

Directors (Sections 252 – 269)

Constitution of Board of Directors (252- 266)

Minimum Number of Directors (Section 252)

Question 1

The Board of Directors of M/s ABC Limited, an unlisted company having a paid-up capital of ₹ 6 crores consisting of equity share capital of ₹ 5 crores and preference share capital of ₹ 1 crore and also 1,100 'Small Shareholders' holding equity shares seeks your advice on the following:

- (i) *Is it necessary for the Company to appoint a Director to represent the 'Small Shareholders'?*
- (ii) *In case the Company decides to appoint such a Director. The procedure to be followed by the company for such appointment and the period for which such appointment can be made.*
- (iii) *Can such a director be removed by the Company before the expiry of his period of appointment without the consent of the 'Small Shareholders'?*

Advise explaining the relevant provisions of the Companies Act and the Rules.

(May, 2004, November 2008)

Answer

Director elected by small shareholders

- (1) A public company (i) having a paid up capital of ₹ 5 crores or more; (ii) One thousand or more shareholders, may have a director elected by small shareholders in the manner prescribed by rules [proviso to Section 252(1)].
- (2) Paid-up capital includes both equity and preference share capital. In this case, the total paid up share capital including the preference share capital exceeds ₹ 5 crores and the equity share capital is also ₹ 5 crores. The company has also got more than 1000 small shareholders. Hence the provisions of Section 252(1) are applicable to this company.
- (3) Since the words used in proviso to Section 252(1) are "may have a director ", the appointment of small shareholders' director is voluntary Rule 4(1) of the Companies (Appointment of the Small Shareholders' Director) Rules, 2001, a company can act suo motu to elect such director. It may also act upon notice of small shareholders and have proposed name of a person as director. However, if a notice is received from required number of shareholders, it will be mandatory to appoint small shareholders' director, otherwise it is discretionary.

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- (4) The director in this case is the small shareholders' nominee and he is elected by the small shareholders only in the manner provided in Rule 4. The director so elected is appointed by the company. (Rule 4(5)). Small shareholders intending to propose to person shall give notice to company at least 14 days before meeting. The notice should be signed by at least 100 small shareholders and it must contain the prescribed particulars. The person whose name is proposed as director will sign and file with the company his consent in writing to act as a director (He must be a small shareholder). In case of unlisted company, appointment of small shareholder, director can be made at the general meeting, if may oath of small shareholders recommend his candidature for the post of director in the meeting.

A nominee director is normally removed by the person who has got authority to make such nomination [e.g. UTI, LIC nominee]. But in view of Rule 6(viii) relating to vacation of office, small shareholders director can be removed by the share holders at a general meeting under section 284 of the companies Act, 1956 before the expiry of his tenure.

He cannot be considered as a director appointed by the company in general meeting within the meaning of section 255. It can, therefore, be said that small shareholders' director is like and nominee director.

- (5) Small shareholders' director can be appointed for a maximum period of 3 years subject to meeting the requirements of provisions of Companies Act except that he is not required to retire by rotation (Rule 4(6)). But on expiry of his tenure, the same person, if so desired by small shareholders, may be elected for another period of 3 years [Rule 4(7)].
- (6) He cannot be considered as a director appointed by the company in general meeting within the meaning of Section 255. It can, therefore, be said that small shareholders' director is like and nominee director.

Question 2

Some small shareholders of TRG Ltd., a company listed with Mumbai Stock Exchange, want to appoint Mr. Raj, who is holding 1,000 Equity Shares of ₹ 10 each in the Company as a Director as their representative on the Board of Directors of the said Company. You are required to state the relevant provisions of the Companies Act, 1956 in respect of such proposal to appoint Mr. Raj as a Small Shareholders' Director. (November, 2004)

Answer

The provisions of section 252 of the Companies Act, 1956, and the Companies (Appointment of Small Shareholders' Director) Rules, 2001 in respect of appointment of Small Shareholders' Director are as follows:

- (1) The provisions of appointment of Small Shareholders' Director are applicable to public companies having paid-up share capital of ₹ 5.00 Crores or more and having 1000 or more small shareholders. In case, TRG Ltd. is fulfilling both these conditions, then only its shareholders shall be eligible to proceed in the direction of appointing Mr. Raj as a Small Shareholders' Director. [Proviso to section 252 (1)]

- (2) Small Shareholder for this purpose means a shareholder holding shares of nominal value of ₹ 20,000/- or less.[Explanation to section 252(1)].
- (3) Small Shareholders who intend to propose Mr. Raj as a Small Shareholders' Director have to leave a notice of their intention with TRG Ltd. at least 14 days before the meeting and such notice has to be signed by at least 100 small shareholders.
- (4) According to the rules, the person whose name is to be proposed for the post of Small Shareholders' Director should himself be a small shareholder. Since Mr. Raj is holding shares of nominal value of ₹ 10,000/- only, which is less than ₹ 20,000, he is eligible to be nominated as such.
- (5) The said notice shall contain the name, address, number of shares held, of Mr. Raj whose name is to be proposed as a Small Shareholders Director and also that of other shareholders proposing Mr Raj.
- (6) Before the meeting, Mr. Raj has to sign and file with TRG Ltd., his consent in writing to act as a director.
- (7) Since TRG Ltd. is a company, which is listed with Mumbai Stock Exchange, it shall elect small shareholders' nominee through the postal ballot.
- (8) On scrutinizing the postal ballot, if Mr. Raj secures the requisite number of votes, he will be elected as a director for a term of 3 years and on expiry of the term shall be eligible to be re-appointed if small shareholders so wish at that time. However, he need not have to retire by rotation.
- (9) Mr. Raj shall be treated as director for all other purposes except for appointment as whole time director or managing director.

Question 3

In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2010, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies' Act, 1956 and decide

- (i) *Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.*
- (ii) *What would be your answer in case the company in question is an "Association not for Profit" incorporated under Section 25 of the Companies Act, 1956.*

(CA Final, New Course, November 2010)

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Answer

The matter of appointment of directors at the general meeting has been correctly slated in the agenda as the ordinary business to be transacted at the general meeting. But in accordance with the provisions of the Companies Act, 1956 as contained in Section 263 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. Any 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. However, Government and companies incorporated under Section 25, i.e. associations not for profit have been exempted from the above.

Answer to Problems:

1. Taking into account the above, the contention of the members shall be tenable. Each director has to be appointed by way of a separate resolution.
2. In the second case since the company is an association not for profit under section 25 of the Companies Act, 1956 the above provisions do not apply. In case of association word limited is also not necessary.

Appointment of directors and proportion of those who are to retire by rotation (Section 255) &

Ascertainment of directors retiring by rotation and filing of vacancies (Section 256)

Question 4

A company has 11 directors on the Board consisting of the following:

- (a) *Mr. Active, Mr. Archive as nominees from two Public Financial Institutions.*
- (b) *Mr. First, Mr. Second, Mr. Third appointed at the 2nd AGM.*
- (c) *Mr. Fourth, Mr. Fifth appointed at the 3rd AGM.*
- (d) *Mr. Addition was appointed as additional director subsequent to 3rd AGM.*
- (e) *Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the 3rd AGM.*
- (f) *Mr. Excellent was appointed as Managing Director for 5 years w.e.f. 2nd AGM.*
- (g) *Mr. One more was appointed as additional Director soon after Mr. Addition was appointed as Additional Director.*

List out in order, who shall be vacating the office at the 4th AGM of the company.

Answer

Section 255 of the Companies Act, 1956, provides that unless the Articles provide for retirement of all the directors at every 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 retire by rotation. In terms of section 256 of the Act, one-third of the directors liable to retire by rotation shall retire at the Annual General Meeting of the Company. If the number of directors liable to retire by rotation is not three or a multiple of three, then the number of nearest to one-third shall retire from the office of director.

In order to determine the directors who shall retire by rotation at every general meeting, it is provided that the persons who have been longest in office since their last appointment shall be liable to retire. As between the persons who became directors on the same day, the directors who shall retire may be determined by agreement among themselves. In the absence of any such agreement the persons liable to retire shall be chosen by lot.

Of the 11 directors mentioned in the question, Mr. Active and Mr. Archive, who are nominees of Public Financial Institutions respectively, are non-rotational directors and are not liable to retire. Mr. Excellent being the Managing Director, is also not liable to retire. The position in regard to the remaining 8 directors is as under:

- (i) Mr. Addition & Mr. One More who were appointed as Additional Directors in subsequent to 3rd Annual General Meeting respectively, shall vacate office on the date of 4th Annual General Meeting.
- (ii) Mr. Casual was appointed in place of Mr. Soul who died and will, therefore, hold office till the date. Soul would have held office.
- (iii) Of the 6 rotational directors, [viz., Mr. First, Mr. Second, Mr. Third, Mr. Fourth, Mr. Fifth and Mr. Casual, 2 directors who constitute one-third, and who have been longest in office are liable to vacate office. Accordingly, two amongst Mr. First, second and third who were appointed in 1st AGM and have been longest in office, shall vacate office. Amongst themselves, either they can decide by mutual consent or by draw of lots.

Question 5

Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 1956. In this connection, it has some directors who are rotational and out which some have been appointed long back, some have been appointed on the same day.

Decide in this connection:

- (i) *Which of the directors shall be retiring by rotation and be eligible for re-election?*
- (ii) *In case two directors were appointed on the same day, how would you decide their retirement by rotation?*
- (iii) *In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences ?*
- (iv) *What will be your answer, assuming that the matter could not be decided even at the adjourned meeting?*

(May 2011)

Answer

Rotational Directors and Retirement:

- (i) According to Section 256 of the Companies Act, 1956, out of the 2/3rds rotational directors only 1/3rds must retire by rotation at one general meeting. If the number is not three or multiple of three, then the number nearest to 1/3 must retire from office. First those directors who are the longest in office must retire.
- (ii) If two directors have been appointed on the same day, their retirement will be determined either mutually or by lot.
- (iii) The vacancies caused by such retirement may be filled in the same annual general meeting by appointing either the retiring directors or some other person. But the meeting may also decide that the vacancies shall not be filled.
- (iv) Where, however, the meeting has not done either of two, then the meeting is deemed to have been adjourned for a week. If at the adjourned meeting held after the said week, fresh appointment is not made and if no resolution against appointment is passed, then the retiring directors shall be deemed to have been appointed except in the following cases:
 - (a) Where at the meeting or at the previous meeting the resolution for the reappointment of a particular director was put to vote but lost;
 - (b) Where the retiring director has expressed his unwillingness to be reappointed by a written notice addressed to the company or its Board of Directors;
 - (c) Where he is unqualified or has been disqualified for appointment; and
 - (d) Where any special or ordinary resolution is required for his appointment or reappointment.

Question 6

The Articles of Association of M/s AB Ltd provides for five directors and all the five directors are in positions. How many directors are liable to retire at the ensuing annual general meeting? Will it make any difference if Mr. A, a Whole Time Director is not liable to retire by rotation. Explain.

Answer

Section 255 and 256 of the Companies Act, 1956 govern the retirement of directors. As per section 255, not less than two-thirds of the directors of a public company or of a private company which is a subsidiary company are liable to retirement by rotation. It would therefore, mean that one-third of the directors need not retire at the annual general meeting. In the question given, it is presumed that all the 5 directors are liable to retire by rotation.

As per section 256, one-third of such directors for the time being are liable to retire by rotation or if the number is not three or a multiple of three, then the number nearest to one-third shall retire from office. The directors who are longest in office shall retire first.

Keeping in view of the above provisions, where all the 5 directors are liable to retire by rotation, 2 directors ie. $\frac{1}{3}$ rd of 5(nearest) will retire by rotation, as this number is nearest to $\frac{1}{3}$ rd of 5.

As per second part of the problem, if Mr A is not liable to retire by rotation, then, those liable to retire by rotation $\frac{1}{3}$ rd of 4 (ie. rotational directors) and this work out to 1. It means at the ensuing annual general meeting only one director will be liable to retire by rotation.

Earlier, it was presumed that all the 5 directors were liable to retire by rotation. If, however, the articles provided that one-third of the directors would not be liable to retire by rotation, then only $\frac{2}{3}$ rd of 5 would be liable to retire by rotation at the every annual general meeting. It means only 3 out of 5 are liable to retire and out of these 3, $\frac{1}{3}$ rd (one) directors will be liable to retire by rotation at every annual general meeting.

Question 7

ABC Company Ltd. in its First General Meeting appointed six Directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if ABC Company Ltd. does not carry on business for Profit?
(November, 2002)

Answer

According to section 255 of the Companies Act 1956, unless the articles provide for the retirement of all directors in every general meeting, at least $\frac{2}{3}$ rd of the total number of directors of the public limited company in question must, in the first place, be appointed, save as otherwise expressly provided in the Act by the company in general meeting; Secondly, they must be persons whose period of office is liable to be determined by rotation.

According to section 256, out of $\frac{2}{3}$ rd rotational directors only $\frac{1}{3}$ rd must retire by rotation at one general meeting. If the number is not three or multiple of three, then the number nearest to $\frac{1}{3}$ must retire from office.

Yes it will make a difference if ABC company does not carry on business for Profit. Provisions of Section 256 do not affect those companies which do not carry on business for profit or those which by their articles prohibit the payment of dividend to their members. Such companies are not affected by Section 255 also which provides that at least $\frac{2}{3}$ rd of the directors shall retire by rotation while section 256 provides that $\frac{1}{3}$ rd of the retiring directors shall retire every year.

Question 8

ADJ Company Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

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Referring to the provisions of the Companies Act, 1956, decide:

- (i) *Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?*
- (ii) *What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?*
- (iii) *Whether such directors can continue in case the directors do not call the Annual General Meeting?* **(May, 2010)**

Answer

Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 1956, as contained in Section 256(3) at the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by re-appointing the retiring director or some other person thereto. If the place of retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to 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. If at the adjourned meeting also, the place of the retiring 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 at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost.

Therefore, in the given circumstances answer to the questions as asked shall be:

- (1) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (2) In the second case, where the resolutions were lost, the retiring directors shall not be deemed to have been re-appointed.
- (3) In the third case the directors due to retire shall vacate their offices latest on the date on which AGM was to be held. (B.R. Kundra v. Motion Pictures Association, 1976, 46 Comp. Cas. 339)

Right of persons other than retiring directors to stand for directorship (Section 257)

Question 9

One of the members of ADB Ltd. has proposed the name of Mr. Fame for appointment as a Director of the Company in the Annual General Meeting and given a notice under Section 257 of the Companies Act, 1956. Mr. Fame is one of the partners of the Fame & Fame, Chartered Accountants, who are the retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Fame & Fame can be reappointed as auditors, if Mr. Fame is appointed as Director **(May 2006)**

Answer

Appointment of a partner of the company's auditors as a director: Problem as asked in the question is based on the provisions of Companies Act, 1956 as contained in Section 2(30) read with Section 226(3)(b) and (c). Accordingly, Mr. Fame is appointed as a director of the company 'Fame and Fame' cannot be reappointed as company's auditors. It is so because a director is an officer of the company within the meaning of section 2(30) of the Companies Act, 1956 and the audit firm becomes disqualified under section 226(3) (b) and (c) even if any of its partner is also an officer of the company. It is immaterial that the audit of the company is being looked after by another partner of the firm and not by Mr. Fame. Therefore, if Mr. Fame is appointed as a director of the company, 'Fame and Fame' cannot be reappointed as company's auditors.

Question 10

The management of ATP Ltd., a company listed with The Stock Exchange, Mumbai wants to appoint Mr. BDF as a Director of a Company at the Annual General Meeting of the Company to be held on 24th May, 2007. It maybe noted that Mr. BDF is not a retiring Director. The Management seeks your guidance regarding the procedure to be adopted for the purpose. You are required to state the procedure to be followed for giving effect to such proposal and formalities to be observed after appointment of Mr. BDF as Director, by the management of ATP Ltd., as per the provisions of the companies Act, 1956.

(May 2007)

Question 11

Mr. Wilson was appointed in ABC Ltd. as a director and he was to retire by rotation on 1st September, 2008. On account of some unavoidable reasons the annual general meeting of the company could not be held on the said date, nor the vacancy caused by retirement could be filled up at the adjourned meeting. State the relevant provisions of the Companies Act, 1956 and decide whether Mr. Wilson shall be deemed to be retired on 1st September, 2008 when the meeting was scheduled to be held or it will become a case of deemed reappointment.

(November 2008)

Answer

DEEMED REAPPOINTMENT OF DIRECTOR: Section 256 of the Companies Act, 1956 deals with deemed re-appointment of a retiring director. The vacancies caused by retirement of a director by rotation should be filled up at the same meeting or at an adjourned meeting. If it is not so done, the retiring director shall be deemed to have been reappointed at such adjourned meeting except in the following cases-

- (i) at any previous meeting, a resolution for his reappointment was put to vote but was lost, or
- (ii) the retiring director has, in writing expressed his unwillingness to continue, or
- (iii) he is not qualified or is disqualified for the said appointment, or
- (iv) a special or ordinary resolution is necessary for his appointment or reappointment by virtue of any provisions of the Companies Act 1956, or

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- (v) it is resolved to appoint two or more directors by a single resolution, or
- (vi) it is resolved not to fill the vacancy.

In the instant case the above mentioned exceptions are not applicable and hence Mr. Wilson cannot be deemed to be retired. He is deemed to be re-appointed as director.

The directors of a company are appointed by the shareholders at the general meeting. Though the retiring directors are normally re-appointed, it may sometimes become necessary to appoint a person other than the retiring director as director. The shareholders also have a right to propose the appointment of a person as a director. This power may be exercised in order to increase the strength of the Board or to permit the shareholders to exercise this important right available to them.

In the case of private company which is not a subsidiary of a public company, the producers given below are not applicable and the appointment shall be in accordance with the Articles of Association.

Procedure to be adopted:

1. A person, other than the retiring director, shall be eligible for appointment to the office of director only if he or some other member intending to propose him has, at least 14 days before the meeting, left at the office of the company a special notice in writing under his hand signifying his candidature for the office of director along with a deposit of ₹ 500 as required under section 257 of the Companies Act, 1956.
2. On receipt of the special notice, information should be sent to all the members of the company not less than 7 days before the meeting. Alternatively, an advertisement may be issued regarding the candidature or intention not less than 7 days before the meeting in at least in two newspapers circulating in the place where the registered office of the company is situated both in English and in the local language.
3. The resolution for the appointment should be move before the annual general meeting and an ordinary resolution should be passed for this purpose. If the resolution is not passed, no further action needs to be taken in this regard.
4. In case the resolution is passed, the deposit money is ₹ 500 should be refunded to the person who made the payment.
5. In the case of a listed company, copy of the minutes of the meeting and intimation regarding the appointment should be sent to each of the stock exchanges in which the securities are listed.
6. Within 30 days of the appointment, a return in Form No. 32 should be filed electronically, with the Registrar of Companies together with the prescribed filing fee.
7. The Company and the director has to complete the formalities as prescribed under Companies (Director Identification Number) Rules, 2006.
8. A genial notice of disclosure of interest in Form No. 24AA indicated the names of bodies corporate of which he is a director or member (holding more than 2% of paid-up

capital) or firms in which he is a partner should be obtained. The said disclosures should be placed before the Board and a resolution taking the notice on record should be passed. The notice shall expire at the end of the financial year but may be renewed by giving a fresh Form No. 24AA in the last month of the financial year in which it would otherwise expire.

9. Articles of Association should be checked and in case it provides for acquiring of qualification shares, the same should be acquired within two months of appointment, if the new appointee does not hold the same.
10. Particulars regarding directors should be entered in the Register of Directors and the Register of Directors' Shareholdings.

Increase in the number of directors to require Government sanction (Section 259)

Question 12

The maximum number of Directors of each of the following Companies as per their Articles of Association is 11.

- (i) ABS Company Ltd.
- (ii) DSP Trading Private Ltd.
- (iii) Traders Association (a Company registered under Section 25 of the Companies Act, 1956)
- (iv) Hindustan Paper Ltd. (a Government Company under Section 617 of the Companies Act, 1956)

The Board of Directors of the Company wants to increase the number of Directors to 15.

State with reference to the provisions of the Companies Act, 1956 whether the Directors can do so.

(November, 2003)

Answer

According to the provisions of section 259 of the Companies Act, 1956, in the case of a company incorporated after 21st July, 1951, any increase in the number of its directors beyond the maximum fixed by its Articles of Association as originally adopted and registered and in the case of a company existing prior to that date, any increase in the number of directors shall not have any effect unless approved by the Central Government and it is to become void to the extent to which it is disapproved by the Central Government. However, such approval from the Central Government is not required if the number of directors is increased to 12 or less than that.

From the reading of the provisions of the said section 259 of the Companies Act, 1956, it can be concluded that these provisions are applicable to only public companies or private companies which are subsidiaries of public companies.

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Based on the above provisions, following can be stated in respect of various types of Companies as mentioned in the question:

In the case of ABS Company Ltd., the Directors have to obtain the approval of the Central Government for increasing the number of Directors from 11 to 15.

In the case of DSP Trading Private Ltd., a private company; Traders Association, a section 25 company and Hindustan Paper Ltd. a Government Company, the provisions of section 259 of the Companies Act, 1956 are not applicable to them, hence the Directors of these companies can increase the number of Directors from 11 to 15 without approval of the Central Government subject to fulfilment of other procedural requirement.

Question 13

As per their Articles of Association the maximum number of Directors of each of the following companies is 9:

- (i) *Goodheart Company Limited.*
- (ii) *Frontline Trading Private Limited.*
- (iii) *Hindustan Zink limited (a Government company under section 617 of the Companies Act, 1956).*

The Board of Directors of the aforesaid companies proposes to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 1956, the Board of Directors can do so?
(June 2009)

Answer

As per Section 259 of the Companies Act, 1956, in the case of a company incorporated after 21st July, 1951, any increase in the number of its directors beyond the maximum fixed by its Articles of Association as originally adopted and registered and in the case of a company existing prior to that date, any increase in the number of directors shall not have any effect unless approved by the Central Government, and it is to become void to the extent to which it is disapproved by the Central Government. However, such approval from the Central Government is not required if the number of directors is increased to 12 or less than that.

The above mentioned provision of the Companies Act, 1956 are applicable only to public companies or private companies which are subsidiaries of public companies. Based on the above mentioned provisions, following conclusion can be drawn in respect of companies as mentioned in the question.

In the case of Good heart company Limited the Directors have to obtain the approval of the Central Government for increasing the number of Directors from 9 to 15.

In the case of Front Line Trading Private Limited (Which is a Private company) and Hindustan Zink Limited (a Government company) the provisions of section 259 of the companies Act, 1956 are not applicable and hence the directors of these companies can increase the number

of directors from 9 to 15 without the approval of the Central Government, subject to fulfillment of other procedural requirements

Question 14

The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 Directors. The Board of Directors of the said company desire to increase the number of Directors to 15. Advise whether under the provisions of the Companies Act, 1956 the Board of Directors can do so.
(CA Final, New Course, May, 2010)

Answer

Increase in the number of directors: As per Section 259 of the Companies Act, 1956 in the case of a company incorporated after 21st July, 1951 any increase in the number of its Directors beyond the maximum fixed by its Articles of Association as originally adopted and registered and in the case of a company existing prior to that date, any increase in the number of Directors shall not have any effect unless approved by the Central Government. However, such approval from the Central Government is not required if the number of Directors is increased to 12 or less than that. The above mentioned provisions of Section 259 of the Companies Act, 1956 are applicable only to public companies or private companies which are subsidiaries of public companies.

In view of the above, since Rajasthan Toys Private Limited is a private company and it is also not subsidiary of any public company, the provisions of Section 259 of the Companies Act, 1956 are not applicable and the Board of Directors of the said company may increase the number of Directors without seeking approval of the Central Government.

Additional Directors (Section 260)**Question 15**

The Articles of Association of a company have fixed the maximum strength of the board as 12 directors. At present the Board has 9 directors of whom 6 are liable to retire by rotation and 3 not liable to retire by rotation. The Board wishes to appoint 3 additional directors. Can they appoint as desired?

Answer

As per Section 260 of the Companies Act, 1956, Board can appoint additional directors provided the Articles give power to the Board to appoint such directors, and provided the number of directors and additional directors shall not exceed the maximum strength fixed by the Articles. In the instant case, after the appointment of 3 additional directors, the total strength of the Board will go up to 12, which is within the maximum fixed by the Articles. Hence, Board can appoint the additional directors.

Question 16

Can an additional Director Continue to be in office where the annual general meeting is not held as per Section 166?

6.14 Corporate and Allied Laws

Answer

In *Krishna Prasad Pilani vs. Colaba Land Mills Co.* 29 Comp. Crs 273, it was observed that an additional Director shall vacate his office latest on the date on which the annual general meeting could have been held under Section 166. He cannot continue in office on the ground that the meeting was not held or could not be called within the time prescribed.

Question 17

Can an additional Director be appointed in general meeting?

Answer

Where the articles have conferred the power of appointing additional directors on the Board of Directors the company in a general meeting is precluded from appointing additional directors [*Blair Open Hearth Furnance Co. vs. Reigart*, (1913) 108 L.T. 665]. However, though in ordinary circumstances the company in general meeting is precluded from appointing such directors yet if owing to a deadlock or otherwise there is no board capable of making the necessary appointment the company in a general meeting may do so [*Barrow vs. Potter*, (914) 1 Ch. 895].

Question 18

Prince Ltd., desires to appoint an additional director on its board of directors. The Articles of the company confer upon the board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 1956, examine:

- (i) *Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?*
 - (ii) *Can the power of appointing additional director be exercised by the Annual General Meeting?*
 - (iii) *As the Secretary of the company what checks would you make after M is appointed as an additional director?*
- (May, 2010)**

Answer

Section 260 of the Companies Act, 1956 empowers the Board of Directors, if authorized by the Articles to appoint additional directors, provided that such additional directors shall hold office only up to the date of the next AGM of the company, and the number of the directors including additional directors shall not exceed the maximum strength fixed for the Board by the Articles. These directors also must acquire the qualification shares within the statutory period of 2 months. The appointment of such directors must be in the interest of the general body of shareholders. (*Anantha Lakshmi vs. Indian Traders Ltd.* A 1953 Mad. 567).

Based on the above provisions answers to the given questions shall be as under:

- (i) M. cannot continue as director till the adjourned AGM, since he can hold the office of directorship only up to the date of the next AGM. Such an additional director shall

vacate his office latest on the date on which the AGM could have been held under Section 166. He cannot continue in the office on the ground that the meeting was not held or could not be called within the time prescribed. (*Krishna Prasad Pilani v. Colaba Land Mills Co.* 29 Comp. Case. 273)

- (ii) Where the articles have conferred the power of appointing additional directors on the Board of Directors, the company in a general meeting is precluded from appointing additional director. (*Blair Open Hearth Furnance Co. vs Reigart*, (1913) 108 L.T. 665). However, though in ordinary circumstances the company in general meeting is precluded from appointing such directors yet if owing to a deadlock or otherwise there is no board capable of making the necessary appointment the company in a general meeting may do so. (*Barrow v. Potter* (914) 1 Ch. 895). Therefore, in ordinary circumstances the general meeting cannot exercise the power to appointment additional director.
- (iii) As the Secretary of the company the following checks would be made after M is appointed as an additional director:
 - (a) Whether the appointment was made by the Board?
 - (b) Whether the maximum strength fixed for the Board was not exceeded by the appointment?
 - (c) Whether the additional directors held office only up to the date of the next AGM?

Filling of casual vacancies among directors (Section 262)

Question 19

The Board of Directors of XYZ Limited appointed Mr. A as a Director in the casual vacancy caused by resignation of Mr. X. Mr. A is proposed to be re-appointed as a Director at the Annual General Meeting, when he vacates his office. Examine with reference to the relevant provisions of the Companies Act, 1956 whether Mr. A can be considered as a 'Retiring Director' and state the legal requirements to be fulfilled to give effect to the proposed appointment of Mr. A as a Director at the Annual General Meeting. **(November, 2003)**

Answer

Re-appointment of a person acting against the casual vacancy:

If a person who is not a 'retiring director' is proposed to be appointed as a director at any annual general meeting, the formalities prescribed under section 257 of the Companies Act, 1956 are to be followed:

The expression 'retiring director' appearing in sections 256 and 257 means a 'director retiring by rotation'. (Explanation under Section 256). The expression 'a director retiring by rotation' refers only to a director appointed by the company in general meeting and retiring (Section 255 read with Section 256).

If office of any director who was appointed at the general meeting is vacated before he is due to retire on normal course, such casual vacancy can be filled in by the Board of Directors

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[Section 262(1)]. The person so appointed would continue in office until the date when retirement of the original director in whose place the former is appointed would fall due in the usual course [Section 262(2)].

Hence the director appointed by the Board in a casual vacancy is not a 'retiring director' within the meaning of Section 257. When such a person is proposed to be appointed as a regular director in the annual general meeting, a notice to appoint him as director has to be received from the member under Section 257 at least 14 days before the meeting along with a deposit of ₹ 500/-. The deposit will be refunded when the person succeeds in getting elected as director at the Annual General Meeting.

Question 20

The Board of Directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2009. Unfortunately Mr. C expired on 15th May, 2009 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard.
(June 2009)

Answer

Section 262 of the Companies Act, 1956 authorises the Board of Directors to fill up casual vacancies if the office of any director appointed by the company in general meeting is vacated before his term of office and hence the appointment of C was in order. In normal course, C could have held his office as director up to the date to which Mr. P would have held but Mr. C expired on 15th May 2009 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy.

Hence the present vacancy cannot be considered as casual vacancy as stated in section 262 and therefore the board cannot fill up the same.

The Board may however appoint Mrs. C as an additional director under section 260 of the Act provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office until the conclusion of the next annual general meeting

Appointment of directors to be voted on individually (Section 263)

Question 21

XYZ Company Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 1956. Will it make any difference, if XYZ Company was a private company?
(May, 2003)

Answer

Section 263 (1) of the Companies Act 1956 requires that the appointment of every director shall be voted on individually. Thus two or more directors cannot be appointed by a single resolution. However an exception has been carried out where under if a resolution has been

first passed to the effect that all the directors shall be appointed by a single resolution without any vote being against it.

Any resolution, as per Section 263(2), in contravention of the aforesaid provisions shall be void whether or not objection was taken at the time of its being so moved.

The aforesaid provision, however apply to a public company or a private subsidiary of a public company. Hence, the appointments so made are void. However if XYZ co. was a private limited company, then the condition of provision of Section 263(1)(2) were not applicable as regards the condition of single resolution is concerned.

Consent of candidate for directorship to be filed with the company and consent to act as director to be filed with the Registrar (Section 264)

Question 22

Mr. John has been appointed as Additional Director on the Board of MCX Ltd. on 12th January, 2006. Mr. John has filed his consent to Act as a Director, if appointed, only with the company. Examine with reference to the provisions of the Companies Act, 1956 whether he is also required to file his consent with the Registrar of Companies. **(May 2006)**

Answer

Filing of consent under section 264: Problem as asked in the question is based on the provisions of Section 264(1) and (2) of The Companies Act, 1956 and also the case ruling in *Lalitbhai C. Kapadia Vs. Laljibhai B. Desai*. Section 264(1) of the Companies Act, 1956 requires that a person proposed as a candidate for the office of director should file with the company his consent to act as a director, if appointed. Section 264(2) stipulates that a person shall not act as a director unless he has filed with the Registrar of Companies his consent in writing (Form No. 32) to act as such. Additional and alternate directors are not required to file consent under section 264(2) (*Lalitbhai C. Kapadia v. Laljibhai B. Desai (1973) 43 Comp. Cases 17*). Accordingly, applying the above provisions and the ruling of the case, John is not required to file his consent for accepting Additional Directorship.

Question 23

Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2009, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2010, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2010. Advise the company on the complaints made by the shareholders. **(CA Final, New Course, May, 2010)**

Answer

Appointment of director in a Casual vacancy: Section 262 of the Companies Act which deals with the filling of a casual vacancy provides that a director can be appointed only at a validly convened and constituted board meeting. Hence the appointment of Mr. Sachin by

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passing a circular regulation is not valid and the shareholders who made a complaint in this regard are correct. The tenure of a director appointed against a casual vacancy will be up to the date to which the original director in whose place he is appointed would have held office. On the other hand, an additional director appointed by the Board will hold office only up to the next date of annual general meeting and he cannot continue in office beyond the last date of the annual general meeting i.e; 31st March, 2010 on the ground the annual general meeting could not be held. (*Krishna Prasad Pilani vs. Colaba Land Mills Co AIR, 1960, BOM, 312.*)

Appointment of directors by proportional representation (Section 265)

Question 24

A company has in its Articles of Association provided for appointment of not less than two-thirds of the total number of its directors according to the principle of proportional representation. Can the directors so appointed be removed by the company in general meeting?

Answer

The articles of a public company or a private company which is subsidiary of a public company may adopt the principle of proportional representation for appointing not less than $\frac{2}{3}$ rd if the total number of the directors, whether by a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sections 262 and 265. Cumulative voting denotes that if there are five candidates or distributes his five votes. He can cast all the five votes in favour of one candidate or distribute his five votes among different candidates. This system of voting ensures that the Board will have fair representation of the minority interest

Resignation of Directors

Question 25

Due to internal problems in the working of M/s Infighting Detergents Ltd., Mr. Satyam, the Executive Director, and Mr. Shivam, a Director, have submitted their resignations and decided to dissociate themselves with the working of the company. Mr. Sundram, the Managing Director, decides to refuse their resignations. Examine whether the Managing Director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act. (November 2001)

Answer

There is no provision in the Companies Act, 1956 relating to the resignation of his office by a director. If there is any provision in the articles giving the right to a director to resign at any time, the resignation shall take effect without any need for its acceptance by the Board or the Company in General Meeting. However, it is not clear what will be the position if the articles do not contain any provision relating to resignation of directors. One view is that the ordinary rule of common law as regards resignation by an officer or agent must be followed namely,

resignation by notice given either to the Company or the Board and acceptance of the same. (*Glossop V. Glossop; Latchford Premier Cinema Ltd. vs. Ennion*). Another view is where the resignation says that it is to take effect immediately, acceptance is not necessary unless the articles or any provision of law makes it necessary. Further the directors do not have the power to refuse the resignation of the co-director unless such a provision is there in the Articles of Association. (*Re. Neokratine Safety Explosives Co. of New Ltd. (1891)*). Hence in the absence of contrary provisions in Articles, the Company (i.e., Mr. Sundaram) cannot compel Mr. Shivam to continue as a director.

However, the position is somewhat different in the case of a managing or whole time director. In such a case a formal acceptance of resignation by the company is essential so as to make it compete and effective. This is because the managing director occupies two positions (i) one that of a director and (ii) the other that of a whole time employee. An employee cannot give up office at his pleasure simply by giving notice. The notice or letter of resignation is required to be accepted by the company and the officer concerned has to be relieved of his duties and responsibilities, attaching to the office which he has resigned from. [*Achutha Pai vs. Registrar of Companies (1956) 36 comp. Case 598*]. Thus as the Executive Director, Mr. Satyam is full time employee of the company, the managing Director (Mr. Sundaram) can compel him to work as per the terms of employment agreed into at the time of appointment.

Question 26

Mr. Raj, a director of POL Ltd., submitted his resignation from the post of director to the Board of Directors on 30th June, 2004 and obtained a receipt therefore on the same day. The Board of Directors of POL Ltd. neither accepted the resignation nor did it file Form No.32 with the Registrar of Companies. You are required to state whether Mr. Raj ceases to be the Director of POL Ltd. and if yes, since when?
(November, 2004)

Answer

There is no provision in the Companies Act, 1956 relating to resignation from his office by a director. If there is any provision in the articles giving the right to a director to resign at any time, the resignation will take effect without any need for its acceptance by the Board of Directors or the company in general meeting in absence of a specific provision in the articles of association, a director can resign without being required to give reasonable notice. In *T. Murari vs. State* [(1976) 46 Comp. Cas. 613] the Madras High Court held that even in the absence of a provision in respect of resignation under the Companies Act, 1956 or under the articles of association of the company, the resignation tendered by a director or a managing director unequivocally in writing will take effect from the time when such resignation is tendered.

The said judgement was followed by the same court in the case of *S.S. Lakshman Pillai Vs. ROC* (1997) 47 Comp. Cas. 652. In a judgement in the case of *Mother Care (India) Ltd Vs. Prof. Ramaswamy P. Aiyar* [(2004) 51 SCL 243] the Karnataka High Court observed that as the appointment of a director is not a bilateral character, the question of acceptance of the request to relinquish the office would arise and filing of Form No.32 in terms of section 303(2)

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of the Companies Act, 1956 is only a consequential act to be performed by the company in obedience of the statutory provision, but it is not an act to be complied with in order to make a resignation valid.

Where the resignation letter states that it is to take effect on acceptance, or where the articles so require, acceptance is necessary to end the tenure of office of a director.

In view of the above legal position, Mr. Raj has ceased to be a director of POL Ltd. with effect from 30th June, 2004, provided his resignation letter does not state that the resignation is to take effect on acceptance or the articles of POL Ltd. does not so require.

DIRECTOR IDENTIFICATION NUMBER (SECTIONS 266A – 266G)

Application for allotment of Director Identification Number (Section 266A)

Question 27

What do you understand by the term “Director Identification Number” (DIN)? Describe the procedure to obtain the same as enumerated under the Companies Act, 1956 read with the relevant Rules.
(May 2008, CA Final, New Course, June 2009)

Answer

Director Identification Number (DIN) is a Unique Identification Number given by the Ministry of Corporate Affairs. It is required to be obtained by every person who is intended to become a director of any company. DIN is a pre-requisite for filing various forms with the Registrar of Companies. The electronic system of the Ministry of Corporate Affairs will not allow filing / submitting the forms if DIN of the signatory director is not mentioned in the form being filed / submitted.

As per the revised procedure for DIN Allotment, any person intending to apply for DIN shall have to make an application in eForm DIN 1 and should follow the following procedure:

1. eForm DIN-1 has to follow the offline eFiling process. For more details regarding the same visit eFiling FAQ's.
2. Attach the photograph and scanned copy of supporting documents i.e. proof of identity, and proof of residence as per the guidelines. Physical documents are not required to submit at DIN cell.
3. Along with the supporting documents, verification by the applicant for applying for allotment of Director Identification Number (DIN) shall also be attached. This shall contain the Name, Father's name, date of birth and text of declaration and physical signature of the applicant.
4. The eForm shall have to be digitally signed and shall be uploaded on MCA21 portal.
5. Upon upload, Pay the fees for DIN1 eForm. Only electronic payment of the fees shall be allowed (I.e. Netbanking / Credit Card). No challan payment will be accepted under revised procedure of DIN allotment.

The applicant is required to get himself/herself registered on the MCA21 Portal to obtain login id, which is necessary for payment of the fees. After obtaining the login-id, Login to the MCA21 portal and click on 'eForm upload' link available under the 'eForms' tab for uploading the eForm DIN 1. eForm DIN-1 will be processed only after the DIN application fee is paid.

6. Upon upload and successful payment,

- In case Form DIN 1 is signed by a practicing professional and details have not been identified as potential duplicate, Approved DIN shall be generated and if the details have been identified as potential duplicate, Provisional DIN shall be generated.
- In case Form DIN 1 is signed by an applicant or by the Managing Director/ existing director of the Company in which the applicant is a Director or the Company Secretary in full time employment of the Company, or details have been identified as a potential duplicate, provisional DIN shall be generated.

7. Processing of e Form DIN 1

In case, DIN 1 gets certified by the professional (i.e. CA/ CS/ CWA in whole time practise), the DIN will be approved by the system immediately online(in case it is not potential duplicate). In case of signing by any other signatory (i.e. director/ Managing Director/ secretary of the company with which applicant is to be associated), the MCA DIN cell will examine the e Form DIN 1 and same shall be disposed of within one or two days.

MANAGING DIRECTORS (SECTIONS 267 – 269)

Appointment of managing or whole-time director or manager to require Government approval in only certain cases (Section 269)

Question 28

M/s Supreme Technologies Limited propose to appoint Mr. E and Mr. F as whole-time directors for a period of three years with effect from 1st June, 2003. The company proposes to pay a consolidated salary of ₹80,000 per month to each of them.

Mr. D, the managing director of the company, has been appointed for a period of five years with effect from 1st January, 2001 on a remuneration payable in the form of commission at the rate of five per cent of net profit subject to a minimum remuneration of ₹80,000 per month.

The effective capital of the company at the end of the financial year ending 31st December, 2002 is ₹4.5 crores and it has been increased to ₹5.5 crores on 1st April, 2003 by way of right issue of equity shares. The company did not repay public deposits on the date of maturity from 1st January, 2003 onwards, but the default was made good on 1st April, 2003.

The company seeks your advice on the steps to be taken to comply with the requirements of Section 269 read with Schedule XIII to the Companies Act, 1956 with regard to the proposed appointment of Mr. E and Mr. F as whole time directors. Advise explaining the relevant provisions.

(May 2003)

Answer

Appointment of whole-time directors

Mr. E and Mr. F are proposed to be appointed as whole time directors for a period of 3 years with effect from 1st June, 2003. Each of them will get a consolidated salary of ₹ 80,000 per month. It has been stated that both of them satisfy the conditions laid down in Part-I of Schedule XIII. It is necessary to examine whether the proposed payment of remuneration is within the limits laid down under A or B or C of Section II of Part II of Schedule XIII in order to determine the legal requirements to be complied with to give effect to the proposed appointment of Mr. E and Mr. F as whole-time directors.

The appointment is to be made on 1st June 2003. According to Explanation II (b) (of Schedule XIII), the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which appointment is made. In this case the effective capital on 31-12-2002 is the last date of the preceding financial year is ₹ 4-5 crores. The right issue of equity shares on 1st April 2003 is not relevant here for the purpose of ascertaining effective capital. According to Schedule XIII, Part II, Section II(A) if the effective capital is ₹ 1 crore or more but less than ₹ 5 crores monthly remuneration payable shall not exceed ₹ 1,00,000. This ceiling shall apply for each M.D and/or whole-time director. The proposed minimum remuneration for each of the directors Mr. E and Mr. F and also the existing director Mr. D is only ₹ 80,000 i.e. within the ceiling laid down in Schedule XIII, Part-II, Section II(A).

It has been stated that the company has defaulted in repayment of public deposits during the period of 1st January 2003 to 31st March, 2003. According to proviso (ii) if the company has defaulted in repayment of debts including public deposits for a continuous period of 30 days during the preceding financial year (i.e. year 2002) before the date of appointment of the managerial person, then the appointment requires approval of Central Government as one of the conditions laid down in Schedule XIII, Part-II, Section II is not fulfilled. But as there was no default in this regard during the preceding financial year ended 31st December 2002, the company has fulfilled the above condition.

Hence the following steps are to be taken to comply with the requirements under section 269 read with Schedule XIII.

- (i) If there is no remuneration committee, remuneration committee must be formed consisting of at least 3 non executive independent directors including nominee directors, if any (explanation (iv)).
- (ii) The remuneration payable to Mr. E and Mr. F must be approved by a resolution passed by the remuneration committee taking into consideration the matters specified on Explanation V (Proviso (i)).
- (iii) Board meeting must be convened to appoint Mr. E and Mr. F as additional directors, if they are not directors and later on appoint them as whole-time directors on a consolidated salary of ₹ 80,000 p.m.
- (iv) A return in the prescribed form (Form 25C) must be filed with Registrar of Companies within 90 days from the date of such appointment. The form must be certified by the

auditor of the company or the secretary of the company or by a secretary in whole-time practice, if there is no secretary. They must certify that the requirements of Schedules XIII have been complied with. [Section 269(2) read with Schedule XIII – Part –III, (2)].

- (v) The appointment of Mr. E and Mr. F and remuneration payable to them must be approved by the company in general meeting by an ordinary resolution [Schedule XIII part III(i)]. There is no need to file Form No.25C once again after the general meeting at which the appointment is approved.

Question 29

Explain the action that can be taken by the Central Government, when a complaint is received from some shareholders of a Public Company that a person has been appointed as the Managing Director of the Company without seeking the approval of the Central Government, when such approval is required. Also examine the validity of the acts of the Managing Director, if the complaint is found to be true. (CA Final, New Course, November 2009)

Improper appointment of Managing Director:

On receipt of the complaint, if the Central Government is prima facie, of the opinion that the Managing Director has been appointed without approval of the Central Government, when in fact such approval was necessary, the Central Government may refer the matter to the Company Law Board (Tribunal) for decision [Section 269(7)]. The Company Law Board will issue show-cause notice to the Company as well as the concerned Managing Director [Section 269(8)]. The Company Law Board will hear the case, and if it comes to a conclusion that the appointment is in contravention of requirements of Schedule XIII, it will make an order to that effect [Section 269(9)]. On such order, the appointment of the concerned Managing Director shall be deemed to have come to an end. The person so appointed shall in addition to being liable to pay a fine of Rs 1 lakh, refund to the company the entire remuneration received by him between the date of his appointment and the passing of such an order [Section 269(10)]. But all acts done by him prior to the declaration of invalidity will be valid, if they are otherwise valid [Section 269(12)].

Resignation by MD

Question 30

A is Managing Director of APAR Ltd. He gave his resignation letter to the Chairman of the Board of Directors on 31st December, 2005 and requested that he should be relieved immediately. When does the resignation of Mr. A take effect? (May 2006)

Answer

A director can resign from his office by serving a notice of his resignation upon the Company or the Board. There is no need for its acceptance by the Board or the Company.

However, if a Managing Director resigns, he cannot give up his office at his pleasure simply by serving the notice. This is because he occupies two positions i.e., of a director and an employee. In case of Managing Director, the notice or letter of resignation is required to be

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approved or accepted by the company and he has to be relieved of his duties and responsibilities attaching to his office from which he has resigned. Similar views were accepted in the case of *Achutha Pal vs. Registrar of Companies* (1956) 36 Comp. Cases 598.

Accordingly, in the given case, the resignation of A, the Managing Director shall be effective when approved or accepted by the company and he is relieved of his duties and responsibilities attaching to his office from which he has resigned.