chapter-1 → Appointment & qualification of ~~Auditors~~ Directors.

[Section - 149 to 171]

Section - 149

Basic provisions 149(1) to (3)

- 149(1)
  - Individual to be director
  - min/max no. of directors
    - minimum
      1. public co → 3
      2. private co → 2
      3. opc co → 1
    - Maximum directors → 15 (More directors can be appointed by passing SR) → Not applicable to gov co's & sec-8 co's
  - women director.
- Transition period 149(2)
- 149(3) → Resident director.

Independent director. 149(4) -(13)

can AoA provide for different limits of directors.

- minimum limit → AoA limit can't be less than Act limit
- maximum limit → If AoA provides for max limit then Act limit has no relevance.

Women director

Applicability

- Every listed Co.
- other public co. having
  - paid up share capital of 100cr (or) more
  - (or)
  - Turnover of 300cr/more.

How many? → atleast one women director.

Filling of vacancy → By BOD not later than

- Immediate next Board meeting
- (or)
- 3 months from date of vacancy

(which ever is later)

Resident director

- Applicability → Every company
- How many? → atleast 1
- Stay in India → not less than 182 days in current F.Y

Newly Incorporated Co → proportionate based on DOI

365 → 182
90 → ?

$\left[\frac{90}{365} \times 182\right] = 45$ days.

Sec-152 → Appointment & Retirement of directors.

152(1) to (5)

↓

Appointment

first director

order of preference

1. Name in AoA
2. process in AoA
3. Subscribers to MoA

↓

Tenure → till 1st AGM

Subsequent directors

↓

By shareholders **OR** **in AGM**

Note: If Act provides other procedure follow the same

eg: AD, Alt Dir etc.

↓

Additional Requirements.

1. posses DIN & furnish it
2. Decleration of non-disqualification [164]
3. Consent [co. in 30 days file with ROC - DIR-12]
4. Independent director → Explainatory Statement & Board Statement.

152(6)

↓

Retirement by Rotation

1. Applicability → only to public co's & their subsidiaries
2. How many?

Rotational directors

↓

not less than $2/3^{rd}$ of **total** (*)

↓

AoA can provide all Dirs to be rotational.

↓

Note: always upward rounding.

Retiring directors

↓

$1/3^{rd}$ of rotational Dirs

↓

AoA can provide all Dirs to be retiring.

↓

Note: Round off to nearest numbers.

3. when to retire? → At every AGM
4. who will retire?

- Director longest in office
- If appointed same day
  - mutual agreement (or)
  - Draw of lots.

⑤ How to fill the vacancy?

By Shareholders [OR]

Either re-appoint retiring director (or) Appoint some other person as per Sec-160 (or) Keep vacancy as it is.

↓

None of the above action taken the meeting will be adjorned (Same day, next week, same time & place other than hobliday)

↓

At adjourned meeting also no action taken then retiring director shall be deemed to be re-appointed. → 152(7)

Unless:
1. Retiring director gives unwilling notice
2. Disqualified u/s 164
3. Resolution for his re-appointment was lost
4. Sec-162 is applicable to the case.

(*) Exclusions from total Directors
1. Independent Director
2. SSD
3. Nominee director
4. Additional director
5. proportional rep director

Sec-162 → Appointment of directors to be voted individually

General rule: 2 (or) more directors can't be appointed through single resolution.

Exception: Take shareholders unanimous approval for moving such resolution.

⇓

then can appoint 2 (or) more directors by single resolution.

Note: Sec-162 is not applicable to Gov co's & private co's

Sec-151 → Small Shareholder director.

Applicability → only to listed Co's (optional)

Small Shareholder means → Holding Shares of nominal value ≯ 20,000

Appointment

- Suo-moto by listed Co.
- (or) notice by not less than
  - 1000 Small Shareholders (or) 1/10th of total Small Shareholders

↓

atleast 14 days notice proposing SSD at Co's address
① name, address ② Shares held, if any ③ DIN, Consent
④ decleration of non disqualification ⑤ comply with req of Independent director

Additional points

① Tenure – 3 years
② No re-appointment (cooling period - 3 years)
③ Not liable to retire by rotation
④ one person → max 2 positions, provided 2nd company is not in competing business.

Sec-161 → Appointment of various directors.

161(1) → Additional director

Applicability → All Companies
why → To manage additional work burden.
By whom → BoD, power by AoA
Tenure → Till next AGM (must retire)
Rejected Dir → Can't be appointed.
Person already Dir/ additional Dir of Same Company } → Can't be appointed.

161(2) → Alternate director.

Vacancy of director.

- Director is on leave
  - for less than 3 months → no action
  - more than or equal to 3 months but less than 12 months
    - Director in India → No action
    - Director outside india → BoD may appoint alternate director
      - → power given in AoA (or)
      - → power given by GM-OR.
  - more than or equal to 12 months → Casual vacancy
- Accident, death, disq etc → Casual vacancy

Additional points

① Tenure → original director tenure (or) original director return to india

② Alt director for ID → must comply with ID requirements u/s 149

③ Removed/rejected Dir → can be appointed.

Sec-161(3) → Nominee director.

→ Appointed on behalf of external organization/FI/CG/SG

→ Appointed by BOD

→ Tenure → Till removal by such organization.

Sec-161(4) → Casual vacancy

original appointment is in AGM & office is vacated before expiry of term

↓

filled by BOD BM-OR [Subsequently approved by GM-OR]

Tenure → Till expiry of tenure of original director

filling casual vacancy of

- women director
- Independent director
  - not later than next BM (or) 3 months from vacancy whichever is later.
- other directors
  - No such urgency.

Sec-160 → Right of person other than retiring director to be appointed as director of company.

- Recommendation by Existing directors
- Recommendation by members
- approach himself

Candidature/proposal atleast 14 days before AGM to company at R.O

&

Deposit of 1 lac [Nidhi co → 10,000]

↓

Company atleast 7 days before AGM

- forward candidature to members individualy E-mode/post
- place on website
- No individual notice to members if advertaised
  - atleast 1 vernaccular news paper & 1 English news paper.

Refund of deposit

- appointed as director → Refund.
- not appointed as director.
  - Secured > 25% of votes → Refund.
  - Secured ≤ 25% of votes
    - Sec-8 co. → directors can decide to refund.
    - other co's → forfeit.

non-applicability of Sec-160

1. Gov co. & its Subsidiaries.
2. private companies
3. Sec-8 companies.

Sec-165 → maximum directorships

maximum 20 companies

- maximum 10 public
  - Includes private co's which are subsidiaries of public co's
- Remaining other co's

Note:-
1. Exclude directorships in dormant & Sec-8 co's
2. Include alternate directorship as well
3. lesser limit can be prescribed by GM-SR

for calculating maximum of 20 directorships

Sec-164 → Disqualification of Directors.

Individual default disq (1)

1. unsound mind
2. undischarged insolvent
3. applied to be adiudged as insolvent & application pending.
4. Convicted by court & imprisonment
   - less than 6 months. → Qualified
   - more than 6 months but less than 7 years → Disqualified for 5 years from expiry of sentence
   - 7 years (or) more. → lifetime disqualification
5. order of disqualification by court
6. failed to pay calls on shares for 6 months
7. convicted u/s 188
8. Has no DIN
9. exceeded maximum directorships u/s 165

Company default disqualifications (2)

- Company failed to file FS (or) AR for 3 continuous ~~years~~ F.Y
- (or)
- failed to repay deposits debentures/interest/ declared dividend for a period of 1 year.

↓

Disq from re-appointment in defaulting co & appointment in other co. for 5 years.

↓

newly appointed director shall not incur disq for a period of 6 months.

Note: put co's can provide for additional disqualifications.

Sec-167 → vacation of office of director.

① Incurs disqualification u/s 164
② absents from all board meetings in past 12 months.
③ contravenes Sec-184/ fails to disclose interest u/s 184 (interested)
④ Disqualification order by court/tribunal
⑤ convicted of offence & imprisoned for 6months or more
⑥ Disq u/s 217(6)
⑦ appointed as director by virtue of him holding other office.

Note:- If all directors vacate

→ Promoters

→ (in their absence) CG will appoint directors

Shall hold office till directors are appointed by shareholders in GM

Sec-168 → Resignation of directors

Director —notice→ Company —30 days, DIR-12→ ROC

Director —30 days of resignation, DIR-11→ ROC

Effective date of resignation

- Date of receipt of notice by co.
- Date specified in notice

whichever is later.

Sec-169 → Removal of directors.

- By shareholders.
  - GM-OR & 14 days special notice u/s 115
  - Exception
    ① appointed by tribunal u/s 242
    ② proportional rep dir u/s 163
- By tribunal on application u/s 241

Special notice u/s 115 signed by members holding

- not less than 1% voting
- (or) Shares on which atleast 5,00,000 paidup

Note → Second time appointed ID can be removed by passing GM-SR

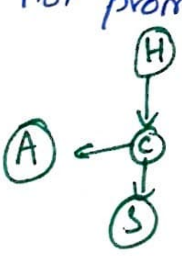
Independent directors (149(4) - (12))

Applicability

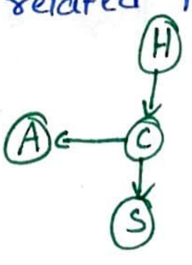
- All listed co's
  - 1/3rd of total directors must be independent.
- Exempted unlisted public co's
  1. Joint venture
  2. Wholly owned Subsidary
  3. Dormant co. u/s 455
- other public companies having
  - PUSC of 10 cr (or) more (or)
  - T.O of 100cr (or) more (or)
  - o/s loans, Deb deposits exceeding 50cr
  - atleast 2 independent directors.

Eligibility to be appointed as ID

1. Should not be MD, WTD, Nominee director.
2. possess relevant expertise & integrity.
3. person who is/was
   - not promoter of

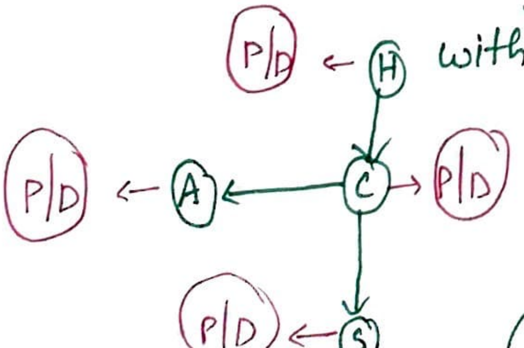


   - not related to promoter/director of



4. person Should not have/had
   - any pecunary relationship (or) Transaction exceeding 10% of his total income.

with



=> for current year & preceeding 2 F.Y's

Note:- pecunary relationship doesn't include
1. Remuneration
2. BM expenses reimbursment
3. profit related commission.

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Relatives of person are not

- (a) Holding any security/interest in C, H, S, A
  - Exception:
    1. FV not exceeding 50 lac (or)
    2. 2% of pusc
- (b) Indebted to C, H, S, A, P, D
  - Exception: up to 50 lac allowed.
- (c) given guarantee on behalf of 3rd party to C, H, S, A, D, P
  - Exception: upto 50 lac allowed.
- Any pecuniary transaction with C, H, S, A amounting to 2% (or) more of its TO together with a, b, c

for current F.Y & 2 preceeding financial years.

6

neither he nor his relatives

- holds/held KMP/yee of C, H, S, A
  - Exception: Relative can be employee.
- is/was yee/prop/partner of firm of
  - Auditors
  - CS
  - Cost auditors
  - legal firm having trans of 10% or more of such firm's T.O

  of C, H, S, A
- Holds 2% (or) more voting power of C
- Is cheif executive (or) Director
  - of any non-profit org receiving 25% of its receipts from C, P, D, H, S, A (or)
  - that holds 2% (or) more voting power of co.

In any of preceeding 3 f.y's

Decleration by ID that he meets all the above criteria

- at 1st BM in which he participates as director.
- 1st BM of every F.Y
- Change in circumstances that affect his status as ID

Remuneration of ID

- not entitled to Stock options.
- Can receive
  - Sitting fee
  - BM exp reimb
  - profit related commission

Tenure : 5 consecutive years of 2 terms.
→ for 2nd term GM-SR

Cooling period : 3 years.

Independent directors are to be selected from databank maintained by organization notified by CG

Director Identification Number [DIN]
(Sec- 153 to 159)

→ DIN & DPIN are Same
→ only one DIN for one person

Application for DIN

- Existing company → DIR-3
- New company → can be applied in INC-32 (spice +)

Any defects → Rectify in 15 days
↓
CG within 1 month allots DIN

on receipt of DIN director Shall intimate $\xrightarrow[\text{DIR-3B}]{\text{30 days}}$ Company $\xrightarrow[\text{DIR-3C}]{\text{15 days}}$ ROC

→ Director has to file DIR-3KYC every year to Keep DIN active

Section-170 → Register of Directors & KMP & shareholding

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Members can inspect these register during business hours & request for photocopies

↓

Co. Shall provide within 30 days free of cost

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If Refused make application to ROC which will order to allow for inspection.

→ this register Should also be Kept open for inspection at every AGM.