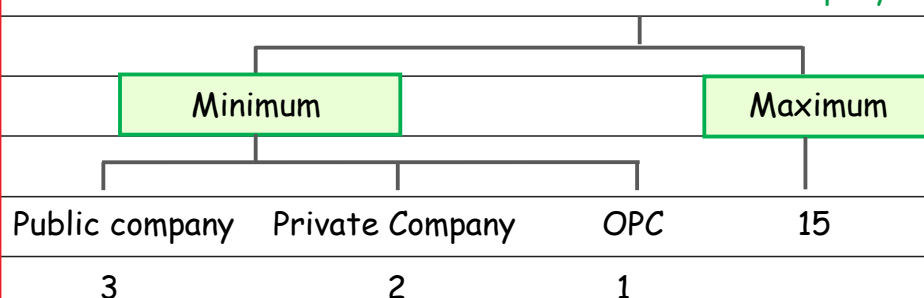


**149 Company to have Board of Directors**

- (1) **Main Provision** - According to section 149(1) of the Companies Act, 2013, every company shall have a Board of Directors consisting of individuals as directors & shall have-

## Number of Directors in company



Provided that a company may appoint more than 15 directors after passing a special resolution

Exemption-

A) A Government company is exempted:

- i) from the application of Section 149 (1) (b) which requires a company to have a maximum of fifteen directors only; and
- ii) from the application of First Proviso to Section 149 (1) which enables a company to appoint more than fifteen directors after passing a special resolution.

However, above exemption is applicable only if such Government company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar. [Notification No. G.S.R. 463(E), dated 5<sup>th</sup> June, 2015 as amended by Notification No. GSR 582 (E), dated 13-06-2017].

B) Similar exemption, as above, is also applicable to company incorporated under Section 8 of the Companies Act, 2013 subject to the condition that such a company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar. [Notification No. 466 (E), dated 5<sup>th</sup> June, 2015 (as amended by Notification No. 584 (E), dated 13<sup>th</sup> June, 2017)].

## Woman Director - [Second Proviso to section 149(1)]

Aspect	Description
Applicability	Rule 3 of the Companies (Appointment & Qualification of Directors) Rules, 2014, provides that following class of companies shall appoint at least 1 woman director-

	Every Listed Company	Every other Public Company having
		i) Paid-up share capital of ₹ 100 cr or more; or
		ii) Turnover of ₹ 300 cr or more.
Compliance	A company, incorporated under the Act & is covered under provisions of 2nd proviso to sub-sec. (1) of sec. 149 shall comply with such Provisions within a period of 6 months from date of its incorporation.	
Vacancy	Intermittent vacancy of a woman director shall be filled-up by Board -	
	i) Within the next immediate Board Meeting, or	} Whichever is later
	ii) 3 months from date of such vacancy	
Explanation	For the purposes of this rule (having a woman director), it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.	

### 3) Resident Director -

- **Main Provision** - Every company shall have at least 1 director who stays in India for a total period of not less than 182 days during the financial year.
- **Proviso** - Provided that in case of a newly incorporated company requirement under this sub section shall apply proportionately at the end of the FY. in which it is incorporated.

### Independent Director:

- Specified public companies are required to appoint independent directors on their Board with a view to boost the level of corporate governance. Such Specified companies are the backbone of any economy and therefore, they must be managed in the best possible manner including adhering to the specified legal provisions. An independent director needs to have an independent mindset which should not be unduly influenced by the other members of the Board; and if such members take any decision which is illegal or not in the best interest of the company or economy, it must be hindered by the independent directors at the outset.

#### 4) Applicability for Independent Director -

Listed Public Company

Prescribed class of companies

[Sec 149(4)]

[Companies (Appointment and Qualification of Directors)

At least 1/3rd of total  
number of directors

Rules, 2014 - Rule 4, sub rule 1]

Public Companies  
Having  
Paid up Share  
Capital  $\geq$  ₹ 10 Cr

Or

Public Companies  
Having  
Turnover  $\geq$  ₹ 100 Cr

Or

Public Companies  
Which have  
in aggregate, outstanding loans,  
debentures & deposits  $>$  ₹ 50 Cr

At least 2 directors as Independent directors

- The Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
- Any fraction contained in such one-third numbers shall be rounded off as one.
- However, in case a company covered as under the above rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.
- As per section 177(2) of the Companies Act, 2013, the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.
- For the purpose of the above assessment, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.
- A company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

#### Non-applicability for Independent Director -

[Companies (Appointment & Qualification of Directors) Rules, 2014 - Rule 4, sub rule 1]

The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (d) a joint venture;
- (e) a wholly owned subsidiary; and
- (f) a dormant company as defined under section 455 of the Act."

where a company ceases to fulfill any of 3 conditions laid down above for 3 consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions. (Rule 4, sub rule 1)

- "joint venture", would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of term is similar to that under the Accounting Standards.

(5) Every company existing on or before the date of commencement of this Act shall, within 1 year from such commencement or from the date of notification of rules in this regard as may be applicable, comply with requirements of the provisions of sub-sec. (4)

(6) Who can become the Independent Director -

In relation to a company, an independent director means a director other than a managing director or a whole-time director or a nominee director, and who fulfills the following criteria:

("Nominee director" means a director nominated by any financial institution in pursuance of 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.)

	Aspect	Description
(a)	Integrity	who, in the opinion of the Board, is a person of integrity & possesses relevant expertise & experience;
		<u>Exemptions</u> - As per G.S.R. 463 (E) dated 5th June, 2015, in case of a Government company, the word "Board" shall be substituted by the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government".
(b)	Non - Promoter	<div> i) who is or was not a promoter, or  ii) who is not related to promoters or directors </div> of company or its holding, subsidiary or associate company

(c)	No pecuniary relationship	<p>who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed, with -</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid green; padding: 5px; width: 45%;"> <ul style="list-style-type: none"> <li>• Company</li> <li>• Holding Company</li> <li>• Subsidiary Company</li> <li>• Associate Company</li> </ul> </div> <div style="font-size: 2em;">Or</div> <div style="border: 1px solid green; padding: 5px; width: 45%;"> <p>Promoter or director of -</p> <ul style="list-style-type: none"> <li>• Company</li> <li>• Holding Company</li> <li>• Subsidiary Company</li> <li>• Associate Company</li> </ul> </div> </div> <p>During the 2 immediately preceding FY or during the current FY;</p> <p>[Exemptions - Point No. (3) mentioned above [i.e. Section 149(6)(c)] shall not apply in case of a Government company if it has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the Registrar.]</p>
(d)	None of whose relatives	<p>i) is holding any security of or interest in -</p> <div style="border: 1px solid green; padding: 5px; text-align: center;"> <p>• Company • Holding Company • Subsidiary Company • Associate Company</p> </div> <p>During the 2 immediately preceding FY or during the current FY;</p> <p><u>Exception</u> - Provided that the relative may hold security or interest in the company of face value not exceeding ₹ 50 Lakhs or 2% of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;</p> <p>ii) is indebted to the -</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid green; padding: 5px; width: 45%;"> <ul style="list-style-type: none"> <li>• Company</li> <li>• Holding Company</li> <li>• Subsidiary Company</li> <li>• Associate Company</li> </ul> </div> <div style="font-size: 2em;">Or</div> <div style="border: 1px solid green; padding: 5px; width: 45%;"> <p>Promoter or director of -</p> <ul style="list-style-type: none"> <li>• Company</li> <li>• Holding Company</li> <li>• Subsidiary Company</li> <li>• Associate Company</li> </ul> </div> </div> <div style="border: 1px solid green; padding: 5px; text-align: center; margin: 10px auto; width: 60%;"> <p>In excess of ₹ 50 lakh</p> </div> <p>During the 2 immediately preceding FY or during the current FY;</p>

iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the -

- Company
- Holding Company
- Subsidiary Company
- Associate Company

Or

Promoter of -

- Company
- Holding Company
- Subsidiary Company
- Associate Company

Or

directors of such holding company

for ₹ 50 lakh

During the 2 immediately preceding FY or during the current FY;

iv) has any other pecuniary transaction or relationship with -

- Company • Holding Company • Subsidiary Company • Associate Company

amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(e) who, neither himself nor any of his relatives

i) holds or has held the position of a key managerial personnel or is or has been employee of the

- Company • Holding Company • Subsidiary Company • Associate Company

in any of the 3 FY immediately preceding the FY in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding 3 financial year.

ii) is or has been an employee or proprietor or a partner, in any of 3 FY immediately preceding FY 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

any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;

iii) holds together with his relatives 2% or more of the total voting power of the company; or

iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.

(f) Skills

Who possesses such other qualifications as may be prescribed.

etc.

According to the Companies (Appointment and Qualification of Directors)

in areas

Rules, 2014,

(1) independent director shall possess appropriate skills, experience & 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.

(2) 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 50 lakhs Rs, at any time during the 2 immediately preceding financial years or during the current financial year."



## (7) Declaration by Independent Director -

Every independent director shall

- i) at the first meeting of the Board in which he participates as a director; and
- ii) thereafter at the first meeting of the Board in every financial year; or
- iii) whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

## (8) Code for Independent Directors -

The company and independent directors shall abide by the provisions specified in Schedule IV to the Companies Act, 2013

## (9) Remuneration of Independent Directors - Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall -

Not be entitled to - any stock option & May receive remuneration by way of -

- i) fee provided under section 197(5),
- ii) reimbursement of expenses for participation in the Board and other meetings &
- iii) Profit related commission as may be approved by the members.

Entitled to:	Not Entitled to:
Fee provided under section 197(5)	Any stock option
Reimbursement of expenses for participation in: <ul style="list-style-type: none"> <li>i) Board Meetings</li> <li>ii) Other Meetings</li> </ul>	
Profit related commission as may be approved by the members	

Note: According to Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, sitting fee required to be paid to an independent director shall not be less than the sitting fee which is payable to other directors of the company.

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



## (10) &amp; (11) Tenure -

an independent director -

shall hold office for a term up to 5 consecutive years on the Board of a company.

He shall be eligible for re-appointment on passing of a SR by the company & disclosure of such appointment in Board's report.

No independent director shall hold office for more than 2 consecutive terms

- However, such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to be an independent director:
- Provided that during the said period of 3 years, such independent director shall not, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.
- Note: According to First Proviso to Section 169 (1), an independent director re-appointed for second term under Section 149(10) shall be removed by the company only by passing a special resolution.
- The MCA vide General Circular No. 14/2014 dated 9th June, 2014 has given some clarifications over manner relating to appointment and qualifications of directors and Independent Directors which are as under:
  - (i) Section 149(6)(c) : "pecuniary interest in certain transactions"
    - a) This provision inter alia requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary / associate company & certain other categories specified therein during the current & last 2 preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public & at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter has been examined & it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the

purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases.

- b) Stakeholders have also sought clarification whether receipt of remuneration, (in accordance with the provisions of the Act) by an 'ID' from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company. The matter has been examined in consultation with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include receipt of remuneration, from one or more companies, 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 approved by the members, in accordance with the provisions of the Act.

(ii) Section 149(10) / (11)- Appointment of 'IDs' for less than 5 years -

Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than 5 years. It is clarified that section 149(10) of the Act provides for a term of "upto 5 consecutive years" for an 'ID'.

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 '2 consecutive terms'. Such a person shall have to demit office after 2 consecutive terms even if the total number of years of his appointment in such 2 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.

(iii) Appointment of 'IDs' through letter of appointment -

With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of 'IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'? The matter has been examined. In view of the

specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

**Independent Director is different from Nominee Director:**

- Appointment of a nominee director cannot be taken as a substitute for appointment of an independent director. Though a nominee director is also independent of the other Board members but this independence does not make him an independent director. He is appointed to safeguard the interest of the respective financial institution to which he belongs. His appointment triggers from the fact that his financial institution has given financial assistance to the company and he remains on the Board till the loan amount is repaid satisfactorily. Nominee director's appointment is mandatory only if the financial institution so desires because of the financial assistance given by it to the company; or any Government requires such appointment to represent its interest.
  - An independent director is appointed by the prescribed companies mandatorily. He is appointed to promote the confidence of the investing bodies, particularly minority shareholders. In fact, the companies in which his appointment is compulsory are much larger than other companies and therefore, they must always be well managed so that the confidence of the stakeholders is not shaken and their investment remains in safe hands. The appointment of independent director is a robust step in this direction. In the matter of good corporate governance, the regulators fall back upon him. The independent director at all times is required to maintain his independence and where circumstances arise which make him lose his independence, such fact must immediately be brought to the knowledge of the Board. The independent directors are required to hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management.
- Exemptions - The MCA vide Notification No. 466(E) dated 5th June, 2015, has exempted section 8 companies from following the provisions of sub-section (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) [related to independent director] and sub-section (13) of section 149 of the Companies Act, 2013.

**Interested Director -**

- An interested director is one among the other directors who constitute Board of Directors. In fact, when an existing director becomes interested in a transaction of the company, he is called interested director; and he needs to disclose his interest at the appropriate forum and at appropriate time. The provisions regarding interested director are discussed in another Chapter.

**Executive and Non-Executive Directors:**

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

**150**
**Manner of selection of Independent Directors &  
Maintenance of Databank of Independent directors**
**(1) Selection from Data Bank -**

According to section 150(1) of the Companies Act, 2013, 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, subject to the provisions contained in section 149(5).

**Maintenance of Data Bank -**

Such data bank shall be maintained by any body, institute or association, as may be notified by the Central Government as having the expertise in creation and

Maintenance of such data bank and put on their website for the use by companies appointing such directors.

■ **Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014**

lays down the provisions for creation and maintenance of databank of persons offering to become independent directors. They are as under:

a) **Authorised Agency to create and maintain data bank:** According to Rule 6 (1), any body, institute or association (referred as "the agency"), which has been authorized in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.

b) **Details to be included in data bank:** According to Rule 6 (2) the data bank referred to in sub-rule (1) above shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director:

- i) **DIN** (Director Identification Number);
- ii) **Income Tax PAN**;
- iii) the **name and surname in full**;
- iv) the **father's name**;
- v) the **date of Birth**;
- vi) **gender**;
- vii) the **nationality**;
- viii) the **occupation**;
- ix) full **Address with PIN Code** (present and permanent);
- x) **phone number**;
- xi) **e-mail id**;
- xii) the **educational and professional qualifications**;
- xiii) **experience or expertise**, if any;

- |      |  |
|------|--|
| xiv) | any legal proceedings initiated or pending against such person;  |
| xv)  | the list of limited liability partnerships in which he is or was a designated partner along with -   |
|      | <ul style="list-style-type: none"> <li>the name of the limited liability partnership;</li> <li>the nature of industry; and</li> <li>the duration- with dates;</li> </ul>   |
| xvi) | the list of companies in which he is or was director along with -  |
|      | <ul style="list-style-type: none"> <li>the name of the company;</li> <li>the nature of industry;</li> <li>the nature of directorship - Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and</li> <li>duration - with dates.</li> </ul> |

**(2) Approval of Appointment in general meeting:**

The appointment of independent director shall be approved by the company in general meeting as provided in section 152(2) 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) Data bank to contain list of willing persons who desire to act as Independent Directors:**

The data bank shall create and maintain data of persons willing to act as independent director in accordance with Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

- Sub-rules (3), (4) and (5) of Rule 6 state that any person who desires to get his name included in the databank of independent directors shall make an application to "the agency". The agency may include his name in the databank after charging a reasonable fee. In case of any changes in his particulars, he shall intimate the agency within fifteen days of such change.

- **Posting on website:** The databank posted on the website shall:

- be accessible at the specified website;
- be substantially identical to the physical version of the data bank;



- c) be searchable on the parameters specified in sub-rule (2);
- d) be presented in a format or formats convenient for both printing and viewing online; and
- e) contain a link to obtain the software required to view or print the particulars free of charge.

**(4) Manner & procedure of selection specified by CG:**

The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under section 149.

Exemption - Notification No. 466(E) dated 5th June, 2015 as amended by Notification No. GSR 584 (E), dated 13-06-2017 has exempted a Section 8 company from the application of Section 150 of the Act, only if such company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

**151 Appointment of Directors elected by 'Small Shareholders'**

- According to Section 151 of Act, a listed company may have one director elected by the small shareholders. This provision enables the small shareholders to place their representative on the Board of Directors of a listed company so that their voice is also listened effectively.
- The term "small shareholders" means a shareholder holding shares of nominal value of not more than 20,000 or such other sum as may be prescribed.
- Manner of appointment of small shareholders' director and terms and conditions of such appointment are prescribed by Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014. These provisions are discussed below:

Strength of Small	A listed company may, upon notice of not less than:		
Shareholders	a) one thousand small shareholders; or	} Whichever	is lower
required for	b) 1/10th of the total number of such shareholders,		
appointment of	have a small shareholders' director elected by the small		
their Director	shareholders.		



		However, a listed company may opt to have a director on suo moto representing small shareholders & in such a case the provisions given below in Point (ii), shall not apply for appointment of such director.
Serving of notice by small shareholders		The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall give 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.
		However, 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.
Statement to be annexed with notice		The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating- a) his Director Identification Number (DIN); b) that he is not disqualified to become a director under the Act; & c) his consent to act as a director of the company.
Small shareholders' director as independent director		Such director shall be considered as an independent director. Therefore, he should meet the eligibility criteria pertaining to independent director as given under section 149(6) and should give a declaration of his independence in accordance with section 149(7) of the Act.
Applicability of section 152		The appointment of small shareholders' director shall be subject to the provisions of section 152 except that - a) such director shall not be liable to retire by rotation; b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and c) on the expiry of the tenure, such director shall not be eligible for

		re-appointment.
Applicability of Section 164		A person shall not be appointed as small shareholders' director of a company, if he is not eligible for appointment in terms of section 164 which specifies the disqualifications for appointment as a director.
Vacation of office		A person appointed as small shareholders' director shall vacate the office if -
		a) the director incurs any of the disqualifications specified in Section 164;
		b) the office of the director becomes vacant in pursuance of Section 167;
		c) the director ceases to meet the criteria of independence as provided in Section 149 (6).
Maximum number of directorships		No person shall hold the position of small shareholders' director in more than two companies at the same time.
		However, the second company in which he has been so appointed shall not be in a business which is competing or is in conflict with the business of the first company.
Cooling period		A small shareholders' director shall not be appointed in or be associated with such company in any other capacity, either directly or indirectly for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company.

## 152 Appointment of Directors

(1)	Appointment of 1 <sup>st</sup> Directors	Where no provision is made in the articles of a company for appointment of the 1st director :- subscribers to the memorandum who are individuals shall be deemed to be the 1 <sup>st</sup> directors of the company until the directors are duly appointed.
		In case of a One Person Company :- an individual being member shall be deemed to be its 1st director until the director or directors are

		duly appointed by the member in accordance with the provisions of this section.
		In simple words, the above provisions are discussed below:
		Usually, <a href="#">articles of the company contain the names of the first directors</a> . In case it is not so, then the <a href="#">individual subscribers to the memorandum are deemed to be the first directors</a> . The corporate bodies, if they are also subscribers, shall not be capable of becoming directors. The <a href="#">first directors shall hold the office until the directors are duly appointed</a> . In fact, the term of first directors is limited to the holding of first Annual General Meeting (AGM). So far as OPC is concerned, the <a href="#">individual member of the OPC is deemed as first director</a> . Thereafter, such member may appoint director or directors as per his requirements.
(2)	Manner of appointment of Directors	Save as otherwise expressly provided in this Act, <a href="#">every director shall be appointed by the company in general meeting</a> . At a general meeting, the shareholders of the company (i.e. the owners) gather and take decisions. Generally, every director shall be appointed by the company in general meeting except where the Companies Act expressly provides some other procedure for appointment of directors. For example, it is expressly provided in the Act that additional directors or alternate directors can be appointed by the Board of Directors if the articles of the company empower Board in this respect
(3)	Requirement of DIN	<a href="#">No person shall be appointed</a> as a director of a company <a href="#">unless he has been allotted the Director Identification Number (DIN) under section 154</a> or any other number as may be prescribed under <a href="#">section 153</a> .
(4)	Duty to furnish DIN & Declaration	Every person proposed to be appointed as a director by the company in <a href="#">general meeting or otherwise</a> , shall <a href="#">furnish his Director Identification Number (DIN)</a> or such other number as may be prescribed under <a href="#">section 153</a> & a declaration that he is not

		disqualified to become a director under this Act.
(5)	Consent to act as a Director	<ul style="list-style-type: none"> <li>■ A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within 30 days of his appointment in such manner as may be prescribed.</li> <li>■ Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company consent in writing to act as director in Form DIR-2.</li> <li>■ Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfills the Conditions specified in this Act for such an appointment.</li> </ul>
		<u>Exemptions</u>
		Non-applicability of Section 152 (5):
		i) Section 152 (5) regarding 'furnishing of consent to act as a director' shall not apply in case of Government company where appointment of the director is done by the Central Government or State Government.
		ii) Similar exemption from Section 152(5) is also applicable to a section 8 company.
		Note: In both the above cases, the exemption is applicable only if the company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar
(6)	Retirement by Rotation	<div style="border: 1px solid green; padding: 10px; text-align: center;"> <p>No. of Rotational Directors</p> <p>= <math>2/3^{\text{rd}}</math> of (Total Directors - Independent Directors)</p> <p>Retirement of Directors</p> <p>= <math>1/3^{\text{rd}}</math> of Rotational Directors</p> </div>
		a) Unless the articles provide for the retirement of all directors at

		every AGM, not less than $2/3^{\text{rd}}$ of the total number of directors of
		a public company shall—
		i) be persons whose period of office is liable to determination by
		retirement of directors by rotation; &
		ii) save as otherwise expressly provided in this Act, be appointed by
		the company in general meeting.
		b) The remaining directors in the case of any such company shall, in
		default of, and subject to any regulations in the articles of the
		company, also be appointed by the company in general meeting.
		c) At the 1 <sup>st</sup> AGM of a public company held next after the date of
		the general meeting at which the 1 <sup>st</sup> directors are appointed & at
		every subsequent AGM, $1/3^{\text{rd}}$ of such of the directors for the
		time being as are liable to retire by rotation, or if their number is
		neither 3 nor a multiple of 3, then, the number nearest to $1/3^{\text{rd}}$ , shall retire from office.

- It is to be noted that the provision regarding 'retirement by rotation' is applicable to a public company or a private company which is subsidiary of a public company. In other words, a private limited company which is not a subsidiary of a public company, is exempted and therefore, if the articles permit it can appoint all its directors as non-rotational directors or permanent directors.
- The articles of a public company may provide for the retirement of all the directors at every annual general meeting. If such is not the case, then not less than two-thirds of the total number of directors of that public company shall be the persons who are liable to retire by rotation. In other words, the articles must provide that minimum two-thirds of the total number of directors shall be liable to retirement by rotation. Such directors are called rotational directors.
- The term "total number of directors" shall not include independent directors, whether appointed under the Companies Act, 2013 or any other law for the time being in force, on the Board of a company. Thus, independent directors are not liable to retire by

rotation and therefore, they are non-rotational directors.

- Further, **any person appointed as a nominee director being nominated by any institution in pursuance of the provisions of any law or any agreement** (like when a financial institution that has been created by an Act of Parliament nominates a person as its nominee director on the Board of a company which has availed financial assistance from such institution) **cannot be considered as a director liable to retire by rotation.**

Nominee director may also be appointed by the Central Government or the State Government by virtue of its shareholding in a Government company.

- **One-third of directors to retire at AGM:** Once the number of directors who are liable to retire by rotation is determined, only one-third out of that number shall retire. If such number is neither three nor a multiple of three, then, the number nearest to one-third, shall be considered and such of the directors shall retire from office.

d) The **directors who actually retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.** If two or more directors were appointed on the **same day**, retirement by rotation will be decided between them **by mutual agreement among themselves or by lot** as the case may be.

The above provision (d) clarifies the basic question that after the determination of number of directors liable to retire by rotation, who should actually retire at the AGM? For this purpose it is provided that the **directors who have been longest in the office since their last appointment are the directors who need to be retired first.** However, it may happen that some of those were appointed as directors on the same day. In that case, if there exists any mutual understanding relating to retirement among such directors, that should be followed; otherwise the determination shall be done by draw of lots.

e) **At the annual general meeting** at which a director retires as aforesaid, the **company may fill up the vacancy** by appointing the retiring director or some other person thereto.



- **Re-appointment:** When a director is retired a vacancy is created. To fill that vacancy, the company may re-appoint the retiring director itself at the AGM. If the retiring director is not re-appointed, the company may appoint some other person at his place but in that case provisions of Section 160 are to be complied with.
- The clause regarding appointment of directors for filling the vacancies created by retiring directors is quite important. However, the number of directors should not fall short of minimum directors required in a company at any stage. However, so long as the clause regarding minimum required directors is fulfilled the company may also resolve not to appoint anyone in place of retiring director.
- In case **Annual General Meeting is not held on due date**, then the **retirement of rotational directors cannot be postponed to that particular date when the AGM shall be held in future**. The directors who are liable to retire must vacate the office of director immediately when the AGM is ought to have been held.
- **Non-rotational Directors: Remaining 1/3<sup>rd</sup> or less number of total directors** (after determining the number of rotational directors) are **not liable to retire by rotation**. These are called non-rotational directors. They may also be appointed at the general meeting or as per the provisions contained in the articles of the company.

(7)	Vacancy in	a) If the vacancy of the retiring director is not so filled-up & the
	case of	meeting has not expressly resolved not to fill the vacancy :-
	retiring	■ the meeting shall stand adjourned till the same day in the next week,
	director	at the same time & place, or if that day is a national holiday, till the
		next succeeding day which is not a holiday, at the same time & place.
		■ If at the adjourned meeting also, the vacancy of the retiring
		director is not filled up & 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.
		b) No automatic/ deemed reappointment of retiring director in certain
		cases :-



i) if 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 i.e. his re-appointment has not been considered favourably because of non-passing of resolution;

ii) If 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) if he is disqualified for appointment as per the provisions of the act;

iv) if a resolution, whether special or ordinary, is required for his appointment or re- appointment by virtue of any provisions of this Act; or

v) if Section 162 is applicable to the case i.e. where a single resolution was used to appoint two or more persons as directors without first moving a proposal which was required to be agreed to at the meeting & no vote was being cast against it. In such a case, Sec 162 is contravened and two or more appointments made by a single resolution are void. Consequently, retiring director is not deemed to be re-appointed

Note: For the purposes of Section 152, the "retiring director" means a director retiring by Rotation.

### Exemptions

Non-applicability of Sections 152(6) and 152(7): Section 152(6) and 152 (7) of the Act of 2013, 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.

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

**Directors Identification Number (DIN) (Sec 153 to 159)****Nature of DIN -**

- "Director Identification Number" (DIN) means an identification number allotted by the 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;
- Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:
- Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 the rules made thereunder; [Rule 2(1)(e) of the Companies (Specification of definitions details) Rules, 2014]
- Requirement of DIN: According to Section 152 (3), no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number (DIN) under section 154 or any other number as may be prescribed under section 153.

**153****Application for Allotment of Director Identification Number**

Aspect	Description
By whom	Every individual intending to be appointed as director of a company shall make an application for allotment of DIN
To whom	The Central Government.
Proviso	Provided that 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 this section shall not apply or apply in such manner as may be prescribed.

Rule 9 of	1) <b>Form</b> - Every applicant, who intends to be appointed as director of
the	an existing company shall make an application electronically in <b>Form</b>
Companies	<b>DIR-3</b> , to the CG for allotment of a DIN along with such fees as
(Appointment	provided under the companies (Registration offices and Fees)
&	Rules, 2014. Provided that in case of proposed directors not having
Qualification	approved DIN, the particulars of maximum 3 directors shall be
of Directors)	mentioned in Form No.INC-32 (spice) and DIN may be allotted to
Rules, 2014	maximum 3 proposed directors through Form INC-32 (spice)
	2) The CG shall provide an electronic system to facilitate submission
	of application for the allotment of DIN through the <b>portal on the</b>
	<b>website of the Ministry of Corporate Affairs.</b>
	3) <b>Documents</b> -
	a) The applicant shall download <b>Form DIR-3</b> from the portal, fill in
	the required particulars sought therein, verify & sign the form &
	after attaching copies of the following documents, scan & file the
	entire set of documents electronically-
	i) <b>photograph;</b>
	ii) <b>proof of identity;</b>
	iii) <b>proof of residence; and</b>
	iiia) <b>board resolution proposing his appointment as director in an</b>
	<b>existing company</b>
	iv) <b>specimen signature duly verified</b>
	b) Form DIR-3 shall be signed & submitted electronically by the
	applicant using his or her own Digital signature certificate & shall be
	verified digitally by a <b>company secretary</b> in full time employment of
	the company or by the <b>managing director or director or CEO or</b>
	<b>CFO</b> of the company in which the applicant is intended to be
	appointed as director in an existing company.
	4) <b>No Last Name</b> - In case the name of a person does not have a last
	name, then <b>his or her father's or grandfather's surname shall be</b>

mentioned in the last name along with the declaration in Form

No. DIR-3A

### 154 Allotment of Director Identification Number

- According to section 154 of the Companies Act, 2013, the Central Government shall, within 1 month from the receipt of the application under section 153, allot a Director Identification Number (DIN) to the applicant in such manner as may be prescribed.
- Rule 10 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides the procedure for allotment of DIN according to which:

Aspect	Description
Application Number	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.
Process by Central Government	After generation of application number, the CG shall process the applications received for allotment of DIN & decide on the approval or rejection thereof & communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of 1 month from the receipt of such application.
Defective or incomplete application	If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website & 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 15 days of such placing on the website and email. Provided that the Central Government shall -
	a) reject the application & direct the applicant to file fresh application with complete & correct information, where the defect has been rectified partially or information given is still found to be defective; treat & label such application as invalid in the electronic record in

case the defects are not removed within the given time; &

b) inform the applicant either by way of letter by post or electronically or in any other mode.

Other

points w.r.t.

defective

application

a) 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.

b) All DIN allotted to individual(s) by the CG before the commencement of these rules shall be deemed to have been allotted to them under these rules.

c) The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

The MCA vide Notification No. S.O. 1354(E) dated 21st May, 2014 delegates the powers & functions of the CG in respect of allotment of DIN under section 154 of the Companies Act, 2013 to the Regional Director, Joint Director, Deputy Director or Assistant Director posted in the office of Regional Director at Noida.

### 155 Prohibition to Obtain More than One Director Identification Number

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

### 156 Director to Intimate Director Identification Number

Section 156 of the Companies Act, 2013, provides for a Director to intimate the DIN allotted to him. According to this section, every existing director shall, within 1 month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director.

**157 Company to inform DIN to Registrar**

Company	Every company shall, within <b>15 days</b> of the receipt of intimation under sec
to	156, furnish the DIN of all its directors to the Registrar or any other
intimate	officer or authority as may be specified by the CG with such fees as may be
DIN	prescribed or with such additional fees as may be prescribed. Every such
	intimation shall be furnished in such form & manner as may be prescribed.
Fine	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 a 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 a 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.

According to Rule 10A of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014:

- i) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within **1 month** of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director as per Form **DIR-3B**.
- ii) The intimation by the company of DIN of its directors under section 157 of the Act shall be furnished in Form **DIR-3C** within **15 days** of receipt of intimation under sec 156.

**158 Obligation to indicate DIN**

According to section 158 of the Companies Act, 2013, every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director



**159 Punishment for Contravention**

If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.

**Cancellation or Surrender or Deactivation of DIN – Rule 11**

The Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the procedure for cancellation or surrender or deactivation of DIN as under:

Aspect	Description
Circumstances of cancellation/surrender	<p>The CG or RD (Northern Region), Noida or any officer authorised by the RD may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case -</p> <p>a) The DIN is found to be duplicated in respect of the same person provided the data related to both the DINs shall be merged with the validly retained number;</p> <p>b) The DIN was obtained in a wrongful manner or by fraudulent means;</p> <p>c) of the death of the concerned individual;</p> <p>d) the concerned individual has been declared as a person of unsound mind by a competent Court;</p> <p>e) if the concerned individual has been adjudicated an insolvent.</p> <p>Provided that before cancellation or deactivation of DIN pursuant to the above clause (e), an opportunity of being heard shall be given to the concerned individual.</p> <p>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 &amp; the said DIN</p>



		has never been used for filing of any document with any authority, the CG may deactivate such DIN.
Conditions		Provided that before deactivation of any DIN in such case, the CG shall verify e- records.
Deactivation of DIN		The CG or RD (Northern Region), or any officer authorised by the CG or RD (Northern Region) shall, deactivate the DIN, of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.
Re-activation of DIN		The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices & Fees) Rules, 2014.

For this purpose-

- i) The term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation.
- ii) The term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

#### Intimation of changes in particulars specified in DIN Application – Rule 12

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for Intimation of changes in particulars specified in the DIN application according to which:

Aspect	Description
Procedure for change DIN	Every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the CG within a period of 30 days of such change(s) in Form DIR-6 in following manner, namely
	i) The applicant shall download Form DIR-6 from the portal, fill in

		the relevant changes, verify the Form & attach duly scanned copy of the proof of the changed particulars & submit electronically.;
		ii) the form shall be <b>digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;</b>
		iii) the applicant shall submit the <b>Form DIR-6;</b>
<b>Changes</b>	<b>update by</b>	i) The CG, upon being satisfied, after <b>verification of such changed particulars from the enclosed proofs</b> , shall incorporate the said
<b>Central</b>		<b>changes &amp; inform the applicant by way of a letter by post or</b>
<b>Government</b>		<b>electronically</b> or in any other mode confirming the effect of such
		change in the electronic database maintained by the Ministry.
		ii) The DIN cell of the Ministry shall also intimate the change(s) in
		the particulars of the director submitted to it in <b>Form DIR-6</b> to
		the concerned Registrar(s) <b>under whose jurisdiction the registered</b>
		<b>office of company(s) in which such individual is a director is situated</b>
<b>Intimation</b>		The <b>concerned individual</b> shall also intimate the change(s) in his
<b>to</b>		<b>particulars to the company or companies</b> in which he is a director
<b>Company</b>		within <b>15 days</b> of such change.
<b>Rule 12A -</b>		Every <b>individual</b> who holds <b>a DIN as on 31st March</b> of a financial year
<b>Directors</b>		as per these rules shall, submit e-form DIR-3-KYC for the said
<b>KYC</b>		financial year to the Central Government on or before 30th
		September of mediate next financial year
		Provided that every individual who has already been allotted a
		DIN as at 31st March, 2018, shall submit <b>e-form DIR-3 KYC on or</b>
		<b>before 5th October, 2018.</b>
		Provided further that 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 desires to update his personal mobile number the e- mail address, as the case may be, he shall update the same by submitting 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 Co's (Registration Offices & Fees) Rules, 2014."

### 160 Right of Persons Other than Retiring Directors to Stand for Directorship

A person who is not a retiring director is also eligible to stand for directorship. Section 160 of the Act and Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014 contain provisions in this respect. These are discussed as under:

Requirement of Written Notice	a) Person who applies his candidature as a director - A person other than retiring director shall be eligible for appointment as a director in a company at any general meeting (Whether In AGM or EOGM), if he has given a notice in writing under his hand signifying his candidature as a director at least 14 days before the meeting at the registered office of the company.
	b) Member who intends to propose other person for directorship - Instead of above person, some other member of the company who intends to propose such other person as a director can also give a written notice at the registered office of the company signifying his intention to propose the other person as a candidate for directorship at least 14 days before the meeting.
Requirement of Deposit	The written notice needs to be accompanied with the deposit of Rs. 1,00,000 or such higher amount as may be prescribed.
	Exception: The requirement of deposit of ₹ 1,00,000 shall not apply:
	a) in case of appointment of an independent director; or
	b) in case of appointment of a director recommended by the Nomination and Remuneration Committee, if any, constituted

		under Section 178 (1);or
		c) in case of appointment of a director recommended by the Board of Directors of the company, where such company is not required to constitute Nomination and Remuneration Committee.
Action by the company	■	The company shall inform its members regarding the candidature of a person for the office of director in accordance with the manner prescribed in Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The same is stated below:
	■	At least 7 days before the general meeting, the company shall inform its members of such candidature-
	a)	by serving individual notices through electronic mode to such members who have provided their e-mail addresses for communication purposes and in writing to all other members; and
	b)	by placing notice of such candidature on its website, if any.
	■	When there is no need to serve notices individually: It shall not be necessary for the company to serve individual notices if it advertises such candidature, not less than 7 days before the meeting:
	a)	at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and
	b)	at least once in English language in an English newspaper circulating in that district.
Refund of Deposit		The amount of deposit shall be refunded to such person or, as the case may be, to the member, if the person proposed gets selected as a director or gets more than 25% of the total valid votes cast either on show of hands or on poll.
		Explanation - No deposit fees shall be refunded to those candidates who are not appointed as directors or do not get more than 25% of total valid votes in favour of their appointment.

- **Note 1:** For the purposes of Section 160, the expression 'retiring director' means a director retiring by rotation.
- **Note 2:** Not all the directors are retiring directors. Therefore, if an additional director or an alternate director or a nominee director or a director appointed to fill a casual vacancy, is to be appointed as a regular director at the general meeting, the procedure prescribed by Section 160 is required to be followed. Similarly, where a director retires by rotation but instead of re-appointing him, a new person in his place is proposed to be appointed, provisions of Section 160 are attracted.
- **Clarifications -**
  - 1) As per Notification No. G.S.R. 465(E), dated 5th June, 2015, in case of **Nidhis**, the amount of deposit for the purpose of Section 160(1) shall be "ten thousand rupees". In other words, a person (not a retiring director) proposing his candidature as director in Nidhis or some other member proposing such person's candidature shall be required to deposit ₹ 10,000 along with the written notice.
  - 2) The MCA vide General Circular No. 38/2014, dated 14th October, 2014, has clarified that in case of Section 8 companies, their Board of Directors shall decide as to whether the deposit of ₹ 1,00,000 is to be forfeited or refunded if the person proposed as director fails to secure more than 25% of the valid votes.

#### Exemptions

- 1) In terms of Notifications No. 463 (E), dated 5<sup>th</sup> June, 2015, as amended by Notifications No. 582 (E), dated 13<sup>th</sup> June, 2017, Section 160 shall not apply to:
  - a) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
  - b) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company.
- 2) In terms of Notifications No. 464 (E), dated 5<sup>th</sup> June, 2015 as amended by Notifications No. 583 (E), dated 13<sup>th</sup> June, 2017, similar exemption from Section 160 is applicable to a private company.
- 3) In terms of Notifications No. 466 (E), dated 5th June, 2015 as amended by

Notifications No. 584 (E), dated 13th June, 2017, similar exemption from Section 160 is also applicable to Section 8 companies whose articles provide for election of directors by ballot.

Note: In all the three cases mentioned above exemption from the application of Section 160 is available only if the concerned company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the Registrar.

A person other than retiring director Notice for appointment as a director at any GM → Any company

- At least 14 days before the GM
- Deposit ₹ 1,00,000
- At the registered office

Company Notice of candidature of person proposed as a director → All members

- At least 7 days before the GM;
- By placing on website;
- By serving individual notices or advertisement in 2 newspapers

## 161 Appointment of Additional Director, Alternate Director & Nominee Director

### (1) Additional Director -

**Appointment** The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

**Restriction** A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.

**Period of office** Earlier of

Upto the date of next AGM

Or

Upto the last date on which the AGM should have been held

- With a view to meet urgent requirements of management, the Board of Directors is empowered to appoint any person as an additional director at any time if such power is granted by the articles. The notable point is that it is not Section 161 (1) but the articles which confer such power.



- The person to be appointed as additional director should possess DIN and must not be the person who failed to get appointed in a general meeting. This brings to the force the power of shareholders i.e. any person discarded as director at a general meeting by the shareholders cannot get appointed by the Board of Directors through back-door entry. Further, an additional director is not a retiring director. Therefore, his appointment as regular director requires that the provisions of Section 160 are followed.
- **Term of office of additional director:** The term of additional director is limited to the holding of ensuing Annual General Meeting (AGM). Even if the AGM is not held on the last due date, the term ends there itself and it cannot be extended to a date when the AGM, in actuality, shall be held in future after its due date.

## (2) Alternate Director -

Appointment	The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a period of not less than 3 months from India.	
Restriction	i) A person who is holding any alternate directorship for any other director in the company or holding directorship in the same company cannot be considered for appointment as above. ii) No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.	
Period of Office	shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed	and shall vacate the office if and when the original director returns to India.
Reappointment	If the term of office of the original director is determined before he so returns to India, any provision for the automatic	



	re-appointment of retiring directors in default of another appointment
	shall apply to the original, and not to the alternate director.

- The power to appoint an alternate director rests with the Board of Directors. However, such power must be conferred by the articles or by a resolution passed at the general meeting.
- An alternate director is appointed in place of a regular director who has gone out of India. The period of absence of such original director from India must be minimum **three months** or more. A short absence of less than **three months** does not entitle the Board to appoint an alternate director. Such proposed alternate director should possess DIN.
- A person selected for appointment as alternate director must not be the one who is holding any alternate directorship for any other director in the company. In other words, a person who is already an alternate director in the company cannot hold another alternate directorship in that company. Further, the selected person must also not be a director in the same company. Thus, a person already a director cannot at the same time be an alternate director in the same company but a person holding directorship in any other company can be considered for the appointment as alternate director. However, for considering maximum number of directorships of a person under Section 165, the alternate directorship shall also be counted. Thus, a fresh alternate directorship should be taken up by the person concerned only if his holding of regular as well as alternate directorships does not exceed the maximum limit. Further, he should not be disqualified to hold the office of a director.
- In case the original director is an independent director and he leaves for a place outside India for **three months** or more, the person who is to be appointed in his place as alternate director must be qualified to be appointed as an independent director. In other words, the status of independence as well as other requisites of an independent director must form part of such alternate director who is selected for appointment in the absence of an independent director.
- A 'would be alternate director' is not exempted from furnishing his consent to act as director. Therefore, he must furnish his consent in **DIR-2** to the company on or

before his appointment and in turn the company shall file his consent with the Registrar in **DIR-12**.

- **Term of office of alternate director:** The term of office of an alternate director coincides with the **permissible term applicable to the original director in whose place he has been appointed**. Thus, the term **shall not be longer than the term which is permissible to the original director**; and as soon as the original director ceases to be a director (death included) the alternate director follows his steps and is required to vacate the office. Further, the alternate director shall vacate the office immediately on the return of original director to India.
- **It may happen that the term of original director expires while he is still outside India.** In such a case, the provisions relating to automatic deemed re-appointment as envisaged in Section 152 (7) (b) shall apply to the original director and not to the alternate director appointed in his place. Thus, the original director (& not alternate director) shall be deemed as re-appointed at the adjourned AGM if the company does not appoint another person on the expiry of the term of original director.
- **Appointment of alternate director by original director:** The original director who is leaving to a place outside India cannot appoint an alternate director in his place. It is the Board which shall make the appointment because the authority for such appointment vests in the Board. Following example will make the situation clear:

### (3) Nominee Director -

<b>Power</b>	Subject to the <b>articles of a company</b> , the Board may appoint any person as a director.		
<b>Persons</b>	<b>any institution</b> in pursuance of the provisions of any law for the time being in force or of any agreement	or	by the <b>CG or the SG</b> by virtue of its shareholding in a Government company.
<b>Nominated</b>			
<b>by-</b>			

- Simply stated, a **nominee director is not like any other director**. He **represents the body which makes his nomination for appointment as director in the company**. Whenever a company obtains financial assistance from some financial institution or bank, such institution invariably nominates its representative for safeguarding

its interests till the loaned amount is completely repaid. The nominee director is expected to ensure that the terms of loan agreements are religiously complied with all the time by the company concerned which has been granted financial assistance. The Board of Directors (subject to the articles) is empowered to appoint a nominee director and the shareholders cannot interfere with such appointment. Further, by virtue of its shareholding in a Government company, the Central Government or the State Government may also nominate a person for appointment as nominee director and the Board shall have to follow the suit without any hindrance on its part.

#### (4) Casual Vacancy -

Power	If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting
Term of Office	Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

The above provisions are discussed as under:

- The term 'casual' means a sudden happening i.e. something which happened by chance or unexpectedly or unforeseen but not by efflux of time. A casual vacancy results when the office of any director appointed in the general meeting is vacated before the expiry of his term in the normal course. This is not the vacancy created due to the retirement of a director. It is created because of certain other factors that are not linked with retirement like occurrence of death or attraction of disqualification or tendering of resignation or removal, etc. Further, in this case, the term of the office of director because of which the casual vacancy is created does not get expired in the normal course.

■	A vacancy which was created due to the fact that the elected director declined to assume the office after his appointment at general meeting cannot be said to result in a casual vacancy. In such a case, when there was no assume of office by the director, how can he vacate it. Thus, there arises no casual vacancy.
■	Section 161 (4) does not require that articles should expressly empower the Board of Directors for filling a casual vacancy. When a casual vacancy occurs it shall be filled by the Board at its meeting by passing a resolution and not otherwise. The vacancy so filled by the Board shall be approved subsequently by members in the immediate next general meeting. It is to be noted that where articles contain any regulations as regards filling of casual vacancy they need to be followed by the Board; but the subsequent approval of such filling of vacancy by members in the immediate next general meeting is a must.
■	As we have noticed, the casual vacancy arises when any director appointed in the general meeting vacates his office before the expiry of his term. Thus, such appointment of the director who vacates his office must have been made in the general meeting and when the casual vacancy is filled by the Board and subsequently approved by the members in the immediate next general meeting, the matter ends there. Subsequently, if the casual vacancy so filled is again vacated due to some casual occurrence, then it cannot be said to be a casual vacancy because it arose against an appointment which was not made in the general meeting. Such type of vacancy needs to be filled by the Board by appointing an additional director.
■	A director appointed to fill a casual vacancy is not a 'casual director'. He enjoys all the powers as well as is required to bear the responsibilities of the director in whose place he is appointed except that where the earlier director was an 'interested director', his 'interest' cannot be attached to the new director filling the casual vacancy.
■	In case a company has appointed a woman director because of statutory requirement and an intermittent vacancy is created in the office of such woman director, the Board shall fill such casual vacancy at the earliest but not later than immediate next Board meeting or three months from the date of creation of such vacancy, whichever

is later. Similar is the case with an independent director whose intermittent vacancy must be filled at the earliest but not later than immediate next Board meeting or three months from the date of occurrence of such vacancy, whichever is later.

However, there is no such urgency so far as filling of any other casual vacancy is concerned (i.e. not of a woman director or of an independent director) because if the Board of Directors feels that the affairs of the company can be managed without appointing anybody, then the Board can postpone such appointment.

- **Term of office of a director appointed to fill a casual vacancy:** The term of office of a director appointed to fill a casual vacancy continues till such time up to which the term of the director because of whom the casual vacancy was created would have continued. Thus, the person filling the casual vacancy shall hold office up to the date up to which the director in whose place he is appointed would have continued in the office which in other words means 'up to the unexpired term of such director'. The 'continuation clause' is applicable because of the Proviso mentioned under Section 161 (4); but for the application of this 'continuation clause' the appointment made by the Board needs to be approved by the members in the immediate next general meeting.

## 162 Appointment of Directors to be Voted Individually

- Section 162 of the Companies Act prohibits appointment of directors by passing a single resolution. Electing more than one person as directors through a single resolution deprives the shareholders from exercising their choice to reject a specific individual. In such a situation, either they will have to vote against or in favour of all the prospective directors i.e. it shall be difficult for them to reject a particular person as director unless they reject such resolution in toto, thus not appointing all the persons specified in that resolution. That is why, Section 162 requires every individual person to be voted individually for appointment as director. As stated in the box below, if certain conditions are satisfied this provision shall not apply to a Government company and its wholly-owned subsidiary. Further, a private company is also exempted from this provision.
- In nutshell, provisions of Section 162 are as under:

- **Main Provision** - Two or more directors of a company cannot be elected as directors by a single resolution.
- **Exception** - Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- **Contravention** - A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so 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.

### Exemptions

Non-applicability of Section 162 of the Act of 2013:

- 1) Notifications No. GSR 463(E), dated 5th June, 2015 as amended by Notification No. GSR 582 (E), dated 13-06-2017 states that Section 162 requiring appointment of each person as director by a separate resolution, shall not apply to:
  - a) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
  - b) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.

However, above exemption is applicable only if such Government company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.
- 2) Similarly, Notifications No. and 464(E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13-06-2017 exempts a private company from the application of Section 162. However, this exemption is applicable only if such private company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.



## 163 Option to Adopt Principle of Proportional Representation for Appointment of Directors

- As a general rule, the directors in a company are appointed by simple majority. It implies that the **shareholders having voting rights just equal to 51 percent can easily negate the choice of other minority shareholders who have substantial voting rights as high as up to 49 percent in the matter of appointment of directors**. Thus, minority shareholders though having sizeable voting rights may not find it possible to appoint even a single director of their own on the Board of Directors. To counter this kind of unpleasant situation which may create confrontation in a company and adversely affect the managerial efficiency. Section 163 chalks out a system by which directors may be appointed by way of proportional representation. The provisions of Section 163 are stated as under:
  - i) Section 163 starts with the phrase '**Notwithstanding anything contained in this Act**' which implies that this section has overriding effect i.e. it overrides all other provisions of the Companies Act, 2013.
  - ii) The **articles of a company need to contain provisions for the appointment of directors by proportional representation**. The procedure as contained in the articles must be capable enough to enable the minority shareholders to have a proportionate representation on the Board of Directors.
  - iii) The **articles need to provide for the appointment of not less than two-third** (i.e. minimum 2/3rd or more) of the total number of the directors in accordance with the principle of proportional representation.
  - iv) Such appointments to be made in accordance with the principle of proportional representation, may use following methods of voting:
    - a) **Voting according to the single transferable vote**. It means, a candidate gets elected if he secures the requisite votes fixed as quota; or
    - b) **Voting according to a system of 'cumulative voting'**; or
    - c) Otherwise i.e. adoption of any other transparent and effective method of voting if it ensures that the **Board shall have fair representation of the minority interest**, in case methods stated at (a) or (b) are not adopted.

v)	Such appointments may be made once in every 3 years
vi)	Casual vacancies of such directors shall be filled as provided in Section 161 (4) i.e. such casual vacancy shall be filled as per the provisions of the articles; and if there is no such provision, then the Board of Directors may fill the vacancy through a board resolution. Later on, such appointment may be regularized by the shareholders at the immediately held general meeting.
	<u>Exemptions</u>
	Non applicability of Section 163: Section 163 of the Act, shall not apply to:
1)	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;
2)	A subsidiary of a Government company, referred to in (1) above, in which the entire paid up share capital is held by that Government company.
	subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.
<b>164</b>	<b>Disqualification for Appointment of Director</b>
■	Section 164 of the Companies Act, 2013 contains disqualifications of a director. A person shall not be eligible for appointment as a director of a company if he suffers from any of the specified disqualifications. As such, the law does not specify any professional or educational qualifications of a director or requires him to hold requisite number of qualification shares except that as a general rule, any person desiring to become a director should be competent to contract and should have been allotted a Director Identification Number (DIN).
■	Various disqualifications are mentioned as under:
i)	Section 164(1) states that a person shall not be appointed as a director 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 to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.
- However, in case a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company
- 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 and 6 months have elapsed from the last day fixed for the payment of the call. It is immaterial whether such shares are held individually by him or jointly with others;
- g) he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years; or
- h) he has not complied with section 152 (3) which requires a director to have a Director Identification Number (DIN).
- j) he has not complied with the provisions of Section 165 (1) relating to holding of specified number of directorships.
- ii) Sub-section (2) of Section 164 prescribes disqualifications which get attached to a person if he is or has been a director of a company which has committed default as under -
- a) his company has not filed financial statements or annual returns for any continuous period of 3 financial years; or
- b) his company has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more.
- In both the above cases of default, the director concerned shall not be eligible to be re-appointed as a director of such defaulting company or appointed in some other company for period of 5 years from the date on which the said company has committed default.
- However, in case a person is appointed as a director of a company which has

committed default as per clause (a) or clause (b) above, he shall not incur the disqualification for a period of six months from the date of his appointment.

**Exemptions** - As per Notification No. GSR 463 (E), dated 5<sup>th</sup> June, 2015 as amended by Notification No. GSR 582 (E), dated 13<sup>th</sup> June, 2017, Section 164(2) is not applicable to a Government company provided it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

iii) **Additional qualifications by private company:**

- According to Section 164 (3), a private company (not being a subsidiary of a public company) is permitted to provide for additional disqualifications through its articles for appointment of a person as a director besides those specified in sub-sections (1) and (2) of section 164. Thus, it may specify certain qualifications like a graduate shall only be the director or the prospective director should hold certain number of qualification shares, etc.

Note: In terms of Proviso to Section 164 (3), 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.

iv) **Disqualification as prescribed by Section 217 (6)(ii):**

- Section 217 relates to a company which is under investigation. In case any director of such a company has been convicted of an offence under Section 217, the director shall be deemed to have vacated his office on and from the date on which he is so convicted. On such vacation of office, he shall be disqualified from holding an office in any company.

**165 Number of Directorships**

Maximum	■ According to Section 165(1), a person, after the commencement of
number of	the Companies Act, 2013, shall not hold office as director, including
directorships	any alternate directorship, in more than 20 companies at the same
	time.
	■ Further, out of the above limit of 20 companies, the maximum

the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

- It may be noted that the limit of public companies (i.e. 10) shall include directorship in private companies that are either holding or subsidiary company of a public company.
  - However, the limit of directorships of 20 companies shall not include the directorship in a dormant company; as also in a Section 8 company (refer Exemption mentioned in the box below).
- Exemptions - Section 165(1) [refer point no.(i) above] shall not apply to a Section 8 company subject to the condition that such a company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the Registrar. In other words, a directorship in a Section 8 company shall not be counted for determining the maximum permissible limit.

Lesser number  
of directorships  
than maximum

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 directors. [Section 165(2)]

Prescription of  
Transition  
Period of 1 Year

- Immediately before the commencement of the Companies Act, 2013 (i.e. before 01-04-2014), if a person was holding office as director in more companies than the specified limits, he was required, within one year (i.e. by 31-03-2015) to:

- a) choose not more than the specified limit of companies, in which he wished to continue to hold the office of director;
- b) resign his office as director in the other remaining companies; &
- c) intimate the choice made by him to each of the companies in which he was director and to the jurisdictional Registrar.

[Section 165(3)]

- Any resignation so made was to become effective immediately on the dispatch thereof to the company concerned. [Section 165(4)]

		■ After dispatching the resignation of his office as director/non-executive director or after the completion of the transition period of one year (i.e. after 31-03-2015), whichever was earlier, no such person would act as director in more than the specified number of companies. [Section 165(5)]
		■ In other words, after the completion of transition period of one year on 31-03-2015, no person is permitted to hold more directorships than the maximum specified.
Punishment		If a person accepts an appointment as a director in violation of this
for		section, he shall be liable to a penalty of two thousand rupees for
Contravention		each day after the first during which such violation continues,
		subject to a maximum of two lakh rupees.

## 166 Duties of Directors

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

### A) Duties as per Section 166:

Duties of directors, more particularly statutory duties, have been prescribed for the first time in the Statute. Section 166 specifies the following duties which are required to be accomplished by a director:

- He shall act in accordance with the articles of the company, subject to the provisions of the the Companies Act, 2013.
- He shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole. Further, he shall act in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- He shall exercise his duties with due and reasonable care, skill and diligence and shall



exercise independent judgment.

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

v) He shall not achieve any undue gain or advantage either to himself or to his relatives, partners, or associates. In case such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

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

■ The assignment of office has been made invalid because of the fact that the shareholders have elected a particular person as director for the management of their company. If such person assigns his office to some other person, the shareholders may not have faith in the other person; and therefore, a person who does not command the faith of the shareholders cannot be given the responsibility to manage the company. In other words, it is required of the original director to carry out his duties of directorship on his own without assigning them to some other person. Delegation of duties to other staff members, wherever permitted, is not akin to assignment of office.

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

#### B) Some Other Duties -

To file various documents	It is the duty of the directors to file various documents required to be filed with the Registrar within the specified time limits.
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Similarly, wherever required, the requisite documents must also be filed with other statutory bodies.

To convene General Meetings	As and when required, Annual General Meeting (AGM) & extraordinary general meetings (EGMs) need to be convened by the directors.
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To attend Board Meetings	Board meetings is the platform where collective decisions are taken for managing the company profitably. It is statutorily
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		required of a company to hold at least four board meetings every year and the gap between two board meetings must not exceed 120 days. However, a company may, as per the exigencies, hold more meetings than statutorily required and every director is duty-bound to attend them. A director, though, may not attend all the Board meetings held in a year but in case he remains absent from all such meetings held within a period of twelve months either with or without seeking leave of absence, he shall be deemed to have vacated his office.
To disclose interest		In the ordinary course, it is required of a director that his interest should not clash with the interests of the company i.e. he should not get himself benefitted from a transaction, the profit of which belongs to the company. If it happens and a director gets interested in a transaction belonging to the company, it his duty to disclose such interest at the very first Board meeting he attends after becoming interested in the transaction. Thereafter, such interest should be disclosed in the first board meeting held in every financial year. In case there is any change in the disclosure already made by the director, such change needs to be brought in the knowledge of other directors in the first board meeting which he attends after occurring of such change. A detailed disclosure of interest and punishment for non-disclosure is discussed at the appropriate place.
To approve the annual financial statements		Before seeking auditor's report, the annual financial statements i.e. balance sheet, statement of profit and loss, cash flow statement, etc. including consolidated financial statements, if any, are required to be approved by the directors.
To approve and attach Board Report		A report by the Board of Directors containing requisite particulars on the affairs of the company including Directors' Responsibility Statement is required to be attached with the financial statement

after its approval.

To appoint

It is the duty of directors to appoint 1<sup>st</sup> auditors of the company.

1st Auditors

## 167 Vacation of Office of Directors

(1) The office of a director shall become vacant in case –

- |    |                                |  |
|----|--------------------------------|--|
| a) | Section 164                    | He incurs any of the disqualifications specified in section 164.<br>Provided that where he incurs disqualification under sub-section (2) of 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) | Director absents from Meetings | he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.  |
| c) | Contravention of section 184   | 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) | Fails to disclose Interest     | 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) | Court/Tribunal Order           | he becomes disqualified by an order of a court or the Tribunal.  |
| f) | Convicted by court             | he is convicted by a court of any offence, whether involving moral turpitude or otherwise & sentenced in respect thereof to imprisonment for not less than 6 months.<br>Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-<br>i) for 30 days from the date of conviction or order of disqualification;<br>ii) where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of |

		7 days from 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 7 days, until such further appeal or petition is
		disposed of.
g)	Removal	he is removed in pursuance of the provisions of the Companies Act, 2013
		like when he is required to vacate office for disqualification incurred
		under Section 217 (6) (ii) i.e. conviction for committing an offence under
		Section 217;
h)	ceases to	he, having been appointed a director by virtue of his holding any office
	hold office	or other employment in the holding, subsidiary or associate company,
		ceases to hold such office or other employment in that company.

(2) Punishment for Contravention -

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 - Minimum - ₹ 1,00,000; Maximum - ₹ 5,00,000

(3) Where all the directors of a company vacate their offices -

Where all the directors of a company vacate their offices

→ appointment of required number of directors by -  
i) Promoter or  
ii) CG (in the absence of promoter)

→ hold office till the directors are appointed by the company in the GM

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

**168 Resignation of Directors**

- Provisions regarding resignation of directors have been included in the Companies Act, 2013 for the first time. Section 168 read with **Rule 15 and Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014** deals with resignation of a director as under:

Notice of resignation in writing may be served to the company by the director

Board takes note on receipt of notice

Co. shall intimate Registrar within 30 days of receipt of notice in Form DIR-12

Fact of such resignation is given in the report of directors placed in the immediately following general meeting

Director forward copy of resignation with reasons to Registrar in 30 days from date of resignation in Form DIR- 11 with fees.

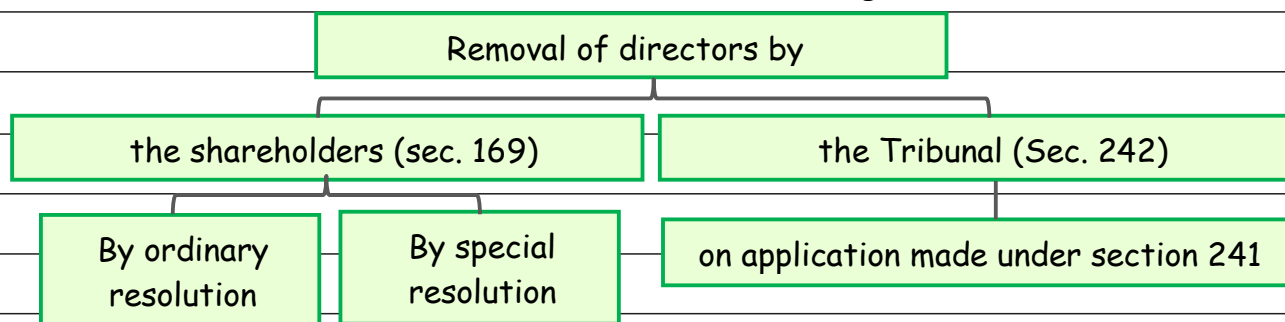
- Signing and Filing of Form DIR-11 in case of a Foreign Director:** In case a company has already filed **Form DIR-12** with the Registrar, a **foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice** or any other resident director of the company to sign **Form DIR-11** and file the same on his behalf intimating the reasons for the resignation.
- Clarification:** MCA vide General Circular No. 3/15, dated 3rd March, 2015 has clarified that in the event of **deactivation of Digital Signature Certificate (DSC) following en masse resignation** of all the directors of a company before appointment of new directors in their places, where **Form DIR-12 cannot be filed by a company due to lack of an authorized signatory director**, the Registrars of Companies within their **respective jurisdictions are authorized, on request from the stakeholders**, & after due examination, to allow any one of the resigned director who was an authorized signatory director for the purpose of filing **DIR-12** only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

- **Effective date of resignation:** The resignation of a director shall take effect:
 

i) from the date on which the notice is received by the company, OR	}	Whichever is later
ii) the date, if any, specified by the director in the notice,		
- **Liability:** The director who has so resigned shall be liable even after his resignation for the offences which occurred during his tenure.
- **All the Directors tendering resignation:** In case all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

**169****Removal of Directors**

- A director of a company may be removed before completion of his term as director. Removal of directors is discussed here under the following heads:

**1) Removal of Director by the Shareholders:**

Section 169 of the Act contains provisions for removal of directors by the shareholders. The way shareholders are empowered to appoint a director, in the same way they can also remove a director. The procedure of removal may be in the following manner:

a)	<b>Requirement of Ordinary Resolution</b>	A company may, by ordinary resolution, remove a director before the expiry of the period of his office except the following:
		a) when a director is appointed by the Tribunal under Section 242.
		b) when as per Section 163, two-thirds or more of the total number of directors are appointed according to the principle of proportional representation, then such directors cannot be removed.
		For example, if a company has eight directors, of which six were



		appointed according to the principle of proportional representation.
		In such a case, only two directors which were not appointed following the system of proportional representation, can only be removed by the shareholders.
b)	Requirement of SR in case of removal of re-appointed independent director	<p>An independent director re-appointed for second term under Section 149(10) shall be removed by the company only by passing a special resolution</p> <p>Note: Under both the clauses (i) and (ii) above, the director to be removed shall be given a reasonable opportunity of being heard before his removal.</p>
c)	Special Notice	<p>A special notice as per Section 115 shall be required for proposing any resolution to remove a director.</p> <p>Special notice under Section 115 is required to be signed by:</p> <p>i) members holding not less than 1% of total voting power; or</p> <p>ii) members holding shares on which at least Rs. 5,00,000 has been paid in the aggregate.</p> <p>Such notice shall be sent by the members not earlier than 3 months but at least 14 days before the meeting at which the resolution is desired to be moved.</p>
d)	Action by the company	<p>On receipt of the special notice of a resolution to remove a director, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.</p>
e)	Representation by the director	<p>In case the director concerned makes a written representation to the company and requests that it should be notified to members, the company shall, if the time permits it to do so,-</p> <p>a) state the fact of the representation having been made by the director in any notice of the resolution given to members of the company; and</p>

		b) send the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company).
		In case, the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.
		Representation of director need not be sent: It is provided that representation need not be sent out and read out at the meeting if, on the application either of the company or of any other aggrieved person, the Tribunal is satisfied that the rights of representation are being abused to secure needless publicity for defamatory matter.
		Further, the Tribunal may order the director concerned (notwithstanding that he is not a party to it) to make payment in whole or in part of the costs incurred by the company on the application so made to the Tribunal.
f)	Filling of vacancy	The vacancy resulting from the aforesaid removal if he had been appointed by the company in general meeting or by the Board, may be filled in by the appointment of another director at the same meeting at which the director is removed, provided special notice of the proposed appointment has been given.
		Non-Filling of vacancy: If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy provided that the director who was so removed from office shall not be reappointed as a director.
g)	Period of holding of office by new director	A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed.

h)	Payment of compensation	A person so removed as director shall not be deprived of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director.
		The restrictions imposed by Section 202 are also to be kept under consideration while making payment of compensation for loss of office of directorship.
i)	No restriction imposed by Section 169	Nothing in Sec 169 shall be taken as derogating from any power to remove a director under any other provisions of the Companies Act. In other words, Section 169 does not impose any restriction on any other power available under some other provisions of the Companies Act, 2013 which allows removal of a director.

## 2) Tribunal:

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

## 170 Register of Directors and Key Managerial Personnel and Their Shareholding

- A company is required to maintain a register of directors and key managerial personnel and their shareholding under Section 170 of the Act. These provisions are as under:
- Every company shall keep at its registered office a register containing the prescribed particulars of its directors and key managerial personnel. The prescribed particulars

	shall include details of securities held by each of them in the company or its holding, subsidiary, subsidiary of its holding companies or associate companies. In this respect Rule 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014, is relevant. It prescribes the following particulars to be included in the Register:
a)	Director Identification Number (optional for key managerial personnel);
b)	present name and surname in full;
c)	any former name or surname in full;
d)	father's name, mother's name and spouse's name(if married) and surnames in full;
e)	date of birth;
f)	residential address (present as well as permanent);
g)	nationality (including the nationality of origin, if different);
h)	occupation;
i)	date of the board resolution in which the appointment was made;
j)	date of appointment and reappointment in the company
k)	date of cessation of office and reasons therefor;
l)	office of director or key managerial personnel held or relinquished in any other body corporate;
m)	membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
n)	Permanent Account Number (mandatory for key managerial personnel if not having DIN);
■	In addition to the above details, the company shall also include in the Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to:
a)	the number, description and nominal value of securities;
b)	the date of acquisition and the price or other consideration paid;
c)	date of disposal and price and other consideration received;
d)	cumulative balance and number of securities held after each transaction;
e)	mode of acquisition of securities ;
f)	mode of holding - physical or in dematerialized form; and
g)	whether securities have been pledged or any encumbrance has been created on the

securities.

- **Filing of Return in Form DIR-12 with the Registrar:** Section 170(2) read with Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014 requires a company to file a return in Form DIR-12 in respect of its directors and the key managerial personnel after paying the prescribed fee as under:
  - a) within 30 days from the appointment; and
  - b) within 30 days of any change taking place.

**Exemption** - Section 170 of the Companies Act, 2013 shall not apply to a Government company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Government subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar. [Notification No. G.S.R. 463(E), dated 5<sup>th</sup> June, 2015 as amended by Notification No. GSR 582 (E), dated 13-06-2017].

## 171 Member's right to Inspect

- The members of the company have a right to inspect the register of directors and key managerial personnel under Section 171 of the Act. Accordingly:

<b>Timing for inspection</b>	The register of directors and key managerial personnel shall be kept open for inspection during business hours. The members shall have the right to take extracts therefrom and copies thereof on request and the same will be provided to them within 30 days free of cost.
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[Refer Section 171(1)(a)]

<b>Open for Inspection</b>	The 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. [Refer Section 171(1)(b)]
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<b>Registrar to order in case of refusal</b>	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. [Refer Section 171(2)]
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Exemptions - Section 171 shall not apply to a Government company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Government subject to the condition that such Government company has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar. [Notification No. G.S.R. 463(E), dated 5th June, 2015 as amended by Notification No. GSR 582 (E), dated 13-06-2017].

172

**Punishment**

If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.