

Management of Company

Directors / Board of Directors

- The company is an artificial person and is managed by the human beings.
- Individually known as Directors and Collectively known as Board of Directors.
- The directors play a very important role in the day to day functioning of the company. It is the board, who is responsible for the company's overall performance.
- To enable a company to live and to achieve its objects as mentioned in the objects clause of its MOA, it has to depend upon an agency, known as Board of Directors.
- Board of directors of a company is a core team, selected according to the procedure prescribed in the Articles of Association.

Directors / Board of Directorscontd

- Minimum/Maximum Number of Directors in a Company
- Minimum Number of Directors
 - Public Company - 3 Directors
 - Private Company - 2 Directors
 - One Person Company(OPC) - 1 Director
- Maximum Number of Directors is 15, which can be increased by passing a Special Resolution.

Appointment of Directors

- As provided in the Companies Act 2013, every director shall be appointed by the company in general meeting.
- Director Identification Number (DIN) is compulsory for appointment of director of a company.
- Every person proposed to be appointed as a director shall furnish his Director Identification Number (DIN) and a declaration that he is not disqualified to become a director under the Companies Act 2013.
- A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.
- Articles of the Company may provide the provisions relating to retirement of the all directors.

Appointment of Directors.....contd

1. By the Promoters of the Company
2. By the Subscribers to the Memorandum
3. By the Shareholder in a General Meeting
4. By the Board of Directors
5. By the Central Government
6. By Proportional Representation
7. By Third Parties

Duties of Directors

- Act in accordance with the articles of the company.
- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- Exercise his/her duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

Liabilities of Directors

- Liability to Outsiders
- Liability to Company
- Liability to Shareholders
- Criminal Liability

Liabilities of Directors...contd

- **Liability to Outsiders**

- If they enter into a contract which is ultra vires the company
- If they fail to sign a negotiable instrument without mentioning the company's name
- If they act in their own name
- If they have made any mis-statement in the prospectus
- If they are guilty of committing a fraud
- If they have made irregular allotment in contradiction

Liabilities of Directors...contd

- **Liability to Company**

- If they are negligent in the performance of their duties
- If they commit an act which is ultra vires their powers
- If they commit any illegal act
- If they commit any breach of trust

Liabilities of Directors...contd

- **Liability to Shareholders**

- Position of directors in respect of the property of the company is that of a trustee.
- If they commit any breach of trust and if as a result of that, the company suffers loss, they have to make good that loss.
- If the directors are negligent and fail to use reasonable care and skill and because of this, the shareholders suffer a loss, they have a right to claim damages from the directors.

Liabilities of Directors...contd

- **Criminal Liability**

- Directors may be awarded two years imprisonment and a fine of Rs.5,000 for the filing of prospectus containing false statement.
- Criminal proceeding against directors may be instituted:
 - For fraudulently obtaining credit for the company
 - For acting as a director after removal by court
 - For failure to supply information to auditor of the company
 - For improper issue of shares
 - For failure to produce the balance sheet before the annual general meeting

Disqualification of Directors

- (a) Unsound mind and stands so declared by a competent court;
- (b) An undischarged insolvent;
- (c) Has applied to be adjudicated as an insolvent and his application is pending;
- (d) Been convicted by a court of any offence, whether involving moral issues 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.
 - If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he/she shall not be eligible to be appointed as a director in any company;

Disqualification of Directorscontd

- (e) An order disqualifying him/her for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) Has not paid any calls in respect of any shares of the company held, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (h) Has not got the DIN - Director Identification Number.

Removal of Directors

- A director may be removed before the expiry of his term of appointment by:
 1. Removal by Shareholders
 2. Removal by the Central Government
 3. Removal by the Company Law Board

Removal of Directorscontd

1. Removal by Shareholders

- A special notice of 14 days is required to be given to the company to move an ordinary resolution to remove the director and to appoint another director as replacement
- On receipt of notice, the company must inform all the members of the proposed resolution. It must also send a copy of the notice to the director proposed to be removed
- If the director wishes to make a representation he may send it to the company and the company in turn sends copies of the representation to the members, together within the notice of a meeting
- If the representation is not received by the company within a reasonable time, the representation may be read out at the meeting. Director can speak at the meeting against his removal.
- At the meeting, two ordinary resolutions will have to be passed. One for removal and another for replacement.

Removal of Directorscontd

2. Removal by the Central Government

- The Central Government may order the removal of a director if an adverse finding has been made by the Company Law Board against him/her, after making an enquiry into these cases such as fraud, persistent negligence, default in carrying out his obligations in such a way as to cause damage to the business.

3. Removal by the Company Law Board

- Company Law Board on receiving application for prevention of oppression or mismanagement may enquire into the matter and on enquiry, if it finds that relief ought to be granted, it may by an order, remove the director.

Types of Directors

- **Managing Director -**
 - A Managing Director is a Director who has substantial powers of management of the affairs of the company subject to the supervisory, control and direction of the Board.
- **Whole Time Director / Executive Director**
 - A Whole-time Director includes a Director who is in the whole-time employment of the company, devotes his whole-time of working hours to the company and has a significant personal interest in the company as his source of income.
- **Independent Director**
 - An Independent director (also known as an outside director) is a director (member) of a board of directors who does not have a material or regular relationship with company or related persons, except sitting fees.

Types of Directorscontd

- **Managing Director:**

Managing Director means a director who :

- a. By virtue of an agreement with the company or
- b. By resolution passed by the company
- c. By Resolution passed by its Board of Directors
- d. By virtue of its MOA or AOA is entrusted with the substantial powers of management which would not otherwise exercisable by him, and includes a director occupying the position of managing director , by whatever name called. Provided further that a managing director of a company shall exercise his power subject to control & directions of its Board of Directors.

- **Whole Time Director:**

- Whole time director is not defined by the companies act.
- As per section 269,"Whole time director includes a director in whole time employment of a company.
- The Department of Company Affairs Clarified that an *whole time employee appointed as a director will be a whole time director only if substantial powers of management is vested with him.*

- **Manager :**

- Manager means an individual who subject to the control & direction of board of directors has the management of the whole or substantially the whole of the affairs of the company and includes the director or the any other person occupying the position of manager, by whatever name called and whether under a contract of service or not.
- A manager may or may not be a director of a company.
- Company cannot have simultaneously two managers .
- A company cannot at a same time employ a managing Director and a manager.
- However a company can simultaneously a manager and a whole time director
- Only an individual can be appointed as a manager.
- No firm or body corporate can be appointed as a manager.

Can a person be employed as a Managing Director in more than one company?

- Section: 316 – No
- However, More than one company (Board resolution)
 - all directors present must vote in favour
 - all directors resident in India must be served special notice
- More than two companies – Central Govt. may pass order accordingly
 - No limit on no. of private companies, which is not a subsidiary of a public limited company.

Resignation & Removal of Resignation & Removal of M.D.

- Resignation of the Managing Director becomes effective only if it is accepted by the Board
- A M.D. can resign and continue as an ordinary director
- No C.G. permission is required
- Removal as per the provisions of A/A or terms of contract
- Removal of Director as per Sec.284 automatically removes M.D.
- However, compensation payable as per the terms of the contract

Company Secretary – Qualification

- Membership of the Institute of Company Secretary of India (ICSI), Institute of Chartered Accountants of India (ICAI) and Institute of Cost and Work Accountants of India (ICWAI)
- Passed all required examinations conducted by the ICSI
- Post Graduate or Corporate Secretary ship award by any recognized university in India
- Degree in Law / Corporate Laws awarded by any recognized university

Company Secretary – Disqualifications

- A person of unsound mind or stands so declared by a court of law
- A person who is an insolvent or bankrupt
- A person who has applied to be adjudicated as an insolvent or bankrupt and application is pending
- A person convicted by the court of law of any offense
- An order disqualifying the person for appointment as a company secretary has been passed by a court or tribunal
- Any dues pending/not paid by the person with respect to issue of shares or debentures

Rights of a Company Secretary

- Rights of a CS is usually defined in the service agreement with the company.
- Right to supervise the secretarial department. Head the department to control and supervise the activities.
- Right to sign documents. CS is a Principal officer providing authentication of the company.
- Right to claim remuneration. CS is an employee of the company and can claim salary as per agreement.
- Right to be compensated for any loss suffered while performing official duties.
- Right to receive a notice before termination of services.

Liabilities of a Company Secretary

- **Statutory Liabilities**

- Failure to hold or organize a statutory meeting
- Failure to circulate any statutory report
- Failure to submit necessary documents to Registrar of Companies
- Failure to provide notice of Board Meeting
- Failure to record and publish the minutes of the meeting
- Failure to prepare Share Certificates and Debenture Certificates
- Failure to maintain statutory registers at the company offices

COMMITTEES MANDATORILY TO BE CONSTITUTED UNDER THE COMPANIES ACT, 2013

- Audit Committee
- Nomination and Remuneration Committee
- Corporate Social Responsibility Committee
- Stakeholders Relationship Committee

Audit committee

Applicability: Section 177 of the Act read with rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 the Board of directors of every listed company and the following classes of companies is required to constitute a Audit Committee of the Board

- I. all public companies with a paid up capital of ten crore rupees or more;
- II. all public companies having turnover of one hundred crore rupees or more
- III. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more. The paid up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purposes of this rule.

Audit committeecontd

- **Composition:**

- Minimum of three directors with independent directors forming a majority.
- The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statements
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

- **Meetings of the committee:**

- As per the revised listing obligations the Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings.
- The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

Role of audit committee

- Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
- Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
- Reviewing, with the management, the quarterly financial statements before submission to the board for approval review and monitor the auditor's independence and performance, and effectiveness of audit process;
- To review the functioning of the Whistle Blower mechanism discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

Powers of audit committee

- Investigate any activity within its terms of reference; seek information from any employee;
- Obtain outside legal or other professional advice;
- Secure attendance of outsiders with relevant expertise, if it considers necessary.
- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- The auditors of a company and the key managerial personnel have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

Nomination and Remuneration Committee

- **Applicability:**
- As per section 178 of the Act read with rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014, the Board of directors of every listed company and the following classes of companies are required to constitute a Nomination and Remuneration Committee of the Board-
 - I. all public companies with a paid up capital of ten crore rupees or more
 - II. all public companies having turnover of one hundred crore rupees or more
 - III. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

Nomination and Remuneration Committeecontd

- **Composition**

- The Board shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors
- The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but he shall not chair such Committee
- In case of a listed company as per listing obligations, Chairman of the committee shall be an independent director.

Nomination and Remuneration Committeecontd

- **Role of the committee**

- Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees
- Formulation of criteria for evaluation of Independent Directors and the Board
- Devising a policy on Board diversity
- Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal.

CSR committee

- **Applicability:**

- Sec 135 (1) read with rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates every company (which may include a holding company or a subsidiary company) having:
 - I. net worth of rupees five hundred crore or more, or;
 - II. turnover of rupees one thousand crore or more or;
 - III. a net profit of rupees five crore or more
- Financial year has been clarified as to imply any of the three(3) preceding financial years
- 2% of it's net profits should be spent on CSR activities

CSR committee...contd

- **Composition**

- The CSR committee shall be constituted with three or more directors, out of which at least one director shall be an independent director

- **Relaxations:**

- an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director, shall have its CSR Committee without such director
- A private company having only two directors on its Board shall constitute its CSR Committee with two such directors
- In case of a foreign company, the CSR Committee shall comprise of at least two persons of which one person should be resident of India and authorized to accept on behalf of the company, service of process and any notices or other documents and another person shall be nominated by the foreign company.

CSR committee...contd

- **Role of CSR committee**

- recommending the amount of expenditure to be incurred on the CSR activities
- monitoring the Corporate Social Responsibility Policy of the company from time to time
- a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company
- shall indicate the activities to be undertaken by the company as specified in Schedule VII;

Stakeholders Relationship Committee

- **Applicability:**

- According to the section 178 subsection (5), any company consists of more than **1000(one thousand) shareholders**, deposit holders, debenture holders and other securities

Stakeholders Relationship Committee...contd

- **Composition**

- It shall consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.
- The chairperson of the committees or, in his absence, any other member of the committee authorised by him in this behalf is required under the section to attend the general meetings of the company.

Stakeholders Relationship Committee...contd

- **Role of the committee**

- To consider and resolve the grievances of security holders of the company
- to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders.
- The grievances of the security holders of the company may include complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends, which shall be handled by this committee.
- The main function of this committee is to expedite the process of share transfers.

THANK YOU