See 123:- Declaration of Dividend

No dividend → shall be declared or paid → by a company → For any financial year → except

- current year profit
- or previous year profit

→ after providing depreciation → as per (schedule II).

- or out of money provided by C.G. / S.G. → For payment of dividend → in pursuance of guarantee.

a company, need to transfer such % of its profits → to reserves of the company
→ F.Y.

In case of inadequacy or absence of profits in any financial year.
→ Company wants to declare out of previous years profits & transfer to reserve, subject to following conditions:
→ Companies(Declaration & payment of dividend) Rules 2014.

(a) Rate of dividend → shall not exceed → average rate of dividend → immediately 3 preceding F.Y.
→ above rule → Not Applicable
→ to a company which has not declared any dividend in each Previous Financial Year

(b) amt. drawn from previous year profit <= 10% of (paid up share capital + Free Reserve) → latest audited financial statement

(c) first be utilised to set off losess in F.Y. (current) → before declaring dividend.

(d) Reserve after drawal not fall below 15% of its paid up share capital

Second proviso to section 123 (1) & also Sub sec (4) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; vide Notification, dated 5th June 2015. [CAA, 2015]

Sec 123 (2nd chart)

Interim dividend

BOD → may declare interim dividend
↓
during any F.Y.
↓
out of profits of the F.Y.

Previous year losses & depreciation → not provided
↓
in F.Y.
↓
are set off against profit of co. C.Y.

In case
↓
Company has incurred loss during the current F.Y.
↓
upto the end of quarter immediately preceeding
↓
the date of declaration of interim dividend
↓
such Interim dividend
↓
shall not be declared
↓
at a rate higher than the average dividend rate immediately 3 Previous financial year.

amount of Dividend (including Interim.Dividend.)
↓
shall be deposited in a scheduled bank
↓
in a separate account
↓
within 5 days
↓
from the date of declaration of such dividend.

Sub sec (5)

→ Dividend shall be paid to registered shareholder or his banker

→ Co. can utilise profits or reserve of a company
↓
for the purpose of issuing fully paid up bonus

A company → fails to comply with the provision of section 73 & 74
↓
shall not declare any dividend on its equity share
↓
till such default continue

Sub-section (5) shall apply to a Nidhi Company, subject to the modification that any dividend payable in cash maybe paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend; vide Notification, dated 5th June 2015.

Sec 126: Right to dividend, right share & Bonus share kept in abeyance pending registration of transfer of shares:

↓

where any instrument of transfer of shares has been delivered

↓

to any company for registration

↓

but not registered

↓

- Transfer the dividend
  ↓
  to unpaid dividend account(sec 124)
  ↓
  unless, authorised by registered holder in writing to transfer to transferee
- keep in abeyance in relation to such shares
  ↓
  any offer of right shares + any issue of fully paid up bonus shares.

Sec 127:- Punishment for failure to distribute dividend

↓

where a dividend → declared by company

↓

but not paid or warrant in respect has not been posted

↓

within 30 days from the date of declaration

↓

to any shareholder entitled to the payment of the dividend.

↓

Default

↓

- Director
  ↓
  Imp= 2 yr
  fine= 1000/day
  till default
  continue
- company
  ↓
  shall be liable to pay simple interest @ 18% pa during the period
  ↓
  default continues

No offence

↓

- Dividend not paid
  ↓
  operation of any loan
- Directions not complied
  ↓
  and communicated to him
- Dispute for amount of dividend
- Dividend
  ↓
  adjusted any sum due to company.
- Not posted dividend warrant
  ↓
  No default of company

Section 127 shall apply to a Nidhi company, subject to the modification that where the dividend payable to a member is Rs 100 or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months; vide Notification ,dated 5th June 2015.

SEC 129:- Financial Statement

- Financial system → shall lay down in AGM
  - shall give a true & fair view → comply with Accounting Standards.
- Company
  - having a subsidiary Company
  - prepare consolidated financial statements (+Joint Venture + Associate Company + Subsidiary Company)
- Non compliance with Accounting Standards
  - the company shall disclose
    - → Deviation from Accouting Standard
    - → Reason for such Deviation
    - → the financial effects, if any arising out of such deviation.
- Contravention
  - If a company contravenes → MD/WTD/CFO
    - Imprisonment = 1 year or Fine = 50000 → 5 lacs
    - Or Both

Provided That :
For Companies

Insurance → Insurance Act 1938 & IRDA 1999

Banking → Banking Regulation Act 1949

Electricity → Electricity Act 2003

The Financial Statement shall not be treated as not disclosing a true & fair view ,if they comply their respective Acts.

** Form of Statement containing salient features of financial statements of subsidiaries.associate company or companies and joint venture or ventures shall be in Form AOC-1.

** Sec 129 shall not apply to Govt co. to the extent of application of AS 17 to the companies engaged in defence production vide notification dated 5 June 2015.

Section 136:- Right of members to copies of audited Financial Statement.

(1)
A copy of financial statement
+ Consolidated Financial Statement
+ Auditors Report &
+ every other documents required to be annexed
→ Which are to be laid before a company in G.M.
→ shall be sent to every member, every Trustee for the Debenture Holder to all persons
→ Being the person so entitled
→ Not less than 21 days(14 days for Sec 8 Co.) before the date of meeting.

(2)
In case of Listed Company.
above provision deemed to be complied → if the Copies of the documents are made to
→ available for inspection → at registered office → durig working hours → for a period of 21 days before the date of the meeting.
&
a statement in prescribed form (AOC-3) Contain salient features of such documents
→ is sent to every member of the Company & to every trustee for the holder of any debenture issued by the Company.
→ Not less than 21 days before the date of the meeting.

(3)
C.G. → Specify manner of circulation of financial Statement
↓
In case of all listed Company
+
Such Public Co. → Net worth= more than 1 crore & Turnover= more than 10 crore
→ may be sent
→ by electronic mode email id.
→ by Dispatched of physical copies.

(4) A listed Company, every company having a subsidiaries Shall.
→ Place separate audited accounts of each subsidiary
→ Provide a copy of Financial Statement if share holders ask for it.

Default :
→ Co. → 25000
→ Officer → 5000

Section 136 (1) shall apply to Nidhi company,in the case of members who do not individually or jointly hold shares of more than Rs 1000 in face value or more than 1%, of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhiis situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy; vide Notification dated 5th June 2015.

Section 149 - Company to have Board of Directors

Minimum Number of director (Not apply to Sec 8 Co.)

Every Company → Shall have a BOD → Individuals (Directors) → Minimum number of director

- private co. → 2
- public co. → 3
- OPC → 1

Maximum = 15 directors (Not apply to Govt Co.)

more than 15 → Need to pass Special Resolution
(Not required in Govt & Sec 8 Co.)

Every company → atleast one women director in specified companies

Companies(Appointment & qualification of directors) Rules 2014)
Rule 3.

- Every listed company
- Every other public co. having
  - Paid-up share capital Rs 100 crore or more
  - **OR**
  - Turnover of Rs 300 crore or more.

A company , incorporated under this act and covered by rules , shall comply within a period of 6 months from the date of its incorporation.

Any intermittent vacancy of a women director shall be fille by the board at the earliest

- immediate next Board meeting
- OR
- 3 months from the date of such vacancy

Which ever is later

Same for Independent Director

Resident Director

Every Co. → shall have → atleast 1 director → Stayed in india → atleast 182 days in previous Calender Year. Refer MCA General Circular - 25/2014.

Independent director (149(4))

Every listed public co. → shall have atleast 1/3** of(total no. of director) → as Independent Director

one year provided for the compliance of this provision from when rules are being notified.

*Any Fraction of 1/3rd shall be rounded off as one.

*C.G can specify minimum number of Independent Director.

For particular class of companies (Specified in Rules)

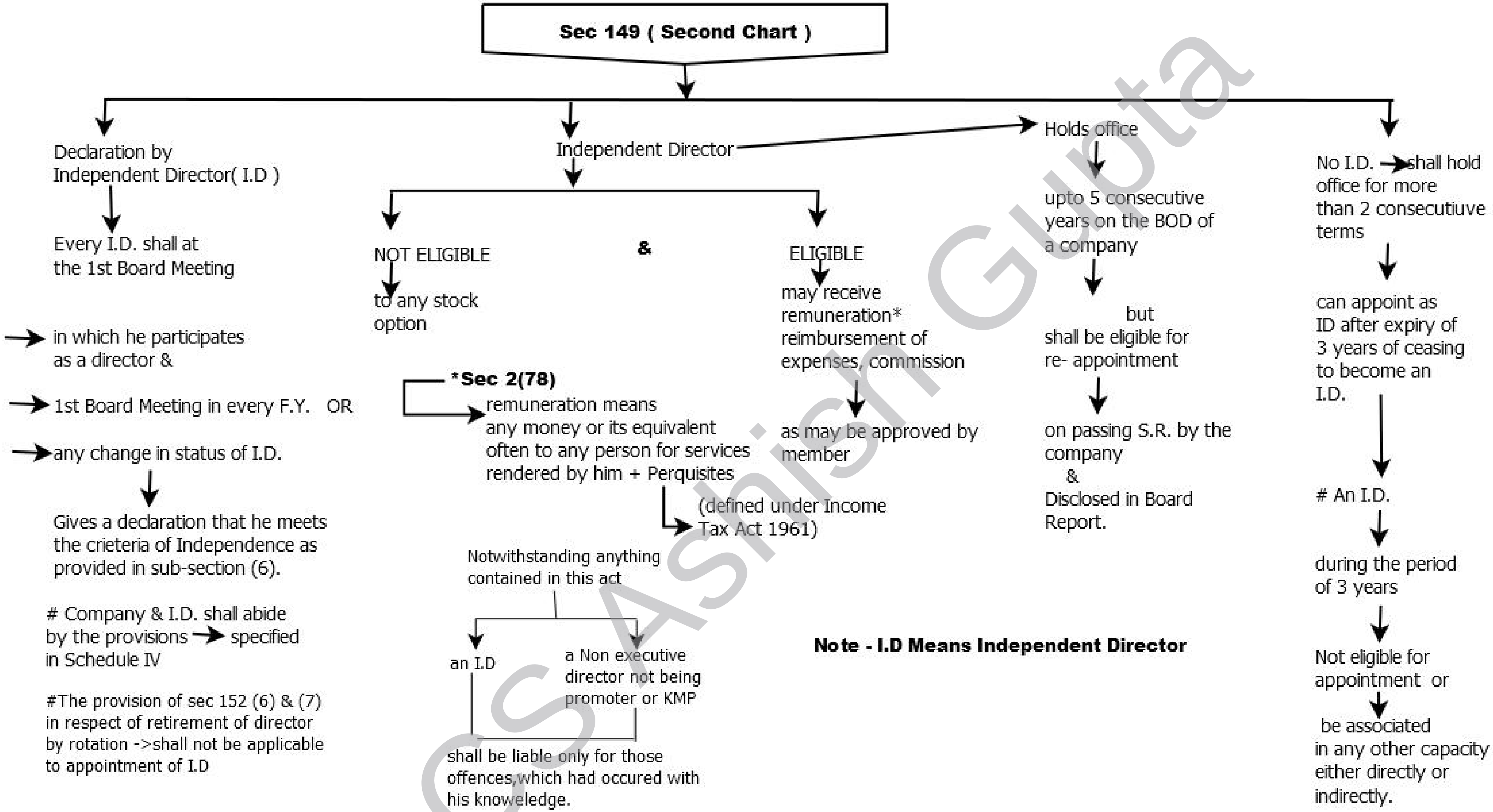
Rule - 4.

PUBLIC COMPANY

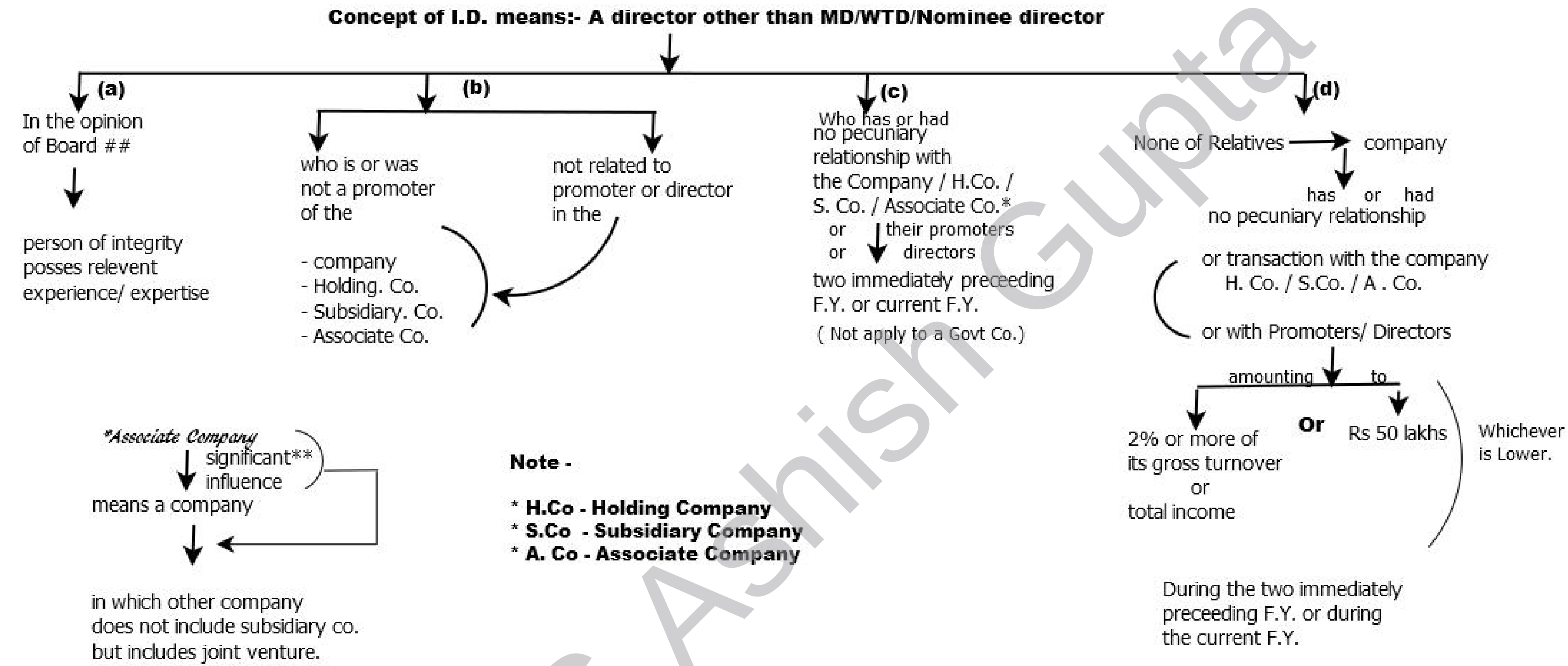
- Paid up share capital Rs 10 Crore or more
- Turnover Rs 100 Crore or more
- in aggregate of outstanding loans, debenture ,deposits exceeding Rs 50 Crore or more

Relaxation

1. Where a company ceases to fulfil any of three conditions laid down above for 3 consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.
2. In case a company covered under this rule is required to appoint a higher number of I.D due to composition of its audit committee, such higher number of I.D shall be applicable to it

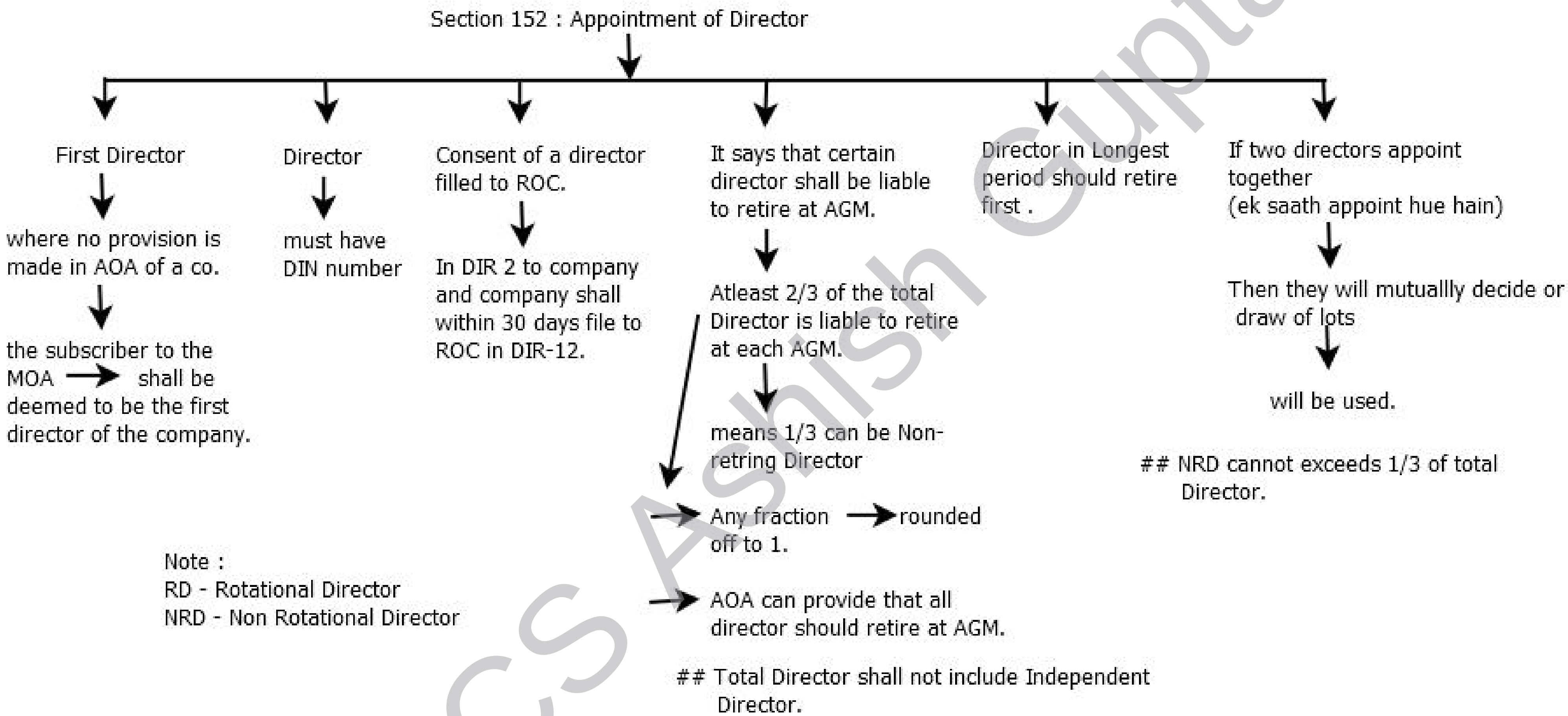


In summary - In case of Sec 8 Co. only Resident director condition will apply ..rest all sub sec of Sec 149 will not apply Vide - Notification dated 5 June 2015.

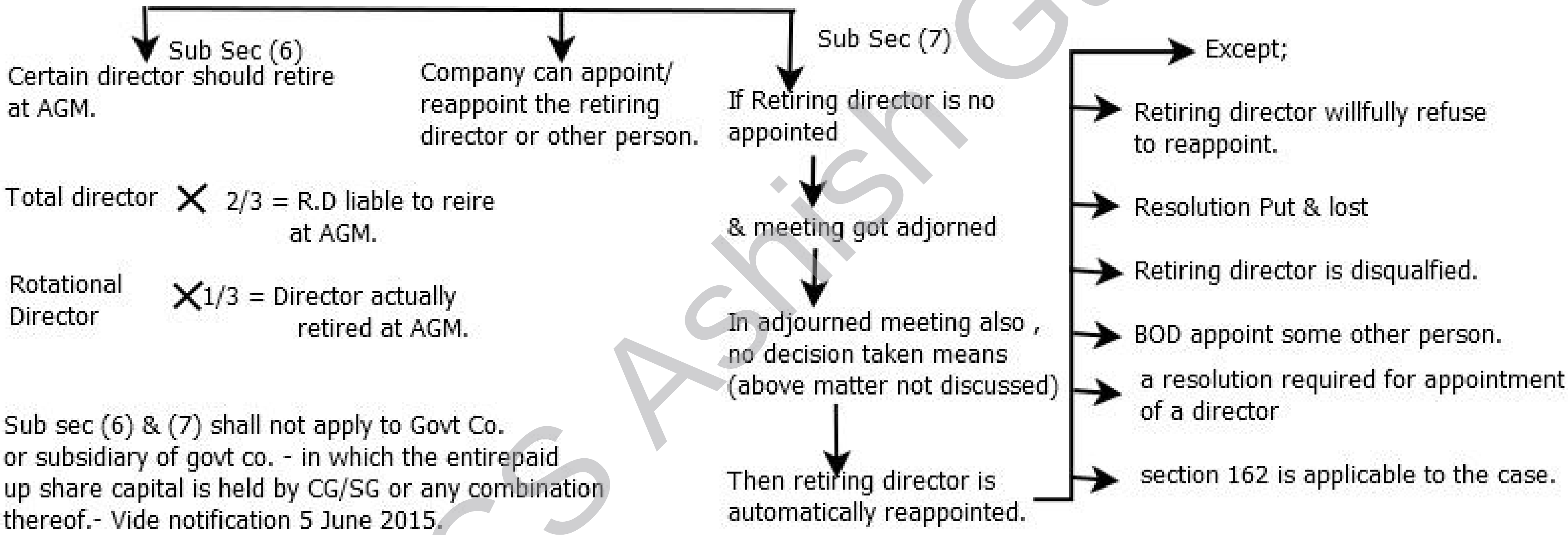


** means control of atleast 20% of total share capital or business decision under an agreement.

##The word "Board", shall be substituted for the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the SG" for a Government company, vide Notification dated 5th June 2015


Section 152 : Appointment of Director
First Director
where no provision is made in AOA of a co.
the subscriber to the MOA shall be deemed to be the first director of the company.
Director
must have DIN number
Consent of a director filled to ROC.
In DIR 2 to company and company shall within 30 days file to ROC in DIR-12.
It says that certain director shall be liable to retire at AGM.
Atleast 2/3 of the total Director is liable to retire at each AGM.
means 1/3 can be Non-retring Director
Any fraction rounded off to 1.
AOA can provide that all director should retire at AGM.
Total Director shall not include Independent Director.
Director in Longest period should retire first .
If two directors appoint together (ek saath appoint hue hain)
Then they will mutuallly decide or draw of lots
will be used.
NRD cannot exceeds 1/3 of total Director.
Note :
RD - Rotational Director
NRD - Non Rotational Director

Section - 152 (Second Chart)



Sec 158
obligation to indicate
DIN

Every person or Co.

Furnishing any return

shall mention DIN
If such return to director

Sec 159
Punishment for
contravention:-

if any individual or
director of a co.

contravenes any
provision
(sec 152, 155 & sec 156).

punishable

contravention

1st Time

6m

Or

with
fine
Rs. 50000

continue

further fine
Rs.500/day

Sec 160
Right of person other than retiring director
to stand for directorship

A person → eligible → for appointment as a director at any GM
(not a retiring
director)

YES
Procedure

* Person or some member propose to him as
as a director

send 14 days notice before the meeting at
registered office of the company
+ Candidature
+ Deposit Rs 1 lakhs or higher amount (For Nidhi Co. -- Rs 10000)

YES
Company shall inform its members within 7 days before the G.M of the
candidature of a person.
→ advertises in newspaper
or
→ placing notice on the website of the co.

Amount of Rs 1 lakhs (Refund)

If person elected as a
director or gets → 25% of total votes

valid

either

on show of hands
or
on poll on such
resolution

Section 160 shall not apply to Section 8 company, whose articles provide for election of directors by ballot,
vide Notification ,dated 5th June 2015. Section 160 shall not apply to -

Private Company.

A Government Company in which the entire paid up share capital
is held by the CG, or by any SG or Governments or by the CG
and one or more State Governments.

Subsidiary of a Govt Co.
in which the entire paid up
share capital is held by that
Govt co.

Sec 161(Remaining Provision)

Nominee director
BOD may appoint
any person
as a director
nominated by any institution or by C.G/S.G
by virtue of its shareholding in a Govt. Co.

causual vacancy director
In case of a Public Co.
If original director
appointed in G.M
vacants before expire of his office
C.V → filled by
BOD → at a meeting of the board

tenure = original director
term =C.V director term

Note : C.V = Casual Vacancy

Section 162:-
Appointment of directors to be voted individually
2 step process
At a General Meetng of a Company
→ a proposal moved at a meeting without any vote being cast against it.
yes
then at a G.M,2 or more person can be appointed by a single resolution as a director.

A resolution moved in contravention of above shall be void ,wheather or not objection was taken when it was moved

Sec 162 not apply
1.over Private Co.
2. ← SAME

SEC 163:-
Option to adopt .
(Principal of proportional representation for appointment of directors)
AOA of a company may
provide for the appointment of -> not less than 2/3rd of total no. of directors in accordance with the principal of P.R , wheather by the Single transferable vote or by a system of cumulative voting .

→ such appointment may be made once in every 3 years & casual vacancies of such director shall be filled by Sec 161(4)

Section 163 shall not apply to vide Notification ,dated 5th June 2015
a) a Govt Co. in which the entire paid up share capital is held by the CG or by any SG or or any combination of above.
b) a subsidiary of a Govt co. referred to in (a) above, in which the entire paid up share capital is held by that Government company

Sec 164:- Disqualification for appointment of Director.

Sub Sec (1)

- (a) He is unsound mind → declared by competant court
- (b) undischarged insolvent
- (c) adjudicated as an insolvent → his application is pending
- (d) convicted by a court → of any offence → involving moral turpitude → Sentenced Imprisonment → for not less than 6 months & → a period of 5years not elasped from the expiry of sentence
- (e) order disqualification passed by court or tribunal
- (f) not paid any calls → irrespective of shares → held by him wheather alone or jointly with others. → 6 month lapsed from calls due
- (g) convicted of the offence → dealing with related party transaction u/s 188 → at any time → during the last preceeding 5 years.
- (h) Not applied for DIN as per Sec 153

If a person is convicted of any offence → Imprisonment = 7 years or more → he shall not be eligible to be appointed as a director in ANY company

Yes ROC shall immediately register the document & place it in the document file for public inspection under (Sub Sec(2))

Sec 164 (2nd chart)

No person or a director of a company

which has not

filled financial statement

OR

Annual returns

For ANY continuous period of 3 F.Y.

has failed to

- to repay deposits
- pay interest
- to redeem debenture
- interest
- Pay dividend declared

such failure continues for 1 year or more

not eligible to be re- appointed in defaulting co. or any others company → for a period of 5 years from the date on which the said co. fails to do so

Co. shall immediately file for DIR-9 to ROC, furnishing the names & addresses of all director of the Co.during Relevant F.Y

Not → filed within 30 days of the faliure officers of the Company as per Sec 2(60) shall be treated as officer in default.

Additional points

Disqualification in clause (d)/(e) & (g)

shall not take effect for 30 days from date of disqualification.

if any appeal is filled

untill the expiry of 7 days

disposal of such appeal

Sec 164(2) shall not apply to a Government company vide Notification dated 5th June 2015.

A private co. may by its articles

provided any additional disqualification

Extra shots:-1)Every director shall inform to the Co. concerned about his disq. in form 8 before his appointment or re-appointment

2)Any application for removal of disqualification of directors shall be made in form DIR-10.

Sub sec (2) - shall not apply over Govt Co. Vide notification dated 5 June 2015.

Section 170: Register of Directors & KMP & their shareholdings.

- Every Co. shall keep its Registered Office → a register containing
  - Particular of Directors
  - Details of Securities held by each of them
    - * Company
    - *Holding Co.
    - * Subsidiary. Co.
    - * Associate Company.
    - * Sub Subsidiary Company
- A return containing such particulars & documents of the Director & KMP → Filled to ROC form no. DIR-12 within 30 days.

Section 171: Members right to Inspect

- The register kept → shall be
- open for inspection → can be done at every AGM. & shall be made accessable to any person attending the meeting.
- during business hours & member can take extracts → Yes on the request by the member → within 30 days (provide) → Free of cost
  - No → ROC shall on an application made to him → order immediately inspection.

Section 172: Punishment

- No specific penalty provided for previous sections (149-172) → Yes
- Co. & Officer → Rs 50000 → Rs 5 lacs

Section 170 & 171 shall not apply to a Govt Co. in which the entire share capital is held by the CG or by any SG or Governments or in any combination thereof ,vide Notification ,dated 5th June 2015

Sec 174 : Quorum for meeting of Board

Minimum Quorum

shall be atleast 1/3rd of its total strength or 2 directors

Participation of the directors by V.C. or by other audio visual → shall be counted for the purpose of quorum.

Any fraction of a number → shall be rounded off as one.

Total strength → shall not include director whole places are vacant.

Quorum reduced below prescribed

shall only act for the purpose of increasing the quorum.

OR of calling a GM of the company

{For No Other Purpose}.

Interested director

if I.D.>= 2/3rd of total strength of BOD.

YES

Quorum will be

Number of disinterested director OR 2

* I.D. → means a director who is interested director → u/s 184(2).

Meeting not held because of quorum

unless the article provide otherwise

the meeting shall stand adjourned to same

- day
- time
- place

→ in the next week

or if that day is a national holiday

till the suceeding day

which is not a national holiday

Sec 8 Co - Quorum will be calculated as "either 8 members or 25% of its total strength whichever is less" for Section 8 company, vide Notification ,dated 5th June 2015. "Provided that the quorum shall not be less than two members".

Section 176 - Defect in appointment of directors not to invalidate actions taken

No Act done by a person as a Director Shall be deemed to be invalid

↓

If Subsequently noticed that

↓

his appointment was invalid by reason

↓

Of any Defect OR Disqualification

After notice of above facts

↓

All acts done by the Director shall stand invalid.

Section 179 - Power of BOD

The BOD of Company Shall be entitled to exercise

↓

all such power

↓

as the company is authorised to do.

Specific Power

- a)to make calls on shares
- b)to authorise Buy Back of securities.
- c)to issue securities including debenture. → in India or outside India.
- d)to borrow money
- e)to invest the fund of the company.
- f)to grant loan or give guarantee or security.
- g)to approve financial statement or Board Report
- h)to diversify the business of company.
- to approve amalgamation,merger or reconstruction
- to takeover a company etc.

Delegation of Power

↓

The BOD may, by a resolution passed at a meeting

↓

Delegate to any

- Committee of Directors
- MD/Manager
- Any other principal officer of the company.

Borrowing not treated in case of Banking Company from other Banking Company or from RBI or from SBI.

Matters referred to in clauses (d), (e) and (f) may be decided by the Board by circulation instead of at a meeting; for a Section 8 company, vide Notification dated 5th June 2015.

Section - 177:-Audit Committee A.C

- Requirement for audit committee
  - BOD of every listed company
  - Other companies as may be prescribed
    - shall constitute audit committee
    - ## All Public Company
      - Paid up capital Rs 10 Crore or more
      - having turnover of Rs 100 Crore or more
      - having in aggregate o/s loans or borrowing or debenture or Deposit exceeds 50 Crore or more.
  - shall consist of minimum of 3 directors including independent director forming majority
  - majority of members of A.C → with ability to read & understand the statement.
- Functions:-
  - → Recommendations for appointment remuneration & terms of appointment of Auditors of the Company
  - → Review & monitor auditor independence
  - → Scrutiny of Inter Corporate-Loans & investment
  - → Approval or subsequent modification of transaction of the company with related parties.
  - → Valuation of undertaking or assets of the company
  - → evaluation of internal financial controls & risk management
  - → etc...

Relaxation :- Every A.C constituted before this act,will comply or reconstituted A.C within 1 year of such commencement

Notification dated - 5th June 2015 following changes carried out -

1.The words "with independent directors forming a majority" shall be omitted for Section 8 company, vide Notification, dated 5th June 2015.
2.The words "recommendation for appointment, remuneration and terms of appointment" shall be substituted by the words "recommendation for remuneration" for a Govt company

Section - 178 Nomination & Remuneration Committee (N&RC) & Stakeholders Relationship Committee.

Section 178(1) to (4) deals with Nomination & Remuneration committee. → Consist of three or more Non -Executive Directors → out of which not less than 1/2 shall be independent directors.

Formation → A committee shall be constituted by the BOD of

- Every listed company
- & Such other class or classes of companies as may be prescribed
  - All public co. → Pade up capital of Rs. 10 Crore or more.
  - Turnover = 100 Crore or more
  - in aggregate having outsanding loans or borrowings or debentures or deposits exceeding 50 Crore or more.

⇨ Provided that public companies covered under this rule which were not required to consitute Audit committee (Sec 292A of 1956 act) or this rule shall apply shall constitute their A.C.within one year from commencement of these rules or appointment of Independent director by them , Whichever is earlier .

Section 178 shall not apply to Section 8 company, vide Notification dated 5th June 2015.

The Chairman (whether executive or Non- Executive) → of the company shall not chair such a committee.

However, he may be appointed as a member to the committee.

N & RC → Identify person who are qualified to become director. → may be appointed in senior management.

N & RC shall ensure that

- the level & composition of remuneration is resonable.
- relationship of remunaration to performance is clear
- Remunaration to Director, KMP
- Penalty for contravention (Same as Audit Committee)

Sec 178 (5) & (6)

- The BOD of a Company → which consist of more than 1000 shareholders debenture holders, Deposit holders any other security holder → at any time → during a F.Y. → shall constitute S.R.C.
- deals with shareholders relationship committee. → Chairman → Non Executive director + other member BOD will decide.

Section - 184 Disclosure of Interest of Director .

Disclosure in 1st Board Meeting

every director shall at the

1st meeting of the board → in which he participates as a director

OR

Any change in the disclosure already made → at the 1st B.M held after such change

* Directors interested after entering in contract → Disclose his concern or interest

- when he becomes interested
- at the 1st B.M held after he becomes interested

Contract or arrangement

Every director,who is directly or indirectly interested in a contract or arrangement into

with a body corporate →

* director holding more than 2% shareholding of that body corporate or

* is a promoter,manager,CEO of that body corporate

with a firm or other entity in which such director is a partner,owner or member

shall disclose the nature of his concern & shall not participate in such meeting

Non disclosure

shall be voidable at the option of the company

Section 184 not applicable

over the contract between two companies where any of the directors of the one company or two or more of them together holds not more than 2% of the paid up share capital in the other company

Default

Company or such director

Imprisonment	Fine
1 year	Rs 50000- 1 lacs

Exemptions u/s 184(2) Company vide notiifcation dated 5th June 2015:

- Section 8 Co, only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds Rs 1 lakh vide Notificatior
- Private company; with the exception that the interested director may participate in such meeting after disclosure of his interest.

SEC 185:- Loan to directors etc....

No company shall
- directly or indirectly
- advance any loan including any loan represented by a book debt
- to any of its director
  or
  to any other person in whom director is interested
  or
  give any gaurantee or provide any security in connection with any loan taken by him

Exemptions
(a)the giving of any loan
to a Managing Direcor /Whole Time Director
- as a part of the condition of sevice to all employees
- to any scheme approved by the members by Special Reesolution

(b) a Co. → in the ordinary course of its business
→ provides loans /give gaurantee
→ for the due repayment of any loan+ any interest@ bank rate declared by RBI

Penalty
Co.-5 lacs-25 lacs → fine
director → fine
imprisionment 6 m or both
→ or the other person also

SEC 185:-Rules 2014
Exempted
- Any loan made by or any gaurantee or security provided by H.Co. in respect of any loan made to its.
  a H.Co.
  → to a wholly owned subsidiary Co.
- Any gaurantee given or security provided by a H.Co.
  → in a respect of loan made by any bank or F.I
  → to its subsidiary Co.
  → is exempted

Provided that
such loans made under sub rule (1) & (2) are utilised by the subsidiary company for its principal business activity

To any other person in whom director is interested means:-
- Any director of the lending Co.
- Any director of the H.Co of the lending Co.
- Any partner or relative of any such director
- Any Firm → in which any such director or realtive → is a partner
- Any Private Company → such director → director / member
- Any body corporate @G.M>25 % of the total voting power → exercised by such director or by directors together
- Any body corporate ,the BOD/MD/Manager → accustomed to act as the director or BOD of lending Company

Sec 185 shall not apply - Exemption granted as notification issued on 5th June 2015
1.Government company in case such company obtains approval of the Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG before making any loan or giving any guarantee or providing any security under the section.
2.Nidhi company, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.
3.A private company -
- in whose share capital, no other body corporate has invested any money.
- if the borrowings of such a co. from banks or financial institutions or any body corporate is less than twice of its paidup share capital or Rs 50 crore, whichever is lower &
- such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

Section 186 ; Loan & Investment by company.

No company

Shall Directly/ indirectly

- give any loan to any Person or other body corporate.
- give any guarantee or provide security in connection with a Loan to any other body corporate or person.
- acquire by way of subscription, purchase or otherwise the securities of any Body Corporate.

Exceeding 60% of its paid up capital, Free Reserve & security premium a/c.
OR
100% of its Free reserve & securities premium a/c

Which ever is higher

Upto below limit
- unanimous resolution
  - Board Meeting.

If exceeds the limits
- prior approval → passed S/R → G.M.

The company shall disclose to the Members

- Full particulars of the loan given.
- Investment made or guarantee given or security provided.
- Amount of loan utilised.

Investment in more than 2 layers of investment companies prohibited –
A company shall not make investment through not more than two layers of investment companies:
Provided that the provisions of this sub-section shall not affect,-

i. a company can acquire any other company outside India if such other company has investment subsidiaries beyond 2 layers as per the laws of such country.
ii. a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law .

Section - 186 (Second Chart)

- Approval of PFI. required if any term loan is subsisting → Not required if within Limit 60% / 100% → & if there is no default in repayment of loan instalment or payment of interest
- No loan given → at a rate of interest lower than prevailing year of 1 year, 3 year or 5 year or 10 year Govt security.
- No company shall give any loan or give any guarantee OR provide Security. → if default is made in repayment of deposit or interest there on before or after the commencement of this act.
- Every Company giving loan or give any guarantee or security → Shall keep a register [MBP-2] → @ Registered Office → open for inspection & extracts may be taken on payment of fees (Not exceeding Rs 10/page).

Contravention

- Company: Fine= 25000 → 5 Lacs
- Every office: I= 2 yr; Fine= 25000 → 1 lacs

Entries made within 7 days of making such loan.

Exemption:

→ to a loan made guarantee,security,

* by a banking Company or an
* insurance company or
* Housing Company or
* a Company engaged in the business of financing of Company or of providing infrastructure Facilities.

→ In the ordinary Course of business.

→ To any acquisition:

* Made by a NBFC → Principal business is acq. of Security
* Made by Co → Principal business is acq. of Security
* Share alloted u/s 62(i) (a) (Right Issue)

No need to pass Special Resolution

* A loan ,guarantee or security provided by a Holding Company to its Wholly owned Subsidiary company or a joint venture company.
* Acquisition of securities by holding of its wholly owned subs co.

Section 186 shall not apply to -

(a) a Government company engaged in defence production.

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG before making any loan or giving any guarantee or providing any security or making any investment under the section.

vide Notification F No 1/2/2014-CL.V dated 5th June 2015.

Section 188 - Related Party Transaction.

Transactions

Entered with the consent of the BOD → Board meeting → B/R

(a) Sale purchase or supply of any goods or material.

(b) Selling or otherwise disposing of, or buying property of any kind.

(c) leasing of property of any kind

(d) availing or rendring of any services.

(e) Appointment of Agent for purchase or Sale of goods, material services or property.

(f) Such Related Party, appointment to any officer or place of profit in the company, its Subs. Co. or Associate Co.

(g) Underwriting the subscription of any securities or derivatives thereof of the Company.

Prior Approval of Company by Ordinary Resolution required if Transaction value exceeds -

Exceeding: 10% of the annual turnover of the Co. (a & e)

Exceeding 10% of Net Worth (b & e)

Exceeding 10 % of Net Worth or Exceeding 10% of Turnover (c)

Or Rs 100 crore (which ever is less)

Exceeding 10% of turnover (d & e) or 50 crore (whichever is less)

at a monthly remuneration Exceeding Rs. 2.5 lacs.

Remuneration for Underwriting of securities exceeding 1% of the Net worth

In Case of wholly owned Subs. Company, the S.R. passed by the H. co. shall be sufficient for the purpose of entering into the tr. b/w wholly owned Subs. & H. Co.

* Shall be computed on the basis of the audited financial statement of the preceding F.Y.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

First and second proviso shall not apply to --

(a) a Govt company in respect of contracts or arrangements entered into by it with any other Government company;
(b) a Govt company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG before entering into such contract or arrangement.

vide Notification dated 5th June 2015.

Second proviso shall not apply to a private company vide Notification dated 5th June 2015.

Sec 188 (Second Chart)

Related Party Section 2 (76)

with referance to a company means

(i) a director or his relative.
(ii) a KMP or his relative.
(iii) a firm — Director / Manager / His Relative — is a partner
(iv) a Pvt Co. — Director or Manager — Member or Director
(v) a Public Co. → in which a director or manager is a director or hold along with his relatives
→ more than 2% of its paid up share Capital.
(vi) any body corporate → whose BOD ,MD, Manager → act in accordane with the advice directors or instruction of a director or manager.
(vii) any person under whose advice, directions or instructions a director or manager is customed to act (Except professional Director)
(viii) any Co. which is
- a holding , subsidiary or an associate of such company
- a subsidiary company of a Holding Company to which it is also a subsidiary

(ix) Such other person as may be prescribed.

Other Points:

→ If transaction entered into by the company in its ordinary Course of business on arm length price shall be out side the scope of the provision.

→ Office or place of profit:- means office or place.

- Is held by a director → receives from the company ANYTHING over & above the remuneration.
- other person → Individual / Firm / Pvt. Co. / Other body Corporate → Holding it receives from the co. anything by way of remuneration, salary,fees etc.

→ Related party transaction to be mentioned in board report.

→ Penalty for Contravention (For Director /other employess)
- Listed Co.
  - Imprisonment = 1 Year
  - Fine = 25000 → 5 lacs
- any other Co.
  - Rs. 25000 → 5 lacs

Effect of Contravention

Transction entered into by Director /any other employee without obtaining Board / GM Approval

- Ratified by Board/shareholders within 3 months from the date of Contract → Contract is valid
- Not Ratified →
  (a) Contract is voidable at the Board option
  (b) Company can claim indemnity of loss from defauting Directors & Directors having relationship with the party
  (c) Company can proceed against Director/ other employee to recover loss sustained by it.

Section 189 - Register of Contracts or Arrangements in which directors are Interested

Content of Register

- Contract or arrangement to which sec 188 apply
- Contract or arrangement disclosure gien u/s 184(2)

Exception of above section -

- for the sale or purchase or supply of goods ,material, if the value or cost thereof in any year does not exceed Rs 5 Lacs
- By Banking Companies for teh collection of bills in the ordinary course of business.

Place -	Registered office
Period of inspection -	Preserved Permanently
Inspection of register -	During Business hours
Copies/extract -	Any member - within 7 days-fees prescribed
Placed in the next BM -	Signed by all the director present
Placed in every AGM -	Open to every person entitled to attend the AGM

Default

Fine Rs 25000 on every director , for any default of these provision and rules.

**Section 189 shall apply to a Section 8 company only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees;, vide Notification dated 5th June 2015.

Disclosure required u/s 184(1)

Time limit - Within 30 days of his appointment

Section- 196
Appointment & Remuneration of M.P (M.D/ WTD/ Manager)

No Company shall appoint or employ → at time → a M.D & Manager.

→ No Company shall appoint or re-appoint any person as its MD/WTD/Manager

↓

For a term exceeding 5 years at a time.

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

No Company shall appoint or continue the employment of any person as MD/ WTD/Manager, Who:-

(a) is below the age of 21 year or has attained the age of 70 year*.
 * S/R passed for appointment of a person → age 70 year.

(b) is an undischarge insolvent or adjudged as insolvent.

(c) has at any time suspended payment to his creditors.

(d) Has at any time been convicted by a court of an offence & sentenced for a period of more then 6 months.

An appointment of M.D/WTD/Manager is not approved by the Co.
 → at a G.M → any act done by him Before such approval shall not deemed to be invalid.

Filling of return of Appointment
↓
of KMP
↓
within 60 days of the appointment
→ with the ROC in form no. MR-1.

Notification ,dated 5th June 2015
- Sub-section (4) and (5) shall not apply to a government company & Private Company.

Appointment of KMP

Section 203 + Rule 8

mandates (compulsory)

appointment of KMP

for a listed Company
&
every other public company having a paid up capital of Rs. 10 crore or more to appoint KMP [2(51)]

- MD/CEO/Manager
- WTD
- CS → Paid up share capital Rs 5 Crore or more (Rule 8A)

Rule 8

Rs. 10 crore or more

Above % , shall be exclusive of sitting fees.

Section 197: Over all Managerial Remuneration(M.R).

The maximum ceiling for payment of M.R by a public Company.

To its MD/WTD/ Manager= 11% of the Net profit of the company in that Financial Year (Section 198)

Company in G.M. may with the approval of C.G authorise the payment of remuneration exceed 11% subject to the provision of Sch.V

Remuneration to MD/WTD/Manager

To Any One

Shall not exceeds 5% of the Net Profit of the Company

If more than such Director 10% of Net Profit to all such Director & manager taken together.

Remuneration to other director

Payable to Director. Who are neither MD or WTD. shall not exceed 3% of the Net Profit of the company.

If there is MD or WTD or Maneger 1% of the Net Profit in any other case.

Second proviso shall apply to Nidhi company that the remuneration of a director who is neither MD nor WTD or manager for performing special services to the Nidhis specified in the AOA may be paid by way of monthly payment subject to the approval of the company in GM & also to the provisions of section 197

Provided that no approval of the company in general meeting shall be required where -