

**COMPANY LAW**  
**TEACHER: Prof. Sunita Saha (SS)**  
**TOPIC: Company Administration**  
**2<sup>nd</sup> sem (H&G)**

**COMPANY ADMINISTRATION**

**Company law**

**2<sup>nd</sup> semester (h & g)**

**UNIT: 3**

**16 MARKS**

**APPOINTMENT OF DIRECTOR[152]**

1. Appointment of the first director: the first director of a company are appointed by the promoters of the company as per Articles of Association. The tenure of the director is up to first annual general meeting.
2. Appointment of subsequent director: every director other than the first director is appointed at AGM
  - a. Rotational directors: out of the total number of directors  $\frac{2}{3}^{\text{rd}}$  of the directors must retire by rotation and must be appointed by the shareholders in the general meeting. In calculating the total number of directors independent directors must not be taken into account.
  - b. Non rotational directors: they are said to be the permanent directors and are not liable to retire by rotation.  
 $\frac{2}{3}^{\text{rd}}$  of directors are subject to retire by rotation. Out of  $\frac{2}{3}^{\text{rd}}$   $\frac{1}{3}^{\text{rd}}$  must retire by rotation that is holding the longest position. And  $\frac{1}{3}^{\text{rd}}$  is rotational.
  - c. Reappointment of retiring director: the vacancy caused by retirement shall be filled at the same meeting or at the adjourned meeting unless the retiring director is found to be disqualified.
  - d. Appointment of a director other than retiring director: a person who is not a retiring director is eligible for appointment:
    1. A 14 days notice is to be given by the person who is opting to be a director
    2. The company must inform the members at least 7 days before the day of the meeting
    3. The person whose name is proposed must submit his candidature by depositing a sum of Rs1,00,000 or if the person gets 25% of the valid votes cast either in poll or show of hands, the sum shall be refunded otherwise the amount stands forfeited by the company.
  - e. Appointment of director by the Board: the BOD exercise the power to appoint additional, alternate and nominee directors and casual vacancy:
    1. Additional director: if the articles specify the BOD has the power to appoint additional director who shall hold office upto next AGM.

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2. Alternate director: the BOD has the power to appoint any director as alternate director in place of director who is absent for a period of not less than 3 months. The alternate director shall not hold office for a longer period than the position of the director in whose place he has been appointed.
3. Nominee director: the BOD has the power to appoint any person as nominee director as a representative for financial institution.
4. Casual vacancy: if the office of any director is vacated before his term or if he expires the resulting casual vacancy can be filled by the BOD.
- f. Appointment of director by Tribunal: the Tribunal has the power to appoint directors preventing from oppression and mismanagement.
- g. Appointment of director by Central Government: Where all the directors have vacated the office then the promoter or the Central Government can appoint the director.
- h. Appointment of director by proportional representation: the articles may have the provision for appointment of  $\frac{2}{3}$ <sup>rd</sup> of total number of director by proportional representation. Such appointment is taken place once in every 3 years either by cumulative voting or by single transferable vote.

## POSITION OF DIRECTOR

SEC 2(34):

Director means a director appointed to the Board of a company.

1. **Director as an agent:** Directors are the agents of a company. They are acting on behalf of the company. In *Ferguson V. Wilson*, the court decided that directors are in the eyes of law, agents of the company. It was held that, the company has no person; it can act only through directors. So directors cannot be held personally liable for any default of the company. It was held that for a loan taken by a company, the directors, who had not given any personal guarantee to the creditor, could not be made liable merely because they were directors.
2. **Director as Trustee:** Directors are the trustees of the company's money, property and their powers and such must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away, and shall exercise their powers honestly in the interest of the company and all the shareholders, and not their own sectional interest. A trustee is the legal owner of the trust property and contracts in his own name.
3. **Director as organ of the Corporate body:** the state of mind of these managers is the state of mind of the company and is treated by law as such. The practical effects of these rules

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are that the directors personal faults in the business of the company. Director and managers represent the directing mind of the company and control what it does.

4. Director as employee of the company: Director are the employee of the company. They are treated as officers of the company. Officer means any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any or more of the directors are accustomed to act.

### **RIGHTS OF A DIRECTOR**

The director enjoys the following rights:

1. Directors have the right to participate in the Board meeting.
2. Qualified directors can participate in the day to day activities relating to the management of the company.
3. Directors are eligible to get remuneration
4. The directors are eligible to get compensation if the they are removed from the position
5. To inspect books of the company
6. To participate in the meeting and vote on the resolutions
7. To inspect the minutes of the Board Meeting
8. To recommend dividend

### **DUTIES OF DIRECTORS [sec 166]**

1. A director must act in accordance with the articles of association
2. A director must pursue the best interest of the stakeholders of the company in good faith and to promote the object of the company.
3. A director shall use independent judgment to exercise his duties with due and reasonable care, skills and diligence.
4. A director should always be aware of conflict of interest situations and should try and avoid such conflict of interest.
5. Before approving related party transactions the director must ensure that adequate deliberations are held.
6. Ensuring vigil mechanism for the company
7. On contravention of any of the provisions the director shall be punishable with 1,00,000 to 5,00,000

### **POWER OF THE DIRECTORS[179]**

1. To make calls on shareholders in respect of money unpaid on their shares
2. To authorize buy back of shares
3. To borrow monies

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4. To invest the funds of the companies
5. To approve financial statement and Board Report
6. To approve amalgamation, merger and reconstruction
7. To appoint and remove key managerial persons
8. To take note on the disclosure of the interest of the shareholders
9. To buy , sell investment held by the company constituting 5% or more of the paid up share capital and free reserve of the company

### **REGISNATION OF THE DIRECTOR [ 168]**

1. The director intending to resign shall send notice in writing to the company. The resignation shall take into account the date on which the notice is received by the company or the date by the director in the notice whichever later
2. The director who has resigned shall be liable even after his resignation for the offence which occurred during his tenure
3. The law has caste duty upon the director resigning and mentioning the reason of resignation
4. Enclose proof of dispatch
5. File the said form within 30 days of resignation

### **LIABILITY OF DIRECTOR**

1. Liability to shareholder: the properties of the company are conferred upon the directors and they are to manage the properties in a way beneficial to the company and the shareholders.
2. Liability as shareholder: the directors are liable to pay for the shares held by them and to that extent their liability is limited
3. Liability to the company: the directors are liable to the company under the following circumstances:
  - a. When due to the negligence of the directors the company suffers any loss
  - b. When they act ultra vires of the act or the company
  - c. When they commit any illegal act or breach of trust
  - d. When they act malafide
  - e. Where they fail to exercise reasonable care and skills in performing their duties.
4. Liability to outsiders:
  - a. When a prospectus is issued by them in contravention of the provisions of the Act
  - b. When they make any irregular allotment
  - c. When the company fails to secure minimum subscription and no refund is made to the applicant within a reasonable time.
  - d. When the company incurs any debt due to the fraudulent acts of the directors

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5. Liability to the violation of the statutory provisions: the Act provides various liabilities to the violation of various provisions of the Act.
6. Criminal liability: the directors are also liable under Indian Penal Code. Liable under the company law for filing prospectus containing untrue statement, contravention of the provisions of law regarding acceptance of deposits, concealment of facts etc.

### **REMOVAL OF DIRECTORS**

1. Removal by shareholders: the power to remove a director is in the hands of the shareholders. All the directors are responsible to the shareholders. Sec 169 of the Act states that a company by an ordinary resolution passed in a general meeting after due receipt of a special notice, remove a director before the expiry of his period of office. If the shareholders feel that the policies followed by the directors are detrimental to the interests of the company they can remove by passing a ordinary resolution.
2. A director appointed by the Tribunal cannot be removed before his term
3. The provisions of removal shall not apply where the company has adopted appointment by proportional representation with more than 2/3<sup>rd</sup> of total number of directors or the director appointed by the Tribunal who deals with oppression and mismanagement. Directors can be removed by the Tribunal under section 241 on account of oppression and mismanagement. The tribunal may order for the recovery of the undue gains made by the director mentioned during the period of their appointments. The directors as removed by the Tribunal cannot hold any managerial office for a period of 5 years.
4. Sec115 of the Act states that shareholders holding not less than 1% of the total voting power or holding shares with not less than 5,00,000 paid up share capital shall apply through special notice for removal of director.
5. The special notice shall not be sent prior to 3 months from the date of the meeting but at least 14 days before the date of the meeting at which the resolution is removed.
6. The company shall immediately send a copy of the notice to the director concerned and the director shall be entitled to be heard at the meeting.
7. The director concerned may make a representation in writing to the company and requests its notification to the members of the company.
8. The company shall intimate its shareholders by a notice at least 7 days prior to the meeting and the notice has to be send in the same manner as for the AGM.

### **KEY MANAGERIAL PERSON(KMP)( VERY IMP)**

2(51) KMP means the following persons:

- a) The Chief executive officer or the managing director or the manager
- b) The company secretary
- c) The whole time director

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- d) The chief financial officer
- e) Such other officer as prescribed

KMP shall only be appointed in the Board Meeting. By a Board Resolution. In terms of section 196 of the companies act the appointment of MD, manager or the Whole time director by a public limited company other than government company and a private company and the appointment shall be approved by the shareholders in the next general meeting held after their appointment in the Board Meeting.

**Sec 203(1) requires that every listed company and every other public company having paid up share capital of 10 crore rupees or more to appoint KMP but a company having a paid up capital of 5 crore or more shall have a whole time company secretary.**

### **MANAGING DIRECTOR**

As per sec 2(54) of the Companies Act 2013, “MD” means a director who by virtue of the articles of the company or an agreement with the company or by a resolution passed in the general meeting or by its Board of directors is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of MD by whatever name called.

### **APPOINTMENT OF MANAGING DIRECTOR**

- 1. An agreement with the company
- 2. A resolution passed by the company in the general meeting
- 3. A resolution of the Board
- 4. A clause in the AOA of the company

### **Tenure of appointment of MD**

The tenure of appointment of MD cannot exceed 5 years at a time. No re appointment shall be made earlier than 1 year before the expiry of his term. Reappointment or extension cannot exceed more than 5 years on each occasion.

### **DISQUALIFICATION OF MD [196(3)]**

This section lays down that no company shall appoint or continue the employment of any person as its managing director, WTD or Manager who is:

- a. Is below the age of 21 years and has not attained 70 years of age. But if appointed above than 70 years a special resolution is to be passed with explanatory statement.
- b. Is an undischarged insolvent or is adjudged to be insolvent
- c. Has at any time suspended payment to his creditors

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- d. Or has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

### **REMUNERATION OF MD**

As per section 197 of the Act the total managerial remuneration payable by a public company to its directors including managerial director and WTD and its manager in respect of any financial year shall not exceed 11% of the net profit of the company subject to the provisions of schedule V:

A MD may be remunerated either:

1. By way of monthly payment or
2. As a special percentage of the net profits of the company or
3. Partly by one or partly by other

However such remuneration should not exceed 5% of the NP without the company's sanction. It may be noted that where there are more than one MD total remuneration payable to them must not exceed 10% of the net profit without the sanction of the company.

### **WHOLE TIME DIRECTOR**

2(94) , A WTD includes a director in the whole time employment of the company. Therefore a WTD is a person who---

1. Devotes all his time and attention to the carrying on its affairs of the company as may be assigned to him by the board;
2. Is almost like a MD though not so designated.

### **APPOINTMENT**

Regarding appointment the same provisions of the MD is applicable.

### **MANAGER**

2(53), MANAGER means an individual who subject to the superintendence, control and direction of the BOD, has the management of the whole or substantially the whole of the affairs of a company and includes a director or any other person occupying the position of a manager.

1. A manager must be an individual
2. Manager will act under the superintendence , control and direction of the BOD
3. He may be a director of a company or any other person occupying the position of a manager by whatever name called.

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### **TENEURE OF APPOINTMENT**

An individual cannot be appointed as a manager for more than 5 years. He may be re appointed within the last 1 year of the present terms

### **REMUNARATION OF THE MANAGER**

Shall not exceed 5% of the net profits of the company. This limit can be exceeded with the approval of the company only.

### **COMPANY SECRETARY**

Sec 2(24) of the Companies Act defined company secretary as defined u/s 2(1)© of the companies secretaries act 1980 who is appointed by a company to perform the following functions of a company secretary under the Act.

A CS means a person who is a member of the ICSI(Institute of Company Secretaries Of India)

From the following :

1. CS means as defined under CS Act 1980
2. Only an individual can be appointed as CS
3. A firm or body corporate cannot be a CS
4. The company must possess the required qualification as prescribed by the Central Government
5. A CS must be a KMP

### **APPOINTMENT OF A COMPANY SECRETARY**

SEC 203 OF THE Companies Act 2013 every listed company and every public company having paid up share capital of Rs 5 crore or more than such shall have a Whole time CS in employment.

2(51) also allows a person to appoint as KMP where CS is said to be KMP

If a company contravenes the provisions regarding the appointment of KMP under section 203 then the company shall be punishable with the minimum fine of Rs 1 Lakh which may extend up to Rs 5 Lakh and every director and KMP of the company who is in default shall be punishable with fine which may extend to Rs 50,000 and if contravention continues then a further fine of Rs 1,000 for every day after the first during which the contravention continues.

### **FUNCTIONS OF THE COMPANY SECRETARY**

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According to SEC 205 of the company Act 2013 the company secretary shall discharge the following functions and duties :

1. To report to the Board about the compliance with the provisions of this Act.
2. To ensure that the company complies with the applicable secretarial standards
3. To provide to the directors of the company the guidelines they require in discharging their duties, responsibilities and powers.
4. To facilitate the convening of meeting and attend Board, committee and general meeting and maintain the minutes of these meetings
5. To obtain approval from the board, general meeting, the government and such other authorities as required under the provisions of the Act.
6. To assist the Board in the conduct of the affairs of the company.
7. To assist and advice the Board in ensuring good governance and in complying with the corporate governance requirements and best practices.

### **CHIEF FINANCIAL OFFICER**

**2(19)** AS PER Companies Act 2013 a person appointed as the CFO of the company for every public listed company and every other public company having paid up share capital of 10 crore or more is mandatorily required to appoint CFO on a whole time basis. A person who leads the finance and treasury functions of a business enterprise is designated as CFO. He can also function as KMP

### **RESIDENT DIRECTOR**

149(3) of the Act 2013 provides that 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 DIRECTOR**

2(47) Defines an INDEPENDENT DIRECTOR as defined in section 149(6) of the Companies Act

### **SEC 149(6)**

An ID in relation to a company can be a director other than MD or a WTD or A Nominee Director

1. Who is the person of integrity and possess relevant expertise and experience;
2. Who is not a promoter of the company or its holding, subsidiary or associate company
3. Who has no pecuniary relationship with the company or its holding or subsidiary company

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4. None of its relatives has any pecuniary relationship amounting to two percent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as prescribed, during the two immediately preceding financial year or during the current financial year.

### **Who can appoint ID?**

Following class of companies are required to appoint at least 1/3<sup>rd</sup> of the total number of directors on their Board as ID:

1. Listed Companies
2. Public companies having paid up share capital of Rs 100 Crore or more
3. Public Companies having turnover Rs 300 Crore or more
4. Public companies which have in aggregate outstanding loans or borrowings or debentures or deposits exceeding Rs 200 crores

### **TENURE OF ID**

1. An ID shall hold office for a term up to 5 consecutive years on the Board but shall be eligible for reappointment on passing a Special Resolution by the company and disclosure of such appointment in the Boards Report
2. No ID shall hold office for more than 2 consecutive terms, but such ID shall be eligible for appointment after the expiry of 3 years of ceasing to become an independent director provided that he shall not during the said period of 3 years be associated with the company in any capacity either directly or indirectly.

### **WOMEN DIRECTOR**

#### **Sec 149(1)**

**The following class of companies are required to appoint at least one Women Director:**

1. Every listed company;
2. Every other public company having paid up capital 100 crore rupees or more or
3. Turnover 300 crore or more

### **MCQ ON DIRECTOR**

1. As per Companies Act 2013 independent director is defined in section **2(47)**
2. For appointment to the office of a director the intending candidate will have to serve notice to the company before **14 days** of the **AGM**
3. **Every listed company and every other company having a paid up capital of Rs 5 cr or more** should have a whole time key managerial personnel

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4. The total managerial remuneration payable by a public company to its directors, including managing director and WTD and its manager in respect of financial year **shall not exceed 11% of the net profit of the company.**
5. Company secretary may be appointed by the **Board of directors**
6. Within how many days a return shall be filed with the registrar regarding appointment of company secretary—**30 days**
7. **Every listed company and every other public company having paid up share capital of Rs 10 cr or more is mandatorily required to appoint a CFO on a whole time basis**
8. Listed companies having paid up share capital of Rs100 crore or more having a turnover of Rs 300 crore or more **are required to appoint 1/3<sup>rd</sup> of total number on their BOD as independent directors.**
9. In terms of rule 4 of the companies (Appointment & qualification of directors )Rule 2014, public companies having paid up share capital of Rs 10 crore or more or public companies having turnover of Rs100 Crore or more shall have **at least 2 directors as independent directors**
10. An independent shall hold office for a term up to **5 consecutive years.**
11. An independent director shall hold office not more **than 2 consecutive terms**
12. Every individual who is appointed as director of a company shall make an application electronically **in Form No DIR 3 for allotment of a DIN**
13. A director shall intimate the change in his particulars to the company or companies in which he is a director **within 15 days of such change**
14. Women director is required to be appointed by a unlisted public **company having turnover of Rs 300 crore or more**
15. A new company shall employ a women director within **6 months from the date of its incorporation**
16. Public companies having paid up capital of **Rs 10 Core or more shall appoint independent director**
17. The relative of an independent may hold security or interest in the company of face value not exceeding **Rs 50 Lakh or 2% of the paid up capital of the company**, its holding, subsidiary or associate company
18. When a person is proposed to be appointed as a director at any general meeting of a company, a deposit **of Rs 1 Lakh** shall be made along with the notice to the company
19. Appointment of an alternate director is the prerogative of the **BOD**
20. A meeting of the BOD may be called at a shorter notice to transact the urgent business if **at least one independent director if any is present at the meeting**
21. A meeting of the Board shall be called by giving not less than **7 days notice in writing** to every director at his address registered with the company
22. In case of section 8 companies the BOD of such companies shall hold at least one meeting **every 6 calendar months**

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23. The participation of the director by video conferencing or by other audio visual means **shall be counted for the purpose of quorum**
24. There are 11 directors in a company. The quorum of a meeting of the BOD of the company is **4**
25. Agenda of the meeting is **list of matters to be discussed in the meeting**
26. The minimum number of directors of a public company will be **3**
27. A company may appoint more than 15 directors after passing a **Special resolution**
28. As per section 152 where no provisions is made in the AOA of company for the appointment of the first director then the first directors of the company will be **subscribers to the memorandum**
29. The tenure of office of a managing director can not exceed at a time **5 years**
30. Every public company having paid up share capital of Rs 100 crore rupees or more or turnover of Rs300 Crore rupees or more are required to appoint at least **one women director**
31. There shall not be **more than 120 days gap between** two consecutive meetings of the BOD of a company
32. The first meeting of the BOD of a company shall be held **within 30 days** of the date of its incorporation
33. Every officer of the company whose duty is to give notice of Board meeting and fails to do so shall be liable to a penalty of Rs 25,000
34. A general meeting may be held through **postal ballot, e voting or physical presence**
35. No company shall appoint or employ at the sametime a **Managing director or manager at the same time**

SECTION 2(24)	Definition of company secretary
2(34)	Director
2(53)	Manager
2(54)	MD
149(4)	Independent Director
153	Allotment of DIN
198	Computation of net profit
168	Resignation of director
177	Audit committee
179	Powers of BOD
197	Overall managerial remuneration