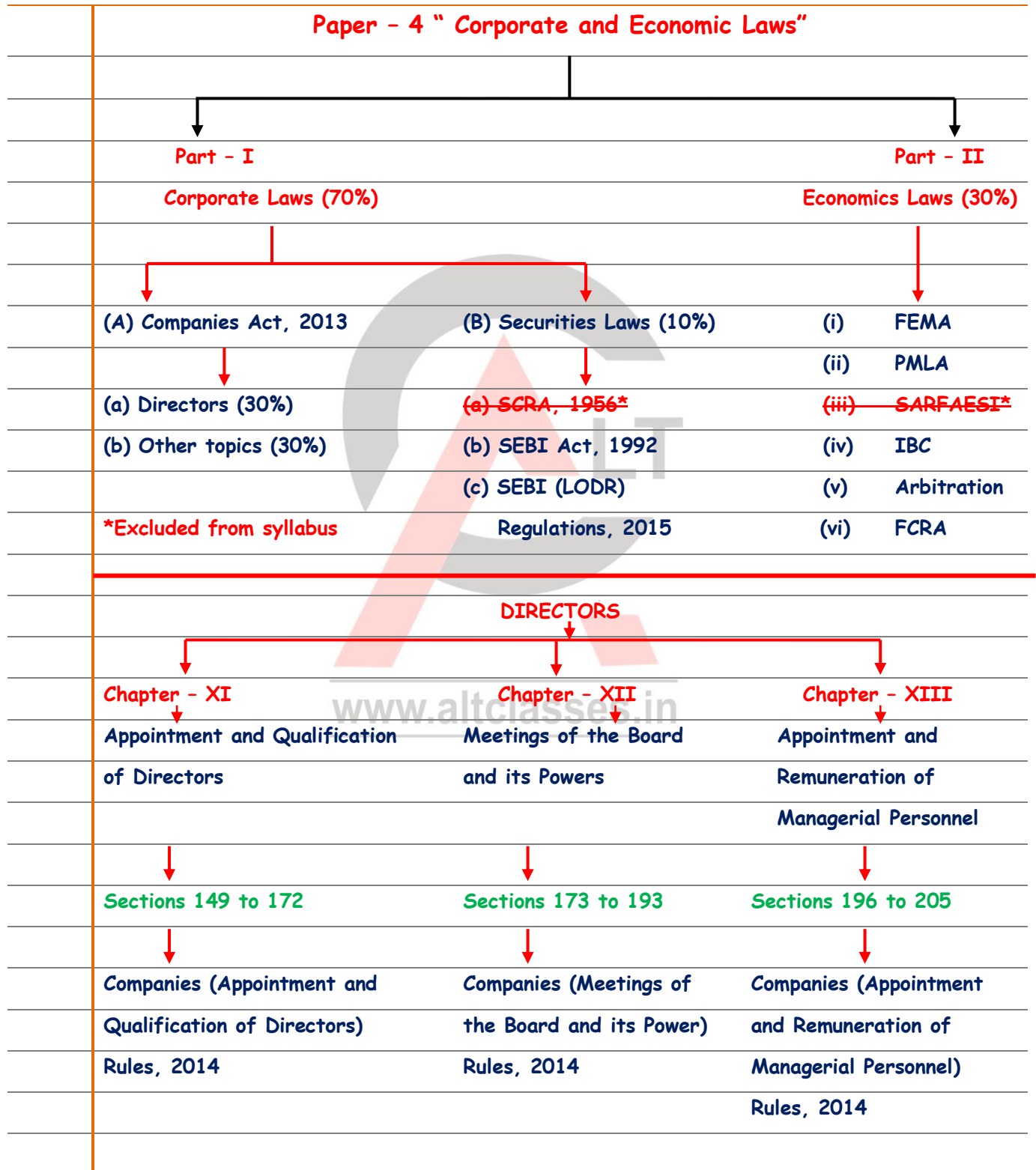


# Chapter- 1 "Appointment and Qualification of Directors"



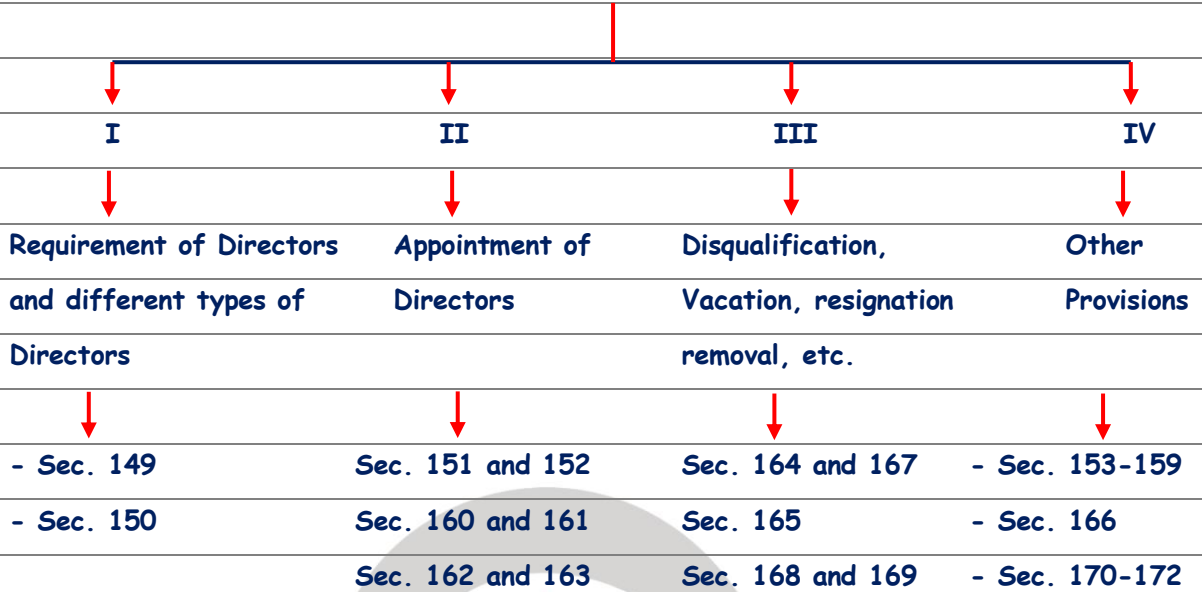
**Analysis of definition of term "Officer" under the Companies Act, 2013**

**Sec. 2(59) - "Officer" includes any**

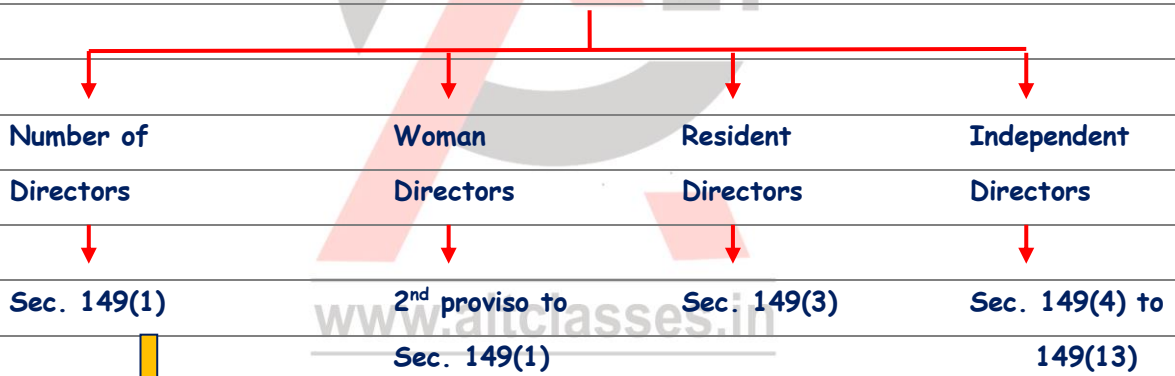
director,		manager	or	key managerial personnel	or	any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.
<b>Meaning of Key Managerial Personnel</b>						
<b>Meaning of Director</b>	<b>Meaning of Manager</b>					
Sec. 2(34): "director" means a director <b>appointed</b> to the <b>Board</b> of a company	Sec. 2(53): "manager" means an <b>individual</b> who, ⇒ subject to the superintendence, control and direction of the Board of Directors, ⇒ has <b>the management of the whole, or substantially the whole,</b> of the affairs of a company, <b>and</b> ⇒ includes a director, or ⇒ any other person occupying the <b>position of a manager,</b> by whatever name called, whether under a contract of service or not.	Sec. 2(51): "key managerial personnel", in relation to a company, means— (i) the <b>Chief Executive Officer</b> or the <b>managing director</b> or the <b>manager</b> ; or (ii) the company secretary; (iii) the <b>whole-time director</b> ; (iv) the <b>Chief Financial Officer</b> ; (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed.				
Sec. 2(10): " <b>Board of Directors</b> " or " <b>Board</b> ", in relation to a company, means the collective body of the directors of the company.		Sec. 2(18) "Chief Executive Officer" means an officer of a company, who has been <b>designated</b> as such by it; "managing director" means a director who, by ⇒ virtue of the <b>articles</b> of a company or ⇒ an <b>agreement</b> with the company or ⇒ a <b>resolution</b> passed in its general meeting, or by its Board of Directors, is entrusted with <b>substantial powers of management</b> of the affairs of the company and includes a director occupying the <b>position of managing director</b> , by whatever name called. Already defined				
		Sec. 2(53) <b>Manager</b>				
		Sec. 2(24) <b>Company Secretary</b>				
		Sec. 2(94) <b>Whole Time Director</b>				
		Sec. 2(19) <b>Chief Financial officer</b>				
Meaning of Terms used in definition of "KMP"						

**Chapter - 1 "Appointment and Qualification of Directors"**

**PARTS**



**(i) Sec. 149: Company to have Board of Directors:**



- (i) Every Company shall have a BOD Consisting of Individuals.
- (ii) Minimum directors: 1 (OPC); 2 (Private Co.); 3 (Public Co.)
- (iii) Maximum directors: 15

**First Provisio to Sec. 149(1):** To appoint >15 directors, SR is required

**Note:** Limit of Maximum directors and requirements of SR, not applicable over Govt. companies and Section 8 companies subject to conditions.

**Woman Director: 2<sup>nd</sup> proviso to Sec. 149 (1) and Rule 3**

↓  
Prescribed Companies shall have  
atleast one woman director

Companies required  
to have woman director

Appointment in case  
of a new company

Filling of Intermittent  
vacancy

(a) Every Listed Company  
(b) Unlisted Public Companies

Covered under  
prescribed criteria

Intermittent Vacancy  
shall be filled by Board

PUC or Turnover  
≥ 100 Cr      300 ≥ Cr.

shall be made within  
6 months of date of  
Incorporation

at earliest but not  
later than  
- Immediate next  
Board Meeting; or  
- 3 Months from date of  
vacancy,  
whichever is later.

Note: PUC or Turnover as on  
date of latest audited  
Financial statements to  
be considered.

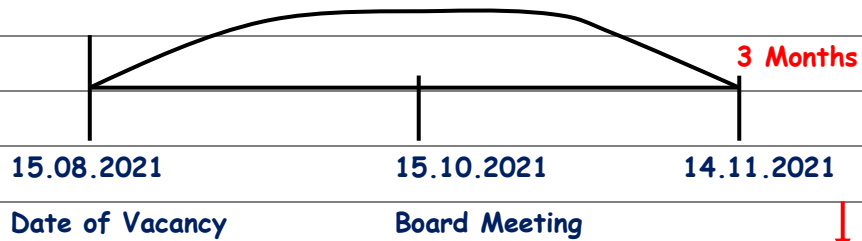
**Example - 1:**

		PUC	Turnover	whether women director required
ABC Ltd.	Listed	50 Cr.	200 Cr.	Yes
A (Pvt.) Ltd.	"	90 Cr.	250 Cr.	Yes
X Ltd.	Unlisted	40 Cr.	240 Cr.	No
Y Ltd.	"	110 Cr.	290 Cr.	Yes
Z Ltd.	"	90 Cr.	305 Cr.	Yes
M Ltd.	"	110 Cr.	350 Cr.	Yes
O (Pvt.) Ltd.	"	105 Cr.	360 Cr.	No
P (Pvt.) Ltd.	"	90 Cr.	400 Cr.	No

**Example - 2:** ABC Ltd. Incorporated on 05.09.2021 with Puc of Rs. 150 crores. Within how much period, Woman director shall be appointed.

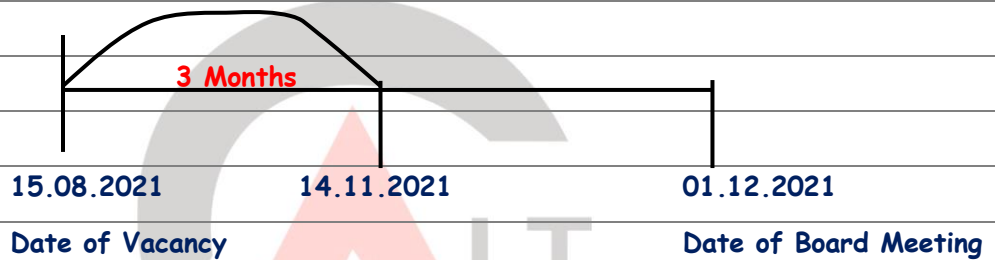
Ans.: 6 months from date of incorporation.

**Example - 3:** Vacancy Created in office of woman director on 15.08.2021.



Last date by which Vacancy to be filled

**Example - 4:** Vacancy created in office of woman director on 15.08.2021



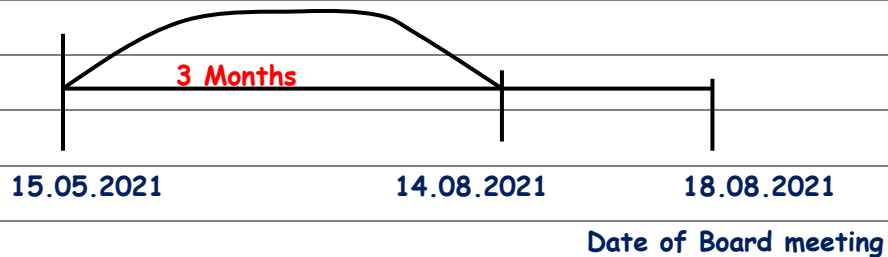
Last date by which Vacancy to be filled

**Example - 5:** ABC Ltd incorporated on 05.03.2021 with PUC of ₹150 Cr. and listed on Bombay Stock Exchange.

- Company has 7 directors - M<sub>1</sub> M<sub>2</sub> M<sub>3</sub> M<sub>4</sub> M<sub>5</sub> (Mens); and W<sub>1</sub> W<sub>2</sub> (Women)
- Office of W<sub>1</sub> falls vacant due to resignation on 15.05.2021.
- Office of W<sub>1</sub> not filled up by the Board in Board meeting held on 18.08.2021.

State wheter Sec. 149 (1) has been contravened?

Ans.: No



**Resident Director - Section 149 (3):**

**Existing Companies**

**Newly Incorporated Companies**

Every Company shall have

This requirement shall apply

atleast one director

proportionately for the financial year  
in which company is incorporated

who stays in India for  $\geq 182$  days  
during the financial year

**Example-1:** For financial year 2020-21, period of stay of directors in India of X Ltd. is as follows:

- D<sub>1</sub> - 01.04.2020 to 31.10.2020 > 182 days
- D<sub>2</sub> - 15.06.2020 to 15.08.2020 < 182 days
- D<sub>3</sub> - 01.01.2021 to 15.01.2021 < 182 days
- D<sub>4</sub> - 10.10.2020 to 05.01.2021 < 182 days
- D<sub>5</sub> - 18.06.2020 to 20.07.2020 < 182 days

State whether Section 149 (3) has been complied with. **Yes**

**Example-2:** A (Pvt.) Ltd. was incorporated on 15.07.2021.  
Compute number of days a director must stay in India so as to fulfill the requirement of Sec. 149 (3).

Ans.: No. of days from 15.07.2021 to 31.03.2022  
 $= 17 + 31 + 30 + 31 + 30 + 31 + 31 + 28 + 31$   
 $= 260$  days

Proportionate days =  $182 \times \frac{260}{365}$   
 $= 130$  days

**DO PRACTICE - Questions on Woman director / Resident Director.**