# DIRECTORS

BY : JAIN ADITYA

# SUMMARY OF 'DIRECTORS'

**SECTION 270 :** **(Qualification Shares of a director)**

**Not applicable** to private. Companies (sec. 273)

Every Director of a Public Company is required to **obtain Qualification Share within 2 months** from the date of his appointment as required by the articles.

The nominal value of Q.S. shall not exceed Rs.5000/- or the N.V. of one share where it exceeds 5000/-

Bearer of share warrant shall not be Deemed Holder for such purpose,
Share must be registered in his name or even mere application for allotment is not sufficient.

If the amount of Q.S. raised than the director, who is not qualified as on that date is required to obtain additional shares.

All directors includes additional director, filing of casual vacancy and alternate director, they have also to obtain Q.S. If articles provides.

SSD & nominee director appointed by CG & Fin. Inst. is not required to obtain Q.S.

**SECTION 260 :** This Section Overrides Section 255,258 & 259 of the act
With the Power Conferred In the Articles BOD May appoint Additional Director. Additional Director shall hold office till the date of Next AGM of the company.

Additional director is not require to file consent u/s 264(2) for their appointment or re-appointment if there is no break in the period of service

**SECTION 275 :** **Applies Only to Public Companies.**

A person can't hold the office of director at the same time in **more than 15 companies** excluding foreign companies because they are not covered u/s 3(1) (i) of the act. Companies given u/s 278 is excluded from the limit of 15.

**SECTION 278 :** **F**or calculating the No. of companies for the purpose of sec 275 & 277, following companies shall be excluded –

a) Private company, which is neither a subsidiary nor a holding of public company.
b) An unlimited company
c) A section 25 company.
d) A company in which such individual is an alternate Director

A company shall be excluded for a period of 3 months from the date on which it ceases to fall within the purview of those clauses.

**SECTION 277**(1): If a person already holding the office of director in 15 Companies is appointed as a director in any other company, the new appointment shall not take effect unless within

15 days thereof the director concerned effectively vacates any of his earlier directorship and the directorship becomes void, if the office is not so vacated.

**277(2).** if a person already holding the office of director in 14 or less companies is appointed as a director in other companies, making his total no. of directorship more than 15 –

No new apptt. shall take effect unless within 15 days of their last appointment. the concerned director chooses the directorship which he wishes to continue to hold or to accept, so that the total no. of directorship don't exceeds 15.

All new appointment. shall become void , if such choice is not so made.

**SECTION 262:** **Applies only to public companies.**

If the office of any director appointed in general meeting vacates before the expiry of his term than the resulting casual vacancy may be filled by the board at a board meeting. director so appointed shall hold office only upto the date upto which the director in whose place he is appointed shall hold office.

**SECTION 313:** **Not counted in the limit u/s 275.**

Board may appoint alternate director in place of director, who absent for a period not less than 3 months from the state in which meetings of the board are ordinarily held.

the power to appoint alternate director conferred to board either by the article or by a resolution passed by the company in general meeting. Alternate director hold office only upto the period upto which the original director in whose place he is appointed shall hold.

Alternate director shall vacate office if and when the original director return to the state in which meetings are ordinarily held.

If the term of office of original director expires before he return to the state, provision for **automatic reappointment u/s 256 shall apply to original director not to the alternate one.**

Section 297, 299 & 300 shall apply to alternate director only when, he is interested in a contract or arrangement. Merely because original is interested not made the above section applicable to alternate one. Alternate director is not the proxy or agent of original director; he has the same rights & duties like other directors.

**SECTION 252 :** Every Public Company shall have at-least 3 directors.

Every other company shall have at-least 2 directors.

Public Company having a paid-up capital of Rs. 5 crore or more and 1000 or more small shareholders may have a director appointed by such SSH in the manner prescribed in the rules.

Small Shareholder means Share holder holding shares of Rs. 20000 or less.

Sec 252 doesn't specify maximum No. of directors in a public company. It may be determined as per articles.

**SECTION 258:** Subject to section 252, 255 & 259 of the act, company may pass a resolution in general meeting for every increase or decrease in no. of directors within the limit fixed in that behalf by the articles.

**SECTION 259 :** **Not applicable to government company, private company & Section 25 company.**

No increase in no. of directors shall be made unless it is approved by CG.

No approval of CG is required if –

(a) The no. of directors to be increased doesn't exceeds the maximum no. of directors specified in their articles as first registered.
OR
(b) The no. of directors increased doesn't exceed 12.

**SECTION 255:** **Applies to public companies.**

Article may provide for the retirement of all directors at every AGM.
Otherwise,
Not less than 2/3 rd of directors of a public company shall be rotational directors & appointed in GM.

Remaining directors in case of public company & directors of private company shall be non – rotational & appointed in GM
OR
As per the provision in the articles MD or WTD may be rotational or non- rotational,

If they are rotational, they have to be retired as per sec 256 even if their term is fixed.

**SECTION 256:** After the directors are appointed as per sec 255 in a general meeting, at 1st AGM & every subsequent AGM 1/3 rd of rotational directors are required to retire from their office. Directors to retire shall be longest in their office & for the same time see-agreement among themselves or apply draw of lot.

Company may appoint same person or other person in place of retiring one.

If the meeting is not expressly resolved not to fill up the vacancy, the meeting shall stand adjourned & if in the adjourned meeting same is happen then the retiring director is deemed to be re-appointed.

**Deeming provision is not apply where-**

A resolution so moved in any of the above meeting & failed. Retiring director in writing expresses his unwillingness. he became disqualified u/s 274 resolution whether special or ordinary is required for his appointment by virtue of act. Resolution passed in contravention of section 263.

**SPECIAL POINTS REGARDING CASE STUDY OF SEC 255 & 256 :**

(1) Additional Director, filing of casual vacancy & alternate directors are non- rotational directors because they are appointed in BM not in GM.

(2) Nominee directors appointed by CG, Financial institutions or LIC is not counted in the total no. of directors while calculating 2/3 or 1/3 limit of sec 255 & 256.

**SECTION 263:** Applies only to public companies in case of appointment in General Meeting only (i.e. **not for appointment in BM**)

If a company wants to appoint 2 or more directors by a single resolution than prior to passing that resolution, a resolution is required to pass without any vote being caste against it.

**CONSEQUECES OF CONTRAVENTION :-**

Resolution passes in contravention of sec 263 shall be void whether any objection was taken or not at the time of moving of resolution, no provision of automatic re-appointment u/s 256 is applied, where a resolution is moved in contravention of sec. 263.

**SECTION 274:** In the following cases a person become disqualified for being a director-

(a) Un-discharged insolvent

(b) Adjudicated as unsound mind by the court

(c) Applied to be insolvent

(d) punishable with imprisonment for not less than 6 months for any offence involving moral turpitude.**(disqualification period is 5 years from the expiry of sentence)**

(e) Not paying call due on shares **of the company held by him** within 6 months from the due date of call **.**

(f) An order u/s 203 is passed by court for disqualifying him.

(g) Directors of a **public company** who fails to file its annual accounts **&** annual return for 3 **consecutive** financial years.

OR,

Fails to repay its deposits or interest thereon or redeem its debentures or to pay dividend within **one year** from their respective due dates. than directors of that public company is disqualified for the period of 5 years for appointment/ re-appointment in any other public company.

But he may be appointed / re-appointed in defaulting company & any private company even after disqualification

**DIRECTOR DISQUALIFIED IN POINT (g) :** in case of non-filing of annual account , only those directors are disqualified, who are the directors on the last due date for filing of return & account in the 3 rd consecutive year

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

In case of non-payment of deposit / debentures/ dividend, only those directors are disqualified, who are the directors for the whole year of non-payment from the due date.

Private Companies may provide additional grounds for disqualification.

**SECTION 283:** In the following cases a director has to vacate from their office –

(a) Fails to obtain Q.S. or cease to hold Q.S.
(b) Found to be of unsound mind by the court
(c) Applied to be insolvent
(d) Adjudged an insolvent
(e) Punishable with imprisonment for not less than 6 months for any offence involving moral turpitude.
(f) Not paying call due on shares **of the company held by him** within 6 months from the due date of call.
(g) Absents in 3 consecutive BM as well as BM's held in the period of 3 months without obtaining leave of absence from the board.
(h) Act in contravention of sec 295 ( loan to directors )
(i) Act in contravention of sec 299 (disclosure of interest by director )
(j) Removal of director u/s 284.
(k) An order u/s 203 is passed by court for disqualifying him.

**POSTPONEMENT OF VACATION:** where 1st appeal is made within 30 days , vacation may be postponed till the finalization of 1st appeal.

Further, where 2nd appeal is made within 7 days of finalisation of 1st appeal vacation may be further postponed till the finalisation of 2nd appeal. **(Postponement can be done only in cases referred in above points (d), (e) & (k).**

Penalty of Rs. 5000/-( max.) for each day is charged to a director for the contravention of sec 283 for the period ranging from the date of vacation till the date he functions as a director**.**

Private company may provide additional grounds in its article for the vacation of a director.

**SECTION 257:** **Applies only to public companies.**

A person who is **not the retiring director** may himself or a member may propose him for the appointment as director in **General Meeting**. For this purpose, the proposed candidate has to serve a notice to the company not less than 14 days before the meeting along with a deposit of Rs. 500/-, such deposit is refunded to that person ,if he succeeds in appointment. Company has to inform within 7 days before the meeting about the notice of that person to its members by serving individual notices to them. in place of serving individual notices company may advertise the fact in at least 2 news papers circulating at the registered office of the company, of which, one of them is published in English & other in regional language of that place.

**SECTION 254:** Unless the directors are appointed in accordance with sec. 255, subscriber to the memorandum who are individual shall be deemed to the first directors of company subject to provision in the articles.

**REGULATION 72:** First Subscribers Of Moa Who Are Individual Deemed To Be As First Directors.

**PROVISO TO SEC 252(1) AND APPOINTMENT OF SSD RULES,2001:** Every public company having paid-up capi. of rs. 5 crore or more and 1000 or more small shareholders may appoint a SSD.

SSD may suo motu appointed by the co. Or a notice by 1/10th small shareholders may be given for that purpose at least 14 days before gm.

No person can be appointed as SSD in more than 2 companies and a maximum period of appointment is 3 years but he may be re-elected for further 3 years.

SSD is not a rotational director because he is not appointed in gm (appointed in class meeting of small shareholders.

All the disqualification u/s 274 is applicable to SSD except sec 274(1)(g).

All the grounds of vacation u/s 283 is applicable to SSD except obtaining of qualification shares.

SSD is to vacate his office as a director if he ceases to be a small shareholder.

**NOMINEE DIRECTORS :**

| BASIS | NOMINEE DIRECTOR APPOINTED U/S 408 BY CG AND NOMINEE DIRECTED APPOINTED BY FIN. INST. ESTAB. UNDER AN ACT | OTHER NOMINEE DIRECTORS |
|---|---|---|
| Sec 255 | Not applicable | Applicable |
| Sec 256 | Not applicable | Not applicable |
| Provision in the article for their appointment | Not necessary | Necessary |
| Total no. Of directors fixed by the article | Increased | Can't increased |
| Removal | Authority appointing them | Removal possible |
| Qualification shares | No need to acquire | May need to acquire |

**SECTION 265:** Proportional Representation Is Not Mandatory.

Public company in its article may provide for proportional representation

appointment shall be made once in every three years.

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

Sec. 265 overrides the entire companies act.

Mode of voting may be single transferable vote or cumulative voting or otherwise

Such director can't be removed u/s 284. But casual vacancy may be filled-up as per sec 262.

**SECTION 291:** In general boar can exercise all the powers, which a company is authorised to exercise.

Board can't exercise such powers which is authorised to be done by members in general meeting.
regulations made by members in gm can't invalidate any prior act of board i.e. regulations can't be made with retrospective effect.

Act of the board should be duly consistent with act, regulations and schedules etc. Shareholders can't supersede any power of board unless there is any deadlock in board or unable to act or acting malafide.

Board may delegate it's power to any director or officer if so authorised by articles.

**Section 292 :** Board Can Exercise Following Powers Only By Passing A Resolution At A Board Meeting-

(A). Making calls for unpaid amount on shares.
(b). Authorise the buy back as per 1st proviso to sec 77a(2)(b).[less than 10% of pc & free reserve and no buy back with in 1 year.]

(C). Issue debentures.
(D). Borrow money otherwise than debentures.
(E). Invest funds of the company.
(F). Power to making (giving) loans.

Board may delegate the power referred in above clause d,e, & f on such condition and to the extent as specified in the section.

With the delegation it is also required to be specify in the resolution, amount may be borrowed for clause d, amount and nature of fund may be invested for clause e, and total amount of loan which may be made for each purpose in individual cases in clause f.

**Section 293:** board of a public company can exercise following powers only with the consent of such public company in general meeting-

(a). Sell, lease or otherwise dispose off whole or substantially the whole of undertaking of a company.

(b). Remit or give time for repayment of debt due bya director (except by banking co. In ordinary course)

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Email : cajainaditya9169@gmail.com

(c). Investment of the amount of compensation received by the company due to compulsory acquisition of its undertaking in otherwise in trusted securities.

(d). Money borrowd, (where money already borrowd + money to be borrowd, exceeds the aggregate of paid up capital and free reserve )

(e). Contribute to charitable funds or other funds not related to the company exceeding-
- Rs. 50000/- in aggregate in a financial year or
- 5% of average net profit of immediately preceeding 3 f.y.

whichever is greater.

Title of the buyer shall not effected if the buyer buys or takes the lease in good faith and after exercising due care or the selling or leasing is the ordinary business of the company.

Debt incurred by the company in excess of limit under **clause d** shall be valid unless the lender proves that advance is made in good faith and without knowledge of the fact of exceeding the limit.

resolution shall specify the disposal of sale proceeds in **clause a**, amount to be borrowed in **clause d** and amount to be contributed in **clause e**.

**SECTION 293A:** political contribution can be made either by directly contribution to political party for any purpose or as consideration for advertisements in any publication by or on behalf of political party.

Or indirectly i.e. A donation which is likely to effect the public support of a political party or as consideration for advertisement in a publication not by political party but for the benefit of such.

Govt. Company and company which is in existance for less than 3 years can't make political contribution.

Maximum limit of contribution shall be 5% of average net profits of 3 immediately preceding f.y's

Political cont. Can be made only by passing a resolution in a meeting of board. Amount and name of political party should be disclosed.
Penalty for contravention for company fine upto 3 times of amount contributed and for officer in default imprisonment upto 3 years and fine.

**SECTION 293B:** notwithstanding anything contained in companies act, moa, aoa company has power to make contribution to national defence fund, prime minister national relief fund or any other fund notified u/s 293b.

Contribution can be made by board or any other person to whom power of board is delegated or through gm.

Amount so contributed should be disclosed in p&l a/c.

**SECTION 295:** a public shall obtain the prior approval of cg –
For making loan to specified persons
For giving security or provide guarantee to specified person for making loan to other or to others for making loan to specified persons.

**Non application** :

Private companies

Loan made by holding company to its subsidiary company

Guarantee given or security provided by holding company for making loan to subsy.

This section applies to all transaction represnted by book debt, which is in actual in the form of loan.

Loan menas any advance of money upon the understanding that it shall be paid back.
This section has no retrospective effect i.e. If a private company after giving loans converted into public , then this section shall not apply.

This section doesn't attract where an advance is made to director in ordianry course of business.

In case of contravention every person who is konwingly a part of contravention shall be punishable with a fine of maximum amount of rs.50000/- or imprisonment upto 6 month and they are severally or jointly liable to repay such amount to the company.

If amount repaid in full or part then full or part imprisonment may be waive off as the case may be.

**SECTION 314(1):** every director (for any amount) & specified persons (for rs. 50000/- or more per month) can holds office or place of profit (opp) in the company or subsidiary thereof only after consent of the company by sr in general meeting.

**PRIOR CONSENT IS NOT NECESSARY (PROVISO TO SUB SECTION (1) ):-**

*consent may also be obtained in the 1st gm held after holding opp.

*where relative of a director or a firm in which such relative is partner (specified persons) holds opp without knowledge of the said director than the consent may be obtained within 3 months of appointment or in the 1st gm held after appointment whichever is later.

For every appointment and subsequent re-appointment on a higher remuneration , sr is necessary except where appointment is made on a time scale. (time scale menas a prior contract to increase a specified amount in remuneration after a specified time)



Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

**SECTION 314(1A):** where relative of a director or a firm in which such relative is partner (specified persons) holds opp before such director becomes director, than sec 314(1) shalln't apply i.e. no retrospective effect.

**SECTION 314(1B):** every specified person (carrying a monthly remuneration of more than rs. 250000/-) can hold opp in the company only after consent of company by sr and approval of central govt.

If a person holds opp in contravention of sec 314(1) / 314(1b) then it shall deemed to vacate its office from 1st day after the expiry of 3 months or 1st gm as the case may be [for 314(1)] and

From the first date on which office is held by him respectively[for 314(1b)]

And

Liable to refund the remuneration earned by him during such contravene period and company can't waive such recovery unless approved by cg.

Section 314 not apply to a person holding opp in the company for appointment by cg u/s 408 as director of the company.

**OPP**: **for directors:** if director obtains anything from company in excess for which he is entitled as director.

**For specified persons :** if they obtains anything from company, by way of remuneration, perquisites, commission, right to occupy any premisses free of rent for residence or otherwise (i.e. Kuch bhi mile company se)

**SECTION 297:** Applicable to public as well as private companies.

Consent of board is necessary for the contract for the contract of sale/purchase/supply of goods & services or for underwriting the subscription of shares in or debentures of the company between company and specified persons.

if the paid-up capital is rs. 1 crore or more than prior approval of cg is necessary.

**NON APPLICABILITY:** sale/ purchase of goods for cash at prevailing market price (not for services).

*contract between company and specified persons for sale/purchase/supply of goods /services in which either of them regularly deals but the value / cost of contract doesn't exceeds rs 5000/-.

*not applicable for contract of rendering of services of professinal nature.

in case of urgent and necessety, prior approval of board is not necessary, but within 3 months from the date of contarct approval of board in a meeting should be obtained (relaxation of urgent & necessety is not available to the company having paid-up capital of rs. 1 crore or more, they have to obtain prior approval of cg)

consent should be obtained at a meeting of board not by passing a resolution by circulation.

if consent is not obtained than voidable at the option of board but when paid up capital is rs.1 crore or more then it becomes void-ab-initio.

if after approval paid-up capital exceeds rs 1 crore or person becomes specified person, then there is no retrospective effect of sec.297.

**SECTION 299:** Every director of a company who is concerned or interested in a contract or proposed contract required to disclose his interest in a meeting of board.

For proposed contract disclosure is required to be made at a bm in which question of entering into the contract is 1st taken into account,but if in such bm director is not interested, then in the 1st bm held after such director becomes concerned/interseted.

For any other contract(i.e. already entered) disclosure is required to be made in 1st bm held after such director becomes concerned or interested in a contract or arrangement.

In place of disclosure in every meeting a general notice stating that he is a director/member of specified body corporate or partner of specified firm is sufficient disclosure and deemed as interested in every contract with such firm or body corporate.

Period of general notice is one year bur renewal can be made in the last month of the f.y. in which it would otherwise expires.

General notice should be given/ renewed at a meeting of board, but if not given at a bm then director concerned should take reasonable steps to bring it at 1st bm held after it is given.

**EXEMPTION:** If one or more director of a company holds (directly or indirectly through relatives) not more than 2% of paid-up share capital of othr company, then disclosure is not required.

**CASE LAWS:**

Dislosure of fact which is not known to others is reqired to be disclosed, facts which is already known is not required to be disclosed**. ( A. shivaselam v asstt. registrar )**

Certain relations like husband-wife, brother-sister, father-mother influence the decision of a person and in such a case director is interested**. (Pyadah Venkatachalapathi V Guntur Cotton Jute & Paper Mills Ltd.)**

If relative is interested than director is interested (fateh chand kad v hind sons (patiala) ltd.)

Defaulting director vacate u/s 283, but contract doesn't become illegal, void, or unenforceable. Non disclosure of **nature of interest** doesn't lead to vacation u/s 283 provided disclosure of interest is made.

**SECTION 300:** Not applicable to private companies.

Director interested in a contract or proposed contract shalln't discuss, vote in such contract and his presence is also not counted for quorum at the time of discussion for such contract or if he does vote his vote shall be void.

CG may exempt the application of sec 300(1) or modified its applicability if in its opinion it is necessary for public interest or beneficiary for business/trade.

Director knowingly contravene sec.300 shall be punishable with a fine , which shall extends to a maximum of rs. 50000/-.

Generally contract doesn't becomes void, but if such director vote and after exclusion of his vote, resolution fails or quorum not formed then such resolution becomes void.

**NON APPLICABILITY :**

Section 300 not apply for contract of indemnity of loss, which director suffers for being surety of company.

Not apply if **solely** a director of a company, holds not more than 2% paid-up share capital of other company with which contract is entered.

Not apply for contract in which director is interested but put for discussion in **GM not in BM**.

Not apply if a public company nominates a director of other public company and such director is required to hold qualification shares and the shareholding of such director **doesn't exceeds the qualification shares specified in the article of such public company.**

**SECTION 310 & 311:** Sitting Fee Paid To Non Executive Directors Can Be Increased Within The Prescribed Limit.

Remuneration paid to managerial persons can be increased within the prescribed limit of sec 198, 309, 387 and schedule xiii.

Remuneration paid to ordinary directors can also be increased within prescribed limit.

If all the above remunerations and sitting fees is increased above the prescribed limit than prior approval of CG is required.

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

**SECTION 269:** Not Apply To Private Companies.

Every public company having paid-up capital of rs.5 crore or more required to appoint md/wtd/manager.

Appointment can be made either with the approval of cg or with the compliance of schedule xiii.

If schedule xiii is complied than a return to roc is required to be filed within 90 days of appointment.

But if not complied schedule xiii than application for approval of CG is required to be made within 90 days of appointment.

If CG satisfied that the person is not fit or proper or appointment is not in public interest or term & conditions of appointment is not fair and reasonable, than cg may either deny the approval or may grant the approval for a leeor period than the period applied for.

If CG denied than the person so appointed shall vacate his office and refund the remuneration to the company earned by him during such period.

**IF NEITHER APPROVAL OF CG IS OBTAINED NOR COMPLIANCE OF SCHEDULE XIII IS MADE :**

CG may make a reference to company law board (CLB) for enqiry and then CLB issue a SCN to concerned persons.

CLB make an order for terminating appointment if satisfied that schedule xiii is not complied with and cobsequently the concerned persons shall vacate his office and liable to refund the remuneration earned by him during such period to the company and company can't waive such recovery.

But acts done by him during such period is remains valid.

**POINTS FROM SCHEDULE XIII :**

Appointment includes re-appointment and

WTD means a person in whole time employment of the company.

**PART 1 OF SCHEDULE XIII :**

Following persons can't be appointed as managerial persons-

(A) Imprisonment for any period under specified 15 acts or
(B) A fine exceeding 1000/- under any specified 15 acts or

(C) Detained for any period under conservation of foreign exchange and prevention of smuggling activities act (COFEPOSA) provided cg doesn't grant approval for appointment and after approval there is no such detention.
(D) Age less than 25 years or attained the age of 70 years provided where age is less than 25 years but attain the age of majority or attains the age of 70 years appointment can be made by company by passing SR in GM.
(E) He is not a resident in india.

All the above conditions should be check at the time of appointment.

Appointment and approval of remuneration should be at a GM.

If a person draws remuneration from 2 or more companies than the total Remuneration to such person should be equal to or less than the maximum permissible remuneration payable by any such company.

**Section 253**:No body corporate, association or firm can be appointed as director ( only individual can be appointed as director and such individual have been alloted a din)

**Section 384:** Only individual can be appointed as manager.

**Section 312:** No director can assign his office to any other person and if done such assignment than it is void.

A person can assign his office only during his life time not after death so transfer of office of a director after hos death is not an assigmnent.

**Section 388**: No manager shall assign his office to any other persons.

**Section 267:** Following are the disqulification and vaction for the md and wtd-

(A) Undischared insolvent
(B) Adjudged an insolvent in past
(C) Suspends or suspended in past any payment to his creditors.
(D) Makes or made in past any composition with his creditors
(E) Is or has at any time been convicted by court for any offence involving moral turpitude.

**Section 385:** Following are the disqulification and vaction for the manager-

(A) Undischared insolvent
(B) Adjudged an insolvent in **preceding 5 years**
(C) Suspends or suspended in **preceding 5 years** any payment to his creditors.
(D) Makes or made in **preceding 5 years** any composition with his creditors

(E) Is or has at any time **within preceding 5 years** been convicted by court for any offence involving moral turpitude.

**Section 317:** Not applicable to private companies.

No company shall appoint a person as md for a term exceeding 5 years but re-

Appointment can be made for a furthur period of 5 years.

Re-appintment can't be made earlier than 2 years befor expiry of his term.

As per section 388 same provision is also applicable to manager.

**Section 316:** Not applicable to private companies.

(1) If a person is already md/manager in any company (including private company) than not eligible to appoint as md in any other public company subject to (2) and (3).
(2) Public company may appoint a person as md, if he is already a manager/md in any other company provided appointment is made by passing a resolution in a board meeting with the consent of all directors (unanimous resolution ) and a specific notice for such resolution is given to all directors.
(3) Notwithstanding anything contained in 1 and 2, cg may permit any person to appointed as md in more than 2 companies, if it is necessary for their proper working and function as a single unit and have a requirement of common MD.

**Section 386:** Not applicable to private companies.

(1) If a person is already md/manager in any company (including private company) than not eligible to appoint as **manager** in any other public company subject to (2) and (3).
(2) Public company may appoint a person as **manager**, if he is already a manager/md in any other company provided appointment is made by passing a resolution in a board meeting with the consent of all directors (unanimous resolution ) and a specific notice for such resolution is given to all directors.
(3) Notwithstanding anything contained in 1 and 2, cg may permit any person to appointed as **manager** in more than 2 companies, if it is necessary for their proper working and function as a single unit and have a requirement of common **manager**.

**Section 197A:** A company can't appoint the MD and manager at the same time **(dono me se koi ek hi rahega company me)**.

**Section 388A:** Following section are not applicable to private companies-

(A) Section 386 ( No. Of companies for which manager is appointed )
(B) Section 387 (Remuneration of manager )
(C) Section 388 ( Section 310,311,317,312 apply to manager as they apply to directors )

**Section 290:** All the acts done by the directors shall be valid notwithstanding that it is afterward discovered that his appointment was invalid due to defect or disqualification or his appointment is being terminated by virtue of any provision in law or article.

Acts of MD/Manager are not validated u/s 290.

As per sec 269 where appointment is not made with the approval of CG nor the compliance of schedule xiii is made and CLB declared the termination of managerial person, but all the prior act of such person was valid.

Act done by the director **after it is shown** to the company that his appoinment is invalid or terminated is not valid.

Act which is ultra vires the company or where quorum is not present or where appointment is illegal or no appointment at all is never validated u/s 290.

**DIN( Section 266A to Section 266G ) :**

As per section **266A** every person intended to be a director or already a director befor companies (amendment) act, 2006 required to be applied for allotment of din (form-din1)

Director before companies (amendment) act, 2006 may apply for DIN within 60 days of commencement of said act.

After application till the DIN is not alloted the applicant can be appointed as director or if already director may remain as director.

As per sec **266B** CG within one month from the date of application is required to allot DIN.

As per sec **266C** no individual who already have a DIN can't apply for another DIN.

As per sec **266D** every director who have allot a DIN is required to intimate the same to the company within 1 month of allotment.

As per sec **266E** every company shall intimate to the registrar about DIN within 1 week of receipt of intimation u/s 266D.

As per sec **266F** every person and company shall quote DIN in every return,information and documents with reference to such director.

As per sec **266G** penalty for contravention of sec 266A/C/D/E for every defaulting individual, director and company of a maximum amount of rs. 5000/- and rs. 500/- per day from the date of contravention for continuous default.

**Resignation by directors :**

If article doesn't contain any provision for acceptance of resignation or article allows the resignation at any time, then there is no need of any acceptance of resignation.

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

If article require acceptance or resignation states that it shall take effect only after acceptance or where person intended to resign is **MD/WTD/MANAGER, then accepatance is necessary, such persons can't resign at his sweet will(ACHUTA PAI V ROC)**

Generally resignation can't withdrawn but where acceptance is required it may withdrawn before acceptance but only with the consent of board/shareholders or in accordance with article.

If article doesn't require a written resignation than verbal resignation is sufficient provided intention to resign is clear.

If article trequire a written resignation, than verbal resignation in GM and accepted in GM is still valid.

Resignation must be submitted to the board/shareholders neither director nor the company require to submit it to the roc.

**<u>Managerial remuneration:(section 198, 309, 387 & schedule xiii )</u>**

Applies only to public companies.

**<u>Section 198:</u>** Overall maximum managerial remuneration ( to md, wtd, manager & ordinary directors) shall be 11% of net profit. Such limit is exclusive of sitting fee.

Net profit is before charging managerial remuneration and should be calculated as per sec 349 & 350.

Subject to section 269 & **Schedule xiii(Section2 of part2)** , in case of no profits or inadequate profits, no remuneration is allowed except with the prior approval of CG.

**<u>Section 309:</u>** Remuneration should be determined by ordinary resolution or by article or by special resolution if article requires.

Remuneration to managerial persons for service rendered in **any other capacity** should be **included** in the managerial remuneration **except where services rendered are of professional nature** and CG have a opinion that person has requsitie qualification for practice such profession.

Guarantee commission paid to directors is not a service , it's only a compensation so no talk about remuneration **(SUSEN TEXTILES bearings case law )**

Sitting fee paid to ordinary directors for board meeting or committee meeting :

(A) Rs**.20000**/- (maximum) per meeting , if **paid-up capital and free reserve is rs.10 crore** or more **or turnover is rs.50 crore or more**.
(B) Rs. **10000/-**(maximum) per meeting, in any other case.

**Remuneration to MD/WTD** shall be paid as monthly payment or specified percentage of net profit or partly by one and partly by other. Maximum limit is **5% of net profit if there is one** such director and where **more than one than 10%** of net profit for all of them together.

**Remuneration to ordinary directors** can be paid as periodic payment after approval of CG or as a commission after passing SR in GM. **No remuneration is paid in case of loss** to such ordinary directors and **schedule xiii is not applicable to ordinary directors**. Maximum limit of remuneration is **1% of net profit, if there is md/wtd and 3% of net profit in case of no MD/WTD**.

Illegaly excess remuneration paid to mangerial persons is liable to refun to the company or hold it in trust of the company and company can't waive such recovery unless approved by CG.

<u>Section 387:</u> **Remuneration to manager** can be paid as monthly payment or as specified percentage of net profits. Maximum limit is 5% of net profits.

**Payment of remuneration in excess of limit prescribed u/s 198,309,387 and schedule xiii can be only after approval of CG.**

**<u>Section 2 of part 2 of schedule xiii (Remuneration in case of no profits or inadequate profits):</u>**

| Effective capital | Remuneration (case:1) | Remuneration (case:2) |
|---|---|---|
| **EC is less than 1 crore** | 750000 | 150000 |
| **EC is 1 crore or more but less than 5crore** | 100000 | 200000 |
| **EC is 5 crore or more but less than 25 crore** | 125000 | 250000 |
| **EC is 25 crore or more but less than 50 crore** | 150000 | 300000 |
| **EC is 50 crore more but less Than 100 crore** | 175000 | 350000 |
| **EC is more than 100 crore** | 200000 | 400000 |

For payment of Remuneration of case 1 follwing conditon is to be satisfied-

(A) Approval of remuneration committee is being obtained.
(B) No default in payment of debts or public deposits or debentures or interest there on for a continuous period of 30 days in preceding F.Y.

For payment of remuneration of case 2 follwing conditon is to be satisfied-

(A) All the condition for case 1 is required to be satisfied.
(B) SR shall be passed in GM and such SR shall remain valid for a period of 3 years only.

Remuneration in excess of case:2 may be paid if all the condition of case 1 & case 2 is satisfied and appointment is made with the prior approval of CG.

**Effective capital(EC) means paid-up capital + reserve & surplus +long term loans + deposits repayable after 1 year –investments – accumulated losses – preliminary expenses written off**

**EC is to be checked on the last day of preceding F.Y. in which appointment is made and if appointment is made in the year of incorporation, than the date of appointmnet.**

**Section 284:** For removal of directors a special notice is required to be given by members to company at lesat 14 days before the GM.

Copy of notice is given by compamny to directors and director has a write to make a representation and also the right to heard at GM.

Copy of representation is sent to members at least 7 days before the GM if not possible than it shall be read in GM.

If representation is defamatory (as decided by CLB ) than it need not to be circulated and not required to be read at GM and director liable for cost of application to CLB.
If or is passed than director shall be removed

**Non-applicability :**

(A) Director appointed u/s 408
(B) Director appointed u/s 265
(C) Nominee director appointed by fin. inst. set up under an act of parliament
(D) Director of private company who holds office for life as on 1.4.1952

**Section 318:** Compensation may be paid to directors (only to MD/WTD/MANAGER ) for loss of office or for retirement from office or in connection with such loss or retirement.

**Prohibition for compensation :**

(A) In case of reconstruction or amalgamation of company dirctor resigns from original company but appointed as director in reconstucted company
(B) Director resigns voluntary or vacate u/s 203 or 283.
(C) Director has instigated or respomnsible for termination of his directorship.
(D) Compnay is wound by supervision of court due to negligence of director
(E) Director has guilty of fraud or breach of trust.

Maximum period of compensation is **lower of unexpired tenure of directorship or 3 years.**

Calculated on the basis of **Avg. remuneration during 3 years immediately preceding the cessation or for such shorter period for which he held office**.

**Section 264:**Every person proposed as director require to file his consent with company before appointment except director retiring by rotation u/s 256 and proposed his candidature u/s 257.

Consent of director require to be filed with the registrar withiin 30 days of appointment except in case of director re-appointed after retirement , alternate director, additional director, director filing casual vacancy and person named in the article as first director.

**Section 264 doesn't apply to private companies.**

## Meaning of specified persons used in section 295, 297 and 314 :

**For Section 297 :**

(A) Director of company
(B) Partner of director
(C) Relative of director
(D) Firm in which diorector is partner or relative is partner
(E) Private company in which director is director or member
(F) Partner of relative of director

**For Section 295 :**

(A) Director of company or of holding co.
**(B)** Partner of director/director of holding co.
**(C)** Relative of director/director of holding co.
**(D)** Firm in which director/director of holding co/relative of both director is partner
**(E)** Private company in which director/dsirector of holding co is director or member
**(F)** Body corporate in which 25% or more voting power is held by one or more such directors.

**For Section 314(1) :**

(A) Director of company
(B) Partner of director
(C) Relative of director
(D) Firm in which diorector is partner or relative is partner
(E) Private company in which director is director or member
(F) Director/manager of such private company
(G) Opp holds under subsidiary

**For Section 314(1B) :**

(A) Partner of director/manager
(B) Relative of director/manager
(C) Firm in which diorector is partner or manager is partner or relative of either is partner
(D) Private company in which director or manager or relative of either is director or member

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

## SOME CASE LAWS TO REMEMBER

| SECTION | CASE LAW | BRIEF OF CASE LAW |
|---|---|---|
| 270 | **RAM AUTAR JALAN V COAL PRODCTS OF INDIA** | FOR QUALIFICATION SHARES DIRECTOR MUST BE THE REGISTERED HOLDER MERE APPLICATION FOR ALLOTMENT IS NOT SUFFICIENT |
| 256 | **B.R. KUNDRA V MOTION PICTURES ASSOCIATION** | DIRECTOR CAN'T CONTINUE AFTER THE DUE DATE OF AGM IF AGM IS NOT CONDUCTED TILL DUE DATE |
| 284 | **TRILOK CHAND KHANNA V RAJ KUMAR KAPOOR** | PERMANENT DIRECTOR CAN ALSO BE REMOVED PROVIDED HE WAS APPOINTED AFTER 1.4.1952 |
| | **KARNATAKA BANK V AB DATAR** | SINGLE MEMBER HOLDING ONE SHARE CAN GIVE A SPECIAL NOTICE U/S 284 IT IS NOT SUBJECT TO SEC188 |
| | **LIC V ESCORTS** | MEMBERS CAN'T COMPELL TO GIVE REASONS FOR PROPOSING RESOLUTION U/S 284, IT IS A DUTY OF DIRECTORS |
| RESIGNATION OF DIRECTORS | **ACHUTA PAI V ROC** | RESIGNATION OF MD/WTD/MANAGER IS EFFECTIVE ONLY AFTER ACCEPTANCE |
| 295 | **DR FREDDIE ARDESHIR MEHTA V UNION OF INDIA** | CO. SOLD FLAT TO DIRECTOR AND HE AGREE TO PAY AMOUNT IN INSTALLMENT IT DOESN'T AMOUNT TO LOAN. |
| | **MR ELECTRONICS COMPONENTS LTD V ASSTT. REGISTRAR** | BONAFIDE SALARY ADVANCE GIVEN TO SPECIFIED PERSON DOESN'T ATTRACT SEC 295 |
| 299 | **SIVASELAM V ASSISTANT REGISTRAR** | DISCLOSURE NOT REQUIRED IF INTEREST ALREADY KNOWN. |

# SUPER SUMMARY :-

| Sec. | | Brief Contents | Applicability |
|---|---|---|---|
| ***252*** | Minimum number of directors | *PVT. COM- 2, PUB.COM-3., SSD is required, if PSC is Rs.5 cr or more. Small shareholder is 1000 or more.* | ***All.*** |
| ***253*** | Only individuals to be directors | *DIN is also required.* | ***All.*** |
| ***254*** | ***First Director.*** | Subscriber of memorandum deemed to be director | ***All.*** |
| ***255*** | Rotational Director. | *2/3rd Rotational director is mandatory as per AOA until the AOA requires all directors are Rotational.* | ***Public company.*** |
| ***256*** | Directors retiring by rotation and filling of vacancies | ***1/3rd*** *Rotational director must Retire at every AGM.* | ***Public company.*** |
| ***257*** | Right of persons other than retiring directors to stand for directorship | *Notice of Candidature +Deposit of Rs. 500/-+ OR to be passed in GM= Candidate is appointed as director.* | ***Public company*** |
| ***258*** | Increase or reduce number of directors | ***Ordinary Resolution (OR) is required.*** | ***All*** |
| ***259*** | Increase in number of director to require CG sanction | increase is within the permissible maximum under its AOA as first registered or 12 Dir. Whichever is higher. | ***Public company*** |
| ***260*** | Additional directors | *BR/RBC; if AOA auth.; Tenure upto next AGM* | ***All*** |
| ***262*** | Filling of casual vacancies . | *Vacancy not in Normal course, BR only,* | ***Public company.*** |
| ***263*** | Appointment of directors to be voted on individually | A resolution agreed to by the meeting *without any vote being given against it* + Single Resolution for the appointment *of two or more persons as director* | ***Public company*** |
| ***265*** | Proportional representation for the appointment of directors | overrides the entire Act.; single transferable vote or system of cumulative voting . once in 3 year.; | ***Public company*** |
| ***267*** | Certain persons not to be appointed managing directors | *Insolvent; composition with creditors; convicted;-- Life time disqualification.* | ***All*** |
| ***268*** | Amendment of provisional relating to MD, WTD | CG approval | ***Public company*** |
| ***269*** | Appointment of MD, WTD or manager | Appointment of MD, WTD or manager is mandatory if PSC is Rs. 5 cr. or more.<br>*Option to make appointment as per Sch-xiii or take approval of CG.*<br>*Penalty-* ***Co-50000/-; Off.-1 lakhs.*** | *Public company* |
| ***270<br>272<br>273*** | Share qualification . | *If AOA requires; within 2 months ; max. value -- 5000/ of nominal value or 1 share whichever is higher, Fine- Rs. 500/ +Rs.5000(sec.283)* | *Public company* |
| ***274*** | Disqualifications of directors | unsound mind; undischarged insolvent; applied to be adjudicated as an insolvent; convicted; not paid call for 6 months; disqualified by court U/S 203; default in filling AA+AR for 3 years; default in Dividend, deposit , debenture for 1 year. | ***All*** |
| ***275*** | Number of Directorship. | No person to be a director of more than 15 companies. | |
| ***277*** | Choice by person becoming director of more than 15 | ***Vacate excess Directorship within 15 days.*** | |
| ***278*** | Exclusion of certain directorships for the purposes of sections 275, 276 and 277 | ***PUNA----****Pvt. Company(P);Unlimited Liability company(U); NPO(N); Alternate Directorship(A)* | |
| ***279*** | Penalty | *Rs. 50000/- per company after fifteen.* | |

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

DIRECTOR AT A GLANCE. --------CORPORATE AND ALLIED LAWS

| | | | |
|---|---|---|---|
| ***283*** | Vacation of office by directors | *12 grounds for vacation.*<br>*Exhaustive List for Public company but inclusive List of Private company.*<br>*Fine – Rs, 5000/- for everyday of default.* | ***All*** |
| ***284*** | Removal of directors | *Special Notice + Ordinary resolution.*<br>***directors cannot be removed- CLIPS***<br>***(C)***director appointed by CG U/S 408; **(L)**director of a private company, holding office for Life on the 1st day of April, 1952.<br>**(I)**director appointed by a financial institution.<br>(**P**)Directors appointed by Proportional representation. **(S)**Director appointed by BIFR under SICA. | ***ALL*** |
| ***286*** | Notice of meetings | | ***All*** |
| ***285*** | No. of Board meeting. | At least once in every 3 calendar months and atleast 4 Board meeting in every year.<br>*CG may exempt by notification.* | ***All*** |
| ***287*** | Quorum for meetings | **A**-1/3rd of its total strength, or 2 directors, whichever is higher;<br>**B**-Where at any time the number of interested directors exceeds or is equal to 2/3rd of the strength, the number of the remaining non interested directors, being not less than 2, shall be the quorum . | ***All*** |
| ***288*** | Procedure where meeting adjourned for want of quorum | Meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday then to next day. | ***All*** |
| ***289*** | Passing of resolution by circulation | Resolution has circulated in draft, to all the directors, then in India not being less in number than the quorum and to all other directors at their usual address in India, and Approved by-- such of the directors as are then in India, or by majority of such of them, as are entitled to vote on the resolution. | ***All*** |
| ***292*** | Certain powers to be exercised by BOD only | *BCD BIL. B-buy back, C-calls on share, D-issue debenture, B-borrowing, I-investment, L- loan.*<br>*BIL can be delegated.* | ***All*** |
| ***293*** | Restrictions on power of BOD. | BoD **shall not,** *except with the consent of GM,-*<br>o sell, lease undertaking ;<br>o remit, or give time for the repayment of, any debt due by a director;<br>o invest, the amount of compensation received by the company in respect of the compulsory,;<br>o borrow moneys excess of the paid-up capital and its free reserves,<br>o contribute, to charitable and other funds | ***Public company*** |
| ***293 A*** | political contributions | Prohibitions-- Government company; and<br>Other company which has been in existence for less than 3 F/Ys<br>Restrictions-- amount which may be so contributed in any FY *shall not exceed 5% of its average net profits* ; BR; Disclosure in P&L A/C. Default –3 years imp. Fine—3 times of PC | ***All*** |
| ***293 B*** | Power of Board to make contributions to the National | *Allowed without any restrictions.* | ***All*** |

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com

DIRECTOR AT A GLANCE. --------CORPORATE AND ALLIED LAWS

| | | | |
|---|---|---|---|
| | Defense Fund, etc. | | |
| ***295*** | Loans to directors, And Specified person . | *CG approval is required;* *Default:-* with fine upto 50,000 or with simple imprisonment for a term upto 6months. | ***Public company*** |
| ***297*** | BR to be required for certain contracts | *BR and previous approval of CG* if company having a PSC of not less than 1 crore. | ***All*** |
| ***299*** | Disclosure of interest by director | Director who is interested in a contract entered into by company, shall disclose his interest at a meeting of the BOD. Every director who fails to make disclosure shall be punishable with fine upto 50,000 | ***All*** |
| ***300*** | Duty of Interested director | Interested director not to participate or vote in Board's proceedings; fine- Rs.5000 | ***Public company*** |
| ***301*** | Registrar of contracts. | Particulars of all contracts or arrangements to which section 297 or section 299 applies | ***All*** |
| ***303*** | Registrar of Directors. | Register of its directors, managing director, manager and secretary, | ***All*** |
| ***307*** | Register of Directors Shareholding.. | | ***All*** |
| ***309*** | *Managerial Remuneration.* | Remuneration payable to the directors of a company, including any MD or WTD, shall be determined in accordance with Sec. 198 and this Section., either by the AOA of the company, or by a Resolution, passed by the company in GM, | ***Public company*** |
| ***312*** | Assignment of office | Prohibited | ***All*** |
| ***313*** | Alternate director | Original Director is absent for a period *of not less than 3 months from the State in which meetings of the BOD* are ordinarily held | ***All*** |
| ***314*** | office or place of profit | 314(1)- SR after appointment ; Remuneration Rs. 10000 or more 314(1B)-Prior SR+CG approval; Remuneration Rs. 10000 or more Specified persons Are different in both Secs 314(1) and 314(1B). | ***All*** |
| ***316*** | Number of companies of which one person may be appointed managing director | No company shall, appoint any person as MD if he is either the MD or the manager of any other company (including a private company which is not a subsidiary of a public company), *except as provided in sub-section(2).* *i.e* BR with the *consent of all the directors present at the meeting + specific notice* | ***Public company*** |
| ***317*** | *MD not to be appointed for more than 5 years* | extension *shall not be sanctioned earlier than two years* OF date on which it is to come into force. | ***Public company*** |
| ***318*** | *Compensation for loss of office* | Payment may be made by a company, except in the cases specified in sub-section (3) and subject to the limit specified in sub-section (4), | ***All*** |
| ***322*** | *Director, etc., with unlimited liability in limited liability company* | if so provided by the memorandum *fine up to 10,000 and shall also be liable* for any damages | ***All*** |
| ***323*** | SR of limited company making Liability of Director., unlimited | A limited company may, if so authorised by its AOA, by SR, alter its MOA so as to render unlimited the liability of its directors or of any director or manager. | ***All*** |

Compiled By : Jain Aditya
Contact: 9911398276
Email : cajainaditya9169@gmail.com