

Directors

By:
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Need for Directors

- **Directors appointed to act on behalf of company:**
 1. A company cannot act by itself, it's a artificial person
- **Directors appointed by members to manage affairs of the company:**
 1. Members do not participate in the management of company;
 2. Separation of ownership from the management

Director: Meaning

- **Director includes any person occupying the position of a director by whatever name called** [Section 2(13)];
- Whether a person is a director or not is determined by the nature of his office, functions he performs in his capacity as director and duties discharged by him **[Re, Forest of Dean Coal Mining Company]**;
- **Shadow Director (or Deemed Director) =**
 1. a **person in accordance with whose directions** or instructions, the BOD is *accustomed to act*;
 2. If directions given in professional capacity, such person is not shadow director [Section 7]

Director: Other Points

- **Only individual** can be **directors** [Sec. 253];
- Provisions of **Sec. 253 also apply** to a **manager** [Sec. 384];
- A director **cannot assign his office** to any other person [Sec. 312]:
 1. If assignment made then its void;
 2. Sec. 312 also applies to a manager [Sec. 388];
- **Appointment in place of deceased director does not amount to assignment**; b'coz
 The word '**his**' used u/s 312 implies that assignment is possible only during the lifetime of director and after death, the office no more belongs to him [**Oriental Metal Pressing Pvt. Limited vs. B K Thakoor**]

Director Identification Number (DIN)

- No director can be appointed or re-appointed if he is not having DIN [Sec. 253];
- **Every individual intending to be director of any company shall apply for DIN [Sec. 266A]:**
 1. Existing director on 1.11.2006 to apply for DIN within 60 days;
 2. Application to be made to CG in prescribed form (i.e. DIN-1);
 3. Directorship pending DIN allotment permissible;
 - CG to allot DIN in 1 month of application [Sec. 266B];
 - More than 1 DIN prohibited [Sec. 266C];
 - Intimation of DIN by director to company in 1 month of allotment in Form DIN-2 [Sec. 266D];
 - Co. to intimate DIN to ROC in 1 week (of DIN-2 receipt) in DIN-3 [Section 266E];
 - Obligation to indicate DIN [Sec. 266F];
 - Penalty upto Rs. 5,000 *plus* Rs. 500 per day [Sec. 266G]

Qualification Shares [Section 270]

- **Not a Statutory Requirement:** To be held by directors **only if AOA requires**;
- If AOA requires so, then they **must be obtained within 2 months of appointment**;
- **Time Limit Absolute:** AOA cannot require holding qualification shares:
 1. before appointment; *or*
 2. in a period less than 2 months; *or*
 3. in a period more than 2 months
- The director **should** (and not 'can') become a registered holder of shares within 2 months [**Ram Autar Jalan vs. Coal Products of India Limited**];
- If director already holds qualification shares at the time of appointment, obtaining additional shares not required

Qualification Shares [Section 270]

- **Nominal amount** of qualification shares $\leq$ Rs. 5,000;
- If Nominal Value of a share $>$ Rs. 5,000, then share qualification shall be holding 1 share;
- The qualification of a director shall be holding of at least 1 share in the company [Reg. 66 of Table A];
- **Following are not required to hold qualification shares:**
 1. Nominee director appointed by CG u/s 408;
 2. Nominee director appointed by a separate Act F.I.;
 3. SSD;
 4. A director specifically exempted by AOA

Qualification Shares [Section 270]

- Unless AOA provides otherwise, following provisions shall apply:
 1. Holding **shares in joint names** is permitted [*Dunster's Case*];
 2. **Mortgaging of shares** permitted [*Cooper vs. Griffin*];
 3. Beneficial Ownership is not required [*Grundy vs. Brigs*];
 4. **Shares = Equity and/ or Preference**;
 5. Share Warrant = Not Included for qual. Shares;
 6. **Section 270 does not apply to Private Companies** [Section 273]

Qualification Shares [Section 270]

- **Can a director continue without holding qualification shares?**
- **If Public Company:** Director can continue upto 2 months only;
- **If Private Company:** To the extent provided by AOA (b'coz of section 273)

Thus, though Section 270 is not applicable to Private Company, if their AOA provides for qual. Shares then AOA is required to be followed

Disqualification of Directors:

For **EVERY** Company [Section 274(1)]

- a. Person found to be of **unsound mind**;
- b. **Undischarged insolvent**;
- c. Person who has applied to be **adjudicated as an insolvent**;
- d. Person **convicted by Court** for:
 - Offence of moral turpitude; **AND**
 - Sentenced to imprisonment $\geq$ 6 months; **AND**
 - 5 years not elapsed from such sentence
- e. **Calls in arrears** $\geq$ 6 months;
- f. Court **disqualifies him u/s 203** on grounds of fraud or misfeasance in relation to company
 - Section 203 remains in force for upto 5 years (that means Court cannot go beyond 5 years' disqualification)

Disqualification of Directors

For **PUBLIC** Company [Section 274(1)]

- g. A director of **public company**:
 - shall be disqualified for a period of 5 year
 - from being appointed as a director in **any public company**
 - if the public company of which he is **already a director**:
1. Does not file the annual accounts and annual returns for any *continuous 3 FYs*; **OR**;
2. **Fails for $\geq$ 1 year**, to
 - Repay its **deposits or interest** thereon on due dates; **or**
 - Redeem its **debentures (interest not covered)** on due dates; **or**
 - Pay **dividend**

Special Points on Section 274 (1) (g)

- Defaulting company must be a public co.;
- Proposed appointment must be in a public co.;
- **Appointment includes re-appointment also**;
- Only those directors shall be disqualified who have been directors from the due date till the expiry of 1 year after the due date;
- All those persons shall be disqualified who have been directors as on the last due date for annual filing;
- The disqualification continues for 5 years;
- **Disqualification will persist even if default made good** after incurring disqualification

Special Points on Section 274 (1) (g)

- Disqualification u/s 274(1)(g) **does not mean automatic vacation of office (by virtue of section 283);**
- If **director resigns before disqualification** becoming effective, he **will not be disqualified**;
- **Private Company** can provide **additional grounds of disqualifications** other than u/s 274(1)(a) to (f) in its AOA:
Examples:
 - a person should be major;
 - a person should be post graduate, etc.

Special Points on Section 274 (1) (g)

- Statutory auditor shall report directors disqualification as required under section 227 to the members of disqualifying company;
- **Company shall intimate** disqualification by filing a return in **duplicate in Form DD-B** of Rules;
- If company fails to file form DD-B within 30 days with ROC, the officers of the company mentioned under section 5 shall be officers in default;
- Every **Director** of a public company **shall intimate** his disqualifications in **Form DD-A** of Rules;
- Contravention of Rules will result in fine up to Rs. 5,000 with additional fine up to Rs. 500 for each day of default.

Vacation of Office by Directors [Section 283]

- Grounds applicable to **EVERY Company**:
 1. Unsound mind;
 2. Adjudged insolvent;
 3. Court's conviction & imprisonment as to moral turpitude $\geq$ 6 months;
 4. Calls in arrears $\geq$ 6 months;
 5. Section 203;
 6. Contravention of Section 295 (i.e. loans to directors);
 7. Contravention of Section 299 (i.e. disclosure of interest by directors);
 8. Removal as director u/s 284;

**Vacation of Office by Directors
[Section 283].....contd.**

9. Contravention of Section 270;
10. Appointment made by virtue of his employment or holding office in the company but now **ceases to be so employed or hold office**;
11. Absents from BOD meetings:
 - from 3 BMs; or
 - from **all** BMs continuously for 3 months whichever is longer

**Vacation of Office by Directors
[Section 283].....contd.**

- Grounds of **Adjudged insolvent, Court's Conviction** and **Section 203**, shall **not take effect**:
 1. For first 30 days;
 2. Until disposal of **first appeal** (if such appeal made in 30 days);
 3. For 7 days from the day **first appeal** is disposed off;
 4. Until disposal of **further appeal** (if such appeal made in 7 days)

**Vacation of Office by Directors
[Section 283].....contd.**

- AOA of **private company** may provide **additional grounds** for vacation of office;
- **Vacation u/s 283 is automatic** w.e.f. the happening day of events;
- **No opportunity of being heard** is required to be given to director;
- **No BR required to be passed** for such vacation of office;
- BOD have **no power to waive any ground** of vacation of office;
- **Section 274(1)(g) not covered**

Number of Directors [Section 252]

- **Minimum** Number of Directors:
 1. **Public Company** = 3;
 2. **Private Company** = 2
- **Maximum** Number of Directors:
 1. Section **252 does not specify** maximum number;
 2. **AOA determines** maximum number
- **AOA may specify** any **minimum** number **BUT greater than** number as u/s **252**

Increase or Reduction in Number of Directors [Section 258]

- **OR is required** for increase/ decrease;
- Such increase/ decrease to be **in limits fixed by AOA**;
- If limit under **AOA** to be **breached**, **SR required** [*Ram Kissendas Dhanuka vs. Satya Charan*]

Increase in Number of Directors [Section 259]

- **Approval of CG** required;
- **No CG approval** required if:
 1. **Number ≤ 12**
- Section 259 **not applicable**:
 1. Pvt. Co.;
 2. Govt. Co.;
 3. Section 25 Co.

Restrictions on Number of Directorships

- A person can be director in ≤ 15 companies [Section 275];
- **Section 277(1):** If a person **already holds 15 directorships**, then:
 1. **New appointment will not take effect**, if within 15 days, he does not **vacates any of earlier directorships**;
 2. **New appointment will be void** if office not vacated

Restrictions on Number of Directorships.....contd.

- **Section 277(2):**
 1. If a person already **holds ≤ 14 directorships** and is appointed as a director in other companies;

AND
 2. As a result his **total directorships > 15 directorships**,

THEN
- **None of the appointments will take effect** if within 15 days, he makes a choice of no. of directorships;
- All such appointments shall be void if no choice is made

Restrictions on Number of Directorships.....contd.

- **Excluded Directorships [Section 278]:** Directorships in following companies are excluded for section 275 & 277:
 1. Private company unless public subsidiary;
 2. Unlimited company;
 3. Section 25 companies;
 4. Alternate Directors
- If **nature of company** at (1), (2) and (3) is **changed**, **exclusion** would be applicable **only for 3 months**

**Appointment of Directors
to be Voted Individually [Section 263]**

- **Single resolution prohibited** for directors appointment;
- **Separate resolution required** for directors appointment;
- Appointment includes reappointment also;
- **Exception:** Single resolution appointment valid if:
 1. Before passing a single resolution,
 2. A resolution is passed for appointment by single resolution,
 3. Without any vote being against it

**Appointment of Directors
to be Voted Individually [Section 263]**

- **Resolution in contravention of Section 263:**
 1. Void appointment;
 2. Provisions u/s 256(4) for automatic appointment shall not apply;
 3. Acts of directors shall be valid till defect in their appointment is shown to company [Section 290]
- **Section 263 not applicable:**
 1. Private company;
 2. Section 25 company;
 3. Appointments made by company otherwise than in GM

**Appointment of First Directors
[Section 254]**

- Persons if **named in AOA**, would be first directors;
- If **AOA does not name first directors but prescribes the manner** of their appointment, then appointment made as per AOA;
- Subscribers to MOA to name first directors in writing (Reg. 64 of Table A)
- If **AOA does not name first directors and do not prescribes the manner** of their appointment, all the MOA **individual** subscribers would be first directors till appointment made u/s 255

Rotational and Non-Rotational Directors [Section 255]

- Rotational Directors = Directors whose office period is to be determined by retirement by rotation;
- $\frac{2}{3}$ rd of **Total Number** to be rotational directors;
- Any fraction to be r.f. to 1;
- AOA may provide
 1. all directors to be rotational; or
 2. all directors to retire at AGM
- Rotational directors shall be appointed in **GM**

Rotational and Non-Rotational Directors [Section 255]

- Non-rotational Directors = Directors not liable to retire by rotation;
- Non-rotational directors to be appointed at **GM**;
- Term of office to be determined by GM/ AOA;
- **Total Number of Directors** = Number of Directors for the time being appointed as such (**do not mean maximum number fixed by AOA**);
- Rotational/ Non-rotational director may be appointed as MD/ WTD;
- **Section 255 not applicable to:**
 1. **Private company:** **BUT** AOA of private company may provide for retirement

Ascertainment of Directors retiring by rotation [Section 256]

- At the first **AGM** and every subsequent AGM, $\frac{1}{3}$ rd of **rotational directors shall retire from office**;
- **Who shall retire:**
 1. Directors longest in office;
 2. Same day appointees to retire by consensus or by drawing lots
- **Vacancy can be filled** by re-appointment or appointing any other person u/s 257

Ascertainment of Directors retiring by rotation [Section 256]

- If at AGM **vacancy not filled AGM stands adjourned** to next week at same day, time & place (if public holiday then succeeding day);
- **Automatic reappointment** if in adjourned AGM vacancy is not filled, **Exceptions:**
 1. Resolution put but lost;
 2. Written notice of unwillingness;
 3. Disqualified for appointment;
 4. Section 263 violation
- Directors cannot continue in office after the last day on which AGM **should have been held** [**B R Kundra vs. Motion Pictures Association**];
- Section 256 N.A. to Private Company

Appointment of a Person other than Retiring Director [Section 257]

- It empowers company to make fresh appointments at GM;
- Eligible persons to Stand for Directorship = Other than retiring directors;
- **Notice of candidature required from eligible person/member;**
 - Notice to be given at least 14 days before GM;
 - Notice to be given at the registered office of company;
 - Rs. 500 deposit also required, BUT would be refunded if person elected as director;
 - Company to inform the new candidature to its members by giving 7 days GM notice (2 newspapers/ individual notices);
- Section 257 N.A. to Private Company

Appointment by Proportional Representation [Section 265]

- Such kind of appointment not compulsory;
- Section 265 applies only if AOA requires such kind of appointment;
- At least 2/3rd of directors to be appointed by this method;
- Such appointment to be made once in 3 years;
- Casual vacancy to be filled u/s 262;
- Directors u/s 265 cannot be removed u/s 284;
- Section 265 overrides entire Companies Act;
- Section 265 N.A. to a Private Company

Appointment of Directors by Small Shareholders
[Proviso to Section 252(1) read with Appointment of
SSD Rules, 2001]

- **Applicability:**
 1. Public company; **AND**
 2. Paid up Capital $\geq$ 5 crores; **AND**
 3. Small Shareholders $\geq$ 1,000
- **Small Shareholder** = Every Shareholder who holds shares of **nominal value $\leq$ 20,000;**
- **Mode of Appointment:**
 1. Company may *suo moto* appoint SSD; **or**
 2. Company bound to act if notice for appointing SSD given by $\geq$ 1/10th of Small Shareholders; (listed company can appoint SSD by postal ballot)

Appointment of Directors by Small Shareholders
[Proviso to Section 252(1) read with Appointment
of SSD Rules, 2001]

- **Notice by SSD:**
 1. At least 14 days notice required;
 2. Notice to specify name, address and number of shares held & folio number of small shareholders and proposed SSD
- **Other Requirements:**
 1. SSD has to be small shareholder;
 2. Cannot be SSD > 2 companies;
 3. SSD cannot be appointed as MD/ WTD;
 4. SSD can be appointed for $\leq$ 3 years;
 5. SSD can be re-elected for $\leq$ 3 years;
 6. SSD not liable to retire by rotation

Appointment of Directors by Small Shareholders
[Proviso to Section 252(1) read with Appointment
of SSD Rules, 2001]

- Section 274(1)(a) to (f) applicable to SSD;
- **Section 274(1)(g) not applicable to SSD;**
- Section 283 (vacation of office) applies to SSD,
Exceptions:
 1. If he ceases to be SSD = Vacate the office;
 2. SSD fails to obtain qualification shares = Do not vacate the office
- Section 284 (removal by shareholders) applies to SSD

Nominee Directors

- **Nominee Directors appointed by CG u/s 408 or Special Financial Institutions:**

1. Retirement by rotation not required;
2. Not counted when calculating 'Total Number of Directors';
3. May be appointed even if AOA silent;
4. Their appointment may result in increasing BOD strength beyond AOA limits;
5. Section 270 not applicable;
6. Can be removed only by appointing authority

Nominee Directors

- **Provisions applicable to other nominee directors:**

1. All the provisions of 'Act' applicable;
2. AOA must specifically provide for their appointment;
3. Their appointment must not contravene Section 255

Additional Directors [Section 260]

- Applicable to **all companies**;
- BOD may make appointment anytime;
- BOD must have authorisation by AOA;
- Appointment to be made either by resolution at BM **or** by circulation;
- Holds office till next AGM;
- If no AGM held, ADD to vacate office on the last day on which AGM ought to be held **[Ananthlakshmi Ammal vs. Indian Trade & Investments Ltd.]**;
- Reg. 72 of Table A also authorises BOD to appoint ADD;
- Section 260 over-rides Section 259, i.e., CG Approval not required

Additional Directors [Section 260]

- Number of directors (including ADD) shall not exceed the maximum strength fixed by AOA (**else section 258 is applicable**);
- Not to be counted for 'Total Number of Directors' u/s 255

Filling of Casual Vacancies [Section 262]

- Applicable only to **Public Company**;
- Casual vacancy arising in office of director appointed at GM may be filled u/s 262;
- Resolution at BM required to fill casual vacancy;
- AOA authorisation not necessary;
- Appointment only for unexpired period;
- Section 259 not attracted for filling casual vacancy;
- Table A silent for filling casual vacancy

Filling of Casual Vacancies

- **Casual Vacancy in Private Company:**
 1. To be filled as per AOA;
 2. If AOA silent, then to be filled in GM;
 3. However, Section 262 shall never apply to a Private Company

Alternate Directors [Section 313]

- Applies to **all companies**;
- Appointed to **act in place of original director** during his absence for a period of ≥ 3 months from the 'State' in which BMs are ordinarily held;
- BOD to be authorised to appoint Alt. Directors via AOA authorisation **or** GM resolution;
- Appointment to be made either by resolution at BM **or** by circulation;
- Appointment only for the term permissible to original director;
- Hold office till his return in the 'State';
- Return to 'State' may be for meeting or otherwise;
- Table A silent;
- Section 259 not attracted

Alternate Directors [Section 313]

- Automatic reappointment shall apply to original director if his term expires before he returns;
- **Position of Alternate Director:**
 1. Right to appoint Alt. Director vests with BOD only (and not with original director);
 2. Alt. Directors not a representative/ proxy/ agent of original director;
 3. Same rights/ duties & liabilities as original director = he is a director in his own right;
 4. All the provisions of 'Act' are equally applicable;
 5. Section 297, 299 & 300 applicable only if Alt. Director is interested (and not b'coz original director was interested)

Common Provisions for Section 260, 262 and 313

- All directors to be non-rotational;
- If any of these directors to be appointed as regular director, Section 257 compliance needed;
- Section 270 applicable if AOA requires so

Removal of a Director [Section 284]

- Applies to all companies
- At least 14 days (before **GM**) notice to company required from **member**;
- A copy of notice to be given to director by Co.;
- Director has the right to make representation;
- Director's representation to be sent to the members at least 7 days before GM;
- If not sent then to be read at GM;
- OR at GM required for removal;
- Any other person can be appointed as director if special notice given for it

Removal of a Director [Section 284]

- **Following Directors cannot be removed u/s 284:**
 1. Director appointed u/s 408;
 2. Director appointed u/s 265;
 3. Nominee directors by Special Financial Institution;
 4. Permanent directors holding directorship in Pvt. Co. for life **as on** 1.4.1952
- Special notice not comply with Sec. 188, i.e. even a single member holding only one share is eligible to give special notice u/s 284 [**Karnataka Bank vs. A B Datar**];
- Member cannot be compelled to disclose reasons for proposing resolution for removal [**LIC vs. Escorts Ltd.**];
- AOA cannot prohibit members from removing directors (else ultra vires section 284, as per section 9)

Resignation By Directors

- Resignation becomes effective immediately;
- No acceptance required if AOA do not require otherwise;
- Resignation to be **effective only on acceptance** in following cases:
 1. AOA requirement;
 2. Resignation itself states so;
 3. MD/ WTD/ Manager tendered resignation [**Achuta Pai vs. ROC**];
- **Resignation once made cannot be withdrawn, EXCEPT:**
 1. Acceptance of resignation is required & withdrawal made before acceptance;
 2. Withdrawal made as per AOA or shareholders consent
- **Verbal resignation** can also be made unless AOA requires otherwise **BUT** where AOA requires written resignation but GM accepted it even if orally made, its valid [**Latchford Premier Cinema Ltd. Vs. Ennion and Paterson**]
- Resignation to be submitted to BOD/ Shareholders;
- Submission to ROC not required

Resignation By Directors

- **S. Varadrajan vs. Udhayem Leasing & Investments (P) Limited**
- Right to receive notice of removal is Director's statutory right.
- Resolution to remove passed without serving notice is invalid

Compensation for Loss of Office [Section 318]

- Compensation may be paid for **loss of office**/ consideration for **retirement from office**;
- **MD/ WTD/** Director holding office of **Manager** only **entitled to compensation**;
- **Amount of Compensation** = 3 years (or shorter period) Avg. remuneration preceding the date of cessation;
- **Period of Compensation** = 3 years or unexpired tenure, whichever is less;

Compensation for Loss of Office [Section 318]

- **Prohibition of Compensation:**
 - 1. Reconstruction or amalgamation of company **BUT** appointed in new company as MD/Mgr/ Any other officer;
 - 2. Voluntary resignation;
 - 3. Vacation of director's office u/s 203 or 283;
 - 4. Director himself responsible for termination of directorship;
 - 5. Company wound up due to his negligence;
 - 6. Guilty of fraud/ Grossly negligent in business conduct;
- Mere allegations against him does not disentitle him for compensation, unless established***

Compensation for Loss of Office
[Section 318]

- **Bell vs. Lever Bros.:**
- **Refund of compensation cannot be claimed:**
 1. if after his removal, it is discovered that director was in fact guilty; **AND**
 2. that he could have been removed without compensation

Consent to act as Director [Section 264]

- **Consent with the Company:**
 1. Every person proposing to be a director to file his consent with the company;
 2. Consent to be filed before appointment
 3. No consent required for appointments made u/s 257
- **Consent with the ROC:**
 1. Every person shall file his consent with ROC to act as an director;
 2. Consent to be filed in 30 days of appointment;
 3. No consent required for ADD, Alt. Directors, Casual Vacancy fillers, Reappointments, and Persons named in AOA
- **Section 264 not applicable to Private Company**

Special Points for 'Minor'

- Minor **not disqualified** u/s 274;
- Minor **cannot file his consent** u/s 264 (b'coz not competent to contract);
- Minor **cannot be appointed as director in public company** (b'coz consent is required to be filed but he cannot file);
- Minor **can be appointed as director in private company** unless AOA states minority as one of the disqualification;
- **Can Minor become a shareholder** [Nadita Jain vs. Benett Coleman Co. Ltd.]: Yes **BUT** for FP shares only

General powers of Board [Section 291]

- **BOD of a company shall be entitled:**
 1. to exercise all such powers, and
 2. to do all such acts and things, as the **company** is authorised to exercise and do
- **BOD powers co-extensive with Company's powers;**
- **Restrictions on general powers:**
 1. Certain powers are to be exercised only at meeting of the Board [e.g. Section 292];
 2. Certain powers may be exercised only after being authorised by the General Meeting [e.g. Section 293];
 3. Certain powers which the Board cannot exercise if MOA/ AOA does not authorise

General powers of Board [Section 291]

- **Shareholders cannot supersede BOD powers;**
- **BOD need only consent of shareholders u/s 293 BUT not direction by them;**
- Shareholders can exercise all the powers if BOD acts malafide/ is incompetent/ there is a deadlock;
Thus, direction by shareholders does not make it obligatory for the BOD to exercise such power (e.g. direction to exercise u/s 293)

Powers Exercisable by passing resolution at BM [Section 292]

- a. Making calls on shares;
 - b. Authorising buy back u/s 77A(2)(b);
 - c. Issuing debentures;
 - d. Borrowing money other than debentures;
 - e. Investing funds of the company;
 - f. Making loans to any person
- Powers under **c, d & e may be delegated** to any committee/ MD/ Manager/ any other principal officer of company or branch office;
 - Delegation resolution to be passed at BM
 - Powers under **d & e should not contravene section 372A**

Section 293(1)

- **Applies to:**
 1. Public Company;
 2. Private Subsidiary
- **Consent of GM required** by the BOD to exercise certain powers

Section 293(1)

- a) sell, lease or otherwise dispose off whole or substantially whole of undertaking(s);
- b) debts due from Directors cannot be remitted or cannot give time for repayment thereof;
Exception: renewal or continuance of an advance made by a banking company to its director in the ordinary course of business;
- c) Investment of compensation of compulsory acquisition
Exception: in case the compensation is invested in trust securities, then, no consent of shareholders is required

Section 293(1)

- d) **Approval of GM Required if:**
Borrowings (current + proposed) > Paid up Share Capital + Free Reserves + P & L Appropriation A/c;
 - **Exception:** temporary loans obtained from company's bankers in the ordinary course of business.
"Temporary Loans" means:
 - (a) loans repayable on demand or
 - (b) payable within six months from the date of the loan,
- NOTE:**
- Temporary Loans do not include loans raised for the purpose of financing capital expenditure
 - Do Not include borrowings from company's bankers in the ordinary course of business

Section 293(1)

- e) Contribution to charitable and other funds
> Rs. 50,000 or 5% of past three years
average profits, whichever is higher

Exception:

- directly relating to the business of the company; or
- for the welfare of its employees

Political Contributions [Section 293A]

- Contribution for political purpose etc. = to any political party **Or** to any other person;
- **Prohibition to make political contribution:**
 1. Govt. Co.;
 2. Any Co. in existence for < 3 years
- Amount of Contribution in a F.Y. $\leq$ 5% of Avg. 3 past years Profits;
- Profits as per section 349 and section 350;
- Resolution at BM required;
- Amount and Contributtee disclosures in P & L A/c

Contribution to National Defence Fund etc. [Section 293B]

- **Fund** = National Defence/ PM National Relief Fund/ Others Notified u/s 293B;
- **Contributors** = BOD by BM resolution/ Any person being BOD authorised/ Members via GM;
- P & L disclosure required;
- Section 293B overrides Companies Act/ MOA/ AOA

Loans to directors, etc. [Section 295]

- Certain **specified transactions** cannot be done with certain **specified persons** unless previous approval of CG is obtained;
- **Types of transactions attracted [Specified transactions]:**
Section 295 applies to only following transactions by a company:
 1. making any loan; or
 2. giving any guarantee; or
 3. providing any security in connection with a loan made by any other person to, or to any other person,

Loans to directors, etc. [Section 295]

- **With whom prohibited [Specified persons]:**
Making/giving/providing of loan/guarantee/security is prohibited by the company (i.e. Lending Co.) to any one or more of the following:
 1. any director of the lending company;
 2. any director of the lending company's holding company;
 3. any partner or relative of any such director;
 4. any firm in which any such director or relative is a partner;
 5. any private company of which any such director is a director or member;
 6. any body corporate at a **general meeting** of which $\geq 25\%$ of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 7. any body 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

Relatives and Section 295

- Relatives = (a) they are **members of a HUF**; or (b) they are **husband and wife**; or (c) the one is related to the other in the manner indicated in **Schedule IA** of Act
- **Schedule IA:**
 - Father
 - Mother (including step-mother)
 - Son (including step-son)
 - Son's wife
 - Daughter (including stepdaughter)
 - Father's father
 - Father's mother
 - Mother's mother
 - Mother's father
 - Son's son
 - Son's son's wife
 - Son's daughter
 - Son's daughter's husband
 - Daughter's husband
 - Daughter's son
 - Daughter's son's wife
 - Daughter's daughter
 - Daughter's daughter's husband
 - Brother (including step-brother)
 - Brother's wife
 - Sister (including step-sister)
 - Sister's husband.

Loans to directors, etc. [Section 295]

- **Exceptions [Section 295(2)]**
 1. Private companies which are not subsidiaries of public companies;
 2. Banking companies;
 3. Loans/ guarantees/ securities made/ given/ provided by holding companies to their subsidiary companies
- **House building loan to director is exempt** if such loan is on the similar terms and conditions as are applicable to the officers and employees of the companies;
- **Sale of House on credit** not covered
- **Salary advance to director/relative of director is exempt** so long as the advance is reasonable and an outcome of contract of employment, it is not covered [*M R Electronics Components Limited & Others vs. Assistant ROC*];
- If Pvt. Co. converted to public company after giving loan, Section 295 not attracted

Loans to directors, etc. [Section 295]

- **Loan means:**
 1. An advance of money;
 2. Given on understanding;
 3. That it shall be paid back [*Dr. Freddie Ardeshir Mehta vs. UOI*]
- Loan in general is Financial Assistance (it may or may not carry interest)**
- **Section 295 shall apply to any transaction represented by a book debt, which was from its inception in the nature of loan or advance [Section 296]**

Contracts in which directors are interested [Section 297]

- A company (public or private) cannot enter into **specified contracts** with **specified persons**, unless:
 1. sanction of the board is accorded to it; or
 2. if company's paid up **share capital is > Rs. 1 crore**, **CG previous approval** is accorded;
- **Types of covered contracts [Specified contracts]**
 1. for the sale, purchase or supply of any **goods, materials or services**; or
 2. for underwriting the subscription of any shares in, or debentures of, the company

Contracts in which directors are interested [Section 297]

- **Specified Persons:**
- 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

Thus, if a contract is entered into with a director of a public co., Section 297 would be N.A.

NO retrospective Application

Contracts in which directors are interested [Section 297]

- **Exceptions [Section 297 (2)]:**
- the purchase of **goods and materials** for **cash** at **prevailing market prices; or**
- any contract or contracts for sale, purchase or supply of any goods, materials and services in which:
 1. either the company or the director, relative, etc. regularly trades or does business; **and**
 2. the value of such contract is **≤ Rs. 5,000** in a year.
- in the case of a **banking or insurance company**: any transaction in the ordinary course of business

Contracts in which directors are interested [Section 297]

Circumstance of urgent necessity:

- contract for sale, purchase or supply of **goods** can be entered, without obtaining Board's consent;
- Board's sanction may be taken within 3 months.
- If paid of share capital > Rs. 1 crore, the prior approval of Central Government will still be required [Deptt. 's clarification].

Consequence of contravention:

- If **BOD approval is not obtained**: contract **voidable** at the option of the Board.
- If **CG approval is not obtained**: contract **void**

Cases where this section does not apply: This section does not apply to:

- contracts **between two public companies**.
- transactions of **loans**.
- transaction in **immovable property** (renting of premises).
- contracts of **employment**.
- contract for rendering professional services

CG's Online Approval u/s 297

- **W.e.f. 25.7.2011**, CG has decided to simplify the procedures and to give its online approval u/s 297 of the Act, **if (all conditions)**:
- 1. the **proposed contract** is **approved by the shareholders by SR in a GM**;
- 2. the **proposed contract** is competitive, at an arm's length, **without conflict of interest and is not less advantageous to it as compared to similar contracts** with other parties;
- 3. **no default has been made in repayment** of any of its debts (including public deposits) or debentures or interest payable thereon and **has filed its upto date B/S and Annual Returns with ROC**;
- 4. the proposed contract is falling within the provisions of section 297 of the Act and **provisions of sections 198, 269, 309, 314 and 295 are not applicable** in the proposed contract

**Disclosure of interest by director
[Section 299]**

- **Interested director's duty to disclose:** If a director is interested in a contract whether directly or indirectly:
 1. shall disclose the nature of his interest;
 2. such disclosure shall be done at a meeting of the Board
- **Every interest shall be disclosed.** This section is wider in scope than section 297;
- **Disclosure required only where shareholdings of directors > 2% of paid up capital of other company;**
- Mode of Disclosure = Specific or General

**Disclosure of interest by director
[Section 299]**

- **Specific disclosure:**
 1. in the meeting in which the question of entering contract is first considered; or
 2. if he was not a director or not interested at the time of such discussion then in the first meeting of board held after he became a director or interested;
- **General disclosure:** A director can give a general notice of disclosure:
 1. at any time, valid for the financial year;
 2. it can be renewed for the next financial year by giving fresh notice in the last month of the current financial year.

**Disclosure of interest by director
[Section 299]**

- Disclosure not required if interest is already known **[A Sivasalem vs. Assistant ROC];**
- Disclosure made at the beginning of the next F.Y. shall be deemed to be sufficient in terms of Section 299 **[ICICI vs. Parasrampuriah Synthetics Ltd.];**
- If interest not disclosed, section 283 is applicable **But** contract does not become illegal/ void/ unenforceable

**Interested director not to participate or vote
in Board's proceedings [Section 300]**

- **Prohibitions on interested director:** A director interested in any contract or arrangement **shall not:**
 1. participate in discussions on the item;
 2. vote on the matter (vote void if casted);
 3. be counted towards quorum for that matter
- Contract not void/ unenforceable but voidable at the option of BOD but not at the option of other party **[Movitax Ltd. Vs. Bulfiled];**

**Interested director not to participate or vote
in Board's proceedings [Section 300]**

- **Non applicability:** The above prohibition shall not apply to:
 1. private companies which are not subsidiaries of public companies;
 2. public company exempted by CG (for interest of trade, business or industry);
 3. any contract of indemnity against any loss which the directors, may suffer by reason of being surety for the company;
 4. contracts with companies where the interest of director is solely limited to:
 - in his being a director and holder of qualification shares;
 - or**
 - in his holding $\leq$ 2% of paid up share capital

Restrictions on holding office of profit by director or his relative/ partner etc [Section 314]

- Section 314 provides for restrictions on holding **office or place of profit (OPP)** by director or his relative or firm in which he is partner etc.;
- Provisions of sections 297 and 299 (in respect of disclosure of interest, etc.) will also have to be complied with;
- **Section 314(3): OPP if director gets something extra than his emoluments as director**
- OPP include selling & buying agents receiving commission and/ or salary [**Arkay Wires (P) Ltd. Case**];
- OPP = All such positions in Co., where functions are performed under the control, direction & supervision of the company;
- Directors do not act under CDS of co.;
- Applies to **all companies**

Restrictions on holding office of profit.....contd.

- **Approval in general meeting to appoint director to hold place of profit:**
- 1. A **director** cannot hold office of profit in the company without approval in general meeting by a special resolution,
- 2. irrespective of the quantum of remuneration drawn.

Restrictions on holding office of profit.....contd.

- **Approval in GM through SR in certain cases:**
- Following **persons** cannot hold office of profit in the company without approval in general meeting by a special resolution, if the total **monthly remuneration ≥ Rs 50,000 (w.e.f. 6.4.2011)**:
- 1. **Director** [The lower ceiling of Rs 50,000 does not apply to director. Thus, a director cannot hold office of profit, irrespective of remuneration drawn by him];
- 2. Partner or relative of such director;
- 3. Firm in which such director or his relative is a partner;
- 4. **Private company** in which the director is a director or member;
- 5. Director or manager of such private company

Restrictions on holding office of
profit.....contd.

- **The provision does not apply if the person is director in a public limited company.**
- Thus, the section can be overcome by the director forming a limited company instead of a private limited company;
- For example, 'X' is director of company 'A'. He is also director in company 'B'. Now, if 'B' is a private company, that private company cannot hold office or place of profit in 'A' company. However, if 'B' is a public company, the 'B' company can hold office or place of profit in the 'A' company

Restrictions on holding office of
profit.....contd.

- **Provision applies only in cases where director himself is holding place of profit:**
- In ***A R Sundaram v. The Madras Purasawal Kam Hindu Nidhi Ltd.***, it was held that restriction of section 314 in respect of appointment of partner or relative apply only when the director himself is holding office of profit;
- Thus, section 314(1) does not apply where relative, partner etc. of an ordinary sitting director (i.e. director who does not hold office of profit) holds an office or place of profit in the company;
- Post of MD/WTM is not considered a 'place of profit', Thus, **this section should not apply where relative or partner of MD/WTM is to be appointed;**
- Further, **if remuneration > Rs 2,50,000 p.m.**, SR plus CG Approval will be required u/s 314(1B).

Restrictions on holding office of
profit.....contd.

- The **restriction is N.A.** if the relative of director or firm in which such relative is a partner, **holds OPP before the director becomes director** of the company [section 314(1A)];
- **Lump-sum payment** of gratuity, leave encashment, etc. will **not be covered in 'monthly' remuneration** [*Ravindar Kumar Sanghal vs. Auto Lamps*]

Restrictions on holding office of
profit.....contd.

- **Restrictions u/s 314(1) apply to appointment in subsidiary company also:**
- The restrictions are applicable in respect of office of profit held in the company or in its subsidiary company;
- **Vice Versa Not Covered;**
- **Restrictions u/s 314(1B) apply to appointment in Company only**

Restrictions on holding office of
profit.....contd.

- **Provision does not apply to appointment of MD, WD, manager, banker or trustee:**
- The restrictions do not apply to appointment of managing director, manager, banker or trustee for the holders of debentures of the company, either under the company or under subsidiary of such company [section 314(1)];
- **No such exemption available u/s 314(1B)**

Restrictions on holding office of
profit.....contd.

- **Provision does not apply to appointment of wholetime director:**
- The section does not make specific provision in respect of appointment of relative/ partner of director as a whole-time director;
- **However, department has clarified that section 314(1) only precludes a director to hold office or place of profit other than a 'director'.**
- The restriction u/s 314(3)(a) is not applicable to remuneration drawn by a person as director;
- Hence, the restrictions u/s 314 do not apply to appointment of wholetime director;

Restrictions on holding office of
profit.....contd.

- **No restriction in appointing director as solicitor or advocate:**
- Provisions of section 314(1), (1B) do not apply for appointment of solicitors and advocates, as the advocate or solicitor appears before Court as an officer of court in pleading cause of justice;
- Receiving fees on this account cannot lead to an inference of an office or place of profit u/s 314;
- However, if such solicitor/advocate is appointed on a **regular basis** for rendering legal advice other than appearance in Courts, provisions of **section 314 will be applicable [DCA Circular]**

Restrictions on holding office of
profit.....contd.

- **Not applicable to director appointed by Central Government u/s 408:**
- Provisions of section 314 are not applicable if a person who is holding office of profit in the company, is appointed as director by Central Government under section 408

Latest Amendment (Rule 7)

- The selection and appointment of a relative of a director holding office or place of profit in the company shall be approved by adopting the same procedure applicable to non-relatives :
- **Provided** that, in the case of listed public companies, the selection of director for holding place of office or profit in the company shall have to be also approved by a Selection Committee.
- "Selection Committee" means a committee, the majority of which shall consist of independent directors and an expert in the respective field from outside the company:
- **Provided** that in case of unlisted companies, independent directors are not necessary but outside experts should be there in the Selection Committee:
- **Provided further** that in the case of private companies, independent directors and outside experts are not necessary.

Restrictions on holding office of profit.....contd.

- **CG approval if remuneration is above prescribed limits:**
- If the remuneration is not less than (i.e. >) that the sum prescribed, prior consent of members by a special resolution and approval of Central Government is necessary. [section 314(1B)];
- The sum prescribed is Rs 2,50,000, (w.e.f. 6.4.2011, earlier Rs. 50,000) vide rule 10C (2) of Companies (Central Government) General Rules & Forms;
- This provision applies to following:
 1. Partner or relative of a director or manager (**Partner of relative of Director not covered**);
 2. Firm in which such director or manager, or relative of either, is a partner;
 3. Private company of which such a director or manager, or relative of either, is a director or member

Restrictions on holding office of profit.....contd.

- **Procedure for obtaining approval:**
- 1. Application for his appointment should be made in Form No 24B;
- 2. Since the term used is 'approval' and not 'prior approval', it can be argued that application for approval to Central Government can be made even after appointment

Sitting fees to directors

- Directors can be paid remuneration by way of fee for each **meeting of Board** or Committee attended by him [Section 309(2)]
- As per rule 10B of Companies General Rules maximum sitting fees payable **per** meeting of Board of directors or its committee is as follows:
 1. **Rs. 20,000** if paid up capital plus free reserves $\geq$ Rs 10 crore or more **or** turnover is $\geq$ Rs 50 crore *(Since word used is 'or', it is sufficient if one of the conditions is satisfied)*
 2. **Rs 10,000** in other cases (i.e. company whose paid up capital plus free reserves is less than Rs 10 crores and turnover is less than Rs 50 crores)
- Sitting fees more than Rs. 10,000/20,000 can be paid only with Government approval;
- Sitting fee is part of managerial remuneration [Proviso to section 310(1)];
- **Sitting fees can be paid to directors even if company is making losses:** As per section 198 (1), managerial remuneration is payable on basis of percentage of profit. However, section 198(2) provides that the percentage shall be exclusive of sitting fees

Sitting fees to directors

- A MD/ WTD getting remuneration as per schedule XIII, is **not entitled to sitting fee**;
- Even if sitting fee is paid, it will be treated as 'other allowance' and overall limit on salary [schedule XIII];
- If meeting is adjourned for want of quorum, sitting fee is payable for adjourned **Board meeting** also [DCA circular dated 2-2-1972];
- Directors are **not entitled to get sitting fees for attending general meetings** but they can claim reimbursement of expenses incurred for attending general meeting as per regulation 65(2)(a) of model Articles as per Table A Articles;
- Directors means other than MD/ WTD

Managerial Remuneration

- **No remuneration free of income tax:**
- Company cannot pay remuneration which is free of income tax, i.e. the remuneration is subject to income tax at the hands of the director [section 200]

Managerial Remuneration: summary of provisions

Sl. No	Person entitled to remuneration	Maximum % of net profit
1.	For all Non-Executive Directors where the company has one or more Managing/Whole time Director or a Manager [proviso (i) to section 309(4)]	1%
2.	For all Non-Executive Directors where there is no Managing or Whole time Director or Manager [proviso (ii) to section 309(4)]	3%
3.	For Managing Director where there is only one Managing Director	5%
4.	For Whole time Director where there is only one Whole time Director	5%
5.	For all Managing Directors/Whole-time Directors where there is more than one Managing Director/Joint Managing Director/Deputy Managing Director or more than one whole time Director (to all managerial personnel put together should not exceed 10%) [Part II section I of Schedule XIII of Companies Act]	10%
6.	Manager (there cannot be more than one Manager) [Part II section I of Schedule XIII of Companies Act]	5%
7.	Total Managerial Remuneration to all Directors, Managing Directors/Whole time Directors/manager put together, excluding sitting fees [section 198]	11%

Managerial Remuneration

- Guarantee Commission not a remuneration u/s 309 [Suessen Textile Bearings Ltd. vs. UOI];
- **Mode of Payment (Section 309):**
Remuneration may be paid on:
 1. Monthly basis;
 2. % of N.P.;
 3. Partly by (1) or (2)

Managerial Remuneration

- **Part time director** may be paid remuneration by way of:
 1. Sitting fees;
 2. Commission as % of N.P. if SR approved it (such SR once passed is effective $\leq$ 5 yrs.);
 3. Monthly/ quarterly/ annual payment only if CG approval obtained.
- **For any increase** beyond Schedule XIII, CG approval (and not 'prior' approval) required [Section 310];
- **Excess Remuneration** need to be refunded by the director and Company cannot waive recovery of such remuneration [Section 309 (5A) and (5B)]

Remuneration if inadequate or no profits

- **Step 1: Effective Capital:**
Paid up share capital
 - (+) Securities Premium A/c
 - (+) Reserves and Surplus
 - (+) Long Term Loans
 - (+) Deposits repayable after 1 year
 - (-) Investments
 - (-) Accumulated Losses
 - (-) Preliminary Expenses not written off

Remuneration if inadequate or no profits

- Effective Capital shall be calculated as on:
- 1. **Date of appointment** of managerial person if appointment is made in the year of company's incorporation;
- 2. **Last Day of preceding F.Y.** in any other case

Remuneration if inadequate or no profits

- **Step 2: Quantum of Monthly Remuneration for each managerial person**

EC	Alt. 1	Alt. 2	Alt. 3
< 1 crore	75,000	1,50,000	Payment of managerial remuneration exceeding the limits given in Alt. 2 Or If EC is -ve
≥ 1 crore < 5 crores	1,00,000	2,00,000	
≥ 5 crores < 25 crores	1,25,000	2,50,000	
≥ 25 crores < 50 crores	1,50,000	3,00,000	
≥ 50 crores < 100 crores	1,75,000	3,50,000	
≥ 100 crores	2,00,000	4,00,000	

Remuneration if inadequate or no profits

Step 3: Conditions for Alternatives:

- **Alternative 1:**
- 1. **Remuneration Committee** approval (having atleast 3 non-executive independent directors);
- 2. **No default** in repayment of debts/ public deposits/ debentures/ interest payable thereon for a **continuous period** of 30 days in **preceding F.Y. before the appointment of managerial person**;
- 3. For SEZ Companies no default for a **continuous period** of 30 days in any **preceding F.Y. before the appointment of managerial person**

Remuneration if inadequate or no profits

Step 3: Conditions for Alternatives:

- **Alternative 2** = Alt. 1 (+) SR at GM (such SR is valid for 3 years);
- **Alternative 3** = Alt. 2 (+) CG prior Approval
- **Private Companies and Govt. Companies are exempted from Sections 198, 309 and Schedule XIII**

Special Points

- Remuneration paid for rendering services in such professional capacity as expressed by CG, not to be included in Managerial Remuneration;
- Remuneration beyond ceiling/ limits = CG approval required;
- CG approval not required by Subsidiary of a Listed Company if (all conditions) [Since 23.05.2011]:
 1. Remuneration Committee and BOD of Holding Co. consented such remuneration;
 2. Holding Co. approved such remuneration in GM;
 3. Remuneration is deemed as paid by Holding Co.;
 4. All members of Subsidiaries are Body Corporates;
- Such CG approval for Subsidiary/ Listed Co. also not required if BIFR fixed the remuneration

Special Points

- Waiver of approval of CG for payment of remuneration to professional managerial person by companies [Since 14.7.2011], if :
 1. Company is listed company and/ or its subsidiary; AND
 2. It has no profits or has inadequate profits; AND
 3. Payment of remuneration ≤ Rs. 4 Lakhs p.m.; AND
 4. The Managerial Person:
 - is not having any direct or indirect interest in the capital of the company or its holding company or through any other statutory structures at any time during last 2 years before or on the date of appointment; AND
 - is having a graduate level qualification with expert and specialized knowledge in the field of his profession

Managing and Wholetime Director

- The Board of Directors cannot look after day to day affairs of the company;
- They, therefore, appoint a Manager, Managing Director or wholetime Director to look after day to day affairs of the company;
- Such Manager, Managing Director or wholetime Director works under overall supervision and control of the Board of Directors

MD, WTD and Manager

MD	WTD	Manager
Means a director who is entrusted with substantial powers of Mgmt, which are not otherwise exercisable by a director	Includes a director in the whole time employment of the company	Means a person having the mgmt of whole or substantially the whole of the affairs of a company
Can be appointed ≤ 5 yrs	Tenure may > 5 yrs	Can be appointed ≤ 5 yrs
MD has to be director first	-	Manager need not be a director but director may be a Manager

Managing and Wholetime Director

- A company having **paid-up share capital $\geq$ Rs 5 crores must appoint** a 'Managerial Person';
- 'Managerial Person' means a Managing Director, Whole-time director or Manager;
- Appointment or re-appointment of any one of these 'Managerial Person' is enough;
- These **provisions are applicable only to public company or a private subsidiary** [section 269(1)];
- When his appointment or re-appointment is made, a return electronically in **form 25C should be filed within 90 days** with ROC [section 269(2)]

Managing and Wholetime Director

- MD can **acquire substantial powers** by:
 1. Agreement with the company;
 2. Resolution passed by a company in the GM;
 3. Resolution passed by Board of Directors; or
 4. Providing those powers in the AOA itself
- Model Articles in Table A do not provide any specific powers to Managing Director/Manager

Managing and Wholetime Director

- A person can be appointed as 'Managerial Person' when he has attained **age**: ≥ 25 years but ≤ 70 years;
- A person **aging** ≥ 18 years but < 25 years **or** a person > 70 years can be appointed as 'Managerial Person' by a **SR passed by the company in GM**;
- If such SR is passed, further approval from Central Government is not necessary;
- If SR is not passed, approval of Central Government is necessary [Schedule XIII Part I]

Managing and Wholetime Director

- **When approval of CG is necessary for appointing MD/MTD:**
 1. Convicted under economic offence;
 2. Detained under COFEPOSA;
 3. Age is over 18 but less than 25 or over 70 years of age and SR not passed in the general meeting;
 4. He is non-resident and was not staying in India for at least 12 months prior to his appointment; or
 5. Remuneration proposed is more than the amount prescribed in Part II of Schedule XIII

Appointment of MD/Mgr in ≥ 2 Co.
(Applies if proposed appointment is in public co.)

Appointment of MD/Manager in 2 companies:

- Normally, a person is expected to be appointed as MD/Manager in one company;
- However, if a person is appointed as MD/Manager in one company, he can be appointed as MD/Manager in another company;
- Such appointment has to be made or approved at a meeting of BOD with the **consent of all directors present**;
- A specific notice of proposed resolution has to be given to all directors then in India [**section 316(2) for appointment of MD and section 386(2) for appointment of Manager**];
- **Appointment > 2 Companies: CG approval required**

Managing and Wholetime Director

- **Appointment of MD/WTD/Mgr:**
- 1. **Appointment and fixation of remuneration** of a 'Managerial Person' (MD / WTD / Manager) is subject to approval in the **GM by OR** [Schedule XIII Part III];
- 2. If such **approval is not accorded** in the first general meeting after his appointment, he **ceases to act as MD / WTD / Manager**;
- 3. However, special resolution u/s 314 is not required, as appointment of MD / WTD is not considered as a 'place of profit'

Managing and Wholetime Director

- **Appointment of MD/ Mgr only five years at a time:**
- 1. A person can be appointed as 'MD' only for five years at a time;
- 2. He can be re-appointed, re-employed or his term may be extended, but only for five years at a time;
- 3. Such re-appointment or extension cannot be sanctioned earlier than 2 years of his initial appointment [section 317];
- 4. This section does not apply to private company which is not a subsidiary of a public company [section 317(4)]
- **This section mentions only Managing Director and not 'wholetime director'**;
- **Corporate Governance: It will not be proper to appoint a WTD for more than 5 years at a time**

Managing and Wholetime Director

- MD/ WTD may be **rotational or non-rotational**;
- **ADD may be appointed** as MD/ WTD;
- If on the **expiry of his term**:
 1. MD not appointed as *director*;
 2. he shall vacate the office of MD

Disqualifications: MD/ WTD [Section 267]

- Applies to **all the companies**;
- If disqualified then vacation of office;
- **Grounds of Disqualifications:**
 1. Undischarged insolvent;
 2. Adjudged insolvent anytime in past;
 3. Suspends payments to **his** creditors;
 4. Composition with **his** creditors;
 5. (3) or (4) happened anytime in past;
 6. **Court:** conviction as to moral turpitude;
 7. (6) happened anytime in past

Disqualifications: Manager [Section 385]

- Applies to **all the companies**;
- If disqualified then vacate the office;
- **Grounds of Disqualifications:**
 1. Undischarged insolvent;
 2. Adjudged insolvent anytime in past 5 years;
 3. Suspends payments to **his** creditors;
 4. Composition with **his** creditors;
 5. (3) or (4) happened anytime in past in 5 years;
 6. **Court in India:** conviction as to moral turpitude;
 7. (6) happened anytime in past 5 years
- CG may remove above disqualification by N/N in OGz

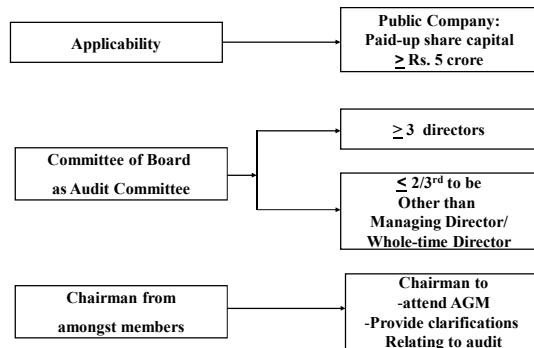
Validity of Acts of Director [Section 290]

- All the acts done by **director** shall be **valid**,
- **notwithstanding that it is afterwards discovered** that:
 1. his **appointment was invalid** by reason of any defect of disqualification; **or**
 2. his **appointment had been terminated** by virtue of any provision contained in the Act or AOA
- Acts done by a director in his capacity as **MD or Mgr** are **not validated** u/s 290;
- Acts done **prior to** CLB declaring appointment of MD/MTD/Mgr as against **Sch. XIII**, shall remain **valid** [Section 269]

Validity of Acts of Director [Section 290]

- **Acts of a Director to be Invalid in following cases:**
 1. illegal appointment **or** no appointment;
 2. acts done after his appointment shown to the company as invalid or terminated;
 3. ultra vires acts;
 4. requirements as to minimum no. of directors never satisfied [**Re, Sly, Spink & Company**];
 5. no quorum at BM

AUDIT COMMITTEE- SEC 292A



AUDIT COMMITTEE- SEC 292A

- Annual Report to disclose composition of Audit Committee;
- Auditor / Internal Auditor / Director Finance to attend meetings of Audit Committee – No right to vote
- Audit Committee should discuss with the Auditor
 - Internal Control System
 - Scope of Audit
 - Observations of auditors

AUDIT COMMITTEE- SEC 292A

- Audit Committee to review half-yearly and annual financial statements before submission to the Board;
- Audit committee to ensure compliance of internal control systems;
- Has authority to investigate any matter referred by Board or specified in Section 292A;
- Recommendation on any matter relating to financial management including audit report – Binding on Board

AUDIT COMMITTEE- SEC 292A

- In case Board does not accept the recommendation of Audit Committee, reasons to be recorded and shareholders to be communicated
- Default in Compliance of Provisions of Section 292A, imprisonment upto one year or fine upto Rs 50,000 or both.
