The Companies Act, 1956.

Year 2010 -11

Mazahir Arsiwala

- Directors
- Board Meeting
- Inter-Corporate Loans & Investments

Directors

Sec 252 (154) – Minimum number of Directors		
252. Minimum number of directors.—(1) Every 3[public company (other than a public company which has become such by virtue of section 43A)] 4[* * *] shall have at least three directors: 5[Provided that a public company having,— (*a*) a paid-up capital of five crore rupees or more; (*b*) one thousand or more small shareholders, may have a director elected by such small shareholders in the manner as may be prescribed.6 *Explanation.*—For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.] (2) Every 7[other] company 8[* * *] shall have at least two directors. (3) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board".		
Status	**As per Companies Act (India)**	**As per Companies Act (UK)**
Private Company	Two	One
Public Company	Three	Two

Sec 253 (155) – Only individuals to be Directors & Requirement of DIN for Valid Appointment as Director	
253. Only individuals to be directors.—No body corporate, association or firm shall be appointed director of a 9[* * *] company, and only an individual shall be so appointed: 1[*Provided that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B*.]	
As per Indian Act	**As per UK Act**
All directors need to be individuals. Corporate or firms are not allowed to act as Director.	At least a company should have one natural person acting as a Director.
All the Directors appointed must possess a valid DIN. Appointment cannot be made by the company unless the person holding DIN.	

Sec 254 – First Directors – Subscribers are deemed to be Directors	
254. Subscribers of memorandum deemed to be directors.—In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 255.	
Case	***Consequences***
Where the AOA provides the name of first directors.	*Named Directors will be deemed directors.*
Where in AOA, directors name are not mentioned but the manner of appointment	*Directors shall be determined as provided in AOA but until such*

is mentioned.	*appointment subscribers of MOA will act as a deemed directors.*
Where AOA also does not mention name of first directors & even does not contain any provision for the appointment of first directors.	*All subscribers to MOA will remain deemed directors unless appointment of directors not made under section 255.*
Note – As per the circular at least one promoter should join the company as first director.	

Sec 255 – Appointment of Directors & Proportion of those who are to retire by Rotation	
255. Appointment of directors and proportion of those who are to retire by rotation.—(1) 2[Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds] of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall— (*a*) be persons whose period of office is liable to determination by retirement of directors by rotation; and (*b*) save as otherwise expressly provided in this Act, be appointed by the company in general meeting (2) The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles of the company, also be appointed by the company in general meeting	
Total number of Directors	
Rotational Directors Directors	Non – Rotational
Atleast $2/3^{rd}$ of total no. of directors be rotational directors ***(if in fractions round off higher)***	Not less than $1/3^{rd}$ of total no. of directors be non-rotational directors
AOA may mention higher proportion than $2/3^{rd}$ of total no. of directors or can also mention all directors to retire rotaionally.	Opposite of ⟸
Rotational Directors can be appointed or re-aappointed at General Meeting (AGM or EOGM).	Non - Rotational Directors can be appointed or re-aappointed at General Meeting (AGM or EOGM).
Term of office as per Sec 256	No fixed term. Can be for life also or as mentioned under AOA.
A Managing / Whole-time director can be rotation or non- rotational director. If Managing Director / Whole-time director is appointed as a rotational director, but the tenure of the Managing Director as an employee is fixed. If he gets re-apponited, only then he can continue as Managing Director until the term have not expired.	
An additional director will automatically retire at AGM. Hence, it has to be excluded while calculating total no. of directors.	
Sec 255 not applicable to Private Company.	

Sec 256 – Appointment of Directors retiring by rotation and filling casual vacancies

256. Ascertainment of directors retiring by rotation and filling of vacancies.—

(1) At the first annual general meeting of a public company, or a private company which is a subsidiary of a public company, held next after the date of the general meeting at which the first directors are appointed in accordance with section 255 and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.

(2) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(3) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

(4)(*a*) If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(*b*) If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(*i*) at that meeting or at the previous meeting a resolution for the reappointment of such director has been put to the meeting and lost;

(*ii*) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so reappointed;

(*iii*) he is not qualified or is disqualified for appointment;

(*iv*) a resolution, whether special or ordinary, is required for his appointment or re-appointment in virtue of any provisions of this Act; or

(*v*) the proviso to sub-section (2) of section 263 [1][* * *] is applicable to the case

[2][* * *]

[3][*Explanation*.—In this section and in section 257, the expression "retiring director" means a director retiring by rotation.]

At least $1/3^{rd}$ of total rotational directors should retire at every AGM. *(rounded to nearest digit)*

Directors holding office longest should retire first. If a two or more directors are appointed on the same day then as per the agreement or if agreement do not materialize than as per the lot, be determine who shall retire first.

If the vacancy of the place of retiring director is not filled at AGM and also meeting has not resolved to not to appoint a director in such vacated placed than the meeting will stand adjourned to next week, same time and place. If the said date is a holiday then the very next day unless otherwise mentioned in AOA.

Automatic Re-appointment

Even if at adjourned meeting the members fails to appoint the vacancy and the meeting fails to resolve than such position will remain vacant then the original director will be deemed to be automatically re-appointed **unless** following circumstances occurs –

a. Retiring director becomes disqualified
b. Retiring director has expressed willingness not to be re-appointed as director.

c. Where resolution has been put and lost. d. Where resolution requires for re-appointment e. Where a resolution is contravention of Sec 263 is passed.
While computing total no. of directors following directors shall be excluded- • Nominee director statutorily appointed. • Nominee appointed by Central Government or ROC. ***Note – Nominee directors appointed by the ICICI, Small Shareholder Directors and casual vacancy shall be included.***
Sec 256 not applicable to Private Company.

Sec 257 – Right of a person other than retiring director to stand for directorship
Refer page no. 8

Sec 258 – Right of a Company to increase or reduce the number of Directors
258. Right of company to increase or reduce the number of directors.— [1][* * *] Subject to the provisions of sections 252, 255 and 259, a company in general meeting may, by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles.
A company can increase or decrease the number of Directors by ordinary resolution in AGM.
But ***no formal resolution is required*** as such. If appointment of the new extra director is made, the increase is implied.
Should not contravene the limits mentioned under AOA.
If AOA is required to be amended than, Special Resolution is required for such appointment.
Sec 252 ***(minimum no. of directors)***, Sec255 ***(Retiring by rotation)*** and Sec 259 ***(increase no. of Directors with CG approval)*** shall not be contravened.
Sec 258 is applicable to all companies.

Sec 259 – Increase no. of Directors with CG approval	
259. Increase in number of directors to require Government sanction.— In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except— (*a*) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the permissible maximum under its articles as in force on that date, and (*b*) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its articles as first registered, shall not have any effect unless approved by the Central Government;[2] and shall become void if, and in so far as, it is disapproved by that Government: [3][Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.]	
No approval is required from CG in the following cases -	
Company in existence on 21.07.1951	**Company after 21.07.1951**

a. Max no. of directors as per AOA as on 21.07.1951	a) Max no. of directors as specified in AOA first registered.
b. Twelve	b) Twelve
whichever is higher	***whichever is higher***

Note-CLB cannot appoint a Director but can remove under section 388B - E.

Sec 260 – Appointment of an Additional Director
260. Additional directors.— Nothing in section 255, 258 or 259 shall affect any power conferred on the Board of directors by the articles to appoint additional directors: Provided that such additional directors shall hold office only up to the date of the next annual general meeting of the company: Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.
Sec 260 ***does not give powers to the Company to appoint*** the additional director. Power for appointing additional directors comes from the AOA. ***AOA gives power to BOD for appointing Additional Directors***.
Additional Director will hold office until AGM. If AGM is not held, than the last date on which the notional AGM should have been held.
<u>Relaxations (plus points) on appointment of Additional Directors -</u> a. It can exceed the maximum number of directors as per Sec 259. ***No CG approval required for such appointment***. b. <u>BOD can appoint the additional directors even though -</u> I. ***One director is present in the BOD.*** II. ***Strength of Board is below Quorum***. c. Additional director ***can be*** appointed by ***Circular Resolution.*** d. ***Sec 255 not to be complied.*** (Additional Director is not a retiring director u/s 255) (Exclude while calculating total no. of directors u/s 255 and 256).
Additional directors will have ***same*** duties, responsibilities and rights as of the other director.
Such additional director ***must not exceed*** the total number of ***directors as mentioned under AOA.*** If it exceeds than first alter the AOA. (Articles Oriented Appointment)
If the Additional Director wants to become the regular director ***than Sec 257 applies and not Sec 256.*** Since the additional director is not the retiring director.
Sec 260 applies to all companies.

Appointment of Alternate Director – Sec 313
313. Appointment and term of office of alternate directors.— (1) The Board of directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. 3[(2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.] (3) If the term of office of the original director is determined before he so returns to the State aforesaid, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate, director.
1. Conditions for appointment – Alternate Director may be appointed only if original director is absent for a period of ***not less than 3 months*** from the ***State in which Board meeting are generally held.***
2. Power to Appoint – Prior Authorization from AOA or Ordinary resolution is required for the Board to empower appointment of the Alternate Director. Members have no power to appoint the alternate director. Members can empower the Board for the appointment.
3. Method of appointment of an alternate director – Alternate Director can be appointed by passing a normal board resolution or even a resolution by circulation u/s 289
4. Term of office of an alternate director – a. Not exceeding the unexpired term of the original director. b. Term comes to the end on the return of the original director in the State in which the Board meetings are ordinarily held. Irrespective whether the original director has returned for resuming the work or some other reason.
5. Position of an alternate director – a. A director in his own rights – Alternate director is not appointed by the original director by the board. Hence, an alternate director is not a proxy and will have the same right / duties / responsibilities as of any other director. Sec 268, 269, 270, 274, 283, 314 applies validly. b. His interest is independent of interest of the original director – Sec 297 & 299 will apply independently.
Applicable to private and public companies.

Filling Casual Vacancies by Board – Sec 262
262. Filling of casual vacancies among directors.—(1) In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a

meeting of the Board. (2) Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid.
Casual vacancy means vacancy created by death, resignation, disqualification, removal, etc. in short ***if the office comes to the end other than the normal course than it is casual vacancy.***
No express power required in AOA for appointing directors filling casual vacancies. If AOA states the manner of appointment than such shall be followed. When AOA is silent then in such case Board of Directors can appoint in Board Meeting by passing a resolution.
<u>Can all vacancies filled by the BOD?</u> a. BOD can fill the casual vacancy *only if the original director was appointed in AGM.* b. Where the casual vacancy filled by the BOD again gets vacated then such vacancy cannot be filled by the Board u/s 262. The board in such case can only appoint additional directors if AOA permits.
Dept has taken a ***liberal view*** on filling up the casual vacancy allowing the Board to appoint the casual vacancy caused by resignation of the director appointed by filling casual vacancy earlier.
It is ***not obligatory*** to fill up the vacancy.
Causal Vacancy Director is not a retiring director and hence for re-appointment as regular director Sec 257 has to be complied and not Sec 256.
Term – will remain same for the director in whose place he has been replaced.
Sec 262 does not apply to Private Company.

Right of a person other than retiring director to stand for directorship – Sec 257
257. Right of persons other than retiring directors to stand for directorship.—(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be, [4][along with a deposit of five hundred rupees which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director.] [5][(1A) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting: Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in the English language and the other in the regional language of that place.] (2) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

A person can nominate his or any other person's name *(not being retiring director) (can be a member or non-member or nominee director or additional director or casual vacancy director)* for the election of directorship by submitting notice + Rs.500 refundable deposit (refundable only if the nominated person is elected as director) at the Registered Office of the Company.

Such notice shall be submitted before 14 days for the date of AGM. Notice is valid even if the notice of AGM has been issued to all members before such receipt of notice.

On receipt of such notice, the company has to inform its members before 7 days from the date of AGM by the following means –

a. By issuing individual notices to all members or
b. By advertising in two (one in English and another in regional language) newspapers circulated throughout the district where the registered office is located.

Sec 257 is mandatory and default will held the appointment of director invalid.

Sec 257 is not applicable to Private Company.

Appointment of Small Shareholder Director – Sec 252

1. **<u>Applicable if the following three conditions are fulfilled –</u>**
    a. It's a Public Company; and
    b. Having share capital exceeding 5o millions; and
    c. Has more than 999 Small Shareholders.

(A Small Shareholder is a member holding shares less than Rs.20,000 Nominal Value and not Market Value) (not even Rs.20,000)

2. **<u>Appointment whether optional or Obligatory –</u>**
    a. <u>**(Option)** Appointment by the Company –</u>
    A Company may elect suo motu a Small Shareholders' Director
    b. <u>**(Obligation)** Appointment by Small Shareholders –</u>
    Small Shareholders' Director can also be elected at the option of the Small Shareholders. The Small Shareholders may issue a notice on the company and the company has to mandatorily have to act on such notice.

3. **<u>Requirement of Notice –</u>**
    a. Period of notice shall be at least 14 days before the meeting.
    b. Notice shall be given by at least 1/10th in number of Small Shareholders.
    c. Notice shall be signed at least 100 small shareholders.
    d. Notice shall specify the name, address, no. of shares held, particulars of shares, with differential rights to dividends or voting and folio number –
        i. Small shareholders proposing resolution
        ii. The person whose name is proposed as a Small Shareholders' Director.

4. **<u>Manner of Appointment of a Small Shareholders' Director -</u>**
    a. Unlisted Company - elect directors if majority has recommended his candidature for the post of director in the meeting.
    b. Listed Company – elected by the method of postal ballot u/s 192A.

5. **<u>Conditions -</u>**
    a. Only a Small Shareholders can be Small Shareholders' Directors
    b. Have to file his consent in writing to acts as director

6. **<u>Disqualification & Vacation -</u>**
    a. Sec 274(1)(a-f) applies
    b. Sec 274(1)(g) will not apply
    c. Vacation same as under section 283 –
        i. He shall vacate his office if he ceases to be small share holder.
        ii. He shall not vacate on non-acquisition of qualification shares.

7. **<u>Tenure -</u>**
    a. Maximum 3 years
    b. Shall not retire by rotation
    c. Can be re-elected for three years.

A Small Shareholders' Director cannot hold office in more than two companies.

A Small Shareholders' Director will have same duties and powers.

Shareholders are empowered u/s284 to remove the Small Shareholders' Director by passing an ordinary resolution in General Meeting.

Appointment of a Director by Proportional Representation – Sec 265

265. Option to company to adopt proportional representation for the appointment of directors.—Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the provisions, *mutatis mutandis*, of section 262.

01. <u>Need for proportional representation -</u>
Generally appointment of directors is made by simple majority of shareholders. Thus, it may result in appointment of all the directors by a majority of shareholders and substantial minority may not be able to place even a single director on the board. Consequently, this is a major handicap in the exercise of rights of minority interest. So to overcome such difficulties Sec 265 has been enacted.

02. <u>Conditions for making appointments by proportional representation -</u>
a. Authorization by articles and even the method for appointment of director.
b. Compulsory adoption of proportional representation in order to prevent oppression or mismanagement by an application of shareholders or reference by Central Government.

03. Number of Directors = at least $2/3^{rd}$ of directors shall be appointed by proportional representation.

04. Periodicity is appointed once for three years.

05. Casual vacancy of the director appointed u/s265 shall be filled by the board of directors unless otherwise mentioned in AOA.

06. <u>Method of voting –</u>
a. Voting by single transferable vote
b. Cumulative voting
c. Any other method

07. Sec 265 does not apply to Private Company.

08. <u>Restriction on removal u/s 284 of Director appointed u/s 265 –</u>
Cannot be removed u/s 284 if the directors are appointed u/s 265.

<u>Procedure for Proportional Representation</u> -
Consult AOA whether the company is authorized to appoint directors by the method of proportional representation, if not than have to alter the provisions in AOA.
Notwithstanding anything contained in this Act, the AOA of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three

years and interim casual vacancies being filled in accordance with the provisions, mutatis mutandis, of section 262.

Cumulative Voting System

In cumulative voting system, several directors are to be voted for at the same time by casting votes for the whole number of shares held multiplied by no. of directors to be elected for a candidate or distributing the votes among a part of the vacancies to be filled instead of straight voting or casting votes according to no. of shares held, for all the vacancies.
Thus, a minority is allowed to secure representation on the BOD. Without a cumulative voting a bare majority of shareholders may elect the full Board and thus the control of the company could be exercised without having representatives of the minority in the board.

Example – Suppose there are 1000 shares, 800 shares from a majority group and the other 200 shares from minority group. The shareholders have to elect 5 directors to the board. A, B, C, D, & E are nominated by the majority group and F is nominated by the minority group. Since 5 have to be elected, each shareholder has five votes for single holding. Shareholders in respect of each share can give all the five votes to a single candidate or distribute it to two or more candidates.

Total votes cast will be = 1,000 x 5 = 5,000
Total number of vacancies = 5

Each candidate receiving $= \frac{5000}{5} = 1000$ ***votes***

Or more shall be deemed to be elected to the board although those who get less may also be considered elected. Therefore, the result will depend on the cumulative voting secured. The minority group can cast all their 1000 votes in favour of F (200 shares x 5) and F will get elected.

A, B, C, D and E will together get 800 x 5 = 4000 votes. Average votes for each of the candidates in the group will be 4000 ÷ 5 = 800 votes. Each and everybody among A, B, C, D and E cannot get more than 800 votes. If any of them gets single additional vote i.e. 801 votes, another of them will get lesser than 800 votes. If the minority concentrates on one candidate, he is very likely to get elected unless the minority is negligible.

Single Transferable System of Voting –

Under this system all the names of the candidates for election are entered in the ballot paper. Each voter has only one vote. He has to indicate his first, second, third preferences and so on by marking in the ballot paper for the candidates.

These preferences will be equal to the number of candidates to be elected. In the first instance, only the first preference are counted and any candidate who receives the number of votes called '"quota" is declared elected.

$$\text{The Quota} = \left\{ \frac{\text{Total numbers of votes polled}}{\text{Number of candidates to be elected} + 1} \right\} + 1$$

Suppose there are four candidates to be elected as director. The votes polled are 500. Then the quota is $\left\{ \frac{500}{4+1} \right\} + 1 = 101$ ***votes***

If four candidates get 101 votes each they will get elected. They will together get 404 votes. The balance is 96 votes. Even if all the remaining votes go to the single candidate he cannot be elected. Every person who can obtain the support of 101 votes among 500 votes will surely get elected as director.
If the person obtains more than the quota number of votes, the surplus votes in his favour will be transferred to other candidates in order of preference. They are added to first preference

votes obtained by the other candidates until some of them also get quota number of votes. The process is repeated until all the required number of candidates for the directorate obtains the quota number of votes.
When the candidates do not get the quota number of votes even after distribution of surplus votes, the candidate who has obtained the least number of first preferences is eliminated. The second preference on these ballot papers are transferred to other candidates against whose name they are marked. Thus the process is repeated until sufficient number of candidates gets the quota number of votes.

Example – Let it be assumed that 5 directors are to be elected and seven candidates A, B, C, D, E, F and G are contesting.

The first preference are counted –

Candidates	No. Of votes
A	200
B	95
C	93
D	74
E	60
F	58
G	20
Total	600

The quota will be (600÷(5+1)) +1 = 101 votes

A gets more than the quota and he is declared elected, and if A has surplus 99 votes in his favour, his papers are scrutinized and the second preference found in them are counted.

Candidate	Second preference votes
D	25
E	5
F	10
G	160
Total	200

Surplus first preference of A

- To be transferred to D (25 ÷ 200) x 99 = 12
- To be transferred to E (5 ÷ 200) x 99 = 2
- To be transferred to F (10 ÷ 200) x 99 = 4
- To be transferred to G (160 ÷ 200) x 99 = 81

Now new polls are

Candidate	Original first pref.	Transferred from A	Total
A	-	-	200
B	95	-	95
C	93	-	93
D	74	12	86
E	60	2	62
F	58	4	62
G	20	81	101

G gets quota and he is deemed to be elected. There is no surplus vote in favour of G. F who has got the lowest first preference vote will lose. His 58 papers are scrutinized and second preference –

Candidate	Second preference votes
B	6
D	16
E	30
C	6
Total	58

After transferring second preference in F's paper to the appropriate candidate the poll is –

Candidate	Original first pref.	Transferred from A	Total
A	-	-	200
B	95	6	101
C	93	3	96
D	86	16	102
E	62	30	92
F	-	-	62
G	-	-	101

B and D get appointed having obtained the quota. Now E who has got the next lowest first preference of 60 and he is eliminated. His ballot papers are scrutinized and it is found that there are 27 second preferences on C. These are ordered C's votes. Now C's votes will be 99 + 27 = 126

Candidate	Total	Status
A	200	Elected
B	101	Elected
C	126	Elected
D	102	Elected
E	62	Eliminated
F	62	Eliminated
G	101	Elected

A, B, C, D and G are elected as director.

Appointment of Directors by the Central Government – Sec 408

408. Powers of Government to prevent oppression or mismanagement[11].—

[1][(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the [2][Tribunal] may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the [1][Tribunal] on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than 1/10th of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the [1][Tribunal] may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the [1][Tribunal].

(2) In case the 1[Tribunal] passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the 1[Tribunal] may, by orders specify as being necessary to effectively safeguard the interests, of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors]. (3) For the purposes of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account. 1[(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director. (5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the 2[Tribunal]. 3[(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs 4[and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.] (7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.]

Appointment of a Nominee Director
01. <u>Nominee Directors general kind –</u> a. Nominee directors can only be appointed if AOA authorises. Nominee Directors shall be appointed out of 1/3rd non-rotational directors only. b. All the provisions of the Act apply to the nominee director.
02. <u>Nominee Directors appointed under a Statutory Act –</u> The provisions mentioned above are not applicable to this category of the directors. They are governed by the Act not being Companies Act and hence, enjoy fiduciary position. Central Government or a Financial Institution (UTI, LIC and IDBI) can appoint their employees as directors in the concerned company. a. He shall not retire by rotation. b. No Qualification shares required c. He is excluded for counting total no. of directors for Sec 255 & 256. d. He can only be removed by the authority appointed him. e. He can also be appointed without Central government approval even if the strength of the board exceeds maximum u/s 259.
ICICI and IFCI are companies under Companies Act and not by special act of parliament.

Sec 261 – Repealed

Sec 262 – Filling Casual Vacancies by Board

Refer Pg. No. 7

Sec 263 (160) – Separate Resolution for each appointment

263. Appointment of directors to be voted on individually.—

(1) At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved:

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of 1[the director retiring by rotation] in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, shall be treated as a motion for his appointment.

2[**263A. Sections 177, 255, 256 and 263 not to apply in relation to companies not carrying business for profit, etc.—**

Nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members.]

A Company cannot appoint by ***composite resolution*** for appointing two or more directors in a single resolution. So pass different resolution so that the members get the opportunity to appoint any one from the selections. **OR**

First pass a ***unanimous*** resolution stating that two or more directors can be appointed by single resolution and then pass another ordinary resolution for appointment of two or more directors in single resolution.

Shall only apply to General Meeting. It means that Composite resolution can be passed in Board Meeting or any other meeting.

If Sec 263 is contravened then the ***appointment will be held invalid.***
All the acts will be held valid until the defect in appointment is shown to the company (Section 290).

Non-applicability of Sec 263

a. ***Private Companies***
b. ***Wholly owned Govt. Companies***
c. ***u/s 25 Companies***

Sec 264 – Consent by a Director

264. Consent of candidate for directorship to be filed with the company and consent to act as director to be filed with the Registrar.—

(1) Every person 4[other than a director retiring by rotation or otherwise or a person] who has left at the office of the company a notice under section 257 signifying his candidature

for the office of a director) proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

[1][(2) A person other than—

(*a*) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or

(*b*) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or reappointed as an additional or alternate director, immediately on the expiry of his term of office, or

(*c*) a person named as a director of the company under its articles as first registered, shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent[2] in writing to act as such director]

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.]

Consent with the Company	Consent with Registrar
Consent before Appointment	
Every proposed director has to file consent in writing with the company ***before*** appointment.	Every director ***after appointment*** shall ***within 30 days*** file a written consent to act as a director with the Registrar.
Exceptions	
a. Directors ***re-appointed*** on ***rotational basis*** b. Directors appointed ***u/s 257 (person appointed director by only own candidature)***	a. Directors ***re-appointed on rotational basis*** b. ***Additional / Alternate and Casual Vacancy Directors*** when appointed or re-appointed as Additional or Alternate Director.
Consequences of default	
It's not mandatory.	***It is mandatory.*** If not filed within 30 days the ***appointment will not become invalid*** but the penalty will be levied u/s629A.
Minor cannot become the director of a Public Company since the minor cannot file the consent in his own capacity with Registrar.	
Not applicable to Private Company.	

Minor cannot be appointed as Directors in Public Company
a. No section in companies act expressly prohibits the appointment of minor as a director in any company. b. Even Sec 274 does not disqualify the appointment of minor director. c. Contract Act – A minor cannot enter into the contract in his own capacity. Hence he cannot file the consent under section 264 with ROC for appointment of director d. Since the directors appointed in the private companies do not require to file the consent with ROC for appointment under section 264. ***e. Final Conclusion is the minor can be appointed as director of private company but not of a public company.***
Under Companies Act, 2006 of United Kingdom it is been held that the directors cannot be appointed unless attainment of age of 16 years in any company.

Sec 265 – Appointment of a Director by Proportional Representation

Refer Page No. 10

Sec 266 – Restriction on appointment and Advertisement of a Director

266. Restrictions on appointment or advertisement of director.—

(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus filed with the Registrar by or on behalf of a company, unless, before the registration of the articles, the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorized in writing,—

(*a*) signed and filed with the Registrar a consent[3] in writing to act as such director; and

(*b*) either—

(*i*) signed the memorandum for shares not being less in number or value than that of his qualification shares, if any; or

(*ii*) taken his qualification shares, if any from the company and paid or agreed to pay for them; or

(*iii*) signed and filed with the Registrar an undertaking[1] in writing to take from the company his qualification shares, if any, and pay for them; or

(*iv*) made and filed with the Registrar an affidavit to the effect that shares, not being less in number or value than that of his qualification shares, if any, are registered in his name

(2) Where a person has signed and filed as aforesaid an undertaking[2] to take and pay of his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for shares of that number of value.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

[3][(4) * * *]

(5) This section shall not apply to—

(*a*) a company not having a share capital;

(*b*) a private company;

(*c*) a company which was a private company before becoming a public company; or

(*d*) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was entitled to commence business

The director cannot be appointed on the basis that his name is included in AOA or prospectus or statement in lieu of prospectus unless following conditions are satisfied –

a. He has ***filed a consent with ROC*** to act as a director **and**
b. He has acquired the Qualification shares and agreed to pay for such qualification shares, **OR**
c. He has signed the memorandum for acquiring the Qualification shares, **OR**
d. He has filed the affidavit with ROC stating the shares already registered in his own name.

Sec 266 is not applicable to Private Company, Company having zero share capital and a company which was private before becoming public company.

Sec 266 A to G – Directors Identification Number

266A. Application for allotment of Director Identification Number[5]***.—***

Every—

(a) *individual, intending to be appointed as director of a company; or*

(b) *director of a company appointed before the commencement of the Companies (Amendment) Act, 2006, shall make an application for allotment of Director Identification Number to the Central Government*[6] *in such form, and manner (including electronic form) along with such fee, as may be prescribed:*

Provided that every director, appointed before the commencement of the Companies (Amendment) Act, 2006, shall make, within sixty days of the commencement of the said Act, such application to the Central Government:

Provided further that every applicant, who has made an application under this section for allotment of Director Identification Number, may be appointed as a director in a company, or, hold office as director in a company till such time such applicant has been allotted Director Identification Number.

266B. Allotment of Director Identification Number—

The Central Government[1] *shall, within one month from the receipt of the application under section 266A, allot a Director Identification Number to an applicant, in such manner as may be prescribed.*

266C. Prohibition to obtain more than one Director Identification Number —

No individual, who had already been allotted a Director Identification Number under section 266B, shall apply, obtain or possess another Director Identification Number.

266D. Obligation of director to intimate Director Identification Number to concerned company or companies.—

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

266E. Obligation of company to inform Director Identification Number to Registrar.—

(1) *Every company shall, within one week of the receipt of intimation under section 266D, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government.*

(2) *Every intimation under sub-section (1) shall be furnished in such form and manner as may be prescribed*

266F. Obligation to indicate Director Identification Number—

Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall quote the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of the director.

266G. Penalty for contravention of provisions of section 266A or section 266C or section 266D or section 266E.*—If any individual or director, referred to in section 266A or section 266C or section 266D or a company referred to in section 266E, contravenes any of the provisions of those sections, every such individual or director or the company, as the case may be, who or which, is in default, shall be punishable with fine which may extend to five thousand*

rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues. *Explanation.—For the purposes of sections 266A, 266B, 266C, 266D, 266E and 266F, the Director Identification Number means an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such.]*
Sec 253 states that every director should possess DIN before appointment.
Sec 266 A to G states that -
Any person ***cannot be appointed*** director unless he posses DIN. Any person who is in existence, in place of directorship after release of Companies (Amendment) Act, 2006 shall apply for DIN in a prescribed form along with fees to Central Government for allotment of DIN ***within 60 days*** from the above mentioned date. CG will allot DIN ***within 1 month*** from the date of such application made subject to the rules for issuing the DIN. On receipt of DIN the director has to intimate the Company in which he is acting director ***within 1 month*** from the date of such receipt. On receipt of DIN by the Company, the Company has to intimate DIN of the director ***to the ROC / Authority as prescribed by the Central Government within 7 days.*** If company files any return, application, or piece of information regarding the director than such should incorporate the DIN also. Contravention of Sec 266 will lead to penalty amounting to ***Rs.5000 + Rs.500*** continuing per day penalty. No Director shall possess two or more DIN. Director can hold office if the application for DIN is made and allotment is pending.

Sec 267 – Disqualification and Vacation of Office of the managing director / whole time director

Sec 268 – Amendment of provision relating to managing director, whole-time director or non-rotational Directors to require Government Approval

Sec 269 – Appointment of Managing or Whole-time director or manager to require government approval in certain cases

Sec 270 – Time limit within which share qualification has to be obtained and maximum amount thereof

270. Time within which share qualification is to be obtained and maximum amount thereof.— (1) Without prejudice to the restrictions imposed by section 266, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director. (2) Any provision in the articles of the company (whether made before or after the commencement of this Act) shall be void in so far as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than two months after his appointment as such. (3) The nominal value of the qualification shares shall not exceed five thousand rupees or

the nominal value of one share where it exceeds five thousand rupees. (4) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.
Time limit is as per AOA or ***2months*** after appointment whichever is higher.
If AOA states time limit shorter than 2 months than it will be held invalid.
Nominal Value shall ***not exceed Rs. 5000.*** If AOA states any amount higher than Rs. 5000 than it will be held invalid.
Any alteration or changes in AOA will not have retrospective effect and hence, not applicable to the existing directors.
Acquisition of share qualification is not compulsory. Sec 270 has to be followed only in case where it is required by AOA.
<u>Important Note</u> – ***Sec 283 states that the director newly appointed if do not acquire qualification shares within 2 months after appointment then in such case he will be disqualified. If he continues the office then will be penalize Rs.5000 per day.*** ***Hence, looking at Sec 270 and Sec 283 simultaneously, it is evident that if the AOA mentions acquisition of Qualification shares than it should be acquired within 2 months.***

Sec 271 – Filing a declaration for acquisition of Qualification Shares by director is Repealed

Sec 272 – Penalty
272. Penalty.—If, after the expiry of the period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 270, he shall be punishable with fine which may extend to 1[five hundred rupees] for every day between such expiry and the last day on which he acted as a director
If after the expiry of the period u/s 270, if the director does not acquire the qualification shares then he has to vacate his office. If he contravenes Sec 272, then will be penalized with ***Rs. 500 per day*** + ***Penalty u/s 283***.

Sec 273 – Savings
273. Saving.—Sections 270 2[and 272] shall not apply to a private company, unless it is a subsidiary of a public company.
Sec 270 and Sec 272 shall not apply to private company.

Sec 274 (1) (a - f) – Disqualification of Directors
274. Disqualifications of directors.—(1) A person shall not be capable of being appointed director of a company, if— (*a*) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; (*b*) he is an un-discharged insolvent; (*c*) he has applied to be adjudicated as an insolvent and his application is pending; (*d*) he has been convicted by a Court 3[* * *] of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of

five years has not elapsed from the date of expiry of the sentence;
(*e*) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
(*f*) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section;
[4][(*g*)[5] such person is already a director of a public company which[6],—
(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or
(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:
Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in [1]clause (B).]
(2) The Central Government may, by notification in the Official Gazette, remove—
(*a*) the disqualification incurred by any person in virtue of clause (*d*) of subsection (1), either generally or in relation to any company or companies specified in the notification; or
(*b*) the disqualification incurred by any person in virtue of clause (*e*) of subsection (1)
(3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).

a. Found to be of ***unsound mind*** proved by the court.
b. He is ***un-discharged insolvent.***
c. He has been ***applied to be adjudicated as insolvent.***
d. Convicted by Court of an offence involving ***moral turpitude*** and sentenced for ***more than 6months.*** Will remain disqualified for ***5 years from the date of such sentence.***
e. ***Not paid calls*** for more than ***6 months***
f. Order has been passed by the Court disqualifying him ***u/s 203.***

Sec 274 (a) to (f) is applicable to all companies.

Sec 274 (1)(g) – Disqualification of Directors

The directors will be disqualified for re-appointment or new appointment in the capacity of directors of a Public Company for the period of 5 years under following circumstances –

a. If the ***annual accounts & annual returns*** are not filed by the company with ROC for consecutive three years **OR**
b. If the interest or the redemption payables is not paid on the ***public deposits*** for more than 1 year since the due date.

If the interest or principal amount is not paid on the public deposit and such default continues for a period more than 1 year than in such case ***all*** the directors in the board will be disqualified under this section.

The company in which such defaults are made should be a ***public company.***

Directors ***need not to vacate*** the office immediately.

Directors will ***not be qualified*** for new appointments or re-appointments as director.

Director can resign just before the default mentioned u/s 274(g) to avoid disqualification for 5 years.

Statutory Compliance –

a. Every person who proposed to be director before appointment shall file with the company declaration ***that he is not disqualified*** as Director u/s 274 (1) (g).
b. Statutory Auditor can also state in audit report regarding the directors disqualified u/s 274 (1) (g).
c. Whenever the company makes default described u/s 274 (1) (g), the companies are required to intimate to ROC by way of filling a return. The return should include the name, addresses and other details of the Directors of the company.
d. Central Government shall publish the names and addresses of the disqualified directors on the website of the Department of Corporate Affairs for the period of 5 years.

Relaxations –

The following directors shall not be disqualified u/s 274 (1)(g) –

a. Nominee Director (appointed by FI or companies established under parliament act)
b. Other nominees of public financial institutions, Central / State Government and Banking Companies.

Department has clarified that privately placed bonds / instruments / debentures etc. by the public financial institutions will not be considered u/s 274 (1) (g).

Following disqualifications can be dispensed off by the Central Government by issuing notification in Official Gazette –

- ***Convicted by court in the offence involving moral turpitude and sentenced for more than 6 months.***
- ***Non-payment of calls in arrears for time exceeding 6 months.***

Following disqualification can be dispensed off by the Court –

- ***Court disqualifying appointment u/s 203 on the grounds of fraud.***

Disqualification applies only when default is made in case of Public Deposits and not in case of the financial institutions.

Sec 274 (1) (g) is not applicable to private companies and government companies.

Sec 275 – No person to be director for more than fifteen Companies
275. No person to be a director of more than 4**[fifteen companies]**.—After the commencement of this Act, no person shall, save as otherwise provided in section 276, hold office at the same time as director in more than 2[fifteen companies].
No person shall act as director for ***more than 15 companies.*** Restriction is on holding office, thus a person can hold a position of a manager in any other company also.
Sec 276 – Choice to be made by director if the no. of companies in which he is a director exceeds fifteen.
276. Choice to be made by director of more than 3**[fifteen] companies at commencement of Act**.—(1) Any person holding office as director in more than 4[fifteen] companies

immediately before the commencement of [5][the Companies (Amendment) Act, 2000] shall, within two months from such commencement,—

(*a*) choose not more than [6][fifteen] of those companies, as companies in which he wishes to continue to hold the office of director;

(*b*) resign his office as director in the other companies; and

(*c*) Intimate the choice made by him under clause (*a*) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government.

(2) Any resignation made in pursuance of clause (*b*) of sub-section (1) shall become effective immediately on the dispatch thereof to the company concerned.

(3) No such person shall act as director—

(*a*) in more than [7][fifteen] companies, after the expiry of two months from the commencement of [1][the Companies (Amendment) Act, 2000]; or

(*b*) of any company after dispatching the resignation of his office as director thereof, in pursuance of clause (*b*) of sub-section (1)

<u>A person holding more than 15 companies directorship as on 13.12.2000 shall –</u>

a. Within 2months of such appointment select any company for resignation from the directorship so as to maintain 15 companies and
b. Intimate the choice to the ROC and CG.

Sec 277 – New appointment exceeding directorship to more than fifteen

277. Choice by person becoming director of more than [2][fifteen] companies after commencement of Act.—

(1) Where a person already holding the office of director in [3][fifteen companies] is appointed, after the commencement of [4][the Companies (Amendment) Act, 2000], as a director of any other company, the appointment—

(*a*) shall not take effect unless such person has, within fifteen days thereof, effectively vacated his office as director in any of the companies in which he was already a director; and

(*b*) shall become void immediately on the expiry of the fifteen days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid

(2) Where a person already holding the office of director in [5][fourteen companies] or less is appointed, after the commencement of [6][the Companies (Amendment) Act, 2000], as a director of other companies, making the total number of his directorships more than [7][fifteen], he shall choose the directorships which he wishes to continue to hold or to accept, so however that the total number of the directorships, old and new, held by him shall not exceed [8][fifteen].

None of the new appointments of director shall take effect until such choice is made; and all the new appointments shall become void if the choice is not made within fifteen days of the day on which the last of them was made.

<u>Where a person already holding 15 directorship is appointed as director of another company then –</u>

a. The new appointment shall not take effect unless under 15 days, the director vacates other company directorship.
b. The appointment will be void if such vacation is not done.

<u>Where a person already holding 14 directorship and is appointed as a director for</u>

<u>more than 2 companies than –</u> a. None of the new appointment will be valid unless he vacates any other company offices and makes choice of the new appointments. b. New appointments will be invalid if such choice not made.

Sec 278 – Exclusions for the purpose of Sec 275 to 277
278. Exclusion of certain directorships for the purposes of sections 275, 276 and 277.— (1) In calculating, for the purposes of sections 275, 276 and 277, the number of companies of which a person may be a director, the following companies shall be excluded, namely:— (*a*) a private company which is neither a subsidiary nor a holding company of a public company; (*b*) an unlimited company; (*c*) an association not carrying on business for profit or which prohibits the payment of a dividend; (*d*) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director. (2) In making the calculation aforesaid, any company referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.
• ***Private Company***
• ***Unlimited Company***
• ***Sec 25 Company***
• ***An alternate director***
• ***Foreign Company also has to excluded***

Sec 279 – Penalty for Contravention of Sec – 275 to 277
279. Penalty.—Any person who holds office, or acts, as a director of more than 1[fifteen companies] in contravention of the foregoing provisions shall be punishable with fine which may extend to 2[fifty thousand rupees] in respect of each of those companies after the first twenty3.
Any person holding office of a director of more than 15 companies shall be punishable with the fine which may ***extend to Rs. 50,000***.

Sec 280 to 282 - Repealed

<u>**Resignation, Removal and Vacation of Office of a Director –**</u>	
• Sec 283 – Vacation of Office of a Director	Pg. No. 25
• Sec 284 – Removal of a Director by shareholders	Pg. No. 27
• Sec 402 – Removal of a Director by CLB	Pg. No. 30
• Sec 388 B to E – Removal of Director by Central Government	Pg. No. 31
• Resignation by a Director	Pg. No. 26
• Sec 318 – Compensation for loss of office	Pg. No. 33

Sec 283 – Vacation of Office of a Director

283. Vacation of office by directors.—

(1) 4[The office of a director shall become vacant if—]

(*a*) he fails to obtain within the time specified in sub-section (1) of section 270, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company;

(*b*) he is found to be of unsound mind by a Court of competent jurisdiction;

(*c*) he applies to be adjudicated an insolvent;

(*d*) he is adjudged an insolvent;

5[(*e*) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;]

(*f*) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call 6[unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure;]

(*g*) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(*h*) 1[he (whether by himself or by any person for his benefit or on his account), or any firm in which] he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295;

(*i*) he acts in contravention of section 299;

(*j*) he becomes disqualified by an order of Court under section 203; 2[* * *]

(*k*) he is removed in pursuance of section 284; 3[or]

(*l*) Having been appointed a director by virtue of his holding any office or other employment in the company 4[* * *] he ceases to hold such office or other employment in the company 5[* * *].

(2) Notwithstanding anything in clauses (*d*), (*e*) and (*j*) of sub-section (1), the disqualification referred to in those clauses shall not take effect—

(*a*) for thirty days from the date of the adjudication, sentence or order;

(*b*) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(*c*) Where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

6[(2A) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (1), he shall be punishable with fine which may extend to 7[five thousand rupees] for each day on which he so functions as a director.]

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

Same as Disqualification u/s 274 (1) (g)	a. Found to be of ***unsound mind*** by the court. b. He is ***un-discharged insolvent.*** c. He has been ***applied to be adjudicated as insolvent.*** d. Convicted by Court of an offence involving ***moral turpitude*** and sentenced for more than ***6months.*** Will remain disqualified for ***5 years from the date of such sentence.*** e. ***Not paid calls*** for more than ***6 months.*** f. Order has been passed by the Court disqualifying him ***u/s 203.***
Sec 295	**Contravention of Sec 295** – where a director or any other person specified u/s 295 accepts the loan from public company in which he is a director.
Sec 299	**Contravention of Sec 299** – where a director fails to disclose his concern interest in any contract or arrangement.
Sec 284	A person who is removed from the office of a director u/s 284.
Sec 270	A person who fails to obtain Qualification shares as per Sec 270.
	A person who absents himself, without obtaining leave of absence from the Board – • From 3 consecutive board meetings or • From all board meetings held for 3 consecutive months whichever is longer
<u>Postponement of certain grounds of vacation</u> – The grounds mentioned in clause (b), (d) & (f) above shall not take effect – a. For ***first 30 days***; b. Where any appeal has been raised within such 30 days, until the ***expiry of 7 days*** from the date on which the appeal has been disposed off. c. Where any further appeal is preferred ***within 7 days***, until such appeal is disposed off.	
<u>Penalty for Contravention</u> If a director defaults under section 283, will be penalized with ***Rs. 5,000 per day.***	
Sec 318 – No compensation to a director vacating office u/s 283.	
Freedom of a private company to prescribe additional grounds for vacation of office but public company cannot have additional grounds.	
Vacation of office is automatic if a director defaults u/s 283.	
Sec 283 is applicable to all companies.	

Resignation from the post of Directorship
There is no specific provision for resignation from the post of Directorship in Companies Act or Table A.
Even Sec 283 does not include resignation as a ground for vacation of office.
<u>Certain General Provisions -</u> a. The resignation should be sent to the Board of Directors or to the company *(and not to the third party)* and should be written *(and not oral)*. It should also mention the date of effectiveness. b. Resignation does not mean relief from the liabilities and obligations prior to resignation holding of office. c. No AOA can provide that resignations from the directors cannot be accepted. d. Any conditions mentioned in AOA regarding Resignation of a Director has to be followed. e. Where a director is appointed for a certain fixed period and if he resigns unless having a reasonable reason, the company can sue for the damages.

Effectiveness of Resignation

Immediately	On Acceptance
• Where AOA does not contain any provision relating to resignation of directors. • AOA allows resignation to be accepted immediately • When resignation letter mentions the immediate effectiveness.	• Where AOA requires Acceptance of resignation. • Resignation letter mentions that resignation will take effect on acceptance.

Verbal Communication

- If given in the General Meeting and accepted by the shareholders.
- Even if the AOA provides that all resignations shall be submitted in writing.

Withdrawal of Resignation

- A director cannot withdraw his resignation without the consent of the company or Board of Directors even though the resignation was given in the General Meeting.
- A resignation can be withdrawn on the terms & conditions of board or company and also subject to the provision of the AOA.
- Board has no power to reject the withdrawal of Resignation unless requires by the AOA.

Resignation of a whole time directors

A managing director or whole-time directors are directors + employees. Hence, employee cannot resign unless accepted by the company. So the whole time director's resignation will be accepted only when accepted and he is relieved from the duties.

Where one of two the director died and the other wanted to resign, it was held that a letter of resignation left at the office of the company under intimation to the registrar was enough to make the resignation effective. It was not necessary to first co-opt a director and then hand over the resignation to him.

Neither the Company nor the Director has to submit the copy of resignation letter to ROC.

Sec 284 – Removal of Director by Shareholders

284. Removal of directors.—

(1) A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 408) before the expiry of his period of office:

Provided that this sub-section shall not, in the case of a private company, authorize the removal of a director holding office for life on the 1st day of April, 1952, whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 265 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) Special notice shall be required of any resolution to remove a director under this section, or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the

company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application[1] either of the company or of any other person who claims to be aggrieved, the [2][*Central Government*] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the [3][*Central Government*] may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board in pursuance of section 262, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(6) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 262, and all the provisions of that section shall apply accordingly:

Provided that the director who was removed from office shall not be reappointed as a director by the Board of directors.

(7) Nothing in this section shall be taken—

(*a*) as depriving a person removed there under of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or

(*b*) as derogating from any power to remove a director which may exist apart from this section

Company (Shareholders) can by Ordinary Resolution remove the director from office before the expiration of his office.

Notwithstanding any agreement with the director and conditions mentioned under AOA.

<u>The director can be removed by the shareholders provided the following procedures are followed –</u>

(Note – Any non-compliance of the following procedure will render the directors removal invalid)

1. Special Notice **(u/s 190)** is required from a member proposing the removal of the specific director. Only a member can issue a Special note. It should be served ***before the 14 days*** from the date of the meeting.
2. A ***Copy of Special Notice*** shall be sent to the concerned director.
3. Director has a ***right to prepare for the representation*** against the removal. The Director may request the company to send such representation to all the members.
4. The Company shall send a copy to all its members and specify the fact of representation made by the director in every notice calling meeting.
   If the representation is not sent due to some reason such as the representation received from the director was too late then in such case Director may ***read out his representation*** in the General Meeting.
5. At general meeting of the company, the proposal shall be discussed and the director will have the ***right to be heard*** at the general meeting.
6. If the ***ordinary resolution*** has been passed, than the director is removed and the company can appoint any other person as a director in his place provided Special Notice **u/s 190** has been received by the company for the ***appointment***,
7. If the vacancy prevails, then it can be filled by the Board of Directors **u/s 262**.

Where the directors attempt to avoid the removal by not attending the meeting or by making 'no quorum' situation then in such a case CLB will convene an EOGM u/s 186.

Consequences of Defamatory representation by the Director

Where CLB is satisfied that the representation made by the director is defamatory and the director is misusing his rights than CLB can order the following –

a. the representation need not to be sent to the members;
b. the representation need not be read out at the meeting; and
c. Cost incurred by the company or any other person for making such application to the CLB is paid in whole or part by the concerned director towards the cost incurred.

Directors cannot be removed by the Shareholders under section 284

a. Appointed by ***Central Government*** **u/s 408**
b. Appointed **u/s 265.** *(for example, where the company appoints 4 directors out of 6 directors* ***by way of proportional representation*** *than only 4 directors cannot be removed; the remaining directors can be removed u/s 284)*
c. Director of private company holding the office of the director ***for life***, appointed ***on or before 01.04.1952.***
d. Nominee Director appointed by the ***FI*** under their ***respective statutes.***

Grounds for removal –

A member cannot be restrained for calling general meeting by issuing special notice u/s 190 for removal director and appointing any other person in such place.
No reasons have to be stated by the member for such removal.

Sec 284 is not subject to Sec 188.
Even a single member holding single share can is eligible to give special notice.

As per Sec 188, a company is required to give a notice of the intention of a member to propose a resolution at the ensuring AGM only if such a requisition is signed by –

a. member holding 1/20th of the total voting power; or
b. 100 members holding paid up share capital of Rs.100,000
whichever is less

Note - AOA has no power for restrain removal of director.

Sec 318 - A Director can claim compensation if removed u/s 284.
This section is applicable to all the companies.

Removal of Directors by the Company Law Board – Sec 402

402. Powers of 10[*Tribunal*] on application under section 397 or 39811.—
Without prejudice to the generality of the powers of the 12[*Tribunal*] under section 397 or 398, any order under either section may provide for—
(*a*) the regulation of the conduct of the company's affairs in future;
(*b*) the purchase of the shares or interests of any members of the company by other members thereof or by the company;
(*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital
(*d*) the termination, setting aside or modification of any agreement,
howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:—
(*i*) the managing director,
(*ii*) any other director,
(*iii*) 1[* * *],
(*iv*) 2[* * *] and
(*v*) the manager, upon such terms and conditions as may, in the opinion of the 3[*Tribunal*] be just and equitable in all the circumstances of the case;
(*e*) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (*d*), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;
(*f*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be
deemed in his insolvency to be a fraudulent preference;
(*g*) any other matter for which in the opinion of the 4[*Tribunal*] it is just and equitable that provision should be made

If the CLB is satisfied that the oppression and mismanagement exists in the company on an application from the members (u/s 397,398 & 399), it may make such orders which CLB deems fit in the facts of case.

As per Sec 402, the company may set aside any contract or agreement with the Managing Director or Ordinary Director or manager shall be terminated, set aside or modified, the following consequences shall follow –

a. The director, MD or the manager, as the case may be, shall ***vacate*** his office.
b. ***No compensation*** will be entitled to.
c. May be disqualified for the period of ***5 years.***
d. No appeals against the conviction unless it is ***question of law*** and not facts.

CLB does not require to follow the procedures of Sec 284

Removal of Directors by Central Govt. – Sec 388B to 388E

388B. Reference to 4[*Tribunal*] of cases against managerial personnel.—

(1) Where in the opinion of the Central Government there are circumstances suggesting—

(*a*) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(*b*) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(*c*) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(*d*) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may state a case against the person aforesaid and refer the same to the 5[*Tribunal*] with a request that the 6[*Tribunal*] may inquire into the case and 7[record a decision] as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the 8[*Tribunal*] or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the 1[*Tribunal*] under this section shall be joined as a respondent to the application.

(4) Every such application—

(*a*) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(*b*) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government

(5) The 2[*Tribunal*] may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

388C. Interim order by 1[*Tribunal*].—(1) Where during the pendency of a case before the 1[*Tribunal*] it appears necessary to the 1[*Tribunal*] so to do in the interest of the members or creditors of the company or in the public interest, the 1[*Tribunal*] may on the application of the Central Government or on its own motion, by an order—

(*a*) direct that the respondent shall not discharge any of the duties of his office until further orders of the 1[*Tribunal*], and

(*b*) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the 1[*Tribunal*] may specify in the order.

(2) Every person appointed under clause (*b*) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

388D. Decision of the 1[*Tribunal*].—

At the conclusion of the hearing of the case, the 1[*Tribunal*] shall record its decision] stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.]

388E. Power of Central Government to remove managerial personnel on the basis of 1[*Tribunal's*] decision.—

(1) Notwithstanding any other provision contained in this Act, the 2[Central Government shall] by order, remove from office any director, or any other person concerned in the conduct and
management of the affairs, of a company, against whom there is a 3[decision of the 1[*Tribunal*] under this Chapter].4[* * *]5[(2) * * *]

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal:

Provided that the Central Government may, with the previous concurrence of the 6[*Tribunal*], permit such person to hold any such office before the expiry of the period of five years.

(4) Notwithstanding anything contained in any other provision of this Act or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.]

1. Opinion given by CLB.
2. CG has the power to remove any director or managerial person connected with the conduct of the company.
3. CG may make reference to CLB if following exists –
    a. Fraud / Negligence
    b. Breach of Trust
    c. Imprudent Business Practice
    d. Damages to Industry, etc
    e. Unlawful Business
4. Interim Order by CLB can be passed –
    a. Ordering that specific person shall not discharge its duties of his office
    b. Ordering the appointment of any other person as director to discharge those duties.

(CLB may pass such interim order suo motu (own its own) or by application made by CG) (Even such orders will be passed if CLB is of the opinion that it is necessary for the interest of the members to do so.)

5. Final Order or Decision by the CLB –
   CLB shall hear both CG and aggrieved party. At conclusion, CLB will give its decision.
6. Actions taken by Central Government –
    a. Removal
    b. No compensation for loss of office
    c. Disqualification for appointment for 5 yrs

d. Filing Casual Vacancy

Compensation for loss of Office – Sec 318

318. Compensation for loss of office not permissible except to managing or whole-time directors or to directors who are managers.—

(1) 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), to a managing director, or a director holding the office of manager or in the whole-time employment of the company, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(2) No such payment shall be made by the company to any other director.

(3) No payment shall be made to a managing or other director in pursuance of sub-section (1), in the following cases, namely:—

(*a*) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, 1[* * *] 2[* * *] manager or other officer of the reconstructed company
or of the body corporate resulting from the amalgamation;

(*b*) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(*c*) where the office of the director is vacated by virtue of section 203, 3[* * *] or any of the clauses (*a*) to 4[(*l*)], of sub-section (1) of section 283;

(*d*) where the company is being wound up, whether by 5[*order of the Tribunal*] or voluntarily, provided the winding up was due to the negligence or default of the director:

(*e*) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof;

(*f*) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office

(4) Any payment made to a managing or other director in pursuance of subsection (1) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold the office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premiums, if any), contributed by them:

(5) Nothing in this section shall be deemed to prohibit the payment to a managing director, or a director, holding the office of manager, of any remuneration for services rendered by him to the company in any other capacity.

1. Circumstances for payment of Compensation –
   Payment can be made to a director –
   a. by the way of compensation for removal from the office of a director u/s 284; OR

b. by way of compensation for loss of any other office which terminates along with the office of director; (E.g. Managerial Director) OR
c. as consideration for retirement for office

2. Compensation shall be paid to –
   a. Managing Director
   b. Manager
   c. Whole-time director

(Nominee and Non-executive directors are not entitled for the compensation)

3. <u>Prohibition of Compensation if loss of office is due to following –</u>
   a. Resignation
   b. Vacation u/s 283 or u/s 203.
   c. Due to negligence of director the company has to wound up.
   d. Directors guilty of fraud / breach of trust / negligence in conduct of affairs of the company or subsidiary or holding company.
   e. Where director is directly or indirectly responsible for termination.

4. <u>Effects of winding up on amount of compensation –</u>
   <u>No payment will be made if following two conditions exists –</u>
   a. Winding up of the company begins within 12 months from the cessation of the office of the director.
   b. Surplus remaining after winding up is not sufficient to repay to the shareholders the share capital ***(including the premium paid on shares)*** contributed by them.

5. <u>Restriction on quantum of compensation –</u>
   a. <u>Period</u>
   Compensation shall be paid for the period lower than the following –
   i. Three years; or
   ii. Remaining tenure
   b. <u>Basis</u>
   Compensation = Avg. Remuneration of past three years * no. of yrs as per point a.

Board Meeting Index

Board Meeting		
***There must be intension to meet and accident meeting of a director against the will of the others will not constitute a valid board meeting.* – Baron v/s Potter**		
<u>Following are the provisions related to Board Meeting in Companies Act, 1956 -</u>		
a. Minimum number of Board Meetings as specified must be held	Sec 285	
b. A Board Meeting must be called by proper authority.		
c. The notice of Board Meeting shall be in accordance of Sec 286.	Sec 286	
d. Act has not mentioned any length for calling a Board Meeting.		
e. Law does not require agenda of the Board Meeting to be mentioned in notice.		
f. The required Quorum must be present at Board Meeting.	Sec 287	
g. Law does not prescribe time, date & place of Board Meeting.		
h. Proper person must be in the chair.		
i. Minutes of the Board Meeting must be kept as per provisions Sec 193 to 195.	Sec 193	
j. Directors must sign the attendance book, if so required by AOA.		
k. A resolution can be passed by circulation unless otherwise mentioned in Act or AOA.	Sec 289	
l. Board may delegate the power to a committee of directors or any director or any officer or employee, if so authorized by AOA.		

Voting at Board Meeting
One director = One vote.
Majority will be decided by excluding the votes of directors who are abstained from voting and directors not present at the meeting.
If the votes equates then the resolution will be lost unless chairman uses casting vote.
<u>Act does requires unanimous votes in the following conditions –</u> a. **Sec 316** – Appointment of a person as a Managing Director and he is acting as a managing director or manager in other company. b. **Sec 386** – Appointment of a person as a Manager and he is also acting as a manager or managing director in other company. c. **Sec 372 A** - Making any inter-corporate investments, or giving any loan, guarantee or security to any other body corporate.
AOA may specify more cases where the resolution requires unanimous votes.
A director if present can vote only. ***Cannot vote remotely.***
Director excluded while voting if he has an interest in the contract or agreement. However this restriction does not apply to Private Companies ***(Interested Director can vote in Private Company Board Meeting unless otherwise mentioned in AOA).***
Board Resolutions ***are binding on all the directors*** even the absentee directors.
A director ***cannot appoint proxy.***

Authority to Call for Board Meeting
Act does not mention who can convene Board Meeting.
As per regulation 73 of table A, an individual director can request to the appropriate authority for scheduling Board Meeting. ***Appropriate Authority = Manager / Secretary.***
Secretary cannot in his, own capacity can call for Board Meeting. However such act can be ratified by the Board of Directors.

Sec 285 - Number of Board Meetings
1[**285. Board to meet at least once in every three calendar months.**—In the case of every company, a meeting of its Board of directors shall be held at least once in every 2[three months and at least four such meetings shall be held in every year]: Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.]
Applicable to all companies.
Interval between board meetings – a. Four board meetings in ***every calendar*** (Jan – Dec) year. b. One board meeting every quarter. (Clarification from the board i.e. one board meeting in ***every calendar quarter***)
Relaxations by the Central Government – Central Government has power to grant relaxations or exemptions for certain companies for the compliance of Sec 285.

Minimum number of Annual General Meetings – A company should hold AGM ***each calendar year*** and ***not more than 15 months gap*** between two AGM. A company can hold ***first AGM*** within a period of ***18 months*** from the ***date of incorporation (such cannot be relatable to the year).*** Registrar can extend such time limits for any special reason by a period ***not exceeding additional three months.***

Place, Time and Date of a Board Meeting	
Place of a Board Meeting	
AGM	**Board Meeting**
Sec 166 requires that the AGM shall be held at the registered office or in the city / town / village where the Registered Office is located.	There is no such section for Board Meeting. Hence can be conducted anywhere. There was a contradicting Sec 301, which was resolved by the clarification from the Department regarding non removal of Register of Contracts outside the Registered Office.
Day of a Board Meeting	
AGM	**Board Meeting**
Original Meeting – Sec 166 requires the day of meeting should be other than a public holiday *unless otherwise mentioned in AOA.*	**Ordinary Meeting -** No such section for board meeting and hence can be held on any day even on public holiday unless otherwise mentioned in AOA.

Adjourned Meeting –	**Adjourned Meeting – Sec 288** states that if the board meeting is adjourned due to the want of quorum than such adjourned meeting will be held in next week, same day time and place. If such a day is public holiday then next day. If AOA provides that the adjourned meeting can be held on public holiday than Board Meeting on a public holiday is valid.
<u>Time of a Director</u>	
AGM	**Board Meeting**
Sec 166 requires the board meeting to be held during usual business hours.	No such section for board meeting and hence, can be held after business hours.

Sec 166 –

- **Company can by its AOA can fix the date, time and place of the AGM in advance.**
- **Even a resolution can be passed by the company in AGM for fixing the variables for next AGM.**
- **Consequences where the company fails to comply with Sec 166 – any member can apply to CLB and demand for the AGM and the person in default shall be punishable with the fine.**
- **AGM is a statutory requirement and has to be called even when the company is not in operations.**
- **Cancelling or postponing an AGM is possible for a proper reason to support with.**
- **Where accounts are not ready is inappropriate reason for cancelling or postponing the AGM and such reason is not legally accepted. However, such default is not punishable if the books are seized by the authorities and the management is helpless.**
- **If the company is in the position where the accounts are not ready and there is no seizure of books. In such case, the AGM should be called, all the resolutions other than the accounts need to be passed and the meeting should be adjourned.**

Sec 286 - Notice of a Board Meeting

286. Notice of meetings.—(1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
(2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to 3[one thousand rupees].

<u>Notice to be in writing –</u>

a. Oral or telephone notice not appropriate.
b. Telegram / Fax / Email etc. are valid.
c. Notice must be definite and should not have ambiguity.

<u>Notice to whom –</u>

a. Notice to be given to all directors for time being in India. Sec 286 does not require the notice to be ***only mailed or sent*** at the usual place of residence. It can be ***delivered hand to hand*** also.
b. Notice to a director should be sent to the usual place of residence for the directors outside India. Even if there is a foreign director who permanently stays outside India, as per sec 286 notices has to be sent to the usual place of residence in India.
If AOA provides that the foreign going director has to be given notice at the foreign location also, then the company has to comply with the provisions.

c. **<u>Case – Kamal Kumar Dutta v/s Ruby General Hospital Ltd</u>**. The CLB has held that if the notice is sent to the director who mostly lives abroad than the notice delivered at usual place of residence in India will not be material. Therefore the notice is inadequate and the board meeting will be held invalid. d. Notice shall be issued to the interested director who is abstained from voting. e. Notice should be served to additional and alternate directors also. f. Notice has to be sent to each and every director, even though the director expresses willingness not to attend the board meeting.
If AOA prescribes certain rules / conditions for the notice of board meeting then it should be followed.
If the notice includes the dates of board meeting for the future then such notice cannot be held invalid since there is no format prescribed under Sec 286. *E.g. – A notice was issued regarding the board meeting which will be held at 10.30 a.m. for three consecutive months starting from April on 10^{th} day of each month at the Registered Office is a valid notice.*
If the future dates of board meeting are specified in AOA then in such case no notice is required to be served.
<u>***No notice for adjourned meeting*** is to be given since it is the continuation of a original meeting except following cases –</u> a. If adjournment is for indefinite period, or b. If AOA specifies issuance of notices for adjourned meeting.
The burden of proof is on the director who claims that the notice was not served to him. The court will assume that the company has followed the rules and regulations as per the Act and AOA. If such directors prove that the notice was not served as per Sec 286 than the burden of proof otherwise shifts on the company.
<u>Improper Notice Consequences –</u> a. Meeting shall be held invalid – if notice was not properly served to all director, if certain strangers participate in the meeting and short notice was given or accidental omission, etc. b. Ratification of improper notice is possible especially if the directors ratify in the subsequent meeting when the absent directors for the prior meeting were present. The effective date will be the date of the original meeting. c. Meeting not to be called void if the director to whom the notice was not sent attends the meeting.

<u>Notice for AGM –</u>

- **At least 21 days notice shall be given to the shareholders for AGM. – Sec 171**
- **AGM can be called for shorter notice if agreed by all the members entitled to vote.**

Length of notice for calling Board Meeting
Sec 286 does not specify minimum no. of days for calling a board meeting.
<u>As less as ten minutes are also capable for conducting a valid board meeting.</u> <u>However –</u> a. A good secretarial practice requires at least 7 days notice prior to the board meeting. b. **<u>Browne v/s La Trinidad</u>.** *A few minutes' notice will also be considered as sufficient if all directors agree to meet at such notice.*

c. **<u>Homer District Consolidated Gold Mines.</u>**
A few hours notice was held to be invalid where it did not state the purpose of the board meeting and resulted in the absence of certain directors who would have objected to the proposal.

d. **<u>T.M. Paul v/s City Hospital Pvt. Ltd</u>.**
Where a meeting was called at time when certain directors were absent and the opportunity was seized to pass certain resolutions, this was held to be fraudulent exercise which invalidated the meeting.

The notice must be reasonable so that all the directors' gets chance to attend the meeting.

<u>*Sec 171* states about the length of the notice for the annual general meeting –</u>
- **At least 21 days notice shall be given to the shareholders for AGM. – Sec 171**

<u>AGM can be called for shorter notice if -</u>
- **All the members who are entitled to vote agrees and has no objection against such length of the notice**

Agenda of a Board Meeting

<u>Agenda is not required –</u>

a. No Section requires agenda to be included in board meeting notice. Even no contents or form of notice has been prescribed. Hence, no agenda is required.
b. Even if the agenda is mentioned in the notice than to the board can discuss about the business transactions other than mentioned in agenda.
c. Compulsory if required by AOA.
d. Good secretarial practice requires forming a detail agenda which is to be included in the notice.

<u>Specific Notices required in certain cases (Compulsory)–</u>

a. **Sec 316** – Appointment of a person as a managing director if he is already a managing director / manager in any other company.
b. **Sec 386** – Appointment of a person as a manager if he is already a managing director or a manager in any other company.

<u>Non-Circulation of agenda must not amount to fraud -</u>
<u>Homer District Consolidated Gold Mines</u>
A few hours notice was held to be invalid where it did not state the purpose of the board meeting and resulted in the absence of certain directors who would have objected to the proposal.

Sec 287 -Quorum of a Board Meeting

287. Quorum for meetings.—
(1) In this section—
(*a*) "total strength" means the total strength of the Board of directors of a company as determined in pursuance of this Act, after deducting there from the number of the directors, if any, whose places may be vacant at the time; and
(*b*) "interested director" means any director whose presence cannot, by reason of section 300, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter
(2) The quorum for a meeting of the Board of directors of a company shall be one-third of

its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher: Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested 1[present at the meeting being not less than two], shall be the quorum during such time.
Minimum Required Quorum at a Board Meeting – As per Sec 287(2), the quorum should be higher of – a. $1/3^{rd}$ of total strength (any fraction shall by rounded to one); **or** b. Two Directors If the quorum is not present as per Sec 287(2) and the no. of interested directors exceeds or equals $2/3^{rd}$ of the total strength, then quorum will be the higher of the following – a. No. of disinterested directors present at the meeting; or b. 2 directors. Meaning of total strength will exclude total strength excluding vacant places.
Quorum for a Committee of Directors - a. The quorum for a committee of directors shall be decided by the Board of Directors while forming the committee. b. Where such quorum is not decided, whole of the committee should meet. ***The board may delegate any of its powers to a committee consisting of such member or members as it deems fit. Thus, a committee of director may consist of a single member and a single member can form a quorum.***
Board Meeting without quorum (Consequences) – a. Board meeting without quorum is invalid. ***b. Even ratification is impossible.***
Quorum should be present throughout the year.
Whether interested directors are counted in quorum? **Public Co** – Sec 300 applies. All the interested directors must be excluded while considering the quorum. ***Quorum shall consist of disinterested directors only.*** **Private Co** – Sec 300 does not apply. Hence, even interested person shall be considered while forming quorum.
Alternate director shall be included and counted for quorum.
AOA may provide for a larger quorum but shall not reduce, when compared with Sec287 (2).
If the number of directors falls below the quorum then the present directors can act for the following – a. Summoning the board meeting. b. Board may increase the number of directors.
No sitting fee for adjourned meeting, since it is the continuation of the original meeting.

Minimum requirement of Quorum – • **Five in case of public company or two in case of other company; or** • **As per Articles** **whichever is *higher***

Sec 288 – Adjournment of board meeting for want of quorum

288. Procedure where meeting adjourned for want of quorum.—(1) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the 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, till the next succeeding day which is not a public holiday, at the same time and place.

(2) The provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.

If the board meeting could not be held for the want of quorum, the meeting shall be adjourned as follows –

> Adjournment to next week, same day, time and place. If that place falls on a public holiday than the succeeding day. But if AOA mentions another day than on such day, even though scheduled on a public holiday.

Adjournment of a Board meeting will not said to contravene Sec 285, which requires minimum no. of board meetings during a year.

No fresh notice for adjourned board meeting is required to be issued.

Recourse when the adjourned board meeting is adjourned again due to lack of quorum -

If the number of directors falls below the quorum then the present directors can act for the following –

a. ***Board may summon at general meeting whereat the shareholders will consider and transact the proposed business by passing the required resolution. or***
b. ***Board may appoint additional disinterested directors, if so authorized by AOA. Such additional directors will form the quorum and the board can transact further.***

Chairman of the board meeting

Functions of a Chairman –

a. His main function is to preside over the meeting and conduct them in orderly manner.
b. To ensure that the meeting is duly convened and properly conducted, the business transactions in accordance with the Act, MOA and AOA.
c. To ensure that the sense of meeting is accurately ascertained.

Appointment –

No statutory provision for appointment of a chairman.

Regulation 76of table A states –

a. The board may elect its chairman for a period.
b. If such chairman is not appointed or is absent in the board meeting then within 5 minutes a new chairman has to be elected from the present directors.

Who can be a Chairman?

a. No proxies allowed.
b. Not required that only whole time director be a chairman. Even a part time director can be chairman.
c. A director may be a non-shareholder (if QS not required), can be appointed as chairman.

Casting Vote -

Case where for passing the resolution no. of votes for and against are equal. In such a case before the resolution is lost, a chairman can cast his casting vote to remove such deadlock.

Minutes of a Board Meeting (Sec 193)
193. Minutes of proceedings of general meetings and of Board and other meetings.—1[(1) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within 2[thirty] days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered. (1A) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed— (*a*) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting; (*b*) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 3[thirty] days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose. (1B) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise.] (2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. (3) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting. (4) In the case of a meeting of the Board of directors or of a committee of the Board, the minutes shall also contain— (*a*) the names of the directors present at the meeting; and (*b*) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring in, the resolution (5) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting— (*A*) is, or could reasonably be regarded as, defamatory of any person; (B) is irrelevant or immaterial to the proceedings; or (*C*) is detrimental to the interests of the company. *Explanation.*—The chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section. (6) If default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to 1[five hundred rupees].
Time limit for preparing the minutes – 30 days from the date of board meeting.
<u>Contents of board minutes book –</u> a. Names of the directors absent & asking for leave for absence & present. b. All the appointments of officers made at board meeting. c. The fact of disclosure of interest made by a director and the fact shall be read in the meeting.

d. The fact of unanimity of decision required u/s 316, 386 & 372A.
e. The fact of granting leave of absence to a director.

Signing of Minutes book –

Minutes book must be serially number and signed on the last page and initials on other pages by the following –

a. Signed by the chairman of the same meeting; or
b. Signed by the chairman of succeeding meeting.

Note – there is no provision for the time limit regarding the signing of the board minutes by the chairman.

Powers of the chairman –

The chairman has a power for absolute discretion so as to include or exclude any matter in the minute book. He may also exclude it if he of the following opinions –

a. It will be defamatory to any person; or
b. It is irrelevant piece of information; or
c. It is detrimental to the interests of the company.

Inspection of a minutes book –

Following person can inspect the minutes book –

a. Unless contradicting mentioned under AOA, minutes of board meeting is open for shareholders to inspect.
b. All directors
c. Auditors of the company
d. ROC
e. Any officer authorized by the Central Government

Presumptions drawn from minutes book -

- The meeting is duly called and held.
- That all the proceedings at the meeting have taken place.
- That all the appointments made at the meeting are valid.

Miscellaneous Points -

a. In no case, the minutes shall be pasted in the minute book.
b. Even no actions will be taken by the Department if the minutes are maintained in loose leaf form unless following conditions are maintained –
   i. The pages should be serially numbered.
   ii. Adequate safeguards must be taken to avoid falsification. There should be proper locking system and proper control when removed.
   iii. Such leaf must be bound in books within the period of 6 months.
c. There is no legal requirement of obtaining confirmation of minutes in the subsequent meeting by the chairman.
d. No separate minutes for adjourned meeting, since it is a continuing meeting.
e. There is no time limit for signing the board minutes by the chairman.

Attendance book
There is no such provision for the requirements of the attendance book at the board meeting unless AOA otherwise mentions. But it is a good secretarial practice to maintain such attendance book, so as to fix the responsibility and determine the disqualification of a director for non-attendance for the period mentioned u/s 283. The director if attended the meeting has to sign against his name. Such will be held as proof of attendance.

Sec 289 - Resolution by Circulation

289. Passing of resolutions by circulation.—No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution.

<u>Requirements of passing a resolution by circulation -</u>

a. Minimum no. of directors present in India
   At least minimum number of directors required in a quorum must be in India.
b. Circulation of draft resolution
   Circulation of draft resolution along with the necessary papers to all directors / members at the time in India and those not in India, at their usual place of address. (i.e. All directors)
c. <u>Approval of resolution</u>
   If any of the following signs, the resolution is passed -
   i. All the directors in India shall sign; or
   ii. Majority of all the directors (irrespective to in India or outside) who are disinterested signs.

<u>When can resolution cannot be passed by circulation –</u>

a. Any matter expressed in the AOA which cannot be passed by the Circulation.
b. <u>Any matter which act disallows –</u>
   i. Filing of casual vacancy.
   ii. Making a political contribution.
   iii. Making inter-corporate loans and investments.
   iv. A resolution enumerating the powers under section 292 (1) (a-e)

Passing of resolutions will not dispense the minimum number of board meeting requirements.

A resolution passed by the circular should be formally noted in the next board meeting minute book.

A committee can also pass a resolution by circular.

Sec 290 - Validity of acts of Directors

290. Validity of acts of directors.—Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

<u>Validity of Acts of Director</u>

Ordinary Director

<u>Valid even though that following may be discovered afterwards –</u>

a. Appointment was invalid by reason of any default / disqualification
b. Appointment was terminated by virtue of Act or AOA

<u>Void if –</u>

a. Where appointment is illegal or there exist no appointment or
b. Where the appointment is shown to the company as invalid or terminated
c. Where acts are ultra-virus the Companies Act.

Whole-time Director / MD / Manager / Chairman

Acts of the above is void under ***Sec 290.***

But protection is given u/s 269 for the acts of MD / Manager / Whole-time Director.

Sec 291 – General Power of the Board

291. General powers of Board.—

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

Provided further that in exercising any such power or doing any such act or thing, the

Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made there under, including regulations made by the company in general meeting.
(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

Board of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is empowered to exercise and do subject to –

a. Any Act or this act or MOA or AOA specifically states that such power can be exercised only at the general meeting.
b. The exercise of power should not be inconsistent with any act or this act or MOA or AOA or regulations made in General Meeting.

No Regulations made by the company shall be invalidated the prior acts of the directors by the members in the general meeting, if such acts would have remained valid unless invalidated by such regulation.

Sec 292 – Certain powers exercisable only at Board Meeting

292. Certain powers to be exercised by Board only at meeting.—
(1) The Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board:—
(*a*) the power to make calls on shareholders in respect of money unpaid on their shares;
1[(*aa*) the power to authorize the buy-back referred to in the first proviso to clause (*b*) of sub-section (2) of section 77A;]
(*b*) the power to issue debentures;
(*c*) the power to borrow moneys otherwise than on debentures;
(*d*) the power to invest the funds of the company; and
(*e*) the power to make loans:
2[Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, 3[* * *] the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (*c*), (*d*) and (*e*) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe:
Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.
Explanation I.—Nothing in clause (*c*) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.
Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (*c*) of subsection shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day to day operation on

overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.]

(2) Every resolution delegating the power referred to in clause (*c*) of subsection (1) shall specify the total amount 1[outstanding at any one time] up to which moneys may be borrowed by the delegate.

(3) Every resolution delegating the power referred to in clause (*d*) of subsection (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate

(4) Every resolution delegating the power referred to in clause (*e*) of subsection (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases

(5) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (1).

01. <u>Power exercisable only a Board Meeting –</u>

a. Making calls on shares
b. Authorization of buy-back of shares (u/s 77A (2)(b)) without passing special resolution subject to following conditions –
   i. Board Resolution has been passed.
   ii. Buy-back is not more than 10% of the total paid up equity share capital and free reserves of the company; and
   iii. No offer of buy- back will be made within 365 days from the date of the preceding offer of buy-back, if any.
c. Issuing debentures
d. Borrowing money otherwise than on debentures
e. Investing funds of the company.
f. Making loans

02. <u>Delegation of Power –</u>

a. <u>Delegated to –</u>
   i. Committee of directors
   ii. Managing directors
   iii. Manager
   iv. Principal officer of the company
   v. Principal officer of the branch office
b. <u>Delegation subject to conditions –</u>
   i. Resolution delegating power shall be passed at a board meeting.
   ii. Resolution passed at the board meeting shall specify –

Where powers u/s 292(1)(c) are delegated	Where powers u/s 292(1)(d) are delegated	Where powers u/s 292(1)(e) are delegated
The total amount outstanding at any one-time up to which moneys may be borrowed.	(a) The total amount up to which funds may be invested. (b) The nature of investments that may be made.	(a) The total amount up to which loans may be made. (b) The purpose for which loans may be made. (c) The maximum amount of loans for each purpose in individual case.

c. No contravention of Sec372A

03. <u>Provision applicable to Banking Company –</u>

(a) <u>Borrowings exclude –</u>

i. Borrowings from banks and RBI

ii. Accepting deposits from customers

(b) Loans exclude deposits made with other banking companies.

Sec 293 – Powers of Board exercisable with the consent of members at general meeting.

293. Restrictions on powers of Board.—

(1) The Board of directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting,—

(*a*) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking;

(*b*) remit, or give time for the repayment of, any debt due by a director [1][except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business;]

(*c*) invest, otherwise than in trust securities, [2][the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act], of any such undertaking as is referred to in clause (*a*), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time;

(*d*) borrow moneys after the commencement of this Act, where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose; or

(*e*) contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed [1][fifty thousand rupees], or five per cent, of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

[2][*Explanation* I.—Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (*d*) or in clause (*e*) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (*d*) or as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (*e*).

Explanation II.—The expression "temporary loans" in clause (*d*) means loans repayable on demand or within six months from the date of the loan such as short term, cash credit arrangements, the discounting of bills and the issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.]

[3][*Explanation* III].—Where a portion of a financial year of the company falls before the commencement of this Act, and a portion falls after such commencement, the later portion shall be deemed to be a financial year within the meaning, and for the purposes, of clause (*e*).

(2) Nothing contained in clause (*a*) of sub-section (1) shall affect—

(*a*) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution; or

(*b*) the selling or leasing of any property of the company, where the ordinary business of the company consists of, or comprises, such selling or leasing

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (*a*) of sub-section (1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction:
Provided that this sub-section shall not be deemed to authorize the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.
(4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (*d*) of sub-section (1).
(5) No debt incurred by the company in excess of the limit imposed by clause (*d*) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Sec 293A – Prohibition on Political Contribution

293A. Prohibitions and restrictions regarding political contributions.—
(1) Notwithstanding anything contained in any other provision of this Act:—
(*a*) no Government company; and
(*b*) no other company which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly,—
(*i*) to any political party; or
(*ii*) for any political purpose to any person
(2) A company, not being a company referred to in clause (*a*) or clause (*b*) of sub-section (1), may contribute any amount or amounts, directly or indirectly,—
(*a*) to any political party; or
(*b*) for any political purpose to any person:
Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.
Explanation.—Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning and for the purposes, of this sub-section.
Provided further that no such contribution shall be made by a company unless a resolution authorizing the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorized by it.
(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2),—
(*a*) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;
(*b*) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed,—
(*i*) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
(*ii*) where such publication is not by or on behalf of but for the advantage of a political party, to

be a contribution for a political purpose to the person publishing it
(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.
(5) If a company makes any contribution in contravention of the provisions of this section,—
(*a*) the company shall be punishable with fine which may extend to three times the amount so contributed; and
(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine]
1[Explanation.—*For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951* (*43 of 1951*).]

Meaning of Political Contribution –

Any Contribution made directly or indirectly to –

a. Any political party; or
b. Any person for the political purpose.

Prohibition / Restriction on Political Contribution

Total Prohibition

a. ***Government Company.***
b. ***Any other Co. which has existence for less than 3 financial years.***

Restrictions

Capped Contribution = 5% of Avg. Net Profit (u/s349 & 350) during immediate 3 preceding FY.

Conditions –

a. Only Board can authorise Political Contribution by passing Board Resolution.
b. Even if the Special resolution is passed in General Meeting for increasing the capped.
c. Disclosure –
   (i) Amount of political contribution
   (ii) Name of person / party to whom such contribution has been made.

Penalty -

a. Fine may extend three times of amount so contributed and
b. Imprisonment up to 3 years and shall be fined.

Sec 293B – Contribution to NDF (National Defence Fund)

293B. Power of Board and other persons to make contributions to the National Defence Fund, etc.—

(1) The Board of directors of any company or any person or authority exercising the powers of the Board of directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 293 and 293A or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central

Government for the purpose of national defence.
(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.]

01. Contribution to approved funds –

Company is empowered to contribute such amount as it thinks fit to –

a. NDF or
b. Any other fund approved by Central Government for the purpose of National Defence

02. **Exercise of Powers** -

a. Board can pass a Board Resolution in a Board Meeting; or
b. Any person or authority empowered by the Board; or
c. The company in the General Meeting.

03. Disclosure –

Every company shall disclose in its Profit and Loss account amount contributed by it to the funds approved under section 293B.

04. Overriding effect of Sec 293B

a. It overrides Sec 293 and Sec 293A
b. It also overrides MOA or AOA which restricts such contribution.

Sec 294 & 295 – Loans to Directors

295. Loans to directors, etc.—

(1) Save as otherwise provided in sub-section (2) no company (hereinafter in this section referred to as "the lending company" 1[without obtaining the previous approval2 of the Central Government in that behalf shall, directly or indirectly,] make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by,

(*a*) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
(*b*) any firm in which any such director or relative is a partner;
(*c*) any private company of which any such director is a director or member;
(*d*) anybody corporate at a general meeting of which not less than twenty five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(*e*) Anybody corporate, the Board of directors, managing director or manager whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

4[(2) Sub-section (1) shall not apply to—
(*a*) any loan made, guarantee given or security provided—
(*i*) by a private company unless it is a subsidiary of a public company, or
(*ii*) by a banking company;
[(*b*) any loan made by a holding company to its subsidiary company;]
[(*c*) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company]

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided,

notwithstanding any agreement to the contrary.

(4) Every person who is knowingly a party to any contravention of subsection (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to [3][fifty thousand rupees] or with simple imprisonment for a term which may extend to six months:

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(5) All persons who are knowingly parties to any contravention of subsection (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

(6) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (4) or shall incur the liability referred to in sub-section (5) in respect of any loan made, guarantee given or security provided [4][after the 1st day of April, 1956] in contravention of clause (*d*) or (*e*) of subsection (1) unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that that clause was being contravened thereby.

[1][**296. Application of section 295 to book debts in certain cases.—**

Section 295 shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.]

01. Requirement of Section –

Without prior approval of the Central Government, no company shall directly or indirectly make loans or guarantee / security to any specified person.

02. Person Specified u/s295, i.e. Specified Person

a. Director of lending company or of a company which is holding company.
b. Relative of such director
c. Partner of such director
d. Firm in which such director or any relative is a partner
e. Private company in which such director is a member or director
f. Body corporate having to exercise 25% voting power clubbing the voting power of two or more such directors.

03. Non-Applicability of Sec 295 –

a. Private company
b. Banking company
c. Loan made or security / guarantee given to holding or subsidiary

04. Consequences of Contravention –

a. Every person knowing contravening will be fined Rs.50000 or simple imprisonment up to 6months.
b. All the parties knowing contravening will be liable to pay to the lending company the repayment in full. And such liability will be several and joint on all the defaulters.
c. If loan is repaid in full, then the imprisonment punishment is waived off.
d. Director has to vacate the office under section 283.

05. No Retrospective Effect –

a. Where loan has been made in the past to a person, who has become the director of the company. Hence Sec 295 will not apply.
b. Where a private company converting into a public company, Sec 295 will not apply to the old loans given.

06. Advances made in the ordinary course of business is not covered under

section 295

07. Security deposit is not a loan.

<u>Meaning of loan –</u>

Loan means an advance of money (i.e. financial assistance) upon the understanding that it shall be paid back. Loan may or may not carry interest. Where a company sells its flat to a director it is not a loan but a general credit allowance. Hence, Sec 295 will not get attracted.

Sale of flat aforesaid case does not amount to an indirect loan also. The word 'indirectly' used under section 295 only means that the company shall not give a loan to a director through the agency of one or more intermediaries. The word 'indirect' cannot be read as converting what is not a loan into a loan. (Dr. Fredie Ardeshir Mehta v/s UOI.

Sec 297 – Boards sanction required for certain contracts

297. Board's sanction to be required for certain contracts in which particular directors are interested.—(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company—

(*a*) for the sale, purchase or supply of any goods, materials or services; or

(*b*) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:

[2][Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval[3] of the Central Government.[4]]

[5][(2) Nothing contained in clause (*a*) of sub-section (1) shall affect—

(*a*) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or

(*b*) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; or (*c*) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2) a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of

the contract shall be voidable at the option of the Board.
(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

Nature & Parties to Contract

Sale / Purchase / Supply of Goods, Material or Services

And

Related Parties to the contract –

a. Director of a company;
b. Relative of a Director;
c. Firm where Director / Relative is a partner
d. Any other partner in such firm
e. Pvt. Co. in which he is director or member

↓

Requirements u/s 297

a. Consent of a Board of Directors by passing Board Resolution contract wise and not period wise.
b. Prior approval of CG if the share capital exceeds 1 crore.

Sale / Purchase Supply of Goods / Material / Services below Rs.5000 and for both parties the transaction are regular business transaction. OR

Cash Purchases at prevailing market price. OR

Contract for purchase / Sale / Supply of immovable asset OR

Employment Contract OR

Professional Service Contract

↓

Sec 297 does not applies

Notes -

a. Also does not apply to insurance and banking companies.
b. If it is very much urgent necessity to contract u/s297, no prior approval of board is required and the Board can ratify with the period of 3 months from date of such transaction. But such relaxation is not available for Central Government permission.
c. No retrospective effects.
d. Not applicable to Government Companies

Contravention of Sec 294 –

a. If the CG approval is not required –
   A contract becomes voidable at the option of the Board.
b. If the CG approval is required –
   A contract becomes illegal and void

Procedure –

a. Board Meeting shall discuss the terms of the contract.
b. Director shall disclose the nature of his interest in the board meeting. The disclosure shall be made at the BM at which the question of entering into the contract is first considered (Sec 299)
c. The Director shall not –
   i. Participate in the discussion on such contract;
   ii. vote thereon (even if he votes, his votes shall be void)
   iii. be counted for the purpose of quorum at the time of discussion and voting on such contract (Sec 300);
d. If the contract is found suitable, the Board shall pass a resolution, subject to approval of the Central Government, giving its consent to enter into the contract. Such consents cannot be given by passing a resolution by circulation or by passing a resolution at a meeting of committee of directors.
e. The prescribed particulars of the contract must be entered in the register maintained under Sec 301within 7 working days of the Board Meeting.
f. An application to the CG shall be made in the prescribed form. Following enclosures shall accompany the application:
   i. Certified copy of BR approving contract
   ii. Certified copy of the agreement containing the particulars of contract
   iii. Bank draft / challan evidencing the payment of prescribed fees.

Sec 298 – Repealed

Sec 299 – Disclosure of Interest by a Director

299. Disclosure of interest by director.—

(1) Every director of a company, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose[1] the nature of his concern or interest at a meeting of the Board of directors.

(2)(*a*) In the case of a proposed contract or arrangement the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested.

(*b*) In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(3)(*a*) For the purposes of sub-sections (1) and (2), a general notice given to the Board by a director to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(*b*) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

(*c*) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given.

(4) Every director who fails to comply with sub-section (1) or (2) shall be punishable with fine which may extend to [1][fifty thousand rupees].

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contracts or arrangements with the company.

[2][(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company.]

01. <u>Intension behind the Section –</u>

A director being in a fiduciary position towards the company. Therefore he should not make profit from his position except with the consent of the company to which he owns the disclosure of his interest.

02. <u>Disclosure of Interest –</u>

Every director who is in any way, ***directly or indirectly interested*** in a ***contract*** or an ***arrangement*** shall disclose the ***nature of his interest.*** Same applies to even ***proposed*** contract or proposed arrangement.

03. <u>Mode of Disclosure –</u>

Specific Disclosure	General Disclosure
The disclosure shall be made at the Board Meeting by the Director at the time at which the question for the contract is considered or at any time thereafter he becomes interested, whichever is earlier.	Sufficient disclosure of interest shall be made by the interested director in other entities (body corporate / firm / Individuals) only at the board meeting and such shall be read out in the meeting. Moreover, it will remain valid till the end of the FY. It can be renewed by issuing it the last month of the end of the above mentioned FY.

04. <u>Consequences of non-disclosure –</u>

a. Vacation u/s 283
b. Fine for non-disclosure is Rs.50,000
c. Additional fine if Sec 283 is contravening (director not vacating the office knowingly) is Rs. 5000 per day continuing offence.

05. <u>Non- Applicability of Sec 299 –</u>

If the two companies entering into an agreement or contract, where any of the directors (individually or in combination) holds not more than 2% of the paid up share capital of other company.

If the cumulative shareholdings of all the directors along with the relatives exceed 2% of the paid up capital of the other company, no exemption will be available.

Arrangements *= includes all the transaction which are out of legal bound.*

Disclosure is not required if known by all the Directors

The relationships of husband, wife, child, brother, sister, parents, etc are considered influential and will be considered.

Applicable to both private and public company

Scope of Sec 299 v/s Sec 297

Sec 299 is wider in scope as compared with Sec 297. Sec 297 applies to when there is a contract of sale / purchase / supply of goods / services or underwriting of shares / debentures. But, Sec 299 applies to all the contracts and even arrangements. Sec 297 is stricter, since it requires the approval of the central government whereas Sec 299 requires only disclosures.

Sec 300 – Interested director not to participate or vote

300. Interested director not to participate or vote in Board's proceedings.—
(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.
(2) Sub-section (1) shall not apply to—
(*a*) a private company which is neither a subsidiary nor a holding company of a public company;
(*b*) a private company which is a subsidiary of a public company, in respect of any contract or arrangement entered into, or to be entered into, by the private company with the holding company thereof;
(*c*) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company;
(*d*) any contract or arrangement entered into or to be entered into with a public company, or a private company which is a subsidiary of a public company, in which the interest of the director aforesaid 1[consists solely—
(*i*) in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1), or
(*ii*) in his being a member holding not more than two per cent of its paid up share capital;]
(*e*) a public company, or a private company which is a subsidiary of a public company, in respect of which a notification is issued under sub-section (3), to the extent specified in the notification
(3) In the case of a public company or a private company which is a subsidiary of a public company, if the Central Government is of opinion that having regard to the desirability of establishing or promoting any industry, business or trade, it would not be in the public interest to apply all or any of the prohibitions contained in sub-section (1) to the company, the Central Government may, by notification in the Official Gazette, direct that that subsection shall not apply to such company, or shall apply thereto subject to such exceptions, modifications and conditions as may be specified in the notification.
(4) Every director who knowingly contravenes the provisions of this section shall be punishable with fine which may extend to 2[fifty thousand rupees].

01. Interested Directors are prohibited to vote, excluded for participation for discussion and also excluded for counting quorum.

02. Not Applicable –
    a. Private Co.
    b. Private Co. (Subsidiary Co.) contracts with Public Co. (Holding Co.)
    c. Express exemption through notification by CG to any Public Co.
    d. A contract of indemnity against any loss which the directors may suffer by reason of being sureties for the company.

In Private Company, interested directors are subject to Sec 299 but Sec 300 does not apply. That means, the interested directors of the company has to disclose his interest but can vote even if he is interested. (No concept of Disinterested Quorum

or Disinterested directors passing Resolution)
Interested Director can vote in the General meeting since he attends general meeting in the capacity of the member.
<u>Madras Tube Company Ltd. v/s Harikishan Somani (1985)</u> *A director shall be interested director, if his relative is proposed to be appointed as an additional director. The relative director shall disclose his interest, and if the company is a public company, he shall not to be counted in quorum, and he shall not discuss and vote on such resolutions.*
a. The scope of Sec 299 and Sec 300 is limited to Board Meeting only and this section does not apply when a resolution is put before the General Meeting. **b. A director may exercise his voting right at a general meeting on a contract in which he is interested, provided –** **i. It does not result in misappropriation of a corporate opportunity by a director; and** **ii. The interest of the director has been sufficiently disclosed in the explanatory statement annexed to the notice of the general meeting (Sec 173).**
Refer pg. 158 of Directors in Munish Bhandari

Sec 301 – Register of Contracts, companies and firms in which directors are interested.
301. Register of contracts, companies and firms in which directors are interested.— 3[(1) **<u>Every company</u>** shall keep one or more registers in which shall be entered separately particulars of **<u>all</u>** contracts or arrangements to which **<u>section 297 or section 299 applies</u>**, including the following particulars to the extent they are applicable in each case, namely:— (*a*) the **<u>date</u>** of the contract or arrangement; (*b*) the **<u>names</u>** of the parties thereto; (*c*) the **<u>principal terms</u>** and conditions thereof; (*d*) in the case of a contract to which section 297 applies or in the case of a contract or arrangement to which sub-section (2) of section 299 applies, **<u>the date on which it was placed before the Board</u>**; (*e*) The **<u>names of the directors voting for and against</u>** the contract or arrangement and the **<u>names of those remaining neutral</u>**. (2) **<u>Particulars</u>** of every such contract or arrangement to which section 297 or, as the case may be, sub-section (2) of section 299 applies, shall be entered in the relevant register aforesaid— (*a*) in the case of a contract or arrangement **<u>requiring the Board's approval</u>**, **<u>within seven days (exclusive of public holidays)</u>** of the meeting of the Board at which the contract or arrangement is approved, (*b*) in the case of **<u>any other</u>** contract or arrangement, **<u>within seven days of the receipt at the registered office</u>** of the company of the particulars of such other contract or arrangement **<u>or within thirty days of the date of such other contract or arrangement whichever is later</u>**, and the **<u>register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at the meeting</u>**. (3) The register aforesaid shall also specify, in relation to **<u>each director</u>** of the company, **<u>the names of the firms and bodies corporate of which (general notice) notice has been given</u>** by him under sub-section (3) of section 299. (3A) Nothing in sub-sections (1), (2) and (3) shall apply— (*a*) to any contract or arrangement for the **<u>sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed one thousand rupees in the aggregate in any year</u>**; **<u>or</u>** (*b*) to any contract or arrangement (to which section 297 or, as the case may be, section 299

applies) **by a banking company** for the collection of bills **in the ordinary course of its business** or to any transaction referred to in clause (*c*) of sub-section (2) of section 297]

(4) If **default** is made in complying with the provisions of sub-section (1), (2) or (3), the company, and every officer of the company who is in default, shall, in respect of each default, **be punishable with fine which may extend to 1[five thousand rupees]**.

(5) The register aforesaid shall be **kept at the registered office** of the company; and it shall be **open to inspection at such office**, **and extracts may be taken there from and copies** thereof may be required, **by any member of the company** to the same extent, in the same manner, and **on payment of the same fee**, as in the case of the register of members of the company; and the **provisions of section 163 shall apply accordingly**.

163. Place of keeping, and inspection of registers and returns.—

(1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company:

2[Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if—

(*i*) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, 3[and][(*ii*) * * *]

(*iii*) The Registrar has been given in advance a copy of the proposed special resolution.]

5[(1A) Notwithstanding anything contained in sub-section (1) the Central Government may make rules6 for the preservation and for the disposal whether by destruction or otherwise, of the Registers, indexes, returns and copies of certificates and other documents referred to in sub-section (1).]

(2) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection—

(*a*) of any member or debenture holder, without fee; and

(*b*) Of any other person, on payment of 1[such sum as may be prescribed2] for each inspection.

(3) Any such member, debenture holder or other person may—

(*a*) make extracts from any register, index, or copy referred to in sub-section (1) without fee or additional fee, as the case may be, or

(*b*) require a copy of any such register, index, or copy or of any part thereof, on payment of 3[such sum as may be prescribed4] for every one hundred words or fractional part thereof required to be copied

(4) The company shall cause any copy required by any person under clause (*b*) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-Working days, commencing on the day next after the day on which the requirement is received by the company.

(5) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to 5[five hundred rupees] for every day during which the refusal or default continues.

(6) The 6[*Tribunal*] may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.

Sec 302 – Register of Contracts, companies and firms in which directors are interested.

302. Disclosure to members of directors interest in contract appointing manager, managing director [1, managing agent or secretaries and treasurers].—

(1) Where a company—

(*a*) enters into a contract for the **appointment of a manager** of the company, in which contract **any director** of the company is **in any way, whether directly or indirectly, concerned or interested**; or

(*b*) **varies any such contract already in existence** and in which a director is concerned or interested as aforesaid; the **company shall, within twenty-one days** from the date of entering into the contract or of the varying of the contract, as the case may be, **send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.**

(2) Where a company enters into a contract for the appointment of a managing director of the company, or varies any such contract which is already in existence, the company shall send an abstract of the terms of the contract or variation to every member of the company within the time specified in subsection (1); and if any other director of the company is concerned or interested in the contract or variation, **a memorandum clearly specifying the nature of the concern or interest of such other director in the contract or variation shall also be sent to every member of the company with the abstract aforesaid.**

(4) Where a **director becomes concerned or interested** as aforesaid in any such contract as is referred to in sub-section (1), (2) or (3) **after it is made, the abstract and the memorandum,** if any, referred to in the said sub-section **shall be sent to every member of the company within twenty-one days** from the date on which the director becomes so concerned or interested.

(5) If **default** is made in complying with the foregoing provisions of this section, the company, and every officer of the company who is in default, **shall be punishable with fine which may extend to 3[ten thousand rupees].**

(6) **All contracts** entered into by a company **for the appointment of a manager or managing director** 4[* * *] **shall be kept at the registered office** of the company; and shall be **open to the inspection of any member** of the company at such office; **and extracts may be taken** there from and copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and **the provisions of section 163 shall apply accordingly**.

(7) The provisions of this section shall **apply in relation to any resolution 1[* * *] of the Board of directors** of a company **appointing a manager** or a managing or whole-time director, **or varying any previous contract or resolution of the company relating to the appointment of a manager** or a managing or whole-time director, as they apply in relation to any contract 2[* * *] for the like purpose.

Sec 303 to 306 – Register of Directors, Managers and Secretary.

303. Register of directors 3[* * *] etc.—

(1) **Every company** shall keep at **its registered office** a **register of its directors, managing director, 4[* * *] manager and secretary**, containing with respect to each of them the following particulars, that is to say:—

(*a*) in the case of an individual, his present **name**, and surname in full; any former name or surname in full; 5[his father's name and surname in full; or where the individual is a married woman, the husband's name and surname in full]; his **usual residential address**; **his nationality** and, if that nationality is not the nationality of origin, his nationality of origin, **his business occupation**, if any, **if he holds the office of director**, managing director, 6[* * *] manager or secretary **in any other body corporate**, the **particulars of each such office held by him**; and except in the case of a private company which is not a subsidiary of a public company, **the date of his birth**;

(*b*) in the case of a **body corporate**, its corporate **name and registered or principal office**; and the full **name, address, nationality**, and nationality of origin, if different from that nationality [7][the father's name or where a director is a married woman, the husband's name] **of each of its directors**; and if it holds the office of [8][* * *] manager or secretary in any other body corporate, the particulars of each such office;
(*c*) in the case of a **firm**, the **name** of the firm, the full name, **address, nationality**, and nationality of origin, if different from that nationality [1][the father's name or where a partner is a married woman, the husband's name] **of each partner**; and the date on which each became a partner; and if the firm holds the office of [2][* * *] manager or secretary in any other body corporate, the particulars of each such office;
(*d*) if any director or directors have **been nominated by a body corporate**, its **corporate name**; all the particulars referred to in **clause (*a*) in respect of each director so nominated**, and also all the particulars referred to in **clause (*b*) in respect of the body corporate**;
(*e*) if any director or directors have **been nominated by a firm**, the **name of the firm**, all the particulars referred to in **clause (*a*) in respect of each director so nominated**, and also all the particulars referred to in **clause (*c*) in respect of the firm**.

Explanation.—
For the purposes of this sub-section—
(1) **any person in accordance with [3][whose directions or instructions], the Board of directors of a company is accustomed to act shall be deemed to be a director of the company;**
(2) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and
(3) references to a former name or surname do not include—
(*i*) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title;
(*ii*) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; and
(*iii*) in the case of a married woman, the name or surname by which she was known previous to the marriage
(2) The company shall, within the periods respectively mentioned in this subsection, **send to the Registrar** [4][a **return in duplicate in the prescribed form**[5]] containing the particulars specified in the said register and [6][a notification in duplicate in the prescribed form] **of any change among** its directors, managing directors, [1][* * *] managers or secretaries [2][* * *] specifying the date of the change. The period within which said return is to be sent shall be a period of [3][**thirty] days** from the appointment of the first directors of the company and the period within which said notification of a change is to be sent shall be [4][**thirty] days** from the happening thereof.[5][* * *]
(3) If **default** is made in complying with sub-section (1) or (2), **the company, and every officer** of the company who is in default, shall be **punishable with fine which may extend to [6][five hundred rupees] for every day during which the default continues.**

304. Inspection of the register.—
(1) The register kept under section 303 shall be **open to the inspection** of **any member** of the company **without charge** and **of any other person on payment of one rupee for each inspection during business hours** subject to such **reasonable restrictions** as the company may by its articles or in general meeting impose, **so that not less than two hours in each day are allowed for inspection**.
(2) If any inspection required under sub-section (1) **is refused**,—
(*a*) **the company, and every officer** of the company who is in default, **shall be punishable with fine which may extend to [7][five hundred rupees]**; and
(*b*) the [8][*Central Government or Tribunal, as the case may be*] **may, by order, compel an immediate inspection of the register**.[9]

305. Duty of directors, etc. to make disclosure.— (1) **Every director, managing director**, 11[* * *] manager or secretary of any company, **who is appointed to or relinquishes, the office of director, managing director** 1[* * *] manager or secretary **of any other body corporate**, shall **within twenty days of his appointment** to, or as the case may be, relinquishment of, such office, **disclose to the company aforesaid the particulars relating to the office in the other body corporate** which are required to be specified under sub-section (1) of section 303; and **if he fails** to do so, he shall be **punishable with fine which may extend to 2[five thousand rupees]**. (2) The provisions of sub-section (1) **shall also apply to a person deemed to be a director of the company** by virtue of the *Explanation* to sub-section (1) of section 303 when such person is appointed to, or relinquishes, any of the offices in the other body corporate referred to in sub-section (1).] **306. Register to be kept by Registrar and inspection thereof.—** (1) The Registrar shall keep a separate register3 or registers in which there shall be entered the particulars received by him under sub-section (2) of section 303 in respect of companies, so however that all entries in respect of each such company shall be together. (2) The register or registers aforesaid shall be open to inspection by any member of the public at any time during office hours, on payment of the prescribed fee.
For change of the composition of the directors the company has to file the return with Registrar within 30 days in prescribed Form No. 32.
Maintenance of loose-leaf form permissible
Additional Director appointed as a rotational Director also amounts to a change for the purpose of Sec 303.

Sec 307 – 308 – Register of Director's Shareholdings
307. Register of directors' shareholdings, etc.— (1) Every company shall keep a **register** showing, as respects **each director** of the company, the **number, description and amount** of any **shares** in, or **debentures** of, **the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him or in trust for him, or of which he has any right to become the holder whether on payment or not.** (2) Where any shares or debentures have to be recorded in the said register or to be omitted there from, in relation to any director, by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and the price or other consideration for, the transaction: Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement. (3) The **nature and extent** of **any interest or right** in or over any shares or debentures recorded in relation to a director in the said register shall, if he so requires, be indicated in the register. (4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or be put upon inquiry as to, the rights of any person in relation to any shares or debentures. (5) The said register shall, subject to the provisions of this section, be kept at **the registered office** of the company, and **shall be open to inspection during business hours** (subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection) as follows:— (*a*) during the period beginning **fourteen days before the date of the company's annual general meeting** and **ending three days after the date of its conclusion**, it shall be open to the inspection of any member or holder of debentures of the company; and (*b*) During that or any other period, it **shall be open to the inspection** of any person acting on

behalf of the **Central Government or of the Registrar**. In computing the **fourteen days** and the **three days** mentioned in this subsection, **any day which is a Saturday, a Sunday or a public holiday shall be disregarded**

(6) Without prejudice to the rights conferred by sub-section (5), the **Central Government or the Registrar** may, **at any time require a copy** of the said register, or any part thereof.

(7) The said **register shall also be produced** at the commencement of **every annual general meeting** of the company and **shall remain open and accessible during the continuance of the meeting** to any person having the right to attend the meeting.

If **default** is made in complying with this sub-section **the company, and every officer** of the company who is in default, **shall be punishable with fine which may extend to [1][five thousand rupees].**

(8) If **default** is made in complying with **sub-section (1) or (2)**, or if **any inspection** required under this section is refused, or if any copy required there under is not sent within a reasonable time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [2][fifty thousand rupees] and also with a further fine which may extend to [3][two hundred rupees] for every day during which the default continues.

(9) In the case of any such refusal, the [1][*Central Government or Tribunal, as the case may be*] may also, by order, compel an immediate inspection of the register.[2]

(10) For the purposes of this section—

(*a*) any person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, shall be deemed to be a director of the company; and

(*b*) a director of a company, shall be deemed to hold or to have an interest or a right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either—

(*i*) that body corporate or its Board of directors is accustomed to act in accordance with his directions or instructions; or

(*ii*) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate [3][(11) * * *]

308. Duty of directors and persons deemed to be directors to make disclosure of shareholdings.—

(1) Every director of a company, and every person deemed to be a director of the company by virtue of sub-section (10) of section 307, shall give notice to the company of such matters relating to him as may be necessary for the purpose of enabling the company to comply with the provisions of that section.

(2) Any such notice shall be given in writing, and if it is not given at a meeting of the Board, the person giving the notice shall take all reasonable steps to secure that it is brought up and read at the meeting of the Board next after it is given.

(3) Any person who fails to comply with sub-section (1) or (2) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [4][fifty thousand rupees], or with both.

Comparative Analysis		
Sec 301	**Sec 303 to 306**	**Sec 307 & 308**
Particulars / Contents of Contracts		
Register shall contain the following particulars of every contract or arrangement covered u/s297 or 299 - a. Dt. of arrangement/contract. b. Names of the parties c. Principal T&C of the contract d. Dt. on which the contract was put before the Board e. Name of director who voted in favour / votes against / remained neutral. f. In relation to each director, the names of the firms / body corporate of which general notice have been given by him u/s299.	Persons details – a. Director b. Managing Director c. Manager d. Secretary Particulars – a. Full name b. Father / Husband Name c. Usual residence address d. Nationality e. Business / Occupation f. The particulars of other office of director / manager / secretary held by him in any other body corporate. g. DOB h. Where a director has been nominated by a body corporate, the name of the body corporate and the address of Registered Office.	The register shall contain the following for all the directors – A. The number, description & amt of share / debenture of the company / subsidiary / holding – - which are held by the directors, or - which are held by any other person in trust for him, or - in respect of which he has any right to become shareholder whether on payment or otherwise Will be considered ***Deemed holding***, if a body corporate other than the company holds them and – - the Body corporate or its board is accustomed to act in accordance with the acts of such director - the director exercises 1/3rd of the voting rights B. dt. of agreement of sale / purchase C. price / consideration of sale / purchase
Place of Keeping Register		
a. Registered Office b. Register may be removed outside the registered office if the members of the company are given notice (either once for all or from time to time) indicating the period and dates when they can inspect the register. {Dept Circular}	Registered Office	Registered Office
Time Limit for entry into Register of Contracts		
a. Where board approval is required – within 7 days of the Board approval b. Where board approval is not required – within 7 days of the receipt of the particular at the Registered Office or within 30days of the date of such contract / arrangement whichever is later	No time limit has been prescribed	
Inspection and copies of Register		
a. Members are allowed,	a. Members are allowed,	a. Member & Debenture

without fee. No other persons are allowed. b. Inspection only business hours. Company can impose restriction such as only 2hrs in each day is allowed for inspection. c. Any member can take extracts without fee. d. Copy of register can be taken with some fee. (Such copy will be sent by the Company within 10 working days) If defaulted, CLB may order – a. Inspection of document shall be immediately allowed. b. Extracts shall forthwith be allowed to be taken. c. The copy shall forthwith be sent to the person.	without fee. Other person with fee of Rs.1. b. Inspection only business hours. Company can impose restriction such as only 2hrs in each day is allowed for inspection. If inspection is refused, CLB may compel an immediate inspection of the register.	holder during 14 days before & 3 days after AGM. (Saturdays, Sundays & holidays to be excluded). Company may refuse the inspection, if such inspection is beyond such period band. b. Member & Proxy may inspect during the AGM. c. CG & ROC can anytime inspect. d. Copies of register of directors' shareholding will not be available to anybody except CG & ROC. If inspection is refused – CLB may order immediate inspection of the Register.
Other Points		
<u>Signing of Register of Contracts –</u> It shall be signed by the all the directors present at the next Board Meeting.	***<u>Filing of Return –</u>*** Company shall file the return under form 32 within 30 days of new appointment of any director or any change in director / MD / Manager / Secretary. ***<u>Disclosure –</u>*** Within 20 days, every director / MD/ Manager / Secretary shall disclose to the company particulars of appointment as a Director /MD / Secretary / Manager in any other corporate. (Sec 305) Maintenance of register in loose-leaf form is permissible. Additional Directors appointed as rotational directors purports to change for the purpose of Sec 303	***<u>Notice by Director –</u>*** Notice shall be given by – - Every director of the company - Every person in accordance with whose instructions, the Board is accustomed to act. ***<u>Contents of notice –</u>*** Such matter as would enable the company to make the entries into the register of directors' shareholding. ***<u>Mode of giving notice –</u>*** - Notice shall be given at Board Meeting
Non Applicability		
a. Any contract / arrangement in which value of material / goods / services does not exceed Rs. 1,000 for the year. b. Any contract / arrangement entered by the banking company for the collection of bills in ordinary course of business.		

Sec 309 – Managerial Remuneration

Refer page no. ***

Sec 310 & 311 – Increase in Remuneration in Director

Refer page no. ***

Sec 312 – Prohibition on Assignment of Office by Director

312. Prohibition of assignment of office by director.—
Any assignment of his office made after the commencement of this Act by any director of a company shall be void.

Sec 313 – Appointment of Alternate Director

Refer page no. 07

Sec 314 - Prohibition of Directors / MD / Manager to hold office or place of Profit

314. Director, etc., not to hold office or place of profit.—
(1) **Except** with the 2[consent] of the company accorded by **a special resolution**,—
(*a*) **no director** of a company shall hold any office or place of profit, and
(b) 3[**no partner** or **relative** of such director, **no firm** in which such director, or a **relative** of such director, is a partner, **no private company** of which such director is a **director or member**, and **no director or manager of such a private company**, shall hold any office or place of profit carrying a total monthly remuneration of 4[such sum as may be prescribed5],
except that of **managing director or manager,] banker or trustee** for the holders of debentures of the company,—
(*i*) under the **company**; or
(*ii*) under **any subsidiary of the company**, unless the **remuneration received from such subsidiary** in respect of such office or place of profit **is paid over** to the **company or its holding company**:

Provided that **it shall be sufficient** if the **special resolution** according the consent of the company is passed at the **general meeting of the company held for the first time after the holding of such office** or place of profit:
Provided further that where a **relative** of a director or a **firm** in which such **relative is a partner**, is **appointed** to an office or place of profit **under the company or a subsidiary** thereof ***without the knowledge of the director***, the **consent of the company may be obtained either in the general meeting aforesaid** or **within three months from the date of the appointment**, **whichever is later**.]
Explanation.—For the purpose of this sub-section, **a special resolution according consent shall be necessary for every appointment** in the first instance to an office or place of profit and to **every subsequent appointment** to such office or place of profit on a **higher remuneration not covered by the special resolution**, except where an appointment on a time scale has already been approved by the special resolution.
(1A) Nothing in sub-section (1) shall apply where a **relative** of a director or a **firm** in which such **relative** is a partner **holds** any office or place of profit **under the company or a subsidiary** thereof having been appointed to such office or place **before such director becomes a director of the company**.]
7[(1B) Notwithstanding anything contained in sub-section (1),—
(*a*) **no partner** or **relative** of a director or manager,
(*b*) **no firm** in which such director or manager, or **relative** of either, **is a partner**,
(*c*) **no private company** of which such a director or manager, or relative of either, is a director or member, shall hold any office or place of profit in the company which carries a **total monthly**

remuneration of not less than 1[10,000 such sum as may be prescribed2], **except** with the ***prior*** consent of the company **by a special resolution** and the **approval3 of the Central Government**:4 5[* *]
6[(2)7[(*a*)] If any office or place of profit is held **in contravention** of the provisions of sub-section (1), the **director, partner, relative, firm, private company** 8[* * *], or **the manager** concerned, shall be **deemed to have vacated** his or its office as such on and **from the date next following** the **date of the general meeting** of the company referred to in the **first proviso** or, as the case may be, the date of the expiry of the period of **three months** referred to in the **second proviso** to that sub-section, and shall also be **liable to refund** to the company any remuneration received or the **monetary equivalent of any perquisite** or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.]
9[(*b*) The **company shall not waive the recovery** of any sum refundable to it under clause (*a*) **unless permitted** to do so by the Central Government.]
1[(2A) Every **individual, firm, private company or other body corporate** proposed to be appointed to any office or place of profit to ***which this section applies*** shall, before or at the time of such appointment, **declare in writing** whether **he or it is or is not connected** with a director of the company in any of the ways **referred to in sub-section (1)**.]
2[(2B) If, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974) any office or place of profit is held, **without the prior** consent of the company by a **special resolution *and* the approval of the Central Government**, **the partner, relative, firm or private company** appointed to such office or place of profit shall be liable **to refund to the company any remuneration received** or the monetary equivalent of any perquisite or advantage enjoyed by him on and from the date on which the office was so held by him.
(2C) If any office or place of profit is held in **contravention** of the provisions of the proviso to sub-section (1B), the **director, partner, relative, firm, private company or manager** concerned shall be **deemed to have vacated** his or its office as such on and from the **expiry of six months from the commencement of the Companies (Amendment) Act, 1974** (41 of 1974) or **the date next following the date of the general meeting** of the company referred to in the said proviso, **whichever is earlier**, and shall be **liable to refund** to the company any remuneration received or the **monetary equivalent** of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.
(2D) The **Company shall not waive the recovery** of any sum refundable to it under sub-section (2B) 3[* * *] **unless permitted** to do so by the Central Government.]
Meaning of Office or Place of Profit -
(3) Any office or place 4[* * *] shall be **deemed** to be an office or place of profit under the company 5[within the meaning of this section],—
(*a*) in case the office or place is held by a director, if the director holding it 6[obtains from the company anything] by way of remuneration **over and above the remuneration** to which he is entitled as such director, **whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence**, or otherwise;
(*b*) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it 1[obtains from the company anything] by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.
2[(4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.

Sec 314 (3) - Meaning of Place / Office of Profit

Place or Office of Profit

Directors	Other than Directors
If he earns ***anything over and above the entitled remuneration*** and also includes Professional Service on ***Retainership*** basis ***Exception -*** Normal Professional Services is exempted.	If such person receives ***anything*** as remuneration by whatever name called. It includes Retainership Professional Service also. ***Exception -*** Normal Professional Services is exempted.

Sec 314(1) - Appointment of Office / Place of Profit by Special Resolution

01. Applicability of Section 314(1) –

a. Where a director of Co. is appointed at an office / place of profit.
b. Where a Relative / Partner of a director or a firm (in which he or his relative is partner) or Private Co. (in which he is a member or director) or director or manager of a Pvt. Co. (in which a director of the Co. is a director or member) with a monthly remuneration exceeding Rs.10000 per month.
c. It even extends to the place / office under the company or under the subsidiary of the company)
d. Reappointment by higher remuneration also covered without Special Resolution in AGM.

02. Requirements -

Special Resolution in AGM is required.

03. Time of Passing Resolution –

a. If appointment of a person in place of profit is ***with knowledge*** of such director – by ***special resolution in first AGM*** after the appointment.
b. If appointment of a person (***relative*** or ***firm*** in which he is ***relative***) in place of profit is ***without the knowledge*** of such director – by ***special resolution in 1st AGM or 3 months whichever is later***.

04. Exemptions -

a. MD or Manager or Banker or Trustee of Debenture holder holds office under the company.
b. MD or Manager or Banker or Trustee of Debenture holder holds office under the subsidiary unless the remuneration received is paid to the company or holding company.
c. Where a relative or a firm in which relative is a partner of a director and appointed in the place of profits before the appointment of the concerned director.
d. Appointment made by the Central Government u/s 408.

05. <u>Effects of Contravention –</u> Immediate vacation in defaulted. Concerned person has to reimburse the remuneration in full and the company cannot waive off liability on such concerned person.
Where the place of office is in subsidiary than Sec 314 is attracted and hence, Special resolution is required to be passed by the Holding Company. Where the place of office is in holding company, than Sec 314 is not attracted.
Applicable to Private and Public Companies, both.

Sec 314 (1B) - Appointment by Special Resolution and Central Government Approval
01. Applicability – a. ***Relative or Partner*** of the Director or ***Manager*** b. A firm in which director / ***manager*** is a partner. c. A private company in which the director / manager / relative is a member or director. Where the remuneration of the above mentioned person exceeds the prescribed Rs.***50,000 (earlier Rs10,000) per month*** Sec 314 (1B) applies to only place under the company and ***not to*** the place under the ***subsidiary*** of the company.
02. <u>Requirements –</u> a. Prior ***Special Resolution*** b. Prior approval from ***Central Government.***
03. <u>Exemptions –</u> a. Where a ***relative*** or a ***firm*** in which ***relative is a partner*** of a director and appointed in the place of profits ***before*** the appointment of the concerned director. b. Appointed by Central Government u/s 408.
04. <u>Contravention Effects –</u> a. Appointment becomes null and void. b. Any remuneration paid becomes reimbursable to the company. c. Company cannot waive off such amount of recovery.
Any person holds place of office under the holding or subsidiary is not attracted.
Applicable to both Private and Public Companies.

Meaning of Managing Director / Whole-time Director / Manager

Managing Director	Whole Time Director	Manager
Sec 2 (26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with 2[substantial powers of management] which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called: 3[Provided that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management: Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors;]	Meaning of Whole-time director has not been defined by the Act specifically.	**Sec 2 (24)** "manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not;
Ingredients of the Definition		
a. MD should be ***Director***. b. MD should be entrusted by ***substantial powers by the Board*** other than the powers of a normal director. c. Even a person occupying the position of the MD and using the substantial powers will be called as MD (***deemed MD***). d. Powers to do ***Administrative Act is not*** deemed to be ***substantial power*** of management. e. Power can be entrusted by mode of an ***agreement*** or a ***board resolution*** or ***MOA*** or ***AOA***. f. MD in Dual Capacity = Employee + Director g. All provisions of Directors shall apply to MD. If he ceases to be an employee or director = he ceases to be MD.	However for the purpose of Sec 269, "whole time director" includes a director in whole time employment of the company. Appointment of an employee as an alternate director amounts to 'Whole time Director'.	
Grounds of Disqualifications		
a. u/s 274 ***(applies to all directors)***		Only Sec 274 applies.

<table>
<tr><td colspan="2">b. u/s 267 (applies to only whole-time & MD)</td><td>Sec 267 does not apply</td></tr>
<tr><td colspan="3"><u>Grounds of Vacation of Office</u></td></tr>
<tr><td colspan="2">a. u/s 283 (applies to all directors)
b. u/s 267 (applies to only whole-time director & MD)</td><td>Only Sec 283 applies
Sec 267 does not apply</td></tr>
<tr><td colspan="3"><u>Compulsory Appointment</u></td></tr>
<tr><td colspan="3">a. Every Public Company having paid up capital of Rs.5 crores or more shall have a MD or Whole-time Director or a manager.</td></tr>
<tr><td colspan="3">b. Every appointment of MD or Whole-time Director or Manager shall be made either with the approval of Central Government or as per Schedule XIII.</td></tr>
<tr><td colspan="3"><u>Remuneration</u></td></tr>
<tr><td colspan="2"><u>Sec 198, 309, 310 & 311 and Schedule XIII make the following provisions in this regard-</u>
1. Remuneration will be monthly or/and % of net profits.
2. Except with the approval of CG, the remuneration shall not exceed the limits prescribed u/s 198, 309 –
a. 5% of NP (if the Co. has 1 whole-time director / MD; or
b. 10% of NP (if the Co. has more than 1 whole-time director / MD)
3. The remuneration paid if exceeds the limits u/s 198 & 309 but is within the limits as per Schedule XIII than it can be paid without approval of CG.
4. Not entitled for sitting fees for the meeting of Board of Directors.
5. Remuneration can be increased within the limits prescribed by Schedule XIII. CG approval is required to increase the remuneration above Schedule XIII.
6. Such restrictions do not apply to Private Company.</td><td><u>Sec 387, 310, 311 & Schedule XIII make the following provisions in this regard –</u>
1. Remuneration will be monthly or/and % of NP.
2. Except with the approval of CG, remuneration shall not exceed 5% of NP.
3. Remuneration paid if exceeds the limits u/s387 but may be below the limits specified under Schedule XIII then no CG approval is required. Otherwise the approval is required.
4. Manager not being director not entitled for sitting fees.
5. Remuneration can be increased within limits prescribed under Schedule XIII. Otherwise CG approval is required.</td></tr>
<tr><td colspan="3"><u>Term of Office</u></td></tr>
<tr><td><u>Sec 317 applies -</u>
a. Max period is 5 years.
b. Can be re-appointed for the period not exceeding 5 years.
c. Re-appointment or extension of the term cannot be sanctioned earlier than 2 years from the date on which it is to come in force.
d. Not applicable to Private Company.</td><td>No restrictions. Can be appointed for life also subject to restriction u/s 255 & 256 unless appointed as non-retiring director.</td><td><u>Sec 388 read with Sec 317 applies –</u>
a. Max period is 5 years.
b. Can be re-appointed for term not exceeding 5 years.
c. Re-appointment / Extension of the term cannot be sectioned earlier than 2 years from the date on which it is to come in force.
d. Not applicable to Private Company</td></tr>
<tr><td colspan="3"><u>Ceiling Limit</u></td></tr>
<tr><td><u>Sec 317 applies –</u>
a. Max 1 Public Company. (2 or</td><td>A person cannot act as whole-time</td><td><u>Sec 386 applies –</u>
a. Max 1 Public</td></tr>
</table>

more Private companies are allowed) b. ***Unanimous resolution*** at Board Meeting is required to appoint for the office of Manager and the person ***already occupies*** (even in private company) ***post as a MD / Manager***. c. Can be appointed in ***2 or more public companies with approval of CG.***	director in more than one company.	Company. ***(2 or more Private companies are allowed)*** b. ***Unanimous resolution*** at Board Meeting is required to appoint for the office of Manager and the person ***already occupies*** (even in private company) ***post as a MD / Manager***. c. Can be appointed in ***2 or more public companies with approval of CG.***
Other Points		
a. A Co. can have 2 or more MD. ***b. Sec 197A – a company cannot appoint at the same time a manager and MD in a company.*** c. A Co. can appoint simultaneously managing director(s) and whole-time director(s). d. ***Sec 268*** –any amendment in AOA /MOA regarding appointment or re-appointment of MD will require a CG approval. e. Where a company enters in to an agreement for appointment of a MD or variation in the contract, it shall ***within 21 days*** send the ***abstract*** to all the members of the company. If the other directors are concerned / ***interested*** in such appointment or variation then the memorandum shall clearly ***mention the nature of the concern or interest*** of such other directors shall also be sent to every member – ***Sec 302.*** f. Can be appointed as Additional Director g. Can be appointed as Rotational Director.	a. Two or more WTD(s) can be appointed. b. WTD(s) & MD(s) can be appointed. c. WTD(s) & ***a*** Manager can be appointed. d. Where a company enters in to an agreement for appointment of a MD or variation in the contract, it shall ***within 21 days*** send the ***abstract*** to all the members of the company. If the other directors are concerned / ***interested*** in such appointment or variation then the memorandum shall clearly ***mention the nature of the concern or interest*** of such other directors shall also be sent to every member	a. Manager need not be director. b. A company cannot have 2 or more managers. c. ***Sec 384*** – For manager - Prohibition of assignment of office u/s 312. d. ***Sec 384*** – Only individuals to be managers. e. ***Sec 197A – a company cannot appoint at the same time a manager and MD in a company.*** h. Where a company enters in to an agreement for appointment of a MD or variation in the contract, it shall ***within 21 days*** send the ***abstract*** to all the members of the company. If the other directors are concerned / ***interested*** in such appointment or variation then the memorandum shall clearly ***mention the nature of the concern or interest*** of such other directors shall also be sent to every member – ***Sec 302.*** ***f. Sec 268 is not***

	– *Sec 302.* e. ***Sec 268*** –any amendment in AOA /MOA regarding appointment or re-appointment of MD will require a CG approval.	***applicable.***

197A. Company not to appoint or employ certain different categories of managerial personnel at the same time.—
Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), appoint or employ at the same time, or after the expiry of six months from such commencement, continue the appointment or employment at the same time, of more than one of the following categories of managerial personnel, namely:—
(*a*) managing director,
(*d*) manager

Sec 315 – Repealed

Sec 316 – Number of Managing Directorships

316. Number of companies of which one person may be appointed managing director.—
(1)[**No public company and no private company which is a subsidiary of a public company**] shall, after the commencement of this Act, **appoint or employ any person as managing director**, **if he is either the managing director or the manager of [any other company (including a private company which is not a subsidiary of a public company)]**, **except as provided in subsection (2)**.
(2) 5[A public company or a private company which is a subsidiary of a public company] may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, 6[other company (including a private company which is not a subsidiary of a public
company):]
Provided that such appointment or employment is made or approved by a **resolution passed at a meeting of the Board with the consent of all the directors present at the meeting** and of which meeting, and of the resolution to be moved thereat**, specific notice has been given to all the directors then in India.**
(3) Where, **at the commencement of this Act**, any **person is holding the office either of managing director or of manager in more than [two companies of which *each one or at least one* is a public company or a private company which is a subsidiary of a public company**], he shall, **within one year** from the commencement of 8[the Companies (Amendment) Act, 1960 (65 of 1960)], **choose not more than two of those companies** as companies in which he wishes to continue to hold the office of managing director or manager, as the case may be; and the provisions of clauses (*b*) and (*c*) of sub-section (1) and of subsections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.
1(4) **Notwithstanding anything** contained in sub-sections (1) to (3), the **Central Government may, by order**, **permit any person to be appointed as a managing director of more than two companies** if the Central Government is satisfied that it is necessary that the companies should, for their proper working function as a single unit and have a common managing director.

01. Appointment as a managing director in two or more companies –
    A person who is appointed as a MD / Manager in any other company (including private company) may be appointed as a managing director of a

public company, only if all the following conditions are satisfied -

a. Maximum a person can hold one place as MD / Manager.
b. If want to exceed the above limit than a Unanimous Board Resolution shall be passed for such appointment by the directors present in the meeting.
c. Specific Notice shall be given to all the directors in India. Notice shall state the appointment of MD / Manager u/s 316. ***(Note – It states specific notice and not special notice u/s 190)***

02. Procedure –

Following procedure shall be adopted for the appointed of Manager / MD u/s 316 –

1. Compliance with Sec 316.
2. Compliance with Sec 269. ***(appointment shall be made either with the CG approval or in accordance with the Schedule XIII)***
3. ***Sec 302*** - Where a company enters in to an agreement for appointment of a MD or variation in the contract, it shall ***within 21 days*** send the ***abstract*** to all the members of the company. If the other directors are concerned / ***interested*** in such appointment or variation then the memorandum shall clearly ***mention the nature of the concern or interest*** of such other directors shall also be sent to every member.
4. Sec 299 & Sec 300 - The proposed appointee and interested directors shall disclose their interest and shall not vote for his appointment.
5. Other procedural requirements –
   a. Where appointment is made under provisions of Schedule XIII, the ***approval of shareholders*** shall be obtained in the General Meeting and the return shall be filed with the Central Government ***within 90 da***ys of appointment.
   b. Where the appointment is not as per the Schedule XIII, an application shall be made with ***the Central Government within 90 days of appointment.***
   c. ***Resolution*** appointing shall be ***filed*** with the Registrar u/s192.
   d. Only MD has to file a ***written consent*** with the Registrar within 30 days of appointment. (Sec 264).
   e. The entries shall be made in the Register of directors. A return in form 32 shall be filed with the Registrar within 30 days of appointment.
   f. MD shall notify about his appointment to every company in which he is a director / manager / MD / Secretary. (Sec 305)

03. CG Approval –

CG may allow a person to be appointed in two or more place of MD / Manager if the CG is satisfied that it is necessary for the proper functioning of the companies.

This section 316 does not apply to Private Company.

Ceiling Limit of office of a Manager – Sec 386

386. Number of companies of which a person may be appointed manager.—

(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ a person as its manager, if he is the manager or managing director of one, and not more than one, other company:

Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he

wishes to continue to hold the office of manager or managing director, as the case may be; and the provisions of clauses (*b*) and (*c*) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director. (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager.
Appointment as a manager in two or more companies – A person who is appointed as a MD / Manager in any other company (including private company) may be appointed as a manager of a public company, only if all the following conditions are satisfied - a. Maximum a person can hold one place as MD / Manager. b. If want to exceed the above limit than a Unanimous Board Resolution shall be passed for such appointment by the directors present in the meeting. c. Specific Notice shall be given to all the directors in India. Notice shall state the appointment of Manager u/s 316. ***(Note – It states specific notice and not special notice u/s 190)***

INDEX FOR THE SECTIONS APPLICABLE TO MANAGERS		
Sec 384	Only individuals to be Managers	Refer Page No. 75
Sec 385	Disqualification & Vacation of Office of a Manager	Refer Page No. 76
Sec 386	Ceiling Limit for appointment as a Manager	Refer Page No. 74
Sec 387	Remuneration of a Manager	Refer Page No. 80
Sec 388	Application of certain sections	Refer Page No. 80

Only Individuals to be Managers – Sec 384

384. Firm or body corporate not to be appointed manager.—
1[No company] shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager.

Same as Sec 252 – which states all the directors appointed, shall be individuals only.

Disqualification and Vacation of Office of the managing director / whole time director – Sec 267

267. Certain persons not to be appointed managing directors.—
No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director who—
(*a*) is an un-discharged insolvent, or has at any time been adjudged an insolvent;
(*b*) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or
(*c*) is, or has at any time been, convicted by a Court 1[* * *] of an offence involving moral turpitude

Disqualification and Vacation of Office of the Managers – Sec 385

385. Certain persons not to be appointed managers.—
(1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who—
(*a*) is an un-discharged insolvent, or has at any time within the preceding five years been adjudged an insolvent; or
(*b*) suspends, or has at any time within the preceding five years suspended, payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or
(*c*) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude
(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (*a*), (*b*) or (*c*) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

Comparatives Sec 267 v/s Sec 385

Sec 267 – MD / WTD – Vacation & Disqualification	Sec 385 – Manager – Vacation & Disqualification
1. A person who is un-discharged ***insolvent*** or ***anytime*** adjudged as ***insolvent.***	1. A person who is un-discharged ***insolvent*** or anytime ***preceding 5 years*** been adjudged as ***insolvent.***
2. A person who ***suspends payments*** or ***makes composition*** with the creditor or has done anytime	2. A person who ***suspends payments*** or ***makes composition*** with the creditor or has done anytime

earlier.	earlier within ***preceding 5 years.***
3. A person who is ***convicted*** by court of an offence involving ***moral turpitude*** or ***anytime*** earlier.	3. A person who is ***convicted*** by court of an offence involving ***moral turpitude*** or ***anytime*** earlier.
Applies to both Private and Public Companies.	
Central Government has no power to remove any disqualification.	***Central Government may notify in official gazette and remove any disqualification.***

Amendment of provision relating to managing director, whole-time director or non-rotational Directors to require Government Approval – Sec 268

268. Amendment of provision relating to managing, whole-time or non-rotational directors to require Government approval.—

In the case of a public company or a private company which is a subsidiary of a public company, **an amendment of any provision** **relating to the appointment or re-appointment of a managing or whole-time director or of a director not liable to retire by rotation**, whether that provision be contained in the company's **memorandum or articles, or in an agreement entered** into by it, or **in any resolution passed** by the company in general meeting or by its Board of directors, ***shall not have any effect unless approved by the Central Government***; and the amendment shall **become void if**, and in so far as, it is disapproved by that Government.2

Appointment of Managing or Whole-time director or manager to require government approval in certain cases – Sec 269

3[**269. Appointment of managing or whole-time director or manager to require Government approval only in certain cases.—**

(1) On and from the commencement of the Companies (Amendment) Act, 1988, every public company, or a private company which is a subsidiary of a public company, 3 having a paid-up share capital of such sum as may be prescribed, 1 shall have a managing or whole-time director or a manager.

(2) On and from the commencement of the Companies (Amendment) Act, 1988, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval2 of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form3 is filed within ninety days from the date of such appointment.

(3) Every application seeking approval to the appointment of a managing or whole-time director or a manager shall be made to the Central Government within a period of ninety days from the date of such appointment.

(4) The Central Government shall not accord its approval to an application made under sub-section (3), if it is satisfied that—

(*a*) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or

(*b*) the terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable

(5) It shall be competent for the Central Government while according approval to an appointment under sub-section (3) to accord approval for a period lesser than the period for which the appointment is proposed to be made.

(6) If the appointment of a person as a managing or whole-time director or a manager is not approved by the Central Government under sub-section (4), the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall

be punishable with fine which may extend to 1[five thousand rupees] for every day during which he omits or fails to vacate such office.
(7) Where the Central Government *suo motu* or on any information received by it is, *prima facie*, of the opinion that any appointment made under sub-section (2) without the approval of the Central Government has been made in contravention of the requirements of Schedule XIII, it shall be competent for the Central Government to refer the matter to the 2[*Tribunal*] for decision.
(8) The 3[*Tribunal*] shall, on receipt of a reference under sub-section (7), issue a notice to the company, the managing or whole-time director or the manager, as the case may be, and the director or other officer responsible for complying with the requirements of Schedule XIII, to show cause as to why such appointment shall not be terminated and the penalties provided under sub-section (10) shall not be imposed.
(9) The 4[*Tribunal*] shall, if, after giving a reasonable opportunity to the company, the managing or whole-time director or the manager, or the officer who is in default, as the case may be comes to the conclusion that the appointment has been made in contravention of the requirements of Schedule XIII, make an order declaring that a contravention of the requirements of Schedule XIII has taken place.
(10) On the making of an order by the 5[*Tribunal*] under sub-section (9),—
(*a*) the company shall be liable to a fine which may extend to 6[fifty thousand rupees];
(*b*) every officer of the company who is in default shall be liable to a fine of 7[one lakh rupees]; and
(*c*) the appointment of the managing or whole-time director or manager, as the case may be, shall be deemed to have come to an end and the person so appointed shall, in addition to being liable to pay a fine of 1[one lakh rupees], refund to the company the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the passing of such order.
(11) If a company contravenes the provisions of sub-section (10) or any direction given by the 2[*Tribunal*] under that sub-section, every officer of the company who is in default and the managing or whole-time director or the manager, as the case may be, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to 3[five hundred rupees] for every day of default.
(12) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and whose appointment has been found to be in contravention of Schedule XIII, shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the 4[*Tribunal*] under sub-section (9).
Explanation.—In this section "appointment" includes re-appointment and "whole-time director" includes a director in the whole-time employment of the company.]

A. Appointment of a Managerial Person

A public Company having paid up capital < *Rs. 5 crores.*	A public Company having paid up capital = or > *Rs. 5 crores.*	A private Company
It is ***not mandatory*** to appoint a Managerial Person. ***However, if it appoints, it must either obtain CG approval or comply Schedule XIII.***	It is ***mandatory*** to appoint a Managerial Person. Appointment must be either by obtaining CG approval or complying with Schedule XIII.	It is ***not mandatory*** to appoint a Managerial Person. Does ***not*** require approval of CG nor is required to comply with Schedule XIII.

No appointment of a managerial person shall be made in a Public Company either without not acquiring the CG approval or without complying Schedule XIII –

Option 1 – Appointment with Central Government's Approval-
An application shall be made after appointment of a managerial person ***within 90 days*** from the date of such appointment.

01. Central Government on receipt of such application shall not accord its approval if it is satisfied that –
    a. the appointee is ***not fit*** for appointment
    b. the appointment is ***not in public interest***

c. T & C of appointment are ***not fair***

02. CG ***may modify*** the T & C or grant appointment for ***shorter period.***

03. If appointment is made but the ***CG disapproves*** than the managerial person has to ***vacate*** the office ***on the date of such decision is communicated.*** However, he shall not be liable to refund the remuneration received during the period.

<u>Option 2 – Appointment in accordance with Schedule XIII –</u>

If appointment has to be made without CG approval than the compliance of Schedule XIII is mandatory.

<u>Eligibility for appointment (Part I of Schedule XIII) –</u>

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies ***all*** the following conditions, namely:—

(*a*) he had ***not been sentenced to imprisonment for any period***, or to a ***fine exceeding one thousand rupees***, for the conviction of an offence under any of the following Acts, namely:—

(*i*) the Indian Stamp Act, 1899
(*ii*) the Central Excise and Salt Act, 1944
(*iii*) the Industries (Development and Regulation) Act, 1951
(*iv*) the Prevention of Food Adulteration Act, 1954
(*v*) the Essential Commodities Act, 1955
(*vi*) the Companies Act, 1956
(*vii*) the Securities Contracts (Regulation) Act, 1956
(*viii*) the Wealth-tax Act, 1957
(*ix*) the Income-tax Act, 1961
(*x*) the Customs Act, 1962
(*xi*) the Monopolies and Restrictive Trade Practices Act, 1969
(*xii*) the Foreign Exchange Regulation Act, 1973
(*xiii*) the Sick Industrial Companies (Special Provisions) Act, 1985
(*xiv*) the Securities and Exchange Board of India Act, 1992
(*xv*) the Foreign Trade (Development and Regulation) Act, 1992

b. he has ***not been detained*** under ***COFEPOSA***
c. Age band is 25 – 75. If other-wise than ***special resolution*** is required for appointment. ***(Less than 18 years cannot be appointed).***
d. Must be ***resident in India*** (who stays in India for ***continuous period of 12 months*** and has come to India for ***employment or to carry business / vocation.***

B. <u>Remuneration of Managerial Person</u>

Refer Page No. 80

C. <u>Procedural Aspects</u>

a. Approval of appointment and Remuneration by shareholders by resolution in General Meeting.
b. ***Form No.25C*** has to be filed with ROC within 90 days of such appointment.
c. Certificate of compliance of Schedule XIII shall be filed with ROC ***along with*** the ***Form No.25C*** certified by an ***Auditor of the company*** or a ***Secretary of the company*** or ***any other secretary in practice.***

Note – Relevant time for checking the compliance of Schedule XIII is at the time of appointment or re-appointment.

Not applicable to Private Company.

Contravention of Sec 269
If an appointment is contravened under Sec 269, then the following procedure shall be adopted by the Central Government :-
A. **Reference made by CG -** Where the CG on a ***prima facie*** views appointment as not valid u/s 269, it will refer the matter to the CLB for decision. The CG may form a decision suo motu or on receipt of any information by it.
B. Procedure for inquiry by CLB – a. CLB will ***issue a show cause notice*** to Company, concerned managerial person & other officers for such contravention. b. CLB can ***make the order*** after giving a reasonable opportunity of being heard. c. CLB may ***end the contract*** of the managerial person. d. Consequences of termination of appointment will lead to penalties as follows – ⇨ ***Managerial person*** so removed will have to refund the managerial remuneration. ⇨ ***Company*** pays penalty of ***Rs.50,000*** ⇨ Every ***officer*** in such default will be penalised with ***Rs.1,00,000*** ⇨ ***Managerial person*** will be penalised with ***Rs.1,00,000***
C. Validity of Acts - All the acts done by Managerial Person will stand valid unless specifically held invalid by CLB.

Remuneration of a Manager – Sec 387
387. Remuneration of manager.—The manager of a company may, subject to the provisions of section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage 2[* * *] of the "net profits" of the company calculated in the manner laid down in sections 349 3[*and 350*], or partly by the one way and partly by the other: 4[Provided that except with the approval5 of the Central Government such remuneration shall not exceed in the aggregate five per cent of the net profits.]

Applications & Non-application of other Sections – Sec 388
388. Application of sections 269, 310, 311, 312 and 317 to managers.—The provisions of sections 269, 310, 311 and 317 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof. **388A. Sections 386 to 388 not to apply to certain private companies.**— Sections 386, 387 and 388 shall not apply to a private company unless it is a subsidiary of a public company.

Managerial Remuneration – Sec 198, 309 & Schedule XIII
198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.— (1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its 6[* * *] manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in sections 349 7[and 350], except that the remuneration of the directors shall not be deducted from the gross profits. (2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309. (3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387. 2[(4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the provisions of

section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government.3]

Explanation.—For the purposes of this section and sections 309, 310, 311, 4[* * *] 381 and 387, "remuneration" shall include,—

(*a*) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in subsection (1);

(*b*) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(*c*) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and

(*d*) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child]

199. Calculation of commission, etc., in certain cases.—

(1) Where any commission or other remuneration payable to any officer or employee of a company (not being a director 1[* * *] or a manager) is fixed at a percentage of, or is otherwise based on, the net profits of the company, such profits shall be calculated in the manner set out in sections 349 2[and 350].

(2) Any provision in force at the commencement of this Act for the payment of any commission or other remuneration in any manner based on the net profits of a company shall continue to be in force for a period of one-year from such commencement; and thereafter shall become subject to the provisions of subsection (1).

200. Prohibition of tax-free payments.—

(1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

Explanation.—In this sub-section, the expression "tax" comprises any kind of income-tax including super-tax.

(2) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company's articles, or in any contract made with the company, or in any resolution passed by the company in general meeting or by the company's Board of directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section (1), such provision shall have effect during the residue of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(3) This section shall not apply to any remuneration—

(*a*) which fell due before the commencement of this Act, or

(*b*) which may fall due after the commencement of this Act, in respect of any period before such commencement

201. Avoidance of provisions relieving liability of officers and auditors of company.—

(1) Save as provided in this section, any provision, whether contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or discharged or in connection with any application under section 633 in which relief is granted to him by the Court.

309. Remuneration of directors.—

(1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting 1[and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

(*a*) the services rendered are of a professional nature, and 2(*b*) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession]

3[(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him:

Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960) fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer.

(3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other:

Provided that except with the approval4 of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.]

5[(4) 6A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration either—

(*a*) by way of a monthly, quarterly or annual payment with the approval of the Central Government; or (*b*) by way of commission if the company by special resolution authorizes such payment:

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed—

(*i*) one per cent of the net profits of the company, if the company has a managing or whole-time director, 1[* * *] or a manager;

(*ii*) three per cent of the net profits of the company, in any other case:

Provided further that the company in general meeting may, with the approval of the Central Government, authorize the payment of such remuneration at a rate exceeding one per cent or, as the case may be, three per cent of its net profits.]

(5) The net profits referred to in sub-sections (3) and (4) shall be computed in the manner referred to in section 198, sub-section (1).

2[(5A) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

3(5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government.]

(6) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time:

Provided that no renewal shall be affected earlier than one year from the date on which it is to come into force.

(8) The provisions of this section shall come into force immediately on the commencement of this Act or, where such commencement does not coincide with the end of a financial year of the company, with effect from the expiry of the financial year immediately succeeding such

commencement.
(9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

SCHEDULE XIII

(*See* sections 198, 269, 310 and 311)

Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government

PART I

Appointments -
No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—
(*a*) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—
(*i*) the Indian Stamp Act, 1899 (2 of 1899),
(*ii*) the Central Excise and Salt Act, 1944 (1 of 1944),
(*iii*) the Industries (Development and Regulation) Act, 1951 (65 of 1951),
(*iv*) the Prevention of Food Adulteration Act, 1954 (37 of 1954),
(*v*) the Essential Commodities Act, 1955 (10 of 1955),
(*vi*) the Companies Act, 1956 (1 of 1956),
(*vii*) the Securities Contracts (Regulation) Act, 1956 (42 of 1956),
(*viii*) the Wealth-tax Act, 1957 (27 of 1957),
(*ix*) the Income-tax Act, 1961 (43 of 1961),
(*x*) the Customs Act, 1962 (52 of 1962),
(*xi*) the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),
(*xii*) the Foreign Exchange Regulation Act, 1973 (46 of 1973),
(*xiii*) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),
(*xiv*) the Securities and Exchange Board of India Act, 1992 (15 of 1992),
(*xv*) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
(*b*) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):
Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under subparagraph (*a*) or sub-paragraph (*b*), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval;
1[(*c*) he has completed the age of 25 years and has not attained the age of 70 years:
Provided that where—
(*i*) he has not completed the age of 25 years, but has attained the age of majority; or
(*ii*) he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;
(*d*) where he is a managerial person in more than one company he draws remuneration from one or more companies subject to the ceiling provided in section III of Part II;]
(*e*) he is resident in India
Explanation 2[*I*].—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—
(*i*) for taking up employment in India, or
(*ii*) for carrying on a business or vocation in India
1[*Explanation II*.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:
Provided that a person, being a non-resident in India shall enter India only after obtaining a proper

Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such persons appointment.]

PART II

Remuneration -

Section I.—Remuneration payable by companies having profits

Subject to the provisions of section 198 and section 309, a company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent for all of them together.

Section II.—Remuneration payable by companies having no profits or inadequate profits

1. Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person by way of salary, dearness allowance, perquisites and any other allowances,—

(A) not exceeding the ceiling limit of Rs. 24,00,000 per annum or Rs. 2,00,000 per month calculated on the following scale:—

Where the effective capital Monthly remuneration
of Company is payable shall not exceed
(Rupees)

(*i*) less than rupees 1 crore 75,000
(*ii*) rupees 1 crore or more but less than rupees 5 crores 1,00,000
(*iii*) rupees 5 crores or more but less than rupees 25 crores 1,25,000
(*iv*) rupees 25 crores or more but less than rupees 50 crores 1,50,000
(*v*) rupees 50 crores or more but less than rupees 100 crores 1,75,000
(*vi*) rupees 100 crores or more 2,00,000:

Provided that the ceiling limits specified under this subparagraph shall apply, if—
(*i*) payment of remuneration is approved by a resolution passed by the Remuneration Committee;
(*ii*) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
(B) not exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale:—

Where the effective capital Monthly remuneration of Company is payable shall not exceed(Rupees)

(*i*) less than rupees 1 crore 1,50,000
(*ii*) rupees 1 crore or more but less than rupees 5 crores 2,00,000
(*iii*) rupees 5 crores or more but less than rupees 25 crores 2,50,000
(*iv*) rupees 25 crores or more but less than rupees 50 crores 3,00,000
(*v*) rupees 50 crores or more but less than rupees 100 crores 3,50,000
(*vi*) rupees 100 crores or more 4,00,000:

Provided that the ceiling limits specified under this subparagraph shall apply, if—
(*i*) payment of remuneration is approved by a resolution passed by the Remuneration Committee;
(*ii*) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
(*iii*) a special resolution has been passed at the general meeting of the company for payment of

remuneration for a period not exceeding three years;
(*iv*) a statement along with a notice calling the general meeting referred to in clause (*iii*) is given to the shareholders containing the following information, namely:—

I. General Information:
(1) Nature of industry.
(2) Date or expected date of commencement of commercial production.
(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.
(4) Financial performance based on given indicators.
(5) Export performance and net foreign exchange collaborations.
(6) Foreign investments or collaborators, if any.

II. Information about the appointee:
(1) Background details.
(2) Past remuneration.
(3) Recognition or awards.
(4) Job profile and his suitability.
(5) Remuneration proposed.
(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be w.r.t. the country of his origin).
(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personal, if any.

III. Other information:
(1) Reasons of loss or inadequate profits.
(2) Steps taken or proposed to be taken for improvement.
(3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:
(1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
(2) The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance",
if any, attached to the annual report:—
(*i*) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc. of all the directors;
(*ii*) Details of fixed component and performance linked incentives along with the performance criteria;
(*iii*) Service contracts, notice period, severance fees;
(*iv*) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.
(C) exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale:—

Where the effective capital Monthly remuneration
of Company is payable exceed (Rupees)

(*i*) less than rupees 1 crore 1,50,000
(*ii*) rupees 1 crore or more but less than rupees 5 crores 2,00,000
(*iii*) rupees 5 crores or more but less than rupees 25 crores 2,50,000
(*iv*) rupees 25 crores or more but less than rupees 50 crores 3,00,000
(*v*) rupees 50 crores or more but less than rupees 100 crores 3,50,000
(*vi*) rupees 100 crores or more 4,00,000:

Provided that the ceiling limits specified under this subparagraph shall apply, if—
(*i*) payment of remuneration is approved by a resolution passed by the Remuneration Committee;
(*ii*) the company has not made any default in payment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial years before the date of appointment of such managerial person;
(*iii*) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
(*iv*) a statement along with a notice calling the general meeting referred to in clause (*iii*) is given to the shareholders containing the following information, namely:—

I. General Information:
(1) Nature of industry.
(2) Date or expected date of commencement of commercial production.
(3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.
(4) Financial performance based on given indicators.
(5) Export performance and net foreign exchange collaborations.
(6) Foreign investments of collaborators, if any.

II. Information about the appointee:
(1) Background details.
(2) Past remuneration.
(3) Recognition or awards.
(4) Job profile and his suitability.
(5) Remuneration proposed.
(6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be w.r.t. the country of his origin).
(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:
(1) Reasons of loss or inadequate profits.
(2) Steps taken or proposed to be taken for improvement.
(3) Expected increase in productivity and profits in measureable terms.

IV. Disclosures:
(1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
(2) The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any attached to the annual report:—
(*i*) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc. of all the directors;
(*ii*) Details of fixed component and performance linked incentives along with the performance criteria;
(*iii*) Service contracts, notice period, severance fees;
(*iv*) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable:
Provided further that the conditions specified in sub-paragraph (C) shall apply in the case the effective capital of the company is negative:
Provided also that the prior approval of the Central Government is obtained for payment of remuneration on the above scale.]
1[(D) not exceeding Rs. 2,40,00,000 per annum or Rs. 20,00,000 per month in respect of companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that these companies have not raised any money by public issue of shares or debentures in India:
Provided further that such companies have not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year.]
2. A managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section:
(*a*) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961,
(*b*) gratuity payable at a rate not exceeding half a month's salary for each completed year of service, and
(*c*) encashment of leave at the end of the tenure
3. In addition to the perquisites specified in paragraph 2 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section:
(*a*) *Children's education allowance*: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000 per month per child or actual expenses incurred, whichever is less
Such allowance is admissible up to a maximum of two children.
(*b*) *Holiday passage for children studying outside India/family staying abroad*:
Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India with the managerial person.
(*c*) *Leave travel concession*:
Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.
Explanation I.—For the purposes of section II of this Part, 'effective capital' means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over-drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock debentures or other securities), accumulated losses and preliminary expenses not written off.
Explanation II.—
(*a*) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
(*b*) In any other case, the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.
Explanation III.—
For the purposes of section II of this Part, family means the spouse, dependent children and dependent parents of the managerial person.
1[*Explanation* IV.—For the purposes of this section, 'Remuneration Committee' means that a committee which consists of at least three non-executive independent directors including nominee director or nominee directors, if any.
Explanation V.—
For the purposes of this clause, the Remuneration Committee while approving the remuneration under this section shall,—
(*a*) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc
(*b*) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders
Explanation VI.—
For the purposes of Paragraph I, "negative effective capital" means the effective capital which is

calculated:—
(*a*) in accordance with the provisions contained in Explanation I of this Part;(*b*) less than zero]
2[*Section III — Remuneration payable to a managerial person in two companies*
Subject to the provisions of section I and II, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.]

PART III

Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
2. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269.]

Mode of determination of Remuneration –

a) either by AOA; or
b) Ordinary Resolution; or
c) Special Resolution where AOA so requires.

Note – Board cannot determine the remuneration unless such powers are delegated by the AOA or Shareholders.

Meaning of Remuneration includes –

a) ***Rent free accommodation*** / any benefit of amenities in respect of accommodation
b) Any ***other benefit of amenity free*** of charge or at a ***concessional*** rate.
c) Any ***service / obligation*** which has been incurred by such person, if it had not been incurred by the company.
d) ***Insurance for life***, any ***pension, annuity, gratuity*** for ***such person*** or his ***spouse or child.***

Situation I – Adequate Profits are available (Sec 198 & 309)

01. Overall Managerial Remuneration –

a. Remuneration not to exceed 11% -
Total remuneration payable to directors in a FY shall ***not exceed 11%*** of NP of the company for that year.
b. Computation of Net Profits –
As per Sec 349 & Sec 350.
It is ***mandatory to charge depreciation*** to arrive to the Profits.
c. Remuneration for other Service –
All remuneration payable to Directors shall be covered in overall managerial remuneration.
Exception – Professional Capacity Service & as per CG's intimation to specifically exclude.
d. Guarantee commission paid to a director is not managerial remuneration –
The guarantee commission is paid to compensate the director for the risk which he bears, which has nothing to do with his directorship. [Suessen Textile Bearing Limited]

02. Remuneration to WTD(s) or MD(s) –

a. Mode of payment – ***monthly or / and certain % of NP.***
b. Quantum –
   - ***5% of NP*** if only single WTD or MD.
   - ***10% of NP*** if two or more WTD or MD.
   - Can be ***exceeded by the CG*** approval.

03. Remuneration to a Manager –

a. Mode of payment – ***monthly or / and certain % of NP.*** b. Quantum – • ***5% of NP*** if only single WTD or MD. • Can be ***exceeded by the CG*** approval.
04. Remuneration to Non – Executive Directors – **<u>Mode of Payment</u>** a. Monthly / quarterly / annually ***with CG approval*** b. ***Commission***, if authorized by ***Special Resolution*** ***Note – Special Resolution authorizing the commission shall remain in force for the period of 5 years only. It can be renewed for further 5 years (max) by passing fresh Special Resolution. However, the renewal cannot be more than 1 year in advance.*** **<u>Remuneration Quantum Cap –</u>** a. 1% of NP, if company has employed WTD or MD. b. 3% of NP, if company has not employed WTD or MD. c. Can be exceeded by CG approval.
05. <u>Sitting Fees to Directors –</u> a. Sitting fees is the fees received by the ***ordinary director*** for ***attending*** the ***meeting of board or committee.*** b. <u>Quantum –</u> • It should ***not exceed Rs.20,000*** per meeting (case where ***Paid up Capital + free reserves exceeds Rs.10 crores*** or ***turnover is more than 50 crores***); or • ***Rs. 10,000*** per meeting, in case of other companies • ***No remuneration for adjoined meeting*** (since it is continuation of the original meeting). • ***Can exceed*** the above limits ***with CG approval.*** c. <u>Sitting fees excluded out of Remuneration –</u> Sitting fees paid to the ordinary director will be excluded for computation of overall managerial remuneration. ***But sitting fees paid to WTD or MD shall be included.***
<u>Situation II – Inadequate Profits or No Profits (Schedule XIII)</u>
01. <u>Sitting fees –</u> No restrictions on sitting fees can be paid even if the company makes loss. <u>Quantum –</u> • It should ***not exceed Rs.20,000*** per meeting (case where ***Paid up Capital + free reserves exceeds Rs.10 crores*** or ***turnover is more than 50 crores***); or • ***Rs. 10,000*** per meeting, in case of other companies • ***No remuneration for adjoined meeting*** (since it is continuation of the original meeting). • ***Can exceed*** the above limits ***with CG approval.***
02. <u>Remuneration to Non – Executive Directors –</u> Not allowed if the company is making loss. Schedule XIII disallows. ***But CG may by special approval may allow***
03. <u>Remuneration to WTD, Manager & MD –</u> As per Section II of Part II of Schedule XIII, the quantum of managerial remuneration depends on two factors, viz., firstly, the effective capital of the company and secondly, the option availed by the company to pay remuneration. **<u>Calculation of Effective Capital –</u>** Items to be added a. Paid up Share- Capital; b. Securities Premium;

c. Reserves & Surplus ***(excluding Revaluation Reserves)***
d. Long-term loans
e. Deposits repayable after 1 year ***(excluding working capital loan, OD, interest due on loans unless funded, bank guarantee, etc., and other short term loans)***

<u>Items to be deducted –</u>

a. Investments ***(except if the company is investment company)***
b. Accumulated Losses
c. Preliminary Expenses not written off

<u>Time of Calculation of Effective Capital –</u>

a. Where appointment of managerial person is made in the year of incorporation than the effective date shall be the date of appointment.
b. If any other case, it shall be calculated on the last day of FY in the year in which the appointment was done.

<u>Quantum –</u>

Option 1 – Payment of managerial remuneration not exceeding Rs. 2,00,000 per month calculated on the following scale :-

Where the effective capital of the company is….	**Monthly remuneration payable to each managerial person shall not exceed Rs…..**
a. < Rs. 1 crore	75,000
b. 1 crore => < 5 crores	1,00,000
c. 5 crores => < 25 crores	1,25,000
d. 25 crores => < 50 crores	1,50,000
e. 50 crores => < 100 crores	1,75,000
f. >= 100 crores	2,00,000

<u>Conditions to be fulfilled under Option1 –</u>

A. Approval of Remuneration by Remuneration Committee.
B. No default in payment of debts, etc. for a period of 30 days in a preceding FY.

Option 2 – Payment of Remuneration not exceeding Rs.4,00,000 per month

Where the effective capital of the company is….	**Monthly remuneration payable to each managerial person shall not exceed Rs…..**
a. < Rs. 1 crore	1,50,000
b. 1 crore => < 5 crores	2,00,000
c. 5 crores => < 25 crores	2,50,000
d. 25 crores => < 50 crores	3,00,000
e. 50 crores => < 100 crores	3,50,000
f. >= 100 crores	4,00,000

<u>Conditions to be fulfilled under Option 2 –</u>

A. Compliance of all conditions under Option 1.
B. Special Resolution is required for such remuneration and shall remain valid for 3 years.
C. Additional Disclosure in notice calling the general meeting is required.

Option 3 – Payment can exceed the limits under above options.
<u>Conditions to be fulfilled under Option 3 –</u>

A. Compliance of all conditions in Option 1 & Option 2.
B. Approval of CG for such payment

Certain Perquisites to be in addition to managerial remuneration –

a. Contribution to ***PF. (to the extent not taxable under Income Tax Act)***
b. ***Gratuity (not exceeding ½ month's salary for each completed year of service)***
c. ***Leave encashment (at the end of tenure)***

Additional perquisites for expatriate managerial person –

a. ***Children education allowance*** of ***maximum Rs.5000 per child per month*** or ***actual incurred whichever is less*** for the children ***studying in or outside*** India. ***Maximum two children.***
b. ***Holiday passage*** for ***children*** studying abroad & ***family*** staying outside India, ***once*** in a year ***by economy class*** or ***once*** in ***two years in first class*** to children and members of family from abroad to India if they are not residing in India.
c. Leave Travel Concession – Return passage for self & family in accordance with the rules of the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Payment of Managerial Remuneration where effective capital is Negative –

No managerial remuneration shall be paid. If the company wants to pay then all the conditions of ***Option 3 shall be fulfilled.***

Remuneration payable to a managerial person in two companies –

Shall not exceed the ***higher limit*** admissible from any one of the companies which he is a managerial person.

Sitting fees will be payable if the ordinary director has not attended the original meeting but attended adjourned meeting.

Under Schedule XIII ceiling limits are for each managerial person and per month.

Remuneration to accrue day to day basis.

Reimbursement of travelling expenses including hotel stay expenses are allowed and to be excluded from managerial remuneration in connection of business of the company or attending the meeting.

If excess of managerial remuneration is paid without the approval or contravening any of the section regarding managerial remuneration than such remuneration shall be refunded and the company cannot waive off such liability of managerial person.

Not applicable to Private Company and Government Company.

Increase in Remuneration of Directors – Sec 310 & 311
01. Manner of increasing the Remuneration by – a. MOA; b. AOA; c. Agreement between company & director; d. Resolution in General Meeting; e. Resolution passed in board meeting.
02. Increase in Sitting Fees – a. Approval of CG is required for increasing the sitting fees. b. No approval if payments are as per below rates – • It should ***not exceed Rs.20,000*** per meeting (case where ***Paid up Capital + free reserves exceeds Rs.10 crores*** or ***turnover is more than 50 crores***); or • ***Rs. 10,000*** per meeting, in case of other companies
03. Increase in other remuneration of Director – a. ***No approval*** if the increase is within the limits prescribed ***under Schedule XIII*** & covered by the ***earlier or fresh ordinary resolution*** in the General Meeting; otherwise b. Approval of ***CG***. **Increase in remuneration of a Director appointed by the CG –** It can be increased up to the limit prescribed ***under Schedule XIII***. But if the ***CG has appointed such director with T & C regarding remuneration than it can be altered by the central government itself, even if it falls below the limit under Schedule XIII.***
04. Increase in remuneration at the time of re-appointment of a MD / WTD – a. No approval of below the limits as per ***Schedule XIII*** and ***ordinary resolution*** has been already passed or passed fresh for such increment in General Meeting; otherwise b. By ***CG*** approval.
Not applicable to Private Company, Manager & Government Company.

Removal of Directors by the Company Law Board – Sec 402
Refer Page No. 30

Appointment of Directors by the Central Government – Sec 408
Refer Page No. 13

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