Appointment & Qualification of Directors (Chart 3.1)

Section 149 - Company to have Board of Directors

Second Proviso to Section 149(1) - Women Director

1) At least 1 woman director be on Board of-
a) every listed company,
b) every other public company having-
• paid–up share capital Rs.100 Crore or more; or
• turnover of Rs.300 Crore or more
2) New Co. comply within 6 mths from incorporation
3) Intermittent vacancy be filled-up by Board not later than immediate next Board Meeting or 3 mths from vacancy whichever is later
4) Section 149(2) - Transition period-
Existing Co. should comply within 1 year from commencement (i.e 1st April, 2014)
5) PSC, turnover as on last date of latest audited financial statements to be considered

Section 149(3) - Resident Director

Every company shall have at least 1 director who has stayed in India for total period of not less than 182 days in previous calendar year

Section 149(4) to 149(13), 150 - Independent Director

Section 149(4) - Applicability

1) Listed public company- at least 1/3rd of total no. of directors as independent directors (ID)
2) Fraction rounded off as 1
3) At least 2 ID-
Public Companies having-
a) PSC Rs.10 Cr or more or
b) Turnover Rs.100 Cr or more
c) Outstanding loans, debentures, deposits exceeding Rs.50 Crore in aggregate
4) Intermittent vacancy be filled-up by Board not later than immediate next Board meeting or 3 mths from vacancy whichever is later
5) Transition period - Section 149(5)-
Existing Co. should comply within 1 year from commencement (1st April, 2014)

Section 149(6) - Who can become ID?

1) In the Opinion of Board[1] person of integrity, possesses expertise, experience

A: [1]For Govt Co. "Ministry/Dept of CG which is administratively in charge of Co, or SG"

2) Not a promoter
3) Not related to promoters/ directors
4) No pecuniary relationship with company/ its holding/ subsidiary/ associate or promoters/ directors, during 2 immediately preceding FY or current FY

A: Not applicable to Govt Co.

5) None of whose relatives has or had pecuniary relationship or transaction amounting to-
a) 2% or more of gross turnover or total income
b) Rs.50 Lakhs or
c) higher amount prescribed, whichever is lower, during 2 immediately preceding FY or current FY

Section 149(7) - Declaration by ID

Declaration that he meets criteria of independence-
1) At 1st Board Meeting in which he participates
2) Thereafter at 1st Board Meeting in every FY or
3) Whenever change in circumstances affecting his status

Section 149(8) - Code for ID

Company & independent directors shall abide by provisions specified in Schedule IV to Companies Act, 2013

Section 149(9) - Remuneration of ID

1) Not entitled to stock option
2) Remuneration by way-
a) fee provided u/s 197(5),
b) reimbursement of expenses for participation in Board & other meetings
c) profit related commission approved by members

Section 149(10) - Tenure

1) Hold office for term up to 5 consecutive years
2) Eligible for re-appointment on passing special resolution & disclosure in Board's report
3) Shall not hold office for more than 2 consecutive terms
4) Eligible for appointment after expiration of 3 yrs of ceasing to be ID, if not associated in any manner during these 3 yrs

Section 149(12) - Liability

Held liable for acts of omission or commission by Company-
a) occurred with his knowledge
b) with his consent or connivance or
c) where he had not acted diligently

Section 149(13) - Retirement by rotation

Section 152(6), (7) retirement of directors by rotation not applicable to Appointment of ID

Section 150 - Manner of selection & maintenance of databank of ID

1) Contains names, addresses & qualifications of persons who are eligible & willing to act as ID
2) Maintained by any Body, institute or association, notified by CG
3) Put on their website for use by companies appointing such directors
4) Responsibility of exercising due diligence before selecting lie with company
5) Appointment be approved by company in GM as per Section 152(2)
6) Explanatory Statement annexed to notice indicate justification for choosing

A: Section 150 not applicable to Section 8 Companies

Section 149(1)

Section 149(1) - (a) Number of Directors - Minimum : Public Co - 3, Private Co - 2, OPC - 1
(b) Articles may stipulate higher number
(c) Maximum - 15 directors, However, Co may appoint more than 15 by passing SR
(d) Only Individuals to be directors, no Body Corporate, firm, association shall be appointed as director

A: Limit of maximum of 15 directors & their increase in limit by SR shall not apply to Government Co.

A: Minimum & Maximum limit of number of directors & their increase in limit by SR shall not apply to Section 8 Companies

A: Section 8 companies are exempted from following provisions of sub-section (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) [related to independent director] & sub- section (13) of section 149 of Companies Act, 2013

Appointment & Qualification of Directors (Chart 3.2)

Section 151 - Small shareholders' Director

1) Listed company may have 1 director elected by SSH
2) Small Shareholders (SSH) - holding shares of nominal value not more than Rs.20,000/-
3) Listed company appoint SSD
a) upon notice of not less than-
• 1000 SSH or
• 1/10th of total no. of SSH,
whichever is lower or
b) May opt suo motu
4) Notice of intention given by SSH at least 14 days before meeting,with details of person
5) Appointment as per Section 152(2), however SSD shall-
a) Not retire by rotation
b) Tenure maximum 3 years
c) Cannot be reappointed
6) Not eligible for appointment if disqualified u/s 164
7) Person can be SSD in 2 Co.
8) Vacate office if incurs disqualification, Section 167, ceases to be ID

Section 161 - Appointment of Additional, Alternate & Nominee Director

Section 161(1) - Additional Director

1) Articles of company may give power to its Board of Directors to appoint any person as an additional director at any time
2) Person, who fails to get appointed as director in general meeting, cannot be appointed
3) Additional director shall hold office up to date of next annual general meeting or last date on which annual general meeting should have been held, whichever is earlier

Section 161(2) - Alternate Director

1) Board, if so authorised by articles or resolution passed in general meeting, appoint person to act as alternate director in place original director during his absence for period of not less than 3 mths from India
2) Person holding alternate directorship for any other director cannot be considered for appointment
3) No person shall be appointed as alternate director for an ID unless he is qualified to be appointed as an ID
4) Not hold office for period longer than original director
5) Shall vacate office when original director returns to India
6) Automatic re-appointment of retiring directors in default of another appointment shall apply to original, & not to alternate director

Section 161(3) - Nominee Director

Board may appoint any person as director nominated by any institution in pursuance of provisions of any law for time being in force or of any agreement or by CG or SG by virtue of its shareholding in Government Company, subject to articles of company

Section 161(4) - Casual Vacancy

1) In case of public company, if office of director appointed in general meeting is vacated before his term expires, resulting casual vacancy may, in default of & subject to any regulations in articles, be filled by Board of Directors
2) Any person so appointed shall hold office only till date up to which director in whose place he is appointed would have held office if it had not been vacated

Appointment & Qualification of Directors (Chart 3.3)

Section 152 - Appointment of Directors

Appointment of directors

152(1) - First Director

1) If no provision made in AOA, individual subscribers to MOA, be deemed to be 1st directors until directors are appointed by members
2) For OPC, individual being member be deemed to be its first director

Section 152(2)

Save as otherwise expressly provided in this Act, every director shall be appointed by company in general meeting

Section 152(3)

No person shall be appointed as director unless he has been allotted DIN

Section 152(4)

Director shall furnish DIN & Declaration that he is not Disqualified

Section 152(5)

Director should give his consent, file with ROC in Form DIR-2 within 30 days of appointment

A

Section 152(5) shall not apply:
(i) where appointment of such director is done by CG or SG
(ii) to a section 8 company

152(6) - Retirement by rotation

1) Unless AOA provide retirement of all directors at every AGM, minimum 2/3rd of total no. of directors of public company shall be Rotational Directors & they shall be appointed at GM
2) Non-rotational Directors shall be appointed in GM or as per AOA
3) In every AGM, 1/3rd of Rotational Directors shall retire
4) Persons longest in office shall retire
5) 2 persons appointed on same day, then retiring person is as per agreement between them or draw of lots
6) No. of Independent Directors shall be excluded from Total no. of directors for purpose of calculation

152(7) - Vacancy in case of retiring director

1) If vacancy of retiring director not filled-up & meeting has not resolved for not filing of vacancy then meeting shall be adjourned till same day in next week
2) If vacancy not filled up in adjourned meeting & resolution for not filing vacancy is not passed, retiring director shall be deemed to have been re-appointed at adjourned meeting, unless-
- resolution for re-appointment has been put to meeting & lost;
- director has expressed his unwillingness to be re-appointed
- he is disqualified for appointment
- OR/SR is required for his appointment or re-appointment
- Section 162 is applicable to the case

A

Not Applicable to : (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.

Section 160 - Appointment of New Director

1) Person other than retiring director (Section 152), be eligible for appointment as director at any GM
2) Notice in writing to be given at least 14 days before meeting at Registered Office along with Deposit of Rs. 1,00,000/-* or higher amount prescribed

A

** In case of Nidhi Co Rs. 10,000/-*

3) Deposit be refunded if person proposed gets elected as director or gets more than 25% of votes of members present & voting

A

In case of Section 8 Companies, BOD is to decide whether deposit is to be forfeited or refunded

4) Company shall, at least 7 days before GM, inform its members of candidature of person as director

A

Not Applicable to : (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.
(iii) Private Company
(iv) Companies whose articles provide for election of directors by ballot

Section 162 - Appointment of directors to be voted individually

1) Each director shall be appointed by separate resolution, unless meeting first agreed that appointment shall be made by a single resolution and no vote has been cast against it
2) Resolution moved in contravention shall be void, whether or not objection was raised at time it was so moved
3) Nomination of person for appointment, shall be treated as motion for his appointment

A

Not Applicable to :
(i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.
(iii) Private Co.

Section 163 - Proportional representation for appointment of directors

1) AOA may provide for appointment of minimum 2/3rd of total no. of directors by principle of proportional representation
2) Appointments may be made once in every 3 yrs
3) <u>Method of Appointment</u>
- Single transferable vote or
- Cumulative voting or
- Otherwise

3) Casual vacancies of such directors shall be filled as per Section 161(4)
4) This section has overriding effect on entire Act because of words used in section "Notwithstanding anything contained in this Act"

A

Not Applicable to : (i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG,
(ii) Subsidiary of Govt. Co. referred to in (i) above, in which entire paid up share capital is held by Govt. Co.

Appointment & Qualification of Directors (Chart 3.4)

Provisions regarding Directors Identification Number (DIN)

Section 152(3) - Person shall not be appointed as a director of a Company unless he has been allotted DIN u/s 154

Section 153 - Application for allotment of DIN and Rules*

Individual to be appointed as director shall make application for allotment of DIN to CG in Form DIR 3 (Downloaded from MCA Portal) along with prescribed fees

Section 154 - Allotment of DIN

CG shall allot DIN to Director within 1 month from receipt of Application

Section 155 - Prohibition to obtain more than one DIN

No individual, who has already been allotted DIN u/s 154, shall apply for, obtain or possess another DIN

Section 156 - Director to intimate DIN

Every existing director shall, within 1 month of receipt of DIN from CG, intimate his DIN all companies wherein he is director

Section 157 - Company to inform DIN to Registrar

1) Company within 15 days of receipt of intimation u/s 156, furnish DIN of all its directors to Registrar or any other officer or authority as may be specified by CG with prescribed fees within time specified u/s 403

2) If company fails to intimate, company & every officer in default punishable with Fine - Rs.25,000/- to Rs.1,00,000/-

Section 158 - Obligation to indicate DIN

Every person or company, while furnishing any return, information or particulars shall mention DIN in case such it relates to director or contain any reference of any director

Section 159 - Punishment for contravention

Any individual or director who contravenes Section 152, 155 and 156 shall be punishable with-

1) Imprisonment upto 6 mths or

2) Fine upto Rs.50,000/- &

3) In case of continuing default, Rs. 500 for every day after first during which contravention continues

Cancellation or surrender or Deactivation of DIN (As per Rules*)

CG/RD/officer authorised by RD on verification of particulars or documentary proof attached with application, cancel or deactivate DIN if-

a) found to be duplicated

b) obtained in wrongful manner or by fraudulent means

c) death of concerned individual

d) concerned individual declared as unsound mind

e) concerned individual adjudicated an insolvent

f) on an application made in Form DIR-5 by DIN holder

Intimation of changes in particulars specified in DIN application (As per Rules*)

1) Every individual who has been allotted DIN shall, in event of any change in his particulars as stated in Form DIR-3, intimate such change to CG in Form DIR-6 within period of 30 days of change

2) CG after verification incorporate changes & inform applicant by letter by post or electronically

3) Concerned individual intimate changes to companies in which he is director within 15 days of such change

* The Companies (Appointment and Qualification of Directors) Rules, 2014

Appointment & Qualification of Directors (Chart 3.5)

Section 164 - Disqualifications for Appointment of Director

Section 164(1) Person cannot be Director if -

a) Unsound mind declared by court

b) Undischarged Insolvent

c) Applied to be adjudicated as insolvent and application is pending

d) Convicted by court, of offence involving moral turpitude or otherwise :

Imprisonment	Term of Disqualification
6 mths or more but less than 7 yrs	5 years
More than 7 yrs	Forever i.e Life time

e) Order passed by Court or Tribunal

f) Not paid any calls in arrears on shares for continuous 6 months from due date

g) Enters into Related Party Transactions u/s 188 during last preceding 5 Years

h) Not complied with Section 152(3) i.e does not hold DIN

Section 164(2) Company fails -

a) To file:
- Financial Statements

or
- Annual Returns

for any "continuous period of 3 Financial Years"

b) To repay:
- Deposits or pay interest thereon

or
- Redeem any debentures on due date or pay interest

or
- Pay any dividend declared

failure "continues for 1 year or more"

A

Section 164(2) is not applicable to Government company

All Directors shall be disqualified for period of 5 years from the date on which company fails to do so

Section 167 - Vacation of office of director

1) Office of director shall become vacant in case-

a) incurs any disqualifications u/s 164

b) absents himself from all Board Meetings held during period of 12 mths

c) Section 184 violation
- Does not disclose interest
- Participates in Board Meeting in which he is interested

e) disqualified by Court/ Tribunal's Order

f) convicted by court of any offence moral turpitude or otherwise, imprisonment for not less than 6 mths

g) he is removed in pursuance of provisions of this Act

h) Ex-officio director (a person who holds directorship by virtue of holding some other position)

2) Director who contravenes, punishable with imprisonment upto 1 year or fine- Rs. 1,00,000/- to Rs. 5,00,000/- or both

Section 168 - Resignation of Director

1) Director may resign by giving notice in writing to Co.

2) Board shall on receipt of notice take note of same

3) Co. within 30 days from date of receipt of notice, intimate Registrar in Form DIR-12 & post on website

4) Co. shall also place fact of resignation in Board Report laid in immediately following GM

5) Director shall forward copy of his resignation along with reasons to Registrar within 30 days from date of resignation in Form DIR-11 along with prescribed

6) Resignation shall be effective from date on which notice is received by Co. or date specified by director in notice, whichever is later

7) Director who has resigned be liable for offences occurred during his tenure

Where all directors of Co. vacate/resign their offices, promoter or CG shall appoint required no. of directors who shall hold office till directors are appointed in GM

Section 169 - Removal of Directors

1) Co. may by OR remove director other than director appointed by Tribunal u/s 242 before expiry his term after giving reasonable opportunity of being heard

2) Directors appointed on Principle of Proportional Representation u/s 163 cannot be removed by OR

3) Special Notice be required of any resolution, to remove director or appoint other in place

4) On receipt of notice of this resolution, Co. shall send copy to removed director

5) Resulting vacancy filled by another director provided Special Notice of proposed appointment is given

6) A director so appointed shall hold office for remaining period for which removed director would have held

7) If vacancy not filled, it may be filled as casual vacancy provided that removed director shall not be reappointed

8) Section shall not take away rights to compensation/damages payable in respect of premature termination, or terms of his appointment or any other position

Appointment & Qualification of Directors (Chart 3.6)

Section 165 - Number of directorship

1) Individual shall hold maximum of 20 directorships including any alternate directorship

A Section 165(1) shall not apply to section 8 companies

2) Out of limit of 20, maximum no. of Public Co. in which he is director shall not exceed 10

3) Private Co. that is either holding or subsidiary Co. of public Co. be included in limit of Public Co.

4) If Contravention, Fine- Rs. 5,000/- to Rs.25,000/- for every day after first during which contravention continues

Section 166 - Duties of Directors

1) Act as per AOA, subject to this Act

2) Act in good faith, to promote objects of Co. for benefit of its members, Co. its employees, shareholders

3) Exercise duties with due, reasonable care, skill & diligence, exercise independent judgment

4) Not involve in situation in which he may have interest that conflicts with Co's interest

5) Not achieve undue gain to himself or his relatives, partners, associates, if found guilty be liable to pay amount of gain to Co.

6) Not assign his office, if assignment made be void

7) If Contravention, Fine - Rs. 1,00,000/- to Rs. 5,00,000/-

Section 170 - Register of Directors and KMP and their shareholding

1) Company shall keep register containing particulars of its directors & key managerial personnel (KMP) at its registered office

2) It shall include details of securities held by each in company or its holding, subsidiary, subsidiary of its holding companies or associate companies

3) Co. shall file return in Form DIR-12 with ROC within 30 days whenever it appoints director or KMP

Section 171 - Members right to inspect

1) Register u/s 170(1) shall be-

a) open for inspection during business hrs

b) members have right to take extracts & copies on request

c) provided within 30 days free of cost

d) open for inspection at every AGM

e) made accessible to person attending meeting

3) If any inspection during business hours is refused, or if any copy required as above is not sent within 30 days from date of receipt of such request, Registrar shall on an application made to him order immediate inspection, supply of copies

A *Not Applicable to :*
(i) Govt. Co. in which entire PSC is held by CG or by SG or by CG & 1 or more SG

Section 172 - Punishment

If company contravenes any sections from 149 to 171 (both inclusive) & for which no specific punishment is provided, company & every officer of in default shall be punishable with fine of Rs. 50,000/- to Rs. 5,00,000/-