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Directors

Board of Directors S 252 (3)

The directors of a company collectively are referred to in this Act as the "Board of directors" or" Board".

Notes:

1. Board of directors means a body duly constituted to direct control and supervise the activities of affairs of a company.
2. Board is entitled to exercise all such powers as co. is auth. To exercise except powers which are reqd. to be exercised in GM by share holders.
3. Term 'Board of Director, 'Board' and 'Directors' are synonymous.
4. All powers of BOD Is exercisable by directors collectively>>individual dir. has no authority to act>>unless auth. by Act, articles, a resolution of BOD or shareholders.

Director: *Director includes any person **occupying the position** of a director by whatever name called. **S. 2(13)***

Notes: 1.This definition is based on **function** so if any person performs the functions of a director though he may be called with different name and not appointed on BOD, still he will be considered as director for this act.

252: Minimum number of directors:

- Every public co. — At least 3 Dir.
- In other co. — At least 2 Dir.

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1. **Maximum no Dir: Act** does not prescribe anything about it however articles may prescribe. However co. is not bound to appoint such no.
2. **Implication:** S 252 is **mandatory**, hence any transaction done after no of Dir. fell below minimum – will be invalid.
3. **If articles provide higher no. –** In such case **smaller no can't act** – if does any act, will be invalid.
4. Every co. must have minimum no. of directors at all time during its existence-from the date of incorporation of co. to dissolution of co.

Appointment of Directors by Small Share Holders (N01, N04, N05)

Proviso to sect. 252(1) r/w Companies (appointment of SS Director) Rules 2001

- **Applicable: Public Co.**, $\geq$ **5 Crores Paid Capital &** $\geq$**1000 SS holders** – **May** have a dir elected by SS Holder.
- SS holders means – holding shares of **nominal value** of Rs. **20,000 or less** in such public co. **(not paid up value/market value)**
- SS can hold equity share/preference shares or both.

SSH may send notice (in writing) for appointment of directors to co. Other provisions are as below:

- Notice shall be given 14 days before meeting.
- Notice shall be given by at least 1/10 of total SSH, notice shall be signed by at least 100 SSH.
- **Contents Of Notice:** Notice shall specify name, address, no. of shares held, particulars of shares with differential rights as to dividend or voting and **folio no. of** – **A.** shareholders proposing the resolution and **B.** proposed SSH Director.
- **Appointment :**

Unlisted Co.	Listed Co.
Majority of **SSH recommend his candidature**, in their meeting.	As per Postal Ballot under **section 192A.**

- SSH director should be small share holder.
- **SSHD has to file his consent in writing.**
- **Disqualifications :** Section 274 applies **except** S. 274(1)(G)
- **Vacation:** Section 283 applies also below additional: a. Vacate office if ceases to be SSH b. Shall **not** vacate office if **does not obtain QS**.
- Such Dir. holds office for **(Max.)** 3 yrs period & can be re-elected for further period of 3 years.
- He shall not liable to R/R.
- He shall not hold office as such dir. in **more than 2 Co.** (means he can become **SSHD in 2 companies**)
- Shall not be eligible to be appointed as MD or WTD.
- **S. 283:** Director shall vacate office if he is removed u/s 284 (i.e. by O.R. in G.M.). This clause applies to SSHD also so he can be removed. **(only one clause is excluded from 283 (vacation) that is QS)**
- Co. can either appoint SS director suo motu, however if SSH serve notice it is **mandatory** to appoint.

Q 1. X holds **3,000 equity shares of Rs. 10 each (Rs. 5 paid up) whether he is SS holder? A. Yes**

253: Only individuals to be Directors:

- Hence No body corporate, association or firm can be **appointed** as dir.
- **Proviso:** NO company shall appoint/re-appoint any individual as dir. unless he DIN u/s 266B.

Note:

1. **Reason:** Somebody readily available in case of failure to carry out obligation of such office.
2. Dir. is **not empowered to appoint proxy**. However BOD may appoint an alternate dir. U/s 313. ,
3. **Deemed Dir:** it should not necessary that it should be individual. Because it is person who is not appointed as dir by Co but who is **deemed** to occupy position of Dir.

254: Subscriber of MOM deemed to be Dir. (First Directors)

- If article do not appoint 1st dir neither prescribe manner of appointment.
- Then subscriber of MOM (who are individuals) shall **deemed** to be Dir.
- Hold office until dir. duly **appointment u/s 255.**
- This fiction creates responsibility as a dir. on subscriber of MOM.

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1. **The provision may be explained as follows**:

If Dir are named by AOA	**If Dir not named in AOA but Articles prescribe manner of appointment of Ist Dir**	**If AOA contain no provisions of appoint of Ist directors**
Dir whose name is Mention In articles Shall be the Ist Dir.	Ist Dir shall be determined in manner provided by articles.	**All** the subscriber of MOM Who are individuals shall be **Deemed to dir**

2. S.254 applicable to **Pvt. as well Public co.**
3. There is no need to hold qualification shares for **deemed directors** as qualification shares are required for the directors who are **appointed** and not those who are deemed to be directors.
4. **As per table A**, The name of first directors shall be determined in writing by the subscribers to the memorandum or a majority of them.

Table A (in Schedule I of Act- Model AOA for Companies Limited By Shares (Whether PVT. Or PUB.)		
Adoption in Full	**Automatic Applicability unless excluded**	**Full Exclusion**
Pub. Co. Limited By Shares	**Pub./Pvt. Co. limited by shares**	**Pub./Pvt. Co. limited by shares**
Pub. Co. does not register its article all the provisions of table **Shall apply.**	Where articles are registered, table A will still apply for matter where co. article is silent.	Article can contain no provisions of table will apply then no provisions will apply.

Q.

1. ST Ltd. Has adopted Table A with the modifications' that its articles specify the names of its first directors. **The directors named in articles shall be the first directors.**
2. PQR Ltd not registered its AOA>>>>Table A would apply full>>>>**First directors shall be determined by majority of subscribers of MOA**
3. XYZ Pvt. Ltd registered its articles>>article are silent on first directors appointment>>Table A would apply>> **First directors shall be determined by majority of subscribers of MOA**
4. MN Ltd. Registered its articles>>article contains the provision that Table A shall not apply>>all the subscribers of MOA would be deemed to be directors unless directors appointed u/s 255.

Act: *In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 255.*

Appointment Of Directors				
First Directors S 254	**By Share Holder S 255, 256, 257, 265, 252**	**By Board S 260, 262, 313**	**By C.G. (S. 408)**	**By Third Party**
	Retirement of Dir. and filling of vaca.**(S. 255, 256)**	Additional Dir. **(S. 260)**	To prevent Oppression & Mismanagement	Nominee Directors
	Appoint. Of a person o/t retiring dir. **(S 257)**	Dir. Filling Casual Vacancy **(S 262)**		
	Appoint. Of Dir by Propot. Representation **(S 265)**	Alternate Dir. **(S 313)**		
	Appointment of Dir. by SSH **(S 252)**			

Retirements of Directors & filling of vacancies [255 & 256]

S. 255 determine how many Dir are liable to **retire by rotation.** However all Dir do not retire at AGM. Only a proportion of them retire which is determined by S 256.

Dir may be classified as follows:

1. Dir who is liable to R/R.
2. Dir not liable to R/R [non- rotational dir] N/R/R

255: Appointment of directors and proportion of those who are to retire by rotation

- **Applicable only on Public co.**
- **Unless article provide retirement of all dir** at AGM. – **not less than (at least) 2/3rd** of total director shall be the persons - whose office period is liable to determination by rotation.

- **Remaining dir of such co. or in case of Pvt. Co** – in default or subject to any regulation in articles - may also appoint at GM.

Notes:

1. **Fraction will be rounded up (rounded off as 1)**. E.g. If 2/3 of 10 is 6.33 then 7-person office must be determination by rotation.
2. Article can not provide for lesser no. however may provide for **Greater no. Or** even retire all directors shall be **R/R OR** even provide all the directors shall retire at every AGM.
3. Rotational Dir. shall be appointed in the GM (Whether AGM or EOGM)
4. **Total no of Dir does not mean** the maximum no of dir fixed by AOA. It means the **no of dir for time being appointed as Dir.**
5. In calculation of 2/3rd dir. appointed **SICA u/s 16(4), 408 & nominee Dir, additional director** shall not consider.
   a. **E.g**. Total no of Dir = 12 in which 3 belongs from above then 2/3rd will calculate on 9.

6. **Dir not liable to retirement by rotation:** [i.e. non – rotational dir]

   - **Appointment:** They shall be appointed at GM. However AOA may provide otherwise. Eg. AOA empowers to BOD to appoint NRD.
   - **Term:** Can be appointed for such period as determined by GM. Even for **whole life**. Act is silent here.
   - **MD/WTD: a.** Can be R/R/D or N/R/R/D **b.** if he is R/R/D>>shall be liable to **R/R** u/s 255, 256>>has to vacate office of MD>>however if gets re-appointed>>can continue office **c.** AOA can provide that a person hold office of MD/WTD need not retire by rotation. However in no case r/r should exceed 1/3.
   - **Additional Dir:** He holds office till next AGM. Therefore they would not include in total no of dir**. [Imp]**
   - Alternate director & Original Dir shall be counted as 1.

[Eyre v Milton Proprietary Ltd]

Refer ill. On P. No. 51 of MB.

256: Provisions applicable to Rotational Directors: (Applicable only to Pub. Co.)

Director shall retire at every AGM with the following Procedure:

- ✓ 1/3rd of dir. from R/R/D **(generally 2/3rd)** shall retire at each AGM (any fraction shall be rounded off **(nearest)**).
- ✓ **Longest dir.** in office shall be retired first.
- ✓ If same seniority – then any agreement between them or by lot in the absence of agreement.
- ✓ Fraction upto 1/3rd ignored & 2/3 is to be rounded off.

- **Vacancy in place of retiring Dir:** it may be filled up by reappointment of retired Dir **or** instead of him may be appoint some other person whose nomination given to co. u/s 257 by **some other person** [257}

- **Position where Vacant Place not filled up:**

a) **Adjournment of Meeting:** if vacancy not filled up & **meeting has not resolved not to fill the vacancy,** then AGM shall adjourn to next week at same time & place [if public holiday then next working day]

b) Automatic Re-appointment of Dir. who R/R [256(4)]: If at adjourned meeting also vacancy not filled up **&** meeting has **not resolved not to fill** the vacancy, then retiring dir shall be deemed to be reappointed.

However in following case he shall not be deemed to be automatic reappointed:

1. Where resolution for re-appointment was put & lost.
2. Retiring director expressed his unwillingness in **writing**.
3. He is not qualified or disqualified for appointment.
4. Proviso of 263(2) is applicable to case.
5. Where a resolution is required for his reappointment.

Eg Total Dir 10, 2-3rd of 10 i.e. 6.33 now 7 dir office will be subject to R/R. now 1/3of 7 will be retired at every AGM .2.33 means 2.

Notes:
1. If director has expressed his unwillingness in oral in GM still it will be effective.
2. If AGM is not held>>still directors liable to **R**/**R** cannot continue office. However if meeting is held and adjourned due to certain reasons then they can hold office till adjourned meeting.

Q Retirement of Directors in case of Private Co.?

A S 255/256 not applicable to pvt co. therefore if articles are silent, then following provisions shall apply**.**
1. No dir shall be retired by rotation. Thus dir of Pvt. co shall hold office till death, resignation, removal or disqualification.
2. All directors shall be appointed at GM.

However Pvt. Co. may provide certain provision in this respect in its articles, and then still provisions of AOA apply.

S: 257 Right Of Persons Other Than Retiring Directors To Stand For Directorship [only public co.]

Any person [o/t retiring Dir] by complying provisions of 257 may stand for directorship.

1. **Who is eligible to give notice:**
   (a) **A person [**whether he is member or not] who is not a Retiring Dir can give a notice for Directorship. (here even Dir. of 260, 262, 313 or nominee director can give notice as they are not retiring director)
   (b) **A member** can give a notice of the candidature of any other person.

2. **Requirement of Notice:**
   a) Notice shall be given **at least 14 days before general meeting.**
   b) Notice shall be along with deposit **Rs. 500/-.** Deposit refunded – if candidate succeeds in getting elect.
   c) Notice shall be deposited at **registered office of Co.**

3. **Notice by Co to Members:** Co. shall inform it members about candidature **at least 7 days** before GM. Two **alternative** methods of intimating: **A.** By **serving individual notices B. A**dvertises such candidature in at least 2 newspaper – which circulating at the district, where registered office is located – 1 in English & other in regional language.

4. **Sec. Not apply on Private Co. (so A.** for appointment articles to be followed **B.** appointment of directors can straightaway start in meeting **C.** can refuse to act only any such notice.
5. After appointment as a Dir. person should sign & filed his consent with ROC within 30 days from his appointment.

Note:
1. Retiring director means only the directors which are retiring by rotation.
2. Proviso of Sec. 257 are **mandatory**, non-compliance like non-circulation of notice etc. would treat the appointment invalid.
3. **Non-applicability of 171 & 173:** 7 days notice is given by co to its member in accordance with 257 **shall be** Valid. Even notwithstanding say in s 171 [i.e. at least before 21 days].

4. A person stands for directorship **at any GM**, not necessary only at AGM.
5. **Notice u/s 257 received after issue of notice of AGM** – requirement is only that notice shall be given at least 14 days before. [Doesn't matter it is given before AGM notice or not]
6. **OR** is required in GM for appointing a person as director. **S 258**
7. Articles cannot take this right u/s 257 (notice to stand for directorship)

Increase or decrease in number of Dir [258/259]

S: 258 Increase or decrease in GM

(a) This section is subject to provisions of section 252, 255 and 259.
(b) **Increase/Reduce by ordinary resolution:** No of dir can be increase or reduced by **passing OR in GM.**
(c) **Increase by passing special resolution:** If co wants to increase its numbers of dir beyond the limits fixed by AOA **then** we have to alter AOA **by passing special resolution. Then with the help of OR directors can be increased.**

S: 259 Increase with the approval of CG

- Applicable only **on Public Co**.
- **Any increase in no. of dir. shall not have any effect:** unless approved by CG & if not approved then become void.
- **Except. [**In following case no CG approval require]:
- If co. is in existence before 21-7-51 - article strength on this date or 12 whichever is **Higher**
- If co. is in existence after 21-7-51 - max. no. of dir in articl. first reg. or 12 whichever is **Higher**

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1. If co. incorporated on 1.7.71 with 10 article & want to raise upto 12 then article will be amended by passing S.R. & if want to raise **>12** then article amended & CG approval require.
2. U/s 408, 16(4), Nominee Director – can exceed 12 w/o approval. **[Override effect]**.
3. **Sec: 259 not applicable to following Co: 1.** Pvt. Co **2**. Govt. Co. **3.** A Co formed u/s 25.
4. **S 258** provisions are subject to 252/258 &259: **following are impact of this language**:
   a. Co can't reduce below the no. specified u/s 252.
   b. Where new director appointed by shareholder, provisions of 255/256 also applicable on them.
   c. **258 provisions also applicable** subject to exception mention u/s 259 – **means CG approval require**.

S: 260 Additional Director (Applicable to Pub. Co. + Pvt. Co.)

- **If \`A\` authorize BOD** –then BOD may appoint AD – **provided** total no. of Dir. shall not increase beyond maximum strength as per articles.
- AD hold office **upto the date of next AGM.**

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Notes:

1) **S.260 does not give any power to BOD to appoint additional Dir.** BOD can exercise such power only if **authorized by AOA.**
2) **Additional Dir.** together with other director should not cross the dir. limit of articles.
3) **S.260 overrides S 259**, therefore no CG approval requires to appoint of Additional Dir.
4) Appointment by Circular Resolution possible **(r/w S. 289)** .
5) Regulation 72 of Table A empowers to BOD to appoint an AD.
6) **If AGM not held** - office **shall vacate on last day by which AGM ought to be held.**{In A/W 166 r/w 210}
7) **DCA- AD** has to hold office just before the commencement of next AGM.

8) Unless article delegated **EXCULSIVELY** power to BOD – GM can appoint AD.
9) AD can appoint as a MD – but AD not re-appointment in next AGM –then MD office will vacate.
10) All provision like 270{Q.S} 274 ,287,295,297,300,299 shall apply on AD
11) Additional Dir holds office upto next AGM, i.e., he does not retire at next AGM. **Therefore he is not a retiring dir,** with the meaning of S 256. **Thus appointment of AD as a regular dir requires compliance with S 257.**
12) **BOD** may appoint AD in excess of 1/3rd of Total Dir. however AD can't exceed total permissible strength.
13) Board may appoint **AD** at its discretion even **A.** Strength of BOD has fallen minimum no. of dir. **B.** Strength of BOD has fallen minimum no. of quorum. **(Reg. 75 of Table A)**

Sec: 261 Omitted
Sec: 262 Filling of casual vacancies among Directors: (Applicable only Pub. Co.) <J9>

- If office of any dir. (**who appointed by GM**) vacated before expiry of his term in normal course.
- If there is no provision in article about this vacancy then it can be filled in BOD meeting.
- The dir. who is appointed will hold office till the time as earlier director would have hold office.

Notes:
1) No express power in article is required.
2) If AOA provide any manner to fill a CV then follow that manner. **If AOA silent, then BOD may fill up.**
3) Vacancy may arise by reason of Death, resignation, disqualification, removal or any other reason **o/t retirement of rotation** or expiry of tenure of office. **(All reasons are O/T normal course.)**
4) **DCA clarification**: Appointment at AGM/2 time resign / 2 time further appointment at BOD – **DCA has no objection. [**at first we will write sec after that give this opposite view] **Imp is both time Casual Vacancy should be there.**
5) **In this Section two conditions is necessary:**
6) Original appointment must be **at GM** & Vacancy must be filled up by BOD **duly held meeting** (not by circulation)
7) General meeting also have inherent power to fill casual vacancy.
8) If a Dir. appointed by GM does not join or dies before joining? - **It is not a casual vacancy & can be appointed in GM only. Reason (S 262 says "** before the term of office will expire in the normal course")
9) Point 11 of S. 260 also applicable here – i.e. 257 shall apply.
10) S 262 not apply on Pvt co. hence CV may by fill up by manner provide in AOA, however if AOA is silent than S 262 shall not apply. Hence CV may be filled up only in GM.
11) There is no provision in Table A regarding filling of CV.

S: 313 Alternate Director (Applicable to any Co.)

- **Power:** this power is used **by BOD** if following conditions have been satisfied:
  BOD if authorized by articles **or** authorized by **ordinarily resolution** passed in GM
- **Condition: Alternate Dir** will be appointed when any dir of the co. absents for a period of not less **than 3 months** from the **state** where **BOD meeting** is **ordinary** held.
- **Period**: If Original Director returns to the **state** where meeting is being held, alternate director will vacate. Attending meeting is not compulsory.
- **Provision of S. 256(4) i.e. prov. of reappoint. will be applicable only on Orig. Dir. and not on Alt. Dir.**

Notes:
1. Important point is that Org. director goes o/s state more than 3 months, even though the director absence has not been more than 3 months.
2. AD is a Dir as his own right. He is not a representative, proxy or an agent of Orig. Dir. – all Provision like S.268/269/70/274/283/295/297/299/300/264/314 shall apply.

3. **AD office vacates as soon as OD come at state where meeting ordinarily held. Whether he attends meeting or not/whether he comes for purpose of attending meeting or not.**
4. GM has no power to appoint A.D. – only BOD can exercise.
5. Resolution by circulation possible **(R/W 289)**
6. If office of OD vacate by any reason (death, resignation, vacation u/s 283 etc.)–AD office shall **also** vacate.
7. Once office of AD vacate – then fresh appointment shall have to be made – if required again.
8. **His interest is independent:** S297/299 applies on alternate dir only when he is interested in such contact or arrangement. **Mere fact that original dir is interested in a contract does not make S 297/299 applicable to An Alternate Dir.**
9. **BOD has power to appoint alternate dir in place of original dir. Original dir** himself **can't** appoint alternate dir.
10. There is not provision in Table A regarding appoint. Of Alternate Director.
11. Appoint of Alt. Dir. does not require approval of CG U/S 259.
12. As per S. 278 Alt. Dir. in a Co. will not be counted while calculating directors in companies for S 275 & 277.

S: 264 Consent of A Dir. To Be Filed With The Co. And The Registrar:

- Applicable only on **Public Co.**
- Consent to **Co. as well as ROC** to act as a Dir.

A. Filing consent **to company (before appointment)**:

- Every person proposed as a Dir shall file his consent in **writing** to act as Dir.
- **Exception:** Following need not to file consent to Co.
  1. A dir who is retiring by rotation or otherwise.
  2. A person who has filed **his own candidature u/s 257.**

Consequence of default: Failure to file consent with Co will not render the appointment invalid. Provision of consent to co is **directory & not mandatory** [Lalji Bhai C. Kapadia v lalibhai Desai]

B. Filing consent to ROC {in form 29} **(After Appointment)**

- If person appointed as Dir – then he has to file his consent **within 30 days of his appointment to registrar.**
- **Exception**: **No** consent require to ROC if:
  1. Dir name is in Co. first registered articles.
  2. Dir reappointed after retirement [whether by rotation **or** otherwise]
  3. Add. Dir/ Alt. Dir./ or a person filling casual vacancy u/s 262 – appointed as a Dir. or re- appo**inted as an add. Dir. /Alt. Dir. immediately** on expiry of his term of offi**ce. [Means** Contin**ue in his office w/o any break]**.

Consequences of default:

- If failed to file consent with registrar with in 30 days, office will not be vacate, however penalty mention u/s 629A shall be impose.
- Such consent may be filed even after the expiry of 30 days by payment of additional fees u/s 611(2)
- Further it is open to CG to condone the delay u/s 637B.

- **264 not apply to Pvt. Co.** Hence no need to file consent to registrar/company **(proposed).**
- **Applicability of S 264 to Nominee Dir:**
  Nominee dir appointed **u/s 408** no need to file his consent to Co. **however require to file consent to Registrar.**

- Consent implies a contractual relationship – hence any contract does with minor will be **void ab initio**. Hence minor can't give his consent u/s 264. **But in case of private co. a minor can be appointed as Dir – unless `A` o/w provided.**

Share Qualification [270 –273]

S: 270 Time limit for QS & max amt thereof [**only public co**]

1) **Time Limit: If AOA provided** then each Dir. must hold Q.S. **within 2 months after his appointment** as a Dir.
2) **Earlier**: If AOA provided that Q.S. should hold **before his appointment *or* within a shorter period** (i.e. before 2 months) –**Not valid**.
3) **Amount: Nominal value** of Q.S shall not exceed **Rs 5,000 Or** if value exceeds Rs 5,000 for one share– **then 1 share only.**

Notes:

1) **If amt of QS increase by AOA**: Dir shall obtain QS so increased, if he has not already obtained it. **However** at the time of alteration of AOA, if dir already hold QS then subsequent increase will not bind on dir.

A. What constitutes sufficient QS?

1) Bearer of Share warrant will not count for this purpose.
2) **In case of joint shareholding: Any one** of joint holder may be appointed unless articles u/w provide.
3) **No bar against mortgage or pledge QS: until AOA provide to hold unencumbered shares.**.
4) **Beneficial ownership is not required:** Until AOA provide otherwise, beneficial ownership is not necessary.
5) **QS should purchase in CASH: If** get by GIFT can't treat as Q.S.
6) **Kind of shares**: S 270 not require that only equity shares, preference share also will be valid , However AOA can provide particular kind of shares.
7) Director accepts Q.S>> as secret gif from promoter>>gross breach of trust>>should give the money to company>>however will be treated as Q.S.

B. Consequences of failure to hold QS:

8) If Dir not hold within 2 months: office shall be **automatically vacated** after 2 month from his appointment **[283(1)]**
9) If a person act as a Dir when **he knows** that his office has vacate, shall be punishable with fine upto Rs. **5,000 per day [283(2A)]**
10) Beside the above he shall be punishable with fine upto **Rs 500 per day [S 272]**
11) If error of QS finds out after 2 moths: work done during 2 month will be valid. (Sec. 290)

C. Dir who need not obtain QS:

12) No need of QS if dir appointed by **1.** CG u/s 408 **2.** By BIFR u/s 16(4) **3.** Nominee dir. 4. Dir who by AOA, are not require to hold QS. 5. A SSHD
13) If co. goes winding up within 2 months: he shall not liable to get Q.S.

D Other provisions:

14) There is no statutory requirement that Dir must hold QS. QS has to be obtain only when AOA so require.
15) **Whether AOA change time limit for obtaining QS:** acc to 270 AOA can't provide shorter period & acc to S 283 if a Dir not hold QS with 2 month his office shall be vacate, **hence AOA neither increase or nor decrease time limit.**
16) **QS not allotted within 2 month:** QS should be '**obtained**' within 2 month. Hence if dir apply but same will not be allotted to him – **we can't say that he has acquired Q.S.**

17) Table A prescribes 1 share as Q.S.
18) Following need to hold : Add Dir, Alt, Dir, S. 262, MD, WTD and NED (i.e. ordinary director)
19) In private co., QS shall be as per articles.

S: 272 Penalty: If Dir. not hold Q.S & act as a Dir.– Shall be punishable with fine upto **Rs. 500 every day** upto last day he act so.

S: 273 Pvt Co: S270 /272 not apply to pvt co.

Qualification & Disqualifications of Dir

No education or other qualifications are required to become a Dir of **any Co. Similarly** Co Act does not prescribe any age limits.

Sec: 274 DISQUALIFICATION OF A DIR.

A. Disqualifications for appointment as a Dir in **Any Co:** [274(1) (a) to (f)]

Following person shall not be capable of being appointed as director if:-

a) Court has found him to be of **unsound mind** and finding is in force [such finding must be on date of appointment**]**
b) He is an **un-discharged insolvent.**
c) Applied to be adjudicated as an **insolvent** and application is pending.
d) Convicted by court for offence involving **moral turpitude** and **sentenced** of imprisonment for not **less than 6 months** and a period of **five years have** not expired since expiry of sentence.
e) Has not **paid calls** for shares held by **him/jointly** and **six months** have elapsed from the last day fixed for payment of call.
f) **U/S 203** (due to fraud and misfeasance) court has declared him **disqualified** to be a director and no leave of court is obtained.

B. Disqualifications for appointment as a Dir **in a Public Co:** [274(1) (g)].

g) such person (who) is already director of a **public co**. which-
   a. Has not filed the annual accounts **and** annual returns for any three continuous three FY after 1.4.1999.

   OR

   b. Has failed to repay it deposit or interest thereon/ redeem it debentures on due date **or** pay dividend and such failure continues for **1 yr. or more**. [Int. on deb., Loan/Int. from PFI not covered here]

Such a person cannot be appointed in any Pub. Co. for 5 years.

Notes:

1) Such a person cannot be appoint./re-appoint. in **any pub. Co. (including defaulting Co.) for 5 years.**
   i) 5 yrs. will be counted from following date:
      a) Date from failure of annual a/c and annual return.
      b) In case of (2) – from due date of payment or redemptio**n**.
   ii) 274(1)(g) mentions only disqualification, hence **Dir is not required** to vacate his office in which he is already dir.
   iii) If dir. resigns from office before disqual., he shall escape the disqual mention u/s (1) (g) o/w not.
   iv) (1)(g) Shall apply if **defaulting co** is a **public Co** & proposed dir is dir in a **public co.**

2) **As per DCA, Nominee Dir** appointed **by** PFI, CG, SG and banking companies & Dir appointed by BIFR will not disqualify u/s 274(1)(g).
3) Thus Dir can't appoint in public co, but can be appointed in Pvt. Co. if he is no more director of defaulting pub. Co.

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(2) CG may remove following D.Q. by notification in OG:

- **(a)** Imprisonment for moral turpitude.
- **(b)** Mistakes in paying calls in arrears.

Court may dispense the D.Q mentioned u/s 203.

(3) Pvt. Co may add in addition to above by its articles **but public co. can't do so b**y it's article in addition to above. (E.g. a **Pvt. Co.** may provide, below 18 years cannot be appointe. as dir. but **pub. Co. cannot** do so.)

Note:

1) 274(1)(G) is incurring a **disqualification** however director is **not required to vacate** the office.
2) Default made under sect. 274(1)(g) subsequently cured>>Directors will still continue to be the **D.Q.**
3) **Public co. can't add** any other Disqualification.
4) Every person who is proposed as dir. in a pub. Co. shall file a declaration that he is not D.Q u/s 274(1)(g).
5) **Statutory auditor** of co. shall state in its **report** if there are any directors **D.Q.** u/s 274(1)(g).[227(3)(f)
6) Whenever a co. makes default mentioned u/s 274(1)(g)>>**Shall** immediately file a return (contains name and address of all directors of co.) in **duplicate** to ROC>> ROC shall **register** the return and return will be open for **public inspection**. ROC shall **fwd** the dup. copy of return to **CG.**
7) **CG** shall place it on the website of **DCA.**
8) **Can a minor be appointed as a Dir**: S 274 does not cover this aspect & also there is no such provisions in Co Act about it.
9) However under **contract Act, 1872**, a **minor** is **not competent** to contract. Thus he can't enter any contract with Co. & also **can't sign** to anything which is to be filed with Co / registrar. However **S 264 requires** every person shall file **consent** with **registrar**. Whereas minor is not capable to file his consent as he is not capable to do contract.
10) However S 264 applicable only on **public co.** Thus **minor** can be appointed as a **Dir** in **Pvt Co**.
11) Sect. 274(1)(G) does **not** apply to **Govt. Co.**
12) Default of **privately placed bonds/debe./debt instrum. by PFI will not disqualify directors u/s 274(1)(g)**
13) **Here 'deposit' means public deposit.**

Restrictions of number of Directorship [S. 275 – 279]

S: 275 Maximum of 15 directorships: A person cannot become **director** in **more than 15 Co. except as o/w provide in 276. (**However a person can hold the office of Manger in other co.)

S: 276 Choice to be made by Dir (Transitional Provisions): if on **13/12/2000** any person is director in more **than 15 co.:**

a. Within **two months**, he will select any 15 Co. out of them.
b. Resign from above companies(such resignation will be effective immediate).
c. Will intimate his choice to CG and ROC.

S: 277 New appointments increasing directorship to more than 15 co:

If a director who is already director in 15 Co. and he is appointed in other co. as director then:

a. Within **15 days** of appointment if he vacates directorship in any co. then appointment is valid.

b. If not vacated then **new appointment** is void.
c. If a person is already dir. in **14 or less** & he is appointed as a dir. in any co. Due to new appointment his **total no. of directorship becomes 15 or more**. In **15 days** he should choose **15 companies o/w** if choice is not made **all the new appointments** will be **invalid.**

S: 278 Exclusion of certain directorships:

(1) Following will not be included for counting directorship in **15 number**:

a. Pvt. co. **except** which is **neither Subsidiary nor Holding co**. of a public co.
b. Unlimited liability Co.
c. A co incorporated u/s 25 of Co Act.
d. ALTERNATE DIR.

(2) If any of the co. mentioned under (a)(b)(c) changed its identity then for **3 months** it will not counted in limit of 15.

S: 279 Penalty

Any person, who acts as a Dir of more than 15 Co's shall be punishable with fine, **up to Rs. 50,000.**

Notes:

1. A person may be appointed (who is already dir in 15 Co.) by CG u/s 408 or by BIFR u/s 16(4) SICA.
2. **Directorship in a foreign co shall also be excluded** since a Foreign Co is not a 'Co.' as defined u/**s 2(10) R/W 3(1)(i).**

Vacation of office by Directors [283]

S: 283 Vacation of office by Directors:

(1) Dir shall vacate the office if:

a) Found to be **unsound mind** by a court of competent jurisdiction.
b) **Adjudged** as an **insolvent.**
c) **Applied** to be **adjudicated** as an **insolvent**.
d) **Convicted** by court of any offence involving **moral turpitude** and is sentenced to **imprisonment** for **6 months** or more.
e) Fails to pay **call** within **6 months** from the **last day** fixed for payment. **(C.G may remove** this ground by NOTF in OG)
f) Disqualified by an **court order u/s 203** (on the ground of **fraud or misfeasance** in relation to co.)

g) Acts in contravention of **S. 295** i.e. director and other specified person under section 295 accepts a loan from pub. Co. where he is a director.
h) Acts in contravention of **S. 299** i.e. where a director fails to show his interest or concern in any of the contract or arrangement.
i) Who is removed from the office **u/s 284**
j) Fails to obtain the Q.S. within the period specified **u/s 270** or at any time thereafter ceases to hold.
k) A person who having been appointed a director by virtue of his holding office or other employment in the company ceases to hold such office or employment.
l) Absents w/o **obtaining the leave of absence** from the **Board.**
   a. From **3 consecutive meeting** or
   b. From **all BOD meeting** for a **continuous period of 3 months** whichever is longer

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(2) The grounds referred under (b) (d) (f) shall not take effect-

a) For the first 30 days.
b) Where any appeal (Ist Appeal) or further appeal (II nd appeal) is preferred, until the expiry of 7 days when appeal is disposed of.

(2A) **Penalty: If** a person act as dir. when he knows that his place is vacated shall be punishable with Fine which **may extent to Rs. 5,000** per day.

(3) **Pvt. Co. may add any other ground in addition to above.** However public co **can't do** so.

Note: 1. **No compensation**: If dir office vacates by reason of 283 – then no compensation **[318]**

2. **Vacation of office is automatic**: vacation shall be automatic; therefore following implication may be drawn:

a. His office shall be vacated. S. 283 does **not** give any **opportunity of being heard**.
b. Sec does **not require** that for vacation of office BOD should pass a resolution.
c. BOD has **no power to waive** the above event.
d. IF Dir disputed the vacation of office: first he shall vacate office & then resort to court.

3. **Other disqualifications & grounds for vacation of office:**

a. Refusal to allow inspection **u/s 209A**
b. Removal of Dir by CLB to end oppression or mismanagement. **[402]**
c. Removal of a Dir by CG to end fraud, negligence, etc. **[388B]**

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Removal of Dir
Dir may be removed by:
1. Shareholder (284) **2.** CG **3.** Company low Board (CLB)

Sec: 284 Removal by shareholder:

(1) Co. **Ordinary resolution** passed djds fdlh Hkh Dir dks mldh **fu;qfDr dh vof/k leklr gksus ls igys** gh mls mlds in ls gVk ldrh gS
However following Dir can't be removed u/s 284:
- Director appointed in a Pvt. Co. for life before 1.4.1952.
- Director appointed through proportional representation u/s 265
- Nominee dir appoint by financial institution under their respective statue [e.g. UTI, LIC & IDBI]
- Dir appointed by BIFR u/s 16(4) of SICA
- Dir appointed by CG u/s 408

(2) **Special notice By member:** ;If any **member** [only member] **prposes to remove any director or wishes to appoint any other person instead of director then special notice need to be given at lesa**fdlh Dir. dks gVkus ;k mlds LFkku ij fdlh vU; O;fDr dks appoint djus dk **izLrko j[krk gS** rks mls bldh **special lwpuk CO dks** lnL;ks dh lHkk dh Date ls de ls de **14 Days igys** nsuh vko';d gS

(3) **Information to Dir:** Co. notice izklr gksrs gh lnL;ks dks lwfpr djrh gS **rFkk** bldh ,d Copy **lEcfU/kr Dir. dks** Hkstuh gksrh gS **rFkk** Dir. dks resolution ij meeting esa luwokbZ dk volj izklr gksrk gS (whether he is member or not)

(4) **Representation to member:** Dir notice zds fojks?k esa dEiuh dks writing esa representation ns ldrk gS (length should be reasonable) & request dj ldrk gS fd bls lnL;ks dks Hkst fn;k tk;s k vkSj ;fn Ik;kZIr le; rks dEiuh bls lnL;ks dks Hkstus ds fy;s ck?; gS vkSj ;fn Hkstuk lEHko ugh gS rks bls meeting esa gh Ik< nsuk pkfg, k

Proviso: - ;fn **dEiuh ;k vU; dksbZ O;kfDr dh izkFkZuk ij** ***CG*** bl ckr ls lUrqlV gS Ik{kdkj fd Co ds lnL;ks dks mlls ekugkfu gksus dk Hk; gS rks ,sls representation dh copies members dks fHktokus ls :dok ldrh gSs
CG, BOD dks representation nsus rFkk bls meeting esa Ik<us ls jksdus rFkk Co. dks [kzpksZs ds lEiw.kZ ;k v'kar Hkqxrku djus dk vkns'k ns ldrh gS k [amendment – "word" CLB SUBTITUED BY CG] - **second amendment 2002**.
Ysfdu ,d Banking Co. dh n'kk esa lnL;ks dks representation Hkstus dk BOD nqkjk fy;k tk ldrk gS

(5) **Fill up the vacancy:** tks place bl rjg ls vacate gqvk gS rks mls **mlh Meeting** esa Hkjk tk ldrk gS **Provided ,slk djus dk** ***<u>Special notice</u>*** co. dks ns fn;k gS rFkk ,slk appointed Dir dsoy mrus gh Period ds fy;s in ij jgsxk ftrus period rd removed Dir. jgrk k

(6) **If vacancy not filed in Same GM**- then BOD may fill up Casual Vacancy as per 262 – **But can't appoint removed Dir.**

(7) **Compensation to removed Dir when remove in properly:** If proper notice not given to removed Dir, then he will be entitled to get compensation. & **blds vykok** bl in ds lkFk leklr gksus okys fdlh vU; in **tSls fd MD ,** dh vk; esa gqbZ gkfu ds fy;s Hkh compensation ekaxus dk vf/kdkj j[krk gS

Note: 1. Grounds of removal of a Dir is not necessary: a member who give special notice, is not bound to give grounds for removal of Dir. u/s 173 it is duty of management to disclose material facts in explanatory statements.
S 173 not require that **shareholders has to disclose reason** for resolutions proposed at meeting. **[LIC v Escorts Ltd.]**

2. S 284 apply to all Co. [whether pvt or public]

3. ;g t:jh ugh gS gVk;s tkus okys Dir gsrq dqizcU/k lnwfo'kokl dk Hkax ;k xYr dk;ksZ dk izek.k miyC/k gks
Even if member's think that policy of Dir is not appropriate, they can use power of sec 284.

4. Removal of permanent Dir: a permanent dir is entitled to hold office **for life.** However 284 give power to shareholder
to control dir, therefore dir even permanent dir could be removed by shareholder.
-**Tarlok chand khanna v Rajkumar kapoor**

5.Can articles prohibit removal of permanent Dir: Any provision in AOA that a dir shall not remove, **violates**
Statutory right of member & it is ultra virus of Act **as provided in Sec 9.**
As per 9 that provisions of Act an overriding effect of clause contained in MOM/AOA, if they r not in conformity with provision of Act. **Hence Act give power to shareholder can't prohibit by AOA..**

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2. Removal By C. G. [S. 388B - 388E] [Applicable to All Co.]

S: 388B Reference to Tribunal of cases against Managerial personnel

CG fdlh Hkh MP (even appointed u/s 408 or 265) dks ***Tribunal* dh flQfj'k ij** gVk ldrh gS . Where CG dh opinion gS fd ,slh circumstance available gS tks & following suggestion nsrh gS :

a) tc dksbZ person Co. ds izcU/k ;k lapkyu esa Co. ds izfr vius nkf;Roks dks fuHkkus esa diV djrk gS ;k yxkrkj **ykijokgh djrk gS** ;k **_fV djrk** gS ;k **fo'okl Hkax** djrk gS

b) tc person nzkjk Co. dk Buss. "<u>Sound Buss. Principal" Or "Prudent commercial practice</u>" vuqlkj ugh pyk;k tkrk gS

c) og Co. dk izcU/k bl rjg ls djrk gS fd Co. ls **Related industry or trade** dks <u>Serious injury or Damage</u> gksrk gS

d) tc person nzkjk Co. dk management Co ds Creditors or members or fdlh vU; person dks /**kks[kk nsus ds mnzs';**
ls ;k fdlh **diViw.kZ ;k xSj dkuwuh mnzs';** ;k **Public int. ds fo:/k** Co. dk management djrk gS k

- ;g proceeding Tribunal dks vkosnu djds izkjEHk dh tkrh gS Tribunal ls vkosnu fd;k tkrk gS fd os facts dh inquiry ds ckn Decision ns fd og person Dir or izcU/kd in lEHkkyus ds ;ksX; gS ;k ugh k
- Application .esa mu lc rF; ;k ifjfLFkfr;ksa dk C;kSjk gksuk pkfg, tks Enquiry ds fy;s vko';d gS
- Tribunal may at any stage of proceeding allow the CG to alter or amend the app. for determining real Quest. in enquiry.

Sec: 388C Interim order by *Tribunal*

Tribunal **CG ds vkosnu ij Or own motion** ls Members, Creditors or Public int. dks /;ku esa j[krs gq,s Interim order
tkjh dj ldrh gS ftles izfooknh (Respondent)ij dk;Z djus ij jksd yxkbZ tk ldrh gS k Tribunal Respondent ds LFkku ij vU; O;fDr dks Hkh appoint Co. dj ldrh gS k ,slk Appointed person **public servant ekuk tkrk gS**

S: 388D Decision of Tribunal: After hearing & recording it decision, give his decision fd D;k Respondent proper & fit gS ;k ugh .

S: 388E Power to CG to remove MP on the basis of Tribunal's Decision:

(1) Nothing contained in any other Prov., if ***Tribunal*** dk Decision Respondent against gksrk gS rks CG. mls gVk ldrh gS
(3) He shall not hold any managerial office of **ANY CO**. for 5 years from date of removal order.
Proviso: "**With Pervious Concurrence of Tribunal**", CG may permit to hold any office before 5 yrs.
(4) Removed Person **can't get any Compensation.** Pkkgs , Anything contained under this **A**ct or **O**ther **L**aw or **C**ontract or **M**OM.
(5) Co. can appoint any other person as a Dir. in place of Removed Dir. After getting "**Pervious approval**" of CG.

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Resignation by a Director

- There is no provision in Co. act about resignation by Dir. **However Act recognized it indirectly by prov. of S.318**
- **Sec. 318**: Dir. not entitled to get any compensation in this case.
- **If any prov. in AOA** – Resign. will take effect acc. to Such Prov. & **If no such prov.** – Resign should be in writing.
  However it can give by Orally in General meeting of Co..
  Dir can give resign by Orally, even if articles say give in writing – **Latchford Premier Cinema V. Ennion**
- **Where AOA contain a prov**. that a Dir. may resign only with BOD consent – then w/o obtaining such consent resign will not take effect**. If no such prov. in article –** then no need of BOD consents & notice is sufficient**.**
- **But in case of MD or WTD they can't give resign only by notice. BOD consent is necessary.**
- Co. can accept his resign or send back to him for rethinking. However once he gives resign then he can't take w/o
  Obtain `s co acceptance.
- ;fn ,d Dir , WTD & Original Dir. nksuks ds Office hold fd;s gq;s gS rks mldk resign nksuks inks ij ykxw gksxk
- ;fn office esa dksbZ vU; Dir .ugh gS rks Hkh mldk resign ekU; gksxk k even dsoy nks gh Dir. gS vkSj ,d ej tkrk gS rks Hkh nwljs Dir. nzkjk Resign fn;k tk ldrk gS k However he can't evade his obligation.
- Letter of resignation must be addressed to Co. . If addressed to Third Party shall have no effect.

Sec.: 290 Validity of acts of Directors:

All the acts of a dir. or committee of BOD shall be valid if afterward discovered that his appointment was:

- Invalid by reason of any defect or disqualification
- Terminated by virtue of any prov. Of Act or Articles

Notes:

1. **Ex.:** Reduction in share capital and subsequent reduction of Q.S.
2. Acts done by **MD, WTD, Man.** After they **cease to hold office not validated**-it was not an irregular exercise of power but exercise of power by a person who had no authority at all.
3. However as per **S .269** when **CLB** declares appointment of any **MP** in contravention of **Sch. XIII** then **all prior acts** shall be **valid** notwithstanding anything contained in CLB order.
4. Sect. applies only when **Defect in appointment** discovered later, does not apply when there was **no appointment or t**here was **illegal appointment.**
5. If a dir. works after his expiry of office, act cannot be regarded as valid because there is no defect afterward discovered.
6. Where defect comes into knowledge of co., all subsequent acts shall be invalid.
7. Where the acts are **Ultra Vires** of **Company Act.**
8. **S. 290** does not apply to **CM so casting vote** is **not valid.**
9. **If a third party is aware of the defect in appointment of director, he cannot take the benefit of this sect.**

Board's Power & Restrictions Thereon

S. 291 General power of Board

(1) **BOD** of co. is **authorized** to do **all such acts or exercise** such powers which **Co**. is **authorized** to do.

Proviso: BOD shall **not exercise** such powers which can be **exercised** in **the General Meeting only**, as per **Act, MOA or AOA.**

Provided further, power of BOD shall be **subject** to provisions u/s **ACT, MOA, AOA or regulations made by GM.**

(2) Restrictions imposed by the GM can be **prospectively** only and not **retrospectively**. I.e. any prior work cannot be invalidated by GM.

Notes:

(1) Directors while exercising their powers does not act as agent of members so members cannot supersede (by way of ordinary resolution or even by unanimous resolution) the power of directors or instruct them how they should exercise their power.

(2) Directors can disregard the wishes of shareholders until the shareholders amend the articles and restrict the power of director

(3) When shareholders can intervene? **A)**Director Acting Malafide **B)**Incompetent BOD **C)**Deadlock In BOD

S.292 Certain Power Can Be Exercised By BOD Only At BOD Meeting

Following powers **can be exercised by BOD** only by way of passing **BOD resolution in BOD meeting**. In other words can't be exercised by passing resolution **through CIRCULATION** (289).

a) Making calls on shares

aa) Power to buy back the shares (As per sect. 77A(2)(b) i.e. where S.R. is not required.)

b) Issuing debentures

c) Borrowing money o/w on debentures. (However Banking Co. can borrow from other Banking Co. or RBI or SBI or any other Bank). (Explanation: 1)

d) Investing funds of Co. (However this power again subject to pro. of S. 295 & 372A).

e) Making Loans. (Again subject to 295 & 372A).

Proviso: In a BOD meeting (**not by circulation**) by way of **resolution,** powers u/s 292 (1)(c)(d)(e) can be delegated (subject to certain conditions) to following person

(1) Committee of Directors (2) MD (3) Manager (4) Principal officer Of Co. (5) in case of Branch – then Principal officer of such Branch.

For delegation resolution passed at BOD meeting should specify

292(1)(C) Borrowing money o/w on debentures.	**Total amt. o/s** at any one time up to which money may be borrowed
292(1)(D) Investing funds of Co.	1. **Max. Amt.,** funds may be invested **& Nature** of investments
292(1)(C) Making Loans	1. **Total amt.** up to which loan may be made **& Purpose** Of Loan 2. **Maximum amt.** where loan can be made for **each purposes. (individual cases)**

Explan. II: in case of S.292 (1)(c): Resolution is not required for Overdraft and Cash Credit taken in ordinary course of business.. ;f

(5) Power of S. 292(1) can be used ONLY BY BOD, However GM may put some restrictions on powers.

Notes:

1. Besides the above following powers (ill.) also can be used only at Duly BOD meeting not by circulat.:

- Power to fill casual vacancies (262)
- Power to make Political Contribution (293A)
- Sanction of a Contract in which Dir. is interested (297) /299
- Declaration of solvency (488)
- Power to recommend the rate of Dividend.

&

2. In following cases power can be exercise **not only** at BOD meeting but also with **unanimous resolution.**

- **Power to appoint a person as MD or manger** who is holding either office in another Co. [**316& 386**]
- Power to invest in any share of ANOTHER BC or Power to make Inter- Co. loans [**372A]**

Sec: 292A Audit Committee: To be read in Audit Chapter

Sec: 293 Restrictions on powers of BOD

(1) Without the **prior consent** of **shareholders in GM(ordinary resolution)**, BOD shall not exercise below powers:

(a) Sell, lease or otherwise dispose of the whole or substantially the whole of one or more undertakin. of co.

- **However this restriction will not apply** to that co. where business is to buy and sell U/T. S 293(2)(b) &
- Title of buyer or lessee shall not be affected–if Taken in <u>**Good Faith** & after exercising due care & caution</u> –293(2)(a).

(b) Remit, or give time for repayment of any debt due by a Dir. **except banking co.** >>ordinary course of business.

(c) Invest, **o/w than in trust securities,** compensation recd. I respect of compulsory acquisition Of

- Any undertaking of co.
- Any premises or property of co. w/o which U/T cannot be carried on or can be carried on with difficulty/after a considerable time.

(d) If Present + **N**ew Borrowing money **exceeds aggregate of Paid-Up Capital + Free Reserves** of Co.

- Borrowing does not include: (1) "**Temporary loans**" "**Obtained from Co`s Banker**" **<u>In the ordinary course of Buss.</u>** **(2) Banking Co.-** Accepting **deposits** from customers
- **<u>Temporary loans means</u>**: loans payable on demand or within 6 months such as CC, discounting of Bills, OD etc.
- If T.L.is taken for **CAPITAL EXPENDITURE** then it will **not be included in T.L**.
- The **total amt. upto which money** can be borrowed by **BOD** must be **specified (when resolution passed by Co. In GM)**.
- Loan takes after contravention of this S. will **not be valid** – unless lender will not prove that **he gave in good faith & w/o/p knowledge of facts. 293(5) Imp.**

(e) Contribute to **charitable funds** or funds **not directly related** to **business** of co. or **employees** welfare. And amt. contributed in a F.Y. Exceeds **(Whichever is Greater)**:

- Rs. 50,000 or
- **5 % of** average net profit of **last 3 (immediately preceding) F.Y. (Calcu. as per S. 349, 350)**

- Total amt. upto, which BOD may contribute to Chart. Or any fund must be specified (when resolution passed In GM).
- School, medical facility for employees & employee dependents will not be counted under limit of **S. 293(1) (e)**.
- If contribution **given in KIND** – still it **would** be **counted** in above limit.
- If contribution give by Co. for **business or employee welfare –** above restrictions will **not** be applied.
- The amt. contributed to these funds must be **separately disclosed in P&L** of the Co. in the year in which contr. was made.
- Cont. to National Defense Fund, Prime Minister's National Relief Fund or any fund approved by CG – Exempted.

Common notes:

- The restrictions of **S. 293 NOT APPLY TO PRIVATE CO.**
- **Previous Approval** of GM is necessary for all above. Post approval will be invalid: **Pothen V Hindustan trading (p) ltd.**
- **U/S 293(1)(d) & (f), shareholders resolution should specify** the **amount** up to which can be **borrowed/contributed to charitable funds o/w** resolution shall be **void. i.e. blanket permission** is **not** permissible**.**
