

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.[Section188(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]

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.

KEY MANAGERIAL PERSONNEL

As per Companies Act, 2013 definition of "Key Managerial Personnel" is given under Section- 2 sub section- 51. The definition of the term provides for the inclusion of the Chief Executive Officer (CEO), the Manager, the Managing Director, the Company Secretary, the Whole-Time Director, the Chief Financial Officer (CFO) and such other officers as may be

prescribed. For the purpose of this Act, a Key Managerial Personnel (KMP) is considered as an “Officer and an “Officer who is in default”.

It may be noted that companies are prohibited from appointing or employing a Managing Director and a Manager at the same time. Also, no individuals should be appointed or reappointed as the Managing Director, Manager, Whole-Time Director or Chief Executive Officer (CEO) of a Company for **a term exceeding five years** at a time, and no reappointments are allowed **earlier than one year before the expiry of its term** (conditions are subject to additional clauses).

Qualifying Companies

Section 203 of the Companies Act, 2013, read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, explicitly states that **all listed companies** and other **public companies with a paid-up share capital of Rs. 10 crores or more** are obligated to appoint the following KMPs:

- Managing Director/Chief Executive Officer/Manager – and in their absence, a whole-time director
- Company Secretary (CS)
- Chief Financial Officer (CFO)

Apart from this, companies which doesn't fit the above description and which isn't having a paid-up share capital of INR 5 crores or more must appoint a whole-time Company Secretary.

Appointment

The KMPs are appointed by the consent of Board of Directors at board meeting after passing a board resolution in this regard. Such a resolution shall include the terms and conditions of appointment and details of remuneration. The details of the appointment shall be intimated to the Registrar in the prescribed form within sixty days of the date of such appointment.

The general norms do not permit any whole-time KMP to hold an office in more than one company at the same time. If the office of any whole-time KMP is vacated, the position so vacated must be replaced with another appropriate personnel **within six months from the date of such vacancy**. Notably, such an appointment cannot be processed through a circular resolution.

Roles and Responsibilities of Key Management Personnel

Key Management Personnel has been vested with a huge responsibility of being liable for any non-compliance with the provisions of the Companies Act, 2013. The management function of implementing important decisions comes under the responsibilities of Key Management Personnel. The future of a company depends on the effectiveness of its Key Management Personnel and the consequences of KMP's errors could impact the company negatively. Some of their main roles and responsibilities are given below:

- As per Section 170 of the Act, the details of securities held by Key Management Personnel in the company or its holding, subsidiary, a subsidiary of the company or associated companies should be disclosed and recorded in the Register of the Books.
- Key Management Personnel has a right to be heard in the meetings of the Audit Committee while considering the auditor's report. However, they do not have the right to vote.
- According to Section 189(2), Key Management Personnel should disclose to the company, within 30 days of appointment, relating to their concern or interest in the other associations, which are required to be included in the register.

Provisions of section 196 of Companies Act 2013.

- A Company can appoint either a Managing Director or a Manager.

No Company shall appoint or employ at the same time a Managing Director and a Manager.

Appointment of a Managing Director shall be for a term which must be less than or equal to 5 years. The Company may re-appoint them for next term in one year of current term. No reappointment shall be done earlier than 1 year before the expiry of his term. A Government

Company may appoint Managing Director for a period of 5 years because provisions of section 196(2) shall not apply to Government Company via Notification dated 5th June 2015.

- Minimum age for appointment of Managing Director is 21 Years and maximum age is 70 years.

Appointment of a person having an age of 70 years can be made by passing Special Resolution in which explanatory statement shall be annexed to the notice as per section 102 of the Companies Act 2013.

- Appointee should not be an undischarged insolvent nor has any time been adjudged insolvent
- Appointee should not be a convict of any offence and sentenced for a period of more than six months.

Can a person be appointed as a Managing Director, if he is the Managing Director of the Another Company?

- According to section 203(3) of the Companies ACT 2013, Whole Time managerial personnel shall not hold the office in more than one Company except in its Subsidiary Company at the same Time.
- A company may appoint or employ a person as its Managing Director, if he is the Managing Director of one and not more than one Company by passing board resolution at the Board Meeting with the consent of all Directors present at the meeting.

Does the provision of Section 196 shall apply to a Private Limited Company?

- Yes, provision of Section 196 Shall apply to a Private Limited Company but provisions of Section 197 shall not apply relating to remuneration.

PENAL PROVISIONS

Non-compliance with these provisions of the Companies Act would result in the following penal provisions:

- For companies – fine of at least Rs. 1,00,000, which may extend to Rs. 5,00,000

- For every director and KMP in default – fine of up to Rs. 50,000. Continued contraventions would result in a fine which may extend to Rs. 1,000 for every day of default.

MANAGERIAL REMUNERATION

The total managerial remuneration payable by a public company to its directors including managing director, whole time director and its managers in respect of any financial year :

Condition	Max Remuneration in any financial year
Company with one Managing director/whole time director/manager	5% of the net profits of the company
Company with more than one Managing director/whole time director/manager	10% of the net profits of the company
Overall Limit on Managerial Remuneration	11% of the net profits of the company
Remuneration payable to directors who are neither managing directors nor whole-time directors	
For directors who are neither managing director or whole-time directors	1% of the net profits of the company if there is a managing director/whole time director
If there is a director who is neither a Managing director/whole time director	3% of the net profits of the company if there is no managing director/whole time director

The percentages displayed above shall be exclusive of any fees payable under section 197(5).

Until now, any managerial remuneration in excess of 11% required government approval. However, now a public company can pay its managerial personnel remuneration in excess of 11% without prior approval of the Central Government. A special resolution approved by the shareholders will be sufficient.

Therefore, the provisions related to the managerial remuneration are not applicable on all KMPs but they are applicable only on such managerial personnel as mentioned in Section 197 and Schedule V to the COMPANIES ACT, 2013. Therefore, CS and CFO not being managerial personnel as mentioned in Section 197, the provisions of Section 197 will not apply on them.
