

# APPOINTMENT & QUALIFICATIONS OF DIRECTORS



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**Chapter XI of The Companies Act, 2013**

**Companies (Appointment and Qualification of Directors) Rules 2014**

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## Board of Directors – Sec 2(10)

'Board of Directors' or 'Board' in relation to a company, means the collective body of directors of the company.

## Board of Directors – Sec 149

- Every company shall have Board of Directors consisting of individuals and shall have:
  - Minimum of 3 directors for a public company
  - Minimum of 2 directors for a private company
  - One director in the case of a OPC
- Maximum of 15 directors
- Company may appoint more than 15 directors after passing a special resolution



# Woman Director

- Following companies shall have at least one woman director:
    - Every listed company
    - Every other public company having:
      - Paid up share capital of Rs.100 crores or more
      - Turnover of Rs.300 crores or more.
- (Turnover and Capital as on the last date of the latest audited FS)*

*One year time to comply.*

- Vacancy  
Any intermittent vacancy of a woman director shall be filled up by the board at the earliest but not later than immediate next BM or three months from the date of such vacancy, whichever is later.

## Resident – Sec 149(3)

- Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

# Independent Directors – Sec 149 (6)

- **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.
  - Who is or was not a promoter of the company or its holding/subsidiary or associate company.
  - Who is not related to the promoters or directors of the company, its holding/subsidiary or associate company.
  - Not holding any employment with the company for immediately preceding 3 years.
  - Who or his relatives has or had no pecuniary relationship with the company for the
    - immediately preceding 2 years.

## Independent Directors – Sec 149(4)

- Every listed public company shall have at least one-third of the total number of directors as independent directors. (fraction to be counted as one)
- The following class or classes of companies shall have at least **two** directors as independent directors -
  - Public Companies having paid up share capital of Rs.10 crore or more; or
  - Public Companies having turnover of Rs.100 crore rupees or more; or
  - Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs.50 crores.

*provided also that where a company ceases to fulfil any of three conditions laid down above for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions*

## Independent Director – Declaration – 149(7)

- **Independent Director shall give a declaration that he meets criteria of independence :**
  - At the first meeting of the board in which he participates as a director.
  - Thereafter at the first meeting of the board in every FY.
  - Wherever there is any change in the circumstances which may affect his status as an independent director



## Independent Director – Term – 149 (10)

- An independent director shall hold office for a term upto 5 consecutive years on the board, but shall be eligible for re-appointment on passing of a special resolution and disclosure of such appointment in the Board's report.
- 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 three years of ceasing to become an independent director.

*Provided that 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.*

## Independent Director – Data Bank – Sec 150

- An independent director may be selected from a data bank maintained in this behalf by an agency approved by the CG.
- Such data bank shall be placed on the website of the Ministry of Corporate Affairs or other website as notified by the CG.
- The responsibility of exercising due diligence before selecting a person from the data bank shall lie with the company.
- Application to include name in data bank – Form DIR - 1



## Small Shareholders' Director – Sec 151

- A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

*\*\* holding shares of nominal value of not more than twenty thousand rupees.*

- Company can appoint suo motu also.
- Small Shareholder Director
  - Not liable to retire by rotation
  - Maximum of 3 consecutive years.
  - Cannot hold the position in more than 2 companies at the same time.
  - Not for a period of three years after he ceases to be a small shareholders' director, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

## Appointment of Directors – Sec 152

- Where no provision is made in the articles of a company for appointment of first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company.
- No person shall be appointed as a director, unless he has been allotted the Director Identification Number (DIN)

# Procedure

- Every individual intending to be appointed as the director of the company shall make an application for allotment of DIN (Directors Identification Number) – Form DIR – 3
- The person shall furnish his DIN and a declaration to the company that he is not disqualified to become a director under this Act.
- A person appointed as director shall not act as a director unless he gives consent to hold office as director ( DIR - 2).
- Company shall file such consent with ROC in Form DIR – 12 within 30 days of appointment.

## Right to stand for Directorship – Sec 160

- A person who is not a retiring director u/s 152, shall be eligible for appointment to the office of a director at any general meeting:
  - He has to give 14 days notice in writing.
  - Deposit Rs.1/- lakh. (refundable)

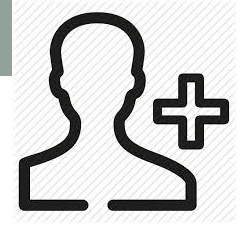
## Appointment at GM

- Sec 162
  - Appointment of directors has to be voted individually.
  - Single resolution shall not be moved unless such a proposal has been agreed to at the meeting without any vote being cast against it.

## Rotation of Directors – Sec 152 (6)

- Unless the articles provide for retirement of all directors at every AGM, not less than  $2/3^{\text{rd}}$  of the total directors of a public company shall be liable to retire by rotation.
  - shall not include independent directors
- At every AGM,  $1/3^{\text{rd}}$  of such directors are liable to retire by rotation. (round off to nearest to  $1/3^{\text{rd}}$ .)
- The directors liable to retire by rotation shall be those who have been longest in office. (if appointed on the same day, agreement/lot)
- At every AGM, the company may appoint the retiring director or some other person thereto.





## Additional Director – Sec 161 (1)

- The BOD has the power :
  - to appoint any person, other than a person who fails to get appointed as a director in GM as an additional director.
  - who shall hold office upto the date of the next AGM or the date on which AGM should have been held, whichever is earlier.

## Alternate Director – Sec 161 (2)

- The BOD, if authorised by the articles of the company may in the GM, appoint an alternate director:
  - During a directors absence for a period of not less than three months from India.
  - The person should not hold alternate directorship for any other director in the company.

# Alternate Director

- Proviso:
  - Alternate Director for an independent director should be qualified for being appointed as an independent director.
  - Period of office shall be of the original director.
  - Vacate office when the original director returns.
  - If term of office of original director is determined and he is reappointed before he returns to India, the appointment shall apply to the original director, and not the alternate director.

## Nominee Director - Sec 161(3)

- Subject to the articles of a company, the Board may appoint any person as a director nominated by:
  - any institution in pursuance of any law for the time being in force or of any agreement or
  - by the CG or the SG by virtue of its share holding in a Govt Co.

## Rotation of Directors – Sec 152 (6)

- Unless the articles provide for retirement of all directors at every AGM, not less than  $2/3^{\text{rd}}$  of the total directors of a public company shall be liable to retire by rotation.
  - shall not include independent directors
- At every AGM,  $1/3^{\text{rd}}$  of such directors are liable to retire by rotation. (round off to nearest to  $1/3^{\text{rd}}$ .)
- The directors liable to retire by rotation shall be those who have been longest in office. (if appointed on the same day, agreement/lot)
- At every AGM, the company may appoint the retiring director or some other person thereto.

## Vacancy – Sec 161(4)

- In the case of a public company, if the office of any director appointed by the company in GM is vacated before the term, the resulting casual vacancy may, (subject to articles) be filled by the Board.
- Any person so appointed shall hold office only upto the date upto which the director in whose place he is appointed would have held office if he had not vacated.

## Number of Directorships – Sec 165 (1)

- Maximum number of directorships (including alternate directorship) – 20 companies
- Maximum number of public companies in which a person shall be appointed as director shall not exceed 10.
  - Directorship in private companies that are either holding or subsidiary of a public company shall be included.
- Compliance in one year

## Number of Directorships – Sec 165 (2)

- The members of the company may by special resolution, specify any lesser number of companies in which a director of the company may act as directors.



## Vacation of Office – Sec 167 (1)

- **The office of a director shall become vacant in case:**
  - he incurs any disqualifications u/s 164
  - He absents himself from all the meetings of the board held during a period of 12 months with or without seeking leave of absence.
  - He acts in contravention to Sec 184 (Disclosure of interest)
  - By order of Court
  - He is removed in pursuance of the provisions of the Act
  - He having been appointed as a director by virtue of holding any office/employment in the holding/subsidiary/associate company, ceases to hold such office/employment.

## Vacation of Office – Sec 167 (3)

- Where all the directors of a company vacate their offices under any of the disqualification under Sec 167(1), the promoter or in his absence, the CG shall appoint the required number of directors, who shall hold office till directors are appointed by the company in GM.
- A private company may specify in its articles, any other ground for vacation of office.

## Resignation of a Director – Sec 168

- A director may resign from his office by giving a notice in writing to the company.
- The board on receipt of such notice, intimate the ROC in DIR -12 within 30 days from the receipt of notice and post the information on its website, if any.
- The director shall also within 30 days of resignation, intimate the ROC in DIR -11 with reasons.
- The resignation shall take effect on the date of receipt of notice by the company or any date as specified in the notice, whichever is later.

## Removal of a Director – Sec 169



- 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, by giving him a reasonable opportunity of being heard.
- Special notice required of the resolution.
- The director can make a representation at the meeting, unless not allowed by the Tribunal.

## Register of Directors – Sec 170



- Every company shall keep at its registered office, a register of its directors and key managerial personnel.
- A return containing the particulars of appointment of director/KMP and changes therein, shall be filed with the ROC in DIR-12, within 30 days of such appointment/change.
- Members has the right to inspect such register – Sec 171



*Thank You....*