public or private.

(ii) Conditions for appointment of an alternate director:

- (a) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of the alternate director.
- (b) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (c) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company or holding directorship in the same company.
- (d) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria of Independence as per section 149(6) of the Act.

(iii) Power to appoint:

The Board may appoint an alternate director only if it is authorized by the articles or by an ordinary resolution passed at a general meeting. The right to appoint an alternate director vests in the Board. The original director has no right to appoint an alternate director. The members have no right to appoint an alternate director, the members can only empower to appoint alternate director as and when board thinks fit.

(iv) Method of appointment:

There is no condition that an alternate director shall be appointed only by passing a resolution at a Board meeting. Therefore, an alternate director can be appointed by passing a resolution by circulation.

(v) Terms of office of an alternate director:

- (a) Not exceeding the term permissible to original director:
An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed. If the original director ceases to be a director by reason of death or vacation of office under section 167, the alternate director shall immediately cease to hold his office.
- (b) The alternate director shall vacate his office when the original director in whose place he has been appointed returns to India.

(vi) Automatic reappointment applies to the original director:

If the term of office of an original director expires before he returns back to India, the provision for automatic reappointment of a director as envisaged under section 152(7)(b) shall be applicable to the original director, and not to the alternate director.

SEBI vide notification with effect from October 1, 2018 provides that no person shall be appointed or continue as an alternate director for an independent director of a listed entity.

As per section 165, an alternate directorship in a company shall also be included while counting the number of directorships held by a director.

Nominee Director

Section 161(3) of the Companies Act, 2013, provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its

shareholding in a Government company. However, there is an exception to this sub section in case of specified IFSC public company and specified IFSC private company.

Illustration- Durga Proj Limited secured a loan of INR 200 crores from HDFC Bank Limited. The HDFC Bank in order to be more secured has entered into an agreement with the Company that it will appoint Mr. Ashish as Nominee Director on the Board of Durga Proj Limited in order to have the knowledge of day to day affairs of the Company. They have added in the clause that the appointment will come to an end once the loan gets fully paid.

Professional Director

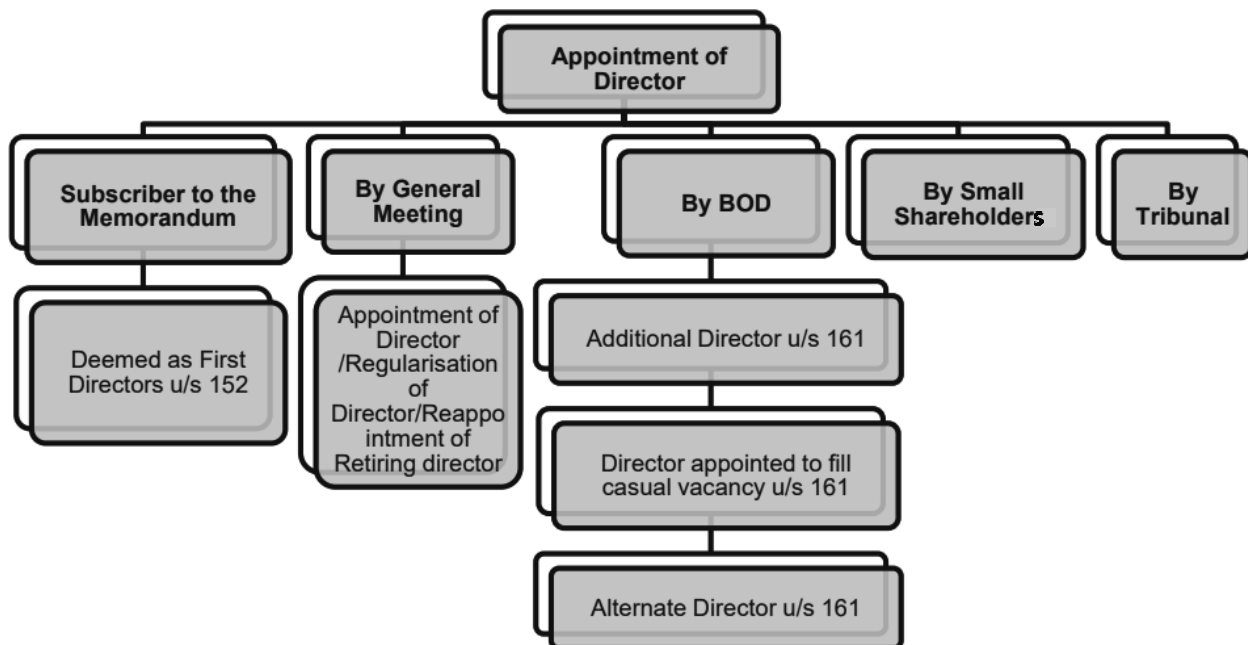
The term “professional director” has not been defined in the Companies Act, 2013. However, Proviso to sub-section (4) of Section 197 of the Companies Act, 2013 has reference to professional services by a director. Section 200 has reference to the professional qualification in relation to managerial remuneration.

The dictionary defines word “professional” as a person is related to or belonging to a profession and competent or skilled in a particular activity. Accordingly, director having specialized knowledge and skill in a particular field and contribute decision making of the board may be appointed as professional director.

Appointment of Directors in Casual Vacancy

Section 161(4), if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall subsequently approved by the members in the immediate next general meeting. The person so appointed shall hold office only upto the day upto which the director in whose place he has been appointed, would have held office if he had not vacated as aforesaid. Where a person appointed by the Board vacates his office, it is not a case of casual vacancy and cannot be filled by the Board in the place.

APPOINTMENT / REAPPOINTMENT, DISQUALIFICATIONS, VACATION OF OFFICE, RETIREMENT, RESIGNATION AND REMOVAL OF DIRECTORS



Appointment of directors to be voted individually- Section 162(1)

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

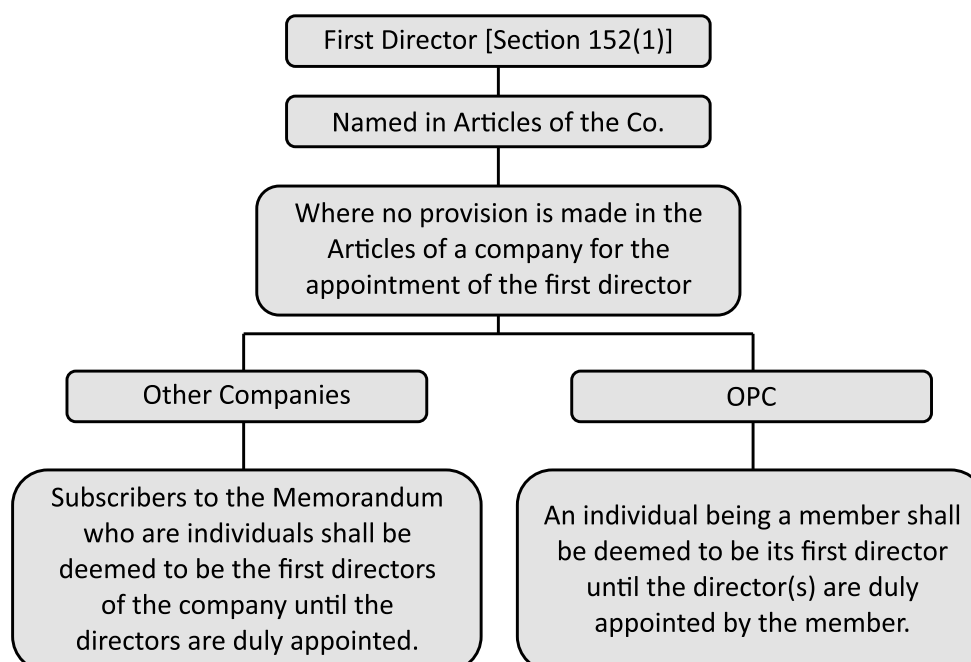
This provision shall not apply to-

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

Appointment of First Director

The first directors of most of the companies are named in their articles. Regulation 60 of Table F provides that the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.



APPOINTMENT OF DIRECTORS BY BOARD**Procedure for appointment of Additional Director**

- Ensure that the Articles of the company authorise the Board to appoint an additional director and such appointment is within the maximum limit of directors mentioned in the Articles.
- Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification mentioned.
- Before appointing a person as an additional director, his consent (Form No. DIR-2) to act as director should be obtained.
- Check whether the additional director to be appointed in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN as per Section 153 and ensure that the Director has intimated his Directors Identification Number to the Company.
- Issue not less 7 days notice and agenda of Board Meeting (comply with Secretarial Standard-1) and pass board resolution for appointment of an additional director to hold office upto the date of next annual general meeting or due date of next annual general meeting, whichever is earlier.
- Obtain the declaration from the appointed Director regarding his interest in other entities in Form MBP-1.
- File a return containing the particulars of appointment of director with RoC in E Form DIR-12 along with such fees as may be provided in the Companies (Registration offices and fees) Rules, 2014 within 30 days of such appointment.
- Lodging of entries in the register of directors and key managerial personnel and their shareholding.
- Inform all concerned government authorities about the appointment.

Procedure for appointing Directors in casual vacancy

- Where it is proposed by the Board to appoint a person to fill a casual vacancy, his written consent to act as a director has to be obtained before appointment.
- Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification mentioned.
- Check whether the director to be appointed in the casual vacancy in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN as per Section 153 and ensure that the Director has intimated his Directors Identification Number to the Company.
- If the casual vacancy is in respect of independent director, then ensure the person proposed to be appointed as director in casual vacancy also fulfills the conditions mentioned in section 149(6) and rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- Issue not less 7 days notice and agenda of Board Meeting (comply with Secretarial Standard-1) and pass board resolution for appointment of director to hold office upto the date till which the director in whose place he is appointed would have held office.
- Obtain the declaration from the appointed Director regarding his interest in other entities in Form MBP-1.
- File a return containing the particulars of appointment of director with RoC in E Form DIR-12 along with

such fees as may be provided in the Companies (Registration offices and fees) Rules, 2014 within 30 days of such appointment.

- Lodging of entries in the register of directors and key managerial personnel and their shareholding.
- Inform all concerned government authorities about the appointment.

In case of a private company, the procedure for appointment will be governed by its Articles.

Procedure for appointment of an Alternate Director

- Consult the Articles of Association of the company to see whether they authorize the Board to appoint an alternate director. Otherwise, either alter them accordingly or pass a resolution in company's general meeting authorizing the Board to make such appointment.
- Where it is proposed to appoint a person as an alternate director his written consent to act as director shall be obtained.
- Check whether alternate director to be appointed in board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN as per Section 153 and ensure that the Director has intimated his Directors Identification Number to the Company.
- Ensure that individual proposed to be appointed as an additional director, does not suffer from any disqualification mentioned.
- If the alternate director is to be appointment in respect of independent director, then ensure the person proposed to be appointed also fulfills the conditions mentioned in section 149(6) and rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- Issue not less 7 days notice and agenda of Board Meeting (comply with Secretarial Standard-1) and pass board resolution for appointment of alternate director to act for original director during his absence from India and shall vacate office when the original director comes to India or the tenure of original director expires, whichever is earlier.
- Obtain the declaration from the appointed Director regarding his interest in other entities in Form MBP-1.
- File a return containing the particulars of appointment of director with RoC in E Form DIR-12 along with such fees as may be provided in the Companies (Registration offices and fees) Rules, 2014 within 30 days of such appointment.
- Lodging of entries in the register of directors and key managerial personnel and their shareholding.

APPOINTMENT OF DIRECTORS BY TRIBUNAL

While giving order on an application made under section 241, i.e., for relief in cases of oppression the Tribunal may provide order for appointment of such numbers of persons as directors of the company and ask them to report to the Tribunal on matters as the Tribunal may direct. [Section 242(2)(k)].

The directors, so appointed, may or may not be the members of the company. For the purpose of reckoning two thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Tribunal shall not be taken into account. Such director or directors shall not liable to determination by retirement of directors by rotation. But they can be removed by the Tribunal at any time and other persons can be appointed by it in their place. Where the directors have been appointed by the Tribunal, it may also issue such directions to the company, as it may consider necessary or appropriate in regard to their affairs.

APPOINTMENT OF DIRECTOR BY SYSTEM OF PROPORTIONAL REPRESENTATION

According to section 163 the articles of a 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 (1) of section 161.

In case of Government Companies, section 163 shall not apply to –

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

APPOINTMENT OF NOMINEE DIRECTORS

Explanation to Section 149(7) defines, “nominee director” as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. Nominee Director shall not be deemed to be independent director as per Section 149(6). [Section 149(7) is not applicable to a Specified IFSC public company as per notification dated 4th January 2017]

Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the appointing bank/institution/Government, the company may choose any of these two methods.

PROCEDURE FOR APPOINTMENT OF DIRECTORS TO BE ELECTED BY SMALL SHAREHOLDERS

A listed company may have one director elected by small shareholders. Small shareholder means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum prescribed [Section 151 r/w Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

1. A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders’ director elected by the small shareholders.
2. Small shareholders intending to propose a person as a candidate for the post of small shareholders’ director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

- If the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.
3. The notice shall be accompanied by statement of proposed director stating his DIN, that he is not disqualified and his consent to act as director of the company.
 4. Such director shall be considered as an independent director subject to being eligible and giving a declaration of his independence in accordance with sub-section (6) and (7) of section 149 of the Act.
 5. The small shareholder director shall be elected through postal ballot.
 6. Ensure that the proposed director shall not hold the position of small shareholder director in more than 2 companies at the same time. Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.
 7. Such director shall not be retire by rotation and shall have tenure of continuous three years.
 8. After completion of tenure small shareholders director shall not be eligible for reappointment.
 9. When small shareholders directors cease to be a small shareholder, he cease to be a small shareholders director.
 10. The company has to file particulars of director in Form DIR-12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.
 11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.
 12. For the purpose of filing Form DIR-12, the following attachments are required:
 - (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director, in Form DIR-2
 - (d) Interest in other entities.
 13. In case of listed company, the particulars of appointment of director should also be given to the stock exchange where the shares of the company are listed.
 14. The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.
 15. After appointment the director concerned has to inform other companies in which he is director about his appointment.

Appointment of Directors by Members at General Meeting

A person appointed as director shall not act as director unless he gives his consent to hold office of director and such consent in Form DIR - 2 has been filed with the registrar within thirty days of his appointment. The company shall within thirty days of appointment of a director, file such consent with the Registrar in form DIR12. However, a specified IFSC public company shall file such consent in sixty days. In case of section 8 company and Government companies this provision is not applicable. According to Section 152, every director shall be appointed by the company in general meeting.

Separate motion should move for the appointment of each director as per section 162. A motion for approving a person for appointment or for nomination a person for appointment shall also be treated as motion for his appointment.

Under section 152(6), articles of a company may provide that all directors of the company shall be retiring by rotation. Where article does not provide for retirement by rotation for all directors, not less than two – thirds of total number of directors of a public company shall be liable to be retired by rotation and be appointed by company in general meeting. At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

As per Section 152(7) (a) if the vacancy of the retiring director is not filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

As per Section 152(7)(b), if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless –

- i. at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- ii. the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
- iii. he is not qualified or is disqualified for appointment;
- iv. a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- v. section 162 is applicable to the case. For the purposes of this section and section 160, the expression “retiring director” means a director retiring by rotation.

Sub-section (6) and (7) of Section 152 shall not apply to:

- (a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held- by- the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- (b) a subsidiary of a Government company, referred to in (a) above.” - Notification Dated 13th June, 2017.

Procedure for re-appointment of the retiring director at the Annual General Meeting

1. Ascertain which directors are due to retire by rotation. As a general principle, the directors to retire shall be those who have been longest in office since their last appointment. This is applicable only in case of Public Companies.
2. Ensure that the retiring director is not subject to any disqualification for re-appointment as director of the Company under sections 164 and 165 of the Companies Act, 2013.
3. Ensure that the consent of the director as well as the declaration from the director has been obtained.
4. Convene a Board meeting after giving notice to all directors of the company in accordance with Section 173 of the Act, to consider the re-appointment of retiring director.

5. Fix the time, place and agenda of the annual general meeting to pass an ordinary resolution for the reappointment of retiring director.
6. Send the notice in writing at least 21 clear days before the date of annual general meeting to the members such notice is required to be sent to the Stock Exchanges where the shares of company are listed.
7. Hold the annual general meeting and pass an ordinary resolution for re-appointment of the retiring director.
8. In case of listed companies, forward a copy of the proceedings of the annual general meeting to the stock exchanges where the company's shares are listed. [Schedule III of SEBI (Listing Obligation and Disclosure) Regulations 2015].

Right of persons other than retiring directors to stand for directorship [Section 160]

1. A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office. Such a person may be a member or a non-member, an additional director or a director to fill a casual vacancy or an alternate director or a nominee director.
2. Such notice must come along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty five per cent of total valid votes cast either on show of hands or on poll on such resolution.

The requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee

3. Section 160 is not applicable to Government Company where the entire paid up share capital is held by Central Government jointly or severally or in case of subsidiary of Government Company in which the entire paid up capital is held by that Government Company.

Further, Section 160 is not applicable to Private Companies, Section 8 Companies whose article provide for election of directors by Ballot.

Procedure for appointment of a director other than a retiring director at the Annual General Meeting

In case of a public company, the following procedure is to be adopted:

- The candidate for directorship or any member proposing other person for appointment to office of director, is required to give a notice in writing not less than fourteen days before the meeting at the office of the company, signifying candidature for the office of director or intention to propose other person as a candidate for that office, as the case may be, along with a deposit of one lakh rupees which shall be refunded to such person, or as the case may be, to such member, if the person succeeds in getting elected as a director.

The requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under

sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.

- On receipt of notice, the company will inform its members of the candidature of a person for the office of director or intention of the member to propose such person as candidate for that office by serving individual notice on the members, not less than seven days before the meeting.
- Where individual notice is not practicable, publish notice not less than seven days before the meeting, in at least two newspapers (one in English and the other in regional language) circulating in the place where the registered office of the company is situated.
- In case of listed company, forward copies of this notice also to the stock exchange, where the shares of the company are listed.
- Check whether the director to be appointed in the general meeting has obtained Director Identification Number (DIN). If not then ask such person to make application to Central Government for obtaining DIN and ensure that the Director has intimated his DIN to the Company.
- Ensure that the consent of the director as well as the declaration from the director has been obtained in Form DIR-2.
- At the general meeting, the motion to appoint a person other than the retiring director will be taken up. Where more than one such proposals are to be decided, they are to be discussed one by one and the decision of the meeting to be arrived at in respect of each proposal separately.
- In case of listed company, send the notice and a copy of the proceedings of the general meeting to the stock exchange with which the company is listed.
- In case the person is appointed as a director, the company shall refund the deposit of one lakh rupees to such person or to such other member, who had proposed his name for directorship.
- The company has to file particulars of director in Form DIR-12 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

For the purpose of filing Form DIR-12, the following attachments are required:

- (a) Letter of appointment
 - (b) Declaration by the first director
 - (c) Declaration of the appointee Director in Form DIR-2
 - (d) Interest in other entities.
- In case of listed company, particulars of appointment of director should also be given to the stock exchange if the shares of the company are listed.
 - The particulars of the director and other aspects of the director have to be entered by the company in the registers maintained under Sections 170 and 189.
 - After appointment the director concerned has to inform other companies in which he is director about his appointment.

Appointment of Independent directors

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively. Independent director may be selected from Databank.
- (2) The appointment of independent director(s) of the company shall be approved by the company at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management. It shall also indicate the justification for choosing the appointee for appointment as Independent Director.
- (4) Section 178(3) of the Act provides that the Nomination and Remuneration Committee (NRC) shall formulate the criteria for determining qualifications, positive attributes and independence of a director.
- (5) The appointment of independent directors shall be formalized through a letter of appointment, which shall set out:
 - (a) The term of appointment;
 - (b) The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) The fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) Provision for Directors and Officers (D and O) insurance, if any;
 - (e) The Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) The list of actions that a director should not do while functioning as such in the company; and
 - (g) The remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (6) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- (7) The terms and conditions of appointment of independent directors shall also be posted on the company's website.
- (8) He shall be hold office for a term of upto 5 consecutive years of a company. [Section 149(10)]

Appointment and removal requirements for IDs in case of listed companies-Regulation 25(2A) of SEBI (LODR) Regulations, 2015

The Securities and Exchange Board of India has notified SEBI (LODR) Sixth Amendment Regulations on 14th November, 2022, specifying that the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution

and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made.

Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

In Re Invesco Developing Markets Fund vs. Zee Entertainment Enterprises Ltd. High Court of Bombay Appeal (L) No. 25420 of 2021, it was held that appointment of Independent director of listed company will be made at general meeting and not by Board of Directors.

Appointment of independent director on unlisted material subsidiary company

As per Regulation 24(1) of the SEBI (LODR) Regulations, 2015 at least one independent director on the Board of Directors of the listed company shall be a director on the Board of Directors of an unlisted material subsidiary, whether incorporated in India or not.

“Material Subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed company and its subsidiaries in the immediately preceding accounting year.

Re-appointment of Independent directors

The re-appointment of independent director shall be on the basis of report of performance evaluation. (Schedule IV – Code for Independent Directors) Section 149(11) provides that the Independent Director shall be eligible for re-appointment on passing of special resolution. He shall not hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years (cooling period) of ceasing to become an independent director.

However, he shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Selection of Independent Directors [Section 150]

- (1) An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

- (2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
- (3) The data bank shall create and maintain data of persons willing to act as independent director in accordance to Rule 6 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

In case of section 8 company - Section 150 shall not apply- Notification dated 5th June, 2015.

On 22nd October, 2019, the Central Government notifies the Indian Institute of Corporate Affairs (IICA) at Manesar (Haryana), as an institute to create and maintain a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, for the use of the company making the appointment of such directors. The same came into force with effect from the 1st day of December, 2019.

Enrollment in Data Bank of Independent Director [Rule 6 of the Companies (Appointment and Qualifications of Directors) Rules, 2014

Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

- (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of ten months from such commencement; or
- (b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

is required to apply online at the website <https://iica.nic.in/> to the institute i.e. IICA for inclusion of his name in the data bank for a period of one year or five years or for his life-time and from time to time take steps as specified in Rule 6 (2) of the Companies (Appointment and Qualification of Directors) Rules, 2014, till he continues to hold the office of an independent director in any company.

The expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

- (2) Any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank;
- (3) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute. Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank;
- (4) No application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank;
- (5) Every independent director shall submit a declaration of compliance relating to eligibility and registration with IICA databank to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act;
- (6) Every individual whose name is so included in the data bank shall pass an online proficiency self-assessment test conducted by the institute within a period of 2 years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute;
- (7) An individual who has obtained a score of not less than fifty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;
- (8) There shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.

Exemptions from Online Proficiency Test for inclusion of Individual name in Independent Director's Databank:

An individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

- (A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-
- (a) listed public company; or
 - (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or
 - (c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or
 - (d) bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or
 - (e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or
- (B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—
- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
 - (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.
- (C) in the pay scale of 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 and having experience in handling the matters relating to corporate laws or securities laws or economic laws

Further, for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once. Provided also that the following individuals, who are or have been, for at least ten years :—

- (A) an advocate of a court, or
- (B) in practice as a chartered accountant, or
- (C) in practice as a cost accountant, or
- (D) in practice as a company secretary,

shall not be required to pass the online proficiency.

Disqualifications for Appointment of Director- Section 164

1. A person shall not be eligible for appointment as a director of a company, if —
 - (a) he is of unsound mind and stands so declared by a competent court;
 - (b) he is an undischarged insolvent;

- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

- (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- (h) he has not complied with sub-section (3) of section 152;
- (i) he has not complied with the provisions of sub-section (1) of section 165.

2. No person who is or has been a director of a company which –

- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

However, in case of Government company this sub-section is not applicable.

3. A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Vacation of Office

According to Section 167 of the Companies Act, 2013, the office of a director shall become vacant in case–

- (a) he incurs any of the disqualifications specified in section 164; the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section;
- (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

- (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- (e) he becomes disqualified by an order of a court or the Tribunal;
- (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months.

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-

- (i) for thirty days from the date of conviction or order of disqualification;
 - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
- (g) he is removed in pursuance of the provisions of this Act;
 - (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

A private company, which is not a subsidiary of a public company, may, by its articles, provide additional grounds for vacation of office of director.

On vacation of office of director, the company is required to file eForm DIR – 12 to the Registrar of Companies.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

CASE LAW

In Re. G. Vasudevan vs. Union of India (Madras High Court) Date of Judgment: 02nd December, 2019

Section 167(1)(a) Companies Act not violative of Articles 14, and 19(1)(g) of the Constitution of India.

The issue raised was that the Section 167(1)(a) of the Companies Act 2013, as inserted vide the Companies (Amendment) Act 2017 as ultra vires the Articles 14, 19(1)(g) of the Constitution of India.

Section 167 of the Companies Act gives instances where the office of a Director shall become vacant. The proviso which is under challenge in the instant writ petition states that, when a company commits a default as stipulated in sub-section 2 of Section 164, then a Director of such defaulting company does not vacate the post in the company in which the default is committed but a Director of such a company has to vacate his seat as a Director in all other companies in which he is Director. The petitioner contends that proviso to Section 167(1)(a) of the Companies Act, leads to unequal treatment being met out to Directors of a defaulting company based on whether they are Directors in other companies or not. The petitioner claims that this leads to unfair treatment to those Directors who hold such posts in multiple companies.

The Court observed that the “purpose of the amendment was that if the post of Directorship is vacated under the provision (as it was) then, this post would remain vacant as these provisions would automatically apply to any individual subsequently appointed”.

The Court has held that the proviso to Section 167(1)(a) must be interpreted in ordinary terms and would apply to the entirety of Section 164 including sub-section 2. The Court has further held that this proviso can be justified on two grounds. Firstly, it has been reiterated that the exclusion of Directors from vacating their posts in the defaulting company while doing so in all other companies where they hold Directorship has been done in order to prevent the anomalous situation wherein the post of Director in a company remains vacant in perpetuity owing to automatic application of Section 167(1)(a) to all newly appointed Directors. Secondly, the underlying object behind the proviso to Section 167(1)(a) is seen to be the same as that of Section 164(2) both of which exist in the interest of transparency and probity in governance, Owing to these justifications, the Court thus holds that the proviso to Section 167(1)(a) is neither manifestly arbitrary nor does it offend any of the fundamental rights guaranteed under Part III of the Constitution of India.

Resignation of Directors

According to section 168 –

1. A director may resign from its office by giving a notice with the reasons of resignation in writing to the company.
2. The Board shall on receipt of such a notice from a director shall take note of the same.
3. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the registrar in Form DIR-12 and post the information on its website if any as provided in Rule 15 of the companies (Appointment and Qualification of Directors) Rules, 2014.
4. The board shall place the facts of such resignation by the director in the Report of Directors laid in immediately following general meeting by the company.
5. The Director may within 30 days from his resignation, forward to the registrar a copy of his resignation along with reasons for resignation with reasons provided therein in Form DIR-11 along with the fee provided. In case of Specified IFSC public and private company, a director may file Form DIR-11 to the Registrar.
6. The resignation shall be effective from the date on which the notice is received by the company or the date specified by the Director in the notice whichever is later.
7. When all the Directors resign at the same time under section 167, in such case the required number of directors are to be appointed by the promoter or in his absence, the Central Government. The Directors so appointed shall hold office till the Directors are appointed by the company in general meeting. The proviso to sub section (2) of section 168 of Companies Act, 2013 clarifies that the Director who shall be liable even after his resignation for the offences which occurred during his tenure.

The proviso to sub section (2) of section 168 of Companies Act, 2013 clarifies that the Director who shall be liable even after his resignation for the offences which occurred during his tenure.

In Re. Harish Jain Vs. Haveli Restaurant & Resorts limited & Ors. dated 26th February, 2020

The NCLAT dismissed the claims of appellant on the ground that he failed to prove his resignation letter is a forged document.

Removal of Directors

Under section 169 of the Act, a company may, by ordinary resolution remove a director before the expiry of the period of his office. The provisions of section 169 shall apply regardless of the way in which the director concerned was appointed and notwithstanding anything contained in the articles of the company or any agreement with the director concerned.

Removal of Director by Shareholders

According to Section 169, a company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

An independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

The provision relating to removal shall not apply where the company has availed itself of the option to appoint not less than two – thirds of the total number of directors according to the principle of proportional representation.

Procedure for Removal of Director

The following procedure is required to be adopted for removal of a director:

1. A special notice from a member of the company proposing an ordinary resolution for removing the director is necessary.
2. Send forthwith a copy of the special notice to the director proposed to be removed.
3. Decision to call a general meeting through the Board resolution.
4. Issue notice of the general meeting in writing at least twenty-one clear days before the date of the meeting informing about the special notice and proposing the ordinary resolution for removal.
5. In the notice of the meeting, state the facts of the representation made by the director concerned and also send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after the receipt of the representations by the company).
6. If the representation is received too late and it could not be sent to the members, the director concerned may require that the representation shall be read out at the meeting. The director concerned has also the right of being heard at the meeting.
7. However, the National Company Law Tribunal on an application of the company or any other person who claims to be aggrieved, on having satisfied, may dispense with the procedure of sending a copy of representation and reading thereof at the meeting if it is being used to secure needless publicity for defamatory matter.

8. In case of listed company, send notice of the general meeting to the stock exchange(s) within 24 hours of the occurrence of the event where the company is listed [Refer regulation 30(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].
9. Hold the general meeting and pass the proposed resolution by ordinary resolution.
10. In case of listed company, forward a copy of the proceedings of the meeting within 24 hours of the occurrence of the event to the stock exchange(s) where the company is listed.
11. The company has to file particulars of director in Form DIR – 12 with the Registrar of Companies within thirty days of the removal after paying the requisite fee electronically.

For the purpose of filing Form DIR – 12, the following attachments are required:

- (a) Notice of resignation;
- (b) Evidence of Cessation;
- (c) Interest in other entities.

Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or Chartered accountant or Cost accountant in Whole time practice by digitally signing it.

12. The particulars of the director and other aspects of the director have accordingly to be modified in the registers maintained under Sections 170 and 189.
13. Give a general public notice in newspaper regarding removal of the director if it is so warranted for the protection of the company and benefit of the general public.

Removal of Director by the National Company Law Tribunal

Where an application has been made to the National Company Law Tribunal under Section 241 of the Companies Act 2013 for prevention of oppression or mismanagement and the Tribunal has conducted its proceedings on the application, it has the power under Section 242(2)(h) of the Act, to remove any director.

In Re. S. Varadarajan and Anr. v. Udhayem Leasing and Investments Pvt. Ltd. [(2005) Vol. 125 CC 853]

It was held that “Any omission to serve a special notice on the directors sought to be removed, would constitute denial of their statutory right of reply and in the absence of such notice to the directors, any resolution for their removal would be vitiated by such omission”. In *Giridhar Gopal Gupta and Ors. v. AAR Gee Board Mills P. Ltd. and Ors (2004) Vol. 60 CLA 182*, It was held that, “any removal of directors belonging to one of the two equal groups of the company and appointment of an additional director not in conformity with the procedure laid down in the Act, would result in setting aside such removal of directors, being bad in law”.

LOANS TO DIRECTORS (SECTION 185)

- (1) According to section 185(1), no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
 - (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
 - (b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) A special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

For the purposes of this sub-section, the expression “any person in whom any of the director of the company is interested” means –

(a) any private company of which any such director is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—

(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and

- (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Disclosures by a director of his interest

Section 184 (1) states that every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed in Rule 9 of Companies (Meetings of Board and its Powers) Rules, 2014.

Section 184(2) states that every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, chief executive officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Further as per section 184(3), a contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

It is also stated that, nothing in this section—

- (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- (b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

Penalty:

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2) of Section 184, such director shall be liable to a penalty of one lakh rupees.

In case of private company - Section 184 (2) shall apply; with the exception that the interested director may participate in such meeting after disclosure of his interest and in case of Section 8 company - Section 184 (2) shall apply, only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

Further, in case of Specified IFSC Public Company - Sub-section (2) of section 184 shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.

Rule 9 of the Companies (Meetings of Board and its Powers) Rules, 2014

- (1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.
- (2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.
- (3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

DUTIES OF DIRECTORS [SECTION 166]

The duties of directors as contained in section 166 of the Companies Act, 2013 are described as follows:

1. Duty to act as per the articles of the company

The director of a company shall act in accordance with the articles of the company.

2. Duty to act in good faith

A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

3. Duty to exercise due care

A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

4. Duty to avoid conflict of interest

A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

5. Duty not to make any undue gain

A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

6. Duty not to assign his office

A director of a company shall not assign his office and any assignment so made shall be void.

Punishment for contravention

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

REGISTER OF DIRECTORS AND KEY MANAGERIAL PERSONNEL AND THEIR SHAREHOLDING

Section 170 makes it obligatory for every company to maintain a register containing the prescribed particulars of all its directors and Key Managerial Personnel and their shareholding.

The provisions of section 170 read with Rule 17 and Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014 are as follows:

- (i) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed and which shall include details of securities held by each of them in the company or its holding, subsidiary, subsidiary of its holding companies or associate companies. [Section 170(1)]
- (ii) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar in e-form DIR-12 within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place. [Section 170(2)]

In case of Government Company - Section 170 shall not apply to Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments (Notification dated 5th June, 2015).

In case of Specified IFSC Public Company and Specified IFSC Private Company - In section 170(2) as stated above, for the words "thirty days" at both places is read as "sixty days" (Notification Dated 4th January 2017).

In Re Welspun project Ltd, NCLT Ahmedabad bench T.P. NO. 149/621A/NCLT/AHM/2016, in this case the register of directors' shareholding of petitioner company did not disclose complete particulars as required under section 307 (170 of Companies Act, 2013) and this violation was continued for about 8 years. Petitioners admitted such violation and filed petition under section 621A (section 441 of the Companies Act, 2013) for compounding violation. The RoC informed the facts that no similar offence under section 307 was compounded during last three years by petitioners and company was not included in list of vanishing company. It was held that as there was no repetition of such violation, offence committed was to be compounded on payment of fine.

MEMBERS RIGHT TO INSPECT (SECTION 171)

- (i) The register of directors and Key Managerial Personnel kept under section 170(1) shall be open for inspection during business hours and the members shall have the right to take extracts there from and copies thereof, on request and will be provided within 30 days free of cost. [Section 171(1)(a)]
- (ii) Such register shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting. [Section 171(1)(b)]
- (iii) If any inspection during business hours is refused, or if any copy required as above is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required there under. [Section 171(2)]

In case of Government Company - Section 171 shall not apply to Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments. Notification dated 5th June, 2015.

SPECIMEN RESOLUTION

1. Board Resolution for appointing a person as additional director of the company

"RESOLVED THAT pursuant to the provisions of Section 161 of the Companies Act, 2013 and other applicable provisions (including any modification or re-enactment thereof), if any, Mrs. ABC (DIN: _____), who has signified her consent to act as a director, be and is hereby appointed as an Additional Director of the Company to hold office with effect from _____ and shall hold office upto the date of the ensuing Annual General Meeting of the Company.

RESOLVED FURTHER THAT Mr. Z (Director) and/or Mr. Y (Director), of the Company be and are hereby authorized to do all acts, deeds, matters, and things as may be deemed necessary and to sign and execute all necessary documents, applications, and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary e-form(s) with the Registrar of Companies.”

2. Board Resolution Accepting Director’s Resignation

“RESOLVED THAT the resignation of Mr. XYZ (DIN: _____) from the directorship of the Company be and is hereby accepted with effect _____, as due to pre-occupations, Mr. XYZ would not be able to devote his time to the affairs of the Company.

RESOLVED FURTHER THAT the Board places on record their appreciation for the assistance and guidance provided by Mr. XYZ (DIN: _____) during his tenure as Director of the Company.

RESOLVED FURTHER THAT any directors of the Company be and is hereby authorized to do all such acts and deeds as may be deemed necessary to give effect to the above resolution.”

3. Appointment of First Directors

“RESOLVED THAT the following persons, whose names are given as first directors of the company under the Article number..... of the Articles of Association of the company hereby constitute the board of directors of the and first directors of the company:

1. Mr/Mrs.....
2. Mr/Mrs.....
3. Mr/Mrs.....

RESOLVED FURTHER THAT Mr., Director of the company be and is hereby authorized to make necessary entries in the Register of Directors and Register of Director’s shareholding.”

LESSON ROUND-UP

- To attain the objectives prescribed in Memorandum of Association of the company, company depends on Board of Directors. Directors of a company are its eyes, ears, brain, hands and other essential limbs.
- The concept of a Director Identification Number (DIN) has been introduced for the first time in the year 2006. It is an 8-digit unique identification number that has lifetime validity.
- A director to the Board may be appointed as; first director, resident director, woman director, independent director, alternate director, additional director, small shareholder director, nominee director and professional director.
- Every public company shall have at least 3 directors and every private company shall have at least 2 directors and every one person company shall have at least 1 director as per section 149.
- Section 164 lays down disqualifications of directors.
- Section 166 (6) of the Companies Act, 2013, prohibits assignment of office of director to any other person.
- Certain prescribed class or classes of companies is required to have at least one woman director.
- Every company including one person company shall have at least on director who stays in India for a period of not less than 182 days during the financial year.

- The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as director.
- A director may be removed from the office by giving a special notice.

GLOSSARY

DIN: Director Identification Number

IICA: The Indian Institute of Corporate Affairs

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Explain the concept appointment of small shareholder directors?
2. Does a person intends to be an independent director need to get itself registered in databank?
3. How to apply for DIN ?
4. What are the qualifications of a director? When is a person disqualified for appointment as a director of the company?
5. Does every willing and eligible independent director needs to pass online proficiency test? What are the exceptions?
6. Mr. 'A' is to be appointed as independent director. Explain the law relating to number of directors.
7. Mr. 'A' an independent director of ABC Ltd. Has Mr. B as alternate director. Mr. B is also the Vice President and Director of the company. Explain the nature of working and legal interpretation?
8. How can the directors be removed from the office before the expiry of their term?
9. Under what circumstances is a director deemed to have vacated the office of directorship?
10. Guru is the director of Superwell Trading Ltd. The name of the company was recently struck off from the register of companies by the Registrar. He does not hold directorship in any other company. Therefore, Guru applied to the Registrar for cancellation of his Directors Identification Number. His application was rejected by the Registrar. Is the action of the Registrar justified under the relevant provisions of the Companies Act, 2013?
 - (a) No, Guru has applied for cancellation of DIN through valid E form, the ROC shall accept the E Form
 - (b) No, Guru has applied for cancellation of DIN through valid E form, the ROC shall accept the E Form
 - (c) Yes, Guru has applied for cancellation of DIN despite the fact that he was appointed director using his DIN, such DIN shall not be deactivated and DIR-5 cannot be filed, the action of the Registrar of Companies is correct
 - (d) No, Guru has applied for cancellation of DIN through wrong E Form.

11. Independent directors (ID) of Apex global Ltd. a listed company decided to convene a meeting of IDs on their own. Non-Independent directors objected to and called it as illegal.

Choose the correct answer:

- (a) Separate meeting of Independent Directors is not valid and Non- Independent Directors can challenge this as per section 149(8) read with Schedule IV of the Companies Act, 2013.
 - (b) Separate meeting of Independent Directors is valid and Non- Independent Directors cannot challenge this as per section 149(8) read with Schedule IV of the Companies Act, 2013.
 - (c) Separate meeting of Independent Directors is valid after the approval from audit committee.
 - (d) Separate meeting of Independent Directors is valid after the seeking permission from Board and shareholders of the company.
12. Rajeev and his wife Surekha are the only two directors of Rajsur Pvt. Ltd. Rajeev went abroad for two months. Before going abroad, he registered a general power of attorney in favour of his son Ranbeer, aged 21 years, to execute all documents on his behalf as an individual as well as director of Rajsur Pvt. Ltd. Ranbeer signed a contract on behalf of Rajsur Pvt. Ltd. by exercising his power of attorney. Is this contract binding upon the company?
- (a) No, Section 166 (6) of the Companies Act 2013 prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void. Authorizing any person to sign a document as a director amounts to assignment of office of director.
 - (b) Yes, Section 166 (6) of the Companies Act 2013 allows assignment of office of director to any other person in his absence for more than 45 days.
 - (c) No, Section 170 of the Companies Act 2013 prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void. Authorizing any person to sign a document as a director amounts to assignment of office of director.
 - (d) Yes, Section 170 of the Companies Act 2013 allows assignment of office of director to any other person in his absence for more than 30 days.

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- ICSI Premier on Company Law
- Bare Act- The Companies Act, 2013
- The SEBI (LODR) Regulations, 2015

OTHER REFERENCES (Including Websites/Video Links)

- <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>
- <https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3&smid=0>

