

Chapter Number	Sections	Rules	Form
XI	149 to 172	Companies(Appointment & Qualification of Director)Rules, 2014	DIR
XII	173 to 195	Companies(Meeting of Board & its Powers)Rules,2014	MBP
XIII	196 to 205	Companies(Appointment & Remuneration of Managerial Personnel)Rules,2014	MR

Chapter XI-Sections 149 to 172

Section 149

Minimum number of directors	<ul style="list-style-type: none"> • Public Company-3 • Private Company-2 • OPC-1 • Maximum number of directors-15 • To appoint>15 directors-Pass SR <p>MCA Clarification-</p> <ul style="list-style-type: none"> ✚ MCA has clarified that the limit of 15 directors and their increase in limit by SR shall not apply to Government Company. ✚ Provisions related to minimum and maximum number of directors is not applicable to Section 8 Companies. . However, the exemption will not be available if company has defaulted in the filing of annual returns or financial statements to ROC.
Women Director	<p>Rule 3 states</p> <ul style="list-style-type: none"> • Every listed company • Every other public company having Paid up share capital ≥100 crore <p>OR</p> <p>Turnover ≥ 300 crore shall appoint women director.</p>
Vacancy in office of Women director	<ul style="list-style-type: none"> • Filled by BOD(Next Board meeting or 3 months whichever is later)
Resident Director	<p>Atleast 1 Resident Director(Atleast 182 days in previous calendar year). In revised study material, financial year is used.</p>
Independent Director	<p>Composition</p> <ul style="list-style-type: none"> • Listed Public Company-one third of directors. • If company is required to appoint Audit Committee under Section 177- Majority of members of Audit Committee must be Independent • Rule 4-Other Public Company(POT ≥ 10cr/50cr/100cr) <ul style="list-style-type: none"> ✚ Paid up share capital ≥10 cr. ✚ O/S Loans, Debentures and Deposits > 50 cr. ✚ Turnover ≥ 100 cr. <p>RTP-May 2018</p> <p>As per Sec 149(4), every listed co shall have at least 1/3rd of total no of directors as independent directors and other prescribed companies were required to</p>

	<p>have at least 2 independent directors. Now the exemption from having 2 independent directors have been granted to following class of unlisted companies that is Joint Venture, wholly owned subsidiary and Dormant Company.</p> <p><u>Vacancy in the office of Independent Director</u></p> <ul style="list-style-type: none"> • Next Board Meeting or 3 months whichever is later. <p><u>Tenure of Independent Director</u></p> <ul style="list-style-type: none"> • Initial appointment for a term of 5 years by members in GM. • Can be appointed for 2nd consecutive 5 years (by passing SR). • No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director. An independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly. • The independent directors who have been appointed for the second time can be removed only after passing SR after giving a reasonable opportunity of being heard. <p><u>Remuneration of Independent Directors</u></p> <ul style="list-style-type: none"> • Entitled to reimbursement of expenses, sitting fees, other profit related commissions. • Not entitled to stock options. <p><u>Counting Purpose</u></p> <ul style="list-style-type: none"> • Counting for purpose of Section 149(1) i.e Total No of Directors. • Not counted in rotational directors{152(6),152(7)} <p><u>Liability of Independent Directors</u></p> <ul style="list-style-type: none"> • Only for those acts of omission which had occurred with his knowledge and consent <p><u>Section 149(6)-Requirements for being Independent Director</u></p> <p>An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.</p>
<p>Non applicable to NPO</p>	<p>Provisions Related to Independent Directors and Woman Director is not applicable on Companies Granted License under Sec.8. (MCA Notification dated 5th june 2015).</p>
<p>Section 150</p>	<ul style="list-style-type: none"> • CG may authorise Institute or Agency to Maintain Data Bank of Independent Directors. • Interested persons after giving prescribed fees may apply to the concerned agencies to get there name included in data bank.(in form DIR-1) • Independent Director may be appointed from data bank after exercising

	<p>due diligence.</p> <ul style="list-style-type: none"> • Appointment of Independent Director shall be approved by the company in general meeting. Explanatory Statement shall be annexed to the notice of General Meeting indicating justification for choosing the said person as director.
<p>Section 151 Read with Rule 7</p>	<p><u>Appointment of director elected by small shareholder</u></p> <ul style="list-style-type: none"> • A listed company may appoint director of small shareholders if notice is given by <ol style="list-style-type: none"> a) Not less than 1000 shareholders or b) one tenth of total no of small shareholders whichever is lower. • Listed companies may also appoint small share holder directors suo moto. • Notice must be given atleast 14 days before meeting specifying the details and consent of the proposed director. • A person can become small shareholder director in maximum 2 companies. • Small share holder means a share holder who holds shares of nominal value of Rs.20000 or less. • Maximum tenure is 3 years and he cannot be reappointed. • Cannot be reappointed for 3 yrs in any other capacity directly or indirectly. • Can be an ID if he gives declaration and fulfils criteria. However he cannot be a MD or WTD. • A person disqualified under Section 164 cannot be a small shareholder director. If the disqualification is incurred later on, the small share holder director will have to vacate his office.
<p>Section 152</p>	<p><u>Appointment of Directors</u></p> <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 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. • Every director shall be appointed by the company in general meeting.[Sec.152(2)] <p><u>Rotation of Directors{152(6),(7)}</u></p> <ul style="list-style-type: none"> • This requirement is applicable only in case of Public Company. • Atleast 2/3 rd (No rounding off)of the total number of directors shall be rotational directors(higher is allowed). • Independent Directors will not be counted in Total Directors for the purpose of taking two third. • All directors appointed by BOD are non-rotational directors. • New Companies Act does not specifically excludes MD and WTD from the requirement of rotation. However, in normal course they are non-

	<p>rotational.</p> <ul style="list-style-type: none">• Appointed in G.M. by passing OR. Remaining 1/3rd directors shall be appointed by AOA. If AOA is silent, then by members in GM.• Exact 1/3 rd of the total number of rotational directors shall retire by rotation at every AGM(Round off to nearest decimal).FIFO method to be followed .ie. directors who have been longest in office shall retire first. If 2 directors are appointed on the same day, then the same shall be determined by lot. However in case there is agreement between directors, retirement shall take place subject to such agreement.• Example:<ul style="list-style-type: none">i) Total number of directors=9,Minimum no of rotational director=6(say 7).Exact 1/3rd of 7=2.33=2 shall retire.(rounded off to nearest decimal)ii) Total number of directors=8,Minimum no of rotational director=2/3rd of 8=5.33.Logically company will have to maintain atleast 6 rotational directors(say all 8 retire).Exact 1/3rd of 8=2.67 i.e. 3 shall retire.iii)Total no of directors=10(including 1 Independent Director) Hence, No of directors to be liable to retire by rotation=9*2/3=6. <p><u>Automatic Adjournment and re-appointment(Section 152(7))</u></p> <p>(a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.</p> <p>(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—</p> <ul style="list-style-type: none">(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;(iii) he is not qualified or is disqualified for appointment;(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
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	<p>(v) section 162 is applicable to the case. {This clause is absurd because it has effect of nullifying the whole section 152(7)}</p> <p>RTP May 2018</p> <p>MCA Clarification Provisions of Section 152(6) and 152(7) shall not apply to a Government Company. However the exemption shall not be available if the company has defaulted in the filing of annual returns or financial statements.</p>
<p>Section 162</p>	<p><u>Appointment of directors to be appointed individually</u></p> <ul style="list-style-type: none"> • Separate resolution passed for the appointment of every individual director is valid. • However if >1 directors is to be appointed by a single resolution, <ul style="list-style-type: none"> a) First pass a unanimous resolution in General Meeting. b) Only then such a resolution passed in General Meeting is valid. • Where re-appointment becomes void under Section 162, the provision relating to automatic re-appointment is not applicable. <p>Important note-MCA has clarified via Notifications No 464(E) dated 5th June, 2015 that provisions of Section 162 shall not be applicable to a private company.</p>
<p>Section 160</p>	<p>Notice to be appointed as director by any person at least 14 days before GM.</p> <p>Deposit-Rs. 100000</p> <p>Resolution – OR</p> <p>Refund of Deposits-If he gets 25% of Vote</p> <p>MCA Notification</p> <ul style="list-style-type: none"> ✚ Provisions of Section 160 (Appointment of a person other than retiring director) shall not be applicable to <ul style="list-style-type: none"> ➤ a Private Company. ➤ a Government Company in which the entire paid up share capital is held by CG, or by SG or by CG and SG. ➤ a subsidiary of a Government Company, in which the entire paid up share capital is held by that a Government Company. ➤ Section 8 companies whose articles provide for election of directors by ballot. <p>Interpretation-14 days notice and deposit of Rs.100000 is not required for appointment of any other person as director in such companies.</p> <p>For Nidhi Companies only deposit of Rs 10,000 will be required.</p> <p>RTP Nov 2018</p> <p>The requirement of deposit shall not be applicable in case of Independent Directors or Directors whose names are recommended by Nomination and Remuneration Committee under Section 178 or in the absence of NRC, the Board of Directors.</p>

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Section 161-Directors appointed by BOD		
Additional Director-161(1)	Alternate Director-161(2)	Director in casual vacancy-161(4)
<p>1. Power-Regulation 72 of Table A authorizes BOD to appoint additional directors.</p> <p>2. Tenure-Upto the commencement of First AGM held after the appointment of additional director(MCA Clarification).Even if such AGM is not held, still the additional director shall retire on the last day on which AGM should have been held.</p> <p>3. Method of appointment In Board Meeting or Resolution by Circulation.</p> <p>4. Restriction A person who fails to get appointed as a director in GM, shall not be appointed as an additional director. However, a person who fails to get appointed as additional director, can be appointed as a directors in GM.</p> <p>5. Limit-Existing directors + Additional Director=Maximum no of directors permissible in AOA.</p>	<p>1. Authorisation in AOA/Resolution in GM.</p> <p>2. Appointed by BOD for the time being during absence of original director in India for a continuous period of 3 months. Such director shall hold office until the return of original director in India or End of office of original director whichever is earlier.</p> <p>3. In Board Meeting or Resolution by Circulation.</p> <p>4.</p> <p>a) An Individual can act as Alternate Director for 1 individual only.</p> <p>b) Concept of automatic re-appointment shall apply to the original , and not alternate director.</p> <p>c) Person can be appointed as an alternate director to an Independent Director only if he is qualified to be appointed as Independent as per 149(6).</p> <p style="color: red;">RTP Nov 2018 a person who is already a director in the company cannot become an alternate director for any other director.</p>	<p>1. No authorisation required in AOA i.e. no provision in Table A regarding appointment of casual directors.</p> <p>2. Casual Vacancy means any vacancy(due to death or any other reason otherwise than in normal course) arising in the office of such a director who was originally appointed In Gm. Eg: Death of Alternate Director is not Casual Vacancy. His tenure is valid only for the unexpired period of original director.</p> <p>3. In Board Meeting. Not by Resolution by Circulation.</p> <p>4. Appointment cannot be done by way of RBC.</p> <p style="color: red;">RTP Nov 2018</p> <p style="color: red;">1. Section 161(4) is now also applicable to a private company.</p> <p style="color: red;">2. The vacancy arising in the office of the director shall be fulfilled by the Board which shall subsequently be approved by members in next GM.</p>

Nominee Directors- Section 161(3)

- He is a director nominated by any Bank or Financial Institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or SG by virtue of its share holding in a Government Company.
- However, AOA must authorise the BOD to appoint nominee directors.

Provisions relating to DIN(Section 153-159)

<p><u>Section 153</u></p>	<p>Every individual, who is to be appointed as director----> make an application electronically in Form DIR-3, to the CG for the allotment of a DIN along with such fees as prescribed.</p> <p>RTP Nov 2018</p> <p>Earlier it was provided in Section 152(3) that “No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number. Now the words “or such number as may be prescribed under Section 153 has been added. Similarly in Section 152(4) it was provided that “Every person proposed to be appointed as a director by the company in General Meeting or otherwise, shall furnish his Director Identification Number. Now the words “or such number as may be prescribed under Section 153 has been added.</p> <p>Important DIR forms</p> <p>DIR 3-Particulars of Directors with relevant documents</p> <p>DIR 4-Verification of particulars given in DIR 3.</p> <p>DIR 6-Changes in Particulars given in DIR 3.</p> <p>DIR 7-Verification of change in particulars given in DIR 6.</p>
<p><u>Section 154</u></p>	<p>The CG shall, within 1 month from the receipt of the application U/S 153, Allot a DIN to the applicant in such manner as may be prescribed.</p>
<p><u>Section 155</u></p>	<p>No individual, who has already been allotted a DIN under section 154, shall apply for, obtain or possess another DIN..</p>
<p><u>Section 156</u></p>	<p>Every existing director shall, within 1 month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director.</p>
<p><u>Section 157</u></p>	<p>Every company shall, within 15 days of the receipt of intimation, furnish the DIN of all its directors to the Registrar.</p>
<p><u>Section 158</u></p>	<p>Every person or company, while furnishing any return, information or particulars shall mention DIN.</p>

Section 159	<p>Contravenes - section 152, section 155 and section 156,</p> <p>Such person shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 50000/ and where the contravention is a continuing one, with a further fine which may extend to Rs. 500/ for every day.</p>
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Section 163-Appointment of Directors by Proportional Representation	
<p>All companies only if authorized by AOA</p> <p>Appointment of at least 2/3rd of the directors by proportional representation, whether by single transferable vote or by a system of cumulative voting or otherwise, such appointment shall be made once in every 3 years.</p>	
Section 164-Disqualification of Directors	
Section 164(1)	<p>A person shall not be eligible for appointment as a director of a company, if —</p> <p>(a) he is of unsound mind and stands so declared by a competent court;</p> <p>(b) he is an undischarged insolvent;(declared insolvent but liabilities not settled..once liability is settled it is discharged insolvent)</p> <p>(c) he has applied to be adjudicated as an insolvent and his application is pending;</p> <p>(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:</p> <p>Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;</p> <p>(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;</p> <p>(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;</p> <p>(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or</p> <p>(h) he has not complied with sub-section (3) of section 152.i.e.DIN not obtained.</p> <p>Note-In clauses d,e,g - 1st appeal -within 30 days, 2nd appeal-7 days</p>

	from disposal of such appeal.
Section 164(2)	<p>No person who is or has been a director of a company which— (a) has not filed financial statements or annual returns for any continuous period of three financial years; or b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.</p> <p>Q. Does failure to pay interest on loan attract 164(2) disqualification? No Q.Is there any auditor's liability with regard to reporting the disqualification under Section 164(2)?Yes, under Section 143(3)(g)</p> <p>MCA Notification dated 5/06/2015 🚩 Section 164(2) is not applicable to Government Company. Note- A private company may add additional ground of disqualifications.</p> <p>Note-As per Section 167(1), the office of the director shall become vacate if he incurs any disqualification specified in Section 164. Note-A minor cannot be a director since he is not eligible to obtain DIN and cannot file a valid consent to act as director.</p> <p>Points to remember: As per ICAI view, 164(2) disqualification is not applicable to nominee director although the Act does not give any such exemption.</p>

Section 165-Number of Directorship	
Section 165(1)	<p>A person can be a director in maximum 20 companies(public or private including alternate directorships) in which there can be maximum 10 public companies. MCA Clarification-Directorship of NPO shall be excluded. RTP Nov 2018</p> <p>Now while counting the limit of directorship of twenty companies, the directorship in dormant company shall not be included.</p>

Section 165(2)	The members of a company may specify in AOA by SR, specify any lesser number of companies .
Section 167-Vacation of office of Director	
Section 167(1)	<p>The office of a director shall become vacant in case he</p> <ul style="list-style-type: none"> • incurs any of the disqualifications specified in section 164; • absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board. • contravenes provisions of Section 184. • becomes disqualified by an order of a court or the Tribunal • is convicted by a court of any offence(minimum imprisonment-6 m). The office shall be vacated by the director even if he has filed an appeal against the order of such court; • is removed in pursuance of the provisions of this Act; • appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company. Subsequently if he ceases to hold such office, he shall vacate the office of director.

Some Do's for directors	Some Don'ts for directors
Act in good faith	Direct or Indirect interest that conflicts his interest
Act in accordance with articles	Achieve any undue gain or advantage
Exercise independent judgement	Assignment of office.
Exercise power with due care, skill and due diligence.	

Resignation and Removal of Director

Section 168	<p>Resignation of Director</p> <ul style="list-style-type: none"> • by giving a notice in writing to the company • forwarding copy of resignation within 30 days with reasons to ROC in DIR-11(Rule 16) • company shall intimate the Registrar within 30 days in DIR-12.(Rule 15) place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. • Director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
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	<ul style="list-style-type: none"> • Even if company has not filed DIR-12 to ROC, the resignation shall be valid . PTR: <ul style="list-style-type: none"> ✚ If all the directors of a company resign from their office or vacate their office , the promoter or in his absence the CG shall appoint the required number of directors to hold office till the directors are appointed by the Company in General Meeting. ✚ In case a company has already filed DIR-12 with Registrar , a foreign director of such company resigning from office may authorize in writing a practising CA or CS or CWA of other resident director of company to sign Form DIR-11 and file the same on his behalf intimating the reasons of his resignation.
Section 169	<ul style="list-style-type: none"> • A company may, remove a director (except the director appointed by National Company Law Tribunal u/s 242, and appointed by central government) before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution • 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.

Register of Directors & KMP & members right to inspect the same

Section 170	<p>Right of directors and KMP and their shareholding</p> <p>Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel including 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.</p> <p>Return containing such particulars shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.</p> <p>Illustrative list of some of particulars to be included as per Rule 17 DIN, PAN, Name, Address, Date of Birth, office held, No of shares held, date of acquisition, mode of holding(physical or dematerialized)</p> <p>Section 170 shall not be applicable to 100 % Government Company.</p>
Section 171	<p>Members Right to inspect</p> <ul style="list-style-type: none"> • Business hours • Free of cost • Take extract and copies • Open for inspection at AGM • If inspection is refused or copies not sent within 30 days, ROC shall on application order immediate inspection/supply of copies.
Section 172	<p>General Punishment(Ch xi)</p> <p>Minimum-50000 Maximum-500000</p>

Chapter XII-Section 173-195

Section 173-Meetings of Board	
Section 173(1)	<ul style="list-style-type: none"> • First Board Meeting should be held within 30 days from the date of incorporation of company. • Minimum 4 Board Meeting every year • Maximum gap between 2 Board Meeting=120 days. <p>MCA Clarification -Section 173(1) shall apply to Non Profit Organisations(Section 8 Companies) only to the extent that the BOD of such Co's shall hold atleast one meeting within every six calendar months.</p>
Section 173(2)	<ul style="list-style-type: none"> • Directors may participate either personally or by video conferencing by other audio visual means.
Section 173(3)	<ul style="list-style-type: none"> • Notice shall be given in writing. • Notice period to call BM-7 days. • Mode of sending notice-by hand delivery or by post or by electronic means.(Notice of Board Meeting by Fax will be adequate notice(Ferruccio Sias V. Jai Manga Ram) • Shorter notice- may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. • In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.
<i>Parmeshwari Prasad Gupta v UOI</i> :	<p>Omission to give Notice – Consequences</p> <ol style="list-style-type: none"> 1. BM shall be void even if single director is not given notice; 2. If BM at (1) is void, resolutions passed thereat also void; 3. Accidental/Deliberate omission immaterial; 4. BM not void if: <ul style="list-style-type: none"> <input type="checkbox"/> Absentee director do not complain of want of notice; <input type="checkbox"/> The director to whom notice is not given, attends BM.
<i>Can a director waive the right to receive notice</i>	<p>Notice of Board Meeting is statutory obligation and not a contractual obligation, and therefore, cannot be waived off by any director.</p>
Section 173(4)	<ul style="list-style-type: none"> • Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
Section 173(5)	<ul style="list-style-type: none"> • One Person Company, small company and dormant company. <ul style="list-style-type: none"> ✚ At least one meeting in each half of a calendar year. ✚ Minimum gap between 2 BM-90 days. • 173(5) and Section 174 shall not apply to OPC's having only 1 director. <p>RTP- May 2018 As per 173(5), in the earlier law, OPC/Small Cos and Dormant Companies only were granted exemption with respect to conduct of BM, they were required to hold only one board meeting in each half of the calendar year with minimum gap</p>

	<p>of 90 days between 2 board meeting, Now the exemption has also been given to Private companies provided they are Start Ups.</p> <p>Now the exemption has also been given to Private companies provided they are Start Ups. However, the exemption is not available if the company has made default in the filing of financial statements and Annual Returns.</p>
Content of Notice	<ul style="list-style-type: none"> • No specific requirement in Section 173. • Date, time and place must be given as a matter of good secretarial practise.
Rule 4	<p>Matters not to be dealt with VC/AV</p> <p>(i)Approval of annual Financial Statement u/s Section 134(1).</p> <p>(ii)Approval of Board's Report u/s 134(3).</p> <p>(iii)Approval of Prospectus.</p> <p>(iv)the Audit Committee Meetings for consideration of F/S including CFS to be approved by BOD.</p> <p>(v)Approval of matters relating to amalgamation , merger , demerger, acquisition and turnover.</p> <p>RTP-May 2018</p> <p>A director who desires to attend the meeting through electronic mode can participate electronically if he submits his declaration to the company. This Declaration shall be valid for a period of one year. Now with prior intimation, This Director can also attend the meeting physically.</p>

Sections 174-Quorum of Board Meeting	
Section 174(1)	<p>Quorum-1/3rd of Total Strength or 2 directors whichever is higher. Round off the fraction to the highest number. Total strength does not include directors whose offices are liable to be vacant.</p> <p>MCA Clarification-Quorum for BM of Section 8 Companies-Eight Members or 25 % of its total strength whichever is less. Provided that quorum shall not be less than two members</p>
Section 174(3)	<p>Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.</p> <p>Analysis of Section 174(3)</p> <p>Step 1-Check whether number of interested director exceeds or is equal to two third of total strength.</p> <p>Step 2-If yes, then check no of directors who are not interested and present in BM. If atleast 2 non interested directors are present, quorum is present.</p> <p>Note-Interested directors shall be counted in Total Strength since office not vacated but not counted in Quorum.</p>

	<p>RTP May 2018</p> <p>As per earlier law, Under Sec 174(3), if 2/3rd or more, of total strength of directors are interested, then for the purposes of quorum the remaining directors shall be construed as quorum provided they are more than 2 and are non-interested.</p> <p>Now, If an interested director discloses his interest to the board u/s 184, then for the purposes of quorum under 174(3), he would be counted in the quorum.</p>
Section 175-Resolution by Circulation	
Section 175(1)	<p>Resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier(Notice of BM main courier nai tha), or through such electronic means(Electronic means includes email or fax as per Rule 5) as may be prescribed</p> <p>AND</p> <p>approved by a majority of the directors or members, who are entitled to vote on the resolution(If 11 directors were entitled to vote, 2 abstained from voting.5 voted in favour , % of directors who approved=5/11 and not 5/9.)</p> <p>Minimum 1/3rd of total no of directors may require that resolution under circulation must be decided at meeting.</p>
Section 175(2)	A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Powers of the Board-Section 176 to 183

Section 176	<p>Acts done by a person as a director shall be deemed to be valid, even if it is subsequently noticed that his appointment was invalid by reason of any defect or disqualification or office was later on terminated because of any provisions of Act/Articles. However, any act done which came to notice of company shall be invalid.</p> <p>PTR:</p> <p>Acts of MD after expiry of his term is not valid because the company cannot claim that the company was not aware of the expiry of tenure of 5 years.{ Varkey Souriar Vs Keraleeya Banking Co.Ltd}</p>
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Powers of BOD	
Section 179	<p>The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—</p> <ul style="list-style-type: none"> (a) to make calls on shareholders in respect of money unpaid on their shares; (b) to authorise buy-back of securities under section 68; (c) to issue securities, including debentures, whether in or outside India; (d) to borrow monies;(Clause d is not applicable when a banking company borrows from other Banking Co./Banks/RBI.) (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans;

	<p>Note-Powers given in clause (d) to (f) can be delegated to committee of directors, the managing director, the manager or any other principal officer of branch office.</p> <p>MCA Clarification- Matters given in clause (d) to (f), may be decided by the board by circulation instead of at the meeting in case of Section 8 Co's.</p> <p>(g) to approve financial statement and the Board’s report; (h) to diversify the business of the company; (i) to approve amalgamation, merger or reconstruction; (j) to take over a company or acquire a controlling or substantial stake in another company;</p>
Rule 8	<ul style="list-style-type: none"> ● Now only there are three matters in Rule 8 for which passing resolution in BM is mandatory <ul style="list-style-type: none"> ➤ To Make Political contributions. ➤ To Appoint or Remove KMP. ➤ To Appoint Internal Auditor's and Secretarial Auditors

Section 180-Restrictions on powers of Board	
Section 180(1)	Following powers exercisable by BOD only by passing SR
MCA Notification- Section 180 now not applicable to private companies.	(a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation; (c) If existing borrowings plus proposed borrowings > aggregate of paid up capital and free reserves and securities premium (apart from temporary loans obtained from the company’s bankers in the ordinary course of business_ (d) To remit, or give time for the repayment of, any debt due from a director.
Section 180(2)	Every special resolution passed shall specify the total amount up to which monies may be borrowed by the Board of Directors.

Powers to contribute/donate(Section 181 to 183)

Section 181 Company to Contribute to bonafide & charitable funds etc	Section 182 Powers of BOD to Contribute to Political Parties	Section 183 Powers of BOD and other authorise persons to contribute to National Defence Fund etc
<p>the BOD of a company may contribute to 'bona fide' charitable and other funds provided that prior permission of the company in GM is required if such contribution exceeds 5% of its average net profits for the 3 immediately preceding previous years</p>	<ul style="list-style-type: none"> • companies Prohibited-- Government company, a company which has been in existence for less than 3 F/Y • Other companies can contribute any amount as they may deem fit . • Resolution Required— BR in BM • Contribution shall be made only by an account payee cheque or account payee bank draft or use of an electronic clearing system through a bank account. • Disclosure in P & L- amount contributed, name of the Political party 	<p>The Board is authorized to contribute such amount as it thinks fit to the National Defense Fund or any other fund approved by the Government for the purpose of national defense. The company is required to disclose in its profit and loss account the total amount or amounts contributed by it during the financial year.</p>

Committees of the Board(S :177 & 178) (R : 6 & 7)

Following Companies to have Audit Committee, Nomination and Remuneration C ommittee:-(**Every Listed Co plus POT(10/50/100)**)

- Every Listed Company;
- All Public Companies with a paid up capital of 10 crores or more,
- All Public Companies with turnover of 100 crores or more;
- All Public Companies having outstanding dues exceeding fifty crores or more.

(Note: All this figures shall be taken as existing on the date of last audited financial statements)

Section 177- Audit Committee	
1	The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
2	The Audit Committee shall consist of a minimum of three directors. Majority of them shall be Independent Director. Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. MCA Clarification-Section 8 Co's are not required to form a majority of Independent Directors.
3	Transition period-1 year.
4	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, <i>inter alia</i> , include,— (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of the financial statement and the auditors' report thereon; (iv) approval or any subsequent modification of transactions of the company with related parties; The Audit Committee may give omnibus approval for RPT's proposed to be entered by the Company(i.e. one time AC approval for all RPT's transactions) (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) monitoring the end use of funds raised through public offers and related matters.
5	Every listed company or such class or classes of companies, as may be prescribed (Rule 7), shall establish a vigil mechanism for directors and employees to report genuine concerns. a) All listed Companies. b) Companies which accepted deposits from the public . c) Companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Crores.
Section 178-Nomination and Remuneration Committee and Stakeholders Relationship Committee	
MCA Clarification-Section 178 shall not be applicable to Non Profit Organisations(Section 8 Companies)	
a) Nomination and Remuneration Committee shall consists three or more non – executive executive directors directors with not less than one half of members members of the Committee shall be Independent Directors b) The Board of a company which consist of more than 1000 shareholders, debenture holders, and deposit holders or any other security holder any time during the financial year shall constitute a stakeholder relationship committee with a chair person to be non-executive director and such other members as may be decided by the Board of directors. c) Non consideration of resolution of any grievance in good faith shall not constitute contravention of this Section. d) Functions of Nomination and Remuneration Committee i) Identify quality personnel to become director.	

- ii) Performance Evaluation of Directors
- iii) Formulate policy to ensure; that remuneration is reasonable and attractive, remuneration is balanced (i.e. fixed and performance based) and to define clear cut relation between performance and remuneration,.

Related Party Transactions (Section 184, 188 and 189)

Section 184

Every director

☐ 1st BM after **appointment**

☐ 1st BM of **every FY**

☐ If interest is changed than 1st BM **after such change.**

Shall **disclose his concern or interest (by way of form no MBP-1)** in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding. **every director** of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into"

- **with a body corporate** in which such director or such director in association with any other director, **holds more than 2 % shareholding** of that body corporate,
- or is a promoter, manager, Chief Executive Officer of that body corporate; or
- **with a firm or other entity in which**, such director is a
 - partner,
 - owner or
 - member,

Shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

MCA Clarification– In case of private companies, there is an exception given in **Section 184(2)**. The interested director may participate in meeting after disclosure of his interest. In case of **Section 8 Companies, Section 184(2) shall apply only if the transaction with reference to Section 188 on the basis of terms and conditions of the contract or arrangement, exceeds one lakh rupees.**

Section 188-Related Party Transactions(Rule 15)

COVERAGE OF “RELATED PARTY”



Individuals

- Director or his relative
- Key Managerial Personnel or his relative
- Any person on whose advice, directions or instructions a director or manager is accustomed to act
- A director or key managerial personnel of the holding company or his relative



Other than individuals

- A firm, in which a director, manager or his relative is a partner
- A private company in which a director or manager is a member or director
- A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital
- Any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager
- A holding, subsidiary or an associate company
- A subsidiary of a holding company to which it is also a subsidiary



Approvals needed for RPT's

- ✚ Board Resolution is always needed for all RPT's.
- ✚ Audit Committee approval is needed (Section 177).
- ✚ OR is needed if threshold limits are exceeded. (Companies Amendment Act, 2015). Earlier SR was needed.
- ✚ RPT's by company where value of transactions are in excess of limit specified as mentioned below will require prior approval of shareholders by ordinary resolution (First proviso of Section 188(1))

- 1) Sale, purchase, supply of goods/materials; (If directly/indirectly through appointment of agent > 10% of turnover or 100 cr whichever is less), resolution must be passed in GM.
- 2) Selling /disposing/buying of any property; (If directly/indirectly through appointment of agent > 10% of net worth or 100 cr whichever is less), resolution must be passed in GM.
- 3) Leasing of any property; (> 10% of net worth /turnover or 100 cr whichever is less), resolution must be passed in GM.
- 4) Availing/rendering any service; (If directly/indirectly through appointment of agent > 10% of turnover or 50 cr whichever is less), resolution must be passed in GM.
- 5) Appointing any agent for purchase /sale of goods /material /services/property (> 10% of turnover or 50 cr whichever is less), resolution must be passed in GM.

- 6) Appointment of related party to any office or place of profit in the Company /its subsidiary/its associate ;(If monthly remuneration > 2.50 lakhs), resolution must be passed in GM.
- 7) Undertaking subscription of securities/derivatives of the Company.(remuneration > 1 % of net worth), resolution must be passed in GM.

No member of the company shall vote on such resolution , to approve any contract or arrangement which may be entered into by the company, if such member is a related party(Second proviso to Section 188(1).Here related party is construed with reference only to the contract or arrangement for which the said resolution is being passed.

RTP NOV 2018

If 90 % or more members in number are relatives of promoters or are related parties, they shall be allowed to vote .

Every contract or arrangement entered with a related party as mentioned above, shall be referred in Board report to the shareholders along with justification for entering into such contract or arrangement.

First and Second Proviso of Section 188(1) is not applicable to

- + Government Company entered into contract or arrangement with another Government Company.
- + Unlisted Government Company, if prior approval of Department or Ministry is taken.

Register of contracts or arrangements in which directors are interested. (S:189)(R :16)

Company shall maintain a register in Form “MBP-4” for contracts entered into under Section 184(2) or 188.

Loans & Investments -Section 185,186,187

Loan to directors, etc. (S:185) (R : 10)

Under Section 185 there is total prohibition on making of loans to Directors or giving guarantee/providing security in connection with loan taken by director or any person in which director is interested.

This sub-section shall not apply to:-

- a. Loan to MD or WTD:
 - as a part of service provided to all employees;
 - under any scheme approved by a special resolution;
- b. By a Company in ordinary course of business where the interest charged is not less than that fixed by RBI.
- c. Loan/Guarantee/Security provided by a holding Company to its WOS.
- d. Providing of Guarantee/Security by a Holding Company for a loan provided by a Bank to its subsidiary company.

(Provided such loan is utilised by the subsidiary for its principal business activities)

No Central Government approval is required under this Section now.

Section 186-Loan and investment by company.

(S: 186)(R : 11 to 13)

- Approval by special resolution is required where the inter-corporate loan/guarantee/security exceed 60% of its paid up capital, free reserves and securities premium account or 100% of its free reserves.[186(2)]

When term loan is subsisting in PFI, conditions for every Inter-corporate Loans/Guarantee/Security

- Obtain unanimous consent of all directors present in Board Meeting
 - Prior approval of PFI .
 - However, if I/L/G/S is within limits & company has not defaulted in repayment of loan/interest only unanimous consent is needed.PFI approval is not required.
- **Exceptions of Section 186**
 - a)Loan made/Guarantee given/Security given by Banking Co./Insurance Co/Housing finance Co in ordinary course of business.
 - b)Company engaged in business of financing/infrastructure/NBFC's or any other Company whose principal business is acquisition of securities.
 - c)Allotment of Right Shares.
 - d) Where a loan/guarantee/security has been provided by a Company to its WOS, JV or acquisition is made by a Holding Company of shares of WOS no special resolution is required even if it exceeds the limit under Section 186(2).

- **MCA Circular-10-3-2015**

If a company gives loan to its EE's (other than MD/WTD) in accordance with condition of service and as per remuneration policy of co, Section 186 is not applicable.

PTR:

Delegation of power exercisable under Section 186 can be done to MD, Manager or Principal officers of the Company. However, Section 186 specifically provides that unanimous resolution of all directors are needed.

RTP-May 2018

1. 186(7) is not applicable to a company in which 26% or more of paid up share capital is held CG/ SG or both in respect of loans provided for funding industrial development projects.

PTR:

As per Section 186(3), no loan shall be given under this section at a rate of interest

lower than the prevailing yield of one year , three year , five year or ten year Government security closest to the tenor of the loan.

2. In the earlier law, as per Sec 186, no company can invest through more than 2 layers of Subsidiaries. Now the exemption has been granted to Banking Company/ NBFC/ Insurance Co and Govt Co.

Investments of company to be held in its own name. (S:187)(R : 14)

All investments made by a Company shall be held in its own name.

Following are the circumstances when a company may not have investment in its own name.

- a) A company may deposit with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
- b) A company may deposit with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof, but required to again hold the shares or securities in its own name within a period of six months;
- c) A company may deposit with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;
- d) A company may hold investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

Section 192: Restriction on non-cash transactions involving directors	
Applicability	All the companies Companies shall not enter into certain types of contracts with certain persons except with the <i>prior</i> approval of members in the general meeting.
Types of contracts	a. Company acquires or is to acquire assets for consideration other than cash b. Director of the company or holding company or subsidiary company or associate company or any person associated with them acquires or is to acquire assets from the company for consideration other than cash.
How contract is entered into?	Every such contract requires prior approval of the members by a resolution. The notice of general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated

	by a registered valuer.
Approval in holding company also	Where contract is entered into with the director of the holding company then approval of member shall be obtained in holding company also.
Effect of contravention	Contract entered into in contravention of these provisions shall be voidable at the option of the company.

Section 193: Contract by One Person Company with the sole member who is also a director	
Form of contract	Any such contract shall be <i>in writing</i> . If it is <i>not in writing</i> , the terms of the contract shall be recorded in a memorandum or in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.
Intimation to RoC	Within 15 days since approval by the Board.
Non-applicability	Contracts entered into by the company in the ordinary course of business.

RTP Nov 2018

Section 194 and 195 are now omitted.

**Ch XIII- APPOINTMENT AND REMUNERATION OF KEY MANAGERIAL PERSONNEL
(Section 196-205)**

Some important definitions

Key Managerial Personnel

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel.

As per section 2(51) “key managerial personnel”, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer; and
- (v) such other officer as may be prescribed.

Section 196–Appointment of managing director, whole-time director or manager	
(1)	No company shall appoint or employ at the same time a managing director and a manager.
(2)	No company shall appoint or re-appoint any person as its MD/WTD/Manager for a term exceeding five years at a time. However they can be reappointed before the end of original term but only during last one year of the original term.
(3)	No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who — (a) is below the age of twenty-one years or has attained the age of seventy yrs. However, even if age is 70 years or more the person can be appointed by passing SR and indicating justification in explanatory statement. (b) is an undischarged insolvent or has at any time been adjudged as an insolvent; (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
(4)	Appointment of MD, WTD, Manager <ul style="list-style-type: none"> • approval by the Board of Directors • approval by a resolution at the next general meeting of the company • by the Central Government in case such appointment is at variance to the conditions specified in Schedule V.
(5)	Even if appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such refusal shall be valid.
MCA Notification dated 5th June 2015	Section 196 (4) & (5) not applicable to private companies and 196(2), (4) and (5) not applicable to government companies.

<p>Section 197-Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits (This Section is applicable only to a public company)</p> <ul style="list-style-type: none"> • Maximum remuneration payable to all directors(including MD, WTD, Mgr) is 11% of Net Profits of the Company. • Any one MD/WTD/Mgr=5% of Net Profits of Co. • >1 MD/WTD/Mgr=10% of Net Profits of Co. • Other directors=1 % of Net profits if there is a MD/WTD/Mgr in Co. and 3% if there is no MD/WTD/Mgr. <p>However if CG approval is taken and conditions of Schedule V is complied with ,the company in GM may authorise payment of remuneration>11%.To jump the other limits only approval in GM is sufficient.</p>
<p>Remuneration to director includes</p> <ul style="list-style-type: none"> • remuneration paid to him in capacity of director & includes • remuneration paid to him in any other capacity but does not include the remuneration paid to him in professional capacity provided that he holds the professional qualification in opinion of NRC/BOD, for such capacity.
<p>Directors are entitled to sitting fees. According to Rule 4, the maximum sitting fees per meeting is Rs.1,00,000.</p>
<p>Remuneration of Independent Director</p> <ul style="list-style-type: none"> • shall not be entitled to any stock option. • may receive remuneration by way sitting fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

<p>Section 199-Recovery of remuneration in certain cases</p> <p>If a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made there under, the company shall recover from any past or present MD or WTD or manager or CEO (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what was permissible as per restated F/S.</p>
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<p>Compensation for Loss of Office of Managing or Whole time Director or Manager (Section 202)</p> <p>(i)Section 202 provides that a company may make payment to a MD/WTD/Mgr but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.</p> <p>(ii) However, No payment shall be made in the following cases:—</p> <p>(a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;</p> <p>(b) where the director resigns from his office otherwise than on</p>
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the reconstruction/ amalgamation of the company;
 (c) where the office of the director is vacated due to disqualification;
 (d) where the company is being wound up due to the negligence or default of the director;
 (e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
 (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(iii) Maximum limit of compensation to MD/WTD/Mgr

- Any payment made to a MD OR WTD or **manager shall not exceed the remuneration** which he would have earned if he had been in office for the remainder of **his term or for 3 years**, whichever is shorter
- The amount shall be calculated on the **basis of the average remuneration** actually earned by him during a period of **3 years immediately preceding** the date on which he ceased to hold office, or where he held the office for a lesser period than 3 years, during such period.
- no such payment shall be made to the director in the event of the commencement of the winding up of the company, **(ii) The company can recover the amount of Rs.5 lakhs paid on the ground that Mr.Doubtful is not entitled to any compensation, because he is guilty of corrupt practise**

Bell vs. Lever Bros it was observed that directors are not bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him.

Section 203- Appointment of key managerial personnel(Applicable only to public co)

(1)	<p>a)As per Section 203 read with Rule 8 of Companies(Appointment & Remuneration of Managerial Personnel) Rules, 2014 Every listed company & { every unlisted public company having a paid up share capital (P out of Pot) of Rs. 10 crore or more shall appoint following whole time KMP (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer : & appointment of CS in Practise is compulsory if Paid up share capital is Rs.5 crore or more.</p>
(2)	<p>Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.</p>
(3)	<p>a)A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold directorship in other companies with permission of Board. b)A whole time KMP holding office in more than one company at same time has to</p>

	<p>choose one company within 6 months from the date of commencement of Act.</p> <p>c) A person can be appointed as MD in 2nd Company if he is Mgr/MD of 1st Company if unanimous resolution is passed at Board Meeting of 1st Company & specific notice stating that unanimous resolution has been passed shall be send to all directors in India . (A person can never be appointed as Manager of 2nd Co) Unanimous resolution at BM-Section 186 when limits exceeded and one mgr/md appointed as MD in 2nd co. Unanimous resolution at GM-Section 162.</p>
(4)	Vacancy if any in office of KMP shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Section 204- Secretarial audit for bigger companies	
(1)	As per Section 204 read with rule 9 , Every Listed Company and other public companies if paid up share capital is ≥ 50 or turnover ≥ 250 crore shall annex with Board Report a Secretarial Audit Report.
(2)	Company to give all assistance and facilities to the CS in practise for audit purpose.
(3)	BOD in Board report shall explain in full any qualification or observation or other remarks made by CS.

SCHEDULE V							
<i>(See sections 196 and 197)</i>							
Part I	Part II					Part III	Part IV
Pre-requisites - Imprisonment or fine - Detention - Age - Two Companies - Resident	Remuneration					Procedural requirements	Power of Central Govt. to grant exemptions
	Sec. I	Sec. II	Sec. III	Sec. IV	Sec. V		
	Company having adequate net profit	Net Profit is inadequate or loss	Excess Remuneration	Perquisites	Remuneration from two companies		

PART I

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under this Act or any of the following Acts, namely:—

- (i) the Indian Stamp Act, 1899 (2 of 1899);
- (ii) the Central Excise Act, 1944 (1 of 1944);
- (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
- (v) the Essential Commodities Act, 1955 (10 of 1955);
- (vi) the Companies Act, 2013;
- (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (viii) the Wealth-tax Act, 1957 (27 of 1957);
- (ix) the Income-tax Act, 1961 (43 of 1961);
- (x) the Customs Act, 1962 (52 of 1962);
- (xi) the Competition Act, 2002 (12 of 2003);
- (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
- (xvi) the Prevention of Money-Laundering Act, 2002 (15 of 2003);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time :

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II

REMUNERATION

SECTION I

Remuneration payable by companies having profits :

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

SECTION II

Remuneration payable by companies having no profit or inadequate profit without Central Government approval :

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	60 lakhs
(ii) 5 crores and above but less than 100 crores	84 lakhs
(iii) 100 crores and above but less than 250 crores	120 lakhs

(B):

In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level

qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company.

How to compute effective capital?

Effective capital means the aggregate of the paid up share capital (excluding share application money or advances against shares) plus share premium credit balance plus reserves and surplus(excluding revaluation reserves) plus long term loans and deposits repayable after one year **minus** accumulated losses and preliminary expenses(except in cases of investment by investment co whose principal business is the acquisition of securities).