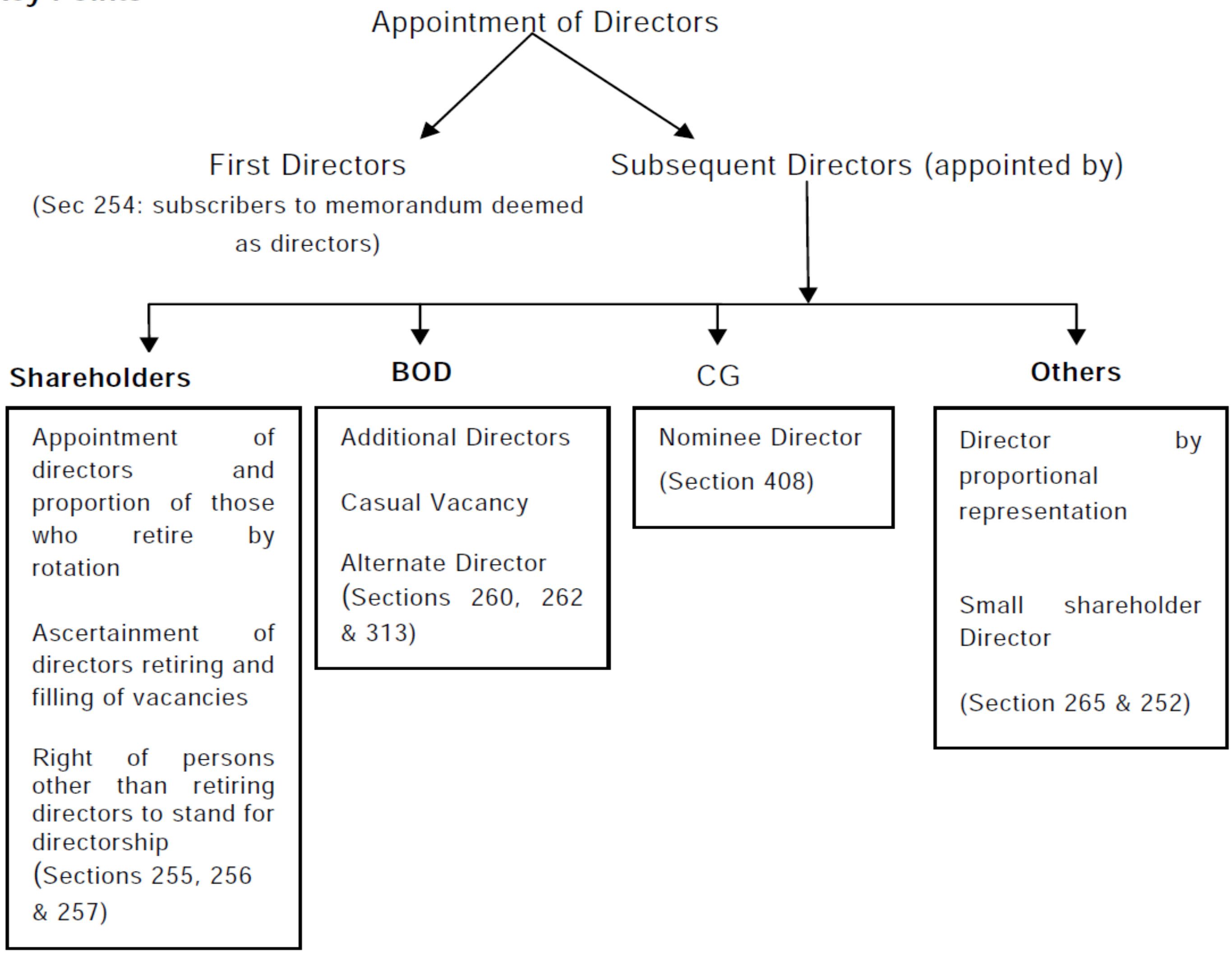
Key Points

Meaning of Director	Person responsible for- Directing Governing Controlling the policy/ management of the company
Directors	Collectively called as ' Board of directors'/ 'Board'
Legal Position	Directors Trustees Agents Managing Partners 'Officers' of the company

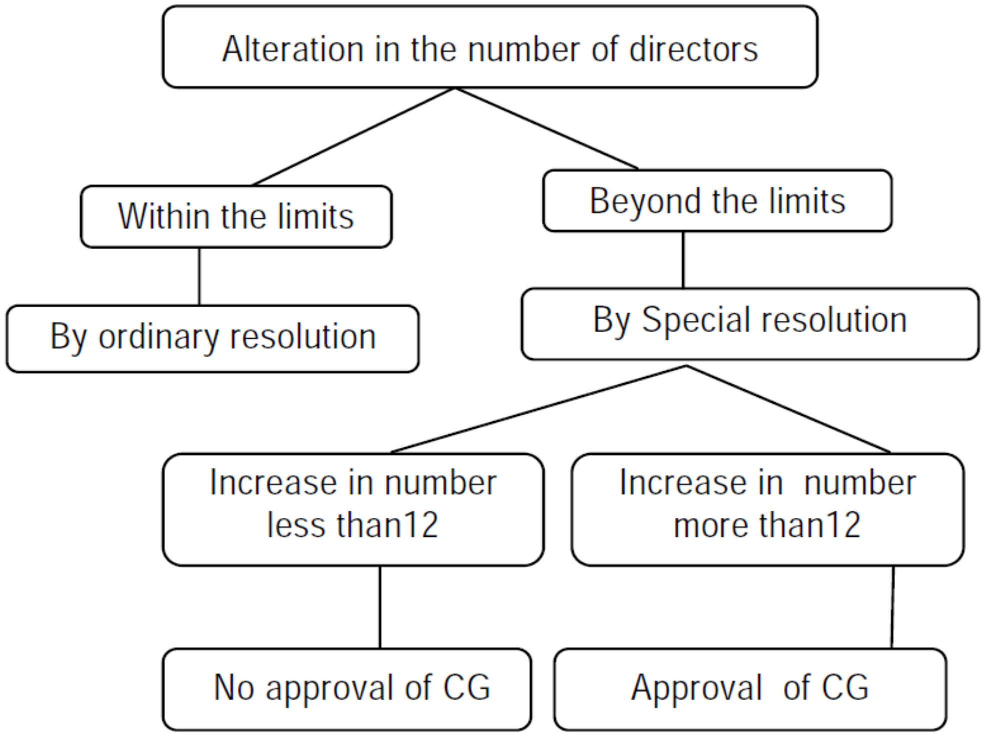
Numbers of directors (Section 252)	Type of company	Minimum	Maximum
	Public company	3 (except companies formed under 43A)	As per AoA
	Others	2	As per AoA
Public company (Section 252)	paid up capital of 5crore or more or 1000 or more small shareholders	may have a director elected by small shareholder	

Key Points



Appointment of Directors	**Relevant Legal provisions**
Only individuals to be directors (section 253)	• Only <u>Individuals</u> can be so appointed as directors • Indiviual with DIN can only be appointed/ reappointed as directors
Subscribers deemed to be directors (section 254)	• Until directors are appointed according to section 255, subscribers to MOA are deemed to be directors of the company(First Directors).
Appointment of subsequent/ rotational & remaining directors	• No. of Rotational Directors = atleast 2/3rd of total directors may be appointed, provided articles do not provide retirement of all the directors at every AGM. • Rotational directors to be appointed by shareholders at annual general meeting.

(Section 255)	• Remaining directors = maximum 1/3rd of the total directors in any public company and private company which is a subsidiary of public company, may be appointed on non-rotational basis for the duration as per the articles of the company. • And all the directors of private company , to be appointed on non- roataional basis as per AOA, in GM.
Ascertainment of directors retiring by rotation(section 256)	• No. of directors to retire at every subsequent AGM = 1/3rd (or number nearest to 1/3rd) of the 2/3rd rotational directors. • Directors shall retire on the basis of FIFO(first in first off). • Where the directors have to retire on the same day, there the retirement shall be decided by lot, if there is no agreement among them. • The company may fill up the vacancy by appointing the retiring director or some other person at the same AGM at which a director retires. • If the vacancy is not filled at the AGM and the meeting has not expressly resolved ,then the meeting will be adjourned till the same day, same time, same place in the next week. • If at the adjourned meeting also the vacancy is not filled and the meeting has not expressly resolved, the retiring director shall be deemed to be reappointed, subject to conditions.
Right of persons other than retiring directors for directorship (Section 257)	• Person other than retiring director shall be eligible for appointment as a director at a GM, subject to the provisions of the Companies Act,1956.

Right to increase/reduce the number of directors and approval of Central Government **(Section 258 & 259)**	
Appointment of Additional Director **(Section 260)**	• BoD can appoint additional directors. • Additional director to hold office only up to the date of next AGM. • Maximum strength of Board fixed by the articles = Additional directors + Other directors
Filling of casual vacancies among directors (Section 262)	• It arises when the office of a director (who was appointed in GM) is vacated before his term of office expires. • Such vacancy can be filled, subject to any regulations in AoA, by BoD in a validly convened and constituted Board meeting. • He can hold office only upto the date to which the original director is entitled.
Appointment of directors by Central Government (Section 408)	• The CG appoints such number of persons as the Company Law Board may, by order, specify as being necessary to effectively safeguard the interest of the company or its shareholders or the public interest for a maximum period of 3 years at a stretch.
Appointment of alternate directors(Section 313)	• Articles empower the Board to appoint an alternate director during the absence of a director for more than 3 months from the State in which meetings of the Board are ordinarily held. • Vacate the office on expiry of the original director's term/ on return of the original director to the State

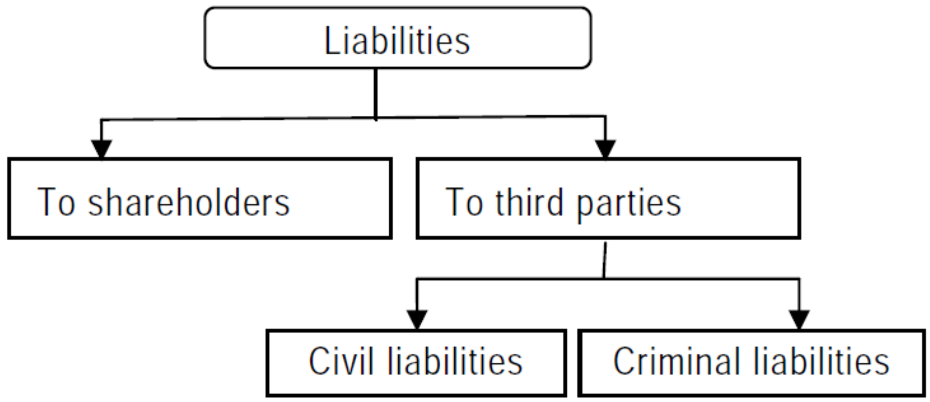
Prohibition on assignment of office by director (Section 312)	• Any assignment of his office by any director of a company is void.
Who cannot be appointed as directors	• Section 202, 203 along with section 274 prescribes the categories of persons who cannot be appointed as director of a company.
Restrictions on number of directorships (Section 275 to 279)	• Not holding more than 15 companies as a directors at the same time. • Where person already holding 15 companies,appointed as director of any other company- appointment shall become void , unless he vacates his directorship in some company within 15 days. • Where person continues holding more than 15 companies- shall be punishable with fine upto to ₹ 50,000 in respect of each of those companies exceeding fifteen.
Principle of proportional representation for appointment of directors (Section 265)	• As per the Articles, a company can adopt the principle of proportional representation for the appointment of its directors. • Not less than 2/3rds of the total number of directors shall be appointed by the- single transferable vote or by a system of cumulative voting or otherwise, in every three years.

Key Points

Qualification shares (Section 270)	• These are the number of shares which a shareholder must hold in order to be eligible for appointment as a director. • Shareholder must obtain the qualification shares within 2 months after his appointment. • Nominal value of qualification shares must not exceed ₹ 5,000. • A director acting without qualification shares is punishable with fine, which may extend to ₹ 500/- for every day during which he continues as director.
Vacation of office (Section 283)	• Along with the disqualification given under section 274, the office of a director shall also become vacant under the conditions mentioned in the section. • Where the person knowingly continuous in office in the circumstances mentioned in the section- punishable with fine upto ₹ 5,000 for each day he so functions as a director.
Resignation of director	• No provison in the Companies Act,1956. • However, AoA, give right to a director to resign his office at any time in the manner provided therein.
Removal of directors (Section 284)	This provisions lay down the process of removal of directors by the company before expiry of his period of office. This provision excludes the directors appointed by the Central Government under section 408. Sections 388B, 388C, 388D and 388E deal with the removal of managerial personnel by the Central Government on recommendation of the Company Law Board

Key Points

Powers of directors and restrictions **(Section 291, 292 and 293)**	• General Power of the Board- Board of directors are entitled to exercise all such powers of the company and to do all such acts and things as the company is authorised to do. • Restrictions- The Board of directors must necessarily act intra-vires the company(i.e., as per MoU & AoA). • Certain power to be exercised only by the shareholders under law, in which the Directors have no authority.(Ex: Sections 79(2)(i),293 484 etc.] • Powers to be exercised by Board only at its meeting- According to Section 292, certain powers can be exercised by the Board only by means of resolution passed at its meetings of the Board. • Under Section 293 the Board of directors of a public company cannot exercise ceratin powers without the consent of the shareholders in general meeting.
Validity of acts of directors (section 290)	• The acts of a director shall be valid though afterwards it may be discovered that his appointment was invalid . • But where the act done by a director after his appointment, which has been shown to the company to be invalid/terminated- have no validity.
Duties of Directors **(Few statutory duties)**	• They must act in utmost good faith for the benefit of the company. • Must exercise their duties with such care as is expected from the person his knowledge and experience. • Must act honestly as they stand in a fiduciary capacity with the company • To see that company's moneys are kept properly invested • To insist on some independent valuation of investment and fixed assets at appropriate intervals.

	• To ensure the accurate compilation of the stock sheets and the physical checking on ceratin work being done by the auditors • Not to act in a manner prejudicial to public interest or oppressive to any members • Duties given under section 395(take over)
Liabilities of directors	
Directors not to hold office or place of profit (Section 314)	• Restrictions are imposed on the directors and Associates in the holding of an office/ place of profit in the company. • But by passing special resolution- (i) Director & (ii) Partner/relative of such director, firm in which director/his relative is partner,private company in which such director is a director/member and such director or manager (private company) carrying a total monthly remuneration of ₹ 50,000/more in the company/subsidiary thereof - shall hold office/place of profit. Exceptions- No sanction by a special resolution is required for the holding of office of-(i) MD (ii) Manager, and(iii)Banker/trustee for debentureholders.

Key Points

Loans to Directors, etc (section 295)	• Company can lend money only with the previous approval of the CG to the directors and the other persons mentioned in the section. • This restriction (approval of CG) does not apply to: • Private Company, Banking company, holding company to its subsidiary or providing guarantee/security for the loans of its subsidiary. • Penalty: Fine up to 50,000 or imprisonment up to 6 months. • where the default has been made good by repayment in full, penalty by way of imprisonment can not be made. If repaid in part then proportional imprisonment will be applicable.
Directorial Registers (Section 301 to 308)	• Every company shall maintain various directorial registers to maintain records covering various aspects related to particulars of all the contract/arrangements made under section 297/299, disclosing of the interest of the director in a contract and providing full details of the directors. • Such registers shall be open to the inspection of any member/any other person. • It the duty of the directors, etc.,to make disclosures of the particulars relating to office to be specified under section 303. • Regsitrar shall maintain a separate register with all information duly filled in , which shall be open to inspection. • Company shall maintain a register showing the shareholdings etc. of the directors and the others.
Political Contributions (Section 293A)	• This section allows the company to contribute any amount(directly/indirectly) to any political party or for any political purpose to any person with restrictions mentioned in.

Key points

Managerial Remuneration	The director's will be provided remuneration, only if there is a specific provision in the articles. Sections 198, 269, 309, 310, 311, 387, 200 and Schedule XIII of the Companies Act, 1956 provide the relevant provision relating to managerial remuneration.
Minimum and Maximum remuneration	Public company may pay total managerial remuneration in respect of any financial year- not exceeding 11% of the net profits of the company for that financial year.
Schedule XIII	If company has no profit/ inadequate profit- company is required to seek approval of the CG for payment of any remuneration subject to section 269 read with Schedule XIII. Prescribes the rules relating to appointment, payment of remuneration to managerial personnel without the approval of CG. In absence/ inadequacy of net profits in any financial year- public company may pay remuneration upto ₹ 24,00,000 p.a / 2,00,000 p.m The payment made per month may vary from ₹ 75,000 – 2,00,000 depending on the capital specified in Part II of Schedule XIII. There shall be made no increase in the remuneration of any director, except with the approval of the Central Government. A company paying the remuneration to its officer or employee cannot be tax-free .

Key Points

Inter-Corporate Loans And Investments (Section 372A)	Specified ceilings- no company shall make any loan/ guarantee/security for a loan/purchase the securities exceeding 60%(paid up share capital + free reserves) or 100% (Free reserves) whichever is more. It must be approved by the Board of Directors by a resolution passed at meeting with the consent of all the directors present and entitled to vote thereon. If the proposed investment exceeds its limit- requires prior approval of the shareholders by a special resolution + approval of the public financial institution, where any term loan is subsisting, Full details relating to investment must be made in the notice of the special resolution. Loan made shall not be at a rate of interest lower than the prevailing bank rate. Register shall be maintained in respect of every investment or loan made, guarantee given or security provided. Every officer of the company who defaults in complying with the provisions shall be punishable with- Imprisonment upto two years /with fine upto ₹ 50,000.