CA- Final (New)

Corporate and Economic Laws

Revision Notes for May, 2020

Part A: Company Law

- ✓ *Covers entire applicable Company Law Syllabus*
- ✓ *Ideal for exam time revision*
- ✓ *No lengthy explanations or examples*
- ✓ *Updated with all relevant amendments*
- ✓ *Print Friendly*

2nd Edition

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*These notes are best compatible to be read in Adobe Acrobat Reader, please visit the following link to download it: www.adobe.com/products/acrobat/readstep2.html

Important Instructions:

1. *These notes contain all exam relevant topics applicable for Part A (Company Law) of CA-Final (New) Paper 4: Corporate and Economic Laws for May, 2020 Exams (NOTES FOR PART B & C i.e. SECURITIES LAWS AND ECONOMIC LAWS ARE RELEASED SEPERATELY). Therefore* ***everything in these notes is part of syllabus for May, 2020 Exams*** *and nothing is to be excluded anyway unless ICAI specifically excludes any topic by way of Announcement/Notification or in RTP released after the Notes Release Date.*

2. These notes are meant for REVISION only *and therefore suggested to be referred by only those who have either read and understand the provisions of Company Law in detail from ICAI Study Material or any other Study Material/Classes. (The reason for same is given in point 4 below)*

3. *These notes are prepared with intention to help students on the paper day for complete revision of Company law syllabus in around 1 day.* ***There is no need to do MCQs separately*** *as they are also from same syllabus.*
At least 2 readings *of these notes is* ***suggested, 1st before beginning of exams (in which student may put markings in these notes as per his/her convenience)*** *and 2nd in days just before the Paper.*

4. *Interpretation (i.e. Analysis) of most provision has not been included in these notes as the same would have defeated the purpose of these notes making them lengthy and difficult to cover in entirety.* ***However, necessary effects such as underlining or making the font Bold/Coloured have been made at appropriate places for easy interpretation and highlighting importance.*** ***(Light coloured text may be skipped in last day revision)***

5. ALL AMENDMENTS COVERED

These notes are fully updated as per the amended relevant provisions of Company Law effective on ***31/10/2019*** *which is cut-off date for May, 2020 Exams.* ***Font of recent amendments has been made in Italics at relevant places****. However, since these notes are released before release of RTP for May, 2020, going through RTP is recommended for any further updates (incl. Exclusion/Inclusion) from ICAI. RTP may be accessed at https://www.icai.org/post.html?post_id=14473 .*

6. Whether all "Company Rules" covered?
All ***relevant Rules/Regulations/Schedules/Case Laws/Circulars*** *have been* ***covered*** *in these notes to the extent made part of syllabus by BOS, ICAI and most of them are given with relevant section(s). YOU NEED NOT REFER ANY THING OTHER THAN THESE NOTES FOR COMPANY LAW in Paper 4 except RTP as mentioned on Point 5.*

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7. What if there is any ERROR in any part of these notes?
Although due care has been taken while preparing these notes, in spite of this, if any error (typographical or otherwise) is noticed by you, then you may bring the same into my notice at below mentioned feedback link so that the same can be taken care of in next edition.
Note*: These Notes are part of* ***free self study resources*** *and can be freely shared by and among CA- Final students but with no modification(s) of any kind.*

Disclaimer: *In case of any inadvertent error in notes, students themselves will be responsible for referring to the correct provision of Law and the author of these notes shall not be responsible for any loss, if any, incurred.*

You may give your valuable Feedback including suggestions for these notes at https://forms.gle/eA3XD4n5QoCoA5EA9

CHAPTER XI of Companies Act, 2013
Appointment and Qualification of Directors

Quick Intro: This chapter deals with the statutory requirements related to Directors in any company including no. of minimum/maximum director, types of director(s), process of appointment/resignation/retirement of director(s), their powers, qualifications, duties and other allied matters. This chapter is normally expected to have high weight age in terms of marks in exams and in this way is one of very important chapters.

Section 149 Company to have BOD (Board of Directors)

149 (1) Every company **shall** have a BOD consisting of **individuals** as directors and shall have—

(a) a **minimum** number of
3 directors in the case of a **public** company,
2 directors in the case of a **private** company, and
1 director in the case of a **OPC (One Person Company)**; and

(b) a **maximum of 15** directors

Provided that a company **may appoint more than 15 directors** after passing a **SR (Special Resolution)**.

Provided further that such class or classes of **companies** as may be **prescribed shall have at least 1 woman director {See Rule 3 on page 19 for Prescribed companies].**

(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

(3) **Every** company shall have **at least 1 director who stays** in India **for** a total period of **not less than 182 days during the FY (Financial Year):**

Provided that in case of a **newly incorporated company** the **requirement** under this sub-section **shall apply proportionately** at the end of the FY in which it is incorporated.

(4) Every **listed public company** shall have at least **1/3rd of the total number of directors** as independent directors **and** the **CG may prescribe** the minimum number of independent directors in case of any class or classes of public companies {**See Rule 4 on Page 20**}.

Explanation.—For the purposes of this sub-section, any fraction contained in such 1/3rd number shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

149(6) An **independent director** in relation to a company, **means** a director **other than a MD or a whole-time director or a nominee director**,—

(**a**) **who**, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) **who** is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii)**who** is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10 percent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the 2 immediately preceding FYs or during the current FY;

d) none of whose relatives—
(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the 2 immediately preceding FYs or during the current FY:
Provided that the **relative may hold security** or **interest** in the company of face value **not exceeding ₹ 50 Lakh or 2 per cent. of the paid-up capital** of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed {No higher amount prescribed yet} ;
(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed {₹ 50 Lakh prescribed} during the **two** immediately **preceding** FYs **or during** the current FY;
(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed {₹ 50 Lakh prescribed} during the two immediately preceding FYs or during the current FY; or
(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to 2 per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three FYs immediately preceding the FY in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three FYs.
(ii) is or has been an employee or proprietor or a partner, in any of the three FYs immediately preceding the FY in which he is proposed to be appointed, of—
(A) a firm of auditors or CS in practice or cost auditors of the company or its holding, subsidiary or associate company; or
(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10 per cent. or more of the gross turnover of such firm;
(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives **25 per cent** or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company **or** that holds **two** per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed{**See Rule 5**}.

(7) **Every independent director shall at the first meeting** of the Board in which he participates as a director and **thereafter at the first meeting of the Board in every FY or whenever there is any change** in the circumstances which may affect his status as an independent director, **give a declaration that he meets the criteria of** independence as provided in **sub-section (6)**.

Explanation.—For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an **independent director shall not be entitled to any stock option** and **may receive** remuneration by way of **fee** provided under sub-section (5) of section 197, **reimbursement** of expenses for participation in the Board and other meetings **and profit related commission** as may be **approved** by the members.

(10) Subject to the provisions of section 152, an **independent director shall hold office for a term up to 5 consecutive years** on the Board of a company, **but shall be eligible for reappointment** on passing of a **SR** by the company **and disclosure** of such appointment **in the Board's report**.

(11) Notwithstanding anything contained in sub-section (10), **no independent director shall hold office for more than two consecutive terms**, **but** such independent director **shall be eligible for appointment after** the expiration of **three years** of ceasing to become an independent director:
Provided that an independent director **shall not**, **during the said period of 3 years**, **be appointed in or be associated** with the company in **any other capacity**, either directly or indirectly.

Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—
(i) an independent director;&
(ii) a non-executive director not being promoter or key managerial personnel, **shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.**

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of **retirement of directors by rotation shall not be applicable to appointment of independent directors**.

Summary of Notifications issued for Section 149:	
Section 8 Companies	Followings shall **not** apply: Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12)(i), (13) of Section 149 First proviso to Sec 149(1) **Major Interpretation: Sec 8 Co. neither need Independent Director (ID) nor maximum limit of Directors applicable on such companies.**
Govt. Companies	Followings shall **not apply**: Section 149(1)(b), 149(6)(c) First proviso to Sec 149(1) **Substitution** In Sec 149(6)(a), for the word "Board", the words "Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG" shall be substituted

Specified IFSC Public Companies	Following shall not apply Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12)(i), (13) of Section 149 Clause (b) and First proviso to Sec 149(1) **Insertion** In Sec 149(3), the following proviso shall be inserted, namely:- "Provided that this sub-section shall apply to a Specified IFSC public company in respect of FYs other than the first FY from the date of its incorporation."
Specified IFSC Private Companies	**Insertion** In Sec 149(3): the following proviso shall be inserted, namely:- "Provided that this sub-section shall apply to a Specified IFSC private company in respect of FYs other than the first FY from the date of its incorporation."

Section 150 Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors (Not applicable on Sec 8 Companies)

150. (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, **as may be notified by the CG**, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors:

Provided that **responsibility of exercising due diligence** before selecting a person from the data bank referred to above, as an independent director **shall lie with the company** making such appointment.

*{CG has on 22/10/2019 notified **Indian Institute of Corporate Affairs at Manesar (Haryana)** as an institute to create and maintain a data bank u/s 150(1). This notification however shall come into force from 31/12/2019 as per the provision therein i.e after cut off date for May, 2020 Exams, hence may be **ignored**}*

(2) The **appointment of independent director shall be approved by the company in general meeting** as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed **{See Rule 6 on Page 21}.**

(4) The CG may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Section 151 Appointment of Director Elected by Small Shareholder

151. A **listed company may** have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed **(See Rule 7 on Page 19**}.

Explanation.—For the purposes of this section "**small shareholders" means** a **shareholder holding** shares of **nominal value** of **not more than ₹ 25000/-** or such other sum as may be prescribed{other sum not prescribed yet}.

Section 152 Appointment of Directors

152. (1) **Where no provision is made in the articles** of a company for the appointment of the first director, **the subscribers to the memorandum who are <u>individuals</u> shall be deemed to be the first directors** of the company **until** the directors are duly appointed **and in case of a One Person Company** an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

152(2) **Save as otherwise expressly provided** in this Act, **every director shall be appointed by the company in general meeting**.

152(3) **No person shall be appointed as a director of a company unless he has been allotted the DIN under section 154 or any other number as may be prescribed under section 153.**

152(4) **Every person proposed** to be appointed as a director by the company in general meeting or otherwise, **shall furnish his DIN or such other number** as may be prescribed under section 153 **and a declaration that he is not disqualified** to become a director under this Act.

(5) A person appointed as a director **shall** not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within 30 days (60 days for IFSC Public Co) of his appointment in such manner as may be prescribed. **{See Rule 8}**
Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

(6) (a) **Unless the articles provide** for the retirement of all directors at every AGM, not less than **two-thirds** of the total number of directors of a **PUBLIC** company shall—
(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first AGM of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent AGM, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the AGM at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.
Explanation.—For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

152(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) **If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting**, unless—

(**i**) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and **lost**;
(**ii**) the retiring director has, by a notice in writing addressed to the company or its BOD, expressed his unwillingness to be so re-appointed;
(**iii**) he is not qualified or is disqualified for appointment;
(**iv**) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
(**v**) section 162 is applicable to the case.

Explanation.—For the purposes of this section and section 160, the expression "retiring director" means a director retiring by rotation.

[**Interpretation Note**:

- Section 152(7)(b) is the only provision which deals with **Automatic Re-appointment** of Director and specifically specifies **5 cases** when such Automatic Reappointment will **NOT** take place.
- In section 152(7)(b)(i) the expression "Resolution **Put and Lost**" means the resolution proposing someone to be appointed as director was placed before the meeting for voting but was **FAILED** i.e. votes in favour were found to be less than votes in against for such resolution.]

Summary of Notifications issued for Section 152:

- In case of section 8 company - proviso to Section 152 (5) shall not apply.
- **In case of Government company - Section 152 (5) shall not apply, where appointment of such director is done by the CG or SG.**
- Sub-section (6) and (7) of Section 152 shall not apply to
  (a) a Government company, which is not a listed company, in which not less than 51 per cent. of paid up share capital is held by the CG, or by any SG or Governments or by the CG and one or more SGs;
  (b) a subsidiary of a Government company, referred to in (a) above
  (c) Specified IFSC Public Company

DIN (Director Identification Number)

Sec 153 Application for Allotment of DIN

153. Every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the CG in such form and manner and along with such fees as may be prescribed.

Provided that the CG may prescribe any identification number which shall be treated as DIN for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.

Sec 154 Allotment of DIN

154. The CG shall, within **one month** from the receipt of the application under section 153, allot a DIN to an applicant in such manner as may be prescribed.

Sec 155 Prohibition to Obtain More than One DIN

155. No individual, who has already been allotted a DIN u/s 154, shall apply for, obtain or possess another DIN

Sec 156 Director to Intimate DIN

156. Every existing director shall, within one month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director.

Sec 157 Company to Inform DIN to Registrar

157. (1) Every company shall, within fifteen days of the receipt of intimation u/s 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the CG with such fees as may be prescribed or with such additional fees as may be prescribed and every such intimation shall be furnished in such form and manner as may be prescribed.

(2) *If any **company** fails to furnish the DIN under sub-section (1), such company shall be liable to a penalty of ₹25,000/- and in case of continuing failure, with further penalty of ₹ 100/- for each day after the first during which such failure continues, subject to a maximum of ₹ 1 Lakh, **and every officer** of the company who is in default shall be liable to a penalty of not less than ₹25,000/- and in case of continuing failure, with further penalty of ₹ 100/- for each day after the first during which such failure continues, subject to a maximum of ₹ 1 Lakh.*

Section 158 Obligation to Indicate DIN

158. Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Secton 159 Penalty for Default of Certain Provisions

159. *If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to ₹ 50,000/- and where the default is a continuing one, with a further penalty which may extend to ₹ 500/- for each day after the first during which such default continues.*

Note: See **Rule 9 to 12B** of Companies (Appointment and Qualification of Directors) Rules, 2014 on coming pages for procedural aspects related to DIN.

Section 160 Right of Persons Other than Retiring Directors to Stand for Directorship

160. (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of **₹ 1 lakh** or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25 per cent of total valid votes cast either on show of hands or on poll on such resolution. Provided that **requirements of deposit of amount shall not apply in case** of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the BOD of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.
(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.
Summary of Notifications issued for Sec 160: • Sec 160 shall **not apply to private** company • Section 160 shall not apply to Sec 8 companies whose articles provide for election of directors by ballot. • Section 160 shall not apply to :- 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 SGs; a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company. • Section 160 shall apply as per the articles framed by the company in case of Specified IFSC Company. • In case of **nidhi company**, in sub-section (1) of Section 160, for the words "**₹ 1 lakh**", the words "₹ 10,000" shall be substituted. **Clarification thru MCA Circular 38/2014:** In case of **Section 8 Company**, if the depositor fails to secure more than 25 per cent of the total valid votes as per section 160, the **BOD** of a said company **is to decide** as to whether the deposit made by or on behalf of the person failing to secure more than 25 percent of the valid votes is **to be forfeited or refunded.**

Section 161 Appointment of Additional Director, Alternate Director and Nominee Director

161. (1) The articles of a company **may** confer on its BOD the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an **ADDITIONAL DIRECTOR** at any time who shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

(2) The **BOD** of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, **appoint** a person, **not being a person** holding any **ALTERNATE directorship** for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of **not less than 3 months** from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the **automatic re-appointment** of retiring directors in default of another appointment **shall apply to the original, and not to the alternate director**.

[**Interpretation Note:**

- the expression "**permissible**" in 2nd proviso above not only means the period for which the original director was appointed but also considers tenure subject to the provisions of 'Vacation of Office of Director u/s 167' applicable to the original director - whichever becomes applicable earlier.
- Since the 'Alternate Director' is appointed by BOD and not by Director going abroad, **'Alternate Director' is in no way a 'proxy' or 'agent' of Original Director**.
- **Both** the Alternate Director and Original Director **can attend same Board meeting** as per provisions of Companies Act. **e.g.:** Original Director attend meeting through Video Conferencing and Alternate Director attend meeting in person by complying necessary provisions related to Board Meetings]

(3) Subject to the articles of a company, the Board may appoint any person as a director **NOMINATED** by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or the SG by virtue of its shareholding in a Government company.

(4) If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting **casual vacancy** may, in default of and subject to any regulations in the articles of the company, **be filled by the BOD at a meeting** of the Board which shall be subsequently approved by members in the immediate next general meeting.
Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Notifications Issued for Section 161:
In Case of Specified **IFSC** (Public/Private) Companies, in Section 161(3), the following proviso shall be inserted, namely:-
"Provided that in case of a Specified IFSC public/private company, the Board may appoint, any person nominated by any institution or company or body corporate as a director in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or the SG by virtue of its shareholding in a Government company."

Section 162 Appointment of Directors to be Voted Individually (Important)

162. (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
(2) A resolution moved in contravention of sub-section (1) **shall be void**, whether or not any objection was taken when it was moved.
(3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.
Exception: Section 162 shall **not apply to Private Companies, IFSC Public Companies and following Government Companies**: (a) 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 SGs; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.

Section 163 Option to Adopt Principle of Proportional Representation for Appointment of Directors

163. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every 3 years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.
Exception: Section 163 shall **not apply** to :- (a) 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 SGs; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.

Section 164 Disqualifications for Appointment of Director

164. (1) A person **shall not be eligible for appointment** as a director of a company, if —

(a) he is of **unsound mind** and stands so **declared by a competent court**;

(b) he is an **undischarged insolvent**;

(c) he has **applied to be adjudicated as an insolvent** and his application is pending;

(d) he **has** been **convicted** by a **court** of any **offence**, whether involving **moral turpitude <u>or otherwise</u>**, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence:
Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
[“or otherwise” has been defined in Company rules specifically, so refer same in Rule 2 on coming pages]

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152;

(i) ***he has not complied with the provisions of sub-section (1) of section 165.***

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three FYs; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

{Exception Note: Section 164(2) shall not apply to Govt. Co. as per Notification issued by CG}

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Section 165 Number of Directorships

165 (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I — For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Explanation II.—For reckoning the limit of directorships of 20 companies, the directorship in a dormant company shall **not** be included.

{Exception Note: Sec 165(1) shall not apply on Section 8 Company as per Notification issued by CG }

165(2) Subject to the provisions of sub-section (1), the members of a company may, by **SR**, specify any lesser number of companies in which a director of the company may act as directors.

(3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other remaining companies; and

(c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

(4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

(5) No such person shall act as director in more than the specified number of companies,—

(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or

(b) after the expiry of one year from the commencement of this Act,

whichever is earlier.

(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall liable to a penalty of ₹ 5,000/- for each day after the first during which such contravention continues.

Sec 166 Duties of Directors

166. (1) Subject to the provisions of this Act, a director of a company **shall act in accordance with** the **articles** of the company.
(2) A director of a company shall act in **good faith** in order to **promote** the **objects** of the company for the benefit of its members as a whole, and in the **best interests of the company**, its employees, the shareholders, the community and for the protection of environment.
(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall **exercise independent judgment**.
(4) A director of a company **shall not involve in a situation in which** he may have a direct or indirect **interest** that **conflicts**, or possibly may conflict, **with the interest of the company**.
(5) A director of a company **shall not achieve or attempt to achieve any undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
(6) A director of a company **shall not assign his office** and any assignment so made shall be void.
(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs.

Section 167 Vacation of Office of Director

167. (1) The office of a director **shall** become **vacant** in case—
(a) he **incurs any of the disqualifications** specified in section 164;
Provided that where he incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

(b) he **absents himself from all the meetings** of the BOD held during a period of 12 months with or without seeking leave of absence of the Board;

(c) he acts **in contravention of the provisions of section 184** relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he **fails to disclose his interest** in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he **becomes disqualified by an order of a court** or the Tribunal;

(f) he is **convicted by a court of any offence**, whether involving moral turpitude **or otherwise** and sentenced in respect thereof to **imprisonment** for **not less than six months**:
Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-
(i) for thirty days from the date of conviction or order of disqualification;
(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(g) he is **removed in pursuance of the provisions** of this Act;

(h) he, **having been appointed a director by virtue of his holding any office** or other employment in the holding, subsidiary or associate company, **ceases to hold such office** or other employment **in that company**.

167(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakh, or with both.
(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.
(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

Sec 168 Resignation of Director

168. (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company **shall** intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company: Provided that a director **may** also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation in such manner as may be prescribed.
(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later: Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Sec 169 Removal of Directors

169. (1) A company may**, by OR, remove a director, not being a director appointed by the Tribunal u/s 242, before the expiry of the period** of his office after giving him a reasonable opportunity of being heard: Provided that an <u>independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a SR and after giving him a reasonable opportunity of being heard</u>. Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.
(2) A **special notice** shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

169(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—
(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the BOD.

(8) Nothing in this section shall be taken—
(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
(b) as derogating from any power to remove a director under other provisions of this Act.

Sec 170 Register of Directors and key Managerial Personnel and their Shareholding

170. (1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.

Exceptions and Modifications notified:

- Section 170 shall not apply to Government Company in which the **entire** share capital is held by the CG, or by any SG or Governments or by the CG or by one or more SGs.

Sec 171 Members' Right to Inspect

171. (1) The register kept under sub-section (1) of section 170,— (a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them **free** of cost within 30 days; and (b) shall also be kept open for inspection at every AGM of the company and shall be made accessible to any person attending the meeting.
(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.
Exception Notified: Section 171 shall not apply to Government Company in which the **entire** share capital is held by the CG, or by any SG or Governments or by the CG or by one or more SGs

Sec 172 Punishment 172. If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000/- but which may extend to ₹ 5 Lakhs.

Companies (Appointment and Qualification of Directors) Rules, 2014

Rule 2(1)(k) For the purposes of clause (d) of sub-section (1) of section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" **means** any offence in respect of which he has been convicted by a Court under the Act or under the Companies Act, 1956.

Rule 3: Woman Director on the Board.

The following class of companies shall appoint **at least** one woman director-
(**i**) every **listed** company;

(**ii**) every other **public** company having -
a) paid–up share capital of ₹ 100 crore or more; or
(b) turnover of ₹ 300 crore or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of 6 months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is **later**.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

<u>Rule 4</u> Number of Independent Directors (Very Important)

(1)The following class or classes of companies shall have at **least two directors as independent directors** -
(i) the **Public** Companies having paid up share capital of ₹ 10 crore or more; or
(ii) the **Public** Companies having turnover of ₹ 100 crore or more; or
(iii) the **Public** Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹50 crore:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfill any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:
Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

(2) The **following** classes of **unlisted public company shall not be covered** under sub-rule (1), namely:-.
(a) a joint venture;
(b) a wholly owned subsidiary; and
(c) a dormant company as defined u/s 455 of the Act.

[**MCA Circular**: "joint venture" would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.]

Rule 5 Qualifications of Independent Director

(1) An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-
(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,
for an amount of ₹ **50 lakhs**, at any time during the two immediately preceding FYs or during the current FY.

Rule 6 Creation and Maintenance of Databank of Persons Offering to Become Independent Directors

(1) Any body, institute or association (hereinafter to be referred as "the agency"), which has been authorised in this behalf by the CG shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the MCA or on any other website as may be approved or notified by the CG. [*Indian Institute of Corporate Affairs at Manesar (Haryana) has been notified u/s 150(1) for this purpose w.e.f. 31/12/2019]*

(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director-

(a) DIN (Director Identification Number);
(b) the name and surname in full;
(c) [Omitted]
(d) the father's name
(e) the date of Birth;
(f) gender;
(g) the nationality;
(h) the occupation;
(i) full Address with PIN Code (present and permanent);
(j) phone number;
(k) e-mail id;
(l) the educational and professional qualifications;
(m) experience or expertise, if any;
(n) any legal proceedings initiated or pending against such person;
(o) the list of limited liability partnerships in which he is or was a designated partner along with –
 (i) the name of the limited liability partnership;
 (ii) the nature of industry; and
 (iii) the duration- with dates;
(p) the list of companies in which he is or was director along with -
 (i) the name of the company;
 (ii) the nature of industry;
 (iii) the nature of directorship – Executive or Non-executive or MD or Independent Director or Nominee Director; and
 (iv) duration – with dates.

(3) A disclaimer shall be conspicuously displayed on the website hosting the databank that a company must carry out its own due diligence before appointment of any person as an independent director and "the agency" maintaining the databank or the CG shall not be held responsible for the accuracy of information or lack of suitability of the person whose particulars form part of the databank.

(4) Any person who desires to get his name included in the data bank of IDs shall make an application to "the agency"

(5) The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.

(6) Any person who has applied for inclusion of his name in the data bank of independent directors or any person whose name appears in the data bank , shall intimate to the agency about any changes in his particulars within fifteen days of such change.

(7) The databank posted on the website shall –
(a) be accessible at the specified website;
(b) be substantially identical to the physical version of the data bank;
(c) be searchable on the parameters specified in sub-rule (2);
(d) be presented in a format or formats convenient for both printing and viewing online; and
(e) contain a link to obtain the software required to view or print the particulars free of charge.

[**Amendment Note**: **Rule 6** has been amended by Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 notified dt. 22/10/2019, but the said amendment shall come into force from 01/12/2019 i.e after May, 2020 Exams cutoff date, hence said amendment has been ignored]

Rule 7 Small Shareholders' Director [Important] –read with Section 151

(1) A **listed company**, **may** upon notice of **not less than one thousand small shareholders** or **1/10th of the total number of such shareholders**, whichever is **lower**, have a small shareholders' director elected by the small shareholders:

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director:

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -
(a) his DIN;
(b) that he is not disqualified to become a director under the Act; and
(c) his consent to act as a director of the company

(4) Such director shall be considered as an independent director subject to , his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with section 149(7) of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-
(a) such director shall not be liable to retire by rotation;
(b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

(6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

(7) **A person appointed as small shareholders' director shall vacate the office if** -
- (a) the director incurs any of the disqualifications specified in section 164;
- (b) the office of the director becomes vacant in pursuance of section 167;
- (c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.

(8) No person shall hold the position of small shareholders' director in more than two companies at the same time:

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

(9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

Rule 8 Consent to Act as Director.

Every person who has been appointed to hold the office of a director **shall** on or before the appointment furnish to the company a consent in writing to act as such in **Form DIR-2:**

Provided that the company **shall**, within thirty days of the appointment of a director, file such consent with the Registrar in Form **DIR-12** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Rule 9 Application for allotment of DIN before Appointment in an existing company (Important)

(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the CG for allotment of a DIN along with such fees as provided under the companies (Registration offices and Fees) Rules, 2014. Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (spice) and DIN may be allotted to maximum 3 proposed directors through Form INC-32 (spice).

(2) The CG shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the MCA.

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents **electronically**-
(i) photograph;
(ii) proof of identity;
(iii) proof of residence;
(iiia) board resolution proposing his appointment as director in an existing company
(iv) [Omitted]
(v) Specimen signature duly verified.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital signature certificate and shall be verified digitally by a CS in full time employment of the company or by the MD or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.
[Earlier CA was also entitled to verify here, but has been excluded now by amendment]

(4) In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.

Rule 10 Allotment of DIN (Important)

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically.

(2) After generation of application number, the CG shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the CG, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:Provided that the CG shall -
(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All DINs allotted to individual(s) by the CG before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Rule 10A: Intimation of DIN to Company.-

(1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director as per Form DIR-3B.

(2) The intimation by the company of DIN of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.

Rule 11 Cancellation or Surrender or Deactivation of DIN

(1) The CG or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified in Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the CG may deactivate such DIN:

Provided that before deactivation of any DIN in such case, the CG shall verify e-records.

Explanation.-

For the purposes of clause (b) -
(i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;
(ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the CG.

(2) The CG or Regional Director (Northern Region), or any officer authorized by the CG or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with rule 12A:

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC ***or the web service DIR-3-KYC-WEB as the case may be*** is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

12 Intimation of Changes in Particulars Specified in DIN Application

(1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the CG within a period of 30 days of such change(s) in Form DIR-6 in the following manner, namely;-
(i) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically;
(ii) the form shall be digitally signed by a CA in practice or a CS in practice or a cost accountant in practice;
(iii) the applicant shall submit the Form DIR-6;

(2) The CG, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

Rule 12A Directors KYC (Imp.)

Every individual who holds a DIN as on 31st March of a FY as per these rules shall, submit e-form DIR-3-KYC for the said financial year to the CG on or before 30th, September of immediate next FY

Provided that every individual who has already been allotted a DIN as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October, 2018.

Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous FY, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent FY it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only:

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Note: For the FY ending on 31st March 2019, the individual shall submit e-form DIR-3 KYC or web form DIR-3 KYC-WEB, as the case may be, on or before the 14th October, 2019.

Rule 12B Directors of company required to file e-form ACTIVE.- (NEW)

(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, DIN allotted to its existing directors, shall be marked as "Director of ACTIVE non-compliant company".

(2) Where the DIN of a director has been marked as "Director of ACTIVE non-compliant company", such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as "Director of ACTIVE compliant company"

Rule 13 Notice of Candidature of a Person for Directorship

The company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-

(1) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Rule 14 Disqualification of Directors Sub-section (2) of Section 164

(1) Every director **shall inform to the company** concerned about his disqualification under sub-section (2) of section 164, if any, in Form DIR-8 before he is appointed or re-appointed.

(2) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form DIR-9, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant FYs.

(3) When a company fails to file the Form DIR-9 within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.

(4) Upon receipt of the Form DIR-9 under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection.

(5) Any application for removal of disqualification of directors shall be made in Form DIR-10.

Rule 15 Notice of Resignation of Director

The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and posts the information on its website, if any.

Rule 16 Copy of Resignation of Director to be Forwarded by him
Where a director resigns from his office, he may within a period of 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case a company has already filed Form **DIR-12** with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practicing CA or cost accountant in practice or CS in practice or any other resident director of the company to sign Form **DIR-11** and file the same on his behalf intimating the reasons for the resignation.

Rule 17 Register of Directors and Key Managerial Personnel

(1) **Every company <u>shall</u> keep at its registered office a register of its <u>directors and key managerial personnel</u>** containing the following particulars, namely:-
(a) **DIN** (**optional** for key managerial personnel);
(b) present name and surname in full;
(c) any former name or surname in full;
(d) father's name, mother's name and spouse's name(if married) and surnames in full;(e) date of birth;
(f) residential address (present as well as permanent);
(g) nationality (including the nationality of origin, if different);
(h) occupation;
(i) date of the board resolution in which the appointment was made;
(j) date of appointment and reappointment in the company;
(k) date of cessation of office and reasons therefor;
(l) office of director or key managerial personnel held or relinquished in any other body corporate;
(m) membership number of the ICSI in case of CS, if applicable; and
(n) **PAN** (**mandatory** for key managerial personnel if not having DIN);

(2) **In addition** to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-
(a) the number, description and nominal value of securities;
(b) the date of acquisition and the price or other consideration paid;
(c) date of disposal and price and other consideration received;
(d) cumulative balance and number of securities held after each transaction;
(e) mode of acquisition of securities ;
(f) mode of holding – physical or in dematerialized form; and
(g) whether securities have been pledged or any encumbrance has been created on the securities.

Rule 18 Return Containing the Particulars of Directors and the Key Managerial Personnel
A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form **DIR-12** along with such fee as may be provided in the Companies (Registration Offices and Fees) Rules, 2014 within **30 days** of such appointment or change, as the case may be.

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CHAPTER XII of Companies Act, 2013
(MEETINGS OF BOARD AND ITS POWERS)

Quick Intro: This chapter deals with the provisions related to Board Meetings, method of conduct of said meetings, their Quorum, powers and duties of BOD and allied matters**.** It also covers various provisions related to Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and provisions related to advancing loans to director or other related parties.

Section 173 Meetings of Board

173. (1) Every company shall hold **the 1st meeting of the BOD within 30 days of the date of its incorporation** and thereafter hold a **minimum number of 4 meetings** of its BOD **every year** in such a manner that not more than 120 days shall intervene between 2 consecutive meetings of the Board: Provided that the CG may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.
(2) The **participation** of directors in a meeting of the Board **may be either in person or through video conferencing or other audio visual means**, as may be prescribed, which are **capable of recording and recognising the participation** of the directors and of recording and storing the proceedings of such meetings **along with date and time**: Provided that the **CG may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.** Provided further that **where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso**.
(3) A meeting of the Board shall be **called by giving not less than 7 days' notice in writing to every director at his address** registered with the company and such notice **shall be sent by hand delivery or by post or by electronic means**: Provided that a meeting of the Board **may be called at shorter notice to transact urgent business subject to the condition that at least one independent director**, if any, shall be **present** at the meeting: Provided further that in **case of absence of independent directors from such a meeting** of the Board, **decisions taken** at such a meeting **shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director**, if any. **[Interpretation Note: In case Alternate director is appointed** by BOD, then Notice of Board Meeting is required to be sent to **both** the Original director and Alternate Director, since Section 173(3) contemplates sending of notice to 'every' director.]

173(4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ₹ 25,000/-.
(5) A **OPC, small company, dormant company and a private company** **(if such private company is a start-up)** shall be deemed to have complied with the provisions of this section if **at least one meeting of the BOD has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days**: Provided that nothing contained in this sub-section and in section 174 shall apply to OPC in which there is only one director on its BOD.
Summary of Notifications issued: • In case of **Section 8 companies**, Section 173(1) shall apply only to the extent that the BOD, of such Companies shall hold at least one meeting within every 6 calendar months. • In sub-section (1) of Section 173, after the proviso, the following proviso shall be inserted, namely:- "Provided further that a **Specified IFSC public company and Specified IFSC Private Company** shall hold the first meeting of the BOD within **60 days** of its incorporation and thereafter hold atleast one meeting of the BOD in each half of a calendar year."

Section 174 Quorum for Meetings of Board

174.(1) The quorum for a meeting of the BOD of a company shall be **1/3rd** of its total strength or **two directors**, whichever is higher, and the <u>participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum</u> under this sub-section.
(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
(3) **Where** at any time the **number of interested directors exceeds or is equal to 2/3rd of the total strength** of the BOD, the **number of directors who are not interested directors and present** at the meeting, **being not less than two, shall be the quorum** during such time. **Explanation**.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.
(4) Where a **meeting of the Board could not be held for want of quorum**, then, **unless the articles** of the company **otherwise provide**, the **meeting shall automatically stand adjourned** to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place. **Explanation**.—For the purposes of this section,— (i) any fraction of a number shall be rounded off as one; (ii) "total strength" shall not include directors whose places are vacant.

Summary of Notifications issued for Section 174:

In case of **Private Company** - Sub-Section (3) of Section 174 shall apply with the **exception** that the interested **director may also be counted towards quorum** in such meeting **after disclosure** of his interest pursuant to section 184.
In case of **section 8 company**, Section 174(1) shall be read as:
The quorum for a meeting of the BOD of a company **shall either 8 members or 25 percent, of its total strength whichever is less**, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section:
Provided that the quorum shall not be less than two members.
In case of **Specified IFSC public as well as private Company**, Sub-section (3) of section 174 shall apply with the **exception** that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.

Section 175 Passing of Resolution by Circulation

175. (1) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, **unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee**, as the case may be, **at their addresses registered** with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed **and has been approved by a majority of the directors or members, who are entitled to vote** on the resolution:

Provided that, **where not less than 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting** of the Board.

(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Section 176 Defects in Appointment of Directors not to Invalidate Actions Taken

176. No act done by a person as a director shall be deemed to be invalid, **notwithstanding that it was subsequently noticed that his appointment was invalid** by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company:

Provided that **nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.**

Section 177: Audit Committee

177. (1) The BOD of **every listed public company** and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a **minimum of 3 directors with independent directors forming a majority**:
Provided that **majority of members** of Audit Committee including its Chairperson shall be persons **with ability to read and understand, the financial statement**.

177(3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

(4) Every Audit Committee **shall act in accordance with the terms of reference specified in writing by the Board** which shall, inter alia, **include**,—
(i) the recommendation for appointment, remuneration and **terms of appointment of auditors** of the company;
(ii) review and monitor the **auditor's independence and performance**, and effectiveness of audit process;
(iii) **examination** of the **financial statement and the auditors' report** thereon;
(iv) **approval** or any subsequent modification of **transactions** of the company **with related parties**;
Provided that the Audit Committee **may make omnibus approval for related party transactions** proposed to be entered into by the company subject to such conditions as may be prescribed;
Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:
Provided also that in case any **transaction involving any amount not exceeding 1 crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss** incurred by it:
Provided also that the **provisions of this clause shall not apply to a transaction**, **other than** a transaction **referred to in section 188**, **between a holding company and its wholly owned subsidiary company**.
(v) **Scrutiny** of **inter-corporate loans and investments**;
(vi) **valuation** of undertakings or **assets** of the company, **wherever** it is **necessary**;
(vii) **evaluation** of **internal financial controls** and **risk management systems**;
(viii) **monitoring** the **end use of funds raised** through public offers and related matters.
[**Interpretation Note:** Audit Committee is subordinate to BOD and accordingly latter is not bound by former's recommendations.]

(5) The Audit Committee **may call for the comments of the auditors** about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and **may also discuss any related issues with the internal and statutory auditors and the management** of the company.

(6) The Audit Committee **shall have authority to investigate into any matter in relation to the items specified** in sub-section (4) or referred to it **by the Board** and for this purpose **shall have power to obtain professional advice from external sources and have full access to information** contained in the records of the company.

(7) The **auditors** of a company and the **KMP shall have a right to be heard** in the meetings of the Audit Committee when it considers the auditor's report **but shall not have the right to vote**.

(8) The **Board's report** under sub-section (3) of section 134 **shall disclose the composition of an Audit Committee** and **where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report** along **with** the **reasons** there for.

177(9) Every **listed company** or such class or classes of companies, as may be prescribed, shall establish a **vigil mechanism for directors and employees** to report genuine concerns in such manner as may be prescribed.

177(10) The **vigil mechanism** under sub-section (9) **shall provide** for **adequate safeguards against victimisation** of persons who use such mechanism **and make provision for direct access to the chairperson of the Audit Committee** in appropriate or exceptional cases: Provided that the **details of establishment of such mechanism shall be disclosed** by the company on its **website**, if any, **and** in the **Board's report**.
<u>**Summary of Notifications**</u>**:** • In case of **section 8 company**, in Section 177(2) the words "with independent directors forming a majority" shall be **omitted**. • In case of **Government Company** - in Section 177(4)(i) for the words "recommendation for appointment, remuneration and terms of appointment'" the words "recommendation for remuneration" shall be **substituted.** • In case of **Specified IFSC Public Company** - Section **177 shall not apply**

Sec 178 Nomination and Remuneration Committee and Stakeholders Relationship Committee

178. (1) The BOD of every **listed public company** and such other class or classes of companies, as may be prescribed **shall constitute the Nomination and Remuneration** Committee consisting of **three or more non-executive directors** out of which **not less than one-half shall be independent** directors: Provided that the **chairperson of the company** (whether executive or non-executive) **may be appointed as a member of the Nomination and Remuneration Committee but shall not chair** such Committee.
(2) The Nomination and Remuneration Committee **shall identify persons who are qualified to become directors** and who may be appointed in senior management **in accordance with the criteria** laid down, **recommend to the Board** their appointment and removal and shall **specify the manner for effective evaluation of performance** of Board, its committees and individual directors **to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency** and review its implementation and compliance.
(3) The Nomination and Remuneration Committee sh**all formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy**, relating to the remuneration for the directors, key managerial personnel and other employees.
(4) The Nomination and Remuneration Committee shall, **while formulating the policy** under sub-section (3) **ensure** that— (a) the **level and composition of remuneration is reasonable and sufficient** to **attract**, **retain** and **motivate** directors of the **quality required** to **run** the **company** successfully; (b) **relationship** of **remuneration** to **performance** is **clear** and meets appropriate performance benchmarks; and (c) **remuneration** to directors, key managerial personnel and senior management **involves** a balance **between fixed and incentive pay reflecting short and long-term performance objectives** appropriate to the working of the company and its goals: Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

178(5) The BOD of a **company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders** at any time during a FY shall **constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided** by the Board.
(6) The Stakeholders Relationship Committee **shall consider and resolve the grievances of security holders of the company.**
(7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.
(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹25,000/- but which may extend to ₹ 1 lakh, or with both: **Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section**. **Explanation**.—The expression ''senior management'' means personnel of the company who are members of its core management team excluding BOD comprising all members of management one level below the executive directors, including the functional heads.
Summary of Notifications Issued: • In case of **section 8 and Specified IFSC Public Company** company - **Section 178 shall not apply.** • In case of **Government company**- Sub-sections (2), (3) and (4) of Section 178, **shall not apply except** with regard to appointment of 'senior management' and other employees.

Sec 179 Powers of Board

179(1) The **BOD** of a company **shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do**: Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting: Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.
179(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

179(3) The BOD of a company **shall exercise the following powers on behalf of the company by means of resolutions passed at meetings** of the Board, namely:—

(a) to make **calls on shareholders** in respect of money unpaid on their shares;
(b) to authorise **buy-back** of securities under section 68;
(c) to **issue securities**, including debentures, whether in or outside India;
(d) to **borrow monies**;
(e) to **invest** the **funds** of the company;
(f) to **grant loans or give guarantee or provide security** in respect of loans;]
(g) to **approve financial statement** and the **Board's report**;
(h) to **diversify** the **business** of the company;
(i) to **approve amalgamation, merger or reconstruction**;
(j) to **take over** a company or acquire a controlling or substantial stake in another company;
(k) any **other matter** which may be **prescribed**:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

179(4) **Nothing** in this section **shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board** of any of the powers specified in this section.

Summary of Notificaions issued for section 179:

- In case of **section 8 company**, matters referred to in **clauses (d), (e) and (f)** of Sub-section (3) of Section 179 may **be decided by the Board by circulation** instead of at a meeting.

- **In case of Specified IFSC Private as well as public Company** - In sub-section (3) of Section 179, after the second proviso, the following proviso shall be **inserted**, namely:-
  "Provided also that in case of a Specified IFSC private/public company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation."

Section 180: Restrictions on Powers of Board

<table>
<tr><td rowspan="4">Section 180 shall not apply to Private companies and IFSC Public Co. unless its article provide otherwise.</td>
<td>180. (1) The BOD of a company shall exercise the following powers only with the consent of the company by a SR, namely:—

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—
(i) “undertaking” shall mean an undertaking in which the investment of the company exceeds 20 per cent. of its net worth as per the audited balance sheet of the preceding FY or an undertaking which generates 20 percent of the total income of the company during the previous FY;
(ii) the expression “substantially the whole of the undertaking” in any FY shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding FY;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company’s bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation.—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) to remit, or give time for the repayment of, any debt due from a director.</td></tr>
<tr><td>(2) Every SR passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the BOD.</td></tr>
<tr><td>(3) Nothing contained in clause (a) of sub-section (1) shall affect—
(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.</td></tr>
<tr><td>(4) Any SR passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.</td></tr>
</table>

	180(5) **No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the <u>lender proves</u> that he advanced the loan in <u>good faith and without knowledge</u> that the limit imposed** by that clause had been **exceeded**.

Sec 181 Company to Contribute to Bona Fide and Charitable Funds etc.

The BOD of a company may contribute to bona fide charitable and other funds:

Provided that **prior permission of the company in general meeting** shall be required for such contribution **in case any amount the aggregate of which, in any FY, exceed 5 per cent. of its average net profits for the 3 immediately preceding FYs**.

Sec 182 Prohibitions and Restrictions Regarding Political Contributions

(1) Notwithstanding anything contained in any other provision of this Act, **a company, other than a Government company and a company which has been in existence for less than three FYs**, <u>**may**</u> contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the BOD and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the FY to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), **the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account**:

Provided that a company may make contribution through any **instrument** issued, pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties. [**Electoral Bond** specified by CG]

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

Sec 183 Power of Board and Other Persons to Make Contributions to National Defence Fund, etc.

(1) The BOD of any company or any person or authority exercising the powers of the BOD of a company, or of the company in general meeting, may, **notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument** relating to the company, **contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the CG for the purpose of national defence.**

(2) Every company shall disclose in its profit and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the FY to which the amount relates.

Sec 184 Disclosure of Interest by Director

184. (1) **Every director shall** at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every FY or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, **disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding**, in such manner as may be prescribed.

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,
shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A **contract** or arrangement entered into by the company **without disclosure** under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company**.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend **to ₹ 1 lakh**, or with both.

(5) Nothing in this section—
(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

Summary of Notifications Issued:

- **In case of private company** - Section 184(2) shall apply with an exception that the interested director may participate in such meeting after disclosure of his interest.

- **In case of Section 8 company** - Section 184 (2) shall apply, only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds ₹ 1 lakh.

- In case of Specified IFSC Public Company - Section 184(2) shall apply with the **exception** that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.

Section 185: Loan to Directors, etc.

185 (1) **No company** shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) **any director** of company, or of a company which is its holding company **or any partner or relative of any such director**; or

(b) **any firm** in which any such director or relative is a partner.

[**Interpretation Note:** The purpose of this provision is that the funds of company which are owned shareholders in substance are not used for personal benefit of any director(s) in any way even for providing guarantee to loan taken by any director or his concern.]

185(2) A **company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan** taken by **any person in whom any of the director of the company is interested**, subject to the condition that—

(a) a **SR is passed** by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) **the loans are utilised by the borrowing company for its principal business activities**.

Explanation.—For the purposes of this sub-section, the expression "**any person in whom any of the director of the company is interested**" means—
(a) any **private company** of which any such director is a director or member;
(b) any **body corporate** at a general meeting of which not less than 25 per cent. of the total voting power may be exercised or controlled by any such director, or by 2 or more such directors, together; or
(c) any **body corporate**, the BOD, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

185(3) **Nothing** contained in sub-sections (1) and (2) **shall apply** to—

(a) **the giving of any loan** to a managing or whole-time director—
(i) **as a part of** the conditions of **service extended by the company to all its employees**; or
(ii) **pursuant** to any **scheme approved** by the members by a **SR**; or

(b) a company which in the **ordinary course** of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an **interest is charged at a rate not less than the rate of prevailing yield** of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

(c) any **loan** made by a holding company to its **wholly owned subsidiary company** or any **guarantee** given or **security** provided by a holding company in respect of any loan made to its **wholly owned subsidiary company**; or

(d) any **guarantee** given or **security** provided by a holding company in respect of **loan** made **by** any **bank** or **financial institution to** its **subsidiary** company:

Provided that the **loans** made under clauses (c) and (d) are **utilised by** the **subsidiary** company **for** its **principal business activities**.

185(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—
(i) the company shall be punishable with fine which shall not be less than ₹ 5 lakh but which may extend to ₹25 lakh;
(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 5 lakh but which may extend ₹25 lakh; and
(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than ₹5 lakh but which may extend to ₹25 lakh, or with both.

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