A company is an artificial person (as it has no physical existence ,it exists only in the eyes of law).It has no brain to think and take decisions .It has no hands to sign the contracts .Hence it needs some human being to do all these things on it`s behalf i.e. it needs some human agents.

The two human agencies through which a company acts are –

a) MEMBERS of THE COMPANY (SHAREHOLDERS)
b) BOARD OF DIRECTORS

Both of them have the power to take decisions.(***Refer Sec 291)***

But we know that in big companies large number of shareholders are scattered all across the country .So it is difficult for them to meet regularly to manage the company. Moreover they lack the expertise to run such big companies. Hence a specialized body of persons ,called as directors are appointed by members to manage the day to day affairs of the company.

Statutory Requirement to have directors

Sec 252	*MINIMUM NUMBER OF DIRECTORS*
In case of ***public company***	***3***
In case of ***private company***	***2***

*There is no provision in law on maximum number of directors. However, AOA may specify maximum number of directors ,beyond which appointment shall not be made. AOA may specify a minimum no of DIRECTOR higher than Sec 252.

BOARD OF DIRECTORS - SEC 252(3)

- It is a body which manages and controls the affairs of the company.It exercises all such powers which the company is authorized to exercise, except certain powers that are required to be exercised by the shareholders in the general meeting.
- Directors collectively are referred to as BOARD of directors. The terms Board, Board of directors and directors are used synonymously.
- Powers of Board are exercisable by the directors as a group.
  - ➢ However an individual director can act on behalf of the company if he is authorized by
    - o The Act
    - o Articles of association
    - o A resolution passed in GM by the shareholders
    - o A resolution passed in the BM by the BOD.

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

Definition is based upon function, if anybody performs the work of a director he is considered under this definition a director,whether he is legally/formally appointed as a director or not.

Deemed director or Shadow Director:

A deem director is a person who is not appointed as a director but theboard of directors of the company are *accustomed to act* as per instructions /directions of such person. However if directions are given in professional capacity (example if chartered accountant gives professional advice to his client) then he is not the *shadow director*.

- o Person is deemed as director for the following purposes only :
- ✓ entry into register of director under Section 303(it contains name ,address ,etc. of directors)
- ✓ register of director under section 307 (register of director`s shareholding)
- ✓ disclosure of shareholding / debenture holding in the company or its subsidiary or it`s holding company
- ✓ Penalty provisions for officer in default as *per section 5*.

- **Officer in default**- MD/WTD is always covered. *OR*
- IF a company does not have a MD or WTD or a Manager, any Director specified by the Board, *OR*
- Where no such Director has been specified, all the Directors may be deemed to be 'officers in default'.

Only individual can be director: SEC 253

Section 253 states that "no body corporate ,association or firm shall be appointed as director and an individual can be so appointed"

Provided no company shall appoint or reappoint any director unless he has been allotted a director identification number by the central government under Section 266 B .(refer PG 24 of this chapter)

Why? Because office of director is to some extent the office of trust there should be somebody readily available for any responsibility.

SEC 312 - *No director shall assign his office to any other person .If he does so that assignment is void.*

However appointment of another person in place of a deceased director does not amount to assignment, even if the new director appointed was named in the will of the director who died.

(Case: Oriental metal processing works Private Limited V/S Bhaskar Kashinath Thakoor.)

NOTE: *A deemed director need not be an INDIVIDUAL.*

1. APPOINTMENT OF DIRECTORS

1.1 ***Appointment of first director***

Articles contain the name of person who have consented to be Directors.
At least 1 promoter must be first director. *(DCA circular)*

Articles do not contain the name of the first directors

But articles prescribe the manner of appointment of the first director by the subscribers to the MOA.
Either all or majority of subscribers may appoint the first directors of the company.
However until first directors are determined all subscribers shall be deemed as directors.

Articles do not contain any provision for appointment of first directors then:
All *individual* subscribers to memorandum shall be deemed to be directors until directors are appointed u/s 255 in a general meeting held before the first AGM.

1.2 Appointment of directors by Board of Directors

Particulars	**Section 260**	**Section 262**	**Section 313**
Who	Additional director	Casual vacancy	Alternate director
When	Whenever board wants for extra work or to maintain minimum number of Directors.	If director appointed by member dies , resigns etc.	If original director is outside the state where Board meeting are held ,for more than 3 months
Applicability	All companies	Public company	All companies
Articles of association	Shall authorize ***OR*** amend article	*No authorization needed*	Shall authorize **OR** amend article
Term	Till the day AGM held *OR* ought to be held After appointment (next AGM)[1]	Till the term of director in whose place appointed	Till return of original director in the state ***OR*** expiry of his term whichever is earlier.
Board meeting ***OR*** Resolution by Circulation	BM or Circulation	Only at BM	Act is silent. So BM or by circulation
CG approval	Generally not required as sec 260 overrides sec 259.[2]	Not required Sec 259 NA	Not required Sec 259 NA

1. If default is made inholding AGM,the additional directorshall vacate his office on the last day AGM ought to have been held ***(ANANTHLAKSHMI AMMAL VS INDIAN TRADE AND INVESTMENTS LIMITED).***

2. Central government`s approval is required if total number of directors (*including additional directors)* exceed the maximum number of directors as stated in the AOA.

1.3 Directors appointed by shareholders ***(Not applicable to private company)***

Case a) Rotational and non-rotational directors

Usually AOA specify who are non-rotational directors i.e. who do not have to retire at AGM .Rest are all rotational directors.

As per Sec 255

Non rotational (NR)
Max-{1/3 rd of BOD}

Rotational
Min: 2/3 rd of TOTAL BOD PRESENT
(2/3 rd to be rounded off to 1)

SEC 256:1/3 rd (nearest to 1/3 rd)
Of that 2/3 rd, has to retire in the AGM.
(THEY MAY BE REAPPOINTED IN THE AGM)

Balance can stay

Minimum 2/3 rd of the BOD shall be rotational i.e. shall stand for election In the AGM. Out of this rotational directors, 1/3 rd shall retire.

Who will retire first?

The retirement is based on:

1. Seniority basis (FIFO)
2. If two directors are appointed on the same date then retirement of one is based on
   - agreement among them

     Or
   - by drawing of lot method.(in the absence of such agreement)

While calculating 2/3rd following shall not be taken:
- -Additional director
- -Nominee director appointed by CG u/s 408
- -Nominee director of statutory bodies.(LIC)
- - BIFR director
- - Alternate director

NOTE: Director acting as nominee of banks like ICICI limited shall be taken.

Now how is the vacancy of retiring director dealt with?

The following can happen at the AGM:

RESOLUTION IS PASSED FOR Filling THE VACANCY.

- Some other person As per Sec 257 (READ LATER)
- Same person i.e retiring director

RESOLUTION OF REAPPOINTMENT IS LOST

RESOLVED THAT The Vacancy is not to be filled

No resolution passed and meeting is adjourned to same day, same time , same place BUT *next week.*

* In the Adjourned meeting

- Retiring Director is Reappointed or Some other person Is reappointed.
- Resolution of Reappointment is lost
- Resolved that vacancy is not to be filled
- No resolution is passed

Retiring is reappointed AUTOMATICALLY

EXCEPT WHEN

- He is unwilling to get reappointed
- He is disqualified to get reappointed
- Resolution is mandatory for his reappointment.
- Resolution in contravention of Sec 263
- Resolution for reappointment is put and lost.

Note :

1. The articles may provide that all the directors are ROTAIONAL And have to retire at the AGM.
2. In case of PRIVATE COMPANIES the articles govern retirement of the directors.Sec 255 and 256 are NA.

*3. In case AGM is adjourned due to disturbance, then retiring director can hold Office till adjourned meeting .Then as per provisions of Adjourned GM.

Illustration1:

X limited has 11 directors. Here at least 8 directors (7.33 rounded off) have to be rotational And out of them 3 directors (nearest to 2.66) must retire at the AGM

Illustration2: on Retirement of directors

There are seven directors in X ltd. Calculate the number of directors who have to retire at the ensuing AGM:

S.No	CASE	Total No of Directors	Number of rotational Directors	Number of retiring Directors
1.	All directors appointed by shareholders	7	5	2
2.	There 1 additional director	6	4	1
3.	There is an alternate director in place Of one of director.	6	4	1
4.	1 nominee director of CG	6	4	1
5.	1 nominee director of LIC	6	4	1
6	1 nominee director of ICICI limited	7	5	2
7.	There is 1 MD	7	5	2
8.	There is 1 WTD	7	5	2

Sec 257: How is a person other than retiring director is appointed?

WHO?	Notice of Candidature (OWN NAME)	Notice of other person `s name
Member	✓	✓
Non member	✓	X

-At least 14 days before the GM.

- With Rs 500 deposits (if candidate loses then this deposit is FORFEITED)
- At the registered Office

Public Company

Companies serve this notice to 7 days before GM to-

- *All members directly*

OR

- *By giving Advertisement in 2 newspaper*

CASE B :small SHAREHOLDER DIRECTOR(proviso to SEC 252 , read with Appt. of SSD rules 2001)

1. Applicability: All public companies having PUC of *5 crores or more and at least 1000 small shareholders.*
   - (SMALL SHAREHOLDER is one who holds shares of *nominal value up to Rs 20,000*.)
2. Only a small shareholder can become a SSD.
3. A person can become SSD in maximum 2 companies.
4. Tenure is MAX is 3 Years. Further reappointment for max 3 years. SSD is not liable to retire by rotation. However shareholders can remove a SSD by passing a OR in GM u/s 284.
5. SSD is not required to hold qualification shares but he shall vacate his office if he ceases to be a small shareholder.
6. Grounds of Disqualification are applicable to SSD like other directors, ***except Sec 274(1)(g)***
7. Appointment - The company may appoint SSD suo- motto (by itself) → IT is COMPANY`s discretion.

   OR

   On receiving **NOTICE** given by small shareholders → on receiving, appt of SSD is mandatory

- NOTICE must be given 14 days before GM.
- It shall specify the name, address and number of shares held by
  - Shareholders proposing the resolution
  - Person whose name is being proposed as SSD.
- It shall be signed by at least-
  - 100 small shareholders **OR** 1/10th of small shareholders.(whichever is HIGHER)

CASE C: Sec 265 : Not applicable to private company

In a Public Company –If the articles provide that appointment of directors shall be under a system of *Proportional representation then it has to follow Sec 265:*

- ✓ At least 2/3rd of BOD appointed by this method.
- ✓ Such appointment shall be made once in every 3 years.
- ✓ They cannot be removed by shareholders later on in GM u/s 284.
- ✓ If there is casual vacancy follows Sec 262.
- ✓ Mode of voting can be single transferable voting, cumulative voting or otherwise.

- ✓ It overrides entire COMPANIES ACT.

EXAMPLE: In a public company there 5 vacant seats of directors.
2000 shares – One group of shareholders, 500 shares – One group of shareholders.
Majority group recommends 5 persons as director and minority group recommends 1 director.
Here MIN vote to get elected = 2500/5 = 500 votes
So majority can elect Max 4 director (500 X 4 = 2000 votes)
"1" director from minority side !

1.4 NOMINEE DIRECTORS

Nominee directors appointed by

- CG u/s 408 (REFER CHAPTER ON OPPRESSION AND MISMANAGEMENT)
- Financial Institutions formed under act of parliament

- *THEY are not required to retire by rotation*
- *They are not counted in TOTAL BOD for counting 2/3rd.*
- *They are not required to hold qualification shares*
- *They can be removed only by authority appointing them.*

OTHER NOMINEE DIRECTORS

All provisions of the companies Act 1956 shall apply.
Following points must be satisfied:

- NO contravention of SEC 255
- Articles must authorize the appointment of such directors.

SEC 263: Appointment of director to be voted INDIVIDUALLY .This Sec *NA to* →

- PVT CO
- Sec 25 Co
- Appointment not made by shareholders

If a PUBLIC COMPANY (X LTD)

↓

Passes One Resolution to appoint more than 1 Director

↓

Appointment of all such directors Void because Separate Resolution for each Director Is needed.

Appointment becomes valid if : a UNANIMOUS RESOLUTION (100 % people vote in favour) *Is passed before appointing the directors* ,stating that all directors will be appointed by Passing 1 resolution.

SEC 258: Increase or reduction in number of directors

- OR is required
- Increase /decrease must be according to MAX/MIN limits as per articles. IF not then first amend articles by passing an SR.***(Ram Kissendas Dhanuka vs Satya Charan)***

SEC 259: APPROVAL OF CG for INCREASE in number of DIRECTORS

INCREASE IN NUMBER OF DIRECTORS

Within limits fixed by AOA *first registered* (Sec 258)

- Initial limits of AOA ≤12
- Initial Limits of AOA > 12

➢ OR
➢ NO CG approval

Beyond limits specified in AOA *first registered*

- initial limits of AOA≤12
  - SR to amend AOA
  - NO CG approval upto 12 directors
- initial limits of AOA>12
  - SR to amend AOA
  - Prior Approval of CG

Sec 259 is not applicable on:

1. Private company
2. Government Company
3. Company formed under Sec 25.

Hence CG approval is not required ,just pass resolution for ↑ Dir

Illustration: Explain the procedure for Increase in number of Directors in the following situations-

SiTUATION	Present Number of Dir	Max limits fixed by AOA	Proposed Board strength	CG approval	Resolution
A	6	9	9	no	OR
B	6	15	15	no	OR
C	6	9	12	no	SR
D	6	12	12	no	OR
E	6	15	18	prior +YES	SR amend AOA

SEC 274(1) Who cannot be a director?(DISQUALIFICATIONS)

In any company (BOTH PVT + PUBLIC)

a) Found to be of unsound mind.
b) Undercharged insolvent.
c) Person who has applied for Insolvency.
d) Convicted for crime involving moral turpitude

➢ Jail for at least 6 months ***and***
➢ *5 years* have not passed from expiry of jail term.

e) Call money due for shares for 6 months or more.
f) Court order u/s203 on the ground of fraud in relation to formation, promotion, winding up of the company. Max disqualification *upto 5 YEARS.*

❖ In case of a Private Company articles may provide extra grounds of Disqualification.
❖ If above disqualifications are attracted, then director has to leave (vacate) his office.
❖ CG can relax points (d) and (e)
❖ Court can remove point (f)

In case of Public Company

Where the said person ***is*** *OR* ***was*** a director :
DEFAULT In:
a) Filing ***Annual return and Annual accounts for continuous 3 years. OR***
b) Not paying (ANY of THE Following):

➢ *Dividend*
➢ *DEPOSITS/INTEREST*
➢ *Debenture (Principal amount only)*

❖ *For 1 year or more from due date*
❖ *Then directors during this period are disqualified*
❖ *Directors at the time of default of (a) OR (b) Cannot be appointed as director in* ***OTHER Public company for 5 years from date of disqualification.***
❖ **If a directors resigns before expiry of 1 year from due date in case of default (b) ,he shall not be disqualified.**
❖ ***NOTE: This disqualification stops new appointment OR reappt in any other public company.***
❖ ***So such defaulting director can continue in existing directorships and can be reappted in defaulting co.***

- Acts done by a director who is disqualified but does not tell the company , are valid till the time company comes to know of it ***OR*** *his appointment is terminated.*

OTHER POINTS TO BE A DIRECTOR

- Only Individual can become director. (Company. Partnership Firm cannot become)
- Shall have DIN(Director Identification Number)
- Must be a major (18^{+}) because then only he can enter into contract and apply for DIN.
- Holding of qualification shares ("q" shares) if articles prescribe

PUBLIC COMPANY (Sec 270)

Articles say Director Should have "q" shares

Articles are silent

1 share (AS per TABLE A)

PRIVATE COMPANY

If article require Directors must hold shares Amount , time limit for acquiring the share shall depend on articles (*SEC270 NA*)

Follow Sec 270:

- q shares must be allotted (only application is not sufficient)
- to the Director (not his wife,etc) ***within 2 months of appointment***
- *q shares must have* ***max nominal value Rs5000, 1 share if nominal value exceeds Rs5000.***
- ***Default- vacate the office***

- **Small shareholders director,nominee director(of CG & LIC,UTI, ETC) don`t have to hold "q" shares**
- **Share warrant is not a share.**
- **Subject to permissions in AOA:**

"q" shares can be
- -Held jointly
- **-Equity or preference**
- -Mortgaged

(SEC 275 – 279)In how many companies can an individual be director?

1. A person cannot hold office at the same time in more than 15 companies.(Sec 275)

2.New appointments increasing Directorship (Sec 277)

Points	Existing directorship is 15. Appointment in one more company.[Sec 277(1)]	Existing directorship is less than 15 . Fresh appt in other companies,taking total beyond 15.[Sec 277(2)]
a)	New apt will not take effect unless, ***within 15 days of such apt***, the person vacatesone of the earlier directorships.	None of the new appt shall take effect unless within 15 days of the last appointment The director chooses the 15 directorships he wishes to continue.
b)	The **new apt** shall ***be void*****after 15 days** if the office not so vacated.	All new appts shall be void if the choice is not so made.

NOTE: For this purpose," new appointment" means all appointment during a period of 15 days prior to date of last appointment.

Directorship excluded from this ceiling limit **(EXCEPTIONS)**: The directorships in the following companies are excluded from the ceiling limit of 15 directorships :***(Sec 278)***

- PVT Co (not a subsidiary of Public Co)
- An unlimited Co
- A company incorporated u/s 25
- Alternate directorships

- Foreign Companies.

Sec 279: **Penalty for non compliance**

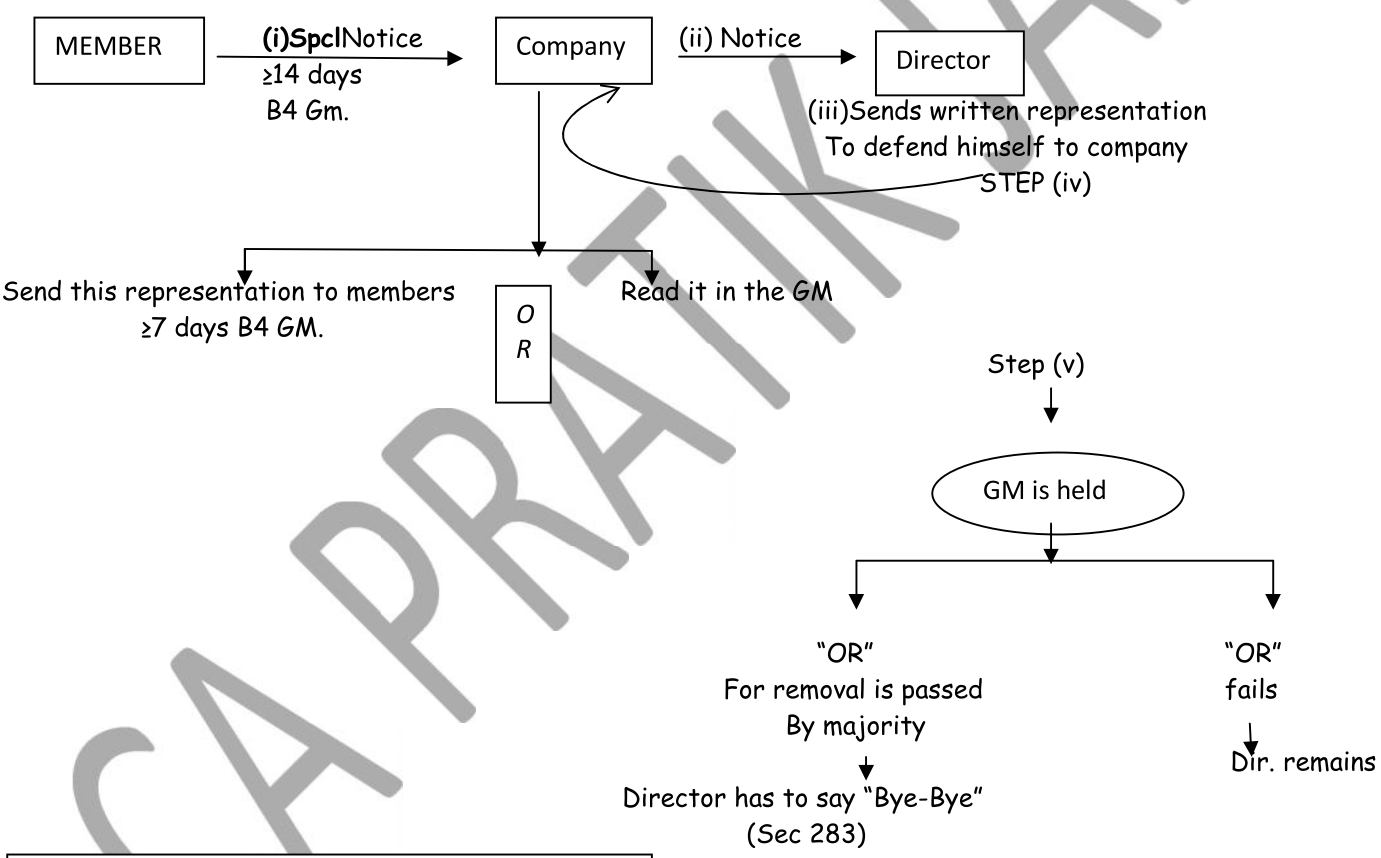
Any person holding directorships in more than 15 companies shall be punishable with a fine upto Rs 50,000 in respect of each company above 15.

Illustration: Shyam is a director in 14 public limited companies as on 30.07.2007 .He continues to be so till 24.09.2007.The following Companies appoint Shyam as a director at their respective AGM`s held on dates mentioned against their names .

Company	DATE OF AGM
PQR LTD	***29.09.2007***
BCD (P) Ltd	25.09.2007
City traders association(REG u/s 25)	26.09.2007
TSP limited	***25.09.2007***

Solution : Appointment in BCD(P) Limited and City traders(Sec 25 CO) is excluded from max limit Of 15.So it is ok. Shyam has to choose the directorships he wants to continue as on 14.10.07(15 days from last appt 29.09.2007).Otherwise appt in both PQR limited and TSP limited will become void.

Removal of director by the shareholders (Sec 284)



- If director in his representation defames the company then Company goes to CLB
- If CLB is of the opinion that representation is Indeed defamatory then
- No step (iv) {No need to read in GM or send it to members)
- CLB may ask director to pay the costs

Let us see when director has to leave his chair:
CASE 1: Vacation of office u/s 283.
CASE2: Removal by shareholder (also covered in Sec 283)

CASE 3: Resignation of director

(i)

ORAL (is OK)
-when articles are silent

WRITTEN (is must)
- when articles require written

- ok if resignation given in GM
(even if articles want written)

(ii) resignation given either to BOD or shareholder (in GM)
(iii) MD/WTD can vacate office only on acceptance of resignation **(ACHUTA PAI vs ROC)**
(iv) Other directors ---- Should wait for acceptance only if:
- Articles require acceptance **OR**
- Resignation letter is subject acceptance.

Certain transactions with Directors and other related persons:
Sec 295: Not applicable –
-On PVT CO.
– when Holding Co gives loan to subsidiary
- when Holding Co guarantee for subsidy

Sec 295 – When a *Public Co* (A ltd) *gives*:

I. ***Loan*** to
II. Guarantee to
III. Guarantee to other for

SPECIFIED PERSONS

Director (D1) of A limited (giving Company)	Or his partner	Or his relative
Director (D 2) of Holding Company of A ltd.	OR his partner	Or his relative
Firm	Where D1 or D2 is partner	Relative of D1/D2 is partner
Body Corporate (ABC Pvt limited)	Where Director Of Company (D1/D2) holds 25% or more Eq shares.(individually or combined)	
Body Corporate where Bod/director of LENDING Company (D1) are shadow directors.		

NOTE:
- Director in this section also includes director of Holding Company(EG – D2)
- In the last point about shadow directors Only D1 is covered .So if D2 is shadow director in other body corporate to whom A ltd gives loan, then SEC 295 is not attracted.
- ***All such transactions with specified persons require prior approval of CG.***
- Director involved has to vacate his office u/s 283.