

Corporate & Economic Laws

FOR CA (FINAL) NEW SYLLABUS

Key Highlights:

Salient Features

- ▶ Tabular presentation of subject matter
- ▶ Coverage of All Past Exam Questions till Nov. 2019 Exam
- ▶ Coverage of Questions from RTPs and MTPs of ICAI
- ▶ Chapter-wise marks Distribution for Past Exams for each chapter
- ▶ Questions are covered along with every topic for easy understanding
- ▶ 700 Questions and Case Studies with Hints for self practice
- ▶ Updated till 30-04-2020
(For detailed answers, refer 5th edition of Practice Manual cum Scanner by same author)

Academic Updates

- ▶ Companies (Appointment and Qualifications of Directors) 5th Amendment Rules, 2019
- ▶ Companies (Appointment and Qualifications of Directors) Amendment Rules, 2020
- ▶ Companies (Creation and Maintenance of data bank of Independent Directors) Rules, 2019
- ▶ Companies (Meetings of Board and its Powers) 2nd Amendment Rules, 2019
- ▶ Companies (Meetings of Board and its Powers) Amendment Rules, 2020
- ▶ Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020
- ▶ Companies (Winding-up) Rules, 2020
- ▶ NCLT (Amendment) Rules, 2020
- ▶ SEBI (LODR) Amendment Regulations, 2020
- ▶ Finance (No. 2) Act, 2019
- ▶ IBC (Amendment) Act, 2020

Pankaj Garg

5th Edition

Relevant for :
**Nov. 2020 Exams
& onwards**

Chapter 1

Appointment and Qualifications of Directors

Table of Sections and Corresponding Rules

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1.1 - Important Definitions (Sec. 2)

Sec. 2(10)	Board of Directors or Board	in relation to a company, means the collective body of the directors of the company.
Sec. 2(34)	Directors	means a director appointed to the Board of a company.
Sec. 2(47)	Independent director	means an independent director referred to in section 149(5).

1.2 - Company to have Board of Directors (Sec. 149 & Rule 3)

Number of Directors - Sec. 149(1)	Every company shall have a Board of Directors consisting of <i>individuals</i> as directors.	
	Minimum Director	<ul style="list-style-type: none"> • Public Company - 3 directors, • Private Company - 2 directors • One Person Company – 1 Director.
	Maximum Director	<ul style="list-style-type: none"> • Fifteen (15). • First proviso to Sec. 149(1) provides that a company may appoint > 15 directors after passing a special resolution.
<p style="text-align: center;">Points to Remember</p> <p><i>Limit of Maximum directors and their increase is not applicable to Govt. Companies and Sec. 8 Companies provided these companies has not committed a default in filing of their financial statements u/s 137 or annual return u/s 92 with the Registrar.</i></p>		

Woman Director	Prescribed companies shall have at least one woman director.
- 2nd Proviso to Sec. 149(1)	<p>Companies requiring to appoint woman director – Rule 3 of Companies (Appointment and Qualification of Director's) Rules, 2014</p> <p>(i) Every listed company;</p> <p>(ii) Every other public company having;</p> <div style="margin-left: 40px;"> <p>(a) paid-up share capital of Rs. 100 Cr. or more;</p> <p style="text-align: center;">or</p> <p>(b) turnover of Rs. 300 Cr. or more.</p> </div> <p>Note: The paid-up share capital or turnover as on the last date of latest audited F.S. shall be considered for this purpose.</p>
Appointment in case of new company	In case of a company, which has been incorporated under this Act and is covered under prescribed criteria, appointment shall be made within 6 months from the date of incorporation.
Filling of Intermittent Vacancy	Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy whichever is later.
Resident Director - Sec. 149(3)	<ul style="list-style-type: none"> Every company shall have at least one director who stays in India for a total period of not less than 182 days during the financial year: Provided that in case of a newly incorporated company the requirement u/s 149(3) shall apply proportionately at the end of the financial year in which it is incorporated.

Points to remember

To support and enable Companies in India to focus on taking necessary measures to address the COVID-19 threat, MCA vide General Circular No. 11 / 2020 dated 24.03.2020, relaxes this requirement for financial year 2019-20. Relevant provision as stated in the circular is as follows:

“Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, u/s 149 of the Companies Act, 2013 shall not be treated as a non-compliance for the financial year 2019-20.”

Important Questions

Q. No. 1: As per the Articles of Association, the maximum number of Directors of each of the following companies is 9:

- (i) Good heart Company Limited.
- (ii) Frontline Trading Private Limited.
- (iii) Hindustan Zink limited (a Government company u/s 2(45) of the Companies Act, 2013).

The Board of Directors of the aforesaid companies proposes to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 2013, the Board of Directors can do so?

HINT: Refer Sec. 149(1). Number of Directors can be increased after altering AOA.

- (i) Number can be increased to 15, For above 15, special resolution will be required.
- (ii) Number can be increased to 15, For above 15, special resolution will be required.
- (iii) No limit in increase in number.

Q. No. 2: In XYZ Ltd., an intermittent vacancy of the women director arises on 15th June 2019. By what time the vacancy so created should be filled if the immediate Board Meeting was held on (a) 14th August 2019 (b) 14th Oct. 2019.

HINT: Refer proviso to Sec. 149(1). (a) 14th Sep. 2019 (b) 14th Oct. 2019.

Q. No. 3: Royal Limited is a company listed at Madras Stock Exchange, incorporated on 1st January, 2018. The Board of Directors of the company decides to appoint in its Board 'Women Director' and the 'Resident Director'.

- (i) Explaining the provisions of the Companies Act, 2013, state whether it is mandatory for the company to appoint such directors in its Board.
- (ii) What would be your answer in case the company is a non-listed company and the Board of Directors decided not to have the Women Director in the company's Board?
- (iii) What shall be your answer in case the company in question is not listed at any of the Exchanges. The paid-up share capital of the company is Rs. 50 crore and the turnover of the company is Rs. 200 crores. Decide whether the company is mandatorily required to appoint the woman director.

HINT: Refer proviso to Sec. 149(1) & 149(3).

- (i) Mandatory to appoint Women Director and Resident Directors.
- (ii) In case of unlisted company, appointment of women directors is not mandatory provided company is not covered under Rule 3.
- (iii) Not mandatory as company does not fall under the categories prescribed in Rule 3.

Q. No. 4: The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so. [May 10 (5 Marks)]

HINT: BOD can increase the number of directors after altering AOA u/s 14 and by passing a Special resolution u/s 149(1).

Q. No. 5: Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013: The Board of Directors of MNP Limited appointed Ms. Neha as a Women Director in the Board Meeting held on 10th September, 2019. The said appointment was made to fill the vacancy of the Woman Director, which had occurred as a result of resignation of Ms. Sheela on 30th June, 2019. Will your answer differ if the Board Meeting of the company was held on 8th November, 2019? [May 15 (4 Marks)]

HINT: Refer Rule 3 – Valid appointment.

Q. No. 6: Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013: LKG Limited was incorporated on 5th May, 2019 under the Companies Act, 2013. Mr. Ramanujam was appointed as the first Resident Director of the company in the Board Meeting held on 30th September, 2019.

[May 15 (4 Marks)]

HINT: Refer Sec. 149(3) and Sec. 152(2). Appointment not valid as Sec. 152(2) provides that save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

Q. No. 7: Sky Limited, a listed company has been incorporated under the Companies Act, 2013. An intermittent vacancy of a woman director has arisen on 15th June, 2019. Advise the company to fill the vacancy as per the provisions of the Companies Act, 2013. The Board meeting was held on 14th August, 2019. [Nov. 16 (4 Marks)]

HINT: Refer Sec. 149(1), Vacancy can be filled by 14th Sep, 2019.

Q. No. 8: KMR Limited, a listed public company, has 15 directors on its Board. The Articles of Association of the said company provide for the maximum number of Directors in the company to be 15. Due to diversification and expansion of activities, the Board of Directors of the said company desire to increase the number of Directors to 18. Decide with reference to the applicable provisions of the Companies Act, 2013:

(i) Whether the Board of Directors can do so?

(ii) Will your answer differ if the said Company would have been a Government Company? [May 19 – Old Syllabus (4 Marks)]

HINT: (i) BOD can increase the number of directors after altering AOA u/s 14 and by passing a Special resolution u/s 149(1). (ii) In case of Govt. companies limit of maximum directors not applicable, hence, BOD can increase the number.

1.3 - Independent Director [Sec. 149(4) – 149(13), Sec. 150, Rules 4, 5, & 6]

Companies requiring to have independent Director – Sec. 149(4)

- Every listed public company shall have at least **1/3rd** of the total number of directors as independent directors.
- Any fraction contained in such 1/3rd number shall be rounded off as one.
- For other public companies, the C.G. may prescribe minimum number of independent directors.

Companies requiring to appoint independent director – Rule 4 of Companies (Appointment and Qualification of Director's) Rules, 2014

Following companies shall have at least **2** directors as independent directors:

- (i) Public companies having paid up share capital \geq Rs. 10 Cr;
or
- (ii) Public Companies having turnover \geq Rs. 100 Cr;
or
- (iii) Public companies having aggregate outstanding loans, debentures and deposits $>$ Rs. 50 Cr.

Note: The paid-up share capital or turnover or outstanding loans, debentures and deposits as on the last date of latest audited F.S. shall be considered for this purpose.

Exemption

Where a company ceases to fulfil any of the above 3 conditions for 3 consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

Higher Number of Independent Directors

A company shall be required to appoint a higher number of independent directors, so as to fulfil the requirement of composition of its audit committee u/s 177.

Points to Remember

Sec. 177(2) – Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Example – ABC Ltd. is having 5 directors in its audit committee. The number of independent directors so as to form a majority should be 3.

Filling of Intermittent vacancy

- Any intermittent vacancy shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy, whichever is later.

Example – A vacancy arises in the office of Independent director on 15th June 2019. Immediate next Board meeting was held on 14th August 2019. Vacancy is to be filled up by 14th Sep. 2019.

If, however, immediate next Board meeting was held on 14th Oct. 2019, the vacancy shall be filled by 14th Oct. 2019.

	Exceptions	<p>Following classes of unlisted public companies shall not be required to have minimum independent director:</p> <ul style="list-style-type: none"> (a) A Joint venture (b) A wholly owned subsidiary, and (c) A dormant company. <p style="text-align: center;">Points to remember</p> <p>MCA vide its circular clarified that 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.</p>
Meaning of Independent Director – Sec. 149(6)		<p>An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director, -</p> <p>(a) Who, in the opinion of the Board*, is a person of integrity and possesses relevant expertise and experience;</p> <p><i>(*In case of government company, which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar, 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").</i></p> <p>(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;</p> <p>(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;</p>

(c) who has or had *no pecuniary relationship other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed* with

- the company, its holding, subsidiary or associate company, or
- their promoters, or directors,

during the 2 immediately preceding FYs or during the current FY.

Note: This clause is not applicable to a government company which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

In case a transaction entered into by an independent director with the company concerned is at par with any member of the general public and at the same price as is payable/paid by such member of public, it would not attract the bar of 'pecuniary relationship' under Section 149(6)(c) and therefore, an independent director will not be said to have 'pecuniary relationship' under this Section, in such cases.

(d) none of whose relatives

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the 2 immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding ₹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;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the 2 immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the 2 immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

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

(i) holds or has held the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 FYs 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 years.

(ii) is or has been an employee or proprietor or a partner, in any of the 3 FYs immediately preceding the FY in which he is proposed to be appointed, of-

(A) a firm of auditors or CS in practice or Cost Auditors of the company or its holding, subsidiary or associate company; or

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

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

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

(f) who possesses such other qualifications as may be prescribed.

Qualifications of independent director - Rule 5 of Companies (Appointment and Qualification of Director's) Rules, 2014

- An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

	<ul style="list-style-type: none"> • 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,- <ul style="list-style-type: none"> (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, at any time during the 2 immediately preceding financial years or during the current financial year.
Declaration by independent Directors – Sec. 149(7)	<p>Every independent director shall</p> <p>→ at the first meeting of the Board in which he participates as a director,</p> <p>and</p> <p>→ thereafter at the first meeting of the Board in every financial year,</p> <p>or</p> <p>→ whenever there is any change in the circumstances which may affect his status as an independent director,</p> <p>give a declaration that he meets the criteria of independence as provided in Sec. 149(6).</p>
Code for Independent Director – Sec. 149(8)	<p>The company and independent directors shall abide by the provisions specified in Schedule IV.</p>

Remuneration of Independent Directors – Sec. 149(9)	Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of Sections 197 & 198, an independent director → shall not be entitled to any stock option and → may receive remuneration by way of (i) fee provided u/s 197(5), (ii) reimbursement of expenses for participation in the Board and other meetings, and (iii) profit related commission as may be approved by the members.	
Tenure of Independent Auditor – Sec. 149(10) & 149(11)	Sec. 149(10)	<ul style="list-style-type: none"> • Subject to the provisions of Sec. 152, an independent director shall hold office for <i>a term up to 5 consecutive years</i> on the Board of a company, • but shall be <i>eligible for reappointment on passing of a special resolution</i> by the company and disclosure of such appointment in the Board's report.
	WWW.	Points to Remember <ul style="list-style-type: none"> • It is clarified by MCA that one tenure of independent directors may be for a period less than 5 year.
	Sec. 149(11)	<ul style="list-style-type: none"> • Notwithstanding anything contained in Sec. 149(10), no independent director shall hold office for <i>more than 2 consecutive terms</i>,

	<ul style="list-style-type: none"> but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director, provided that an independent director shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
	<p style="text-align: center;">Points to Remember</p> <p>It is clarified by MCA that if tenure of independent directors is fixed for a period less than 5 year, than cooling period of 3 years arises on completion of two tenures even if the total number of years of his appointment in such two consecutive terms is less than 10 years.</p>
Liability – Sec. 149(12)	<p>Notwithstanding anything contained in this Act,</p> <p>(i) an independent director, and</p> <p>(ii) a non-executive director not being promoter or KMP</p> <p>shall be held liable, only in respect of such acts of:</p> <ul style="list-style-type: none"> omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or where he had not acted diligently.
Retirement by rotation - Sec. 149(13)	<p>The provisions of Sec. 152(6) and 152(7) in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.</p>

**Selection of
Independent
directors**
- Sec. 150

- An independent director may be selected from a **data bank**.
- The responsibility of exercising due diligence before selecting a person from the data bank, as an independent director shall lie with the company making such appointment.
- The appointment of independent director shall be approved by the company in general meeting and the explanatory statement annexed to the notice of the general meeting shall indicate the justification for choosing the appointee for appointment as independent director.
- The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Data Bank

- It contains names, addresses and qualifications of persons who are eligible and willing to act as independent directors.
- Such data bank is maintained by any body, institute or association, as may be notified by the CG, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors.

C.G. notifies the Indian Institute of Corporate Affairs at Manesar (Haryana), as an institute to create and maintain a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, for the use of the company making the appointment of such directors. (Notification will be effective from 01.12.2019)

- The data bank shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

Compliances required by a person eligible and willing to be appointed as an independent director – Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014 (as substituted by Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019) and amended by Companies (Appointment and Qualification of Directors) Amendment Rules, 2020. (effective from 01.12.2019)

Online Application for inclusion of name to Institute - Rule 6(1)

Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (i.e. 01.12.2019), shall within a period of 5 months from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of 1 year or 5 years or for his life-time, and from time to time take steps as specified in Rule 6(2), till he



	<p><i>continues to hold the office of an independent director in any company:</i></p> <p><i>Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.</i></p>
<p>Application for renewal - Rule 6(2)</p>	<p><i>Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of 1 year or 5 years or for his life-time, within a period of 30 days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute</i></p>
	<p>Point to remember</p> <p><i>No application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.</i></p>
<p>Submission of declaration of Compliance - Rule 6(3)</p>	<p><i>Every independent director shall submit a declaration of compliance of Rule 6(1) and Rule 6(2) to the Board, each time he submits the declaration required u/s 149(7) of the Act.</i></p>

Online proficiency self-assessment test - Rule 6(4)

Every individual whose name is so included in the data bank under rule 6(1) shall pass an online proficiency self-assessment test conducted by the institute within a period of 1 year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Exemption from online proficiency self-assessment test

An individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or KMP, for a total period of not less than 10 years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

- (a) listed public company; or*
- (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or*
- (c) body corporate listed on a recognized stock exchange.*

For the purpose of calculation of the period of 10 years referred above, any period during which an individual was acting as a director or as a KMP in 2 or more companies or bodies corporate at the same time shall be counted only once.

**Explanation
to Rule 6**

For the purposes of this rule,-

- (a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified u/s 150(1) of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;**
- (b) an individual who has obtained a score of not less than 60% in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;**
- (c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.**

Points to remember

- **Provisions of Sec. 149(4), 149(5), 149(6), 149(7), 149(8), 149(9), 149(10), 149(11), 149(12)(i), 149(13) & Sec. 150 shall not be applicable over Section 8 Company, which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 to the Registrar.**
- **Detailed provisions as to creation and maintenance of data bank are covered in Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, effective from 01.12.2019. (Refer Annexure 1 at the end of this chapter)**

Important Questions

Q. No. 9: Explaining the regulatory provisions of the Companies Act, 2013 and the rules thereof regarding the appointment of independent directors on a company's Board, state whether BCD company Ltd. is required to appoint Independent directors in the following situations:

- a. The company has a paid-up share capital of Rs. 10 crores.
- b. What shall be your answer in case the company's paid up share capital is only Rs. 2 crores.
- c. Whether a person who hold the position of a key Managerial Personnel can be appointed as an Independent Director?

HINT: Refer Sec. 149(4) read with Rule 4. (i) 2 independent directors are mandatory (ii) Independent Directors not mandatory (iii) KMP cannot be appointed as Independent Director.

Q. No. 10: Mr. Azad, an independent director of X company, was appointed in the AGM for a period of three years. After the expiry of 3 years he was re-appointed for a period of 5 years. Considering that though Mr. Azad has completed two tenures/terms but hasn't completed ten years in total, therefore he may be appointed in the upcoming AGM for another 2 years to complete his total term of 10 years. Conferring in the light of the Companies Act, 2013, state the validity of reappointment of Mr. Azad for further term in the company.

HINT: Refer Sec. 149(10) & 149(11). Reappointment for third term is not valid.

Q. No. 11: M Ltd. is an unlisted company engaged in FMCG sector having 11 directors on its Board. The company has paid-up share capital of Rs. 300 crore and a turnover of Rs. 500 crore. The provisions contained

in the Companies Act, 2013 require the companies to have the following categories of directors on their Board

- (a) Woman director
- (b) Independent director

Keeping in view of the provisions of the Companies Act, 2013, M Ltd. appointed the directors as required by the Act. State the relevant provisions.

HINT: Refer Sec. 149(1) with Rule 3 & 149(4) with Rule 4.

Q. No. 12: XYZ Limited is an unlisted public company having a paid-up capital of ₹20 crore as on 31st March, 2020 and a turnover of ₹150 crore during the year ended 31st March, 2020. The total number of directors is 13. State the following answers:

- (i) Minimum number of directors appointed as Independent Director in XYZ Limited.
- (ii) What will be the consequences where XYZ Ltd. ceases to fulfill any of the required conditions with respect to appointment of Independent directors for three continuous years?
- (iii) If suppose XYZ Ltd. (Unlisted public company) is a dormant company, what shall be the law related to the appointment of Independent director? [MTP-March 18]

HINT: Refer Sec. 149(4) and Rule 4, (i) 2 Directors; (ii) Exemption from requirement of independent director will be available till such time company meet the conditions (iii) In case of dormant company – no requirement of minimum number of independent director.

Q. No. 13: XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2020 and a turnover of one

hundred fifty crore rupees during the year ended 31st March, 2020. The total number of directors is thirteen. State the minimum number of directors appointed as Independent Director in XYZ Limited. What, if XYZ Ltd. is a dormant company. [MTP-April 18]

HINT: Refer Sec. 149(4) and Rule 4, No. of independent directors required – 2, In case of dormant company – no requirement of minimum number of independent director.

Q. No. 14: XYZ Limited is an unlisted public company having a paid-up capital of Rs. 20 Cr. as on 31st March, 2020 and a turnover of Rs. 150 Cr. during the year ended 31st March, 2020. The total number of directors is 13. Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) State the minimum number of independent directors that the company should appoint.
- (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company? [May 16 (4 Marks)]

HINT: Refer Sec. 149(4) and Rule 4 – (i) 2 Directors (ii) 5 Directors.

Q. No. 15: The composition of the Board of Directors of a listed company as on 31-03-2020 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director. Mr. D & Mrs. E vacated their office of Director on 15-04-2020.

You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the Company in this regard?

[May 17 (4 Marks), RTP-May 18]

HINT: Refer Sec. 149(1) and 149(4). One women director shall be appointed by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy whichever is later.

Q. No. 16: CTC Limited is an unlisted public company having a paid-up capital of Rs. 100 crores as on 31st March, 2020. The company made a turnover of Rs. 300 crores for the financial year ended 31st March, 2020. The Articles of Association of the company provides for payment of sitting fee to Directors for each board meeting/committee thereof subject to a maximum of Rs. 40,000 per meeting. The board of directors is comprised of Independent Directors and woman directors also. The company is having 7 directors in its Audit Committee. Shri PKV, working as Financial Advisor of the company, was designated as Chief Financial Officer from 1st April, 2018. He retired from service on 31st March, 2019, He is in receipt of monthly pension of Rs. 80,000 from the company. It is proposed to appoint Shri PKV as Independent Director of the company. The board of director propose to fix sitting fee of Rs. 50,000 per meeting to Independent director and Rs. 30,000 per meeting to Woman Director taking into consideration their experience and qualification. In the light of the provisions of the companies Act, 2013, advise the board of directors in the following matters:

1. Appointment of Mr. PKV as independent director.
2. Fixing sitting fee of Rs. 50,000 to independent director and Rs. 30,000 to Woman Director.
3. Minimum number of independent directors.
4. Maximum sitting fee to a director.

Assuming CTC Ltd. is a Government Company, what will be your advise in the matter of appointment of Mr. PKV as independent director.

[May 18 – New Syllabus (8 Marks)]

HINT: Refer Sec. 149(4), 149(6) and 197(5)* of Companies Act, 2013.

1. Mr. PKV cannot be appointed as independent director of the company.
2. Sitting Fees is allowed subject to condition that it shall not be less than the sitting fees payable to other directors and altering the Articles of Association by Special Resolution.
3. Number of independent directors so as to form a majority should be 4.
4. Maximum sitting fees payable to a director will be Rs. 1,00,000 provided there is no restriction in the Articles of Association.
5. Mr. PKV cannot be appointed as independent director of the company if CTC ltd. is a government company.

****Provisions related to Sec. 197(5) are covered in Chapter 3.***

Q. No. 17: M/s. Bosch and Lawrence Limited, an unlisted company has a paid up equity share capital of ₹11 crores as on 31st March, 2015. Mr. Robert was appointed as an Independent Director at the AGM of the company held on 29-09-2017 for a period of one year. Again, he was appointed in the subsequent AGM held on 28-09-2018 for a period of two years as his second consecutive term. Examine under the provisions of the Companies Act, 2013 whether he can be again appointed in the AGM to be held in September 2020 for another period of 2 years to complete his total term of 5 years? **[RTP-Nov. 18]**

HINT: Refer Sec. 149(10). Mr. Robert cannot be appointed as an Independent Director at the AGM proposed to be held in 2020.

Q. No. 18: Considering the regulatory provisions of the companies Act, 2013 and the rules thereof regarding the appointment directors on a company's Board, state whether Z Limited, a listed public company is required to appoint Independent Directors. Also, state whether appointment of Independent Director is required in the following cases:

- (i) The public company has a paid-up share capital of Rs. 10 crores
 - (ii) What shall be your answer in case the company's paid up share capital is only Rs. 2 crores.
 - (iii) Whether a person who holds the position of a Key managerial personnel in the same company can be appointed as an Independent Director?
 - (iv) In relation to mandatory women directors as required under the Companies Act, 2013 should such directors also be Independent Directors?
- [Nov. 18-Old Syllabus (6 Marks)]**

HINT: Refer proviso to Sec. 149(1), 149(4) and Rule 4. Z ltd., being a listed company is required to have $\frac{1}{3}$ rd of total number of directors as independent directors.

- (i) Company shall have atleast 2 independent directors.
- (ii) No requirement to have independent director as paid up capital is less than ₹10 Cr.
- (iii) KMP cannot be appointed as independent director.
- (iv) It is not mandatory that women directors should be Independent Directors.

Q. No. 19: ABC Limited is an unlisted public company having a paid up equity share capital of ₹20 Crores and a turnover of ₹150 Crores as on 31st March, 2020. The total number of directors on the Board is 13.

Referring to the provisions of the companies Act, 2013 answer the following:

(i) The minimum number of Independent Directors that the company should appoint.

(ii) How many Independent Directors are to be appointed in case ABC Ltd. is a listed company? [Nov. 18-New Syllabus (4 Marks)]

HINT: Refer Sec. 149(4) and Rule 4 – (i) 2 Directors (ii) 5 Directors.

Q. No. 20: Rudraksh Ltd., a public company, was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.

Evaluate in the light of the given facts, nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of the company. [RTP-May 19]

HINT: Proposal for appointment of Independent Director (Mr. Ram & Mr. Rahim) is not necessitated as a dormant company is not required to have independent director.

1.4 - Appointment of Directors elected by Small shareholders (Sec. 151 & Rule 7)

Sec. 151 A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Small shareholders: A shareholder holding shares of nominal value of not more than Rs. 20000 or such other sum as may be prescribed.

Rules for appointment of Small shareholder's director - Rule 7 of The Companies (Appointment and Qualifications of Directors) Rules, 2014

Appointment of Small Shareholder Director

On Application of members

A listed company, may upon *notice* of not less than -

- 1000 small shareholders

or

- 1/10th of the total number of such shareholders,

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

Suo motu appointment

A listed company may opt to have a director representing small shareholders suo motu.

Requirement w.r.t. Notice	<ul style="list-style-type: none"> • Small shareholders intending to propose a person as a candidate for the post of small shareholders shall leave a notice of their intention with the company at least 14 days before the meeting under their signatures 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. • Provided that 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 accompanied with notice	<p>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 -</p> <p>(a) his Director Identification Number;</p> <p>(b) that he is not disqualified to become a director under the Act; and</p> <p>(c) his consent to act as a director of the company.</p>
Status of Small Shareholder Director	<p>Such director shall be considered as an independent director subject to, his being eligible u/s 149(6) and his giving a declaration of his independence in accordance with Sec. 149(7).</p>

Conditions as to appointment	<p>The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-</p> <p>(a) such director shall not be liable to retire by rotation;</p> <p>(b) such director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years; and</p> <p>(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.</p>
Ineligibility	<p>A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of Sec. 164.</p>
Vacation of Office by Small Shareholder Director	<p>A person appointed as small shareholders' director shall vacate the office if -</p> <p>(a) he incurs any of the disqualifications specified in Sec. 164;</p> <p>(b) the office of the director becomes vacant in pursuance of section 167;</p> <p>(c) he ceases to meet the criteria of independence as provided in Sec. 149(6).</p>
Limit on number of companies	<ul style="list-style-type: none"> • No person shall hold the position of small shareholders' director in more than two companies at the same time. • Second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

Further Disqualification

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

Important Questions

Q. No. 21: The Board of directors of M/s ABC Limited, an unlisted company having a paid-up capital of Rs. 6 crores consisting of equity share capital of Rs. 5 crores and preference share capital of Rs. 1 crore and also 1,100 'Small Shareholders' holding equity shares seeks your advice on the following:

"Is it necessary for the Company to appoint a Director to represent the 'Small Shareholders'"? Advise explaining the relevant provisions of the Companies Act, 2013 and the Rules.

HINT: Refer Sec. 151 – Not necessary as it is an unlisted company.

Q. No. 22: M/s. Bharat Pharma Limited is a company listed with Bombay Stock Exchange. The company were having 500 small shareholders in the said company, so they wanted to appoint Mr. A as a Director as their representative on the Board of Directors of the said company. Mr. A is holding 1000 equity shares of 10 each in the said company. State in the light of the Companies Act, 2013 whether the proposal to appoint Mr. A as a Small Shareholders' Director can be adopted by the company. Examine, if Mr. A is already holding a position of small shareholders director in more than two companies.

HINT: Refer Sec. 151 read with Rule 7 – Mr. A can be appointed as director. If Mr. A is already holding a position of small shareholders director in more than two companies, then he cannot be appointed.

Q. No. 23: M/s. Neemuch Pharma Limited is a company listed with Malhargarh Stock Exchange. Some small shareholders of the said company want to appoint Mr. Avadhesh as a Director as their representative on the Board of Directors of the said company. Mr. Avadhesh is holding 1000 equity shares of 10 each in the said company. State the provisions of the Companies Act, 2013 in relation to the proposal to appoint Mr. Avadhesh as a Small Shareholders' Director.

[Nov. 11 (8 Marks)]

HINT: Refer Sec. 151 & Rule 7.

Q. No. 24: DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:

- (a) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.**
- (b) Is it possible to appoint a person who does not hold any share in the company, as small shareholders' director?**
- (c) What is the tenure of small shareholders' director and whether he can be reappointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.**

[May 16 (4 Marks)]

HINT: Refer Sec. 151 & Rule 7 – (b) Yes (c) 3 years, not eligible for reappointment.

Q. No. 25: Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid?

[Nov. 16 (2 Marks)]

HINT: Refer Rule 7. He can accept appointment in either A Ltd. or B Ltd., provided that company is not having a business which is competing or is in conflict with the business of the XYZ Ltd.

Q. No. 26: ABC Ltd. is a listed company having 50,00,000 equity shares of Rs. 100 each as its paid up capital. Of the total shareholders of the company there are 20000 shareholders who are holding shares of nominal value of not more than Rs. 20000 each. A group of shareholders who had applied for these shares at the time of issue of such shares by the company by issuing prospectus and been allotted these shares, wants to appoint a small shareholder's director to safeguard their interest and to get a proper representation in the company. A total number of 1500 such small shareholders decided to propose Mr. X as their candidate for this post.

In the light of the Companies Act, 2013 on the basis of the facts provided, determine the following situations—

- (1) What procedure should be followed by group of shareholders to have Mr. X, a small shareholder director in the Board of Directors of the company?**
- (2) What are the provisions related to his (Mr. X) status as an independent director and what exceptions are available to him in relation to his appointment as a director? [MTP-Aug. 18]**

HINT: Refer Sec. 151 and Rule 7.

Q. No. 27: The Board of Director of M/s. Diya Steels and Aluminum Limited, a listed company having a paid up equity share capital of ₹15 crores and preference share capital of ₹1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:

- (i) Is it mandatory for the company to appoint a Director to represent Small Shareholders?**
- (ii) If the company decides to appoint such a Director, the procedure to be followed by the company for such appointment and the tenure for which such appointment can be made.**
- (iii) Whether such a Director be considered as an Independent Director?**
- (iv) When does a person appointed as a small shareholders Director vacate his office?**

Advise suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder.

[Nov. 18 – New Syllabus (8 Marks)]

HINT: Refer Sec. 151 & Rule 7

- (i) Use of the term ‘may’ make it clear that there is no mandatory requirement for a listed company to have a director elected by such small shareholders on its Board.**
- (ii) Tenure of small shareholders’ director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.**

- (iii) Small Shareholder Director shall be considered as an independent director subject to, his being eligible u/s 149(6) and his giving a declaration of his independence in accordance with Sec. 149(7).
- (iv) A person appointed as small shareholders' director shall vacate the office if -
- he incurs any of the disqualifications specified in Sec. 164;
 - the office of the director becomes vacant in pursuance of section 167;
 - he ceases to meet the criteria of independence as provided in Sec. 149(6).

Q. No. 28: B Ltd. is a listed Company and it has been served with a notice for appointment of a small shareholders' director. Referring to the provisions of the Companies Act, 2013, examine the following:

- (i) The tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure?
- (ii) Whether he can be appointed as an officer of the Company on expiry of his tenure as small shareholders' director.

[May 19 – Old Syllabus (4 Marks)]

HINT: (i) 3 years, cannot be reappointed (ii) cannot be appointed for 3 years.

1.5 - Appointment of Directors (Sec. 152)

First Directors - Sec. 152(1)	<ul style="list-style-type: none"> Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In case of an OPC, an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
Appointment in General Meeting - Sec. 152(2)	<p>Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.</p> <p style="text-align: center;"><i>Points to remember</i></p> <ul style="list-style-type: none"> <i>First Directors – Individual Subscribers to the MOA be treated as First Directors, if Articles does not provide any provision.</i> <i>Additional, Alternate and Nominee Directors are not appointed through general meetings as provided u/s 161.</i>
Submission of DIN	<p>Sec. 152(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number u/s 154 or any other number as may be prescribed u/s 153</p>
	<p>Sec. 152(4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish</p> <ul style="list-style-type: none"> his DIN or such other number as may be prescribed u/s 153 and a declaration that he is not disqualified to become a director under this Act.

**Consent to
act as
director
-Sec. 152(5)**

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.

Consent to act as Directors - Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014

- Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form **DIR-2**.
- The company shall, within 30 days of the appointment of a director, file such consent with the Registrar in Form **DIR-12** along with the prescribed fee.

Points to remember

- **Proviso to Sec. 152(5) - In 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 fulfils the conditions specified in this Act for such an appointment. (not applicable to Sec. 8 company which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92).**
- **Sec. 152(5) shall not apply to Government companies where appointment is done by C.G. or S.G and company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.**

Retirement by Rotation – Sec. 152(6)	(a) No. of Rotational Director & their appointment	<p>Unless the articles provide for the retirement of all directors at every AGM, not less than $\frac{2}{3}$rd of the total number of directors of a public company shall—</p> <p>(i) be persons whose period of office is liable to determination by retirement of directors by rotation;</p> <p>and</p> <p>(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.</p>
	(b) Appointment of Non-Rotational Directors	<p>The remaining directors in the case of any such company (i.e. public company) shall, in default of (i.e. articles are silent), and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.</p>
	(c) No. of Directors liable to be retired by rotation	<p>At the first AGM of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent AGM,</p> <ul style="list-style-type: none"> • $\frac{1}{3}$rd of such of the directors for the time being as are liable to retire by rotation, <p>or</p> <ul style="list-style-type: none"> • if their number is neither 3 nor a multiple of 3, then, the number nearest to $\frac{1}{3}$rd, shall retire from office.

		<p>Examples</p> <ul style="list-style-type: none"> • Company is having 6 directors. $\frac{2}{3}$rd Directors liable to retire by rotation, i.e. 4. No. of directors to retire at AGM will be $\frac{1}{3}$rd of 4 (1.33) or nearest, i.e. 1. • Company is having 7 directors. $\frac{2}{3}$rd Directors liable to retire by rotation, i.e. 4.67 or 5. No. of directors to retire at AGM will be $\frac{1}{3}$rd of 5 (1.67) or nearest, i.e. 2. • Company is having 8 directors. $\frac{2}{3}$rd Directors liable to retire by rotation, i.e. 5.33 or 6. No. of directors to retire at AGM will be $\frac{1}{3}$rd of 6, i.e. 2.
	(d) Directors liable to be retired by rotation	<ul style="list-style-type: none"> • The directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, • but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
	(e) Appointment in place of retiring auditor	<p>At the AGM at which a director retires as aforesaid, the company may fill up the vacancy by</p> <ul style="list-style-type: none"> • appointing the retiring director or • some other person thereto.

	<p style="text-align: center;"><i>Points to remember</i></p> <ul style="list-style-type: none"> • For the purposes of Sec. 152(6), “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force. • For the purposes of Sec. 152 and 160, the expression “retiring director” means a director retiring by rotation. • An additional director or an alternate director or a nominee director or a director appointed to fill a casual vacancy are not considered as retiring directors. 	
Vacancy in case of retiring Director – Sec. 152(7)	(a) Adjournment of Meeting	<ul style="list-style-type: none"> • If the vacancy of the retiring director is not so filled-up <p style="text-align: center;">and</p> <ul style="list-style-type: none"> • the meeting has not expressly resolved not to fill the vacancy, <p>the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.</p>
	(b) Automatic (Deemed) Re-appointment of Retiring auditor	<ul style="list-style-type: none"> • If at the adjourned meeting also, the vacancy of the retiring director is not filled up <p style="text-align: center;">and</p> <ul style="list-style-type: none"> • that meeting also has not expressly resolved not to fill the vacancy, <p>the retiring director shall be deemed to have been re-appointed at the adjourned meeting.</p>

Exception to Automatic (Deemed) Re-appointment

Retiring director shall not be deemed to have been re-appointed at the adjourned meeting if,

- (i) at that meeting (i.e. adjourned meeting) or at the previous meeting (i.e. original meeting) a resolution for the re-appointment of such director has been put to the meeting and lost;
- (ii) the retiring director has, by a notice in writing addressed to the company or its BOD, expressed his unwillingness to be so re-appointed;
- (iii) he is not qualified or is disqualified for appointment;
- (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- (v) section 162 is applicable to the case.

Points to remember

Sec. 152(6) and 152(7) shall not apply to (a) a Government company (non-listed) in which not less than 51% of paid up capital is held by the C.G., or by any S.G. or S.G.s or by the C.G. and one or more S.G.s. (b) a subsidiary of a Government company referred in (a). This exemption will be applicable provided the company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

Important Questions

Q. No. 29: The articles of association of M/s XY Ltd. provide for five directors and all the five directors are in positions. How many directors are liable to retire at the ensuing annual general meeting.

HINT: Refer Sec. 152(6). One director who has been longest in the office shall retire and eligible for reappointment.

Q. No. 30: ABC company Limited in its first general meeting appointed 6 directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference if ABC company does not carry on business for profit?

HINT: Refer Sec. 152(6). One director who has been longest in the office shall retire and eligible for reappointment. No special provisions for a company that does not carry on business for profit.

Q. No. 31: The promoters of a public company propose to have the strength of the board of directors as 11. They also propose to make the managing director and whole-time directors as directors not liable to retire by rotation. They seek your advice on the following matters

(a) Maximum number of persons who can be appointed as directors not liable to retire by rotation.

(b) How many of the remaining directors will have to retire by rotation every year at the annual general meeting.

HINT: Refer Sec. 152(6). (a) Maximum 3 directors can be non-rotational. (b) 1/3rd of rotational directors will have to retire by rotation at the AGM, but eligible for re-appointment.

Q. No. 32: Is it possible for a retiring director to continue in his office beyond the date of the AGM which had to be adjourned due to disturbance at the meeting. Explain.

HINT: Refer Sec. 152(7). Retiring director continue and he shall be deemed to have been re-appointed at the adjourned meeting if the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, subject to conditions.

Q. No. 33: A company has 11 directors on the Board consisting of the following:

- (a) Mr. Active, Mr. Archive as nominees from two Public Financial Institutions.**
- (b) Mr. First, Mr. Second, Mr. Third appointed at the 2nd AGM.**
- (c) Mr. Fourth, Mr. Fifth appointed at the 3rd AGM.**
- (d) Mr. Addition was appointed as additional director subsequent to 3rd AGM.**
- (e) Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the 3rd AGM.**
- (f) Mr. Excellent was appointed as Managing Director for 5 years w.e.f. 2nd AGM.**
- (g) Mr. One more was appointed as additional Director soon after Mr. Addition was appointed as Additional Director.**

List out in order, who shall be vacating the office at the 4th AGM of the company.

HINT: Refer Sec. 152(6) – Mr. Addition, Mr. One More and any two out of Mr. First, Mr. Second and Mr. Third (either by mutual consent or by draw a lot).

Q. No. 34: The Articles of Association of XBL Limited provided of maximum number of Directors 12. Presently, the company is having 10 directors. Since XBL Limited was expanding its business, so it's Board of directors was desiring to increase the number of directors to 16.

During the time, out of the 10 directors in its board, two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors was not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Due to some reasons, the AGM was adjourned to a later date. At this adjourned meeting also, the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Referring to the provisions of the Companies Act, 2013, decide:

- (i) Whether the Board of Directors can increase the number of directors to 16 though specified maximum to 12, in the Article of Association.**
- (ii) What will be the consequences if at the adjourned meeting also, the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.**
- (iii) What if, at the adjourned meeting, a Retiring director has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected.**

[MTP-April 18]

HINT:

- (i) Refer Sec. 149(1), Number can be increased to 15, For above 15, special resolution will be required.
- (ii) Refer Sec. 152(7), Retiring director deemed to be re-appointed at adjourned meeting.
- (iii) Refer Sec. 152(7), Retiring director shall not be deemed to have been re-appointed at adjourned meeting.

Q. No. 35: AGM of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.

Decide in this connection:

- (i) Which of the directors shall be retiring by rotation and be eligible for re-election?
- (ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation?
- (iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?
- (iv) What will be your answer, assuming that the matter could not be decided even at the adjourned meeting? [May 11 (8 Marks)]

HINT: Refer Sec. 152(6) & 152(7).

Q. No. 36: A and B were appointed as first directors on 4th April, 2018 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July 2018 and F, G and H were also appointed as directors on 7th Aug. 2018 in the company. In the AGM of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as directors.

At the AGM, resolution for A's retirement and re-appointment was passed. However, before the resolution for 'B' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.

In the light of above and with reference to relevant provision of the Companies Act, 2013, answer the following:

- (i) Whether proposals for retirement by rotation and re-appointment of A and B only were sufficient?
- (ii) What will be the status of B as a director in the company?

[Nov. 15 (8 Marks)]

HINT: Refer Sec. 152(6) and 152(7) - (i) Yes (ii) Deemed to be reappointed.

Q. No. 37: Two (2) out of Ten (10) directors on the board of XYZ Limited have retired by rotation at an AGM. These two (2) vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve 'not to fill the vacancy'.

Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?
- (ii) What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?
- (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?

[May 19-New Syllabus (8 Marks)]

HINT: Refer Sec. 152(6) & 152(7) - (i) Yes (ii) Retiring director need to vacate the office (iii) Directors liable to retire by rotation cannot continue beyond the last day the AGM ought to have been held.

Q. No. 38: Eternal Ltd., a wholly owned government company consisting of 10 directors in its Board with the subsidiary company, Evergreen Ltd., having 9 directors in its board. Referring to the provisions of the Companies Act, 2013, examine the following situations:

- (i) Number of directors liable to retire by rotation in Eternal Ltd. at an AGM.
- (ii) Number of directors liable to retire in Evergreen Ltd.
- (iii) What will be the legal situation in case Eternal Ltd. is a listed Government Company?

[MTP-Oct. 19]

HINT: Refer Sec. 152(6). (i) No requirement of retirement by rotation, being a case of government company (non-listed). (ii) No requirement of retirement by rotation, being also a case of government company (non-listed). (iii) 2 directors must retire every year as exemption not available to a listed Govt. company.

1.6 - Directors Identification Number (DIN) [Sec. 153 – 159, Rules 9 – 12B]

**Meaning of
DIN – Rule
2(1)(d)**

DIN means an identification number allotted by the C.G. 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.

Points to remember

DIN includes the Designated Partnership Identification Number (DPIN) issued u/s 7 of the LLP Act, 2008 and rules made thereunder.

**Application
for allotment
of DIN
– Sec. 153**

Every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the C.G. in such form and manner and along with such fees as may be prescribed.

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.

Application for allotment of DIN before appointment in an existing company – Rule 9 of The Companies (Appointment and Qualification of Directors) Rules, 2014

(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the C.G. for allotment of a Director Identification Number (DIN) along with prescribed fees.

Provided that in case of proposed directors not having approved DIN, the particulars of maximum 3 directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum 3 proposed directors through Form INC-32 (SPICe).

(2) The C.G. shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the MCA.

(3) The applicant shall download Form **DIR-3** from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-

- (i) photograph;
- (ii) proof of identity;
- (iii) proof of residence;
- (iv) board resolution proposing his appointment as director in an existing company; and
- (v) specimen signature duly verified.

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

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

**Allotment of
DIN – Sec. 154**

The C.G. shall, within one month from the receipt of the application u/s 153, allot a DIN to an applicant in such manner as may be prescribed.

Allotment of DIN – Rule 10 of The Companies (Appointment and Qualification of Directors) Rules, 2014

- (1) On the submission of the Form **DIR-3** on the portal and payment of the requisite amount of fees through online mode, an application number shall be generated by the system automatically.
- (2) After generation of the application number, the C.G. shall process the applications received for allotment of DIN, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.
- (3) If the C.G., on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of 15 days of such placing on the website and email.
- (4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All DINs allotted to individual(s) by the C.G. before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) 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.

Implication of "Put under resubmission"

If the DIN application is put under Resubmission due to any reason like:

- Proof of Identity/ residence is not enclosed or expired.
- Proof of Date of Birth is not enclosed.
- Supporting documents are not properly attested.
- Non-submission of affidavit (if required).

applicant can submit additional documents for rectifying the DIN application, within a period of 15 days from the date on which it is marked as Resubmission

On resubmitting with the additional documents, same DIN will be approved, if documents are found in correct order as per marked in resubmission.

Prohibition to obtain more than one

DIN – Sec. 155

No individual, who has already been allotted a DIN u/s 154, shall apply for, obtain or possess another DIN.

Director to Intimate DIN – Sec. 156

Every existing director shall, within one month of the receipt of DIN from the C.G., intimate his DIN to the company or all companies wherein he is a director.

**Company to
Inform DIN to
Registrar
– Sec. 157(1)**

Every company shall, within 15 days of the receipt of intimation u/s 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed and every such intimation shall be furnished in such form and manner as may be prescribed.

**Penalty for
failure to
inform
– Sec. 157(2)**

If any company fails to furnish the DIN,

- such company shall be liable to a penalty of ₹25,000 and in case of continuing failure, with further penalty of ₹100 for each day after the first during which such failure continues, subject to a maximum of ₹1 lakh,
- and
- every officer of the company who is in default shall be liable to a penalty of not less than ₹25,000 and in case of continuing failure, with further penalty of ₹100 for each day after the first during which such failure continues, subject to a maximum of ₹1 lakh.

Rule 10A of the Companies (Appointment and Qualification of Directors) Rules, 2014

**Intimation of
DIN by
Director to
Companies**

Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of DIN from the C.G., intimate his DIN to the company or all companies wherein he is a director as per Form DIR-3B.

	Intimation of DIN by Company to Registrar	The intimation by the company of DIN of its director's u/s 157 of the Act shall be furnished in Form DIR-3C within 15 days of receipt of intimation u/s 156.
Obligation to indicate DIN – Sec. 158	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.	
Punishment for Contravention – Sec. 159	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 ₹50,000 and where the default is a continuing one, with a further penalty which may extend to ₹500 for each day after the first during which such default continues.	
Cancellation or surrender or Deactivation of DIN – Rule 11	<ul style="list-style-type: none"> The C.G. or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case - <ul style="list-style-type: none"> (a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number; 	

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

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

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent:

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

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

- The C.G. or Regional Director (Northern Region), or any officer authorized by the C.G. or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC or the web service DIR-3-KYC-WEB as the case may be, within stipulated time in accordance with Rule 12A.
- The de-activated DIN shall be re-activated only after e-form DIR-3-KYC or the web service DIR-3-KYC-WEB as the case may be, is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

Intimation of changes in particulars specified in DIN application - Rule 12

(1) Every individual who has been allotted a DIN shall, in the event of any change in his particulars as stated in Form **DIR-3**, intimate such change(s) to the C.G. within a period of 30 days of such change(s) in Form **DIR-6** in the following manner, namely; -

- (a) the applicant shall download Form **DIR-6** from the portal and fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submitted electronically;
 - (b) the form shall be digitally signed by a CA in practice or a CS in practice or a cost accountant in practice;
 - (c) the applicant shall submit the Form **DIR-6**;
- (2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
- (3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form **DIR-6** to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- (4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

Directors KYC - Rule 12A	<ul style="list-style-type: none"> • Every individual who holds a DIN as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC for the said financial year to the C.G. on or before 30th Sep. of immediate next financial year. • Every individual who has already been allotted a DIN as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th Oct. 2018. • 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. • In case an individual desire to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only. <p style="text-align: center;"><i>Points to remember</i></p> <p>For the financial year ending on 31st March 2019, the individual shall submit e-form DIR-3 KYC or web form DIR-3 KYC-WEB, as the case may be, on or before the 14th Oct., 2019.</p>
Directors of company required to file e-form ACTIVE - Rule 12B	<ul style="list-style-type: none"> • Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the DIN allotted to its existing directors, shall be marked as “Director of ACTIVE non-compliant company.” • Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all

necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

- After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as “Director of ACTIVE compliant company”.

Points to remember

- As per Rule 25A of the Companies (Incorporation) Rules, 2014, every company incorporated on or before the 31st Dec., 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 15.06.2019.
- In case a company does not intimate the said particulars, the Company shall be marked as “ACTIVE-non-compliant” on or after 16th June, 2019.

Important Questions

Q. No. 39: What do you understand by the term “Director Identification Number” (DIN)? Describe the procedure to obtain the same as enumerated under the Companies Act, 2013 read with the relevant Rules.

Q. No. 40: What is Director Identification Number (DIN)? Mr. Mohan, a newly appointed director of RST Limited applied for DIN. Advise him about the list of scanned documents required to be attached with DIN-1.

[Nov. 13 (5 Marks)]

Q. No. 41: Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director.

[May 15 (4 Marks)]

Or

Surya, a director in New Age Limited holding Directors Identification Number (DIN) wants to make certain changes in the particulars of his DIN. What procedure would you follow to get changes incorporated in the DIN already allotted to Surya?

[May 17 (4 Marks)]

HINT: Refer Rule 12.

Q. No. 42: Mr. Vinay Kumar, applied for the first time for allotment of a Directors identification Number (DIN) on 1st May, 2019 as he is planning to incorporate a private limited company in Form No. DIN-3 under the Companies Act, 2013. The status of his DIN applications presently is showing as "Put Under Resubmission". He seeks your guidance as to whether his application has been rejected and is he required to obtain a fresh DIN. Advise.

[Nov. 17 (2 Marks)]

HINT: Refer Sec. 154 & Rule 12. (Topic – Implication of put under resubmission).

Q. No. 43: Mr. Thangavel is a Director in 7 Companies with a DIN (Director Identification Number) allotted to him. Again, another DIN was inadvertently allotted to him which was never used for filing any document with any Authority. He desires to surrender the second

DIN and keep all his directorship with the first DIN. Advise him the procedure to be followed under the provisions of the Companies Act, 2013 and the Rules made thereunder for surrendering the second DIN inadvertently obtained by him.

[Nov. 19 – New Syllabus (4 Marks)]

HINT: Refer Sec. 155 and Rule 11.

1.7 – Rights of persons other than retiring directors to stand for directorship **[Sec. 160]**

**Requirement
of Notice and
Security
Deposit –
Sec. 160(1)**

- A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director.
- For this purpose, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office has to be left at the registered office of the company, not less than 14 days before the meeting.
- Along with the notice, a deposit of Rs. 1 Lac or such higher amount as may be prescribed shall also be made.
- Security deposit shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

	<ul style="list-style-type: none"> Requirements of deposit of amount shall not apply in case of appointment of <ul style="list-style-type: none"> (a) an independent director or (b) a director recommended by the Nomination and Remuneration Committee, if any, or (c) a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.
Intimation to members by the company – Sec. 160(2)	<p>The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.</p> <p>Notice of candidature of a person for directorship – Rule 13 of The Companies (Appointment and Qualification of Directors) Rules, 2014</p> <p>The company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-</p> <ul style="list-style-type: none"> by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and by placing notice of such candidature or intention on the website of the company, if any.

It shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than 7 days before the meeting 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 circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Points to Remember

(i) Sec. 160 shall not apply to

- *a Government company in which the entire paid up capital is held by the C.G., or by any S.G. or S.G.s or by the C.G. and one or more S.G.s.*
- *a subsidiary of a Government company (referred above), in which the entire paid up capital is held by the that Government Company.*
- *Sec. 8 companies whose articles provide for election of directors by ballot.*
- *Private companies.*

Exemption is subject to the condition that company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

(ii) In case of Nidhi company, amount of security deposit will be Rs. 10,000 instead of Rs. 1,00,000.

(iii) In case of Sec. 8 companies, deposit made by or on behalf of the person failing to secure more than 25% of the valid votes, may be forfeited or refunded as decided by their BOD.

Important Questions

Q. No. 44: The management of ATP Ltd., a company listed with the Stock Exchange, Mumbai wants to appoint Mr. A as a director of the company at the AGM of the company to be held on 24th May 2020. It may be noted that Mr. A is not retiring director. The Management seeks your guidance regarding the procedure to be adopted for the purpose. You are required to state the procedure to be followed for giving effect to such proposal and formalities to be observed after appointment of Mr. A as director, by the management of ATP Limited as per the provisions of the Companies Act, 2013.

Or

Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the AGM. As a secretary of a public company, how will you deal with the above situation.

HINT: Refer Sec. 160 and Rule 13.

1.8 - Appointment of Additional Director, Alternate Director & Nominee Director [Sec. 161]

Additional Director - Sec. 161(1)	Authority to appoint	The articles of a company may confer on its BOD the power to appoint any person as additional director at any time.
	Disqualified person	A person who fails to get appointed as a director in a general meeting cannot be appointed as an additional director.

	Tenure	Additional Director shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.
Alternate Director – Sec. 161(2)	Authority to appoint	The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, to act as an alternate director for a director during his absence for a period of not less than 3 months from India.
	Disqualified person	A person holding any alternate directorship for any other director in the company or holding directorship in the same company.
	Alternate Director for an independent director	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.
	Tenure	<ul style="list-style-type: none"> An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

		<ul style="list-style-type: none"> 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.
Nominee Director - Sec. 161(3)	<p>Subject to the articles of a company, the Board may appoint any person as a director nominated</p> <ul style="list-style-type: none"> by any institution in pursuance of the provisions of any law for the time being in force or of any agreement <p>or</p> <ul style="list-style-type: none"> by the C.G. or the S.G. by virtue of its shareholding in a Government company. 	
Filling of Casual Vacancy - Sec. 161(4)	<p>Authority to fill casual vacancy</p> <p>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.</p>	
	<p>Tenure of person appointed to fill casual vacancy</p> <p>Any person so appointed to fill casual vacancy 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.</p>	

Important Questions

Q. No. 45: Mr Suresh, an additional director appointed by the board of directors of public company is proposed to be appointed as a regular director in the AGM. Explain the requirements under the Companies Act 2013 to give effect to the proposed appointment.

HINT: Refer Sec. 160 & 161.

Q. No. 46: The Articles of Association of a company have fixed the maximum strength of the board as 12 directors. At present the Board has 9 directors of whom 6 are liable to retire by rotation and 3 not liable to retire by rotation. The Board wishes to appoint 3 additional directors. Can they appoint as desired as per provisions of the Companies Act, 2013?

HINT: Refer Sec. 161(1) – BOD can appoint provided AOA authorizes BOD.

Q. No. 47: Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:

- (i) Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?
- (ii) Can the power of appointing additional director be exercised by the Annual General Meeting?
- (iii) As the Company Secretary of the company what checks would you make after M is appointed as an additional director?

HINT: Refer Sec. 161(1) – (i) M cannot continue (ii) No.

Q. No. 48: The Board of directors of XYZ Limited appointed Mr. A as a Director in the casual vacancy caused by resignation of Mr. X. Mr. A is proposed to be re-appointed as a Director at the AGM, when he vacates his office. Examine with reference to the relevant provisions of the Companies Act, 2013 whether Mr. A can be considered as a 'Retiring Director' and state the legal requirements to be fulfilled to give effect to the proposed appointment of Mr. A as a Director at the Annual General Meeting.

HINT: Refer Sec. 161(4) – Mr. A cannot be considered as 'Retiring Auditor'. Requirements of Sec. 160 are required to be complied with for appointment in AGM.

Q. No. 49: Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st Jan., 2020, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next AGM of the company was due on 30th Sep., 2020, but the same was not held due to delay in the finalization of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 30th Sep., 2020. Advise the company on the complaints made by the shareholders.

HINT: Refer Sec. 161(4) & 161(1) – Casual Vacancy cannot be filled by circular resolution. Additional director may be appointed by circular resolution but can hold office upto date of AGM or the date AGM ought to be held, whichever is earlier.

Q. No. 50: Authorised by Articles, the Board of Directors of Paras Medicines Limited made the following appointments:

- (i) Mr. Anderson, who could not be appointed as director in the general meeting, appointed as Additional Director.**
- (ii) In pursuance of an agreement with a financial institution, Mr. Black is appointed as a Nominee Director.**
- (iii) Mr. Mohan appointed as alternate Director for a period of three months. Mr. Mohan is already holding alternate directorship for some other director in this company.**

Decide the validity of the above appointments under the provisions of the Companies Act, 2013. Also point out whether the acts done by the said directors are valid under the Companies Act, 2013?

HINT: Refer Sec. 161 & 176. (i) Invalid appointment (ii) Valid appointment (iii) Invalid appointment. Acts done by the said directors till it is noticed that their appointment was not in order, remains valid.

Q. No. 51: Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

- (i) The Board of Directors of AJD Limited appointed Mr. N as an alternate director for a period of two months against a director who has proceeded abroad on leave for a period of six months. Articles of Association of the company are silent.**
- (ii) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.**

(iii) On the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination.

[Nov. 14 (8 Marks)]

HINT: Refer Sec. 161(2) & 161(3) – (i) Not Valid (ii) Not Valid (iii) Not Valid.

Q. No. 52: Queens Limited is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K. as the additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K. as a director on the Company's Board was rejected by the members at the company's AGM.

Examine the provisions of the Companies Act, 2013, answer the following:

- (i) Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K. as the additional director when the proposal to appoint comes before the meeting for the first time?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K. who was appointed by the Board as additional director, for the first time, can continue to act as a director?

[Nov. 15 (8 Marks)]

HINT: Refer Sec. 161(1) – (i) Not Valid (ii) No (iii) No.

Q. No. 53: Mr. Abhi was appointed as an additional director of Pioneer Limited on 14th March, 2020. The AGM of the company was scheduled to be held on 29th Sep, 2020 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the company approached the ROC for extension of time for holding the AGM till 30th Dec, 2020. In the light of the Companies Act, 2013 advise Mr. Abhi, who was appointed as additional, director during the year.

[May 17 (4 Marks)]

HINT: Refer Sec. 161(1). Mr. Abhi may continue till 30th Dec, 2020.

Q. No. 54: Mr. Narayan, a Director of KPR Limited who is proceeding on a long foreign tour, appointed Mr. Shankar as an alternate director to act for him during his absence. The Articles of the company provide for appointment of alternate directors. Mr. Narayan claims that he has a right to appoint an alternate director.

[May 17 (2 Marks)]

HINT: Refer Sec. 161(1). Appointment is not valid as authority to appoint alternate director vested in BOD.

Q. No. 55: The Board of Directors of Sakthi Limited decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.

[May 17 (2 Marks), RTP-May 18]

HINT: Refer Sec. 161(3). Board Cannot appoint.

Q. No. 56: Mr. Single, a director of XYZ Ltd. goes Singapore, for a period of 6 months. Board appoints Mr. Replacement, in his place as an alternate director. Mr. Replacement was also holding directorship in XYZ Ltd. Identify the nature of appointment of Mr. Replacement in XYZ Ltd as an alternate director. [MTP-Aug.18]

HINT: Refer Sec. 161(2). Appointment of Mr. Replacement as an alternate director is invalid as he is already a director in same company.

Q. No. 57: On the ground of the conviction for an offence dealing with related party transaction, Mr. Gap was disqualified to hold the directorship in XYZ Ltd. His vacancy was filled up by Mr. Samarth by the Board as a director on 3rd April, 2019 which was subsequently approved by the members in the immediate next general meeting. Unfortunately, Mr. Samarth expired on 15th May, 2019 after working about 40 days as a director. The Board now wishes to fill up the said vacancy by appointing Mr. Able in the forthcoming meeting of the Board. Advise the Board on the validity of the following appointments as per the provisions under the Companies Act, 2013.

(i) Holding of Mr. Samarth in place of Mr. Gap

(ii) Appointment of Mr. Able in place of Mr. Samarth.

[MTP-April 19]

HINT: Refer Sec. 161(4) & 161(1). (i) Valid appointment (ii) Invalid appointment.

Q. No. 58: The Board of Directors of Tours Ltd., in terms of the Articles of the Company, filled up the casual vacancy caused by the resignation of Mr. Philip (who was appointed in a duly held general meeting) by appointing Mr. Max as a director on 1st May, 2020. Unfortunately, Mr.

Max expired on 10th May after working for a period of about 10 days as a director. The Board now intends to fill up the casual vacancy by appointing Mrs. Nini (Wife of late Mr. Max) in the forthcoming meeting of the Board. Referring to and analysing the provisions of the Companies Act, 2013, Advise the Board whether it can do so.

[May 19-Old Syllabus (4 Marks)]

HINT: Refer Sec. 161(4) & 161(1) – Vacancy created on death of Mr. Max cannot be filled by BOD u/s 161(4). Mrs. Nini can be appointed as additional director u/s 161(1).

Q. No. 59: M/s. Bright Motors (P) Limited at the AGM held on 30.09.2017 appointed Mr. Anmol as a Non-Executive Director on the board of the company for a period of 3 years. On 2nd October, 2018 Mr. Anmol suffered a severe heart failure and expired. The board of directors of the company on 16th October, 2018 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the board. Subsequently at the AGM held on 29-09-2019 Mr. Prateek's appointment was not proposed or approved as the board was of the view that it is not required. But the CFO of the company is of the opinion that the board of directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide. [May 19-New Syllabus (4 Marks)]

HINT: Refer Sec. 161(4). BOD have contravened the provisions of the Sec. 161(4) of Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure.

Q. No. 60: You are the CFO and in-charge of legal compliances of a large multi-national company in India. The Board of Directors of the Company are broad based and comprise of competent directors who are Indian as well as Foreign Nationals. Mr. 'X', who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

- (a) 'To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting?
- (b) If the original director joins the Board Meeting through video conferencing without returning to India, then, can the alternate director appointed in his place attend the same board meeting? If yes, whose presence and vote will be counted?
- (c) In case of a private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director provided the original director does not return to India for a longer period say 3-4 years?
- (d) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

[Nov. 19 – New Syllabus (8 Marks)]

HINT: Refer Sec. 161(2). (a) One, One (b) Yes (c) Same as that of director in whose place alternate director is appointed, provided no disqualification arises. (d) No.

1.9 - Appointment of Directors to be voted individually (Sec. 162)

Conditions for appointment by a Single Resolution Sec. 162(1)	<p>At a general meeting of a company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.</p>
Consequences of non-compliance Sec. 162(2)	<ul style="list-style-type: none"> • A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved. • A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Points to Remember***Sec. 162 shall not apply to***

- *a Government company in which the entire paid up capital is held by the C.G., or by any S.G. or S.G.s or by the C.G. and one or more S.G.s.*
- *a subsidiary of a Government company (referred above), in which the entire paid up capital is held by the that Government Company.*
- *A private company.*

Exemption is subject to the condition that company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

Important Questions

Q. No. 61: In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th Sep, 2020 under the category of 'Ordinary Business'. All the three persons as proposed by the Board of directors were elected as directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 2013 and decide: Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.

HINT: Refer Sec. 162. Contention of the members shall be tenable and each director is to be appointed by separate resolution.

Q. No. 62: XYZ Company Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 2013. Will it make any difference, if XYZ Company was a private company?

HINT: Refer Sec. 162(2). Appointment is invalid. In case of private company Sec. 162 shall not apply.

Q. No. 63: Mr. Bond and Mr. James were appointed as Directors of Jamesbond Ltd. at the AGM held on 30th Sep., 2020 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above Directors by a single resolution?

[May 18 – New Syllabus (4 Marks)]

HINT: Refer Sec. 162. More than one directors may be appointed by single resolution provided the requirement as stated in Sec. 162 is complied with.

1.10 - Option to adopt Principle of Proportional Representation for appointment of directors (Sec. 163)

Appointment by Proportional Representation	Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than $\frac{2}{3}$ rd of the total number of the directors of a company in accordance with the principle of proportional representation.
Manner of Appointment	<ul style="list-style-type: none"> • Such appointments may be made once in every 3 years. • Appointment may be made by <ul style="list-style-type: none"> (a) voting according to the single transferable vote, i.e. 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.
Filling of Casual Vacancy	Casual vacancies of such directors shall be filled as provided in Section 161(4).

Points to Remember

Sec. 163 shall not apply to

- *a Government company in which the entire paid up capital is held by the C.G., or by any S.G. or S.G.s or by the C.G. and one or more S.G.s.*
- *a subsidiary of a Government company (referred above), in which the entire paid up capital is held by the that Government Company.*

Exemption is subject to the condition that the company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

1.11 - Disqualifications for Appointment of Director [Sec. 164]**Individual
Disqualification
– Sec. 164(1)**

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

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 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, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions u/s 188 at any time during the last preceding five years;

(h) he has not complied with Sec. 152(3); or

(i) he has not complied with the provisions of sub-section (1) of section 165.

Points to Remember

- *Proviso to Sec. 164(3) provides that disqualifications referred to in clauses (d), (e) and (g) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.*
- *Rule 2(1)(k) - For the purposes of Sec. 164(1)(d) and 167(1)(f), "or otherwise" means any offence in respect of which he has been convicted by a Court under the Act or under the Companies Act, 1956.*

Disqualifications for non-filing of statements etc. - Sec. 164(2)

- No person who is or has been a director of a company which—
 - (a) has not filed financial statements or annual returns for any continuous period of **3 financial years**; or
 - (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for **one year or more**,
 shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of **five years** from the date on which the said company fails to do so.
- *Proviso to Sec. 164(2) is inserted by Companies (Amendment) Act, 2017 w.e.f. 07.05.2018, which states as under:*

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

Disqualifications of Directors u/s 164(2) - Rule 14 of The Companies (Appointment and Qualification of Directors) Rules, 2014

- (1) Every director shall inform to the company concerned about his disqualification u/s 164(2), if any, in Form **DIR-8** before he is appointed or re-appointed.
- (2) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in Sec. 164(2), the company shall immediately file Form **DIR-9**, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.
- (3) When a company fails to file the Form **DIR-9** within a period of thirty days of the failure that would attract the disqualification u/s 164(2), officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.
- (4) Upon receipt of the Form **DIR-9**, the Registrar shall immediately register the document and place it in the document file for public inspection.
- (5) Any application for removal of disqualification of directors shall be made in Form **DIR-10**.

	<p style="text-align: center;">Point to remember</p> <p>Sec 164(2) is not applicable to Government companies, which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.</p>
<p>Additional Disqualifications in case of Private companies – Sec. 164(3)</p>	<p>A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified above.</p>

Important Questions

Q. No. 64: State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a Director of a company:

- (i) Mr. A, who has huge personal liabilities far in excess of his Assets and Properties, has applied to the court for adjudicating him as an insolvent and such application is pending.
- (ii) Mr. B, who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks.
- (iii) Mr. C, a Former Bank Executive, was convicted by a court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.

(iv) Mr. D is a Director of DLT Limited, which has not filed its Annual Returns pertaining to the Annual General Meetings held in the calendar years 2017, 2018 and 2019.

HINT: Refer Sec. 164(1) & 164(2). (i) Not Eligible (ii) Eligible (iii) Eligible (iv) Not Eligible.

Q. No. 65: Mr. John is a director of MNC Ltd., which had accepted deposits from public. The Financial position of MNC Ltd. turned very bad and it failed to repay the deposits which fell due for payment on 10th April, 2019 and such repayment has not been made till 5th May, 2020. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its AGM to be held on 6th May, 2020. You are required to state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd.

HINT: Refer Sec. 164(2). Mr. John is disqualified to be appointed as director.

Q. No. 66: Mr. Ramanathan is a director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. For the financial Year ended on 31st March, 2019, two irregularities were discovered against Fraudulent Ltd. Fraudulent Ltd. did not file its financial statements for the year ended 31.3.2019 and failed to pay interest on loans taken from a financial institution for the last three years.

On 1st June, 2020, Mr. Ramanathan is proposed to be appointed as additional director of Goodwill Ltd, which company has sought a declaration from Mr. Ramanathan and he also submitted the declaration stating that the disqualification specified in Section 164 of the Companies Act, 2013 is not attracted in his case. Decide under the provisions of the Companies Act, 2013:

- (i) Whether the declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order?
- (ii) Whether Mr. Ramanathan can continue as a Director in Honest Ltd. and Regular Ltd.?

HINT: Refer Sec. 164(2). (i) Declaration is in order (ii) He can continue.

Q. No. 67: Mr. Ravindranathan is holding the post of Director in three companies out of which Good luck Colors Limited is one. For the financial year ended on 31st March, 2019, Good luck Colors Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2020, Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited submitted a declaration that the disqualification specified In Section 164 of the Companies Act, 2013 is not applicable in his case. Decide whether the Declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order.

HINT: Refer Sec. 164(2). Declaration is not in order as Good Luck Colors Limited failed to repay its deposits on due date and the said failure continue for more than one year.

Q. No. 68: State with reference to the provisions of the Companies Act, 2013, whether the following persons can be appointed as a Director of a company.

- (i) Mr. L, who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls.
- (ii) Mr. G is Director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2017, 2018 and 2019. [Nov. 16 (4 Marks)]

HINT: Refer Sec. 164. (i) Can be appointed (ii) cannot be appointed.

Q. No. 69: Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s LT Limited did not file its financial statements for the year ended 31st March, 2017, 2018 & 2019 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. LT Limited also did not pay interest on loans taken from a public financial institution from 1st April 2018 and also failed to repay matured deposits taken from public on due dates from 1st April 2018 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

- (i) Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September 2020?
- (ii) Mr. Dhruv is proposed to be appointed as an Additional Director of M/s. MN Limited in June 2020. Is he eligible to be appointed as an Additional Director in M/s. MN Limited? Decide.

[May 13 (8 Marks), May 19-New Syllabus (4 Marks)]

HINT: Refer Sec. 164(2). (i) disqualification arises, cannot continue as director in PQ Limited. (ii) Not eligible.

Q. No. 70: Mr. 'K' is a small shareholder director in M/s KGP Tyres Limited from 1st April 2019 and in M/s VSR Cotton Mills Limited from 1st April 2020, in compliance with the relevant provisions of the Companies Act, 2013. M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July 2019. In the light of the information given

above, examine the following under the provisions of the Companies Act 2013.

- (i) Whether the office of Mr. 'K', small shareholder director, shall become vacant in M/s KGP Tyres Limited and M/s VSR Cotton Mills Limited?
- (ii) If yes, state the period from which the office of the directorship shall become vacant. [Nov. 19 – New Syllabus (4 Marks)]

HINT: Refer Sec. 164(2) and 167(1). (a) Office need to be vacated in M/s VSR Cotton Mills Limited, but not in M/S KGP Types Limited. (b) Office is to be vacated from 01st July 2020.

1.12 - Number of Directorship (Sec. 165)

**Maximum
number of
directorship
- Sec. 165(1)**

- No person, shall hold office as a director, including any alternate directorship, in more than **20 companies** at the same time:
- The maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Point to remember

- Explanation I to Sec. 165(1) provides that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.
- *Explanation II to Sec. 165(1) is inserted by Companies Amendment Act 2017 w.e.f. 09.02.2018 which provides that for reckoning the limit of directorships of 20 companies, the directorship in a dormant company shall not be included.*

	<ul style="list-style-type: none"> • Sec. 165(1) shall not apply to Sec. 8 companies, which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.
Limit of Maximum Number below 20 - Sec. 165(2)	The members of a company may, by <i>special resolution</i> , specify any lesser number of companies in which a director of the company may act as directors.
Transition Period - Sec. 165(3), (4), (5)	Not Relevant Now
Penalty - Sec. 165(6)	If a person accepts an appointment as a director in contravention of sub-section (1), he shall be liable to a penalty of ₹5,000 for each day after the first during which such contravention continues.

Important Questions

Q. No. 71: Excel limited is a listed company with a turnover of ₹60 crore in the FY 2019-2020. The company appoints Ms. R as the women director on 1st March 2020. Ms. R is already a director in 12 companies including 10 public companies. Also, Ms. R is chartered accountant in practice. Evaluate in the light of the given facts, the validity of appointment of Ms. R in Excel Limited. [MTP-April 18, RTP-May 18]

HINT: Refer Sec. 165(1), appointment not valid.

Q. No. 72: Mr. Influential is already a director of 19 companies out of which 10 are public limited companies and 9 are private companies. He is being appointed as a director of another company named Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:

- (i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof.**
- (ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors in a public company?**

HINT: Refer Sec. 165(1). (i) New appointment cannot be accepted. (ii) Private companies which are neither the subsidiary or holding of a public company.

Q. No. 73: Mr. Raj is director in 10 public limited companies as on 30th July, 2020 and continues to be so till 26th September, 2020. The following companies appoint Mr. Raj as a director at their respective AGMs held on dates mentioned against their names:

- (i) MLP Ltd. (AGM held on 27th Sep, 2020)**
- (ii) PAT Private Ltd. (AGM held on 25th Sep, 2020)**
- (iii) KMC Ltd. (AGM held on 29th Sep, 2020)**

You are required to state with reference to the relevant provisions of the Companies Act, 2013 the options available to Mr. Raj in respect of accepting or not accepting the appointment of the above companies.

HINT: Refer Sec. 165. Appointment in PAT Private Ltd. Can only be accepted.

Q. No. 74: Mr. Fortune is holding directorship in the following types of companies:

- (i) 4 Public companies**
- (ii) 10 private companies**
- (iii) 2 companies registered under section 8 of the Companies Act, 2013.**

Mr. Fortune further received offer from 7 public companies, 6 private companies and 2 companies registered under section 8 of the Companies Act, 2013. He wants to take up maximum permissible directorship.

His order of preference is as follows:

- (i) Public companies**
- (ii) Private companies (not being holding or subsidiary of any public company) and**
- (iii) Companies registered under section 8 of the Companies Act, 2013**

Advice Mr. Fortune referring to the restriction provisions imposed in the Companies Act, 2013. [MTP-March 18]

HINT: Refer Sec. 165. Offer of 6 Public companies and 2 Companies registered u/s 8 can be accepted.

Q. No. 75: Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors:

- (i) Brown Limited, having a turnover of Rs. 60 crore in the financial year 2019-20 appoints Ms. Rose as the women director on 1st March 2020. Ms. Rose already holds directorship in 12**

companies including 10 public companies. She is whole time Cost Accountant in practice.

- (ii) Ms. Jasmine holds directorship in 8 public companies including managing directorship in 2 companies and directorship in 6 companies. In addition, she also holds alternate directorship in 3 companies and independent directorship in 3 subsidiary companies of Brown Limited. [Nov. 17 (4 Marks)]

HINT: Refer Sec. 165. (i) Appointment not valid. (ii) Appointments are in contravention of Sec. 165 as number of directorships in public companies exceeds 10.

Q. No. 76: Mr 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2020. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2020 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide:

- (i) The validity of holding directorship of Mr 'R' with reference to number of directorship as on 31.05.2020 and as on 30.06.2020.
- (ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director? [Nov. 19 – New Syllabus (4 Marks)]

HINT: Refer Sec. 165. (i) 31.05.2020 – Valid; 30.06.2020 – Invalid (ii) Yes, by Special Resolution.

1.13 - Duties of directors (Sec. 166)

Duties of directors	To act in accordance with Articles	Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
	To act in good faith	A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
	To exercise due care	A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
	To avoid conflict of interest	A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
	Not to earn any undue gain	A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

	Not to assign office	A director of a company shall not assign his office and any assignment so made shall be void.
Penalty for contravention – Sec. 166(7)		<p style="text-align: center;">Points to remember</p> <p>Appointment of a person as his successor by a director by virtue of a right conferred by Articles does not amount to assignment.</p>

Important Questions

Q. No. 77: 'X' was appointed as a director for life by the articles of association of a private company incorporate on 1st May 2019. The articles also empowered 'X' to appoint a successor. 'X' appointed, by will 'Y', to succeed him after his death. Can 'G' succeed 'X' as a director after the death of 'X'?

HINT: Refer Sec. 166(6). G can succeed as the appointment by X does not amount to assignment.

1.14 - Vacation of office of director (Sec. 167)

Basis of Vacation - Sec. 167(1)	The office of a director shall become vacant, if he	
	(a) Disqualified u/s 164	incurs any of the disqualifications specified in section 164.

		<p>Points to remember</p> <p>It is provided that where a director incurs disqualification u/s 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section</p>
(b) Absence from Board Meetings		absents himself from all the Board Meetings held during a period of 12 months with or without seeking leave of absence of the Board.
(c) Entering into a contract in violation of Sec. 184		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) Failure to disclose interest u/s 184		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) Disqualified due to Order of Court/tribunal		becomes disqualified by an order of a court or the Tribunal.
(f) Convicted of an offence		is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months.

	<p style="text-align: center;">Points to remember</p> <p>It is provided by proviso to Clause (f) of Sec. 167(1) that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f) -</p> <ul style="list-style-type: none"> (i) for 30 days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or (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 from office	is removed in pursuance of the provisions of this Act.
(h) Ceases to hold office	having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

Penalty -Sec. 167(2)	<p>If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in Sec. 167(1), he shall be punishable with</p> <ul style="list-style-type: none"> • imprisonment for a term which may extend to one year <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • fine ranging from Rs. 1 Lac to Rs. 5 Lac, <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • with both.
Appointment due to vacation of office by all Directors - Sec. 167(3)	<p>Where all the directors of a company vacate their offices under any of the disqualifications specified in Sec. 167(1),</p> <ul style="list-style-type: none"> • the promoter <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • in his absence, the Central Government <p>shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.</p>
Additional grounds for vacation in case of private company - Sec. 167(4)	<p>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 u/s 167(1).</p>

Important Questions

Q. No. 78: M/s Iqbal Sons Ltd. issued shares of the nominal value of Rs. 10 per share out of which Rs. 5 was payable on application and balance Rs. 5 was payable on call. The call money was invited by the Board of directors but some shareholders including a non-executive director failed to pay the same within the prescribed period. Explain the status of the director who defaulted in paying call money.

HINT: Refer Sec. 164(1) and 167. Being disqualified u/s 164(1), director need to vacate the office as per provisions of Sec. 167.

Q. No. 79: Mr. A is director of ABC Ltd. which failed to repay matured deposits from 1st Oct. 2019 onwards and the default continues. But ABC Ltd. is regular in filing annual accounts and annual returns. Mr. A is also a director of PQR Ltd. and XYZ Ltd. Answer the following questions with reference to the relevant provisions of the Companies Act, 2013:

- (a) Whether Mr. A is disqualified and if so whether he is required to vacate his office of director in PQR Ltd. and XYZ Ltd.**
- (b) Is it possible for Board of directors of DEF Ltd to appoint Mr. A as an additional director at the board meeting to be held on 15th Nov. 2020. Would your answer be different if Mr. A ceased to be a director of ABC Ltd. by resignation on 1st Sep. 2020.**

HINT: Refer Sec. 164(2) & 167.

- (a) Mr. A is disqualified and need to vacate the office of PQR Ltd. & XYZ Ltd. Though he may continue in the office of ABC Ltd.**
- (b) DEF cannot appoint him as a director. Answer will differ if Mr. A resign on 1st Sep. 2020.**

Q. No. 80: Mr. Vikram, a director of M/s Tubelight Limited has made default in filing of annual accounts and annual returns with Registrar of Companies for a continuous period of 3 financial years ending on 31st March 2020. Examine the validity of the following under the Companies Act, 2013:

- (i) Whether Mr. Vikram can continue to be a director of M/s Tubelight Limited (defaulting company) and also M/s Green Light Limited, where he is also a director? Also state whether he can be re-appointed as director in these two companies.
- (ii) What would your answer be in case Mr. Vikram is a nominee director of a Public Financial Institution?
- (iii) What would be your answer in case the defaulting company (i.e. M/s. Tubelight Limited) is a private limited company?

[Nov. 17 (4 Marks)]

HINT: Refer Sec. 164(2) and 167(1).

- (i) Mr. Vikram need to vacate the office in M/S Green Light Ltd., though he may continue in Tube Light Ltd. Mr. Vikram shall be disqualified in all companies for appointment or reappointment for 5 years.
- (ii) Answer would remain same.
- (iii) Answer would remain same.

1. 15 - Resignation of director [Sec. 168]

**Manner of
Resignation
– Sec.
168(1)**

- A director may resign from his office by giving a notice in writing to the company.
- The Board shall on receipt of such notice take note of the same.
- The company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

- Director, who resigned, may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation in such manner as may be prescribed.

Rule 15 & 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014

Notice of resignation of director – Rule 15

The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form **DIR-12** and post the information on its website, if any.

Copy of resignation of director to be forwarded by him – Rule 16

Where a director resigns from his office, he **may** within a period of 30 days from the date of resignation,

- forward to the Registrar a copy of his resignation
- along with reasons for the resignation in Form **DIR-11**
- along with the prescribed fee.

In case a company has already filed DIR -12 with the Registrar under Rule 15, a foreign director of such company resigning from his office may authorise in writing a practicing CA or Cost Accountant in practice or CS 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 from resignation.

Effective date of resignation – Sec. 168(2)	<p>The resignation of a director shall take effect</p> <ul style="list-style-type: none"> from the date on which the notice is received by the company <p style="text-align: center;">or</p> <ul style="list-style-type: none"> the date, if any, specified by the director in the notice, <p>whichever is later</p> <div style="text-align: center; background-color: #f0f0f0; padding: 10px; margin-top: 10px;"> Points to remember The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure </div>
Resignation or Vacation of all directors – Sec. 168(3)	<p>Where all the directors of a company resign from their offices, or vacate their offices u/s 167,</p> <ul style="list-style-type: none"> the promoter <p style="text-align: center;">or,</p> <ul style="list-style-type: none"> in his absence, the Central Government <p>shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.</p>

Important Questions

Q. No. 81: Due to internal problems in the working of M/s Infighting Detergents Ltd., Mr. Satyam and Mr. Shivam, Directors, have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundram, the Managing Director, decides to refuse their Resignations. Examine whether the Managing Director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act, 2013.

HINT: Refer Sec. 168. No right given to MD to reject the resignation of a director and force him to continue.

Q. No. 82: Mr. Raj, a director of POL Ltd., submitted his resignation from the post of director to the Board of Directors on 30th June, 2020 and obtained a receipt therefore on the same day. The Board of Directors of POL Ltd. neither accepted the resignation nor did it file the required form with the Registrar of Companies. You are required to state whether Mr. Raj ceases to be the Director of POL Ltd. and if yes, since when?

HINT: Refer Sec. 168(2). Mr. Raj ceases to be a director and effective date will be 30th June 2020.

Q. No. 83: Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time. What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to ROC? [May 17 (4 Marks), RTP-May 18]

HINT: Refer Sec. 168(2). Resignation of Vijay shall take effect from the date on which the notice is received by the company or the date, if any, specified by Vijay in the notice, whichever is later.

1.16 - Removal of directors (Sec. 169)

**Removal by
ordinary
resolution
Sec. 169 (1)**

- A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

- An independent director re-appointed for second term u/s 149(10) shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.
- Provisions of Sec. 169(1) shall not apply where the company has availed itself of the option given to it u/s 163 to appoint not less than 2/3rd of the total number of directors according to the principle of proportional representation.

Procedure for the removal of director

Step 1 Requirement of Special Notice – Sec. 169(2)

A special notice shall be required of any resolution,

- to remove a director under this section,

or

- to appoint somebody in place of a director so removed, at the meeting at which he is removed.

Note: Shareholders have the right to decide the date of meeting. However, the special notice shall not be sent earlier than three months from the date of meeting but at least 14 clear days before the date of the meeting, at which the resolution is to be moved.

Step 2 Sending the copy of notice to director – Sec. 169(3)

On receipt of 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.

Step 3 **Director's right as to representation – Sec. 169(4)**

Where notice has been given of a resolution to remove a director and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,-

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Points to remember

Copy of the representation need not be sent out and the representation need not be read out at the meeting if,

		<p><i>on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.</i></p>
Filling of Vacancy	Sec. 169(5)	<p>A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board,</p> <ul style="list-style-type: none"> • be filled by the appointment of another director in his place at the meeting at which he is removed, • provided special notice of the intended appointment has been given.
	Sec. 169(6)	<p>A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.</p>
	Sec. 169(7)	<ul style="list-style-type: none"> • If the vacancy is not filled u/s 169(5), it may be filled as a casual vacancy in accordance with the provisions of this Act. • The director who was removed from office shall not be re-appointed as a director by the Board of Directors.

**Compensation
for loss of
office**

- Sec. 169 (8)

Nothing in this section shall be taken—

1. as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
2. as derogating from any power to remove a director under other provisions of this Act.

Points to remember

- A director removed u/s 169 is entitled to claim compensation for loss of office in accordance with the terms of contract.
- However, the right to compensation is subject to the restrictions imposed u/s 202 of the Companies Act, 2013.

Important Questions

Q. No. 84: A company has in its Articles of Association provided for appointment of not less than two thirds of the total number of its directors according to the principle of proportional representation. Can the directors so appointed be removed by the company in general meeting as per the provisions of the Companies Act, 2013?

HINT: Refer Sec. 163 & 169. Directors elected by the principle of proportional representation cannot be removed in general meeting.

Q. No. 85: Mr. Stubborn is a director of Doubtful Industries Ltd. He along with other two directors has been running the Company for the past twenty years without declaring any dividends or giving any benefit to the shareholders. Frustrated by this, some shareholders are desirous of giving notice to pass a resolution with the support of other shareholders for his removal as a director in the AGM of the company to be held in the month of December of 2020. State the procedure to be followed for the removal of Mr. Stubborn as a director.

HINT: Refer Sec. 169(1) to Sec. 169(4).

Q. No. 86: Mr X, a shareholder in M/s ABC Ltd. holding 50,000 equity shares of Rs. 10 each fully paid up want to give a special notice to the company for removal of Mr. M, a director of M/s ABC Ltd without stating any reason in the notice. You are required to state as per the provisions of the Companies Act, 2013, whether Mr. X is entitled to do so.

HINT: Refer Sec. 115 & 169 along with case law of LIC vs Escorts Ltd. Mr. X is entitled to give special notice to the company.

Q. No. 87: Mr. X is named as a director for life in the articles of association of M/s ABC (P) Limited which was incorporated on 1st April 2012. The Articles of Association of the company also provide that he cannot be removed by the members in general meeting. Some of the members want to remove Mr. X by passing an ordinary resolution in general meeting. State with reference to the relevant provisions of the Companies Act 2013 whether the proposed action is valid.

HINT: Refer Sec. 169. Proposed action is valid subject to compliance of conditions as stated in Sec. 169.

Q. No. 88: Mr. X, a 15% shareholder of the company and other shareholders have lost confidence in the managing director of the company. He is the director not liable to retire by rotation and was re-appointed as the managing director for 5 years with effect from 1st April 2020 in the last general meeting of the company. Mr. X seek your advice to remove the managing director after following the procedure laid down under the Companies Act 2013.

- (a) Specify the steps to be taken by Mr X and the company in this behalf.
- (b) Is it necessary to state reasons to support the resolution for his removal.

HINT: Refer Sec. 115 & 169 along with case law of LIC vs Escorts Ltd.

1. Conditions as stated in Sec. 169 need to be complied with.
2. It is not necessary to state the reasons to support the resolution.

Q. No. 89: Super Speciality Hospital Limited has a paid up share capital of Rs. 10 crores and annual turnover of Rs. 90 crores. There are 5 directors in its board. Two doctors Mr. ZA and Mr. AZ are appointed as independent directors. Mr. ZA was appointed for a period of 5 years on 1st August, 2016 while Mr. AZ was originally appointed for 3 years on 1st August, 2015 and was subsequently reappointed for 5 years on 1st August, 2018. Now, in August, 2020, the Company wants to remove both the independent directors. Referring to the relevant provisions of Companies Act, 2013, decide whether the company can do so.

[Nov. 19 – Old Syllabus (4 Marks)]

HINT: Refer Sec. 169(1). Company can remove both independent directors, however to remove, Mr. AZ, special resolution will be required. Company is simultaneously required to appoint two independent directors so as to fulfil the requirements of Sec. 149(4).

1.17 - Register of directors and key managerial personnel and their shareholding [Sec. 170]

Particulars of directors and KMP to be entered in Register - Sec. 170(1)

Every company shall keep at its registered office a register containing

- such particulars of its directors and KMP as may be prescribed,
- which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Register of directors and KMP - Rule 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014

Every company shall keep at its registered office a register of its directors and KMP containing the following particulars, namely:

- (a) Director Identification Number (optional for KMP);
- (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 KMP held or relinquished in any other body corporate;
- (m) membership number of the ICSI in case of Company Secretary, if applicable; and
- (n) Permanent Account Number (mandatory for KMP if not having DIN);

In addition to the details of the directors or KMP, the company shall also include in the aforesaid 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-

1. the number, description and nominal value of securities;
2. the date of acquisition and the price or other consideration paid;
3. date of disposal and price and other consideration received;
4. cumulative balance and number of securities held after each transaction;
5. mode of acquisition of securities;
6. mode of holding – physical or in dematerialized form; and
7. whether securities have been pledged or any encumbrance has been created on the securities.

**Filing of
return with
Registrar
– Sec. 170(2)**

A return containing such particulars and documents as may be prescribed, of the directors and the KMP shall be filed with the Registrar within 30 days (60 days in case of Specified IFSC Public and Private Companies) from the appointment of every director and KMP, as the case may be, and within 30 days (60 days in case of Specified IFSC Public and Private Companies) of any change taking place.

Return containing the particulars of directors and the KMP - Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014

Return containing the particulars of appointment of director or KMP and changes therein, shall be filed with the Registrar

- in Form **DIR-12**
- along with prescribed fee
- within 30 days of such appointment or change, as the case may be.

Points to remember

Section 170 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. Exemption is subject to the condition that the company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

1.18 - Members' right to inspect (Sec. 171)

Inspection of
Registers
maintained
u/s 170
- Sec. 171(1)

The register kept u/s 170(1)

a. shall be open for inspection during business hours

and

the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within 30 days; and

	b. shall also be kept open for inspection at every AGM of the company and shall be made accessible to any person attending the meeting.
Remedy for refusal for inspection etc. – Sec. 171(2)	<ul style="list-style-type: none"> • If any inspection as provided in Sec. 170(1)(a) is refused or • if any copy required under that clause is not sent within 30 days from the date of receipt of such request, <p>the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.</p>

Points to remember

Sec. 171 shall not apply to a government Company in which the entire share capital 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. Exemption is subject to the condition that the company has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

1. 19 - Punishment (Sec. 172)

Penalty for non-compliance of Sec. 149 – Sec. 171	<ul style="list-style-type: none"> • If a company contravenes any of the provisions of this Chapter and • for which no specific punishment is provided therein, <p>the company and every officer of the company who is in default shall be punishable with fine ranging from Rs. 50,000 to Rs. 5 Lacs.</p>
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Other Comprehensive Questions

Q. No. 90: Mr. Ram have been appointed as a director in X Ltd. due to his holding of an office as Managing Director (MD) in its holding company, ABC Limited. In due course of time, Mr. Ram was offered by HXL Limited to join the company as a managerial personnel on very good package. He was offered the said position on the term that he has to resign from the ABC Ltd. Mr. Ram served a notice in writing to the company by mail and through post to his registered office on 1.02.2020. His notice of resignation specified the date 15.02 2020 as the last date in the ABC Ltd. However, due to pressure of HXL Ltd., he joined the company on 13.02.2020.

Analyse, Integrate and apply in terms of the Companies Act, 2013, the legal position of Mr. Ram in the given situations-

(i) Holding of directorship of Mr. Ram in X Ltd. after ceasing to hold office as MD in ABC Ltd.

(ii) Joining of HXL Ltd on 13. 02.2020. [MTP-March 18]

HINT: Refer Section 167(1)(h), 167(2), 168 and 172.

(i) holding of directorship in X Ltd. is invalid and penalty will be imposed u/s 167(2).

(ii) Joining on 13.02.2020 is invalid and penalty will be imposed u/s 172.

Q. No. 91: Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

(i) Mr. Person together with one of his relatives holds 3% of the total voting power of XYZ Ltd. The Board of Directors of the company appointed him as an independent director.

(ii) ABC Ltd., a listed company having 5,000 small shareholders, upon receiving notice from 400 of such small shareholders has refused to appoint a small shareholders' director under section 151 of the Companies Act, 2013.

(iii) Mr. D, who fails to get appointed as a director in the general meeting of AJD Limited, subsequently was appointed as an additional director by the Board of Directors of the company.

HINT: Refer Sec. 149(6), 151 read with Rule 7, 161(1). (i) Invalid appointment (ii) Valid Refusal (iii) Invalid appointment.

Q. No. 92: The Promoters of M/s Frontline Limited a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and whole-time directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:

- (i) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.
- (ii) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?
- (iii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received.

- (iv) Can the Board of Directors increase the strength of companies' directors to 18 from 11 by appointing additional directors through passing single resolution?

[May 18 – Old Syllabus (4 Marks), RTP-Nov. 18]

HINT: Refer Sec. 152, 160 & 162.

- (i) 3 directors – Sec. 152(6);
- (ii) 3 directors – Sec. 152(6);
- (iii) Invalid rejection - Sec. 160 (Answer as given in Suggested answer issued by ICAI is different stating that director's contention is valid);
- (iv) Allowed subject to alteration of Articles and compliance of conditions specified in Sec. 162.

Q. No. 93: VGP Ltd. is a listed public company with a paid up capital of Rs. 100 crores as on 31st March, 2020. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd. has the following proposals:

- (1) To remove Mr. Z, an Independent Director who was re-appointed for a second term.
- (2) To appoint Mr. N, a nominee Director in the Board as an independent director.
- (3) To appoint Mrs. Jasmine as an Independent -cum-Woman Director.

With reference to the relevant provisions of the Companies Act, 2013, examine:

- (i) The validity the above proposals and appointment of woman director already made.

(ii) Whether Mr. N, can be appointed as an Independent Director of PDS Ltd.?

(iii) Is an Independent Director entitled for stock option?

[Nov. 18-New Syllabus (8 Marks)]

HINT: Refer Sec. 2(6), 149(6) and 169(1).

(i) Proposal to remove Mr. Z an independent director is valid if removal is by Special resolution and a reasonable opportunity of being heard is provided. Proposal to appoint Mr. N, a nominee Director in the Board as an independent director is not valid as a nominee director cannot be appointed as independent director. Proposal to appoint Mrs. Jasmine as an Independent –cum-Woman Director is not valid as Mrs. Jasmine was promoter of PDS Ltd, which is a joint venture company of VGP Ltd.

Appointment of Mrs. Jasmine as woman director in the company is valid.

(ii) There is no specific restriction imposed under the provisions of Company Law which restricts the appointment of nominee director of a company as independent director in joint venture company of first mentioned company. Hence Mr. N, can be appointed as an Independent Director of PDS Ltd.

This situation appears to be against the intention of the law. Hence, alternative answer is possible so as to maintain integrity of independent director.

Note: Answer as given in suggested answers issued by ICAI is different stating that Mr. N cannot be appointed as director.

(iii) An independent director shall not be entitled to any stock option.

Q. No. 94: State the legal positions as to the valid appointment of the directors in the given situations in the light of the Companies Act, 2013-

- (i) Shiksham Ltd. was formed for prompting the girls education with 15 directors in its Board. Due to expansion of its objective at large scale, the company increased the strength of its directors to 20 without passing SR.**
 - (ii) Mr. Kabir was appointed as an alternate director on behalf of Mr. Robert, as Mr. Robert goes abroad and comes back to India temporarily and leaves country again.**
 - (iii) PQR Ltd., who failed to file a financial statement in previous financial year 2019-2020, appointed Mr. Khurana as a director in July 2020.**
- [MTP-March 19]**

HINT: (i) Valid as limit of maximum number of directors is not applicable in Sec. 8 companies. (ii) Mr. Kabir can continue for temporary period also (iii) Appointment is valid till Jan. 2020.

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Scanner of Past Exam Questions – New Syllabus

Attempt	Q. No.	Topic	Suggested Answer / Hint*	Marks
May 18	1(a)	Practical Illustration on Sec. 149(4), 149(6) & 197(5)	Refer Q. No. 16	8
	6(a)	Practical Illustration on Sec. 162	Refer Q. No. 63	4
Nov. 18	1(a)	Practical Illustration on Sec. 151 & Rule 7	Refer Q. No. 27	8
	5(a)	Practical Illustration on Sec. 2(6), 149(6) & 169	Refer Q. No. 93	8
	6(a)	Practical Illustration on Sec. 149(4) and Rule 4	Refer Q. No. 19	4
May 19 [#]	1(a)	Practical Illustration on Sec. 152(7)	Refer Q. No. 37	8
	6(a)	Practical Illustration on Sec. 161(4)	Refer Q. No. 59	4
	6(b)	Practical Illustration on Sec. 164(2)	Refer Q. No. 69	4
Nov. 19 [#]	1(a)	Practical Illustration on Sec. 161(2)	Refer Q. No. 60	8
	6(a)	Practical Illustration on Sec. 164(2)/ Sec. 165	Refer Q. No. 70/76	4
	6(b)	Process of Surrendering DIN obtained inadvertently	Refer Q. No. 43	4

**detailed answers are given in Scanner.*

#From May 2019 exam, questions are covered only for Descriptive Part of Paper.

*Annexure 1**Companies (Creation and Maintenance of databank of Independent Directors)
Rules, 2019***Rule 3****Creation and maintenance of data bank**

- (1) *The institute shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such databank shall be an online databank which shall be placed on the website of the institute.*
- (2) *The data bank referred to in sub-rule (1) 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*
- (a) DIN (Director Identification Number), if applicable;*
 - (b) Income Tax PAN;*
 - (c) the name and surname in full;*
 - (d) the father's name;*
 - (e) the date of Birth;*
 - (f) gender;*
 - (g) the nationality;*
 - (h) the occupation;*
 - (i) full Address with PIN Code (present and permanent);*
 - (j) phone number;*
 - (k) e-mail id;*
 - (l) the educational and professional qualifications;*
 - (m) experience or expertise, if any;*
 - (n) any pending criminal proceedings as specified in clause (d) of sub-section (1) of section 164;*

- (o) the list of LLPs in which he is or was a designated partner along with-*
- (i) the name of the limited liability partnership;*
 - (ii) the nature of industry; and*
 - (iii) the duration- with dates;*
- (p) the list of companies in which he is or was director along with-*
- (i) the name of the company;*
 - (ii) the nature of industry;*
 - (iii) the nature of directorship-Executive or Non-executive or Managing Director or Independent Director or Nominee Director; and*
 - (iv) duration – with dates.*
- (3) The information available in the data bank shall be provided only to companies required to appoint independent director after paying a reasonable fees to the institute.*
- (4) A person whose name is included in the data bank, may restrict his personal information to the institute, to be disclosed in the data bank.*
- (5) Any individual whose name appears in the data bank, shall make changes in his particulars within thirty days of such change through web based framework made available by the institute for this purpose.*
- (6) A disclaimer shall be conspicuously displayed on the website hosting the data bank that a company must carry out its own due diligence before appointment of any person as an independent director.*

- (7) The institute, shall with the prior approval of the Central Government, fix a reasonable fee to be charged from :-*
- (a) individuals for inclusion of their names in the data bank of independent directors; and*
 - (b) companies for providing the information on independent directors available on the data bank.*

Explanation: For the purpose of this rule, the expression “persons willing and eligible to be appointed as independent director” shall include individuals already serving as independent directors on the Board of companies.

Rule 4***Duties of the institute***

- (1) The institute shall comply with the following, in respect of individuals referred to in Rule 6(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014 , namely:*
- (a) conduct an online proficiency self-assessment test covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual acting as an independent director;*
 - (b) prepare a basic study material, online lessons, including audio-visuals for easy reference of individuals taking the online proficiency self-assessment test;*
 - (c) provide an option for individuals to take advanced tests in the areas specified in clause (a) and prepare the necessary advanced study material in this respect:*
- Provided that no separate fees shall be charged by the institute in respect of clauses (a), (b) and (c).*



(2) The institute shall daily, share with the Central Government, a cumulative list of all individuals-

(a) whose names have been included in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director (not required to have Income-Tax PAN);

(b) whose applications for inclusion in the data bank have been rejected along with grounds and the dates of such rejection; and

(c) whose names have been removed from the data bank along with grounds and the dates of such removal.

Rule 5

Panel

(1) There shall be a panel of not more than ten members nominated by the Central Government, for the purpose of approving the outline of the courses and study material prepared by the institute.

(2) Panel referred to in sub-rule (1) shall consist of:-

(a) Secretary, Ministry of Corporate Affairs or his nominee;

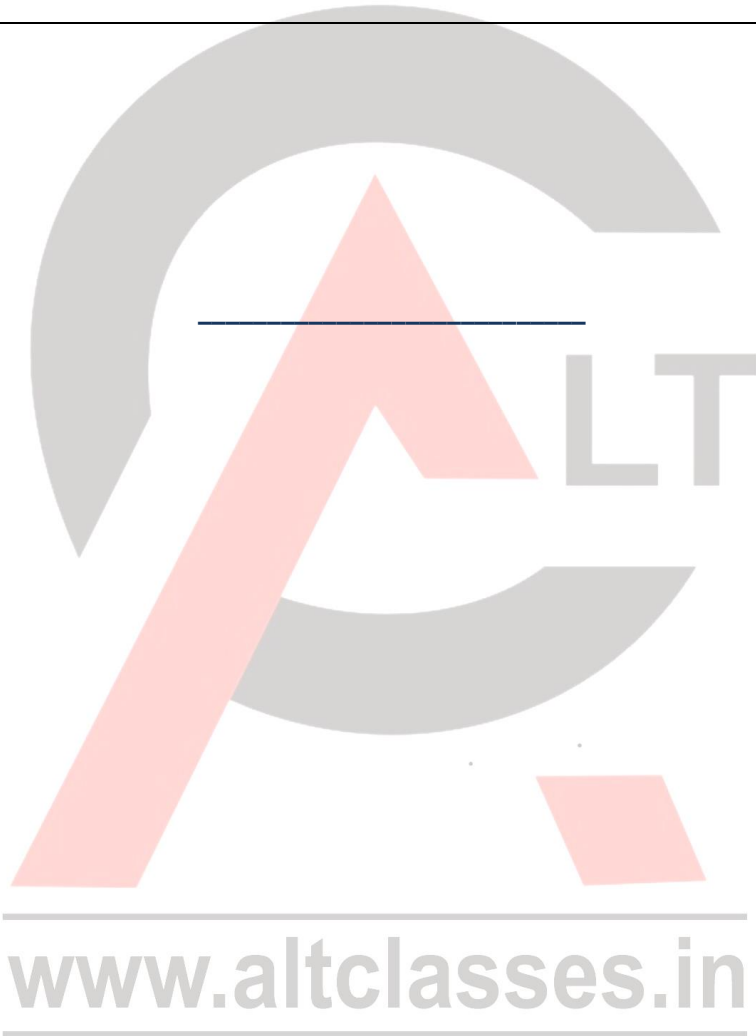
(b) Director General and Chief Executive Officer of the institute or his nominee;

(c) one member nominated by the Department of Economic Affairs;

(d) one member nominated by the Department of Public Enterprises;

(e) one member nominated by the Securities and Exchange Board of India;

- (f) at-least one representative from the stock exchange nominated by the Central Government;*
- (g) at-least one representative from the industry nominated by the Central Government; and*
- (h) at-least one representative from the academia nominated by the Central Government*



Notes



