ROLES AND RESPONSIBILITIES OF DIRECTORS UNDER THE NEW REGIME

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Who is a Director?

- An appointed or elected member of the board of directors of a company.
- He has the responsibility for determining and implementing the company's policy.

- A company director need not
  - to be a shareholder or
  - an employee, and
- may hold only the office of director under the provisions of the Act.
- Directors derive their powers emanating from

board resolutions

- Unlike shareholders, directors cannot participate through proxy.
- Unlike employees, cannot absolve themselves of their responsibility for the delegated duties.
- Section 2(34) of the Companies Act, 2013 defines a director as – "director" means a director appointed to the Board of a company.

Disqualifications for appointment as director

A person shall not be eligible for appointment as a director of a company, if —

He is of unsound mind and stands so declared by a competent court

He is an undischarged insolvent

He has applied to be adjudicated as an insolvent and his application is pending

He has been convicted and sentenced to imprisonment for atleast 6 months and 5 years from expiry of sentence have not got over

He has been convicted and sentenced for a period of 7 years or more

An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force

He has not paid any calls in respect of any shares of the company held by him & 6 months have elapsed from the last day fixed for the payment of the call

He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years

He has not obtained DIN

A person who is director of a company which has not filed financial statements or annual returns for 5 continuous yrs, till expiry of 5 yrs from date of default

A person who is director of company which has failed to repay deposits, debentures or distribute dividend for a period of one year, till expiry of 5 years from date of default

Private Companies can provide for additional disqualifications in their Articles

Role of Directors in a Company

A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company.

LEGAL POSITION OF DIRECTORS

a) Directors as Agents :	b) Directors as employees	c) Directors as officers
A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders	When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or whole time director	Director treated as officers of an company. They are liable to certain penalties if the provisions of the companies act are not strictly complied with. <u>Director as trustees:</u> Director is treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.

Director as "Officer"

"officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

Director as "Key Managerial Personnel"

"key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

Director as "Officer in default"

"officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

DUTIES OF DIRECTORS

- Director to act in accordance with AOA.
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
- A director of a company shall not assign his office and any assignment so made shall be void.

to be continued next issue...