DIRECTORS CHAPTER SUMMERY – FOR NOV '14 EXAMS

NOTE:-FOLLOWING SUMMERY IS MEANT FOR QUICK REVISION PURPOSE ONLY.IT IS NOT A SHORT-CUT TO THE FULL COURSE.
-WHEREVER PROVISIONS OF THE COMPANIES ACT 2013 ARE APPLICABLE, IT IS SPECIFICALLY MENTIONED AGAINST THOSE POINTS.

1. As per sec 2(10) of CA 2013, **Board of directors means** collective body of directors of company, duly constituted to direct, control & supervise the affairs of company.
2. Only **individual** to be **directors** - sec.253 i.e. firm, body corporate, association cannot be appointed as Directors.
3. **Assignment of office** by a director during his lifetime is void- Sec 312.
4. **DIN**
- Every director is compulsorily required to hold 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, if it contains the reference of directors.

5. **Executive director** means who are in the whole time employment of the co, e.g. MD, WTD.
- **Non Executive director** means who are not in the whole time employment of the Co, e.g. Professional directors, nominee directors.

6. **Qualification of shares -Sec 270**
- As per act, no statutory requirement to hold QS, except if provided by articles.
- Then it must be held within 2 months of appointment and should continue to hold thereafter.
- 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 per share as per reg.66 of Table A.
- Directors exempted to hold QS are SSD, Nominee director appointed by CG, Nominee director appointed by 3rd parties, director who is specially exempted by articles.
- If director resigned within 2 months of appointment without obtaining qualification shares, then his name can't be included in the list of contributories, during winding up.
- 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, but must be registered in his own name.
- 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. co. Provides for QS then director must obtain as per the time and amount specified in the articles.

7. **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.

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 company in which he is already a director does not file the annual accounts and annual returns for any continues three FYs

  or
- Fails to repay its 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.

<u>Note</u>: - No vacation of office in defaulting Co. and any other Co. even if sec 274 (1) (g) is attracted. Director can escape from disqualification if he resigns before that.

8. **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.
- 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, guarantee or security from a public Co. in contravention of sec 295.

- A person who acts in a contravention of sec.299 & 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 continues period of 3 months, whichever is longer.

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.

9. Number of Directors - Sec. 252
- Public companies - Minimum 3, maximum not prescribed as per act.
- Private companies - Minimum 2, maximum not prescribed as per act.

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

10. Increase or Reduction in Number of Directors - Sec. 258
- Increase or decrease in the number of directors shall be done by passing OR but it should be within the limits fixed by the articles.
- Increase in number of directors beyond the limits as fixed by the articles requires amendment of article by SR.

11. Increase 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.
  - The number of directors as increased does not exceed the maximum number of directors specified in the "articles as first registered"/ articles as on 27.07.1951.
- This section does not apply to a private company, government company and company licensed u/s 25.
- Alternate directors, additional directors, casual vacancy directors are exempted from this section.

12. Restrictions on number of Directorships - Sec. 275
- 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 private co (i.e. private 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 a Co.

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

13. Appointment of directors to be voted on individually – Sec 162 of CA 2013
- Separate resolution is required for each appointment.
- 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.
- Unlike repealed sec 263 of CA 1956, this new section applies to all types of companies.

14. 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.
- Since they are deemed directors, hence not required to obtain QS.

15. Rotational and non rotational directors – sec 255
- Rotational director means a director 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 AGM.
- Total number of directors means the total directors for the time being appointed as directors.
- Moreover, ~~additional directors~~, alternate directors, nominee directors, directors appointed by CG, are not counted in the total number of directors.
- This section does not apply to a private company.

16. Ascertainment of Directors Retiring by Rotation – Sec 256

- 1/3rd or nearest to 1/3rd of rotational directors shall retire from office on FIFO basis or by agreement by lots.
- Vacancy shall be filled by reappointing the retiring director or appointing some other person (Provided conditions of sec 257 are fulfilled)
- Adjournment of AGM - 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 succeeding day which is not a public holiday.
- Automatic reappointment in adjourned AGM - 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 co of his unwillingness to be reappointed
  - he is disqualified for appointment
  - a resolution is required for his reappointment
  - a resolution in contravention of section 162 of CA 2013 is passed.
- Calling of an AGM is a duty of directors. Therefore, directors cannot continue in office after the last day on which AGM should have been held.
- This section does not apply to a private company.

17. Appointment of person other than retiring directors – Sec 257

- 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 within 7 days by serving individual notices or advertising in 2 newspapers.
- This section does not apply to private companies.

18. **Appointment by proportional Representation - sec 163 of CA 2013**

- This section was introduced to provide opportunity to minority shareholders to appoint directors by way of proportional representation which enables minority of respectable strength to elect their own representatives.
- Sec 163 of CA 2013 applies only if the articles of a Co. provides for.
- It shall appoint at least 2/3rd of directors by proportional representation and such appointments shall be made once in every 3 years.
- Mode of voting - single transferable voting, cumulative voting, otherwise.
- Directors appointed under this section cannot be removed u/s 284.
- Sec 163 of CA 2013 overrides the entire companies act 1956.
- ~~Non-applicability: Private Co.~~

19. Nominee directors(by CG)-Sec 408

- Under this sec, CG can appoint a nominee director on the board of co. to prevent oppression & mismanagement.
- Such directors are not liable to retire by rotation and not required to hold QS.
- 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.
- Their appointment may result in increasing the strength of the board beyond the maximum number of directors as specified in the articles.
- They can be appointed for maximum 3 years & before expiry of their term, they can be removed by CG only.
- Sec 408 overrides the entire Companies Act, 1956.

20. Nominee directors(by 3rd parties)-Sec 161(3) of CA 2013

- Authorization from articles is required for their appointment.
- Any representative of any institutions can be appointed as their nominee director in a company.
- More specifically, this section was inserted to give power to banks/financial institutions etc, providing financial assistance to the company to appoint their representatives as their watchdogs on the board of the company.

21. Additional Directors - Sec 161(1) of CA 2013

- Applicable to all companies.
- Articles must authorize the board to appoint the additional directors.
- Power is given to board so it can elect a director of its choice.
- Board at anytime, in its discretion, appoint additional directors by passing a resolution at a BM or passing a resolution by circulation.
- No approval of CG is required in case of appointment.
- An additional director holds office up to the date of next AGM; hence he is not a retiring director.
- If default is made in holding AGM, the additional directors shall vacate his office on the last day AGM ought to have been held.
- Person, who fails to get appointed as a director in a GM, can't be appointed as an additional director.

22. Alternate director - Sec 313 (Corresponding Sec 161(2) of CA 2013 is not applicable for Nov '14)

- Applicable to all companies.
- Articles/resolution At GM must authorize the board to appoint the alternate directors.

- Appointment can be done by passing a resolution at a BM or passing a resolution by circulation.
- Alternate director can be appointed to act in place of an original director in case of his absence 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 or not for the purpose of attending BM.

23. Filling of casual vacancies - Sec 161(4) CA 2013

- 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.
- Board can fill casual vacancy of a director, only if he was appointed by the company in GM.
- If casual vacancy earlier filled by board is again vacated, it can't fill such casual vacancy.

Common points in sec 161(3), 161(1), 161(4) of CA 2013 and Sec 408 & 313 of CA 1956

- All the above directors are called non rotational directors
- Appointment of any of these directors as a regular director shall require compliance of sec 257, since none of these directors is a retiring director.
- All these directors (except u/s 408 of CA 1956 and 161(3) of CA 2013) shall be required to take the qualification shares, if the articles of the Co. require holding of qualification shares.

24. Appointment of directors by Small shareholders - Sec 252

- Applicable to public Co,
  - If the paid up capital is 5 crore 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 -
  - Co suo motu can appoint SSD.
  - On notice by small shareholders i.e. notice given by $1/10^{th}$ 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).
  - The notice shall be signed by at least 100 small shareholders.
  - In case of listed Co, the appointment shall be made by postal ballot.
  - SSD has to be a small shareholder and can't be appointed as WDT/MD.
  - A person cannot become SSD in more than 2 companies
  - Maximum tenure of SSD is 3 years, but can be reelected for a maximum period of 3 years.
  - SSD is not a rotational director & don't require to obtain QS.
  - Disqualification u/s 274 applies to SSD but not 274 (1) (g).
  - Vacation of office u/s 283 also applies to SS

25. Removal of directors - Sec 284

- 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 Gives (right) representation in writing to co which shall be sent to members by co at least 7 days before the meeting.
- If representation not sent then it will be read out at the AGM.
- Director shall be removed if OR is passed for his removal.
- If OR fails then director continues.
- It is the duty of the board, & not of member proposing a resolution, to give the explanatory statement.
- The articles cannot anyway restrain 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 Co.
- Director removed under this section is eligible to receive compensation u/s 202 of CA 2013.
- If a director attempts to avoid his removal by creating hurdles to GM, then CLB may convene and EGM.

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

- A director appointed u/s 408 of CA 1956 & u/s 163 of CA 2013.
- A director of private Co. holding office for life as on 01.04.1952. (In case appointed after 01.04.1952 then he can be removed).
- If the representation is defamatory as decided by CLB on application by co or any aggrieved person then CLB may order that representation need not be circulated to members/ need not be read out at the GM & moreover director shall be liable for costs of application made to CLB.

26. Resignation by directors.

- Resignation by MD/WTD - Vacation of office only on acceptance of resignation(as they are employees of company)
- Resignation by other director - Vacation of office with immediate effect i.e. without acceptance of resignation.
- However if the articles require acceptance for making resignation effective or resignation is given subject to condition of acceptance, then resignation requires acceptance.

27. Compensation for loss of office – Sec 202 of CA 2013

- Compensation may be paid for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. Compensation can be paid only to MD, WTD, or Manager only.
- 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 the Co.
  - Mere allegation on a director does not entitle him from receiving compensation.
  - No compensation if winding up of the company commences within 12 months of his cessation of office or before the date of his cessation of office & surplus after winding up is not sufficient to repay the shareholders, their share capital.

28. Consent to act as director – Sec 264

- Every person proposed as a director shall file his consent with the Co before appointment.
  - Exception - A directors 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.
- This section does not apply to a private company.

  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 provide so; further, a minor is not eligible to apply for DIN without which he shall not be appointed as director in any company.

29. **General powers of the Board - Sec.291**

- Powers of the board are same as that of co. Hence what the Co. can do, the board can do.
- Powers exercisable subject to the provisions of companies act, MOA, AOA, any other act.
- Powers can be exercised by passing a resolution at a BM, or by circulation/delegating its powers to a director or committee of directors, or any other officer.
- However Board shall not exercise any power which is required to be exercised in GM whether by companies 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 melafide/board is incompetent to act/ if there is a deadlock in the board.

30. Powers exercisable only at a BM - Sec. 292

- Powers which requires a resolution at a BM are-
  1. Making calls on shares
  2. Authorizing 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

- Powers mentioned in 4,5,6 above may be delegated by the board subject to the following 3 conditions-
  - Resolution delegating powers is passed at a BM
  - Powers may be delegated to any committee of directors, MD, Manager, any other officer of co.
  - Resolution delegating such powers shall specify the following particulars-
    - In case of borrowing of amount - Amount that can be borrowed.
    - In case of investment of funds - Amount may be invested and the nature of investments.
    - In case of power to make loans- the total amount that may be lent, purpose of making loans.
- Power to make inter-corporate loans and investments cannot be delegated by the board of a public co

31. Restrictions on power of board – Sec 180 of CA 2013

- Board of a ~~public~~ co shall not exercise the following powers except with consent of the shareholders in GM :-
  - Sale, lease or otherwise dispose off the whole or substantially the whole of one or more undertakings of the co.

- (In case of listed co, resolution to be passed though postal ballot.)
- Remission, or give time for the repayment of a debt due by a director.
- Investment of compensation received as a result of merger or amalgamation. However no consent of shareholders required if such compensation is invested in trust securities specified u/s 20 of the Indian Trust act.
- Borrowing of money if money already borrowed, together with moneys proposed to be borrowed will exceed the total of paid up capital and free reserves.
  - Temporary loans obtained from co's bankers in the ordinary course of business are not considered as borrowings
  - Temporary loan include loan repayable on demand or loan repayable within 6 months of the date of the loan, but does not include loan raised for financing capital expenditure.
  - If the board borrows money in excess of the limits imposed u/s sec.293, the shareholders may ratify such excess borrowings
  - 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 180 of CA 2013 had been exceeded.
  - GM resolution must specify the maximum amount which can be borrowed by the board, if not specified then the resolution shall be void.

32. **Contribution to bonafide charitable funds- Sec 181 of CA 2013**
- Board of a co. may contribute to bonafide charitable & other funds,
- But member's consent in GM is required if contribution exceeds 5% of average net profit during immediately preceding 3 financial years.

33. **Restrictions on political contributions – Sec 182 of CA 2013**
- Contribution to any political party - including contribution made for advertisement in any publication of such party or on behalf of a political party, or for the advantage 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 FYs are prohibited from making any political contribution.
- The political contribution shall be made by passing a resolution at a BM only.
- The total amount of political contribution in a FY shall not exceed 7.5 % of average net profits during 3 immediately preceding financial years. This limit can't exceed even if permitted by members or CG.
- 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 on co. for contravention is fine up to 5 times the amount so contributed. And same fine for officers in default and imprisonment up to 6 months.
- As per MCA circular, any co. contributing to electoral trust companies is not required to make full disclosures in the books except a general disclosure. Rather, electoral trust companies themselves will have to make disclosures of all the contributions received by them & further contributed to political parties.

34. **Contribution to national defense fund – Sec 183 of CA 2013**
- Contribution to National defense fund, PM national relief fund, any other fund notified u/s 183 of CA 2013.
- Contribution by board whether by passing a resolution in a BM or by circulation.
- Contribution can be of any amount as the co. thinks fit.
- The Co. has the power to make contribution u/s 183 of CA 2013 notwithstanding anything contained in the companies act or the memorandum or the articles.

35. **Loan to directors – Sec 185 of CA 2013**
- No co. can directly or indirectly advance any loan to any specified person (even with CG permission) in the below mentioned manners:-
  - If a Co. makes any loan to a specified person.
  - Or gives any guarantee or security for loans extended to any specified person.
- Specified persons means -:
  - A director of lending Co. or of a Co. which is its holding Co.
  - A relative of any such director.
  - A partner of any such director.
  - A firm in which any such director or relative is a partner.
  - A private Co. of which any such directors is a director or member (but not the relative of director.)
  - A body corporate at a GM of which 25% or more voting power is exercised by any such directors, or by two or more such directors together.
  - A body corporate, the board or MD or manager where of is accustomed to act in accordance with the directions of the board or any director of the lending Co.

  Note:-
  - Loan means advance of money (i.e. financial assistance) upon the understanding that it shall be paid back.
  - Loan may or may not carry interest.

  Exceptions:-
  - No retrospective effect of sec 185 of CA 2013 i.e. if a co. makes a loan to a person, who afterwards becomes a specified person.
  - 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 it for residential accommodation of MD.

- Where loan is given to MD/WTD as a part of the conditions of service extended by co. to all its employees.
- Where loan is given to MD/WTD pursuant any scheme approved by members.
- Where the co. extends loan in normal course, upon the rate of interest not less than the bank rate declared by RBI.
- This section don't covers situation where directors are advanced money for the purpose of business of co.
- Salary advance given to specified person is not covered if in normal course co. pays salary in advance to other employees too.

36. Board's Sanction required for certain contracts- Sec 297

- Applies to all companies, whether Public or private.
- Does not apply if other party to contract is a public co.
- 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 persons means:-
  - A director of the Co.
  - A relative of any such director.
  - A partner of any such director.
  - A firm in which any such director or relative is a partner.
  - A private co of which any such directors is a director or member (but not the relative of director.)

Legal requirement u/s 297-:

- If Paid up capital of the co. is less than Rs. 1 crore, 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.
- If paid up capital of the Co. is 1 crore or more, then :-
  - Previous approval of board must be obtained by passing a resolution at BM only.
  - Previous approval of CG must be obtained.
  - In case of contravention, the contract is void ab initio.

Section 297 does not apply:-

- If the contract is made for cash and at prevailing market price.
- IF the value of such contracts is not more than Rs. 5000/- in a year & any of the party to contract regularly trades in such goods or services or business.
- Banking co.
- Insurance co.
- Contracts for sale/purchase/renting of immovable properties.
- Employment contract.
- Contract for rendering professional services.

- This section does not have retrospective effect, thus:-
  - Approval of CG is not required if after entering in to contract, the paid up capital of co. increased to 1 crore or more.
  - No application of sec 297, if a co. enters into a contract with a person who is not a specified person and afterwards become a specified person.

37. 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 with the co.
- Failure to disclose the *NATURE OF HIS INTERST* 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.
- Alternatively, a director may give a general notice to the board stating 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.

Exemption u/s 299:-

  - 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 exemptions shall be available to any of the directors of the co.
  - Disclosure is not required if interest is already known to all the directors.

- Consequences of failure to disclose interest - The defaulting directors shall vacate the office of director u/s 283 but the contract does not become illegal, void or unenforceable.
- **Interested director** - 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.

38. Interested directors not to participate or vote - Sec. 300

- A director who is directly or indirectly interested in a contract or arrangement shall not be-
  - Counted for the purpose of quorum.
  - Participate in the discussion
  - Vote thereon (even if he votes, his vote shall not be counted).

- The transaction is voidable at the option of board but not at the option of the other party, in case an interested director casts his vote.
- 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:-
  - Private Co.
  - A Public Co. which has been exempted by CG
  - A contract of indemnity against any loss which the directors may suffer by reason of being surety for the co.
  - 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.
  - Sec 299 and sec 300 shall not apply if a contract in which a directors is interested is put for discussing and voting in a GM & the director votes in the capacity of member.
  - A private co. being a subsidiary of a public co., when it enters into contract with its holding co.

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

- Every co shall compulsorily appoint MD or WTD or a Manager if it fulfills the following two conditions.
  - The Co. is a public Co.
  - The paid up capital of the Co. is Rs.5 crore or more.
- Mode of appointment:-
  - (A.) The appointment may be made with the approval of CG.
  - (B.) The appointment may be made without the CG approval, provided such appointment is in accordance with schedule XIII.

(A.) The Co. shall make application to CG within 90 days of making the appointment. CG shall not grant the approval if it is satisfied that the appointee is not a fit and proper person/ it is not in the public interest/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.) 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 ROC within 90 days of appointment.

- If appointment made without the approval of CG and also in contravention of schedule XIII, then:-
  - CG may make a reference to CLB for enquiry 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 shall vacate the office- but acts done shall be valid- remuneration should be refunded- co shall not waive recovery of remuneration from him.

40. **Requirements for appointment of a managerial person as per schedule XIII**

- He has not been imprisoned for anytime for any economic offence.
- He has not been fined for more than Rs.1000 for any economic offence.
- He has not been detained for any period under conservation of foreign exchange and prevention of smuggling activities act, 1974.
- He must be resident in India.
- Appointment without SR - He must have completed the age of 25 years and he must not have attained the age of 70 years.
- Appointment by SR - He has not attained the age of 25 years but has attained the age of 18 years. Or he has completed the age of 70 years.
- The appointment and remuneration shall be approved in GM
- A return shall be filed with the registrar within 90 days of appointment

41. Managerial remuneration - Sec. 198, 309,387, schedule XIII, etc.

- **Remuneration of a director who is not a MD/WTD i.e. non -executive director or ordinary director.**
  - Mode of payment may be monthly, quarterly or annual payment.
  - Approval of CG is required, except for sitting fees.
  - Remuneration shall be Max 1% of net profits if the Co. has employed MD, WTD or manager.
  - Remuneration shall be max 3% of net profits if the Co. has not employed MD, WTD or manager.
  - Payment of commission to Non whole time directors/non-executive directors/ordinary directors:-
    - Co. must pass SR approving the payment of commission
    - SR shall remain in force for 5 years only and may be renewed from time to time.
    - Approval of CG is not required if the total commission does not exceed 1% & 3 % rule.
  - Payment of sitting fees to Non whole time directors/non-executive directors/ordinary directors:-
    - Sitting fees is payable only to an ordinary director i.e. no sitting fees can be paid to WTD/MD,
    - If paid 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 crore or more OR Turnover of the Co. is Rs.50 crore or more.
  - Maximum Rs. 10,000/- in any other case.

- **Remuneration to MD/WTD/Manager.**
  - **Remuneration as per Section 198,309 and 387**.
  - Overall remuneration shall not exceed 11% of net profits.
  - It is mandatory to charge depreciation to arrive at net profits (either by WDV or SLM)
  - 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.
  - Amount of remuneration is 5% of N.P in case of manager.
  - **Remuneration as per Schedule XIII**
  - Calculate Effective capital (paid up capital + securities premium + reserves and surplus + long term loans + deposits repayable after 1 year - accumulated losses - preliminary expenses)
  - 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.
  - If effective capital is

<u>If effective capital is</u>	<u>Option 1</u>	<u>Option 2</u>	<u>Option 3</u>
EC<1 Crore	75000	150000	No limit, if
EC<5 Crore	100000	200000	all conditions
EC<25 Crore	125000	250000	under option2
EC<50 Crore	150000	300000	are fulfilled &
EC<100 Crore	175000	350000	CG approval
EC>=100 Crore	200000	400000	is obtained.

<u>**Option 1**</u> Conditions to be fulfilled -:
- Remuneration has been approved by a ' Remuneration committee'
- 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.

<u>**Option 2**</u> Conditions to be fulfilled -:
- 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.

- The remuneration payable to the directors shall be determined or increased by the articles of the Co. 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 the services are rendered in a professional capacity and 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. It is paid to compensate the director for the risk which he bears which has nothing to do with his directorship.
- In case of inadequacy of profits/losses, MD/WTD/Manager can still be paid remuneration as calculated under the 3 options under schedule XIII.
- 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 co and the co shall not waive the recovery.
- Non applicability:-Private limited Co.

42. Increase in remuneration of directors – Sec 310 & 311
- Increase in sitting fees-
  - If increased sitting fees is within the prescribed limit then no approval of CG is required, if not then approval of CG is required.
- Increase in remuneration of a managerial person-
  - If increased remuneration is within the limits prescribed under schedule XIII or limits prescribed u/s 198, 309, and 387 then no approval of CG is required, if not then approval of CG is required.
- Increase in remuneration of a non executive director-
  - If increased Remuneration is within the prescribed limit then no approval of CG is required, if not then approval of CG is required.
- Non - Applicability -: Private Co.

43. Director etc. not to hold office or place of profit (OPP) -Sec. 314
- Any office or place of profit means any post under the company which carries with it any remuneration.
- Office of MD/WTD is not an OPP unless the remuneration paid to him is over & above the remuneration to which he is entitled as director.
- A director or any other person shall not be said to have been appointed at an OPP if he renders services in his professional capacity & receives remuneration on case to case basis.
- <u>**Section 314(1)**</u> applies where –
  - A director of the co. is appointed at an officer carrying remuneration over & above the remuneration payable to him as director.
  - A related person is appointed at an OPP carrying remuneration of Rs. 50000 to Rs. 250000 per month.

- Here related person means-
  - A relative of a director
  - A partner of a director
  - A firm in which a director or relative of a director is a partner
  - A private co. in which the director of the co. is a director or member(not applicable to his relatives)
  - A director or manager of a private co. in which a director of the co. is a director or member.
- Section 314(1) applies where OPP is held,
  - Under the co.
  - Under the subsidiary of the co.
  - *But it doesn't apply if OPP is held under the holding co.*
- Any appointment under sec 314(1) is required to be approved by members by way of SR.

o **section 314(1B)** applies where-
- A **person*** is appointed at an OPP on a monthly remuneration exceeding Rs. 250000.
  ***person** means-
  - A partner of a director or manager
  - A relative of a director or manager
  - A firm in which a director or manager or relative of either is a partner
  - A private co. in which director or manager or relative of either is a director or member
- Where section 314(1B) applies, prior consent of members is required by way of SR together with the prior approval of CG.
- Unlike section 314(1), section 314(1B) doesn't apply when OPP is held under the subsidiary of the co.

44. MD , WTD, Manager

o 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.
o MD is entrusted with substantial powers of management.
o MD/Manager exercises his powers subject to the superintendence, control, and direction of board.
o Only individual can be appointed as MD/WTD/Manager.
o MD/Manager can be appointed for a maximum period of 5 years, while WTD can be appointed for more than 5 years.
o Manager/MD/WTD is in the whole time employment of the company.
o Co. can't appoint MD & manager simultaneously.
o A manager need not be a director. However a director may be appointed as a manager.
o Notes :-
- MD/ WTD may be a rotational or a non rotational director.
- An additional director may be appointed as MD/ WTD.

45. Disqualifications and vacation of office of MD & WTD – Sec 267

o Applies to all companies, public as well as private.
o Grounds for disqualification -:
- Undischarged insolvent
- A person who at anytime been adjudged as an insolvent.
- A person who, at anytime been, convicted by a court of an offence involving moral turpitude.
- A person who at anytime had suspended or made a composition with his creditors.

46. Disqualifications and vacation of office of Manager – Sec 385

o Applies to all companies, public as well as private.
o 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, at anytime in the preceding 5years been 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.

47. Number of managing directorship – Sec 316

o Generally a public Co. shall not appoint or employ any person as MD, if he is either MD or manager of any other co. (including a private co.) except as provided u/s 316(2) or 316(4)
o **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.
- 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 by a unanimous resolution.
  - Specific Notice of such resolution is given to all the directors.

o **Sec. 316(4) -**
- CG May permit a person to be appointed as MD of more than two companies, if CG is satisfied that -
- The companies should function as a single unit and,
- The companies should have a common MD.

48. Validity of Acts of directors – Sec 176 of CA 2013

- All acts done by a person as a director shall be valid notwithstanding that it is afterwards discovered that his appointment was invalid by reason of any defect or disqualification.
- Acts done by a director in his capacity as MD or manager are not validated. However all the prior acts of such a managerial person before declaration by CLB as contravention, remains valid.
- A person who deals with the directors even after having the knowledge of defect or disqualification of directors is not protected by sec 176 of CA 2013.
- Following acts of a director are 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.

49. **Restriction on non cash transactions involving directors- Sec 192 of CA 2013**

- This section applies where a co. acquires any asset for value other than cash from
  - Any director of such co.
  - Any director of associate, subsidiary or holding co.
  - Any person connected to such director
- This sec also applies where any asset is acquired from a co. for a value other than cash by any of the above mentioned persons.
- If co. enters into any of the above mentioned agreements, then it need to ask the consent of members in GM & when the director or connected person belongs to holding co, then additional approval of members of such holding co. is also required.
- In the notice of meeting, info needs to be given about such arrangements & value of asset as assessed by a registered valuer.

50. Prohibition on forward dealing- Sec 194 of CA 2013

- A WTD or a key managerial person is prohibited from entering into a forward contract in relation to shares & debentures of their respective companies, its holding or subsidiary co.
- Even if they enter into forward contract, they shall be liable for fine & the securities shall continue to remain in the name of the transferor.

51. **Prohibition on insider trading- Sec 195 of CA 2013**

- A director, officer or any other person is prohibited in trading in securities of a co. on the basis of any price-sensitive, non public information.
- In short, insider trading is prohibited and violators will be punished with
  - 5 years imprisonment,
  - Rs. 5 lakh fine minimum, which may extend to Rs. 25 crore or 3 times the profit made, whichever more,
  - Or both, fine & imprisonment.

52. Removal of directors by CG- Sec 388B to Sec 388E

- CG is empowered to remove any managerial person after considering the opinion of CLB, if in the opinion of CG any of the following circumstances exists-
  - Where managerial person is guilty of fraud, misfeasance, negligence or default in carrying out his obligations.
  - Where managerial person is guilty of breach of trust.
  - Where business of the co. is not conducted in accordance with sound business principals or prudent practices.
  - Where business of a co. is conducted in a manner which is likely to cause serious injury or damage to the interest of trade & industry to which it belongs.
  - Where business of co. is conducted for fraudulent or unlawful purposes.
- No compensation shall be payable to managerial person removed under this section.
- The managerial person so removed shall be disqualified for holding similar position in any other co for 5 years.
- The vacancy so arising shall not be filled without approval of CG.

53. Removal of directors by CLB- Sec 402

- Where member have applied to CLB for relief from oppression or mismanagement, CLB if satisfied can make orders for termination of services of a director or manager.
- No compensation shall be paid to such director or manager.
- Further, such director/manager shall be disqualified for holding similar position in any other co for 5 years.

BEST OF LUCK!!!

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