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FINAL CA
MAY '19
REVISION NOTES
Corporate, Allied (Old)
& Economics (New) Laws

Part - IV

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DIRECTORS AND BOARD MEETING [BOTH]

Directors

- Definition of Director : Sec. 2(34)
Director means a director appointed to BOD

➤ **Section 149(1) : Membership**

	Public Co.	Pvt. Co.	O.P.C.
Members			
Minimum	7	2	1 member + 1 nominee
Maximum	Unlimited	200	1 member + 1 nominee
Directors			
Minimum	3	2	1
Maximum	15*	15*	15*

- Company can appoint more than 15 directors by passing special resolution of the shareholders

Exception : Section 8 & Govt. Co. can have more than 15 Directors without SR

➤ **Section 149 (1) Proviso 2 : Women Director**

- i) Listed Co.
- ii) Unlisted Public Company

↓
 Paid-up share capital \geq 100 crore } to be checked on latest audited financial statement
 OR
 Turnover \geq 300 crore

Above company should have at least one woman director
Intermittent vacancy shall be filled in 3 months or next BM WIL

➤ **Section 149 (3) : Resident Director**

Every company should have at least 1 resident director
Director who stays in India in for atleast 182 days during financial year

- **Section 165** : maximum number of directorships a person can become director in maximum 20 companies out of which it can be maximum 10 public companies

Note :

- 1) Company can reduce the limit of 20 companies by amending articles of association. However, co. cannot increase the limit by amending AOA
- 2) Private Co. which is holding or subsidiary of public co. is a public co.

Exception : section 8

Dormant company

Fine : 5000 per day

- **Section 162 : appointment of two or more directors by passing single resolution**
 - Normally appointment of each director requires separate resolution. However, in following situation two or more directors can be appointed by passing single resolution
 - Unanimous resolution passed to appoint two or more directors by single resolution
 - If two or more directors appointed without U.R. then such appointment is void-ab-initio even if no. shareholder object against to.
 - 1) Private company
 - 2) 100% holding government company or its subsidiary

- **Section 164(1) : disqualification of directors**
 - I. Unsound mind declared by court
 - II. Un-discharged insolvent
 - III. Applied himself to be declared as insolvent
 - IV. Convicted by court on moral turpitude ground or otherwise for a continuous period of 6 months or more and (5 years not elapsed from the date coming out of jail)
Convicted by court on moral turpitude ground or otherwise for continuous period of 7 years or more (disqualification is for life time).
 - V. Disqualified by Court / NCLT
Eg : fraud / misfeasance etc.
 - VI. Calls in arrears for continuous period of 6 months or more
 - VII. Contravention under section 188 (Related party transaction) (5 years disq.)
 - VIII. No DIN (director identification number) or UIN

Note 1 : IV, V, VII shall continue even if the appeal is filed

Note 2 : In all other cases, there will be immediate disqualification

- **Section 164(2) : disqualification of director**
Any person who is a director of a company which fails to.
 - a) File financial statements or annual return for a continuous period of 3 years
 - or**
 - b) Not paid dividend or deposit or interest on deposit or debenture or interest on debenture for a continuous period of 1 year NOR

Note 1 : In that case person disqualified to get appointed as director of any company (public + pvt.) for a continuous period of 5 years from the date of disqualification

Note 2 : Director shall not incur disqualification for 6 months from the date of his appointment. Dividend will be treated as paid if it is transferred to separate account

- 1) Debenture / deposit interest on debenture, interest on deposit will be treated as not paid if holder claims the money and company refuses to make the payment
- 2) If any person ceases to hold the office before the date of disqualification he will not attract disqualification



Company _____ Director 9 → ROC
 Whether any director is qualified or not

Director/ _____ Director 10 → Central Govt.
 Co. on his behalf for removal of disqualification

Applicability to all companies

Note: - private company can have any additional ground of disqualification

Exception : this section is not applicable to Govt. Co.

➤ **Selection 152 (6) : rotational director**

Applicability public company

Atleast $2/3^{rd}$ directors should be rotational directors (AOA can increase limit)

Rotational director $\geq 2/3^{rd}$ of total directors (not included independent director)

Fraction will be rounded off to next full figure

Eg : 5.1. \approx 6

Retirement by Rotation :

Out of total rotational directors, at least $1/3^{rd}$ should retire by rotation who are eligible to get reappointed

(Retirement by rotation $\geq 1/3^{rd}$ of rotational directors)

Note : any fraction will be rounded off to nearest figure

- 1) Person who is holding office longest will retire first
- 2) If two or more persons are appointed at the same point of time than retirement will be by their mutual consent or lot basis

➤ **Section 160 : nomination for appointment of regular director**

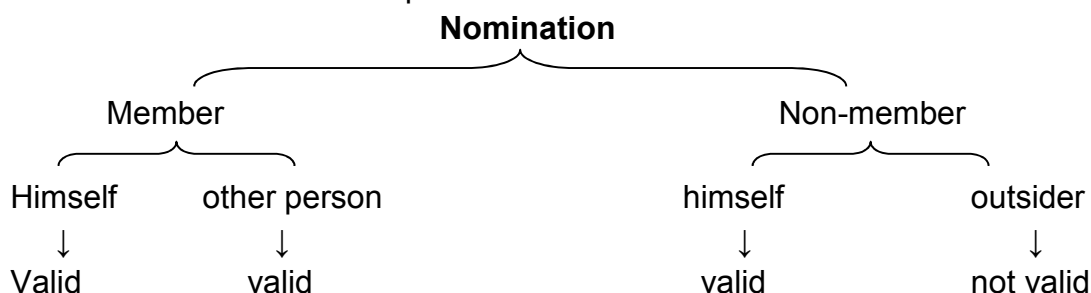
1. This is not applicable when the appointment is made by BOD
2. If any person other than retiring director wants to become regular director, shall file nomination under this section

Note : retiring director need not file nomination under this section as it is statutory obligation of BOD to file nomination for re-appointment of retiring directors.

3. in case co. appointing independent director or director recommended by NRC or board deposit not require

A person has to file nomination to the company along with:

- Consent letter to act as director if appointed
- Security deposit of Rs. 100,000
- Declaration that he is not disqualified u/s 164



If a person get appointed as director or secure at least 25% of total vote cast then security deposit will be refunded, otherwise it will be forfeited

This section does not apply to:

- Section 8 company (if election is by ballot)
- Private company
- 100% controlled govt. company or its subsidiary
- Nidhi Company → deposit amount shall be Rs.10,000

Section 161 (1) : additional director (Applicability to all companies)

Meaning : he is a director appointed by B.O.D. between two AGM

Condition :

- 1) after appointment of additional director, total number of directors in the company increases, therefore co. should ensure it does not exceed limit in AOA
- 2) additional director can be appointed only if it is authorized by the AOA if it is prohibited, then BOD cannot appoint additional director

Restriction: any person who is rejected by the shareholders in GM cannot be appointed as A.D

Tenure:

- 1) additional director will continue upto next AGM
- 2) if AGM is not held, then till the period, AGM should have been held
- 3) if AGM is legally extended, then term of additional director will be extended accordingly

Note: additional director is not at par with other directors except the tenure of office (term)

➤ **Section 161(4) : casual vacancy director (C.V.D)**

Casual vacancy: vacancy created by

- directors appointed by
- shareholders in GM
- cease to hold the office
- due to any reason (resign/death etc.)
- before / prior to completion
- of his terms

➤ condition : casual vacancy director (CVD) can be appointed only by board meeting resolution

(circulation not allowed)

- 1) filing of casual vacancy is power of BOD and not the obligation
- 2) casual vacancy created by one person can be filled by the same person
- 3) vacancy created by CVD cannot be filled by BOD as per strict reading of the Act however, as per the MCA's view, it can be filled up by BOD
- 4) CVD is at par with other directors in terms of power, duties and responsibilities except his tenure in office

Tenure: CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 161 (2) : Alternate Director**

Applicability : All companies

Alternate director can be appointed in case of absence of original director in India for a continuous period of 3 months or more

Conditions:

- 1) Alternate director can be appointed only if it is authorized by AOA or by shareholders in GM

Tenure:

- 1) Alternate director will vacate his office if original director returns to India (for any reason)
- 2) If original director attracts disqualification then alternate director should vacate immediately
- 3) If original director get retires and re-appointed then alternate directors can't be re-appointed immediately he can be re-appointed only after the expiry of 3 months

Note:

- 1) If company is appointing alternate director of independent director than he should also satisfy the criteria of independent director
- 2) Alternate director is at par with other directors except in the tenure of office
- 3) No person holding directorship in the company in any capacity can stand for alternate directorship in the same company.
- 4) That person should not hold alternate directorship for any other director in the company.
- 5) CVD will continue in the office upto the period original director would have continued if he would have not vacated the office

➤ **Section 151 : small shareholder director (SSD)**

Applicability: listed company

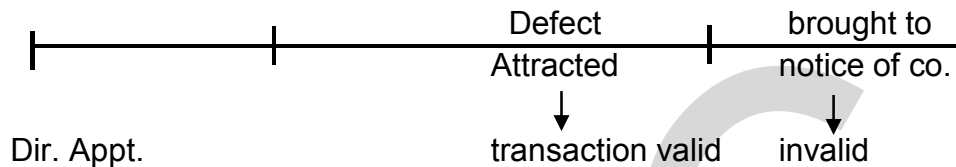
SSD = means person holding share upto Rs. 20,000 (nominal value)

1. Company can appoint SSD either suo-moto or on the notice by small shareholder at least 14 days' notice is to be given to the company by small shareholder along with →
 - Details of small shareholders (name, address, shareholding, folio no.)
 - Details of shareholding (if any) of proposed SSD
 - Consent to Act as director by proposed SSD
 - Declaration of proposed SSD
 - DIN of proposed SSD
2. SSD will be appointed if ordinary resolution (OR) is passed by small shareholder
3. SSD can be appointed for maximum tenure of 3 years and on expiry of 3 years he can never be re-appointed as SSD for lifetime in that company.
4. SSD is always treated as non-rotational director.
5. On expiry of tenure, SSD should not be associated with Co. in any capacity for next 3 years.
6. A person can become SSD in max 2 companies provided they are not into competing business SSD should satisfy criteria of independent director
7. A company can appoint max 1 SSD
8. A SSD is liable to vacate the office in the following cases :
 - Disqualified u/s 164
 - Disqualified u/s 167
 - Fails to satisfy the criteria of independent director

9. Notice: should be given by 1/10th of SSH or 1000 small shareholder whichever is lower
 1/10th of small shareholders
 or
 100 small shareholders
 ↓ Whichever is lower

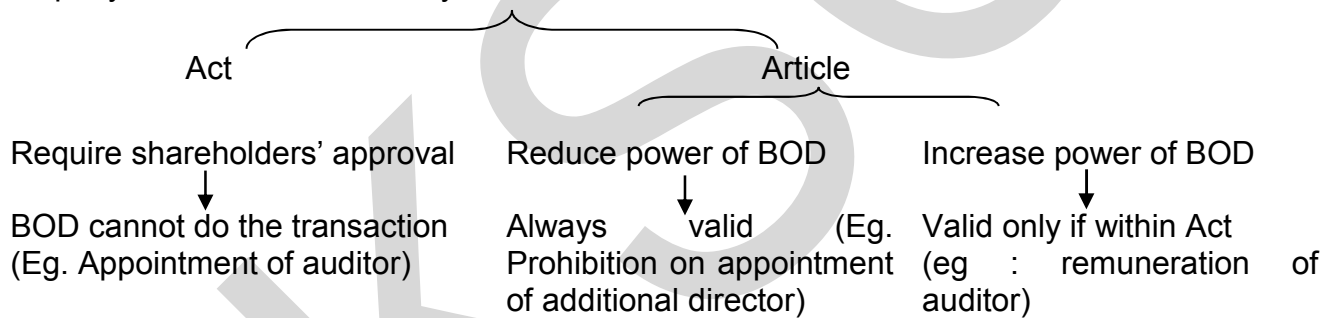
➤ **Section 176 : validity of the act of director**

After proper appointment if any defect is attracted to the appointment of director, then any transaction done by such director will be valid till the period such defect is brought to the notice of the company. However, after such date transaction will be invalid.



➤ **Section 179 : powers of company**

Unless otherwise specifically stated in the Act or AOA of the company, all the powers of company shall be exercisable by BOD



➤ Certain powers exercisable only by board meeting resolution (circular → not allowed)

1. Making calls on shares
2. Authorizing buy-back
3. Issuing debentures
4. Borrowing money otherwise then on debentures
5. Investing funds of the company
6. Making loan
7. Approving financial statement
8. Diversification
9. Amalgamation, merger or reconstruction
10. Making political contribution
11. Appointing or removing KMP
12. Appointing internal auditor and secretarial auditor (cant remove)
13. Takeover or substantial stake in another co.

➤ Normally, transaction has to be done in board meeting, however, in case no. 4,5,6 it can be delegated to any MD, committee by passing O.R after satisfying following conditions :
 Max amt. which can borrowed should be specified nature and max limit for investment should be specified.

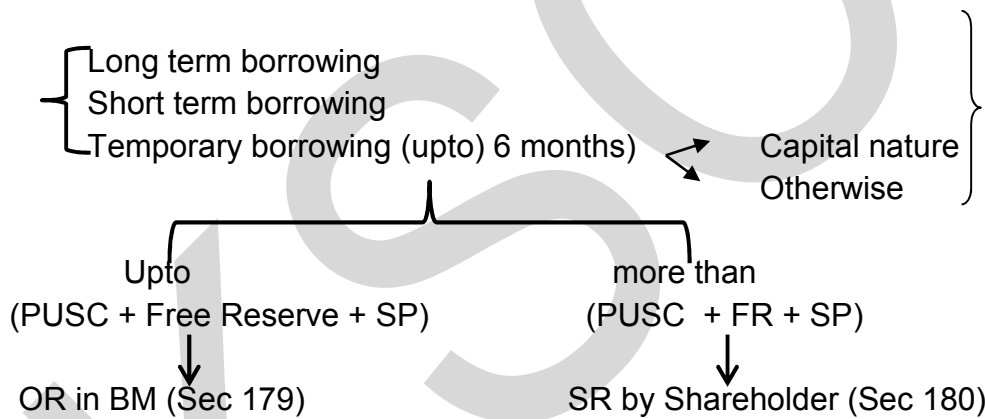
➤ In case of section 8 company transaction 4, 5 & 6 can be done by way of circular

- Transaction in the ordinary course of business by banking company not required approval.
- **Section 180 (1) : certain transaction require special resolution of shareholders**
 - Sale, lease or otherwise disposal of whole or substantially whole of the undertaking and if the company is having more than 1 undertaking, than any of the whole or substantially whole of the undertaking

Undertaking

- Co. has invested > 20% of its net worth
earning ≥ 20% of its total income
- Substantially whole : ≥ 20% of total value of undertaking
Net worth will be taken of latest audited balance sheet date total income will be taken of preceding financial year
 - Invest in otherwise than trust securities of amt. received by way of compensation on amalgamation / merger

Borrowing (present + proposed)



If lender provides loan without the knowledge of contravention and in good faith, then it will not affect validity of transaction. In other words, he will get good title
This provisions is not applicable if it done in the ordinary course of business

- Giving time for repayment of loan taken by the Director of the company (extension for repayment)

Note :

- (1) If assets are sold, leased in the ordinary course of business, i.e. business activity of the company, then this clause would not be applicable.
- (2) If any person acquire asset without knowledge of contravention and in good faith, then this transaction will remain valid and he will get good title of the asset

Non-applicability – private companies

➤ **Sec. 181 – Charitable Contribution**

Applicable: to all companies

If company propose to make charitable contribution exceeding 5% of average net profit (average of preceding 3 f.y.)

Requirement – prior approval of shareholders required by passing ordinary resolution in general meeting

➤ **Section 182 : Political Contribution**

Not applicable to

- 1) Govt. company
- 2) Any company which is in existence for less than 3 years

Political contribution means

Contribution to any local party	Contribution for benefit of political party	Advertisement in souvenir. Brochure etc. of political party	Payment to any person who is likely to support any political party
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Note 1: Payment should be made by A/C payee cheque

Note 2: Political party means any party registered under “Representative of people’s Act 1951”

Requirement: board meeting resolution

Disclosure: political contribution is to be disclosed in the profit and loss A/c

Penalty

Company ↓ Upto 5 times of amt. contributed	Officer – in – default ↓ Upto 5 times of amt. contributed and Imprisonment upto 6 months
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➤ **Section 183 : contribution to national defence fund**

Notwithstanding anything contained in section 180, 181 or 182 Act or article, company may contribute any amount national defence fund (NDF)

Shareholder’s approval not required

Note : contribution made to NDF should be disclosed in profit and loss

➤ **Section 185 : loan etc. to director or interested person**

Loan, security or guarantee in connection of loan cannot be given by company to director or other interested person as given below :

- 1) Director of that company or its holding company, or their partner or their relative
- 2) Any partnership firm in which such director or their relative is partner (partner of relatives is not covered)

Allowed if following conditions are satisfy : -

- SR by shareholders
 - Explanatory note
 - Use for principle Activity
- 1) Any private company in which such director is a director or member (relative of director is not covered)
 - 2) Any Body corporate in which one or more director at general meeting holds at least 25% of voting rights either individually or cumulatively
 - 3) Any Body corporate whose MD or BOD is accustomed to act as per directions of one or more director of the lending company.

➤ **Exceptions :**

In the following cases, loan, security or guarantee can be given :

- 1) To MD / WTD if it is given under service which is extended to all the employees
- 2) Under scheme approved by shareholders by passing special resolution
- 3) In case of Nidhi Co. loan given to member in capacity of director is not prohibited if disclosure for the same has been made

Note :

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

Penalty

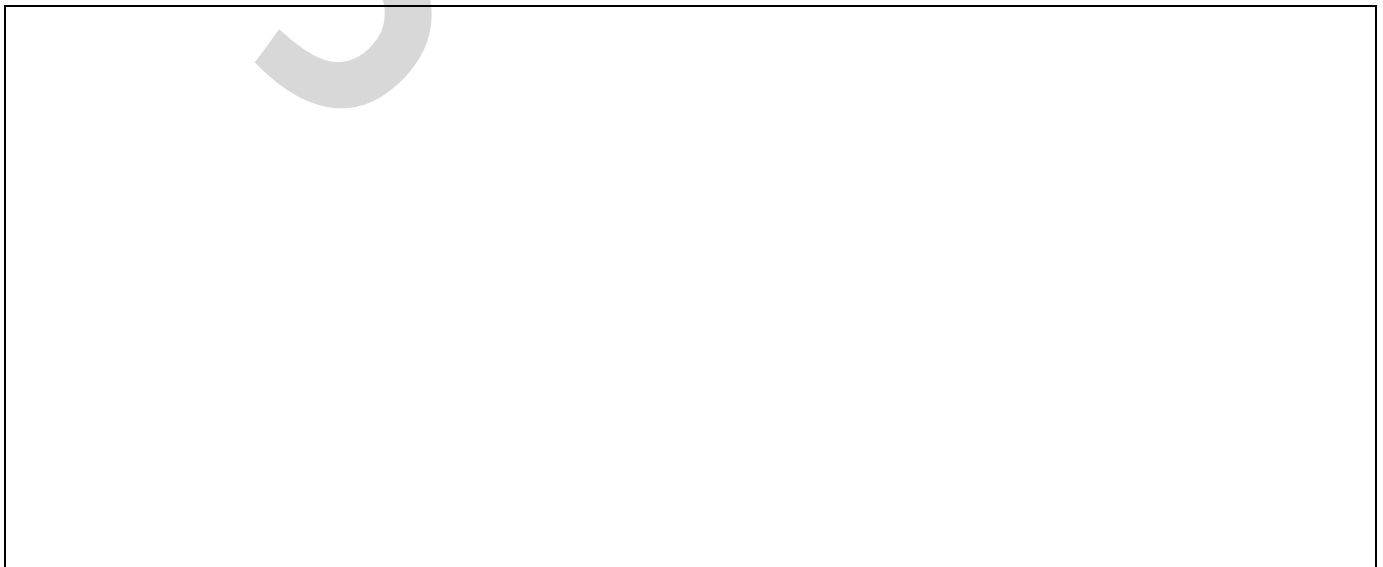
Company Minimum 5,00,000 Maximum 25,00,000	Director, interested person etc. Minimum 5,00,000 Max. 25,00,000 OR Imprisonment upto 6 months OR Both Compoundable offense
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Applicability :

1. Not applicable to pvt. Co. if all the following conditions satisfies :
 - No Body corporate should invest in share capital of such pvt. Co. (no Body corporate should be its shareholder)
 - Borrowing from bank, financial institutions or Body Corporate should be less than twice of paid up share capital or Rs.50 crore whichever is lower
 - There should not be subsisting default of such borrowing (on the day of giving loan)
2. Government company if approved by department :

➤ **Section 2(77) Relative :**

- 1) Husband and wife
- 2) All members of HUF
- 3) Relation given in rule 4 as follows :



➤ **Section 173 : board meeting**

<p><u>Every Co. normally</u> 1) At least 4 Board Meetings 2) Difference between two B.M. → max 120 days</p>	<p><u>Sec. 8 Co.</u> Atleast 1 B.M in every half of calendar year</p>	<p>OPC / small / dormant at / Pvt. Co. (start-up) Atleast 1 B.M. in every half of calendar year Difference between 2 BM minimum 90 days</p>
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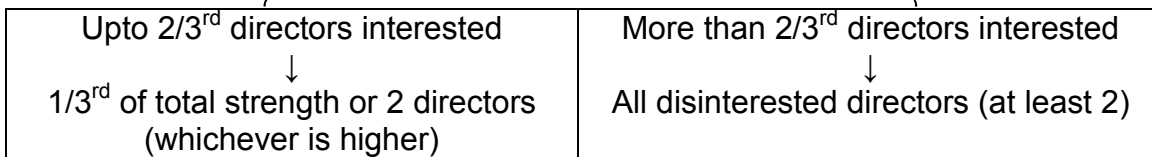
- Provisions relating to but notice of BM
- Notice should be given to whom every director (Alternate, additional, CVD, interested, disinterested etc.)
- Mode : writing only
 Post, hand delivery, fax, email etc.
 Place : at registered address of director which is provided by director to the company
- Length of the notice : at least 7 days
 Shorter notice is allowed if BM attended by one independent director otherwise it should be circulated among all directors and should be approved by at least one independent director
- Specific notice (Agenda of meeting should be given)



Various terms of Notice

<p>Calling ↓ Issuing notice</p>	<p>Holding ↓ Validity starting the meeting</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> <p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p> </td> <td style="width: 50%;"> <p>Voluntary adjournment ↓ Any day, time and place</p> </td> </tr> </table>	<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>	<p>Conducting ↓ Discussion (voting etc.)</p>
<p>Quorum not present ↓ Section 174 compulsory adjourned to next week same day, time and place ↓ If national holiday succeeding working day</p>	<p>Voluntary adjournment ↓ Any day, time and place</p>			

➤ **Section 174 : Quorum**



Total directors	10	10	10	10	10	10	10	10	10	10	10
Interested	0	1	2	3	4	5	6	7	8	9	10
Disinterested	10	9	8	7	6	5	4	3	2	1	-
Quorum	4	4	4	4	4	4	4	3	2	#	#

Appoint additional director or shareholders GM

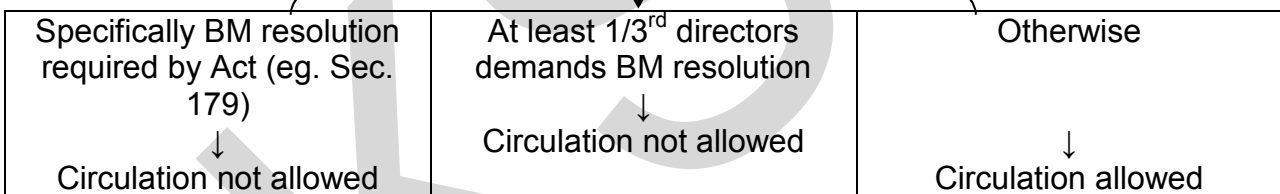
Note: if total no. of directors in the company fall below the limit fixed by the Act for the purpose of quorum then board meeting is valid only for :

- 1) Appointing director to increase the number of directors
- 2) For the purpose of calling shareholders GM

➤ **Section 175 : resolution by circulation**

In case of circulation, necessary documents are circulated among the directors and if it is approved by majority then transaction will be treated as approved.

CIRCULATION



Any transaction approved by circulation shall be records in the next board meeting (i.e. recording of minutes)

➤ **Section 167 : Vacation of director**

In the following case, director is liable to vacate office :

- i. Disqualified U/s 164 (1&2)

Note: In section 164 (2) office shall vacate from all company except in which he is director.

- ii. Not attended board meeting for continuous period of 12 months or more (with or without seeking leave)
- iii. Failure to disclose interest u/s 184
- iv. Contravention by entering into transaction u/s 184
- v. Disqualified by Court or NCLT
- vi. Convicted by Court on moral turpitude ground or otherwise for a period of 6 months or more

Note: In point v and vi for 30 days office shall not vacate if applied is filed.

- vii. Removed by shareholder u/s 169
- viii. Ceases to hold the office **in holding / subsidiary / associates** company by virtue of which he is appointed as director in the company

- If all directors vacate the office than promoters shall manage the company
- If there are no promoters, central government will manage the company till the period directors are appointed by shareholders in general meeting

Penalty : only if he does not vacate the office

Imprisonment upto 1 year

or

Fine – min 1,00,000 or max. 5,00,000

or

Both

➤ **Section 188 : related party transaction**

Certain transaction will relate party requires few approval

Section 2(76) : **related party**

<ol style="list-style-type: none"> 1. Director + relative 2. KMP + relative 3. Any person on whose advise directors of the company are accustomed to act <ul style="list-style-type: none"> ➤ If person gives direction in professional capacity he will not be treated as related party 	<ul style="list-style-type: none"> - Any partnership firm in which director or manager or their relative are partner - Any pvt. Co. in which director / manager or their relative is director / member - Any public co. in which director / manager is director and holds more than 2% of PUSC (along with relative) - Any Body corporate whose BOD / MD / manager is accustomed to as per direct of directors of that co. - Holding / subsidiary / associate/ fellow subsidiary companies
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Certain transaction requires certain approvals as given below

Transactions	BM resolution	OR by shareholders if exceeds
i. Sale, purchase or supply of goods or materials directly or through agent	Always required	10% of annual turnover or 100 cr. WIL
ii. Selling or otherwise disposing or acquiring property of any kind directly or through agent	Always required	10% of net worth or 100 crore WIL
iii. Leasing of property in any kind agent	Always required	10% of annual turnover 10% of net worth WIL
iv. Availing or rendering services directly or through	Always required	100 crore 10% or annual turnover 50 crore WIL
v. (already combined with a,b and d) AGENT		
vi. Appointment at office or place of profit (in holding / subsidiary associate)	Always required	>250,000 per month
vii. Appointment of underwriter) payment of underwriting commission	Always required	>1% of net worth

Office of place of Profit:

- In case director, receiving any remuneration other than in capacity of director.
- In case of any person other than director, receiving any remuneration will be treated as office or place of profit.

➤ **Interested director and interested member**

They cannot participate in discussion and cannot vote

Amendment

Exception Note : - However, in case of Pvt. Company, interested member can vote

- If loss occurred to company due to any director or related party due to their default, then in that case company can initiate legal proceedings against them.

Penalty :

<p><u>Listed Company</u> Imprisonment upto 1 year OR Fine : Min 25,000 to Max. 5,00,000 OR Both</p>	<p>Other company (Pvt. + unlisted company) Fine : Min. 25,000 Max. 5,00,000</p>
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- If transaction is between holding co. and its wholly owned subsidiary co. and if approval is taken at holding co. then O.R. of shareholders is not required in wholly owned subsidiary company

Disclosure in notice

BM Notice	GM Notice
<ul style="list-style-type: none"> - Name of related party - Nature of relation - Nature of contract - Material term (e.g. Value of transaction) - Other important information 	Same as board meeting + name of related <u>“director / KMP”</u>

- **Applicability : All companies**
Exception : Section 188 approval is not required if the transaction is done at “arm’s length price” in the ordinary cause of business : price applicable to unrelated party
- **Section 163 : Proportionate Director**
 - Company can appoint proportionate director suo-moto by inserting in the articles of association oppression and mismanagement



- This section is not mandatory but driven by AOA therefore proportionate director can be appointed by 'PR' (proportion representation) only if it is inserted in AOA
- This is overriding section, hence section 152(6) rotational director will not be applicable in this case

Tenure : maximum 3 years

Casual vacancy : shall be filed by BOD u/s 161(4)

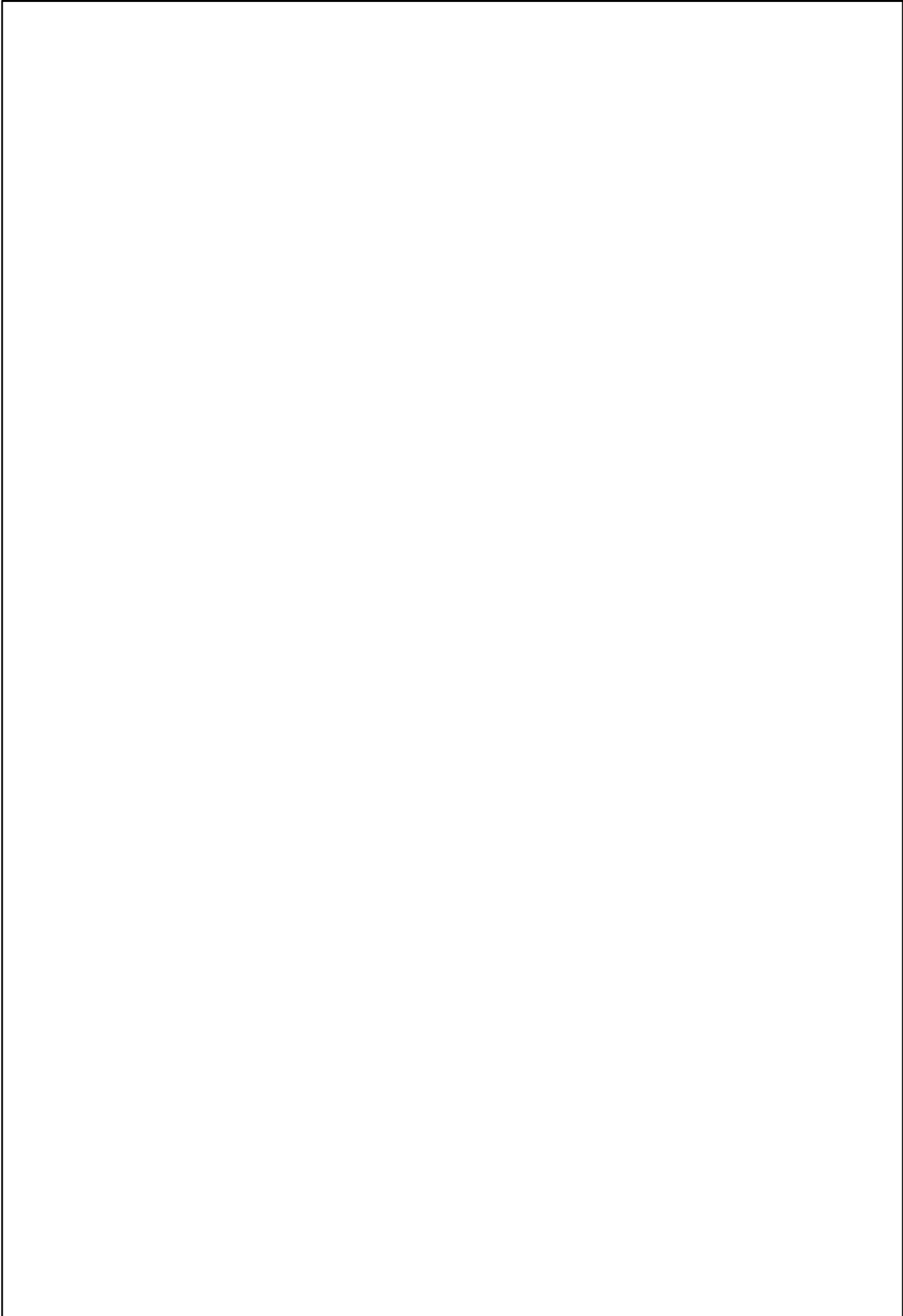
If this method is followed, at least 2/3rd directors shall be appointed by this method

Directors under this method can be appointed by

- 1) Single transferable vote or
 - 2) Cumulative voting method or otherwise
- **Non – applicability:** this section does not applicable to 100% holding government co. or its subsidiary Co.
 - **Section 166 : Duties of Directors**
 - 1) Director should work as per article of company
 - 2) Director should work in the best interest of members, employees, society, community and environment
 - 3) Director should not enter into any transaction which creates conflict of interest
 - 4) Director should not enter into any transaction for undue advantage
 - 5) Director should perform his work on due diligence
 - 6) Director should not assign his office
 - **Section 168 : Resignation of Director**
 - Director can resign in writing to company which will be effective from the date of receipt of notice or the date mentioned in notice whichever is later
 - Director should file notice along with reason of resignation in form DIR 11 to ROC within 30 days from the date of notice
 - Company should file in DIR 12 notice of resignation to ROC within 30 days from the date of receipt of notice
 - Company should lay the details of director's resignation in the director's report in next general meeting
 - **Section 169 : Removal of Directors by Shareholders**

Following directors cannot be removed by shareholders

 - Directors appointed u/s 163 (PR directors)
 - Directors appointed by NCLT



If notice is being circulated for abusive / defamatory matter, then company may make an application to NCLT and if NCLT satisfied, then it may give an order not to circulate such representation.

➤ **Section 186 : loan, investment, security, guarantee made by a company**

If company wants to give loan / security / guarantee or company wants to make investment, then certain conditions are required to be satisfied

1) Approval of all directors present in the meeting should be in favour loan / investment / sec./ guarantee

2) Special resolution of shareholders required if L/I/S/G (present + proposed) exceeds ceiling limit :

Ceiling limit 60% [PUSC + FR + SP] ↑
OR
100% [FR + SP]

In shareholders meeting, shareholder should specify amount upto which L/I/S/G is permitted

Therefore, blanket approval is not allowed (H → WOS) Approval not required

3) If loan is taken from PFI then prior approval of **PFI** is also required

➤ **Exception : if following conditions are satisfied, then approval of PFI is not required**

• L/I/S/G to Body Corporate (any person) (does not) exceeds ceiling limit (as mentioned above)

• There is no existing default in repayment to PFI (principal + interest)

4) There should not be any subsisting default in repayment of "public deposit"

5) Interest rate for loan made should be atleast interest rate of government securities which is closest to the tenure, of 1,3,5 or 10 years

- Register: company should maintain register in form : MBP2 at its registered office in which entry shall be made within 7 days of entering into transaction.

- The register shall be open for inspection by member of the company in office hours (free of cost)

- Every member can take extract of register as may be prescribed for payment (max. Rs. 10 per page)

- Disclosure : in notice

- Loan given
- Investment made
- Guarantee given
- Securities provides
- Purpose for which receipt is utilized

➤ **Exception :**

If L/I/S/G is made by holding co. wholly owned subsidiary, then approval of shareholders (S.R) is not required

However, company should make disclosure of such L/I/S/G in its financial statements.

➤ **Non – applicability :**

Note: Loan, security or guarantee to employee is not covered under this section

➤ **Applicability : private and public companies**

➤ **Section 186(1) :**

Any company cannot make investment through more than 2 layers of Investment Company (as per Section 2 (87), layer means subsidiary(s))

It means that a company cannot have more than 2 layers of investment subsidiary(s)

However, in following cases, co. can have more than 2 layers of investment subsidiaries

- 1) A co. may acquire any company which is incorporated outside India and such layer is permitted as per law of that country
- 2) Subsidiary company may have more than 2 layers if it is due to requirement if some law

INDEPENDENT DIRECTORS - [PUBLIC COMPANY ONLY]

- **Section 149(4)** every listed public company shall have at least 1/3 of the total number of directors as independent directors.

Explanation.—for the purposes of this sub-section, any fraction contained in such one third number shall be rounded off as one.

Number of independent directors.-

The following class or classes of companies shall have at least 2 Independent directors –

- (i) The Public Companies having paid up share capital of 10 crore rupees or more;
or
- (ii) The Public Companies having turnover of 100 crore rupees or more; or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees:

Following Unlisted Public companies shall be Exempt: [W.E.F JULY 2017]

1. A Joint Venture Company.
2. A Wholly Owned Subsidiary Company
3. A Dormant Company.

DON'T FORGET:

Limits to be checked at the time of Appointment and Not during the pendency of Tenure.

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

Provided also that where a company ceases to fulfill any of 3 conditions laid down in sub-rule (1) for 3 consecutive years,

It shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

(5) Every company existing on or before the date of commencement of this Act shall, **within 1 year from such commencement** or from the date of notification comply with the requirements of this provisions

(6) An independent director in relation to a company, means a director other than a MD or a WTD or a nominee director,—

- (a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who **is or was not a promoter of the company** or its holding, subsidiary or associate company;
- (ii) Who **is not related to promoters or directors in the company**, its holding, subsidiary or associate company;
- (c) Who **has or had No** pecuniary relationship, other than remuneration as such director or having transaction **not exceeding ten per cent.** of his total income or such amount as may be prescribed **with the company**, its holding, subsidiary or associate company, **[Companies Amendment Act, 2017]** **or their promoters, or directors**, during the 2 immediately preceding financial years or during the current financial year;
- (d) None of whose relatives - [Companies Amendment Act, 2017]
- (i) **Is holding any security of or interest** in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;
- (ii) **Is indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; [prescribed amount = 50 lakhs].
- (iii) **Has given a guarantee or provided any security** in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or [prescribed amount = 50 lakhs].
- (iv) **Has any other pecuniary transaction or relationship** with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);
- (e) **Who, neither himself nor any of his relatives —**
- (i) holds or has held the position of a KMP or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years. [Companies Amendment Act, 2017]

- (ii) **Is or has been an employee or proprietor or a partner**, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of—
- (A) **A firm of auditors or CS in practice or cost auditors of the company** or its holding, subsidiary or associate company; or
- (B) **any legal or a consulting firm that has or had any transaction with the company**, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
- (iii) **Holds together with his relatives 2% or more of the total voting power of the company**; or
- (iv) **Is a CEO or director, by whatever name called, of any NPO that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company**; or
- (f) Who possesses such other qualifications as may be prescribed. – Disclosure in BOD Report regarding his appropriate skills.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every 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.
- (8) The company & Independent directors shall abide by **Schedule IV**.
- (9) Notwithstanding anything contained in any other provision of this Act, **an independent director shall not be entitled to any stock option - [subject to section 197& 198]**.
- (10) Subject to the provisions of section 152, an **independent director shall hold office for a term up to 5 consecutive years on the Board of a company**, but shall be eligible for re-appointment on **passing of a special resolution** by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), **No independent director shall hold office for more than two consecutive terms**, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director: **[Cooling Period]**
Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, directly or indirectly.
- **Section 152: Appointments of directors**
- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- Amended w.e.f.9th February, 2018
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154 or any other number as may be prescribed under section 153.
- Amended w.e.f.9th February, 2018
- (4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number or such other number as may be prescribed under section 153 and a declaration that he is not disqualified to become a director under this Act.
- (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:
Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.
- Exemption to Section 8 Company
- (7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and them
- **Section 184 : Disclosure of interest by director**
- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-
- (a) With a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting: Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

Exemption to Private company or apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

Exemption to Section 8 Company.

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

Amended w.e.f.9th February, 2018

- (4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which [*] may extend to one lakh rupees, or with both.
- (5) Nothing in this section-
- (a) Shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- Substituted by Companies (Amendment) Act, 2017**
- (b) Shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

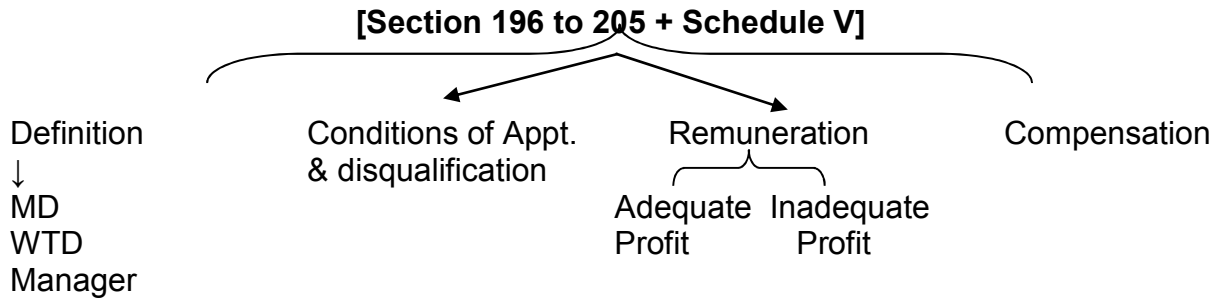
➤ **Section 192 : Restriction on non-cash transactions involving directors**

- (1) No company shall enter into an arrangement 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, unless 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 under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (3) 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 unless-
- (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

JKSSC

MANAGERIAL REMUNERATION



➤ **Section 2(54) : Managing Director (MD)**

MD is a director who is entrusted with substantial power of management which is entrusted by

- Article
- Agreement
- Resolusion by shareholders in GM
- BOD
 - 1) MD has to be a Director
 - 2) If MD ceases to be director, he ceases to be MD
 - 3) MD is subordinate to BOD

➤ **Section 2(53) : Manager**

Manager is an individual (which is includes director) who have control of whole or substantially whole affairs of the company.

Manager may be or may not be Director

➤ **Section 2 (94) : Whole Time Director**

Whole time director is a director in whole time employment of a company

WTD = director + employee



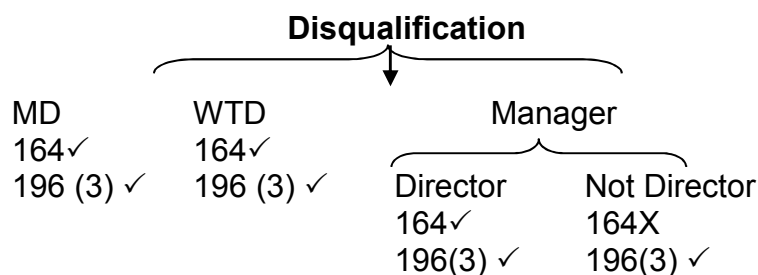
➤ **Section 196 :**

196 (1) MD and manager cannot be appointed simultaneously

196 (2) tenure

Managerial personnel can be appointed for a maximum period of 5 years. However, he is eligible for re-appointment of any number of times but only in last one year of tenure

196(3)



- Age should not be below 21 years and should not attain the age of 70 years or more

Exception → can be appointed if following conditions satisfied

a) Explanatory statement annexed with the notice
AND

b) Special resolution passed by the shareholder
Or CG + OR of shareholder

- Un-discharge insolvent at any time
- Compounded his creditors in personal capacity at any time
- Compounded means settlement at lower value due to financial adversity
- Convicted by Court for continuous period of imprisonment for more than 6 months at any time

	164	196(3)
- Moral turpitude or otherwise = 6 months > 6 months < 7 years ≥ 7 years - any other ground (> 6 months)	5 years 5 years Lifetime No disqualification	No disqualification Lifetime Lifetime Lifetime

➤ **Section 196 (4) : Managerial**

Appointment of managerial personnel requires prior approval of BOD and subsequent approval of shareholders in next general meeting

196(5) – If it does not approve by shareholders in GM, then appointment is CEASES to be valid

➤ **Non applicability of Sec. 196**

- Section 196(4) and 196(5) not applicable to private company
- Section 196(2), 196(4) and 196(5) not applicable to Government Company

➤ **Schedule V [Part – I] : conditions for appointment of managerial personnel**

1. No imprisonment or fine exceeding Rs.1000 under economic offenses
2. No detention under COFEPOSA (Conservation Of Foreign Exchange And Prevention Of Smuggling Activities) Act, 1974

Note : In case of above two conditions, if managerial personnel is appointed with the approval of CG then at the time of reappointment, approval is not required again provided he does not attract further defect after appointment

3. Age : should not be below 21 years and it should not have attained 70 years of age



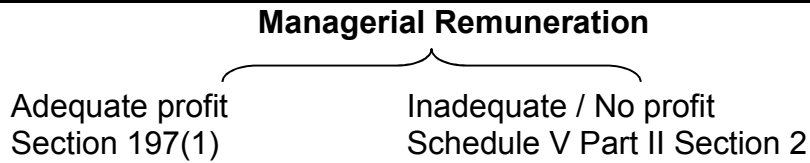
Exception: can be appointed by special resolution of shareholder for which explanatory statement attached to notice is

4. Managerial personnel should be Resident



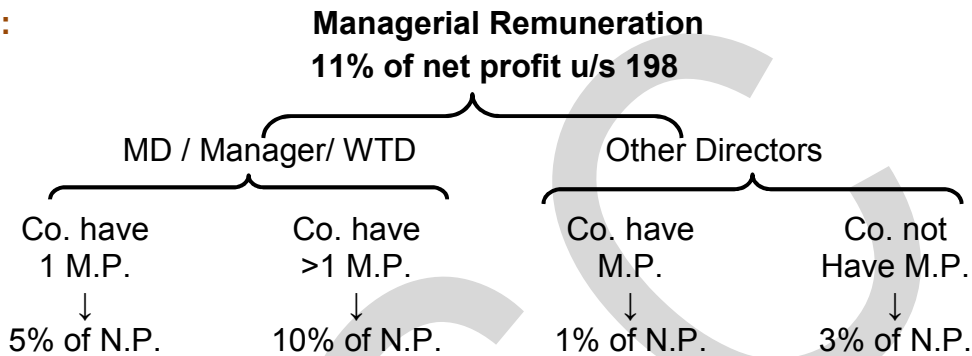
Stay in India in last 12 months before the date of appointment for business / vocation / employment.

Exception: In case of SEZ, a non-resident can be appointed as managerial personnel, provided he enters with proper, employment visa.



If profit is 7 crore then any remuneration upto 35 lakhs [7cr. x 5%] will be adequate profit and can paid u/s 197(1) if co. proposes to pay more than 35 lakhs then it should be accommodated under limit given under Schedule V, part II and Section 2 if it exceeds both the limits 197(1) and Schedule, then CG approval is required.

➤ **Section 197 :**
197(1) :



➤ **197(5)(2) : Sitting fees**

- a) Sitting fees shall be excluded from managerial remuneration
- b) Sitting fees can be paid maximum upto Rs.100,000 per director per meeting
- c) Sitting fees paid to women / independent director should not be less then as paid to other directors

➤ **197(3) : inadequate / No profit**



➤ **197 (4) : Determination of managerial remuneration (M.R.) subject to other provisions of the Act, M.R. shall be determined by :**

Article Or
O.R. by shareholder or
S.R. by shareholders (if required by AOA)

Note: Remuneration paid to Directors in other capacity
Shall be included in M.R.

Exception: If such remuneration is paid in **“Professional Nature”** then it will not be included provided certain conditions satisfied:

- 1) Approval of BOD / nomination and remuneration committed (if any) is required AND
- 2) Such director possess appropriate qualification or experience

➤ **197 (6) : Mode of M.R.**

Either Monthly
Or in % form
Or partly monthly and partly % form

- **197 (7) : Various benefits to independent director**
 - a) Company is not allowed to give stock option to independent director
 - b) Independent director is eligible for sitting fees
 - c) Independent director is eligible for reimbursement of expenses for attending board meeting
 - d) Independent director is eligible for profit related commission only if it is approved by shareholders

- **197 (8) : Net profit shall be calculated as per Section 198**

- **197 (9) : Excess remuneration**

Any excess remuneration paid to Director shall be refunded to company and until it is refunded it shall be held in separate trust until refund within maxi 24 years

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company [Companies Amendment Act, 2017]

- **197 (10) :**

The company shall not waive the recovery of any sum refundable to it unless approved by the company by special resolution within two years from the date the sum becomes refundable. [Companies Amendment Act, 2017] Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver. [Companies Amendment Act, 2017]

- **197 (11) : increase in M.R.**

M.R. can be increased within limit u/s 197(1) as per

 - Agreement
 - AOA
 - MOA
 - Shareholders
 - BOD

- **197 (12) :** ratio of remuneration of director shall be disclose in relation to median employee

- **197(13) :** Insurance premium paid for indemnification of loss due to Act of KMP shall be included in M.R. If such KMP is guilty excluded if such KMP is not guilty.

➤ **Key words to remember section 197**

197	(1)	Limit
197	(2)(5)	Sitting fees
197	(3)	Inadequate / no profit
197	(4)	Determination of MR
197	(6)	Mode of payment
197	(7)	Independent director
197	(8)	198
197	(9)	Excess remuneration
197	(10)	Waiver of excess remuneration
197	(11)	Increase in remuneration
197	(12)	Ratio to median employee
197	(13)	Insurance premium

➤ **Schedule V :**

- Part I : already discussed
- Part II :
 Section 1 : if the co. is having adequate profit then remuneration shall be paid as per section 197
 Section 2 : if co. is having inadequate / no profit then remuneration to managerial / personnel shall be paid in the following manner :

Limit A: effective capital

Effective capital	Per director p.a. O.R. of shareholder
Negative or < Rs.5 cr.	Rs. 60 lakhs
≥ Rs. 5 cr. < Rs.100 cr.	Rs. 84 lakhs
≥ Rs. 100 cr. < Rs. 250 cr.	Rs. 120 lakhs
Rs. 250 cr. or more	Rs. 120 lakhs + 0.01% [E.C. – 250 cr.]

Note: If company wants to pay exceeding the limit specified above then its requires special regulation of shareholders.

Effective Capital:

	Share capital [excluding share application money] & advance against shares	xxx
+	Reserves and surplus (excluding revaluation reserve)	xxx
+	Long term borrowings	xxx
+	Deposits (repayable after 1 year)	xxx
(-)	Investments (except for investment company)	xxx
(-)	Accumulated losses	xxx
(-)	Preliminary expenses	xxx
	Effective Capital	xxx

Limit B: Remuneration to managerial personnel can be paid without CG approval in professional capacity if following conditions are satisfied :

1. Managerial personnel should not have interest in capital of that company or its holding or subsidiary co.
Note : interest in capital means holding 0.5% or more paid up share capital
2. M.P. should not be related to director / promoters of that company or its holding or subsidiary company in last 2 years before the date of his appointment
3. Such MP should possess graduate level qualification and appropriate qualification or experience as may be required.

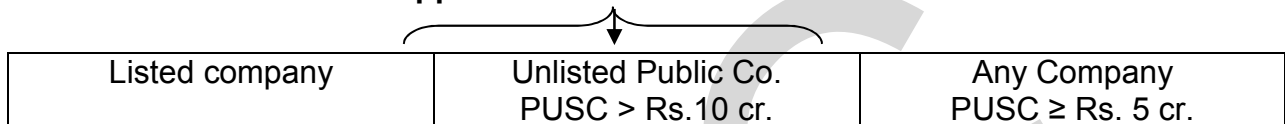
Common Conditions [Limit A and Limit B]

1. Approval of BOD / nomination and remuneration committee (if any) is required.
2. There should be no default in repayment of DEBT (including debentures, deposits, loans etc.)
3. Approval of secured creditors is required
4. OR / SR of shareholder is validated for 3 years

Section 3 : CG can exempt certain companies from complying with Section 1 and Section 2 without CG approval

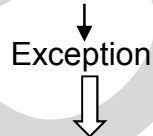
➤ **Section 203 : Whole Time KMP**

Appointment of Whole Time KMP



- | | |
|---|------------------------------|
| <ol style="list-style-type: none"> 1) MD / WTD / Manager / CEO
+ 2) Company Secretary
+ 3) CFO | whole-time company secretary |
|---|------------------------------|

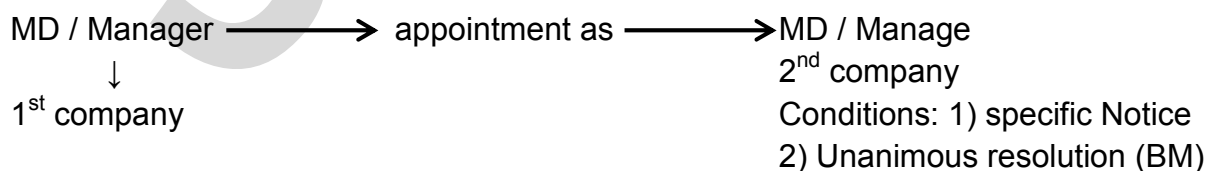
A person can become whole time KMP in maximum 1 Co,



- Can become whole time KMP in subsidiary company
- Can become other director in other co. with permission of BOD

Casual vacancy in case of whole time KMP :
It is mandatory to fill casual vacancy within 6 months

Appointment of M.D. who is already MD / Manager :



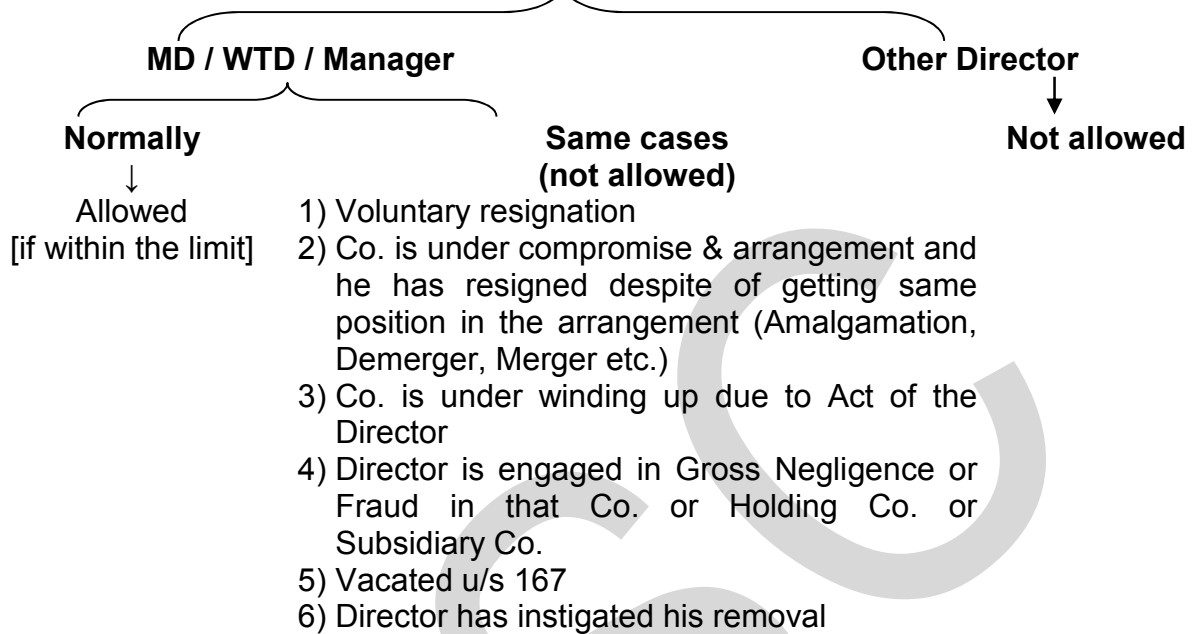
➤ **Same person ≠ chairperson + MD / CEO**

- 1) Approved by AOA
- 2) Co. carries single business
- 3) Co. carries multiple business

Conditions –

- 1) Separate CEO appointed for each business
- 2) Company's PUSC ≥ 100 crore
AND annual turnover ≥ 1000 crore

➤ **Section 202 : Compensation for loss of office**



➤ **Ceiling Limit**

- a) Period of unexpired term X Average remuneration
- b) Maximum 3 years X average remuneration

Avg. remuneration :

Remuneration earned in last 3 years
OR completed term whichever is less

➤ **Section 204 : Secretarial Audit**

Applicability

Every listed company	Unlisted public company a) PUSC ≥ 50 cr. OR b) Annual T/O ≥ 250 crore
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Secretarial audit by 'CS' in practice
To be annexed with board report