

Corporate & Economic Laws Revision Notes **(For November, 2020 Exams)**

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Chapter: Appointment and Qualification of Directors

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CHAPTER XI of Companies Act, 2013

Appointment and Qualification of Directors**Section 149 Company to have BOD (Board of Directors)**

(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)**;
- (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 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 for **class or classes of companies**].

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 % 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 **2 immediately preceding FYs or during the current FY**;
 - (iii) (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 **3 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 3 FYs.
 - (ii) is or has been an employee or proprietor or a partner, in any of the **3 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 2% 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 KMP, **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 and 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) and 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

[In both the above cases, the exemption is only available if such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC.]

Clarification by MCA Circular 14/2014 and 01/2020**Pecuniary Relationship**

If an independent director enters into transaction with the company concerned at par with any member of general public and at same price, **it would not attract the bar of 'Pecuniary relationship u/s 149(6)(c) and hence such transaction does not lead to Pecuniary Relationship between Independent Director and concerned Company. Further 'Pecuniary Relationship' does not include receipt of remuneration u/s 197(5), reimbursement of expenses of participation in meetings and profit related commissions as approved by members in compliance with the Act.**

Tenure of Independent Director

As per Section 149(10), **independent director** shall hold office for a term 'up to' 5 consecutive years, which means he **can also be appointed for any period less than 5 years, but such less period shall be treated as ONE term under that provision.**

Also as per Sec 149(11), independent director shall not hold office for more than **2 consecutive terms.**

Co-reading of both the above provisions provide that '**2 consecutive terms**' can be of less than 10 years.

In other words if the total tenure is less than 10 years and 2 terms as aforesaid expire, then the Independent director shall be eligible for appointment for 3rd term in same company only after a cooling period (gap) of 3 years.

Clarification on Section 149(12) {Amendment for Nov., 2020}

Independent Director and non-executive director (non-promoter and non-KIM), should not be arrayed in any criminal or civil proceedings under the Act, unless criteria mentioned u/s 149(12) is met. It means in case, lapses are attributable to the decisions taken by the Board or its Committees, ROC must take all care to ensure that that means proceedings are not unnecessarily initiated against the IDs or the NEDs, unless sufficient evidence exists to the contrary.

Further all instances of filing of information/ records with the registry, maintenance of statutory registers or minutes of the meetings, or compliance with the orders issued by the statutory authorities, including the NCLT under the Act are not the responsibility of the IDs or the NEDs, unless any specific requirement is provided in the Act or in such orders, as the case may be. The responsibility of the NEDs, ordinarily arise in such cases, where there are no WTDs and KMPs.

Section 150 Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors

(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.

(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}**.

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

Exception Note: Section 150 is not applicable on Section 8 Companies provided no default in filing Annual Return & Financial Statements.

Amendment Notified: [Indian Institute of Corporate Affairs at Manesar (Haryana) has been notified u/s 150(1) for maintenance of database of Independent directors.]

Section 151 Appointment of Director Elected by Small Shareholder

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}**.

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

(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 individuals 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 u/s 154 or any other number as may be prescribed u/s 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.

152(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 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.

152(6)

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.

[Note: In case of B. R. Kundra vs Motion Pictures Association, it was held that if a company does not hold AGM up to last due date, the director liable to retire u/s 152(6), shall have to vacate on last day AGM ought to have been held]

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 to the meeting 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).

[In all the above cases, the exemption is only available if such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC.]

DIN (Director Identification Number)**Sec 153 Application for Allotment of DIN**

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

The CG shall, within **1 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

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

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

(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

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.

Section 159 Penalty for Default of Certain Provisions

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.

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

(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) 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.

[In all the above cases, the exemption is only available if such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC.]

- 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

(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:

2nd proviso > 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.

Section 162 Appointment of Directors to be Voted Individually

(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.

[Interpretation Note for Section 162 By CA. Mohit Bansal (Telegram App/@CAFinalLawNotes):

- ‘a motion for the appointment of two or more persons as directors of the company by a single resolution’ means a proposal made in any General Meeting to appoint more than one person as Director of Company but only by a single resolution i.e. no separate voting for each person.
- ‘Whether or not any objection was taken when it was moved’ means that it shall become immaterial whether anyone objected to such proposed resolution or not.

- **Mischief and Analysis**

This section **restricts** (does not prohibits) moving of any such single resolution (say ‘resolution A’) which proposes to appoint more than person as Director of company so that all persons proposed to be appointed shall be individually voted for in general meeting by members. If such ‘resolution A’ is moved or even passed irrespective of any objection from any member **shall be deemed as void**.

Exception: this section allows moving of said ‘resolution A’ if before moving such resolution, another resolution (say ‘resolution B’) is moved in meeting which proposed to move resolution A and where there is no vote casted against such resolution B.

i.e. Allowed chronology is 1st pass resolution B with no vote casted against it and then only resolution A can be validly moved and passed.

Exception:

Section 162 shall not apply to Private Companies and following Government Companies:

- 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.

[In all the above cases, the exemption is only available if such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC.]

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

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.

[In the above cases, the exemption is only available if such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC.]

Section 164 Disqualifications for Appointment of Director

(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 or otherwise**, 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(1)(k)]

- (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;
 - (h) he has not complied with sub-section (3) of section 152;
- or
- (i) **he has not complied with the provisions of section 165(1).**

164 (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 3 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. provided there is no default in filing Annual Return or Financial Statements with ROC by that Company.]

(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

(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 provided such company has not committed a default in filing its Financial statements u/s 137 or Annual Return u/s 92 with ROC]

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.

Section 166 Duties of Directors

(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

(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 30 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**.

(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 1 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).

Section 168 Resignation of Director

(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.

Section 169 Removal of Directors

(1) A company may, **by ordinary resolution (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 independent director re-appointed for second term u/s 149(10) shall be removed by the company only by passing a SR and after giving him a reasonable opportunity of being heard.

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it u/s 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.

(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.

[Note: Shareholders are not required to disclose reasons for removal of director. It is duty of BOD to disclose material facts in explanatory statements. {LIC vs. Escorts Ltd.}]

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

(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 for Section 170:

- 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 provided that there is no default in filing Annual Return or Financial Statements.

Section 171 Members' Right to Inspect

(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 there under.

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 provided that there is no default in filing Annual Return or Financial statements with ROC by such company..

Section 172 Punishment

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 section 164(1)(d) and section 167(10)(f) 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 1 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.

Rule 4 Number of Independent Directors [see section 149(4)]

Sub-rule (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.

Sub-rule (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 section 149(6)(d),-

- (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 Compliances required by a person eligible and willing to be appointed as an independent director [AMENDMENT for Nov/Dec, 2020 Exams]

(1) Every individual –

- (a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 {viz.01/12/2019}, **shall** within a period of **7 months** from such commencement;

or

- (b) who intends to get appointed as an independent director in a company after such commencement, **shall** before such appointment,

– **apply online to the institute** for inclusion of his name in the data bank for a period of 1 year or 5 years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of 1 year or 5 years or for his life-time, within a period of 30 days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required u/s 149(7) of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of 1 year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

1st proviso-> Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or KMP, for a total period of not less than 10 years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) listed public company;

or

(b) unlisted public company having a paid-up share capital of ₹ 10 crore or more;

or

(c) body corporate listed on a recognized stock exchange

Provided further that for the purpose of calculation of the period of ten years referred to in the **first proviso**, any period during which an individual was acting as a director or as a KMP in two or more companies or bodies corporate at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression “**institute**” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified u/s 150(1) of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a **score of not less than 60% in aggregate** in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be **no limit on the number of attempts** an individual may take for passing the online proficiency self-assessment test.

Brief about Rule 6 AMENDMENT (for Nov., 2020 Exams)

With the idea to improve corporate literacy and to make the Independent Directors aware of their duties, roles and responsibilities, **MCA has introduced proficiency examinations for the Independent Directors (ID)**. The Proficiency examination will be an online evaluation test conducted by the Institute (mentioned above) comprising the basics of Indian company law, ethics, and capital market norms etc.

So, now after the above amendment, only those persons who qualify that proficiency exam are eligible to apply online to the institute for inclusion of his name in the data bank of Independent Directors.

However certain exemptions have been provided (see 1st proviso of sub-rule 4 above) **to persons who are experienced** as directors or KMP of specified category of company for 10 or more years will not be required to take the exam subject to condition that while calculating such 10 year period, any period during which an individual was acting as a director or as a KMP in 2 or more companies or bodies corporate at the same time shall be counted only once.

Note that DIN is not mandatory for the person applying online to said institute for inclusion of his name in said data bank.

Example: Mr. Bansal is an ID in MB LTD from 01.12.2013 and also a KMP in Crush Ltd. from 01.12.2013. In such circumstances both the periods shall be counted as one and not twice i.e. he will be considered as ID/KMP for just 6 years on 01/12/2019. Hence, Mr. Bansal is required to undergo and pass the **ONLINE PROFICIENCY SELF ASSESSMENT TEST** (within above mentioned 7 month period) to continue as an ID as he has not served for 10 or more years as an ID or KMP.

LINKED PROVISION with amended Rule 6 above:**Rule 3 of Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019:**

Sub-rule (1) The “**institute**” shall create and maintain a databank of persons willing and eligible to be appointed as independent directors, and such databank shall be an online databank which shall be placed on the website of the institute.

Sub-rule (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), if applicable;	(m) experience or expertise, if any;
(b) Income Tax PAN;	(n) any pending criminal proceedings as specified in clause
(c) the name and surname in full;	(d) of sub-section (1) of section 164;
(d) the father's name;	(o) the list of limited liability partnerships in which he is or was a designated partner along with-
(e) the date of Birth;	(i) the name of the limited liability partnership;
(f) gender;	(ii) the nature of industry; and
(g) the nationality;	(iii) the duration- with dates;
(h) the occupation;	(p) the list of companies in which he is or was director along with-
(i) full Address with PIN Code (present and permanent);	(i) the name of the company;
(j) phone number;	(ii) the nature of industry;
(k) e-mail id;	(iii) the nature of directorship-Executive or Non-executive or MD or Independent Director or Nominee Director; and
(l) the educational and professional qualifications;	(iv) duration – with dates.

Sub-rule (3) The information available in the data bank shall be provided only to companies required to appoint independent director after paying a reasonable fees to the institute.

Sub-rule (4) A person whose name is included in the data bank, may restrict his personal information to the institute, to be disclosed in the data bank.

Sub-rule (5) Any individual whose name appears in the data bank, shall make changes in his particulars within 30 days of such change through web based framework made available by the institute for this purpose.

Sub-rule (6) A disclaimer shall be conspicuously displayed on the website hosting the data bank that a company must carry out its own due diligence before appointment of any person as an independent director.

Sub-rule (7) The institute, shall with the prior approval of the CG, fix a reasonable fee to be charged from :-

- (a) individuals for inclusion of their names in the data bank of independent directors;
and
- (b) companies for providing the information on independent directors available on the data bank.

Explanation:- For the purpose of this rule, the expression “persons willing and eligible to be appointed as independent director” shall include individuals already serving as independent directors on the Board of companies

Rule 7 Small Shareholders' Director (read with Section 151)

(1) A **listed company**, **may** upon notice of **not less than 1000 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 3 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 30 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 3 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.

(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 u/s 157 of the Act shall be furnished in Form DIR-3C within 15 days of receipt of intimation u/s 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.

Rule 12 Intimation of Changes in Particulars Specified in DIN Application

(1) Every individual who has been allotted a DIN 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

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.-

(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 30 days of the failure that would attract the disqualification u/s 164(2), 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 shall keep at its registered office a register of its directors and KMP** containing the following particulars, namely:-

- (a) **DIN** (optional for KMP);
- (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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