

**SEM: II**  
**Subject : - COMPANY LAW**  
**Topic: ADMINISTRATION OF THE COMPANY**  
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**DIRECTORS – APPOINTMENT, DUTIES, RIGHTS, LIABILITIES – COMPANY  
LAW**

- A director is the member of the Board of Directors.
- Director means a director appointed to the board of a company
- According to the companies act states the board of directors in relation to a company refers to a collective body of the directors of the company

**Meaning of Director**

A director is one of those persons, who are responsible for directing, governing and controlling the policy or management of a company. All directors collectively are called as Board of Directors or Board. They are the top administrative organ and the company can operate only through them. They are the brain of the organization responsible for all policy making and decision making activities.

**Appointment of Directors**

The following guidelines have been established by the companies act regarding the appointment of directors.

- The articles of a company may list the names of the first directors in its articles of association, if no names are mentioned in the articles, the subscribers of the memorandum become the first directors.
- Directors can be appointed by the initial members of the company at its first general meeting.
- A company may appoint an additional director if it needs.
- An Alternate Director may be appointed by the board during the absence of a director for a period not less than 3 months
- A vacant position of director can be filled by the members of the board on temporary terms.
- Nominee Director – It refers to any person nominated as director by a financial

institution or a government body who holds shares in the company. He must be appointed by the company.

- On complaint against oppression or mismanagement in a company, the tribunal may order the company to appoint the required number of directors as directed by the Tribunal.
- A director may be appointed by the central government under certain circumstances.
- A director may be appointed by a single transferable vote system or cumulative transferable vote system

## **Powers of Directors**

### **Statutory Powers of Directors**

Powers must be exercised by Board of Directors in the general meeting of the company by passing a resolution.

- ✓ The power to make call on shares in respect of unpaid money.
- ✓ The power to authorize lack of shares
- ✓ The power to issue debentures, whether in or outside India.
- ✓ The power to invest in funds
- ✓ The power to borrow money otherwise than on debentures
- ✓ The power to make loans or give guarantee in respect of loans. But a banking company does not require any resolution by the board.
- ✓ The power to approve the financial statement and board's report.
- ✓ The power to diversify the business of the company.
- ✓ The power to approve amalgamation, merger or reconstruction.
- ✓ The power to take over a company or acquire a company or substantial stake in another company.

### **Other powers –**

- Power to fill casual vacancy
- Power to appoint the first auditor of the company
- Power to make political contribution.
- Power to appoint alternate directors.
- Power to appoint additional directors.
- Power to declare interim dividend.
- Power to appoint or remove key managerial personnel (KMP)
- Power to declare Solvency , where the company winds up voluntarily.
- Power to recommend the rate of dividend on the shares of the company subjected to approval by shareholder of the company

### **Powers only with a resolution –**

- To sell or lease any asset of the company
- To allow time to the director for the repayment of the loan
- To borrow money in excess of paid up capital and free reserves
- To appoint a sole agent for more than 5 years
- To issue bonus shares and for reorganization of share capital

### **Managerial powers of Directors**

The Board acts in the interest of shareholders with the following powers –

- Power to contract with the third party
- Power to recommend dividend
- Power to allot, forfeit or transfer shares of company
- Power to take decision regarding terms and conditions for the issue of debentures

- Power to form policy and to issue instructions for the efficient running of the business
- Power to appoint Managing Director, Manager, Secretary of the company.
- Power of control and supervision of work of subordinates

### **Duties of Directors**

#### **General Duties of Directors.**

- To form policy and determine objectives of a company
- To delegate power to any committee if the Articles permit
- To issue instructions to subordinates for the implementation of policy to review company's progress
- To appoint their subordinate officer, managing director, Manager, Secretary, other employees
- To act in accordance with the Articles of the company providing that articles are subject to the provisions of this Act. (sec 166(1))
- To act in Good faith in order to promote the objects of the company. However the promotion of the objects should be for the benefit of the company.
- To perform duties with Due and reasonable care and Diligence.
- Duty to not to achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives.

## **Specific Duties of Directors**

- Must disclose his shareholding in a company.
- Must disclose his interest in contracts of the company
- Must disclose their name, address and occupation
- Duty to take up qualification shares within 2 months after his appointment
- Decide the minimum subscription and issue prospectus. It must not contain any false or misleading statement
- The Board of Directors or requisition must be ready to call on an extraordinary general meeting
- Duty to call statutory and annual general meeting of the company
- To ensure full and correct disclosure in prospectus of all matters as required by law.
- To sign the prospectus before it has been delivered to the Registrar.(sec 26)
- To deliver the prospectus to the Registrar before the prospectus is issued to the public.
- To deposit application money in a scheduled Bank. They shall not utilize money other than purposes mentioned in the Act.
- To file Return of Allotment of securities with the Registrar.
- To declare dividend and arrange for the payment
- To file with registrar the reports and resolutions as required by the act.
- To issue forfeit and transfer shares
- To perform all other duties as assigned by the Act

## **Liabilities of a Director**

### **Liability against Company**

The directors will have to make good for any loss on account of –

- An ultra vires act where the directors have entered into a contract beyond their powers. In such case directors are personally liable for the loss caused to the company.
- Breach of trust where the directors make a secret profit out of the business
- for negligence or for not performing his duties honestly and carefully
- for the activity of the co-directors

### **Liability toward Third parties**

The directors will be personally liable towards the 3rd parties –

- For any mis-statement in the prospectus for acting fraudulently, the directors shall be liable to pay compensation to every person who subscribe for shares on the faith of such prospectus.
- For the failure to repay application money on non- receipt of minimum subscription.
- Failure to repay Application money on refusal to list shares by the stock exchange.
- For acting in their own name without mentioning the name of the company
- For acting beyond the powers of the company
- When the liability has been made unlimited by the Memorandum
- For any liability at the company at the time of winding up

### **Definition of Director Identification Number (DIN)**

It is a unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 153 & 154 of the Companies Act, 2013

### **File an application for allotment of DIN**

Every individual, intending to be appointed as a director of the company, can file an application for allotment of DIN.

### **Allotment the DIN**

Central Government (Office of Regional Director (Northern Region), Ministry of Corporate Affairs, NOIDA).

### **Sign EForm DIR-6**

The EForm DIR-6 is required to be digitally signed by an Applicant and a Chartered Accountant or a Company Secretary or a Cost Accountant in whole-time practice.

### **Ensure following before attaching supporting documents with DIN application:**

- Documents submitted are currently valid and not expired.
- Documents issued by LIC may be enclosed as Date of Birth and Address proof.
- Bank Statements, Utility Bills like telephone, electricity bill etc furnished as residence proof are in the applicant's name only and not older than two months.
- All supporting documents attached with form DIR-3 must be duly attested by an authorized person/ authority.
- In case the director is illiterate, thumb impression should be certified from the concerned revenue authority (where the applicant resides) and then all the documents should be notarized or attested OR if applicant is not in a position to sign the application due to medical reasons and affixed thumb impression on the application then duly attested medical certificate from Government hospital is must with the application stating the reason of his / her ailment.

### **The things should be taken care of with regard to supporting documents**

ID proof must be currently valid and issued by the Central/ State Government or Instrumentalities of state like PSUs, Public Sector Banks, Universities recognized under the UGC Act. It should contain following information:

- Applicant's name with photograph
- Father's Name
- Date of Birth

### **Common Causes of DIN Rejection**

- Common Causes of DIN Rejection
- DIN Process Document
- CA 2013 – Companies (Appointment and Qualification of Directors) Rules, 2014
- How to apply Director Identification Number (DIN) with New Forms
- The Name should be expanded even if the ID proof contains the name in abbreviated form.
- Any mismatch in Name, including spelling mistake, may lead to rejection of application. Minor spelling deviations in the father's name may be accepted, if such deviations do not materially impact the name.
- Residence proofs like: Bank Statements, Electricity Bill, Telephone Bill, Utility bills etc. submitted are older than 2 months of submitting the application for verification OR such documents are in the name of some other person, for example father or spouse.

## **DIN Process Document**

### **Procedure of obtaining DIN**

As per the revised procedure for DIN Allotment, any person intending to apply for DIN shall have to make an application in eForm DIR-3 and should follow the following procedure:

1. EForm DIR-3 has to follow the offline E Filing process
2. Attach the photograph and scanned copy of supporting documents i.e. proof of identity, and proof of residence as per the guidelines. Physical documents are not required to submit at DIN cell.
3. Along with the supporting documents, verification by the applicant for applying for allotment of Director Identification Number (DIN) shall also be attached. This shall contain the Name, Father's name, date of birth, present address and text of declaration and physical signature of the applicant.
4. The EForm shall have to be digitally signed and shall be uploaded on the Respective Mentioned Website.
5. Upon upload, Pay the fees for DIR-3 EForm
6. Upon upload and successful payment,

In case Form DIR-3 details have not been identified as potential duplicate, Approved DIN shall be generated and if the details have been identified as potential duplicate, Provisional DIN shall be generated.

#### 7. Processing of EForm DIR-3

In case, DIR-3 is a potential duplicate, the MCA DIN cell will examine the e Form DIR-3 and same shall be disposed of within one or two days.

#### 8. Post-approval changes in particulars of DIR-3

If there is any change in the particulars submitted in form DIN-3, applicant can submit e-form DIN-6 online. For instance in the event of change of address of a director, he/she is required to intimate this change by submitting Eform DIN-6 along with the required attested documents.

### **Things should be taken care of while filling form DIR-3**

Income Tax PAN is mandatory in case of Indian applicants so the applicant details

(name, father's name, date of birth) should be as per the PAN details. The particulars filled in form DIN-3 should match with the details given in the supporting documents to be submitted along with DIN application. Any Mismatch will lead to rejection of DIN application. Particulars filled in form DIR-3 should match with the details given in the supporting documents to be submitted along with DIN application. Any Mismatch will lead to rejection of DIN application.

**Fee is payable along with application for allotment of DIN**

Yes, DIN Allotment Fees is Applicable.

**The documents required to be attached with DIR-3**

- High resolution photograph of the applicant
- PAN is mandatory now. So copy of pan is mandatory for identity, name, father's name and date of
- Proof of father's name is not required in the case of foreign nationals
- Copy of passport is mandatory as an id proof in the case of foreign nationals.
- Present Address proof which should not be older than 2 months
- Verification in Form No. DIR-4 is as per the format given on the website

## Types of Directors

Following are the categories of directors who constitute 'Board' of a Company:

**1. Ordinary directors:** Ordinary directors are also referred to as simple director who attend board meeting of a company and participate in the matters put before the board. These directors are neither whole time directors nor managing directors.

**2. Managing Director:** According to Sec.2 (54) of the Indian Companies Act "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its 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 managing director, by whatever name called.

**3. Whole-time directors:** A whole-time executive director includes a director in the whole-time employment of the company.

**4. Alternate director:** The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an 'alternate director' is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director.

**5. Professional Directors:** Any director possessing professional qualifications and do not have any pecuniary interest in the company are called as "professional directors".

**6. Independent directors:** Sec. 2(47) defines independent directors to mean an independent director referred to in Sec. 149(5).

**7. Nominee Directors:** The banks and financial institutions which grants loans to a company generally impose a condition as to appointment of their representative on the

board of the concerned company. These nominated persons are called as nominee directors.

### **Qualifications of a Director:**

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.

### **Disqualifications of a director:**

Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:

#### **1) A person shall not be capable of being appointed director of a company, if the director is**

- (a) Of unsound mind by a court of competent jurisdiction and the finding is in force;
- (b) An undischarged insolvent;
- (c) Has applied to be adjudicated as an insolvent and his application is pending;
- (d) Has not paid any call in respect of 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.

## **Appointment of Directors**

As Per the Companies Act, 2013, makes it obligatory on every public company to have at least three directors and on every other company to have at least two directors. The directors may be appointed in the following ways:

**1. Appointment of First Directors:** First directors mean the director of the company who assumes office from the date of incorporation of the company. The first directors of a company may be named in its articles of association and if it is not mentioned, then the subscribers of the memorandum of association who are individual, shall be deemed to be the first directors of the company, until the directors are not appointed in accordance with Section described in Companies Act.

In case of public company, if the article provides any share qualification, only such subscribers as possess the necessary share qualification shall be deemed to be directors. The articles at the time of registration may contain the names of the first directors until directors are appointed in the first general meeting.

**2. Appointment of Directors by Members in the General Meeting:** Except for the first director, the subsequent directors are appointed by the company in the general meeting. The Section of the Companies Act provides that not less than 2/3 of the total number of directors of a public company, or of a private company which is subsidiary of a public company must be appointed by the company in general meeting. These directors must be subject to retirement by rotation. The remaining directors of such a company and a purely private company are appointed by the company in general meeting

**3. Appointment by Board of Directors:** The directors are appointed in the general meeting by the members. But, the Board of Directors may also appoint the directors, in the following way:

- **Additional Directors:** the Board may appoint additional directors if the article of association of a company empower the Board of Directors to do so. Such additional directors shall hold office only up to the date of the next annual general meeting. If the annual general meeting is not held, then such additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 166. The additional directors are exempted from the requirement of filing consent to act as directors.

- **Casual Vacancies:** the Board of Directors to appoint the directors in the casual vacancy which may occur due to any reasons like, death, resignation, insanity, insolvency etc of the directors. Such casual vacancy may be filled according to the regulations and procedure prescribed by the articles of association. A person appointed to fill a casual vacancy will hold office only till the date up to which the directors in whose place, he is appointed would have held office.
  
- **Alternate Directors:** The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an alternate director is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director.

### **Removal of Directors**

A director of a company can be removed by

- (a) Shareholders
- (b) The Tribunal

**(a) Removal by shareholder:** To remove a director by ordinary resolution before the expiry of his period of office except in the following cases:

- (1) A director appointed by the tribunal
- (2) A nominee director of a public financial institution which is by its charter empowered to nominate a person as a director or to remove him notwithstanding any power contained in any other act.
- (3) Director appointed in accordance with the principal of proportional representation. This is to ensure that the directors appointed by the minority are not removed by a bare majority.

Special notice is required of any resolution to remove a director or to appoint somebody in his place at the meeting at which he is removed. On receipt of such notice, the company will immediately send a copy thereof to the director concerned. He may make

any representation in writing and the copy of such representation may be sent by the company to every member. Where the copy of the representation is not sent to the members, in that case the director concerned may require the representation to be read at the meeting.

A vacancy created by the removal of a director as aforesaid can be filled up at the meeting at which he is removed provided special notice of the proposed appointment was also given. The director so appointed shall hold office till the date the director removed would otherwise have hold office. If the vacancy is not filled, it shall be filled up as casual vacancy except that the director removed shall not be re-appointed. The director so removed is entitled to claim compensation or damages for breach of contract.

**(b) Removal by the Tribunal:** On an application to the Tribunal for prevention of oppression and mismanagement, the tribunal may terminate or set aside or modify any agreement between the company and the managing director, or any other director or manager.

#### Removal of a non-rotational director of a government company

Directors appointed by the state government as a nominee director can be removed by such government. The government is entitled to revoke the nomination as a matter of right, which flows from the articles of association.

## Key Managerial Personnel under Companies Act, 2013

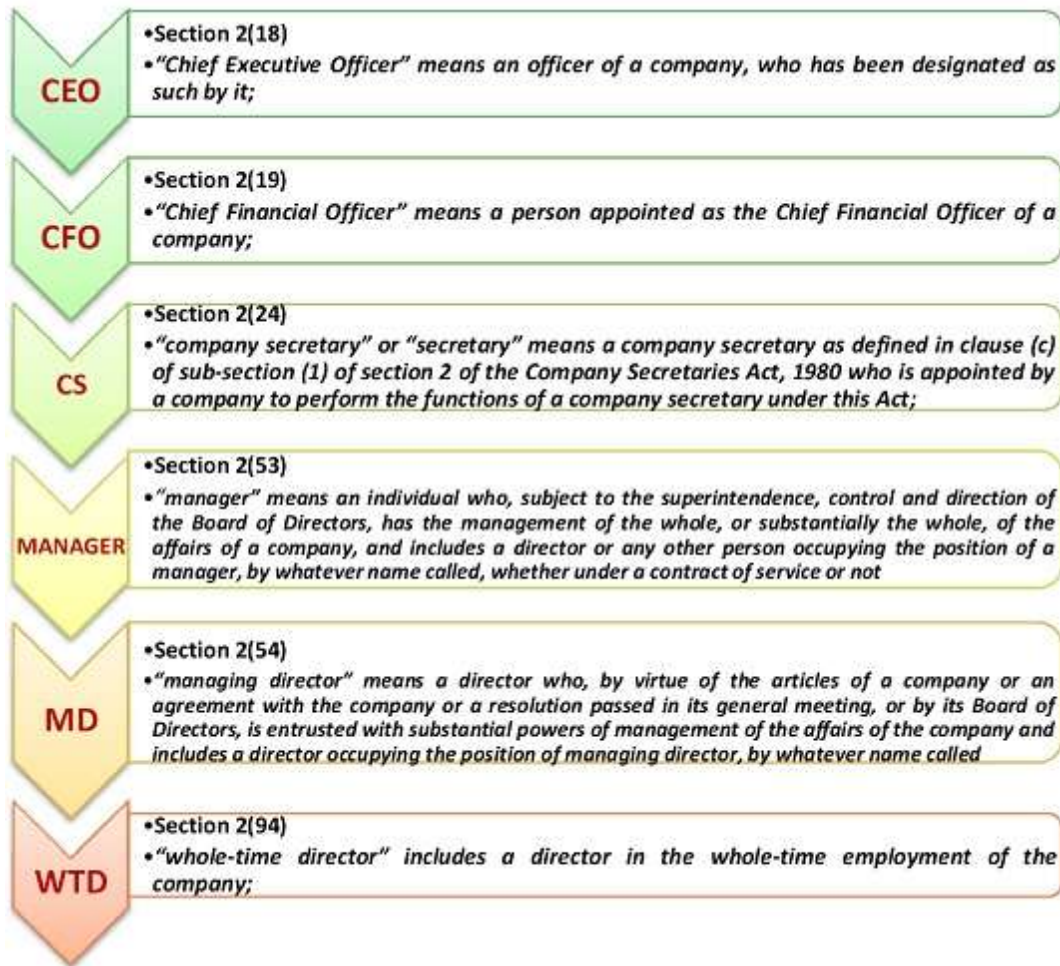
### **Definition:**

The definition of the term Key Managerial Personnel is contained in Section 2(51) of the Companies Act, 2013. The said Section states as under:

**The Key managerial personnel, in relation to a company, means—**

- (i) The Chief Executive Officer Or The Managing Director**
- (ii) The Company Secretary;**
- (iii) The Whole-Time Director;**
- (iv) The Chief Financial Officer; And**
- (v) Such Other Officer As May Be Prescribed;**





## Roles and Responsibilities of the CEO

To the overall success of an organization or company, the CEO is responsible for leading the development and execution of long-term strategies, with the goal of increasing shareholder value.

The roles and responsibilities of a CEO vary from one company to another, often depending on the organizational structure size of the company. In larger companies, CEO usually only deals with high-level corporate strategy and major company decisions. Other tasks are delegated to managers or departments.

### **The Duties, Responsibilities, And Job Description of A CEO Include:**

1. Communicating, on behalf of the company, with shareholders, government entities, and the public
2. Leading the development of the company's short- and long-term strategy
3. Creating and implementing the company or organization's vision and mission
4. Evaluating the work of other executive leaders within the company, including directors, vice presidents, and presidents
5. Maintaining awareness of the competitive market landscape, expansion opportunities, industry developments, etc.
6. Ensuring that the company maintains high social responsibility wherever it does business
7. Assessing risks to the company and ensuring they are monitored and minimized

### **Functions of a Managing Director:**

(1) Within the established company goals and policy, the MD determines primary operating policies.

(2) MD organizes and plans the organization structure.

(3) In consultation with the Personnel Manager, the MD plans and organizes the Personnel Management.

(4) In the management of the personnel department of the company the MD is directly involved in the selection of training, promotion and remuneration of the company's managerial staff in management development.

(5) As the chief executive, the MD exercises overall control and supervision over purchasing and inventories.

(6) He formulates and approves budgets.

(7) To ensure sound financial position of the company the MD administers finances and financial controls.

(8) Marketing plans and Programmes and overall control and supervision over production are within the administrative and managerial jurisdiction of the MD.

(9) He plans and organizes accelerated growth of business.

(10) As the chief executive, he maintains external relations of the company with the Government, customers, trade unions, trade associations etc.

### **Managing Director:**

#### **1. Power:**

A managing director is director who is entrusted with substantial powers of the management.

#### **2. Prohibition:**

The Act prohibits a company from having simultaneously both a managing director and a manager.

#### **3. Restriction:**

No individual can be appointed for more than five years at a time.

#### **4. Number of directorship:**

A person can be managing A person cannot be whole- director of two companies or time director of more than even more in certain cases, one company.

#### **5. Appointment:**

The appointment of managing director does not necessarily require the consent of the shareholders of the company by means of resolution.

### **Whole-Time Director:**

#### **1. Power:**

A whole-time director is an employee of the company entrusted with powers as per terms of employment.

#### **2. Prohibition:**

A whole-time director may be appointed along with a manager director

#### **3. Restriction:**

There is no such restriction regarding the appointment of a whole-time director.

#### **4. Number of directorship:**

A person cannot be whole-time director of more than one company.

## **5. Appointment:**

The appointment of a whole- time director requires the consent of shareholders of the company by a special resolution.