

Restrictions on the Number of Directorships (Sections 275 – 279)

No person to be a director of more than fifteen companies (Section 275)

Question 1

Mr. Influential is already a director of 19 companies. He is being appointed as a director of another company named M/s Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:

- (i) *Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof.*
- (ii) *What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors?* **(November, 2001)**

Answer

- (i) After the commencement of the Companies (Amendment) Act, 2000, (i.e. w.e.f. 14.12.2000), no person, shall save as otherwise provided in section 276, hold office at the same time as director in more than 15 companies (Section 275). Earlier the limit was 20 companies.

For calculating the limit certain companies are to be excluded as provided in section 278(1).

Any person holding office as Director in more than 15 companies immediately before the commencement of the Companies (Amendment) Act, 2000, has to make a choice of 15 companies in which he wishes to continue as Director. He has to make this choice within 2 months from the commencement of the Companies (Amendment) Act, 2000 (i.e. 12.2.2001) [Section 276(1)]. No such person shall act as a director in more than 15 companies after the expiry of 2 months from the commencement Companies (Amendment) Act, 2000 [Section 276 (3) (1)].

In view of the above, it is not possible for Mr. Influential to be a director in 19 companies after excluding the companies listed in section 278 (1). In the absence of information about companies, it is not possible to ascertain the exact number of directorship held by Mr. Influential for the purpose of section 275.

There are two possibilities. Either Mr. Influential is a director in less than 15 companies (say 14 Companies) or 15 Companies. If he is a director in 14 Companies he can accept the directorship of M/s Expensive Remedies Limited. If he is already a director in 15 companies, he must within 15 days of his appointment as a director in M/s

Expensive Remedies Ltd., relinquish any of his directorship. If he does not exercise the option within 15 days and does not vacate his directorship in any of the 15 companies, the appointment in M/s Expensive Remedies Ltd., shall become void immediately on the expiry of the 15 days [Section 277(1)].

- (ii) For calculating the limit of 15 companies the following companies can be excluded:
- (i) a private company which is neither a subsidiary nor a holding company of a public company.
 - (ii) An unlimited company.
 - (iii) An association not carrying on business for profit or which prohibits the payment of a dividend.
 - (iv) A company in which the person is only acting as alternate director.[Section 278(1)].

In making the above said calculation, any company referred to in (i), (ii) & (iii) above shall be excluded for a period of 33 months from the date on which the company ceases to fall within the purview of these clauses [Section 278(2)].

Question 2

Mr. PMC is Director in 14 Public Limited Companies as on 30th July, 2003. He continues to be so till 4th September, 2003. The following companies appoint Mr. PMC as a Director at their respective Annual General Meetings held on dates mentioned against their names.

- (i) *PQR Ltd. (AGM held on 29th September, 2003).*
- (ii) *BCD Private Ltd. (AGM held on 25th September, 2003).*
- (iii) *City Traders Association (A company registered under Section 25 of the Companies Act, 1956- AGM held on 26th September, 2003).*
- (iv) *TSP Ltd. (AGM held on 25th September, 2003).*

You are required to state with reference to the relevant provisions of the Companies Act, 1956 the options available to Mr. PMC in respect of accepting or not accepting the appointment of Director of the above companies.
(November, 2003)

Answer

Section 275 of the Companies Act, 1956 debars any person to hold office as a director of more than 15 companies simultaneously. As per provisions of Section 277(2) of the Companies Act, 1956 where a person holds directorship of 14 or less companies is appointed as a director of other companies and such appointments make the total number of his directorships more than 15, then the person concerned has to choose the directorships which he wishes to continue to hold or to accept so that the total number of directorships, old and new henceforth to be held by him does not exceed 15.

The said section further provides that none of the new appointments shall be effective until such a choice is to be made and in case of failure of the person to make such a choice within

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15 days of the day on which the last of the new appointments was made, all the new appointments shall become void.

Section 278 of the Companies Act, 1956 states that for the purpose of section 275 and section 277 the number of companies of which a person may be a director, following companies are not to be counted:

- (a) A private company unless it is a subsidiary of a public company.
- (b) An unlimited company.
- (c) An association not carrying on business for profit or which prohibits the payment of dividend.
- (d) A company in which such a person is only an alternate director.

In view of the above mentioned legal provisions, Mr. PMC who is already a director in 14 companies has to consider the following aspects:

As per provisions of section 278 of the Companies Act, 1956, BCD Private Ltd. being a private company and City Traders Association being an association not carrying on business for profit and prohibiting payment of dividend by virtue of being a company registered under section 25 are not to be counted for the purpose of section 277 read with section 275.

Thus, Mr. PMC can accept the appointment in BCD Private Ltd and City Traders Association without any obstacle.

The appointment of Mr. PMC in the other two public companies along with the old directorships in 14 companies makes a total of 16, which is in excess of 15 prescribed by section 275. As per provisions of section 277, Mr. PMC has to decide within 15 days from 29th September, 2003, the date on which the last appointment was made, as to the directorships which he wishes to continue to hold or to accept so that the number of his total directorships does not exceed 15 and in case he fails to decide within the said 15 days, then his appointments as a director of PQR and TSP Ltd shall become void on the expiry of the said 15 days.

Question 3

Mr. Raj is director in 14 public limited companies as on 30th July, 2007 and continues to be so till 26th September, 2007. The following companies appoint Mr. Raj as a director at their respective Annual General Meetings held on dates mentioned against their names:

- (1) MLP Ltd. (AGM held on 27th September, 2007)
- (2) PAT Private Ltd. (AGM held on 25th September, 2007)
- (3) Retail Traders Association (a company registered under Section 25 of the Companies Act, 1956 (AGM held on 26th September, 2007)
- (4) KMC Ltd. (AGM held on 29th September, 2007)

You are required to state with reference to the relevant provisions of the Companies Act, 1956 the options available to Mr. Raj in respect of accepting or not accepting the appointment of the above companies.
(May 2008)

Answer

Section 275 of the Companies Act, 1956 debars any person to hold office as a director of more than 15 companies simultaneously.

As per the provisions of Section 277(2) of the Companies Act, 1956 where a person holds directorship of 14 or less companies is appointed as a director of other companies and such appointments make the total number of his directorships more than 15, then the person concerned has to choose the directorships which he wishes to continue to hold or to accept so that the total number of directorships, old or new, henceforth to be held by him does not exceed 15.

The said section further provides that none of the new appointments shall be effective until such a choice is to be made and in case of failure of the person to make such a choice within 15 days of the day on which the last of the new appointments was made, all the new appointments shall become void.

Section 278 of the Companies Act, 1956 states that for the purpose of Section 275 and Section 277 the number of companies of which a person may be a director, following companies are not to be counted.

- (a) A private company unless it is a subsidiary of a public company
- (b) An unlimited company
- (c) An association not carrying on business for profit or which prohibits the payment of dividend
- (d) A company in which such person is only an alternate director.

In view of the abovementioned legal provisions, Mr. Raj who is already a director in 14 companies has to consider the following aspects.

As per provisions of Section 278 of the Companies Act, 1956 PAT Private Ltd. being a private company and Retail Traders Association being an association not carrying on business for profit and prohibiting payment of dividend by virtue of being a company registered under section 25 are not to be counted for the purpose of Section 277 read with Section 275.

Thus Mr. Raj can accept the appointment in PAT Private Ltd. and Retail Traders Association without any obstacle.

The appointment of Mr. Raj in the other two public companies along with the old directorships in 14 companies makes a total of 16 which is excess of 15 prescribed by Section 275. As per provisions of Section 277, Mr. Raj has to decide within 15 days from 29th September, 2007, the date on which the last appointment was made, as to the directorships which he wishes to continue hold or to accept so that the number of his total directorships does not exceed 15

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and in case he fails to decide within the said 15 days then his appointments as a director of MLP Ltd. and KMC Ltd. shall become void on the expiry of the said 15 days.

Note: A different view can also be taken to the extent that the appointment of Mr. Raj in MLP Ltd. on 26th September, 2007 will make the total number of directorships to 15 which is within the prescribed parameters. However, his appointment as Director of KMC Ltd. on 29th September, 2007 will make it 16 which is in excess of the permissible limit. Hence, the appointment in KMC Ltd. will become void and ineffective in case Mr. Raj does not decide about which of the two companies he should choose within 15 days.