

DIRECTOR

I. Definition:- As per **Section 2(34)** of Companies Act 2013 Director means a director appointed to the Board of a Company.

II. Responsibility:- The board of directors of a company is primarily responsible for:

- determining the company's strategic objectives and policies;
- monitoring progress towards achieving the objectives and policies;
- appointing senior management;
- Accounting for the company's activities to relevant parties, e.g. shareholders.

III. Minimum Directors Required in Company:-

- i. One Person Company:- One Director.
- ii. Private Limited Company:- Two Directors.
- iii. Public Limited Company:- Three Directors.

Maximum 15 directors can be appointed in any format of Company (OPC, Public, and Private). Bypassing Special Resolution Company can increase the number of Directors beyond 15. Out of appointed directors one director should be resident in India for more than 182 days in previous calendar year.

IV. Types of Directors:-

1. Residential Director:- As per Section 149(3) of Companies Act,2013 every company shall at one director who has stayed in India for a total Period of **not less than 182 days** in the Previous calendar year.

2. Independent Director:- As per section 149(6) an independent director in relation to a company, means a director other than a Managing Director, Whole Time Director Or Nominee Director. Companies which have to appoint Independent Director:- As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules,2013 the following class of companies have to appoint at least two independent directors:-

A} Public Companies having **Paid-up Share Capital-Rs.10 Corers or More;**

B} Public Companies having **Turnover- Rs.100 Corers or More;**

C} Public Companies have total **outstanding loans, debenture and deposits of Rs. 50 Corers or More.**

Person Qualified for Independent Directorship:-

A) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise & experience;

B) I) who is or was not a promoter of the Company or its Holding, Subsidiary or Associate Company (HSA Companies);

ii) Who is not related to Promoters or directors in the company, it's HSA COMPANIES?

C) Who has or had no Pecuniary (relating to Money) relationship with Company and its HSA Company or their promoters, directors during the 2 immediately preceding financial years or during the current financial year;

D) none of whose relatives has or had pecuniary relationship with company, its HSA company or their Promoters, directors -amounting to 2% or more of its gross turnover or total income; -or fifty lakhs or such higher amount as may be prescribed, whichever is lower. During the 2 immediately preceding financial years or during current financial year.

E) Who neither himself nor any of his relative-

1. Holds or has held the position of KMP (key Managerial position) or has been employee of the Company or its HSA companies in any of the 3 financial years;

2. he or his relative has an employee or proprietor or a partner in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed- as a auditor firm, Company Secretary in practice, Cost Auditor, Legal Consultant of the company or its HSA companies;

3. Holds with relatives 2% or more of the total voting power of the Company;

4. he or her has not been Chief Executive or Director of any Non Profit Organization that receive 25% of its receipt from the Company or HSA Companies or its Promoters or directors or that NGO holds 2% or more of the total voting power of the Company.

F) Who possesses such other qualification as may be prescribed. Tenure of Director:- an independent director hold office for a term up to 5 consecutive years, -Also eligible for reappointment by passing Special Resolution and also require its reappointment in Boards Report. -He shall not hold office for more than 2 Consecutive terms, but shall not be eligible to appoint after expiration of 3 Years of ceasing to become an independent director. Remuneration to Independent Director:- An independent director shall not be eligible for any stock option as per section 149(9) of Act. But they may receive remuneration by way of fee provided under section 197(5) of the Act. Sitting fees for Board meeting and other committee meeting **shall not be exceed Rs. 1, 00,000 per meeting.**

3. Small Shareholders Directors:- A listed Company may have one director elected by small shareholders. May appoint upon **notice of not less than 1000 Shareholders or 1/10th of the total shareholders, whichever is lower** have a small shareholder director which elected form small shareholder.

4. Women Director:- As per Section 149 (1) (a) second proviso requires certain categories of companies to have **At Least One Woman** director on the board. Such companies are any listed company, and any public company having-

1. **Paid Up Capital of Rs. 100 crore or more, or**
2. **Turnover of Rs. 300 crore or more.**

5. Additional Directors: Any Individual can be appointed as Additional Directors by a company under **section 161(1)** of the New Act.

6. Alternate Directors:- As per Section 161(2) A company **May** appoint, **if the articles confer such power** on company or a resolution is passed (if an Director is **absent from India for at least three months**).

- An alternate Director cannot hold the office longer than the term of the Director in whose place he has been appointed.
- Additionally, he will have to vacate the office, if and when the original Director returns to India.
- Any alteration in the term of office made during the absence of the original Director will apply to the original Director and not to the Alternate Director.

7. Shadow Director:- A person, who is not appointed to the Board, but on whose directions the Board is accustomed to act, is liable as a Director of the company, unless he or she is giving advice in his or her professional capacity.

8. Nominee Directors:- They can be appointed by certain shareholders, third parties through contracts, lending public financial institutions or banks, or by the Central Government in case of oppression or mismanagement.

9. Difference Between Executive and Non-Executive Director:- An Executive Director can be either a Whole-time Director of the company (i.e., one who devotes his whole time of working hours to the company and has a significant personal interest in the company as his source of income), or a Managing Director (i.e., one who is employed by the company as such and has substantial powers of management over the affairs of the company subject to the superintendence, direction and control of the Board). In contrast, a non-executive Director is a Director who is neither a Whole-time Director nor a Managing Director.

Qualifications of a Director:

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.
6. He should be a person of Integrity and should possess relevant expertise.
7. A Director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing etc.

Disqualifications of a director:

Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:

A person shall not be capable of being appointed director of a company, if the director is

- (a) Of unsound mind by a court of competent jurisdiction and the finding is in force;
- (b) An undischarged insolvent;
- (c) Has applied to be adjudicated as an insolvent and his application is pending;
- (d) Has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;
- (e) Has not paid any call in respect of 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; or
- (f) A company in which the director is a part of the board has not filed financial statements or annual returns for any continuous period of 3 financial years.

Appointment of Directors

Section 152 of the New Act governs the appointment of directors. Certain specific requirements for appointment of director as laid down in the New Act are-

- (a) If there is no provision for appointment of Director in the Articles (AoA), the Subscribers to the memorandum, i.e. the shareholders, who are individuals, shall be deemed to be the first directors of the company until the directors are duly appointed.
- (b) Director to be appointed in a general meeting. If it is so done, 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 fulfills the conditions specified in this Act for such an appointment.
- (c) The proposed Director has to furnish his DIN (Director Identification Number) mandatorily. DIN is allotted by the Central Government on application by a person intending to be the Director of a company. DIN can be obtained in pursuance of section 153 and 154.
- (d) The proposed Director has to also furnish a declaration stating that he is not disqualified to be a director.
- (e) Such appointment should be with his consent. Earlier such consent was not mandatory for private companies. Consent implies that being appointed a director and taking the charge of the office is two different things.
- (f) Consent has to be filed with the Registrar of Companies within 30 days of appointment.