

Ch. 14 Company Management

Definition Section 2 (34)	“Director” means a director appointed to the Board of a company.
Section 2 (10)	“Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.
Minimum No. of Directors [Section 149(1)]	Every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company.
Maximum No. of Directors	A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.
No. of Directorship [Section 165] & Conditions	Maximum number of directorships, including any alternate directorship a person can hold is 20. The maximum number of public companies in which a person can be appointed as a director shall not exceed ten . The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as director. Therefore, the number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10.
Punishment for contravention	If a person accepts an appointment as a director in contravention of above mentioned provisions, he shall be punishable with fine which shall not be less than Rs. 5,000 but which may extend to Rs. 25,000 for every day after the first day during which the contravention continues.
Residence of a director in India [Section 149 (3)]	According to this section 149 (3), the residence of a director in India is compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. <u>Clarification by MCA:</u> It is clarified by MCA that the, residency requirement' would be reckoned from the date of commencement of section 14 of the Act i.e. 1st April, 2014.

One Woman Director

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014,

It prescribes the following class of companies shall appoint at least one-woman director-

- (i) every listed company;
- (ii) every other public company having: -

- (a) **paid-up share capital** of one hundred crore rupees or more; or
 (b) **turnover** of three hundred crore rupees or more.

Director elected by small shareholders

Section 151 Every listed company may have one director elected by such small shareholders.

Small shareholder Small shareholder” means a shareholder holding shares of nominal value of not more than **twenty thousand rupees** or such other sum as may be prescribed.

Terms & Conditions for Small Shareholders’ Director

Rule 7, Companies (Appointment and Qualifications of Directors) Rules, 2014 has laid down the following terms and conditions for appointment of small shareholder’s director, which are as under:

(i) 1000 or 1/10th of total no of shareholders A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a small shareholders’ director elected by the small shareholders.
 A listed company may suo moto opt to have a director representing small shareholders.

(ii) Notice of candidature The small shareholders intending to propose a person as a candidate for the post of small shareholder’s director shall submit a signed notice of their intention with the company at least 14 days before the meeting specifying their details and proposed director’s details. The details include name, address, shares held etc.

(iii) Statement by proposed director The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders’ director stating
 (a) his Director Identification Number;
 (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.

(iv) Can be considered as an Independent Director If proposed director is qualified u/s 149 (6) for appointment as an independent director and has given declaration for his independence u/s 149 (7) then such director shall be considered as an independent director.

(v) Director’s Tenure The director’s tenure as small shareholders’ director shall not exceed a period of **3 consecutive years** and he shall not be liable to retire by rotation.
 Further he shall not be eligible for reappointment after the expiry of his tenure.

(vi) Disqualification under section 164 If the person is not eligible for appointment according to section 164 (i.e., disqualification for the appointment of director), then he can’t be appointed as small shareholder’s director.

(vii) Vacation of Office	Small shareholders' director shall vacate the office if - (a) he ceases to be a small shareholder, on and from the date of cessation; (b) he incurs any of the disqualifications specified in section 164 (disqualification for the appointment of director); (c) the office of the director becomes vacant in pursuance of section 167, (Vacation of office of director); (d) he ceases to meet the criteria of independence as provided u/s 149(6).
(viii) No. of small shareholder's directorship in 2 companies	He shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company, then he shall not be appointed in second company.
(ix) Subsequent to cessation of small shareholder's directorship	He shall directly or indirectly not be appointed or associated in any other capacity with the company for a period of 3 years from the date of cessation as a small shareholder's director.

APPOINTMENT OF DIRECTORS – Section 152

First Director

Normal company

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

One-person company

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1.Appointment in General Meeting

Every director shall be appointed by the company in general meeting.

2. Director Identification Number (DIN)

Director Identification Number is compulsory for appointment of director of a company.
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 C. Govt. in such form and manner and along with such fees as may be prescribed.

Rule 9

(1) Every individual, who is to be appointed as director of a company shall make an application electronically in **Form DIR-3 (Application for allotment of Director**

Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN).

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in **Form DIR-4**, specimen signature duly verified and sign the form digitally.

Sec 154- Allotment of DIN- C. Govt. shall within one month from the receipt of the application u/s 153 allot a DIN to an applicant.

Rule 10

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as mentioned below:

(1) On the submission of the **Form DIR-3** on the portal and payment of the requisite amount of fees through online mode, the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of one month from the receipt of application.

(3) If the Central Government, 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.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

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

Cancellation/Surrender/Deactivation of DIN – Rule 11

The Competent Authority (Central Government/RD (North), Noida/ Authorized Officer by the RD) may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case –

(a) the DIN is found to be duplicated in respect of the same person;

(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 lunatic or of unsound mind by a competent Court;

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

(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 Central Government may deactivate such DIN but after verification of e-records.

Intimation of changes in particulars of Director - Rule 12

(1) Every director having DIN in the event of any change in his particulars as stated in **Form DIR-3**, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in **Form DIR-6** (Intimation of change in particulars of Director to be given to the Central Government).

Form DIR-6 will be filed along copy of the proof of the changed particulars and verification in the **Form DIR-7** (Verification of applicant for change in DIN particulars) all of which shall be scanned, signed digitally by applicant and submitted electronically. Form requires pre-certification by the professional CA/CS/CMA in practice.

(2) The Central Government shall incorporate the said changes in the electronic database after due verification from the enclosed proofs and confirm the applicant by post/email/any other mode.

(3) The DIN cell of the MCA 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 fifteen days of such change.

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 C. Govt., intimate his DIN to the company or all companies wherein he is a director.

Sec 157- Company to inform DIN to Registrar- within 15 days of the receipt of intimation u/s 156.

If a company fails to furnish Director Identification Number u/s 157, before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Sec 158- Obligation to indicate DIN – Every person or company, while furnishing any return or information as are required to be furnished under this Act, shall mention DIN in such return or information.

Section 159- Punishment - If any individual or director of a company, contravenes any of the provisions of section 152,155 and 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which

may extend to Rs. 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs. 500 for every day after the first day during which the contravention continues.

3. Not disqualified

He shall file a declaration that he is not disqualified to become a director under the Act.

4. Consent to act as a director of a company

A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.

5. [Rule 8]

Company shall file **Form DIR-12** (particulars of appointment of directors and KMP along with the **Form DIR-2** as an attachment within 30 days of the appointment of a director, necessary fee.

6. Retirement of Director

Articles of the Company may provide the provisions relating to retirement of the all directors.

If there is no provision in the article, then at least two-thirds of the total number of directors of a public company shall be liable to retire by rotation.

But they are eligible to be reappointed at annual general meeting.

However, independent directors shall not be included for the computation of total number of directors.

At the annual general meeting of a public company 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.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

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.

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) a resolution for the re-appointment of such director has been put to the meeting and lost;
- (ii) the retiring director has expressed his unwillingness to be so re-appointed;
- (iii) he is disqualified for appointment.

Appointment of Additional Director- Section 161 (1)

The additional directors can be appointed by BODs, if such power is conferred on them by the articles of association.

Such additional directors hold office only up to the date of next annual general meeting.

A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161 (2)

- (i) The Board of Directors of a company must be authorized by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.
- (ii) The person in whose place the Alternate Director is being appointed should be absent for a period of **not less than 3 months from India**.
- (iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.
- (iv) If it is proposed to appoint an Alternate Director to be an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.
- (v) 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.

Appointment of Directors by Nomination Section 161(3)

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution.

Appointment of Directors in causal vacancy- Section 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy.
The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Appointment of directors to be voted individually- Section 162(1)

A single resolution shall not be moved for the appointment of two or more persons as directors of the company. A resolution moved in contravention of aforesaid provision shall be void.

Right of persons other than retiring directors to stand for directorship- Sec. 160

A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he has, not less than fourteen 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 along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

Disqualifications for appointment of director (Section 164)

- (1) A person shall not be eligible for appointment as a director of a company, if —
 - (a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

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

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, 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.

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;

(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, and six months have elapsed from the last day fixed for the payment of the call;

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

(h) he has not got the DIN.

(2) An additional disqualification is provided in sub section (2) of Section 164 relating to consequences of non-filing of financial statements or annual returns. Any person who is or has been director of any company which has not filed any financial statements and Annual Return for 3 continuous financial year or has defaulted in payment of debentures/deposit/dividend etc., shall also not be eligible for appointment as director of any public company and for re-appointment in the same company for a period of five years from the date on which the said company fails to do so.

Rule 14 prescribed that every director who disqualified u/s 164 (2), shall inform to the company concerned in Form DIR-8 (Intimation by Director) before he is appointed or re-appointed.

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

But when a company fails to file the Form DIR-9 within a period of 30 days of the failure it would attract the disqualification u/s 164(2), officers of the company shall be the officers in default.

Upon receipt of the Form DIR-9 the Registrar shall immediately register the document and place it in the document file for public inspection.

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

Duties of directors- Section 166

A director of a company shall:

- Act in accordance with the articles of the company.
- Act in good faith in order to promote the objects of the company for the benefit of all stakeholders.
- Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 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.
- 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.
- Not assign his office and any assignment so made shall be void.

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 Rs. 1,00,000 but which may extend to Rs. 5,00,000.

Vacation of office of director- Section 167

The office of a director shall become vacant in case—

- (a) He incurs any of the disqualifications specified in section 164;
- (b) He absents himself from all the meetings of the Board of Directors held during a period of twelve 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
- (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 and sentenced in respect thereof to imprisonment for not less than 6 months;

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

- (g) He is removed in pursuance of the provisions of this Act.

Contravention

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 above, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000 or with both.

Where all the directors of a company vacate their offices under any of the disqualifications specified above, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

Resignation from Board's Office

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in **Form DIR-12** and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website. The director shall also forward a copy of resignation along with detailed reasons for the resignation to the Registrar in **Form DIR-11** within 30 days from the date of resignation. The notice shall become effective 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.

The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

Ch. 15 Independent Directors

Introduction

In order to provide better governance, and to act as an oversight body in monitoring the performance and should raise red flags whenever suspicion occurs in the functioning of the company, the concept of Independent Directors arises.

Companies Act 2013 mandates appointment of independent directors by listed companies and other class of companies.

It also prescribes other aspects such as maximum tenure of independent directors, separate meeting of independent directors, tenure, their qualifications, liability, appointment, remuneration and other aspect.

Definition of Independent Director [Section 149(6)]

Independent Director, in relation to a company, means a director **other than** a managing director 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** with the company, its holding, subsidiary or associate company, or their promoters, or directors, **during** the two immediately preceding financial years or during the current financial year.

Pecuniary Interest

(i) *Section 149(6)(c): "pecuniary interest in certain transactions": -*

(a) This provision inter alia requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary/ associate company and certain other categories specified therein during the current and last two preceding financial years.

Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c).

*The matter has been examined and it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of **business at arm's length price** from the purview of related party transactions, an 'ID' **will not** be said to have 'pecuniary relationship', under section 149(6)(c) in such cases.*

(b) Stakeholders have also sought clarification whether receipt of remuneration by an 'ID' from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

*The matter has been examined in consultation with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6)(c) of the Act **does not include** receipt of remuneration, from one or more companies, by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.*

(d) **none of whose relatives** has or had **pecuniary relationship or transaction** with the company, its holding, subsidiary or associate company, or their promoters, or directors, **amounting to two percent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed,** whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) **who, neither himself nor any of his relatives—**

(i) **holds or has held the position of a key managerial personnel or is or has been employee** of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) **is or has been 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, of—

(A) a firm of auditors or company secretaries 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 ten per cent. or more of the gross turnover of such firm;

(iii) **holds together with his relatives two percent or more of the total voting power** of the company; or

(iv) **is a Chief Executive or director of any non-profit organisation**

(a) that receives **twenty-five percent or more** of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or

(b) that (**non-profit organization**) **holds two percent or more of the total voting power** of the company;

or who possesses such other qualifications as may be prescribed.

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.

NOTE: Nominee Directors are not Independent Directors.

Number of Independent Directors [Section 149(4)]

Every listed public company shall have at least **one-third of the total number** of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of other classes of public companies

Rule 4 of Companies (Appointment and Qualification of Directors) Rules 2014, provides that the following classes of companies shall have **at least two directors as independent directors** -

- (i) the Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Qualification of independent Directors

Rule 5 of Companies (Appointment and Qualification of Directors) Rules,2014 provides that 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.

Manner of selection of an Independent Director [Section 150 (1)]

Independent directors may be selected from a **data bank of eligible and willing persons** maintained by the agency (as may be authorized by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director.

Further, the **appointment of independent directors** has to be **approved by members in a General Meeting** and the explanatory statement annexed to the notice must indicate justification for such appointment.

Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency in **Form DIR-1 Application** for inclusion of name in the databank of Independent Directors which includes the personal, educational, professional, work experience, other Board details of the applicant [**Rule 6(4)**].

The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors [**Rule 6 (5)**].

An existing or applicant of such data bank of independent directors shall intimate any changes in his particulars within fifteen days of such change to the agency [**Rule 6 (6)**].

The databank posted on the website shall:

- a. be accessible at the specified website;
- b. be substantially identical to the physical version of the data bank;
- c. be searchable on the parameters specified;
- d. be presented in a format convenient for both printing and viewing online; and
- e. contains a link to obtain the software required to view printing free of charge. [**Rule 6**]

Declaration by independent director

Section 149(7) provides that 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 financial year 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 section 149 (6).

Code for Independent Directors [Section 149 (8)]

The company and independent directors shall abide by the provisions **specified in Schedule IV (Code of Conduct for Independent Director)**. It is a guide to professional conduct for independent directors.

Code of Conduct includes:

1. Guidelines of professional conduct
2. Role and functions
3. Duties
4. Manner of appointment
5. Re-appointment
6. Resignation or removal
7. Separate meetings
8. Evaluation mechanism

1.Guidelines of professional conduct

An independent director shall:

- (1) uphold ethical standards of integrity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining personal advantage;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

2.Role and functions

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinize the performance of management in meeting agreed goals and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

	<p>(5) safeguard the interests of all stakeholders;</p> <p>(6) balance the conflicting interest of the stakeholders;</p> <p>(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;</p> <p>(8) arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.</p>
3. Duties	<p>The independent directors shall—</p> <p>(1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;</p> <p>(2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;</p> <p>(3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;</p> <p>(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;</p> <p>(5) strive to attend the general meetings of the company;</p> <p>(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;</p> <p>(7) keep themselves well informed about the company and the external environment in which it operates;</p> <p>(8) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;</p> <p>(9) report concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;</p> <p>(10) acting within his authority, assist in protecting the legitimate interests of the company its stakeholders;</p> <p>(11) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.</p>
4. Manner of appointment	<p>(1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.</p> <p>(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.</p> <p>(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be</p>

	<p>appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.</p> <p>(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out:</p> <p>(a) the term of appointment;</p> <p>(b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;</p> <p>(c) the Code of Business Ethics that the company expects its directors and employees to follow;</p> <p>(d) the list of actions that a director should not do while functioning as such in the company; and</p> <p>(e) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.</p> <p>(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.</p> <p>(6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.</p>
5. Re-appointment	The re-appointment of independent director shall be on the basis of report of performance evaluation.
6. Resignation or removal	<p>(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.</p> <p>(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than 180 days from the date of such resignation or removal, as the case may be.</p> <p>(3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.</p>
7. Separate meetings	<p>(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;</p> <p>(2) All the independent directors of the company shall strive to be present at such meeting;</p> <p>(3) The meeting shall:</p> <p>(a) review the performance of non-independent directors and the Board as a whole;</p>

	(b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.
8. Evaluation mechanism	(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Tenure of Independent Director	
Section 149(10) provides that subject to the provisions of section 152 (Appointment of Directors), (a) an independent director shall hold office for a term up to five consecutive years on the Board of a company. (b) He shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. (c) No independent director shall hold office for more than two consecutive terms. (d) An independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. During the said period of three years, an independent director shall not be appointed in or be associated with the company in any other capacity, either directly or indirectly.	
Clarification has been sought if "IDs" appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the new Act.	
Explanation to section 149(11) clearly provides that any tenure of an "ID" on the date of commencement of the Act shall not be counted for his appointment/ holding office of director under the Act.	
Appointment of 'IDs' for less than 5 years: - Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years.	
It is clarified that section 149(10) of the Act provides a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years.	

In such a case the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

Independent Director shall hold office for a term up to 5 consecutive years, but shall be eligible for reappointment on passing of a special resolution. He shall not hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director.

Remuneration of Independent Director

Section 149(9) provides that an independent director shall not be entitled to any stock option and may receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings.

Liability of Independent Director

Section 149(12) provides that—
 (i) an independent director;
 (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

Retirement by rotation not applicable to independent directors

Section 149(13) states that the provisions relating to retirement of directors by rotation shall not be applicable to appointment of independent directors.

The Companies Act, 2013 for Independent Directors

	Regulatory Framework
Basis	Companies Act, 2013
Board Independence	Every listed company and prescribed class of companies to have at least 1/3rd of total number of directors as independent directors. (Section 149)
Office of Chairman and CEO	Office of Chairman and CEO cannot be held by same individual. (Section 203)
Lead Independent Director	Not required to be appointed
Nominee Director	An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director. (Section 149(6))
Declaration as to independence	Section 149(7) mandates declaration from Independent Directors stating that they are meeting the criteria for independence.

Qualification of Independent Directors	Companies (Appointment and qualification of Directors) Rules, 2014 specifies certain criteria as to qualification.
Stock Options	Independent Directors are not entitled to any stock option [section 197(7)]
Separate Meeting of Independent Directors	The IDs of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. [Section 149]
Audit Committee	(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. (2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. [Section 177.]
CSR Committee	Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. [Sec. 135. (1)]
Nomination Committee	The Nomination and Remuneration Committee is applicable to the following classes of Companies (i) Every listed Company (ii) Every other Public company- (a) Having Paid up capital of Rs.10crores or more; or (b) Having turnover of Rs.100 Crores (c) Which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores. The above mentioned classes of companies shall constitute the Nomination and Remuneration Committee consisting of 3 or more Non-Executive Directors out of which not less than one half shall be IDs. The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.
Stakeholders Grievance Committee	The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The SRC shall consider and resolve the grievances of security holders of the company [Section 178(5)].
Performance Evaluation	Section 178(2): The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior

of Independent Directors	<p>management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.</p> <p>The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.</p>
Tenure of Independent Directors	<p>An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. 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.</p>
Training of Independent Directors	<p>No provision as to training.</p>
Liability of Directors	<p>An independent director a non- executive director not being promoter or KMP, shall be held liable, only in respect of such acts or 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. (Section 149(12))</p>

CH. 16 BOARD AND ITS POWERS

DISTRIBUTION OF POWERS OF A COMPANY

A company is an entity distinct from its shareholders and its directors.

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CH. 16 BOARD AND ITS POWERS
DISTRIBUTION OF POWERS OF A COMPANY
A company is an entity distinct from its shareholders and its directors.

Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting.

The powers of management are vested in the directors. They and they alone can exercise these powers.

The only way in which the general body of the shareholders can control over the powers of directors, is by altering the articles, or if opportunity arises, by refusing to re-elect the directors whose action they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors.

In **Milan Sen vs. Guardian Plasticate Ltd.**, the directors passed a resolution for rights issue which was questioned by certain shareholders.

The Calcutta High Court held that the question whether the company needed additional capital was a question which should primarily be decided by the directors of the company and if they were of the view that further capital in the form of rights issue was required, the Court would be slow to disturb the same unless there were extreme circumstances of mala-fides or breach of trust.

Division of Power between Directors & Shareholders

The Companies Act, 2013 has reserved some powers especially for the Board e.g. appointing directors in casual vacancies, the power to issue debentures, etc.

On the other hand, some powers are exclusively reserved for the members in general meeting e.g. borrowing in excess of the paid-up capital and free reserves, selling or disposing off the whole or substantially the whole of the undertaking etc.

However, in the following exceptional cases, the general body of shareholders is competent to act even in matters delegated to the Board:

GB competent to decide matters even though they are delegated to the BoDs.

1.Directors Acting Mala-fide

The general body of shareholders can intervene when it is proved that the directors have acted with bad intention.

In **Satya Charan Lal vs. Romeshwar Prasad Bajoria**, it was stated that ordinarily the directors of a company are the only persons who can conduct litigation in the name of company, but when they are themselves the wrong doers, and have acted mala-fide and their personal interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the shareholders may take steps for redressal of the wrong.

Marshal's Valve Gear Co. Ltd. vs. Manning Wardle & Co. Ltd.

Mr. A and three other persons were four directors of **Marshal's Valve Gear Co. Ltd** (M. Co.) and they held almost the whole of the subscribed capital of the company. Mr. A was the majority shareholder, but held less than three-fourth of the share capital.

	<p>Another company, Manning Wardle & Co. Ltd. (say as N. Co.) was committing infringement of M. Co.'s trademark and other three directors were interested in that company (N. Co.).</p> <p>The result was that at a meeting of the Board they (other three directors) declined to sanction any proceeding against N. Co.</p> <p>What is the remedy available in this case?</p> <p>Mr. A, at a general meeting of the shareholders, resolved and commenced an action to restrain the alleged infringement.</p>
<p>2. Incompetent Board</p>	<p>The general body of shareholders may exercise the powers vested in the Board when the Board is incompetent to act, for instance, where all the directors are interested in the transaction or when there are no validly appointed directors functioning.</p> <p>Vishwanathan vs. Tiffins B.A. & P. Ltd.,</p> <p>AOA of the company authorized the directors to fill casual vacancies and also to increase the number of directors within the maximum number fixed in the articles.</p> <p>Some casual vacancies occurred, and they were promptly filled at a general meeting of the shareholders. This was challenged on the ground that once the power to appoint was delegated to the Board, it could not have been exercised at a general meeting.</p> <p>The Court upheld (supported, maintained, defended, endorsed, encouraged) the appointments by the company in the general meeting, as it found that at the time of the general meeting there was no director in office and therefore, the members had the right to elect.</p>
<p>3. Deadlock in the Board</p>	<p>If the directors are unable or unwilling to act, on account of deadlock, the shareholders have the inherent power to act.</p>
	<p>Barron vs. Potter</p> <p>In this case, there were only two directors on the Board of the Company and one refused to act with the other. There was no provision in the articles enabling the general meeting of the shareholders to increase or reduce the number of directors. Therefore, there was a deadlock in the administration. The court held that the residuary powers can be pressed into service by the shareholders in general meeting.</p>

Meetings of the Board (Section 173)

1. The Act provides that the **first Board meeting** should be held **within thirty days** of the date of incorporation.

2. There shall be **minimum of four Board meetings** every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.
3. In case of One Person Company (OPC), small company and dormant company, **at least one Board meeting should be conducted in each half of the calendar year** and the gap between two meetings should not be less than ninety days.

Notice of Board Meetings

1. The Act requires that **not less than seven days' notice** in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.
2. In case the Board meeting is called at **shorter notice, at least one independent director** shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

Agenda of Board Meetings

The Act does not prescribe such requirement to circulate Agenda etc. However Good governance envisage such requirement.

1. The SS-1 issued by ICSI requires a Company to circulate Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda to the Directors at least **seven days before** the date of the Meeting, unless the Articles prescribe a longer period.
2. Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director.

Requirements and Procedures for Convening and Conducting Board's Meetings

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides:

- (1) Every company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary shall take due and reasonable care:
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure the availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting;
 - (c) to record the proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;

(e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

3. (a) The notices of the meeting shall be sent to all the directors.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the Chairman or the company secretary of the company.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.

(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:

(a) name;

(b) the location from where he is participating;

(c) that he can completely and clearly see, hear and communicate with the other participants;

(d) that he has received the agenda and all the relevant material for the meeting; and

(e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.

5. (a) After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairman and confirm that the required quorum is complete.

Explanation: It is clarified that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum.

(b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorized under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted, the Chairperson or company secretary shall request for a repeat or reiteration by the director.

(9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(10) From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means

Rule 4 prescribe restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of accounts; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Penalty	Every officer of the company who is duty bound to give notice under this section if fails to do so shall be liable to a penalty of twenty-five thousand rupees.
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Quorum for Board Meetings [Section 174]

One third of total strength of directors or two directors, whichever is higher, shall be the quorum for a meeting.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.

If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

The meeting shall be adjourned due to want of quorum, shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

After exemption notification dated 05.06.2015, in case of Section 8 Company

In sub-section (1) of Section 174,

(a) for the words "one-third of its total strength or two directors, whichever is higher", the words "either eight members or twenty-five per cent. of its total strength whichever is less" has been substituted;

(b) the following proviso has been inserted, namely: -

"Provided that the quorum shall not be less than two members."

Note: In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty-five per cent of its total strength whichever is less. However, the quorum shall not be less than two members.

Passing of Resolution by Circulation [Section 175]

A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include e-mail or fax.

The said resolution must be passed by majority of directors or members entitled to vote. If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

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

All acts done by directors shall be valid notwithstanding that it is subsequently noticed that his appointment was invalid by reason of any defect or disqualifications or had terminated by virtue of the provisions of Companies Act or the articles of the company.

BOARD COMMITTEES

COMMITTEES

Committees are usually formed as a means of improving board effectiveness and efficiency in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

Quorum for Committee Meetings

The Companies Act, 2013 does not prescribe the quorum with respect to Board Committee meetings.

Whereas the SS-1 states that the presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or other law or the Articles or by the Board.

Regulation 18 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 prescribes Quorum for Audit Committee as lower of 1/3 of total strength or 2 Member with presence of at least two Independent Directors.

VARIOUS COMMITTEES OF THE BOARD

The following are some of the important committees of the Board:

- Audit Committee
- Nomination & Remuneration Committee
- Stakeholders Relationship Committee
- CSR Committee

- Corporate Governance Committee
- Science Technology and Sustainability Committee
- Risk Management Committee
- Regulatory, Compliance and Governmental affairs committee
- Corporate Compliance Committee

Audit Committee

Purpose

A key element in the corporate governance process of any organization is its audit committee. The purpose of constitution of this committee is to make it responsible for the oversight of the quality and integrity of the company's accounting and reporting practices; controls and

financial statements; legal and regulatory compliance, etc. The committee functions as liaison between the board of directors and the auditors- external & internal.

AUDIT COMMITTEE UNDER SECTION 177 OF THE COMPANIES ACT, 2013

The Act has enlarged the responsibilities of auditors to include valuation of their performance, approval of modification of related-party transactions, scrutiny of loans and investments, valuation of assets and evaluation of internal controls and risk management. They have to establish a vigil mechanism and protection for any whistle-blower. The members must be able to understand financial statements and have a majority of Independent Directors. Large companies must mandatorily have professional internal auditors.

Constitution

1. The requirement of constitution of Audit Committee has been limited to:

(a) Every listed Companies; or

(b) The following class of companies –

(i) all public companies with a paid up capital of ten crore rupees or more;

(ii) all public companies having turnover of one hundred crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures; or deposits exceeding fifty crore rupees or more.

Explanation - The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

2. The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.

3. A transition period of one year from the date on which the new Act comes into effect has been provided to enable companies to reconstitute the Audit Committee.

4. The terms of reference of the Audit Committee have now been specified and inter alia includes, -

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties;

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit.

6. The audit committee hold the authority to investigate into matters or referred by the Board and have the powers to obtain professional advice from external sources and have full access to records of the company.

7. In addition to the auditor, the KMP shall also have a right to be heard in the meetings of the Audit Committee.

8. Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances

(a) The companies which accept deposits from the public;

(b) The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Default

If a default is made in complying with the provisions of section 177 of the Companies Act, 2013, the company and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees or with both.

Additional role of the Audit Committee under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Role of Audit Committee

The role of Audit Committee are as follows:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees and terms of engagement.
3. Reviewing, with the management, the annual/quarterly financial statements before submission to the Board for approval.
4. Reviewing, with the management, performance of statutory and internal auditors.
5. Discussion with internal auditors, any significant findings and follow up there on.
6. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity and reporting the matter to the board.
7. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any areas of concern.
8. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors.
9. To review the functioning of the Whistle Blower mechanism, in case the same is existing.
10. Approval of appointment of CFO after assessing the qualifications, experience & background, etc. of the candidate.

Mandatory Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;

	<ol style="list-style-type: none"> 3. Management letters/letters of internal control weaknesses issued by the statutory auditors; 4. Internal audit reports relating to internal control weaknesses; and 5. The appointment, removal and remuneration of the Chief internal auditor.
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2. Nomination and Remuneration Committee Section 178

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters that relate to the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes.

Except for certain large listed companies, the importance of constitution of the Nomination and remuneration Committee has not been realized fully in India. The Board of directors of following companies shall constitute:

- (a) Every listed Companies; or
- (b) The following class of companies –
 - (i) all public companies with a paid up capital of ten crore rupees or more;
 - (ii) all public companies having turnover of one hundred crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

NOTE: After exemption notification dated 05.06.2015 the provisions of Section 178 of the Act are not applicable to the Section 8 Companies.

The committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors. The chairperson of the company may be appointed as member, but shall not chair such committee.

The Committee shall identify the person qualified to become directors and may be appointed in senior management and recommend their appointment and removal and also carry out evaluation of every director.

The Committee shall formulate the criteria, for determining qualifications, and independence of a director and recommend to the Board the policy relating to remuneration for directors, KMPs and other employees.

While formulating its policy, the Nomination and Remuneration Committee shall ensure that

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate the directors

- (b) relationship of remuneration to performance is clear and

- (c) remuneration to Directors, KMP and senior management involves a balance between fixed and incentive pay reflecting short and long term performance objectives which are suitable for the working of the company and its objectives.

NOTE: After exemption notification dated 05.06.2015, in case of the Government Company provisions of Section 178 shall apply for the appointment of Senior management and other employees only.

Duties of the Nomination and Remuneration Committee

The duties of the Nomination and Remuneration Committee include:

- (a) identifying persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down;
- (b) recommend to the Board their appointment and removal;
- (c) carry out evaluation of every Director's performance;
- (d) formulate the criteria for determining qualifications and independence of a Director, and
- (e) recommend to the Board, a policy relating to the remuneration for the Directors, KMP and other employees.

3. The Stakeholders Relationship Committee – Under Companies Act, 2013

Section 178(5) of the Companies Act, 2013 provides for constitution of the Stakeholders Relationship Committee. The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

Who can attend the general meeting of the company on behalf of committee constituted under this section?

The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorized by him in this behalf shall attend the general meetings of the company.

Penalty for Contravention

The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine not less than rupees twenty-five thousand but which may extend to one lakh rupees or with both. The non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

	Listed Company	Public Company			Company
		Paid up capital	Turnover	Loans or borrowings	No. of Shareholders or debenture holders
		10 Crore or more	100 crore or more	Exceeding 50 crore	1000 or more
Nomination and Remuneration Committee (3 or more Non-Executive Directors with majority Independent)	Yes	Yes	Yes	Yes	No
Audit Committee (Minimum of 3 directors with majority Independent)	Yes	Yes	Yes	Yes	No
Stakeholders Relationship Committee (Chairman shall be Non-executive Director)	Yes	No	No	No	Yes

4. Corporate Social Responsibility Committee

Corporate Social Responsibility (CSR) refers to way that businesses are managed to bring about an overall positive impact on the communities, cultures, societies and environments in which they operate. The fundamentals of CSR rest on the fact that not only public policy but even corporate should be responsible enough to address social issues.

The basic objective of CSR in these days is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations.

CSR programs ranges from community development to development in education, environment and healthcare etc. Provision of improved medical and sanitation facilities, building schools and houses, and empowering the villagers and in process making them more self-reliant by providing vocational training etc.

One of the key changes in the Companies Act, 2013 is the introduction of a Corporate Social Responsibility section making India the first country to mandate CSR through a statutory provision. While CSR is not mandatory for companies, the rules are in line with the 'Comply or Explain' principle with penalties applicable only if an explanation is not offered.

The provisions of the Section may be summarized as under:

1. The Section applies to the following classes of companies during any financial year:
 - (i) Companies having Net Worth of rupees five hundred crore or more;
 - (ii) Companies having turnover of rupees one thousand crore or more;
 - (iii) Companies having Net Profit of rupees five crore or more.
2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
3. The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director.
4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

5. The contents of the Policy shall be disclosed in the Board's report.
6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.
7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant:

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;
2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board's Report.
3. The eligible companies are required to spend in every financial year, at least two per cent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, "Average Net Profit" shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

Corporate Governance Committee

A company may constitute Corporate Governance committee to develop and recommend the board a set of corporate governance guidelines applicable to the company and implement policies relating to corporate governance. Many companies give the mandate of corporate governance to nomination committee and is given the nomenclature Nomination and Corporate Governance Committee.

Regulatory, Compliance & Government Affairs Committee

The primary objective of the Compliance Committee is to review and monitor:

- the Company's compliance with applicable legal and regulatory requirements,
- the Company's policies, programs, and procedures to ensure compliance with relevant laws and the Company's Code of Conduct;
- the Company's efforts to implement legal obligations arising from settlement agreements;

and

- perform any other duties as are directed by the Board of Directors of the company.

Science, Technology & Sustainability Committee

It:

- Monitors and reviews the overall strategy, direction and effectiveness of the Company's research and development.
- Provides input, as needed, regarding the scientific and technological aspects of product safety matters.
- Reviews the Company's policies, programs and practices on environment, health, safety and un- sustainability.
- Assists the Board in identifying and comprehending significant emerging science and technology policy and public health issues.
- Assists the Board in the Company's major acquisitions and the acquisition or development of new science or technology.

Risk Management Committee

Risk Management Committee under SEBI (Listing Obligations and Disclosure Requirement) Additional Regulations, 2015

As per regulations 21 of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, the board of directors of the top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year shall constitute a Risk Management Committee.

The majority of members of Risk Management Committee shall consist of members of the board of directors.

The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

Power of Board: Section 179

The power of the company is divided into two parts, i.e., powers to be exercised by the BODs and the powers to be exercised by the shareholders in the general body meeting.

Powers to be exercised in the Board's meetings

The following [section 179(3) and Rule 8] powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely: -

- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorize buy-back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, or merger;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) to make political contributions;
- (12) to appoint or remove key managerial personnel (KMP); etc.

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager, the powers specified in (4) to (6) above on such conditions as it may specify.

Restriction on Powers of Board [Section 180]

The board can exercise the following powers only with the consent of the company by special resolution, namely –

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company.
- (b) to invest the amount of compensation received by it as a result of any merger or amalgamation;
- (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves;
- (d) to give time for the repayment of, any debt due from a director.

NOTE: *After exemption notification dated 05.06.2015, in case of Private Companies provisions of Section 180 shall not apply.*

Contributions to Charitable Funds and Political Parties [Section 181]

The power of making contribution to ‘bona fide’ charitable and other funds is available to the board subject to certain limits.
Further, the permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding previous years.

Prohibitions and Restrictions Regarding Political Contributions [Section 182]

The non-government company or the company which has been in existence for less than three financial years may contribute any amount directly or indirectly to any political party.
Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.

The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose.

The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year and the particular of total amount contributed and the name of political party to whom the contribution so made.

Penalty for Contravention

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

Power of Board and other Persons to make Contributions to National Defence Fund, etc. [Section 183]

The Board is authorised to contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Government for the purpose of national defence.
The company is required to disclose in its P&L Account the total amount contributed by it during the financial year.

Disclosure of Interest by Director [Section 184]

The Act provides for the disclosure by directors relating his interest in any company or companies, firms or other association of individuals by giving a notice in writing in **Form MBP -1** (Rule 9(1)) at the first meeting of board after being appointed as director and at first meeting of board of every financial year.

As per section 184 (2) of the Act, every director is required to disclose the nature of his concern or interest at the meeting of board in which the contract or arrangement is discussed and he has not to participate in such meeting.

The above mentioned interest may be direct or indirect and relating to some contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with other director holds more than two percent shareholding or is a promoter, manager, Chief Executive Officer of that body corporate or with a firm or other entity in which such director is a partner, owner or member as the case maybe.

If a director is not interested at the time of contract but, subsequently becomes interested is required to disclose his interest or concern at the first meeting of the board.

If a contract or arrangement is entered into by the company without disclosure of interest by director, it shall be voidable at the option of the company. The contravention of the provisions leads to punishment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or both.

NOTE: In case of private companies the interested directors may participate in the Board Meetings after disclosure of interest. [Vide exemption notification dated 5th June, 2015.]

NOTE: After exemption notification dated 05.06.2015, In case of section 8 companies: Provisions of Section 184 (2) shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

Loans to Directors, etc. [Section 185]

No company shall directly or indirectly advance any loan to any of its directors or to any person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

But a company may advance loan to managing or whole-time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution or the company provides loans or gives guarantee or securities for the due repayment of any loan in due course of its business.

Rule 10 provides that any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section; provided that such loans are utilized by the subsidiary company for its principle business activities.

Penalty

In case of contravention of any provisions of this section, there is punishment with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisonment which may extend to six months or with fine mentioned above or with both.

Related Party Transactions [Section 188]

Meaning of Related Party

The term 'related party', in relation to company, means and includes the following:

1. a director or his relative,
2. KMP or their relative,
3. a firm in which a director, manager or his relative is a partner,
4. a private company in which a director or manager is a director or members,
5. a public company in which a director or Manager is a director or holds along with his relatives more than 2% of its paid up share capital.
6. a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is accustomed to act,
7. a holding/ subsidiary or associate company, subsidiary 's subsidiary, and
8. such person as would be prescribed.

1. Scope of Transactions [Section 188 (1)]

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013.

Section 188(1) of the 2013 Act provides below for approval of related party transactions:

Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to:

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any **office or place of profit** in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities of the company.

The expression "**office or place of profit**" means any office or place—

- (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (ii) where such office or place is held by an individual other than a director, if the individual receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

The expression "**arm's length transaction**" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

However, nature of transactions covered are comprehensive as they include routine to rare supply of goods or material either by way of direct sale, purchase or supply of any goods or services (technical support, maintenance, consultancy, advisory, or sharing professional knowledge etc.) or by appointing agent for the same and underwriting financial instruments of the Company. While entering into such type of transactions, Company will be required to take prior approval of Board of Directors, by way of a resolution passed in the board meeting. The transactions done in ordinary course of business on arm length's basis shall be outside the scope of this provision.

As per second proviso of the section 188(1) of the Act, no member of the company, shall vote on such resolution if such member is a related party to the contract or arrangement which may be entered in to by the company.

Note: After exemption notification dated 05.06.2015 the second proviso of the section 188(1) of the Act shall not apply to the private company.

Entering into Contract or Arrangement with Related Party [Rule 15 of The Companies (Meeting of Board and its Powers) Rules 2014]

A company shall enter into any contract or arrangement with a related party subject to the following (Rule 15) conditions –

(1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-

- (a) the name of the related party and nature of relationship;
- (b) the nature, duration of the contract and particulars of the contract or arrangement;
- (c) the material terms of the contract or arrangement including the value, if any;
- (d) any advance paid or received for the contract or arrangement, if any;
- (e) the manner of determining the pricing and other commercial terms, both included as part of contract;
- (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
- (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

(3) **For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution –**

(i) a company having a paid-up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party; or

(ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into –

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188 with criteria, as mentioned below –

- (i) sale, purchase or supply of any goods or materials directly or through appointment of agents **exceeding twenty-five percent of the annual turnover** as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

<p>(ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;</p> <p>(iii) leasing of property of any kind exceeding ten percent of the net worth or exceeding ten percent of turnover as mentioned in clause (c) of sub-section (1) of section 188;</p> <p>(iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;</p> <p>(b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or</p> <p>(c) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent of the net worth as mentioned in clause (g) of subsection (1) of section 188.</p>
<p>In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.</p>
<p><i>After exemption notifications dated 05.06.2015, in case of Government company:</i> First and second proviso to sub section (1) of Section 188 shall not apply to –</p> <p>(a) a Government company in respect of contacts or arrangements entered into by it with any other Government company;</p> <p>(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, of, as the case may be, the State Government before entering into such contract or arrangement.</p>
<p>Disclosure in Board's Report</p>
<p>Every related party contracts or arrangements shall have to be disclosed in the Board's report and referred to shareholders along with the justification for entering into such type of transactions.</p>
<p>Consequences of Contravention of Provisions</p>
<p>In case, where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under subsection (1) and,</p> <p>(i) if it is not ratified by the Board or</p> <p>(ii) by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.</p>
<p>Recovery of Loss in Related Party Transaction</p>

Besides subsequent approval, it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Penal Provisions

Any director or any other employee of a company, who authorised to enter into the contracts or arrangement, in violation of the provisions of this section, shall be punishable as under -

(i) In case of listed company – Any director or other employee of the listed company be punishable with,

(a) imprisonment for a term which may extend to 1 year; or

(b) fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees; or

(c) with both.

(ii) In case of other than listed company – Any director or other employee of the unlisted company be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Additional requirement for Related Party Transactions under the Listing Regulations

As per Regulation 23 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015,

(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions which shall also be placed on the website of the company.

Explanation- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions shall require prior approval of the audit committee.

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) the audit committee shall lay down the criteria for granting the omnibus (compilation, collection) approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

(b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;

(c) the omnibus approval shall specify:

(i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,

(ii) the indicative base price / current contracted price and the formula for variation in the price if any; and

(iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

(d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

(a) transactions entered into between two government companies;

(b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

(6) The provisions of this regulation shall be applicable to all prospective transactions.

(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

(8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

Section 189: Register of Contracts or Arrangements in which Directors are interested

Every company is required to keep one or more registers in Form MBP 4 giving separately the particulars of all contracts or arrangements and shall enter therein the particulars of (Rule 16(1))- company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest.

But the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.

The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. (Rule 16(2))

Such register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose. (Rule 16(3))

Such register or registers are required to be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Every director within thirty days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.

The register be kept at the registered office of the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page. (Rule 16(4))

Penalty

Every director who fails to comply is liable to a penalty of twenty- five thousand rupees.

Section 190: Contract of Employment with Managing Director or Whole-Time Directors

Every company which is not a private company is required to keep the copy of contract if in writing with a managing director or whole-time director for contract of service or a written memorandum setting its terms if not in writing.

The abovementioned copies required to be kept open to inspection for any member of the company free of cost.

Penalty

The default in complying with the provisions of this section, the company is liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default liable to a penalty of five thousand rupees for each default.

Section 191: Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares

No director of a company shall receive any payment by way of compensation in case of transfer of the whole or any part of any under taking or property of the company or the transfer to any person of all or any of the shares in a company.

The following particulars mentioned in Rules 17 are required to be disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount: -

- (a) name of the director
- (b) amount proposed to be paid;
- (c) event due to which compensation become payable;
- (d) date of Board meeting recommending such payment;
- (e) basis for the amount determined;
- (f) reason/justification for the payment;
- (g) manner of payment - whether payable in cash or otherwise and how;
- (h) sources of payment; and
- (i) any other relevant particulars as the Board may think fit.

Any payment made by the company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as a consideration for retirement from office or in connection with such loss or retirement subject to the limit as set out under section 202. (Rule 17(2))

No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (Rule 17(3)) (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if:

- (a) the company is in default in repayment of public deposits or payment of interest thereon;
- (b) the company is in default in redemption of debentures or payment of interest thereon;
- (c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;
- (d) the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues);
- (e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and
- (f) the company has not paid dividend on preference shares or not redeemed preference shares on due date.

If the payment is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

Penalty upon Contravention

The director who contravenes shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Restriction on Non- Cash Transactions Involving Directors [Section 192]

A company can't enter into an agreement by which –

- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected. A company can enter into an arrangement only with the prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Effect of Violation

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company.

Contract is valid

The arrangement will be valid if the company has been indemnified by that person for any loss or damage caused to it or any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

In case of OPC	Where One Person Company limited by shares or by guarantee enters into a contract except in its ordinary course of business with the sole member of the company who is also the director of the company, the company shall ensure that the contract is in writing. If the contract is not in writing, it ensures that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.
	The company is required to inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board within a period of fifteen days of the date of approval by the Board.

Prohibition on Insider Trading of Securities [Section 195]	
Meaning	An act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or An act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person.
Prohibited	Insider trading is totally prohibited in the Act, including any trading by director or key managerial personnel.
Information in ordinary course of business	Any communication required in the ordinary course of business or profession or employment or under any law is not amounting to insider trading.
Contravention and Penalty	If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

CH. 17 APPOINTMENT AND REMUNERATION OF KMP

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term key management personnel to define the executive management.

While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for laying down the strategies as well as its implementation.

Definition Section 2(51)	Key Managerial Personnel in relation to a company means: (i) The Chief Executive Officer or the Managing Director or the Manager; (ii) The Company Secretary; (iii) The Whole Time Director; (iv) The Chief Financial Officer and (v) such other officer as may be prescribed.
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MANAGING DIRECTOR

The Board of directors manage the affairs of a company either by mean of a committee of its own or by appointing managerial personnel such a Managing Directors, Whole Time Directors and managers to work under their superintendence.

Ways to manage	The companies must opt between two modes of management- namely by a Managing Director or by a Manager. But both Managing Director and Manager cannot co-exist, as section 196 prohibits the simultaneous appointment of a Managing Director and a Manager in a company.
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Ways to manage	However, the Companies Act, 2013, doesn't prohibit the simultaneous employment of: (i) more than one Managing Director; or (ii) one or more Whole Time Director along with the Managing Director or Manager. This implies that a whole-time director can co-exist with a Managing Director or Manager.
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Meaning & Appointment of Managing Director	Section 2 (54) of the Companies Act defines 'Managing Director' as a director who by (a) virtue of an agreement with the company, or (b) a resolution passed by the company in a general meeting, or (c) its Board of directors, or (d) virtue of its Memorandum or Articles, is entrusted with 'substantial' powers of management of the affairs of the company and includes a director occupying the position of a Managing Director.
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Important Points	Managing Director must necessarily be a director. Managing Directors' powers of managing the affairs of the company must be 'substantial'.
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	<p>The power to do acts of routine nature such as, power to affix the common seal of the company to any document, or to draw and endorse any cheque on account of the company in any bank, or to sign any share certificate, shall not be included within substantial powers of management.</p> <p>The Managing Director is the executive head of the company, who exercises his powers subject to the superintendence, control and direction of the Board of Directors.</p> <p>This means that any director entrusted with managerial functions will be a Managing Director.</p>
Employee as well as director	<p>Whether a Managing Director is an employee of the company or not. Since he derives his status as a Managing Director from his appointment by the Board of Directors to this office, he is both a director as well as an employee of the company.</p>
Termination & Compensation	<p>A Managing Director is normally appointed through a separate service agreement with the company. If his appointment is prematurely terminated, he is entitled to compensation.</p> <p>Again if termination is brought about by an alteration of articles in a manner which is inconsistent with the terms of appointment, damages will have to be paid.</p>

APPOINTMENT OF MANAGING DIRECTOR/WHOLE TIME DIRECTOR/MANAGER

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager.

Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term.

Appointment of Managing/whole time Director require Board and general meeting approval

The appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

Earlier no appointment of a managerial personnel could be made without the approval of Central Government. Now, Section 196 of the Companies Act enables a company to appoint a managerial personnel i.e., a Managing or Whole Time Director or Manager, without the approval of the Central Government, if the conditions laid down in Part I of Schedule V to the Companies Act are satisfied.

Part I of Schedule V - Conditions

- (a) he had not been sentenced to imprisonment for any period, or to a fine exceeding Rs. 1000/- for conviction of an offence under any of the following 15 Acts, namely:
- (i) the Indian Stamp Act, 11899,

- (ii) the Central Excise Act, 1944,
- (iii) the Industries (Development and Regulation) Act, 1951,
- (iv) the Prevention of Food Adulteration Act, 1954,
- (v) the Essential Commodities Act, 1955,
- (vi) the Companies Act, 2013,
- (vii) the Securities Contracts (Regulation Act) 1956,
- (viii) the Wealth Tax Act 1957,
- (ix) the Income Tax Act 1961,
- (x) the Customs Act 1962,
- (xi) the Monopolies and Restrictive Trade Practices Act 1969,
- (xii) the FEMA, 1999
- (xiii) the Sick Industrial Companies Act 1985,
- (xiv) the Securities & Exchange Board of India Act, 1992,
- (xv) the Foreign Trade (Development and Regulation) Act 1992;

(b) he had never been detained for any period under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974.

NOTE: Where Central Government has given its approval to the appointment of a personnel convicted or detained under clause (a) or (b) of Schedule V, no further approval of Central Government shall be necessary for subsequent appointments if he has not been convicted or detained after such appointment.

(c) He has completed the age of 21 years and has not attained the age of 70 years.

NOTE: Where he is already 70 years or more, then a special resolution should be passed by the shareholders in the annual general meeting approving his appointment. The explanatory statement annexed to the notice for such a meeting should indicate the justification for the appointing such a person.

(d) Where he is a managerial person in more than one company, draws remuneration from one or more companies subject to ceilings given in Part II of Schedule V.

(e) He is resident in India.

NOTE: resident in India means a person who has been staying in India continuously, for not less than 12 months, from the date of his appointment.

Other conditions

In addition to requirements given by Schedule V, the conditions prescribed by section 196 for the appointment of Managing Director, Whole Time Director or Manager must be met.

Disqualifications

Section 196(3) provides that no company shall appoint or continue the employment of any person as Managing Director, Whole Time Director, or Manager who:

- (a) is below the age of 21 years,
- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent,
- (c) has at any time suspended payment to its creditors, or
- (d) has at any time being convicted by a court of an offence and sentenced for a period of more than 6 months.

Appointment with the Approval of Central Government

In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, in **e-Form No. MR 2**.

According to section 200, the Central Government or a company may, while according its approval under section 196, to any appointment of a managing director, whole-time director or manager, the Central Government or the company shall have regard to—

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by the individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days of the appointment, with the Registrar in **Form No. MR.1** along with such fee as may be specified for this purpose.

Case Law

Wasava Tyres vs. Printers (Mysore) Ltd.

The managing director of a company filed a suit on behalf of the company against the tenants and the trial court granted decree directing the tenants to vacate and deliver possession of the tenanted premises. The court also directed payment of damages and, in default, to pay interest. The tenants filed an application and contended that in the instant case, the managing director, who had filed suit, had no proper authorization from the board of directors. The Court dismissed the application of the tenants and held that the words 'substantial powers of management' specifically excludes certain acts from its purview. Therefore, except the excluded acts, the managing director has power and privilege of conducting the business of the company in accordance with the memorandum and articles of association of the company. The institution of the suit on behalf of the company by the managing director is deemed to be within the meaning of 'substantial powers of management', since such a power is necessary and incidental to manage the day-to day affairs and business of the company.

The suit was obviously filed for the benefit of the company. In that view of the matter, the contention that the managing director had no authority to file a suit is untenable and the same is rejected.

Shanta Shamsher Jung Bahadur vs. Kamani Brothers (P) Ltd.

A managing director must hold and continue to hold the office of director. A managing director is first a director and then a managing director with certain additional powers.

A managing director is an ordinary director entrusted with special powers. If a company wants to appoint a person as managing director, who is not a director of the company, he has first to be appointed as an additional director in accordance with the provisions of section 161 of the Companies Act, 2013 of the Act.

Managerial Remuneration

Section 196(4) provides that subject to the provision of Section 197 which deals with overall managerial remuneration, a Managing Director, Whole-time Director or Manager shall be appointed by the Board of Directors at a meeting, which is convened through a notice specifying the terms and conditions of such appointment, remuneration payable etc. Subsequent to their appointment at a Board meeting, Managing Director, Whole-time Director or Manager's appointment must be approved by an ordinary resolution passed at the next general meeting of the company.

NOTE: As per Section 196(5) where an appointment of a Managing Director, Whole-time Director or Manager is not approved by the company at a general meeting, any act done by him before such approval shall be valid.

Exemption to private company for section 196(4) & (5) vide notification dated 05.06.2015

Section 196(4) and Section 196(5) is not applicable to Private Company

Note: Exemption is given to the private companies for Section 196(4) which deals with appointment of Managing/Whole time director /manager /approval of Central Government as the case may be and Section 196(5) deals with validating actions of Managing/Whole time Director/manager, if the appointment is not approved by a company in general meeting.

NUMBER OF COMPANIES IN WHICH ONE PERSON MAY BE APPOINTED AS MANAGING DIRECTOR

Section 203 provides that a person who is already a Managing Director or Manager of another company, cannot be appointed as the Managing Director of a company.

But such an appointment can be made if the Board of Directors of such a company approves the appointment through a unanimous resolution passed at the meeting provided specific notice had been given to all the directors then in India about the Board meeting.

Thus, no person can be appointed as the Managing Director or Manager in more than two companies.

Tenure of Appointment

According to Section 196, the term of office of a Managing Director cannot exceed 5 years at a time. However, reappointment or extension is possible within the last 1 year of the present appointment. Reappointment or extension cannot exceed more than 5 years on each occasion.

Remuneration

A Managing Director may be remunerated either
(i) by way of a monthly payment; or
(ii) as a specified percentage of the net profits of the company; or
(iii) partly by (i) and partly by (ii).
However, such remuneration should not exceed 5% of the net profits without the company's sanction.
NOTE: Where there are more than one Managing Director, the total remuneration payable to them must not exceed 10% of the net profits without sanction of the company.

WHOLE TIME DIRECTOR	
Meaning	Section 2(94) provides that the term Whole Time Director includes a director in the whole time employment of the company.
<p>Thus, a Whole Time Director means a director who devotes all his time and attention to the carrying on of the affairs of the company as may be assigned to him by the Board. Therefore, he is almost like a Managing Director though not so designated.</p> <p>But a person who does not devote "substantiality the whole of his time to manage the affairs of the company" is not a Whole Time Director.</p>	
Appointment/ Reappointment and Remuneration	Regarding appointment/reappointment and remuneration of whole-time directors, same provisions which are applicable to Managing Directors shall be applicable to whole-time directors.
	Similarly provisions of Section 196 dealing with disqualification of Managing Directors and are also applicable to whole-time directors.
	Also the provisions dealing with remuneration of directors and other managerial personnel are applicable to whole time directors.
<p>NOTE: A company can have more than one whole-time director, each looking after a different aspect of the business of the company such as Whole-Time Director Finance, Whole Time Director Marketing.</p>	

DISTINCTION BETWEEN A MANAGING DIRECTOR AND WHOLE-TIME DIRECTOR			
S. No.	Basis	Managing Director	Whole-Time Director
1.	Appointment	The appointment of a Managing Director need not necessarily be made with the consent of the shareholders in a meeting. Instead, it can be made by virtue of an agreement with the company, or by virtue of a resolution passed by the BOD, or by virtue of a provision in the Memorandum or Articles.	Appointment of a whole-time director requires the sanction of the shareholders by means of a resolution.
2.	Number of Companies	A person can be a Managing Director of two companies.	A whole-time director being a whole-time employee of the company cannot be a whole-time director in more than one company.

3.	Powers	A Managing Director is entrusted with substantial powers of management i.e., discretionary powers to take decisions regarding policy matters.	A Whole Time Director exercises the powers as per the terms of his employment, which need not be as wide as those of a Managing Director.
4.	Manager	A Managing Director cannot coexist with a Manager.	A Whole Time Director can be appointed together with the Manager.

MANAGER	
Meaning	As per Section 2 (53), Manager means "an individual, who subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a director, by whatever name called, whether under a contract of service or not."
From the above definition, it is clear that only an individual can be appointed as the Manager of a company. No company can appoint any firm, body corporate or association of persons as its Manager.	
Again, a Manager may be a director of the company. Where a director is a Manager of a company and for some reason, his office of director is vacated, the office of Manager held by him shall not be affected.	
A Manager, shall have the management of the whole or substantially the whole of the affairs of a company.	
Manager is not an agent who has to act as a servant or who is to obey orders, but a person who is entrusted with the power to transact the whole of the affairs of the company.	
NOTE: A person who is one of the departmental Manager or a branch Manager is not deemed to be a Manager in this sense.	
Appointment of Manager	The provisions of Section 196 which are applicable to a Managing Director and Whole Time Director regarding appointment and reappointment shall apply to a Manager also.
Tenure of Appointment	An individual cannot be appointed as a Manager for more than 5 years, as per Section 196. He may be reappointed the, reappointment within the last 1 year of the present term.
Number of Managements	Section 203 provides that no company shall appoint any person as Manager if he is either the Manager or the Managing Director of any other company unless his appointment is approved by the unanimous consent of the directors at the Board meeting provided that a specific notice for the meeting had been given to all the directors then in India.
Remuneration	The Manager of a company may receive remuneration either by way of a monthly payment, or by way of specified percentage of the net profits of the company. The remuneration payable shall not exceed 5% of the net profits of the company. This limit can exceed, however, with the approval of the company only.

Disqualifications of Manager	The provisions of Section 196 which prescribed conditions for the appointment of persons as Managing Directors or Whole Time Director equally apply to Managers.
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DIFFERENCE BETWEEN MANAGER AND MANAGING DIRECTOR

S. No.	Basis	Manager	Managing Director
1.	Director	A Manager may not be a director of a company.	A Managing Director must be a director.
2.	Number	There cannot be more than one Manager in a company.	There may be more than one Managing Director in a company.
3.	Method of Appointment	A Manager may be appointed under a contract of service or by way of a resolution passed by shareholders in general meeting.	A Managing Director may be appointed by (1) virtue of an agreement with the company, or (2) resolution passed by company in a general meeting, or (3) or by BOD, or (4) by virtue of Memorandum and Articles of the company.
4.	Remuneration	The maximum remuneration payable to a Manager cannot exceed 5% of the net profits.	Where there are more than one Managing Director, the maximum remuneration payable will be limited to 10% of the net profits.

Sitting Fees to Directors for Attending the Meetings [Section 197(5)]

A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board.
The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof.

The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Remuneration Drawn in Excess of Prescribed Limit

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)]

Managerial Remuneration under Schedule V (Part II)

Section I: Remuneration	A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197.
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by companies having Profits											
Section II: Remuneration by Companies having no profits or inadequate profits without Central Govt. approval	<p>Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it, may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) below:</p> <p>(A)</p> <table border="1"> <thead> <tr> <th>Where the effective capital is</th> <th>Limit of yearly remuneration payable shall not exceed (Rs)</th> </tr> </thead> <tbody> <tr> <td>Less than 5 Crore</td> <td>30 Lakhs</td> </tr> <tr> <td>5 Crore and above but less than 100 Crore</td> <td>42 Lakhs</td> </tr> <tr> <td>100 Crore and above but less than 250 Crore</td> <td>60 Lakhs</td> </tr> <tr> <td>250 Crore and above</td> <td>60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore</td> </tr> </tbody> </table> <p>If a special resolution is passed by the shareholders, the above limits shall be doubled.</p> <p>(B) In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the two years prior to his appointment as managerial person- 2.5% of the current relevant profit.</p> <p>If a special resolution is passed by the shareholders, this limit shall be doubled.</p>	Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rs)	Less than 5 Crore	30 Lakhs	5 Crore and above but less than 100 Crore	42 Lakhs	100 Crore and above but less than 250 Crore	60 Lakhs	250 Crore and above	60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore
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Less than 5 Crore	30 Lakhs										
5 Crore and above but less than 100 Crore	42 Lakhs										
100 Crore and above but less than 250 Crore	60 Lakhs										
250 Crore and above	60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore										

Central Government or Company to Fix Remuneration Limit (Section 200)

In case, where the company has inadequate or no profits, the Central Government or a company may fix the remuneration within the limits specified in the Act. While doing so, the Central Government or the company shall have regard to—

- the financial position of the company;
- the remuneration or commission drawn by the individual concerned in any other capacity;
- the remuneration or commission drawn by him from any other company;
- professional qualifications and experience of the individual concerned;

Compensation for Loss of Office of Managing or Whole- time Director or Manager (Sec 202)

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office.

However, no payment shall be made in the following cases: —

- where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;
- where the office of the director is vacated due to disqualification;
- where the company is being wound up due to the negligence or default of the director;
- where the director has been guilty of fraud or breach of trust or gross negligence or

mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
 (e) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Remuneration to Managerial Personnel [Section 197]

Overall managerial remuneration	Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year.
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Remuneration to Managing Director/whole time Director/Manager

The remuneration payable to any one managing director or whole- time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

Remuneration to other directors

Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed, - 1% of the net profits of the company, if there is a managing or whole-time director or manager; - 3% of the net profits in any other case.