

COMPANY ADMINISTRATION

DIRECTOR [Section 2(34)]

The Companies Act 2013 defines the term “director” in Section 2(34) as ‘a director appointed to the board of a company’. The legal position of the directors of the company is related to different attributes. They act as trustees for assets and properties of the company, as agents on behalf of the companies and as managing officer who enjoys the vast power of management by various provisions in memorandum and articles.

Only individuals can be appointed as directors, neither a body corporate nor a firm can be appointed as director of a company.[Section 149]

BOARD OF DIRECTORS

The directors of the company are collectively called the “Board of directors”.

A public company must have a minimum number of three directors, in case of a private company a minimum of two directors and one director in case of a one-person company

The maximum limit on number of director for every company is fifteen. However, A company may appoint more than fifteen directors after passing a special resolution.

The new Companies Act,2013 has introduced for the first time the concept of woman director , resident director and key managerial personnel.

MODES OF APPOINTMENT OF DIRECTOR

1. **Appointment of first directors:** The first directors of the company are either appointed by the promoters or they are named in the Articles. If not so appointed or named, the subscribers to the Memorandum are deemed to be directors. If the Articles of Association has no provision then the first directors hold office upto the first general meeting of the company. Each director must be elected by a separate resolution and only an individual can be a director.
2. **Appointment of Directors in the General Meeting:** The subsequent directors are appointed in the general meeting of the company. One third of the directors will retire every year. The person holding the office of a director shall retire first. Moreover, the retiring director on rotational basis may offer himself for re-appointment.
3. **Appointment of directors by Board of directors:** The board of Directors can appoint additional directors, casual directors and alternate directors as per section of 161 of the Companies Act, 2013.

- **Additional director:** If required and authorized by the Articles of the company the Board of directors can appoint one or more person as an additional director at any time who shall hold office upto the date of the next Annual General Meeting or the last date on which the AGM should have been held, which is earlier.[Section 161(1)]
- **Casual Director:** The board is empowered to fill in such casual vacancy which occurs in office due to death, incapacity, resignation etc of any directors. The person who has been appointed by this procedure, hold the office until the expiry of the period for which the outgoing director would have held the office.[Section 161(4)]
- **Alternate Director:** The board of directors either by its articles or by resolution passed in the general meeting can appoint an alternate director to act in the absence of a director for a period not more than three months.[Section 161(2)]

The Board may fill a casual vacancy or appoint additional or alternate directors, provided the total number remains within the maximum laid down in the articles.

4. **Appointment by third parties:** The Articles of the company sometimes authorize financial institutions or debenture-holders who have given loan to the company to nominate their representatives on the Board. The number of such directors does not exceed 1/3 of the strength of the board and such directors cannot be compelled to retire by rotation.[Section 161(3)]
5. **Appointment of directors by Central Government:** If the central government thinks it is necessary to appoint one or more directors for the interest of the company, investors , shareholders etc, then it can do so.

QUALIFICATION OF DIRECTOR

The law does not prescribe any academic qualification of a person to be appointed as a director in the company. However , as per section 270 of the Companies Act ,1956 the articles of association of the company might require the directors of the company to hold minimum shares at the time of their appointment or within the prescribed time limit after his appointment. The new Companies Act,2013 does not specify any provisions for holding qualification shares by directors.

DISQUALIFICATION OF DIRECTORS

Section 164 of the Companies Act 2013 deals with disqualification of Directors. According to the Companies Act 2013, the following conditions can be reasons for disqualifying a Director.

- The Director is of unsound mind and stands so declared by a competent court.
- The Director is an undischarged insolvent.
- The Director has applied to be adjudicated as an insolvent and his application is pending.
- The Director has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. Also any person who has been convicted of any offence and sentenced to imprisonment for a period of seven years or more, will not be eligible to be appointed as a director in any company.
- An order disqualifying the Director for appointment as a director has been passed by a court or Tribunal and the order is in force.
- The Director has not paid any calls in respect of any 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.
- The Director has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years.
- A company in which the Director is a part of the Board has not filed financial statements or annual returns for any continuous period of three financial years.
- The company has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more.

As mentioned in point 8, a person can be disqualified from being a Director, if a company on which the person is a Director has not filed MCA annual return for a continuous period of three years.

VACATION OF OFFICE OF DIRECTOR

As per section 167 of the Companies Act, the office of a director shall fall vacant in the following cases:

1. If he possesses any disqualifications as stated in Section 164
2. If the person absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.
3. If he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.
4. If he becomes disqualified by an order of a court or the Tribunal.

5. If he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months.

POWER OF A DIRECTORS/ BOARD OF DIRECTORS

The following powers must be exercised by Board of Directors of the company by passing a resolution at the Board Meeting-

- To make call on shares in respect of unpaid money.
- To authorize buy back of shares
- To issue securities including debentures.
- To invest the funds of the company
- To borrow money
- To grant loans or to give guarantee in respect of loans. But a banking company does not require any resolution by the board.
- To approve the financial statement and board's report.
- To diversify the business of the company.
- To approve amalgamation, merger or reconstruction.
- To take over a company or acquire a company or substantial stake in another company.

LIABILITIES OF DIRECTOR

1. Liability towards the 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 dishonest act to make personal profits
- for the activity of the co-directors

2. Liability towards third party :

The directors will be personally liable towards the third party –

- 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 within 10 days from the date of cancellation of the issue
- for making any undue gain or advantage by himself or by his relatives.
- for acting beyond the powers of the company. When a director contravenes the Articles, he shall be punishable with fine of Rs.1,00,000 to Rs.5,00,000

3. Criminal liability of Directors

The Companies Act, 2013 not only makes the director criminally liable but also include officers in default under the concept of corporate criminal liability in India.

The term Officer in a default is a broad term and can include whole-time director, key managerial personnel and such other directors in the absence of KMP who has been specified by the Board of Directors and every other director who is aware of the default which is being done by virtue of receiving of board proceedings or by participating in same without raising any objection or where non-compliance has taken place with his consent or connivance.

The corporate criminal liability is recognized under the following sections of the Companies Act, 2013 -

- ***Prohibition on an issue of shares on discount*** - The company will be fined for the amount not less than one lakh but which may extend up to five lakhs. Further, the officer in default may be imprisoned for up to six months or fine of minimum one lakh which may extend to five lakhs or both.[section 53]
- ***Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot-*** If a person is found tampering with the minutes of meeting then such an officer in default may be imprisoned for the term which may extend to 2 years or with fine of not less than twenty-five thousand but may extend to one lakh.[Section 118(12)]
- ***Books of account, etc., to be kept by Company- Officer in default- Maximum imprisonment of 1 year or Fine-*** Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section128(6)]
- ***Financial statement - Officer in default- Maximum imprisonment of 1 year or Fine-*** Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section129(7)]
- ***Financial statement, Board's report, etc- Company-Fine-*** Not less than Rs. 50,000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 3 years or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section 134]

- ***Related party transactions***- In case of unlisted Company, be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.[Section 188(5)]
- ***Punishment for personation of shareholder***- Such person in default- Minimum 1 year to Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.[Section 57]
- ***Refusal of registration and appeal against refusal***- Such person in default- Minimum 1 year to Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.[Section 58(6)]
- ***Prohibitions and restrictions regarding political contributions.***- Company-Fine- 5 times of the amount of contribution in contravention and Officer in default- Maximum imprisonment of 6 months and Fine- 5 times of the amount of contribution in contravention.[Section 182(4)]
- ***Disclosure of interest by the director*** - Such person in default- Minimum 1-year imprisonment or Fine- Not less than Rs. 50,000 and may extend to Rs. 1 lakh or both. [Section 184(4)]
- ***Investments of Company to be held in its own name*** - Company-Fine- Not less than Rs.25,000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 6 months or Fine- Not less than Rs. 25,000 and may extend to Rs. 1 lakh or with both. [Section 187(4)]
- ***Punishment for fraud*** - Any person who is found to be guilty of fraud- Maximum imprisonment of 6 months may extend to 10 years. Such person also liable to fine which may extend up to 3 times the amount involved. .[Section 447]