Director

1. **Only individual to be directors - sec.253 i.e. firm, body corporate, association cannot be appointed as Directors.**

2. **DIN**
   - It is mandatory to have DIN.
   - Application shall be made to CG in such form and manner including electronic form.
   - CG shall allot DIN within 1 month of receipt of application.
   - Prohibition to obtain more than one DIN.
   - Intimation of DIN to the companies within 1 month of receipt from CG.
   - Co. shall intimate ROC or any authority as prescribed by CG within 1 week of receipt of intimation of DIN by it from its directors.
   - Obligation to indicate DIN in returns, information particulars it contains the reference of directors.

3. **Executive director** :- it means who are in the whole employment of the co e.g., managing director, WTD.

   Non Executive director : it means who are not in the employment of the Co. e.g., Professional directors, nominee directors.

4. **Qualification of shares -Sec 270**

   - No statutory requirement to hold QS as per the act.
   - But it is to be held only if so required by the articles.
   - Then it must be held within 2 months of appointment as per sec.270
   - Articles cannot increase or decrease the period given as per sec.270. If it provides then it is void.
   - Nominal value of QS shall be Maximum Rs.5000 or the nominal value of 1 share where it exceeds Rs.5000/ 1 share as per reg.66 of Table A

   Directors exempted to hold QS are:

   - SSD
   - Nominee director appointed by CG or financial institution (statute),
   - Director who is specially exempted by articles.
   - Increase in the amount of qualification shares binding on the director if he is not already qualified as on the date of increase

Provisions applicable in the absence of any provisions in the articles:

- Joint Holdings
- QS can be mortgaged
- QS can be equity or preference
- Beneficial ownership not required.

Note:

- Bearer of share warrant shall not be deemed to be a holder of QS.
- Sec. 270 does not apply in the case of private companies, in other words if the articles of Pvt. Company provides for it, Then director must obtain as per the time and amount specified in the articles.

5 Qualifications of Directors:

- No educational or otherwise qualifications is required
- No age limit has been prescribed under the act for appointment as a Director or compulsory retirement of a certain age except for MD, WTD

6 Disqualification of director - sec.274 (Applicable to all companies)

- Unsound mind
- adjudged insolvent
- applied for insolvency
- Non payment of calls for 6 months or more from the last due date.
- Imprisoned for 6 months or more for an offence involving moral turpitude and a period of 5 years has not lapsed from the date of expiry of sentence.
- Order of court u/s 203 on the ground of fraud or misfeasance in relation to a Co. and such disqualification shall remain for such period as may be specified by court, but not exceeding 5 years.

Disqualification applicable to public Co. only - Sec. 274 (1) (g)

- Directors of a public company shall be disqualified for appointment or reappointment in any other public Co. for 5 years if the public in which he is already a director does not file the annual accounts and annual returns for any continuous 3 Financial Years

Or

- Fails to repay its Public deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for 1 year or more.

Notes: No vacation of office of defaulting Co. and any other Co. even if sec 274 1 (g) is attracted. Director can escape from disqualification if he resigns before that.

7 **Vacation of office by directors - Sec. 283 Applicable to all companies:**

- Unsound mind
- adjudged insolvent
- applied for insolvency
- Non payment of calls for 6 months or more from the last due date.
- Imprisoned for 6 months or more for an offence involving moral turpitude and a period of 5 years has not lapsed from the date of expiry of sentence.
- A person becomes disqualified by an order of court u/s 203 on the ground of fraud or misfeasance in relation to a Co.
- A person who acts in contravention of sec. 295. i.e. accepting a loan, or any guarantee or security for a loan from a public co. in contravention of sec. 295.
- A person who acts in a contravention of sec.299. Where a director fails to discloses his interest in any contract or arrangement.
- A person who is removed from the office of a director u/s 284.
- A person who fails to obtain QS u/s 270.
- A person who having been appointed a director by virtue of his holding any office or other employment in the Co., cease to hold such office or employment
- A person who absents himself, without obtaining leave of absence from the Board
    - From 3 consecutive BMs,

      Or
    - From all the BMs for a continuous period of 3 months, whichever is longer.

Notes: Points highlighted **shall not take effect**.

- For the first 30 days where any appeal is preferred.
- Until such appeal is disposed of,
- For 7 days as reckoned from such day when the first appeal is disposed of,
- Where any further appeal is preferred within 7 days, until such further appeal is disposed off.

Effect: - No opportunity of being heard is required to be given to the director.

- Board is not required to pass a resolution to the effect that the office of a director has been vacated.
- Board has no power to waive any ground of vacation of office.

Note: Private companies may provide additional grounds of vacation of office.

8 Number of Directors - Sec. 252

	Minimum	Maximum
• **Public Co**.	3	Not prescribed as per act
• **Private Co.**	2	Not prescribed as per act

Note: Articles may specify minimum number of directors which may be higher than that specified u/s 252.

9 Increase or Reduction in Number of Directors - Sec. 258

- Increase or decrease in the number of directors shall be done by passing an Ordinary Resolution, but it should be within the limits fixed by the articles.
- Increase in number of directors beyond the limits of fixed by the articles requires amendment of article by SR.

10 Increases in Number of Directors - sec. 259

- No increase in number of directors shall have effect unless approved by CG. However no approval of CG is required if:-
  - The number of directors as increased does not exceed 12.

Or

  - The number of directors as increased does not exceed the maximum number of directors specified in the -
    - articles as first registered
    - articles as on 21.07.1951
- Moreover additional directors, alternate director, nominee directors, directors appointed by CG, are not counted in the total number of directors.
-

Non Applicability

- Private Co.

- Government Co.
- Co. licensed u/s 25.

Note: Alternate directors, additional directors, casual Vacancy directors are exempted from this section.

11 Restrictions on number of Directorships - Sec. 275, 277, 278

- No person can be a director in more than 15 companies.
- When a person already holding 15 directorships is appointed as a director in any other Co., then the new Appointment shall not take effect unless within 15 days of such appointment, the director concerned vacates any of his earlier directorships.
- The appointment shall become void if the office is not so vacated.

Directorships excluded u/s 278

- Directorship in pure Pvt. co (i.e. Pvt. co which is not a subsidiary or holding of a public Co.)
- Directorship in an unlimited Co.
- Directorship in a Co. licensed u/s 25.
- Alternate directorship in any Co.

Change in Nature of Company Then: -

- Any co referred to above shall be **excluded** for 3 months from the date it ceases to fall within that category.

12 Appointment of Directors to be voted on individually - Sec.263

- Single resolution is prohibited for appointment or reappointment of two or more persons as directors, i.e. separate resolution is required.
- However it can be made by a single resolution if before passing a single resolution a unanimous resolution is passed that the appointment or reappointment shall be so made.

Non applicability

- Private Co.
- Co. licensed u/s 25
- Appointments made by the Co. otherwise than in GM. (E.g. Fill up the Causal Vacancy)

13 **Appointment of First Directors - Sec. 254**

- If Directors are named in the articles - then they shall be the first Directors
- If directors are not named in the articles -
  - **Manner prescribed** - then as per manner specified in the articles.
  - **Manner not specified -** then all the subscribers to MOA shall be deemed to be directors until directors are duly appointed at a GM u/s 255.

14 **Rotational and non rotational directors - sec. 255**

- Rotational directors mean those directors whose period of office is liable to determination by retirement by rotation.
- Not less than 2/3 rd of total number of directors shall be rotational directors (any fraction contained in that 2/3rd shall be rounded off as one.)
- Articles may even provide that -
  - All the directors shall be rotational directors

    Or
  - All directors shall retire at every AGM.
- Non rotational directors are other than rotational directors.
- The non rotational director shall be appointed -
  - in the GM

    Or
  - As per the articles provide for.
- The non rotational director can be appointed for a period as may be -
  - Determined in GM

    Or
  - Determined as per the articles.
- Total number of directors does not mean the maximum number of directors fixed by the articles but the number of directors for the time being appointed as directors.

Non applicability - Private Co.

15 **Ascertainment of Directors Retiring by Rotation - Sec. 256**

- 1/3 or (nearest to 1/3) of rotational directors shall retire from office on FIFO basis **or** by agreement **or** by lots (in the absence of such agreement).
- Vacancy shall be filled by reappointing the retiring director **or** appointing some other person (Provided conditions of sec. 257 are fulfilled)

- **<u>Adjournment of AGM -</u>** If the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy then the AGM shall adjourn to next week at the same day, time and place or if that day is a public holiday, then to next succeeding day which is not a public holiday.
- **<u>Automatic reappointment in adjourned AGM -</u>** If the place of retiring director is not filled and the meeting has not resolved not to fill the vacancy then the retiring director shall be deemed to be reappointed.
  - **Exceptions –** Automatic reappointment shall not apply to a director if:-
    - A resolution for the reappointment of retiring director was put and lost

      Or

    - The retiring director has given a written notice to the company of his unwillingness to be reappointed.
    - He is disqualified for appointment
    - A resolution is required for his reappointment
    - A resolution in contravention of section 263 is passed (i.e. separate resolution is required for appointment or reappointment)

<u>Note</u>: - Calling of an AGM is a duty of directors. The director can not by omitting to call AGM, take advantage of their own default and by that means extend their tenure of office. Therefore, directors cannot continue in office after the last day on which AGM should have been held

Non applicability - Private Co.

16 <u>Appointment of person other than retiring directors - Sec.257</u>

<u>Eligibility of person:</u>

- A person who is not a retiring director is eligible for being appointed as a director at any GM (AGM or EGM), if conditions of sec 257 are complied with
- A person can give a notice of his own candidature, but a member can even propose a candidature of any other person.
- Notice to Co. at least 14 days before the GM along with Deposit Rs.500 at the registered office (notice given after dispatch of notice of GM. Still valid if it received at least 14 days before the GM.)
- Co. shall inform members at least 7 days before GM by serving individual notices or advertising in 2 newspapers.

Non applicability - Private Co.

17 <u>Appointment of proportional Representation - sec. 265</u>

- No statutory requirement in the act to make the appointment by proportional representation.
- Sec.265 applies only if the articles of a company provides for.
- It shall appoint at least 2/3 rd of directors by proportional representation and such appointments shall be made once in every 3 years
- Any casual vacancy created shall be filled u/s 262.
- Directors appointed under this section cannot be removed u/s 284.
- **Sec.265 overrides the entire company's act.1956.**
- **Mode of voting -** single transferable voting, cumulative voting, otherwise.

Non applicability - Private Co.

18 <u>Nominee Directors</u>

- This provisions applicable to directors appointed by CG or financial institutions :
    - They are not liable to retire by rotation.
    - They are not counted in the total number of directors
    - They may be appointed even if there is no provision in the articles for their appointment.
    - They are not required to hold qualification shares
    - Their appointment may result in increasing the strength of the board **<u>beyond the maximum number of directors</u>** as specified in the articles.
    - They can be removed only by the authority appointing them.

19 <u>Additional Directors - Sec 260</u>

- **Applicable to all companies**
- Articles must authorized the board to appoint the additional directors
- Board at anytime, in its discretion, appoint additional director –
    - by passing a resolution at a BM

      Or
    - Passing a resolution by circulation.
- No approval of CG is required in case of appointment.
- Table A authorized board to appoint additional directors
- An additional director holds office up to the date of next AGM.

- If default is made in holding AGM, the additional director shall vacate his office on the last day AGM ought to have been held.

Alternate director - Sec 313

- **Applicable to all companies.**
- Alternate director can be appointed to act in place of an original director during the absence of original director for a period of 3 months or more from the state in which BMs are ordinarily held.
- Alternate director shall not hold office beyond the term permissible to the original director.
- Appointment of an alternate director comes to an end as soon as the original director returns to the state for any reason whether for the purpose of attending BM or not.
- Articles/ resolution passed at GM must authorize the board to appoint the alternate directors.
- Alternate director may be appointed -
  - by passing a resolution at a BM

    Or
  - Passing a resolution by circulation.
- No approval of CG is required.
- There is no provision in Table A regarding appointment of alternate director.

Filling of casual vacancies - Sec 262

- When the director's office comes to an end otherwise than in the normal course, such vacancy is called casual vacancy.
- No express power in articles is required to fill a casual vacancy.
- Casual vacancy shall be filled only by passing a **resolution at a BM.**
- No approval of CG is required.
- No provision of Table A.

Common points:

- All the above directors are called non rotational directors.
- Appointment of any of these directors as a regular director (i.e. a director appointed by the shareholders in GM) shall require compliance of sec.257, since none of these directors is a retiring director.
- All these directors shall be required to take the qualification shares, if the articles of the

Co. require holding of qualification shares.

20 Appointment of Directors by Small Shareholders - Sec.252

- Applicable to Public Co.
- If the paid up capital is 5 crores or more.
- If the number of small shareholders are 1000 or more (small shareholders means a shareholder holding shares of nominal value of Rs. 20000 or less.)

Mode of appointment:

- Company may **suo motu** appoint SSD.
- On notice by small shareholders i.e. notice given by 1/10 or more of SSD.
- Notice shall be given at least 14 days before the meeting and it shall contain the name, address and no of shares held and folio no of shareholders proposing the resolution and person whose name is proposed as SSD.
- In case of listed Co., the appointment shall be made by postal ballot.
- SSD has to be a small shareholder.
- A person cannot become SSD in more than 2 companies
- SSD cannot be appointed as WTD/ MD
- Maximum tenure of SSD is 3 years, but can be re-elected for a maximum period of 3 years.
- SSD is not a rotational director.
- Disqualification u/s 274 applies to SSD but not 274 (1) (g).
- Vacation of office u/s 283 also applies to SSD.

21 Removal of directors - Sec. 284

- Sec. 284 empowers the members to remove any director, whether he is a rotational or non-rotational director, or MD, WTD or a non-executive director.
- Notice (special) must be given by a member to Co. at least 14 days before the GM.
- Even a single member holding one share only is eligible to give a special notice u/s 284.
- Copy of notice is given by Co. to director.
- Directors has a right to make a representation in writing to company, which shall be sent to members by company at least 7 days before the meeting.
- If representation not sent then it will be read out at the GM.
- If the representation is defamatory as decided by CLB on application by company or

any aggrieved person, then CLB may order that –

  - Representation need not be circulated to members.
  - Need not be read out at the GM.
  - Director shall be liable for costs of application made to CLB.

- Director shall be removed if "**OR**" is passed for his removal.
- If OR fails then director continues,
- **Vacation of office u/s 283 -** Vacancy may be filled in the same GM, if special notice is given.
- If vacancy is not filled in same GM, then it may be filled up u/s 262.
- It is the duty of the board, & not of member proposing a resolution, to give the explanatory statement.
- The articles cannot anyway prohibit the shareholders from removing any director.
- Any other person shall be appointed at the place of director removed, only if special notice of the new appointee was given to the company.

<u>Directors who cannot be removed u/s 284</u>

- A director appointed u/s 408 & u/s 265
- Nominee director appointed by a financial institution constituted under special act of parliament.
- A director of Pvt. Co. holding office for life as on or before 01.04.1952. (In case appointed after 01.04.1952 then he can be removed.)

22 <u>Resignation by Directors</u>

- **Resignation by MD/WTD -** Vacation of office only on acceptance of resignation
- **Resignation by other director –** Following 2 situation can be arise:-

  a. **<u>Without acceptance of resignation</u> -** Vacation of office with immediate effect.

  b. **<u>Only on acceptance of resignation</u> -**

  - ❖ Articles require acceptance for making resignation effective.

  Or

  - ❖ Resignation is given subject to condition of acceptance.

23 <u>Compensation for loss of office - Sec.318</u>

- Compensation may be paid –

  a. for loss of office **or**

b. as consideration for retirement from office **or**

c. in connection with such loss or retirement.

- Compensation can be paid only to MD, WTD, or Manager.

Amount of compensation:

- **Lower of –**
  - the unexpired tenure of directorship, **or**
  - 3 years.
- **Basis –**
  - Average remuneration actually earned during 3 years immediately preceding the date of cessation of office, **or**
  - Such shorter period for which the director has held his office.

Prohibition of compensation in following cases:

- Reconstruction or amalgamation of Co. takes place and director resigns but is appointed as MD or manager or any other officer of the reconstructed or amalgamated Co.
- Director resigns voluntarily.
- Office of director is vacated u/s 203 or 283.
- Director has instigated or is responsible for the termination of his directorship.
- Co. is wound up due to negligence of director.
- Director is guilty of fraud or breach of trust or gross negligence in the conduct of affair of the company.
- Mere allegations on a director do not entitle him from receiving compensation.

24 Consent to act as director - Sec. 264

- Every person proposed as a director shall file his consent with the Co. before appointment
  - **Exception -** A director retiring by rotation or otherwise (i.e. on expiry of his term) and person who files his candidature u/s 257.
- No person shall act as director unless he filed his consent with registrar within 30 days of appointment.
  - **Exception -** A director reappointed after retirement, additional director, alternate director, person filling casual vacancy as a director, person named in the articles as first registered.

Non applicability - Private Co.

Note: A minor cannot be appointed as a director in a public Co. since he is not competent to contract, so he cannot file his consent. Similarly in case of private Co. also if the articles provides so.

25 General Powers of the Board - Sec.291

- Board is entitled to all such powers /acts as the Co. is authorized to exercise.
- Therefore Powers of the board are same as that of co. Hence what the Co. can do, the board can do.
- However Board shall not exercise any power which is required to be exercised in GM whether by co's act, any other act, memorandum or articles.
- The Shareholders can impose restrictions on powers of board through the articles or by a resolution at AGM.
- But restrictions can be imposed prospectively and not retrospectively.
- The board is the supreme body having the management of the Co.
- Shareholders cannot interfere in the day to day management of the Co.
- Shareholders cannot supersede/usurp the Board's powers, or instruct it as to how it shall exercise its powers.
- Even a unanimous resolution of the Shareholders will not enable them to exercise the powers of the board.
- However Shareholders can exercise all powers of the board where the board has been acting malafide/board is incompetent to act/ if there is a deadlock in the board.

26 Powers exercisable only at a BM - Sec. 292

1. Making calls on shares
2. Authorized buy back. Buyback shall not exceed 10 % of (Paid up capital and free reserves), and no further buyback shall be made in next 365 days.
3. Issuing debentures
4. Borrowing money otherwise than on debentures
5. Investing funds of the Co.
6. Making loans to any person.

Delegation of powers

1. Powers mentioned in 4, 5 and 6 above may be delegated by the board subject to following 3 conditions:

i. Resolution delegating powers is passed at a BM

ii. Powers may be delegated to any committee of directors, MD, Manager, any other officer of co.

iii. Resolution delegating such powers shall specify the following particulars

   a. **<u>In case of borrowed of amount</u>** - Amount that can be borrowed.

   b. **<u>In case of investment of funds</u>** - Amount may be invested and the nature of investments.

   c. **<u>In case of power to make loans</u>-** the total amount that may be lent, purpose of making loans.

2 Power to make inter corporate loans and investments cannot be delegated by the board of a public co.

27 <u>Restrictions on Power of Board - Sec. 293</u>

- Board of a **Public Company** shall not exercise the following powers except with consent of the Shareholders in GM :

   i. Sale of undertaking (in case of listed co, instead of passing resolution in GM, pass the resolution by postal ballot.)

   ii. Remission, or give time for the repayment of a debt due by a director.

   iii. Investment of compensation received by way of compulsory acquisition of any undertaking. However no consent of Shareholders required if such compensation is invested in trust securities specified u/s 20 of the Indian Trust act.

   iv. Borrowing of money if:-

      a. Money already borrowed, together with moneys proposed to be borrowed will exceed the total of paid up capital and free reserves.

      b. Temporary loans obtained from co's bankers in the ordinary course of business are not considered as borrowings.

(Temporary loans include loan repayable on demand/ loans repayable within 6 months of the date of the loan, but do not include loans raised for financing capital expenditure)

      c. If the board borrows money in excess of the limits imposed u/s sec.293, the shareholders may ratify such excess borrowings.

      d. Any excess borrowing shall not be valid and effectual against the Co., unless the lender proves that he lent the money in good faith and he lent the money without having any knowledge that the limit imposed u/s 293 had been exceeded.

e. GM resolution must specify the maximum amount which can be borrowed by the board, if not specified then the resolution shall be void.

v. Contributions to any charitable fund or any other fund not relating to the business of the co or any fund not directly relating to the welfare of its employees unless GM specify the total amount which will be contributed.

Exceptions -

1. Contribution up to Rs. 50000/- in a FY shall not require approval of Shareholders in GM.
2. Contributions up to 5% of average net profits during 3 immediately preceding FY's shall not require approval of shareholders in GM.

28 <u>Restrictions on political contributions - Sec. 293 A</u>

- **Contribution to any political party** – For any purpose or contribution made for advertisement in any publication of such party or on behalf of a political party.
- **Contribution to any other person** - For a political purpose i.e. a donation which is likely to affect public support for a political party.
- Government Co. and any Co. which is in existence for less than 3 Financial Years are prohibited from making any political contribution.
- The total amount of political contribution in a FY shall not exceed 5 % of average net profits during 3 immediately FY's
- The political contribution shall be made by passing a resolution at a BM only.
- Amount of political contribution and name of the political party or the person to whom political contribution has been made needs to be disclosed in the P& L a/c
- Penalty for contravention is fine up to 3 times the amount so contributed and imprisonment up to 3 years and fine for officers in default.

29 <u>Contribution to National Defense Fund - Sec.293 B</u>

- Contribution to National defense fund, PM national relief fund, any other fund notified u/s 293 B.
- Contribution by board whether by passing a resolution in a BM or by a circulation or by any person to whom the powers of the board have been delegated through GM.
- Amount of contribution has been made needs to be disclosed in the P& L a/c.
- The Co. has the power to make contribution u/s 293 B notwithstanding anything contained in the companies act or the memorandum or the articles.

30 Loan to directors - Sec. 295

Sec 295 is attracted -

- If a Co. makes any loan to a specified person.

a. If a co gives any guarantee or provides any security to a specified person who gives loans to any other person.

- If a co gives any guarantee or provides any security to any person who gives a loan to specified person.

Specified person's means:

1. A director of lending Co. or of a Co. which is its holding Co.
2. A relative of any such director.
3. A partner of any such director.
4. A firm in which any such director or relative is a partner.
5. A private Co. of which any such director is a director or member. (But not the relative of director.)
6. A body corporate at a GM of which 25% or more voting power is exercised by any such director, or by two or more such directors together.
7. A body corporate, the board or MD or manager whereof is accustomed to act in accordance with the directions of the board or any director of the lending Co.

Note: Sec.295 shall apply only if the contract is entered into between the Co. and any of above persons. Previous approval of CG is required in every case falling u/s 295.

Non applicability:

- Private Co.
- Loan given by a holding Co. to its subsidiary Co.
- Guarantee given or security provided by a holding co to any other person in respect of a loan made to its subsidiary co.
- Sec.295 shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.

Meaning of Loan:

- **Loan means** advance of money (i.e. financial assistance) upon the understanding that it shall be paid back.

- **Indirect loan means** loan given by a co to a specified persons through the agency of one or more intermediaries.
- Loan may or may not carry interest.

Notes:

- A bonafide salary advance given to the wife of MD does not attract sec. 295.
- No retrospective effect of sec.295. i.e. if a Pvt. Co. after making a loan to specified person, is converted into a public Co.
- No restrictions on business advance, i.e. for the purpose of business of the Co. E.g. security deposit given by a Co. in respect of a house taken by the Co. For residential accommodation of MD

31 Board's Sanction required for certain contracts Sec. 297

- Applies to all companies, whether Public or private.
- Applies only when the contract is made between the Co. and any specified person **and** the contract is a specified contract.
- Specified contract mean a contract for sale, purchase or supply of any goods, materials or services and/or contract for underwriting the subscription of shares or debentures.

Specified person's means:

1. A director of the Co.
2. A relative of any such director.
3. A partner of any such director.
4. A firm in which any such director or relative is a partner.
5. A Pvt. co of which any such director is a director or member. (But not the relative of director.)

Legal requirements U/s 297

1. **If paid up capital of the Co. is less than Rs. 1 crores then,**
   - Previous approval of board must be obtained by passing a resolution at a BM only.
   - Not required if the circumstances are of urgent necessity and the consent of board is obtained by passing a resolution at a BM within 3 months of entering into such a contract.
   - In case of contravention the contract is voidable at the option of board i.e. contract shall become void only when the board takes some action to rescind such contract.
2. **If paid up capital of the Co. is 1 crores or more then,**
   - Previous approval of board must be obtained by passing a resolution at a BM only

- Previous approval of CG must be obtained.
- In case of contravention, the contract is void ab initio.

Exemptions u/s sec. 297

- If the contract is made for Purchase or Sale of goods or material on cash basis at prevailing market price.
- If the value of such contracts is not more than Rs. 5000/- in a year.
- Banking Co.
- Insurance Co.

Non applicability

- Contracts for sale or purchase of immovable property.
- Contracts for supply of any services relating to immovable property.
- Employment contracts.
- Contract for rendering professional services.

No retrospective effect

1. Therefore approval of CG is not required if after entering in to contract the paid up capital of Co. increased to 1 crores or more.
2. Sec 297 not attracted with, if a Co. enters into a contract with a person who is not a specified person and afterward such person becomes a specified person.

32 Disclosure of Interest by Directors - Sec. 299

- Disclosure of interest by every director who is anyway directly or indirectly concerned or interested in a contract or arrangement or any proposed contract or arrangement shall disclose his interest.
- Failure to disclose the **nature of his interest** would not result in vacation of office provided the director has made a disclosure of his interest.
- Disclosure must be made at the first BM held after the director becomes so concerned or interested.
- In case of proposed contract when the director is interested, disclosure must be made at the BM held when the contract is first considered by the board.

Alternative Mode of Disclosure:

1. **If the director is a director or member in a Body Corporate:**

- The director agrees that he is to be regarded concerned or interested in every contract which may be entered into with that body corporate in future.
- The notice is effective only if it is given at a BM and the notice shall expire at the end of the FY in which it is given.

2. **<u>If the director is a partner in a firm:</u>**

   - The director agrees that he is to be regarded concerned or interested in every contract which may be entered into with that firm in future.
   - The notice is not given at BM but the director concerned takes reasonable steps to secure that it is brought up and read at the first BM held after it is given.
   - The notice may be renewed for 1 FY at a time and the renewal shall not be made earlier than the last month in which the general notice is due to expire.

<u>Exemptions u/s 299</u>

1. Disclosure is not required, If the interest of one or more directors of the co is not more than 2% of paid up share capital of other co. if it exceeds then no exemption shall be available to any of the directors of the co.
2. Disclosure is not required if interest is already known to all directors.

- ❖ **<u>Interested Director</u> -** The relationship of husband and wife, father and son, brother and sister are capable of influencing the judgment of a person & therefore in such cases the director shall be an interested. If a relative of a director is concerned or interested, the director is interested.
- ❖ **<u>Consequences of failure to disclose interest -</u>** The defaulting director shall vacate the office of director but the contract does not become illegal, void or unenforceable.

33 <u>Interested director not to participate or vote - Sec. 300</u>

- Prohibition on interested director in respect of the contract in which he is concerned or interested:
  - Counting for the purpose of quorum.
  - Participating in the discussion
  - Voting
- Vote of interested director shall be void.
- Validity of contract does not become void or unenforceable. The transaction is voidable at the option of the board but not at the option of the other party.

Exception - Voting by an interested director will make the resolution of the board void in the following 2 Cases:

- ❖ If his exclusion from quorum would have resulted in a situation of no quorum.
- ❖ If exclusion of his vote would have resulted in failure of such revolution.

Non-Applicability of Sec. 300

1. Private Co.
2. A Public Co. which has been exempted by CG.
3. A contract of indemnity against any loss which the directors may suffer by reason of being surety for the co.
4. A contract with a public co in which the sole interest of the director is holding not more than 2% of the paid up share capital of such other public co.
5. In any contract in which a public company appoints a nominee director in another public company and it is required to hold qualification share in such another public company for such nominee director, then amount of qualification share does not exceed the amount specified in the articles of such other public co.
6. Sec. 299 and Sec. 300 shall not apply if a contract in which a director is interested is put for discussing and voting in a **GM.**

34 Appointment of MD/WTD/Manager - Sec. 269

- Every company shall compulsorily appoint MD or WTD or a Manager if it fulfills **all** the following 2 conditions:
    1. The Co. is a public Co.
    2. The paid up capital of the Co. is Rs.5 crores or more.

Mode of appointment:

(A) The appointment may be made with the approval of CG

- The Co. shall make application to CG within 90 days of making the appointment. CG shall not grant the approval if-
    1. it is satisfied that the appointed is not a fit and proper person
    2. it is not in the public interest
    3. Terms and conditions are not fair and reasonable.
- CG may grant the approval for a lesser period than applied. If CG does not approve then the person appointed as the managerial person shall vacate his office with effect from the date of communication of decision of CG and he shall not be required to refund to the Co. the

remuneration already received by him.

(B) <u>The appointment may be made without the CG approval, provided such appointment is in accordance with Schedule XIII</u>

- The appointment may be made without obtaining the approval of CG, if such appointment is made in compliance with the provisions of schedule XIII, & a return is filed with **<u>ROC</u>** within 90 days of appointment.

- **<u>If appointment made without the approval of CG and also in contravention of schedule XIII.</u>**
- Then CG may make a reference to CLB for enquiry by CLB and its decision thereon.
- CLB shall issue a show cause notice to all the concerned parties.
- CLB may make an order of termination of appointment if it comes to the conclusion that it was in contravention.
- **Consequences -** Managerial person may vacate the office- but acts done shall be valid.
- **Remuneration should be refunded-** Company shall not waive recovery of remuneration from him.

35 <u>Requirements for Appointment of Managerial Person as Per Schedule XIII</u>

1. He has not been imprisoned for anytime for any economic offence.
2. He has not been fined for more than Rs.1000 for any economic offence.
3. He has not been detained for any period under conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
4. He must be resident in India.
5. **<u>Appointment without SR</u> -** He must have completed the age of 25 years and he must not have attained the age of 70 years.
6. **<u>Appointment by SR</u> -** He has completed the age of 18 years and has not attained the age of 25 years. **Or** he has completed the age of 70 years.
7. The appointment and remuneration shall be approved in GM.
8. A return shall be filed with the registrar within 90 days of appointment.
9. Company shall file a certificate of fulfilling the requirement of Schedule XIII with the registrar.

36 <u>Managerial Remuneration - Sec. 198, 309,387, schedule XIII, etc.</u>

(A) <u>Non Executive Director/Ordinary Directors</u>

1. **Remuneration:**
    - Mode of payment may be monthly, quarterly or annual payment.
    - Approval of CG is required.
    - Remuneration shall be maximum 1% of net profits, if the Co. has employed MD, WTD or Manager.
    - Remuneration shall be maximum 3% of net profits, if the Co. has not employed MD, WTD or Manager.
2. **Commission:**
    - Co. must SR approving the payment of commission.
    - SR shall remain enforce for 5 years only and may be renewed from time to time.

3 **Sitting Fees:**

- Sitting fees is payable only to ordinary directors i.e. no sitting fees can be paid to WTD/MD.
- If sitting fees is paid to MD/WTD, then it shall be treated as payment of managerial remuneration.
- Sitting fees is payable only once where a BM is adjourned and again held, since adjourned BM is a mere continuation of the original BM.
- It is permissible to pay sitting fees for meetings of the committee.
- Sitting fees can be paid even if the Co. has incurred a loss.
- **Amount of sitting fees per director per BM :**
    - **Maximum Rs.20,000** –
        - ❖ if the aggregate of paid up share capital and free reserves of the Co. is Rs.10 crores or more, **or**
        - ❖ Turnover of the Co. is Rs.50 crores or more.
    - **Maximum Rs.10,000** - in any other case.

(B) Remuneration to MD/WTD/Manager

1. Remuneration as per Section 198,309 and 387 and Schedule XIII (Section I of Part II)

- Overall remuneration shall not exceed 11% of net profits.
- It is mandatory to charge depreciation to arrive at net profits.
- Mode of payment is monthly and/or specified percentage of net profits to MD/WTD/Manager.
- Amount of remuneration is 5% of Net Profit, if the Co. has employed one WTD or MD
- Amount of remuneration is 10% of Net Profit, if the co has employed more than one

WTD or MD.

- Manager is entitled to get remuneration 5 % of Net Profit (max.)
- Remuneration shall include Basic Salary, DA, other allowance, perquisites, and commission.

2. **Remuneration as per Schedule XIII (section II of part II)**

- Calculate Effective capital - items to be added -

	Paid up Share Capital	**xxx**
	Reserves and Surplus	**xxx**
	Securities Premium Account	**xxx**
	Long Term Loans	**xxx**
	Deposits repayable after 1 year	**xxx**
(-)	Investments	(**xxx)**
(-)	Accumulated Losses	(**xxx)**
(-)	Preliminary Expenses not written off	(**xxx)**
		xxx

- If appointment is made in the year in which company has been incorporated then the effective capital shall be calculated as on the appointment of managerial person.
- In any other case, the effective capital shall be calculated as on the last day of preceding FY.
- **Monthly Remuneration Payable to each Managerial Person:**

Effective capital	**Option 1**	**Option 2**
EC < 1 crores	75000	150000
EC< 5 crores	100000	200000
EC< 25 crores	125000	250000
EC< 50 crores	150000	300000
EC< 100 crores	175000	350000
EC $\geq$ 100 crores	200000	400000

Option 1 Conditions to be fulfilled:

- Remuneration has been approved by a ' Remuneration committee.
- Remuneration Committee means –
    1. **In Listed Company -** a committee which consists of at least 3 non executive independent directors including nominee directors (if any)

2. **In Other Company** – a remuneration committee of directors.

- There is no default in repayment of debts, public deposits, debentures or interest payable thereon, for a continuous period of 30 days in the preceding FY before the appointment of managerial person.

Option 2 –

- All the conditions given under option 1 must be fulfilled.
- SR shall be passed in the GM of the Co. SR shall remain valid for 3 years only.

(C) Misc. Point -

- The remuneration payable to the directors shall be determined or increased
  - by the articles of the Co. **or**
  - by **OR**
  - by **SR** (where the articles so require.)
- The remuneration payable to a director for rendering services in any other capacity shall also be covered in "overall managerial remuneration" and other limits specified under the act.
- However remuneration paid for rendering services in any other capacity shall not be included if-
  1. The services are rendered in a professional capacity

     And

  2. CG has expressed the opinion that the director concerned possesses requisite professional qualifications.
- Guarantee commission paid to a director cannot be treated as a part of managerial remuneration since the director does not render manual, clerical, technical service etc. to the company
- Guarantee commission is paid to compensate the director for the risk which he bears which has nothing to do with his directorship.
- Remuneration exceeding the limits may be drawn after obtaining the approval of CG. If approval not obtained then excess remuneration shall be repaid to the company and the company shall not waive the recovery.

(D) Non applicability - Private Co.

37 Increase in Remuneration of Directors - Sec. 310 & 311

- **Increase in Sitting Fees/Remuneration of Managerial Person and Non Executive Director :**

- If increased sitting fees is within the prescribed limit then no approval of CG is required, if not then approval of CG is required.

Non applicability - Private Co.

38 Director Not to Hold Office or Place of Profit – Sec 314

Sec. 314 (1)

1. **Nature of Companies**
   - All the Companies whether Public or Private.

2. **Exemption**
   - MD
   - Manager
   - Trustee or Debenture holders
   - Banker of the company

3. **Meaning of office or Place of Profit**
   - An Office or Place held by a director is an OPP, if the director is getting from the company anything over than the remuneration like Salary, Fees, Commission and Building for resident or any purpose without any rent.

4. **Applicability**
   1. **In the Case of Director**
      - Sec 314 (1) shall apply if the director is appointed at an OPP at any remuneration.
   2. **In the Case of Specified Person**
      - Sec 314 (1) shall apply if the following Person get monthly remuneration of Rs. 50000 or more from the company.
        1. Partner of the director
        2. Relative of the director
        3. Firm in which director or relative is a partner
        4. Private company in which director of a company is a director or member
        5. Any Director or Manager of such private company.

5. **Requirement**
   - A Special Resolution may be passed.

- If a person reappointed at such OPP at a higher remuneration, then
    - **a.** SR is required.
    - **b.** SR is not required, if the appointment was originally made on time scale basis.

6. <u>Relaxation for Passing SR</u>

- SR may be passed tin the first GM held after holding OPP.
- Where Relative of a director **or** Firm in which such relative is a partner is appointed at OPP without the knowledge of the director, then **SR** may be passed –
    - **b.** In first GM held after appointment

      Or
    - **c.** With in 3 months of appointment

7. <u>Effect of Contravention</u>

- The person appointed at OPP shall vacate such office.
- The person appointed at OPP shall refund the entire remuneration to the company.
- The company shall not waive off recovery of such remuneration.

<u>Sec. 314 (1B)</u>

1. <u>Nature of Companies</u>

- All the Companies whether Public or Private.

2. <u>Exemption</u>

- No Exemption available.

3. <u>Meaning of office or Place of Profit</u>

- An Office or Place held by a Specified Person is an OPP if such person obtains from the company anything in the form of remuneration like Salary, Fees, commission or Building for residential or any other purpose without rent from the company.

4. <u>Applicability</u>

- Sec 314 (1B) shall apply if any of the following Person get monthly remuneration of Rs. 250000 or more from the company.
    1. Partner of the director or manager
    2. Relative of the director or manager

3. Firm in which director or manager or relative of either is a partner.
4. Private Company in which director or manager or relative of either is a director or member.

5. **Requirement**
- Prior Special Resolution **and**
- Prior Approval of CG.

6. **Relaxation for Passing SR**
- No relaxation is available

7. **Effect of Contravention**
- The appointment shall be void, if in the contravention of Sec. 314 (1B).
- The person appointed at OPP shall refund the entire remuneration to the company.
- The company shall not waive off recovery of such remuneration.

(Professional Services and Services Rendered on Retainer ship Basis.)

1. Director + Renders professional services e.g. Advocate/ CA/ Doctor who gives his opinion or consultancy in a particular case referred to him - then holding of OPP - No

2. Director + Renders professional services on a retainer ship basis e. g. advocate/ CA/ Doctor who is bound to accept all the cases referred to him - then holding of OPP - Yes

39 MD, WTD, Manager

1. **MD**
- MD is a director first, i.e. only a director can become MD of the Co., and if MD ceases to be a director then he automatically ceases to be MD.
- MD is entrusted with substantial powers of management. Such substantial powers of management are not otherwise exercisable by a director. Power to do administrative acts is not deemed to be substantial powers of management.
- MD exercises his powers subject to the superintendence, control, and direction of board.
- Only individual can be appointed as MD.

- MD can be appointed or reappointed for a maximum period of 5 years.

2. <u>WTD</u>

- Whole time director includes a director in the whole time employment of the company.
- Only an individual can be appointed as WTD.
- Tenure of office of WTD may exceed 5 years.

<u>Notes:</u>

- MD/ WTD may be a rotational or a non rotational director.
- An additional director may be appointed as MD/ WTD.
- If the term of additional director is ending in the coming AGM, and if he is not appointed as a director by the shareholders in AGM, then he will vacate the office of additional director and MD/WTD also.
- If in the AGM, he is reappointed as a director by the shareholders, then he shall continue as MD/WTD.

3. <u>Manager</u>

- A Manager need not be a director. However a director may be appointed as a manager.
- Manager means a person who has the management of the whole or substantially the whole of the affairs of a company.
- Manager exercises his powers subject to the superintendence, control and direction of the board.
- Only an individual can become a manager.
- Manager can be appointed or reappointed for a maximum period of 5 years.

40 <u>Disqualifications and Vacation of Office of MD & WTD - Sec.267</u>

- Applies to all companies.

<u>Grounds for Disqualification –</u>

- Undischarged insolvent
- A person who at anytime in the past adjudged as an insolvent.
- A person who is convicted by a court of an offence involving moral turpitude.
- A person who has, at anytime in the past, convicted by a court of an offence involving moral turpitude.

- A person who suspends payment or makes a composition with his creditors
- A person who at anytime in the past, had suspended or made a composition with his creditors.

41 Disqualifications and Vacation of Office of Manager - Sec. 385

- Applies to all companies.

Grounds for disqualification –

- Undischarged insolvent
- A person who at anytime in the preceding 5 years adjudged as an insolvent.
- A person who is convicted by a court of an offence involving moral turpitude.
- A person who has, at anytime in the preceding 5 years, convicted by a court of an offence involving moral turpitude.
- A person who suspends payment or makes a composition with his creditors
- A person who at anytime in the preceding 5 years, had suspended or made a composition with his creditors.
- **Exemption by CG -** by notification in the official Gazette removes any disqualifications specified u/s 385.

42 Term of Appointment of MD - Sec. 317

- MD can be appointed for a maximum period of 5 years.
- MD can be reappointed for a further period of maximum 5 years.
- Reappointment of MD cannot be made earlier than 2 years before expiry of his term.
- The provisions of sec. 317 shall also apply to a manager.

Non applicability - Private Co.

43 Number of Managing Directorship - Sec. 316

- Generally a public Co. shall not appoint or employ any person as MD, if he is either MD or manager of any other Co. except as provided u/s 316 (2) or 316 (4)

1. Appointment as MD in 2 companies - Sec. 316 (2) -

- A person is proposed to be appointed as MD in a public co. & he is already MD or Manager in any other co.

- Any other company means Public or Private Company.

Conditions:

- The person is MD or manager in only one Co.
- His appointment is approved by passing a resolution at a BM only.
- The resolution at the BM is passed with the consent of all the directors present, i.e. by a unanimous resolution.
- Specific Notice of such resolution is given to all the directors.

2. **Appointment as MD in more than 2 companies - Sec. 316 (4)** -

- CG May permit a person to be appointed as MD of more than two companies, if CG is satisfied that –
  1. The companies should function as a single unit; **and**
  2. The companies should have a common MD.

44 Number of managerships - Sec. 386

- Generally a public Co. shall not appoint or employ any person as Manager, if he is either Manager or MD of any other Co. except as provided u/s 386 (2) or 386 (4).

1. **Appointment as Manager in 2 companies - Sec. 386 (2)** –

- A person is proposed to be appointed as Manager in a public co. & he is already MD or Manager in any other co.
- Any other company means Public or Private Company.

Conditions:

- The person is MD or manager in only one Co.
- His appointment is approved by passing a resolution at a BM only.
- The resolution at the BM is passed with the consent of all the directors present, i.e. by a unanimous resolution.
- Specific Notice of such resolution is given to all the directors.

2. **Appointment as Manager in more than 2 companies - Sec. 386 (4)** –

- CG may permit a person to be appointed as Manager of more than two companies, if CG is satisfied that -
  1. The companies should function as a single unit; **and**

2. The companies should have a common MD.

45 Validity of Acts of Directors - Sec. 290

- All acts done by a person as director shall be valid notwithstanding that it is afterwards discovered that –
    - His appointment was invalid by reason any defect or disqualification; **or**
    - His appointment had terminated by virtue of any provision contained in the Act or in the Articles.
- Acts done by a director in his capacity as MD or manager are not validated u/s 290.
- However all the prior acts of such a managerial person remain valid even if CLB declared that the appointment of MD/WTD/Manager is in the contravention of Schedule XIII

Following Acts of a Director are completely invalid -

- Where the appointment is illegal or no appointment at all.
- Acts done after the appointment of a director has been shown to the Co. as invalid or terminated.
- Where the acts done are ultravires the Co.
- Where requirement as to minimum number of directors was never satisfied.
- Where quorum is not present at a BM.