

COMPANY ADMINISTRATION

PART –II

RESIGNATION OF DIRECTORS [SECTION 168]

As per Section 168 of the Companies Act, 2013, a director may resign from his office by giving a due notice to the company and the board shall take note of it and intimate the same to the Register of companies. The Board shall also place the fact of such resignation in the next meeting.

The resignation 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 his notice, whichever is later.

The liability of such resigning director even after his resignation shall extend to all the offences which occurred during his tenure.

Lastly where all the directors of a company resign from their office, the Central Government shall appoint such required number of directors who shall hold office until the directors are appointed by the company in the general meeting.

REMOVAL OF DIRECTOR [SECTION 169]

A company can remove a director apart from those directors appointed by the Tribunal, by an ordinary resolution before the expiry of the term of his office after giving him reasonable opportunity of being heard.

A special notice with the intention of removing a director by the specified no. of members of the company has to be passed at least before **14 days** before the concerned meeting at which it has to be moved excluding the day on which the notice is served and the day of the meeting.

A vacancy so created by the removal of a director may be filled by the company during the general meeting or by the board provided a special notice has been given. The director so appointed shall hold office until the date up to which the predecessor would have held office if he had not been removed.

INDEPENDENT DIRECTOR

As per section 149(6) of the Companies Act, 2013:

Independent Director is a Director other than a Managing Director or a whole time Director or a nominee Director, who should

- Not be a promoter or director of the company or its subsidiary company.
- Not be a Relative of promoter or director in the company, its holding, subsidiary or associate company.

- Have no pecuniary relationship with the company's holding, subsidiary or associate company, or their promoters, or directors, during the 2 immediately preceding financial years or during the current financial year;

- None of whose relatives has or had Pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2 % or more of its gross turnover or total income or 50 lakh rupees or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;

- who, neither himself nor any of his relatives—

- i. Holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
- ii. is or has been an employee or proprietor or a partner, in any of the 3 Financial years immediately preceding the financial year in which he is proposed to be appointed, of
 - a. Firm of Auditors or Company Secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - b. any Legal or a Consulting Firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10 % or more of the gross turnover of such firm;
 - i. holds together with his Relatives 2 % or more of the Total Voting power of the company; or
 - ii. is a Chief Executive or director, by whatever name called, of any Non profit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2 % or more of the total voting power of the company; or
 - iii. who possesses such other qualifications as may be prescribed.

The Term “Pecuniary Relationship” has not been defined in the act so one can presume that it basically means relationship as holding voting power or relationship like a relative.

Strength of Independent Directors

Listed Companies: at least 1/3 of total number of Directors

According to the listing agreement :

Board of Directors shall optimum combination of executive and non executive and non executive directors . Where Chairman of the Board is a non- executive- 1/3 rd of the Board should have

independent directors. And where chairman is executive one – ½ of the Board should comprise of independent Directors. At least one half of the Board of the Company shall consist of independent directors.

Other Companies : The following class or classes of companies shall have at least 2 directors as Independent directors –

- (i) The Public Companies having paid up share capital of 10 crore rupees or more; or
- (ii) The Public Companies having turnover of 100 crore rupees or more; or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees:

Tenure:

- An independent Director shall hold office for a term upto 5 years on the Board.
- Eligible for re- appointment on passing of special resolution by the company
- Eligible to hold office for not more than two consecutive terms
- But such independent director shall be eligible for reappointment after the expiration of 3 years of ceasing to become an independent director. Such independent director shall not during the said period of 3 years be appointed in or be associated with the Company in any other capacity, either directly or indirectly.
- The re-appointment of Independent Director shall be on the basis of report of performance evaluation.
- The provisions in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Remuneration:

- An Independent Director may receive remuneration by way of fee which shall not exceed Rs. 1,00,000/- per meeting of the Board or committee.
- He/ She is also be liable for reimbursement of expenses for participation in the Board
- Other profit related commission as may be approved by the members.

Resignation or Removal:

- (1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

- (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.
- (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

WOMAN DIRECTOR

As per Section 149(1), the following class of companies shall appoint at least one woman director:

- a. Every listed company
- b. Every public company having-
 - paid-up capital of Rs. 100 crores or more; or
 - turnover of Rs. 300 crore or more

Appointment of such director must take place within 6 months from the date of its incorporation. In case of any intermittent vacancy of a woman director, it shall be filled up in the next board meeting or 3 months from the date of such vacancy, whichever is earlier.

SMALL SHAREHOLDER'S DIRECTOR

Every listed company may have one director elected by such small shareholders. Small shareholders mean a shareholder holding shares of nominal value of not more than Rs. 20,000/- or such other sum as may be prescribed. Such a director may be elected from amongst the small shareholders. Election of a small shareholder's director may take place upon a notice of not less than 1/10th of the total small shareholders or 1,000 small shareholders whichever is less.

RESIDENT DIRECTOR

The Companies Act, 2013, has introduced the concept of residency of directors. A resident director means a director who has stayed in India for a period of 182 days or more in the previous calendar year. Every company shall have at least one resident director.