CHAPTER 1

APPOINTMENT AND QUALIFICATION OF DIRECTORS.

CONTENTS OF THE CHAPTER:

- Need for Board of directors.
- Provisions related to Appointment of Board, Number of Directors, Women Director.
- Need for Independent Directors, their appointment, qualification, tenure, etc.
- Concept of Rotation & Retirement of directors.
- Director Identification Number and its allotment.
- Provisions related to additional director, alternate director, nominee director and casual vacancy.
- Disqualifications of a director, duties of director, vacation of office of director, resignation of director, removal of director.
### LIST OF SECTIONS:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Section 149</td>
</tr>
<tr>
<td>2.</td>
<td>Section 150</td>
</tr>
<tr>
<td>3.</td>
<td>Section 151</td>
</tr>
<tr>
<td>4.</td>
<td>Section 152</td>
</tr>
<tr>
<td>5.</td>
<td>Section 153</td>
</tr>
<tr>
<td>6.</td>
<td>Section 154</td>
</tr>
<tr>
<td>7.</td>
<td>Section 155</td>
</tr>
<tr>
<td>8.</td>
<td>Section 156</td>
</tr>
<tr>
<td>9.</td>
<td>Section 157</td>
</tr>
<tr>
<td>10.</td>
<td>Section 158</td>
</tr>
<tr>
<td>11.</td>
<td>Section 159</td>
</tr>
<tr>
<td>12.</td>
<td>Section 160</td>
</tr>
<tr>
<td>13.</td>
<td>Section 161</td>
</tr>
<tr>
<td>14.</td>
<td>Section 162</td>
</tr>
<tr>
<td>15.</td>
<td>Section 163</td>
</tr>
<tr>
<td>16.</td>
<td>Section 164</td>
</tr>
<tr>
<td>17.</td>
<td>Section 165</td>
</tr>
<tr>
<td>18.</td>
<td>Section 166</td>
</tr>
<tr>
<td>19.</td>
<td>Section 167</td>
</tr>
<tr>
<td>20.</td>
<td>Section 168</td>
</tr>
<tr>
<td>22.</td>
<td>Section 170</td>
</tr>
<tr>
<td>23.</td>
<td>Section 171</td>
</tr>
<tr>
<td>24.</td>
<td>Section 172</td>
</tr>
</tbody>
</table>
INTRODUCTION:
According to section 2(10) of the Companies Act, 2013, "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

According to section 2(34) "Director" means a director appointed to the Board of a company.

Legal position of Directors
As regards legal position of directors in relation to a company, they can be considered both agents and trustees. As agents, they bind the company as their principal as soon as they enter into various transactions on its behalf. As trustees, the directors are required to take care of properties, moneys, trade secrets, etc. belonging to the company. In fact, as trustees the directors are in a fiduciary relationship with the company (and not with any individual shareholder) and if such relationship is broken and the company suffers a loss because of the illegal acts of the directors, the erring directors will be required to reimburse the loss suffered by the company.

The office of directorship is an office of trust.

I. Section 149 - COMPANY TO HAVE BOARD OF DIRECTORS:

This section provides for the provisions for companies to have a duly constituted Board of Directors. According to this section:

1. **NUMBER OF DIRECTORS: [149(1)]**
   
   Every company should have a Board of Directors consisting of individuals as directors and shall have –

   (a) **MINIMUM DIRECTORS:**
   
   Three 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; and

   (b) **MAXIMUM DIRECTORS:** Fifteen.
   
   If a company wants to appoint more than fifteen directors, it must pass a special resolution.

   - **PUBLIC COMPANY**
     - Minimum: 3
     - Maximum: 15
   - **PRIVATE COMPANY**
     - Minimum: 2
     - Maximum: 15
   - **ONE PERSON COMPANY**
     - Minimum: 1
     - Maximum: 15
Exemptions:

As per the Notification G.S.R. 463(E) dated 5th June, 2015, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to **Government company**.

Further, as per the Notification dated 13th June, 2017, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to **Section 8 companies**.

However, above exemption is applicable only if such Government company or Section 8 company, has not committed a default in filing its financial statements under Section 137 or Annual return under Section 92 with the registrar.

**Question 1.**

As per their Articles of Association, the maximum number of Directors of each of the following companies is 9:

(i) Goodheart Company Limited.
(ii) Frontline Trading Private Limited.
(iii) Hindustan Zink limited (a Government company under section 2(45) of the Companies Act, 2013).

The Board of Directors of the aforesaid companies proposes to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 2013, the Board of Directors can do so?

**Answer:**

Under section 149(1) of the Companies Act, 2013, every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company. The maximum number of directors shall be 15.

The proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

As per the Notification G.S.R. 463(E) dated 5th June, 2015, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to **Government company**.

Further, as per the Notification dated 13th June, 2017, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to **Section 8 companies**.

From the provisions of section 149(1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors except for a Government company and for a section 8 company as they can have as many directors as they consider necessary without any special resolution.

In the case of the first two companies in the question above, the maximum permissible limit is 15 directors. Hence, the Board of Directors of these two companies can increase the number by simply altering the Articles and appointing the additional 6 directors at the general meetings of the company after following the prescribed procedure and conditions. However, if the number of directors was proposed to have been increased beyond 15 directors, such authority must be obtained from the members through a special resolution and only after that approval, new directors could be appointed.
But in the case of Hindustan Zink limited (a Government company under section 2(45) of the Companies Act, 2013), the limit of maximum 15 directors and their increase in limit by special resolution shall not apply, so they can increase total directors beyond 15 also without any compliance of section 149.

Question 2.
The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so.

Answer.
Under section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company. The maximum number of directors shall be 15.
The proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.
From the provisions of section 149(1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types at 15 directors.
In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:
(i) Alter its Articles of Association under section 14 of the Act, so as to increase the number of directors in the Articles from 10 to 16;
(ii) Approval shall also be taken to be authorised to increase the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

(c) WOMEN DIRECTOR:

⇒ Minimum women director: Prescribed class or classes of companies shall have at least one Woman director.
⇒ Appointment requirement: Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class of companies shall appoint at least one woman director.
→ Transitional provision, in case of provision for women director is 1 Year.  
(i.e. a company incorporated under companies act, 1956 must appoint Women director within a year from commencement of this act.)  
**Compliance by a newly incorporated company:** But for a company incorporated under Companies act, 2013 women directors must be appointed within **six months** from incorporation.)

→ **Filling of Intermittent Vacancy of Woman Director:** Any vacancy in office of the women director shall be filled up by board at the earliest but not later than;  
   - Immediate next Board meeting  
   - OR  
   - 3 months from date of vacancy  
   - Whichever is later

→ **Discontinuation of applicability:**  
When a company does not satisfy any of the 2 conditions for consecutive 3 years, then this section shall cease to apply.  
i.e. should not be satisfying even 1 condition for 3 years.

<table>
<thead>
<tr>
<th>Exemptions</th>
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<tr>
<td><strong>In case of Specified IFSC Public Company</strong> - Second proviso to Sub-section (1) (i.e. requirement of women director) of section 149 shall not apply- Notification Dated 4th January 2017.</td>
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<td><strong>&quot;International Financial Services Centre (IFSC)&quot;</strong> means an International Financial Service Centre which has been approved by the Central Government under sub-section (1) of Section 18 [Section 2(q) of the Special Economic Zones, 2005]</td>
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2. **TRANSITIONAL PROVISION FOR REMAINING PART OF 149 (1): [149(2)]**  
Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

3. **RESIDENT DIRECTOR: [149(3)]**  
Every company shall have at least one resident director i.e who stays in India for a total period of not less than one hundred and eighty-two days in the **Financial Year**.

**Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.**

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| **In case of Specified IFSC Public Company & IFSC Private Company** - Sub-section (3) of section 149, the following proviso shall be inserted, namely:-  
"Provided that this sub-section shall apply to a Specified IFSC company in respect of financial years other than the first financial year from the date of its incorporation.”. - Notification Dated 4th January 2017. |
Question 3.
Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

(i) The Board of Directors of MNP Limited appointed Ms. Neha as a Women Director in the Board Meeting held on 10th September, 2014. The said appointment was made to fill the vacancy of the Woman Director, which had occurred as a result of resignation of Ms. Sheela on 30th June, 2014. Will your answer differ if the Board Meeting of the company was held on 8th November, 2014?
(ii) LKG Limited was incorporated on 5th May, 2014 under the Companies Act, 2013. Mr. Ramanujam was appointed as the first Resident Director of the company in the Board Meeting held on 30th September, 2014.

Answer:
(i) Woman Director: At least one woman director shall be on the Board of such class or classes of companies as may be prescribed (second proviso to section 149(1) of the Companies Act, 2013). Further, any intermittent vacancy of a woman director shall be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

As per the above provisions, the appointment of Ms. Neha is valid. The vacancy of a woman director of MNP Limited which arose on 30th June 2014, due to the resignation of Ms. Sheela, should be filled up latest by 29th September 2014 or the day of the next Board Meeting, whichever is later. Since Ms. Neha was appointed in the next Board Meeting after the vacancy arose, i.e. on 10th September 2014, her appointment is valid.

The answer will remain the same, even if MNP Ltd. appoints Ms. Neha in the Board Meeting held on 8th November 2014, provided the said meeting is the first meeting of the Board after 30th June 2014 i.e. after the resignation of Ms. Sheela.

(ii) Resident Director: As per section 149(3) of the Companies Act, 2013, every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty two days in the financial year.

The MCA vide General Circular No. 25/2014 dated 26 June, 2014 has given a clarification on applicability of requirement for resident director regarding newly incorporated companies, it is clarified that companies incorporated between 1st April, 2014 to 30th September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation.

Since, LKG Ltd., was incorporated on 5th May 2014, it should have a resident director either at the incorporation stage itself or within six months of their incorporation. Thus accordingly, the appointment of Mr. Ramanujam as a first Resident Director of the company in the Board Meeting held on 30th September, 2014 is valid.

4. INDEPENDENT DIRECTOR:
An independent director needs to have an independent mindset which should not be unduly influenced by the other members of the Board; and if such members take any decision which is illegal or not in the best interest of the company or economy it must be hindered by the independent directors at the outset.

a. Number of Independent Directors: Prescribed companies to have Independent directors:
   i) Every listed company shall have at least one-third of the total number of directors as independent directors,
   ii) Any fraction contained in such one-third number shall be rounded off as one.
iii) According to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or

(2) the Public Companies having turnover of 100 crore rupees or more; or

(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

➔ **Requirement of higher number:** Section 177 shall override the companies rules, 2014. i.e. if a company is required to appoint more than 2 independent directors as per rules of sec 177 (Audit committee), then section 177 will prevail.

That means, rule is: Requirement as per :-

I. Companies (appointment & qualification of directors) Rules, 2014 {i.e. 2}
   OR

II. As per Section 177.
   **WHICHEVER IS HIGHER.**

Due to composition of its audit committee, if a public company covered under the above rule, is required to appoint a higher number of independent directors, such higher number shall be applicable to it.

As per section 177(2) of Act, the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.
Example:

As per section 177, a company is required to form an Audit committee with minimum 3 directors, out of which **MAJORITY** must be independent. So if ASC Ltd. is having 9 directors in its audit committee, then minimum independent required as per section 177 shall be 5 directors (majority), whereas Companies (Appointment & Qualification of directors) Rules, 2014 requires 2 independent directors. Therefore section 177 will prevail & company will be required to appoint atleast 5 independent directors.

c. **Intermittent vacancy of an independent director:** Any vacancy in office of the Independent director shall be filled up by board at the earliest but not later than:

   - Immediate next Board meeting
   - 3 months from date of vacancy

   Whichever is later

d. **Discontinuation of applicability:**

   When a company does not satisfy any of the 3 conditions for consecutive 3 years, then this section shall cease to apply.
   i.e. should not be satisfying even 1 condition for 3 years.

   Clarification: 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.

Exempted classes of unlisted public companies: According to Rule 4(2), following classes of unlisted public companies shall not be covered under sub-rule (1) of Rule 4 (i.e. point a of our notes):

- a joint venture;
- a wholly owned subsidiary; and
- a dormant company as defined under section 455 of the Act.

5. **TRANSITION PERIOD FOR INDEPENDENT DIRECTOR:** 149(5).

   Every company existing on or before the date of commencement of this Act shall, **within one year** from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

6. **WHO CAN BECOME AN INDEPENDENT DIRECTOR [SECTION 149(6)]**:

   An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, who fulfils the following criteria — **I Mz Relative OF V E N**.
Chap. 1. Appointment and qualification of Directors.

(a) In the opinion of the Board, he must possess integrity and relevant expertise and experience;

(b) Must not have any pecuniary relationship (Monetary relationship) other than his remuneration as director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company * or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(c) His relatives must not have any pecuniary relationship (Monetary relationship) as follows with the company * or their promoters, or directors during the two immediately preceding financial years or during the current financial year:

   i. Holds any security of or interest;
      Provided that the relative may hold security or interest of face value not exceeding
      Fifty lakh rupees (₹50,00,000/-) or
      Two per cent. of the paid-up capital of the company or *;

   ii. Is indebted, in excess of ₹50,00,000/-;

   iii. Has given a guarantee or provided any security in connection with the indebtedness of any third person, for ₹50,00,000/- or more; or

   iv. Has any other pecuniary relationship 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);

(d) (i) He must not be or must not have been a promoter of the company *;
     (ii) He must not be related to promoters or directors in the company *

For (b) & (c): MONETARY RELATION IF AT ARMS LENGTH, THEN PERSON WILL NOT BE DISQUALIFIED.

Exemptions

As per G.S.R. 463 (E) dated 5th June, 2015, in case of a Government company, the word "Board" shall be substituted by the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government".

Exemptions

As per Notification 463 (E) dated 5th June, 2015, the above point no. (3) [section 149(6)(c)] shall not apply in case of a Government company.
Chap. 1. Appointment and qualification of Directors.

(e) He must possess such other qualifications as may be prescribed. Prescribed by Companies (Appointment & Qualification of directors) Rules, 2014 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.

(f) He must not be an employee or proprietor or a partner of—
   (i) A firm of auditors or company secretaries in practice or cost auditors of the company *; or
   (ii) Any legal or a consulting firm that has or had any transaction with the company * amounting to ten per cent. or more of the gross turnover of such firm; in any of the three immediately preceding financial years.

(g) Voting power held by him together with his relatives must not be 2% or more of the total voting power of the company; or

7. DECLARATION BY INDEPENDENT DIRECTOR [SECTION 149(7)]:
   Every independent director shall
   i. at the first meeting of the Board in which he participates as a director; and
   ii. thereafter at the first meeting of the Board in every financial year; or
   iii. 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. CODE FOR INDEPENDENT DIRECTORS [SECTION 149(8)]:
The company and independent directors shall abide by the provisions specified in Schedule IV to the Companies Act, 2013.

9. **RENUMERATION OF INDEPENDENT DIRECTOR:**
Subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option.

But he shall be entitled to receive remuneration by way of

→ fee,
→ reimbursement of expenses for participation in the Board and other meetings and
→ profit related commission as may be approved by the members.

### ENTITLED TO:
- Fee provided under section 197(5).
- Reimbursement of expenses for participation in:
  - (i) Board Meetings
  - (ii) Other Meetings
- Profit related commission as may be approved by the members.

### NOT ENTITLED TO:
- Any stock option.

10. **TENURE [Section 149(10) & (11)]:**

i) Appointment: An independent director shall hold office for a term up to five consecutive years AND

Reappointment: Shall be eligible for reappointment by a special resolution of members and disclosure of such appointment in the Board’s report. [Section 149(10)]

ii) Cooling period: An independent director shall not hold office for more than two consecutive terms, and shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. [Section 149(11)]

iii) No association during cooling period: The independent director shall not be appointed in or be associated with the company in any other capacity either directly or indirectly during the said period of three years.

* Any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under point 10.

11. **LIABILITY [Section 149(12)]:**
An independent director, or a non-executive director (Who is not a promoter or key managerial personnel) shall be held liable, only in respect of
1) such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and

2) with his consent or connivance or

3) where he had not acted diligently.

12. RETIREMENT BY ROTATION: [Section 149(13)]
The retirement of directors by rotation u/s 152 shall not be applicable to appointment of independent directors.

The MCA vide General Circular No. 14/2014 dated 9th June, 2014 has given some clarifications over manner relating to appointment and qualifications of directors and Independent Directors which are as under:

(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, (in accordance with the provisions of the Act) 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 provided under sub-section (5) of section 197, 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.

(ii) Section 149(10) / (11)- 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 for 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.
(iii) Appointment of 'IDs' through letter of appointment:-
With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of 'IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'? The matter has been examined. In view of the specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

Exemptions

The MCA vide Notification No.466(E) dated 5th June, 2015, has exempted section 8 companies from following the provisions of sub-section (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub- section (12) [related to independent director] and sub- section (13) of section 149 of the Companies Act, 2013.

In case of Specified IFSC Public Company - Sub-sections (4) to (11), clause (i) of subsection (12) and sub-section (13) of section 149 shall not apply. - Notification Dated 4th January 2017.
### SECTION 149 (6): REQUIREMENTS TO BECOME INDEPENDENT DIRECTOR:

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<tr>
<th>Sr. no.</th>
<th>Qualification / Disqualification (By)</th>
<th>With</th>
<th>Monetary Limit</th>
<th>Time limit</th>
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<tr>
<td>1. 1</td>
<td>Integrity and relevant expertise and experience.</td>
<td>In the opinion of the Board</td>
<td>————</td>
<td>————</td>
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<tr>
<td>3. M₂</td>
<td>Monetary relationship (Relative) S D G O</td>
<td>Company, *, Director, Promoter.</td>
<td>Face value not exceeding 2% of its Paid Up Share Capital. or ₹50,00,000/- whichever is lower</td>
<td>Current year + immediately preceding 2 years.</td>
</tr>
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<td></td>
<td>S: holding any security or interest</td>
<td>Company, *, Director, Promoter.</td>
<td>In excess of ₹50,00,000/- ₹50,00,000/- or more</td>
<td>Current year + immediately preceding 2 years.</td>
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<td>D: Indebted</td>
<td>Company, *, Director, Promoter.</td>
<td></td>
<td>Current year + immediately preceding 2 years.</td>
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<td>O: Any other monetary transaction or relationship.</td>
<td>Company, *, Director, Promoter.</td>
<td>Transaction value should not be ≥ 2% or more of its gross turnover or total income.</td>
<td>Current year + immediately preceding 2 years.</td>
</tr>
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<td>4. Relative</td>
<td>Promoter &amp; relative of promoter. (himself)</td>
<td>In Company &amp; *.</td>
<td>————</td>
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<td>5. O</td>
<td>Other qualifications</td>
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</table>
| 6. | **Firm**  
(Partner/ Proprietor/ Employee) | In Company & * | In any of the 3 immediately preceding financial years |
| a. | An Audit firm  
(CA / CS / CWA) | | |
| b. | Consultancy firm. | In Company & * | Transaction value should not be 10% or more of the gross turnover of such firm |
|   | | | In any of the 3 immediately preceding financial years |
| 7. | **Voting Power.**  
(Himself along with Relatives in aggregate) | In Company ONLY | Should not be 2% or more of the total voting power of the company |
| 8. | **Employee, KMP.**  
(Himself, relative) | In Company & * | |
| 9. | **NPO. (Director / CEO)**  
Grants and donations | Company, *, Director, Promoter | Which receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or * |
| a. | | | |
| b. | Voting Power. | In Company ONLY | Should not be 2% or more of the total voting power of the company |

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1.16
Chap. 1. Appointment and qualification of Directors.

Question 4

XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:
(i) State the minimum number of independent directors that the company should appoint.
(ii) How many independent directors are to be appointed in case XYZ Limited is a listed company?

Answer

(i) According to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:
   (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
   (2) the Public Companies having turnover of 100 crore rupees or more; or
   (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ₹20 crores as on 31st March, 2015 and a turnover of ₹150 crores during the year ended 31st March, 2015. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

(ii) According to section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited shall have atleast 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

The explanation to section 149(4) specifies that any fraction contained in such one-third numbers shall be rounded off as one.

As the explanation to rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that for the purpose of the assessment of the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, their existence on the last date of latest audited financial statements shall be taken into account.

In the present case, it is mentioned that paid up capital of XYZ Limited is ₹ 20 crore on 31st March, 2015 and turnover is ₹ 150 crore during the year ended 31st March, 2015. So, it is assumed that 31st March, 2015 is the last date of latest audited financial statements.

II. Section 150 - MANNER OF SELECTION OF INDEPENDENT DIRECTORS AND MAINTENANCE OF DATABANK OF INDEPENDENT DIRECTORS

Section 150 provides for manner of selection of independent directors and maintenance of databank of independent directors.

1. 150(1): An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors subject to the provisions contained in sub-section (5) of section 149(5).

Databank shall be maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors.
The responsibility of exercising due diligence shall lie with the company making such appointment, before selecting a person from the data bank as an independent director.

2. **150(2):** The appointment of independent director shall be approved by the company in general meeting and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment, shall indicate the justification for choosing the appointee for appointment as independent director.

3. **150(3):** The data bank shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

4. **150(4):** The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

**Creation and maintenance of databank of persons offering to become independent directors:**

(i) Any body, institute or association (referred as “the agency”), which has been authorised in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.

(ii) The data bank shall contain the particulars in respect of each person included in the data bank to be eligible and willing to be appointed as independent director like DIN, the name and surname in full, details of LLPs in which he is or was a designated partner, the list of companies in which he is or was director, etc.

(iii) For further details regarding the procedure of creation and maintenance of databank of persons offering to become independent directors, please refer Companies (Appointment and Qualification of Directors) Rules, 2014 and Companies (Appointment and Qualification of Directors) Amendment Rules, 2014.

**Exemptions**

The MCA vide Notification No. 466(E) dated 5th June, 2015, has clarified that section 150 of the Companies Act, 2013, shall not apply to a section 8 company.

**III. Section 151 - APPOINTMENT OF DIRECTOR ELECTED BY SMALL SHAREHOLDERS**

Applicability: A listed company may have one Small shareholder director.

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

Companies (Appointment & Qualification of directors) provides for procedure of appointment of small shareholder director as follows:

1. **MANNER OF APPOINTMENT:**
   A listed company may appoint small shareholder director,
a) Either SUO MOTO; or  
b) On application made by requisite no. of small shareholders.

2. **MINIMUM REQUISITION:**  
Notice must be made by:  
a) 1000 small shareholders; or  
b) 1/10th of the total small shareholders  
WHICHEVER IS LESS.

3. **NOTICE TO COMPANY:**  
Small shareholders intending to propose a person as small shareholder director shall give a notice to company at least 14 days before the meeting in writing.

4. **CONTENTS OF NOTICE:**  
The notice shall specify the name, address, shares held & folio number of  
➔ The person proposed to be appointed; and  
➔ The small shareholders proposing the appointment.  
# If the person to be appointed doesn’t hold any shares then details as to shares held & folio no. need not be given.

5. **DECLARATION BY SSD:**  
Notice shall be accompanied with a declaration by proposed small shareholder director stating:  
➔ His DIN (Director Identification Number);  
➔ That he is not disqualified to act as director; and  
➔ His consent to act as director of the company.

6. **SSD TO BE CONSIDERED INDEPENDENT DIRECTOR:**  
SSD shall be considered as INDEPENDENT director subject to compliance with section 149(6) & 149(7). (Eligibility & Declaration).

7. **TERM / TENURE:**  
Section 152 will apply. Except the following:  
➔ He shall not be liable to retire by rotation.  
➔ Term shall not exceed a period of 3 consecutive years.  
➔ On the expiry of tenure, he shall not be eligible for reappointment.  
➔ Cooling period shall be 3 years.  
➔ During the cooling period (3 years from the date when he ceases to hold office) the SSD shall not be appointed or be associated with the company in any other capacity directly or indirectly.

8. **DISQUALIFICATION U/S 164:**  
A person cannot be appointed at SSD if he is disqualified u/s 164.

9. **VACATION OF OFFICE:**  
SSD shall vacate his office if:  
➔ Attracts disqualification u/s 164.  
➔ Section 167.  
➔ Ceases to be independent u/s 149.

10. **MAXIMUM COMPANIES:**  
A person cannot hold the position of small shareholder in more than 2 Companies.
Question 5.
The Board of directors of M/s ABC Limited, an unlisted company having a paid-up capital of ₹ 6 crores consisting of equity share capital of ₹ 5 crores and preference share capital of ₹ 1 crore and also 1,100 ‘Small Shareholders’ holding equity shares seeks your advice on the following:
(i) Is it necessary for the Company to appoint a Director to represent the ‘Small Shareholders’?
(ii) In case the Company decides to appoint such a Director, the procedure to be followed by the company for such appointment and the period for which such appointment can be made.
Advise explaining the relevant provisions of the Companies Act, 2013 and the Rules.

Answer
Director elected by small shareholders
(i) Section 151 of the Companies Act, 2013 provides that a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Further, the explanation to section 151 clarifies that for the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

As the company given in the question is an unlisted company, it is not bound by section 151 and hence, it is not necessary for the company to appoint a director to represent the “small shareholders”.

(ii) The company may decide to appoint such director on its own. A director appointed to represent the “small shareholders” will be treated as an independent director and will be appointed according to the provisions of section 152. Such director will not be liable to retire by rotation, nor will his tenure as small shareholders’ director exceeds a period of three consecutive years and he will not be eligible for reappointment on the completion of his tenure.

Question 6.
M/s. Neemuch Pharma Limited is a company listed with Malhargarh Stock Exchange. Some small shareholders of the said company want to appoint Mr. Avadhesh as a Director as their representative on the Board of Directors of the said company. Mr. Avadhesh is holding 1000 equity shares of 10 each in the said company. State the provisions of the Companies Act, 2013 in relation to the proposal to appoint Mr. Avadhesh as a Small Shareholders' Director.

Answer:
Section 151 of the Companies Act, 2013 provides that a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Further, the explanation to section 151 clarifies that for the purposes of section 151 “small shareholders” means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

In the given case, the company is a listed one; hence the provisions of section 151 will apply. The Companies (Appointment & Qualifications of Directors) Rules, 2014 clearly provides that a listed company, may upon notice of not less than 1,000 small shareholders or one- tenth of the total number of such shareholders, whichever is lower, have a small shareholders’ director elected by the small shareholders.

Therefore, the number of small shareholders who can send the notice for the appointment of a small shareholders director must not be less than 1,000 or one tenth of the total number of small shareholders. This is not clarified in the question. Presuming that the small shareholders meet the criteria, they must give 14 days’ notice to the company under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.
Further, the notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders’ director stating—
(a) his 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.

From the above, it is clear that Mr. Avadhesh who holds 1,000 shares in the company is not debarred from being appointed the small shareholders’ director in the company.

Question 7
Answer any four of the following:
DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders’ director. Referring to the provisions of the Companies Act, 2013, advise on the following:

(i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.

(ii) Is it possible to appoint a person who does not hold any share in the company, as small shareholders’ director?

(iii) What is the tenure of small shareholders’ director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders’ director.

Answer
(i)
According to section 151 of the Companies Act, 2013, a listed company may have one director elected by small shareholders in such manner and on such terms and conditions as may be prescribed. Here, “Small Shareholders” means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

A listed company may upon notice of not less than
(a) one thousand small shareholders; or
(b) one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders’ director elected by the small shareholders.

(ii)
The small shareholders intending to propose a person as a candidate for the post of small shareholders’ director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

Further, the notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders’ director stating—
(a) his 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.

(iii)
The tenure of small shareholders’ director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment. A small shareholders’ director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders’ director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

IV. Section 152 - APPOINTMENT OF DIRECTORS

1) 152(1):
   i) First Director:

   ii) 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.

   iii) 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) 152(2) : Normally every director shall be appointed by the company in general meeting.

3) 152(3) : A person shall not 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.

4) 152(4) : Every person proposed to be appointed as a director, 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.
5) 152(5): A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director to company and such consent has also been filed with the Registrar within thirty days* of his appointment in Form DIR-12 along with the fee as prescribed.

★ In case of Specified IFSC Public Company- In Sub-section (5) of section 152, For the words “thirty days” read as “sixty days”- Notification Dated 4th January 2017.

Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company consent in writing to act as director in Form DIR-2.

The proviso to Section 152(5) states that in 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 fulfills the conditions specified in this Act for such an appointment.

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement shall be annexed to the notice for the general meeting and shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act (section 149) for such an appointment.

Exemptions
The Ministry of Corporate Affairs has clarified via Notification dated 5th June, 2015, that proviso to section 152(5) shall not apply in case of section 8 company.

The Ministry of Corporate Affairs has clarified via Notification dated 5th June, 2015, that in case of Government company, section 152(5) shall not apply where appointment of such director is done by the Central Government or State Government, as the case may be.

6) Retirement & Rotation:
(a) Not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation;

(b) At every annual general meeting, 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.

(c) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but if two persons were appointed as directors on the same day, retirement shall be
   -- By mutual agreement between them; or
   -- By lots.

(d) Where a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person.

“Total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.
Chap. 1. Appointment and qualification of Directors.

Exemptions

Non applicability of section 152(6) and 152(7): The Ministry of Corporate Affairs has clarified via Notification 13th June, 2017, that section 152(6) and (7) of the Companies Act, 2013, shall not apply to:

a) Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

b) a subsidiary of a Government company, referred to in (a) above.". - Notification Dated 13th June, 2017.

In case of Specified IFSC Public Company - Sub-sections (6) and (7) of section 152 shall not apply Notification Dated 4th January 2017.

Question 8.
A company has 11 directors on the Board consisting of the following:
(a) Mr. Active, Mr. Archive as nominees from two Public Financial Institutions.
(b) Mr. First, Mr. Second, Mr. Third appointed at the 2nd AGM.
(c) Mr. Fourth, Mr. Fifth appointed at the 3rd AGM.
(d) Mr. Addition was appointed as additional director subsequent to 3rd AGM.
(e) Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the 3rd AGM.
(f) Mr. Excellent was appointed as Managing Director for 5 years w.e.f. 2nd AGM.
(g) Mr. One more was appointed as additional Director soon after Mr. Addition was appointed as Additional Director.

List out in order, who shall be retiring at the 4th AGM of the company.

Answer:
Section 152(6)
Of the 11 directors mentioned in the question, Mr. Active and Mr. Archive, who are nominees of Public Financial Institutions respectively, are not liable to retire by rotation. Mr. Excellent being the Managing Director, can be kept as not liable to retire. The position in regard to the remaining 8 directors is as under:
Chap. 1. Appointment and qualification of Directors.

(i) Mr. Addition & Mr. One More who were appointed as Additional Directors in subsequent to 3rd Annual General Meeting respectively, shall vacate office on the date of 4th Annual General Meeting.

(ii) Mr. Casual was appointed in place of Mr. Soul who died and will, therefore, hold office till the date Mr. Soul would have held office.

(iii) Of the 6 rotational directors, [viz., Mr. First, Mr. Second, Mr. Third, Mr. Fourth, Mr. Fifth and Mr. Casual] 2 directors who constitute one-third, and who have been longest in office are liable to vacate office. Accordingly, two amongst Mr. First, second and third who were appointed in 1st AGM and have been longest in office, shall retire and vacate office. Amongst themselves, either they can decide by mutual consent or by draw of lots.

7. Reappointment:
   a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

   b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the RETIRING DIRECTOR SHALL BE DEEMED TO HAVE BEEN RE-APPOINTED at the adjourned meeting, unless (c).

   c) Exceptions: when retiring directors will not be Automatically reappointed—
      i. at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost
      ii. the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
      iii. he is not qualified or is disqualified for appointment;
      iv. a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
      v. section 162 is applicable to the case.

“retiring director” means a director retiring by rotation.

Non applicability of section 152(6) and 152(7): The Ministry of Corporate Affairs has clarified via Notification 13th June, 2017, that section 152(6) and (7) of the Companies Act, 2013, shall not apply to:

   a) Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

   b) a subsidiary of a Government company, referred to in (a) above.". - Notification Dated 13th June, 2017.

Question 9.
Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.
Decide in this connection:
(i) Which of the directors shall be retiring by rotation and be eligible for re-election?
(ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation?
(iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?

Answer:

Rotational Directors and Retirement:
(i) According to section 152(6)(a)(i) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Further, section 152(6)(c) of the Act states that 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.

From the above provisions, it is clear that the directors who are liable for rotation at every annual general meeting shall be one third of those directors who constitute the two thirds of the total number of directors and who are liable for rotation at every AGM.

(ii) Under section 152(6)(d) the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. Therefore, the directors who will retire by rotation shall be those who have been in office for the longest term since their appointment. In case of two or more directors who were appointed on the same date at the same AGM, the retiring directors will be mutually agreed by them or in the absence of such agreement, will be determined by lots.

(iii) Under section 152(6)(e) of the Companies Act, 2013 the Vacancy caused by the retirement of directors at the AGM may be filled in the same annual general meeting by appointing either the retiring directors or some other person. The annual general meeting may also decide not to fill the vacancy arising from the retirement of one or more directors.

Section 152(7) (a) provides that if the vacancy of the director retiring by rotation, 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.

Section 152 (7)(b) further provides that 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:
(a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
(b) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
(c) he is not qualified or is disqualified for appointment;
(d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
(e) section 162 (appointment of directors to be voted individually) is applicable to the case.
Question 10.

ABC Company Ltd. in its First General Meeting appointed six Directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if ABC Company Ltd. does not carry on business for Profit?

**Answer:**

Under section 152(6) (a) unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

In the given case, it is assumed that the 6 directors appointed at the first general meeting of the company constitute at least two thirds of the total number of directors.

Section 152(6)(c) further states that at every annual general meeting, 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.

Therefore, in the given case 2 directors will be liable to retire by rotation at the next AGM of the Company.

Section 152(6)(d) further states that the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

In the given case, all the 6 directors were appointed on the same date. Hence, the choice of the 2 directors who would retire at the next AGM of the company will be made either mutually by these 6 directors failing which; it will be decided by lots.

It will not make any difference under the Companies Act, 2013 if the company is a non profit organization.

Question 11.

ADJ Company Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Referring to the provisions of the Companies Act, 2013, decide:

(i) Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?

(ii) What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?

(iii) Whether such directors can continue in case the directors do not call the Annual General Meeting?

**Answer:**

In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to 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.
Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring 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 at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost or he has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answer to the questions as asked shall be:

(i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.

(ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.

(iii) Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM. They retire at the AGM and at its conclusion. Hence, they will retire as soon as the AGM is held. Further, as per section 96 (dealing with annual General Meeting) of the Companies Act, 2013, every company other than a One Person Company shall in each year hold an Annual General Meeting. Hence, it is necessary for the company to hold the AGM, whereby these directors will be liable to retire by rotation.

Question 12
A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July 2014 and F, G and H were also appointed as directors on 7th August 2014 in the company. In the Annual General meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as directors.

At the AGM, resolution for A’s retirement and re-appointment was passed. However, before the resolution for ‘B’ could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B’s retirement and re-appointment.

In the light of above and with reference to relevant provision of the Companies Act, 2013, answer the following:

(i) Whether proposals for retirement by rotation and re-appointment of A and B only were sufficient?

(ii) What will be the status of B as a director in the company?

Answer:

According to section 152(6)(a)(i) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Further, section 152(6)(c) of the Act states that at the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, 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.

Section 152(6)(d) further states that the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
Section 152(7) (a) provides that if the vacancy of the director retiring by rotation, 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.

Section 152 (7)(b) further provides that 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:

(a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(b) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(c) he is not qualified or is disqualified for appointment;

(d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(e) section 162 is applicable to the case.

(i) In the given case there are total 8 directors, out of which A and B were appointed as first directors of Sun Glass Ltd.

As per the provisions of section 152 of the Companies Act, 2013, the number of directors liable to retire by rotation at the next Annual General Meeting are 2 [1/3 of (2/3 of 8)].

Therefore, in the given case, 2 directors will be liable to retire by rotation at the next AGM of the Company, which in this case will be A and B as they are who have been longest in office since their last appointment. Thus, the proposals for retirement by rotation and re-appointment of A and B only were sufficient.

(ii) According to section 152(6)(c), at the annual general meeting, one-third of rotational directors shall retire from office. Thus, B shall retire at the Annual General Meeting in which he was due to retire even though it was adjourned without the resolution for B’s retirement could have been taken up.

Further, 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 as he does not fall in the category of any of the exceptions mentioned in section 152(7)(b). Hence, B will be deemed to be re-appointed as a director in the company.

V. Section 153 - APPLICATION FOR ALLOTMENT OF DIRECTOR IDENTIFICATION NUMBER

“Director Identification Number” (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.
Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013.

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 the rules made thereunder; [Rule 2(1)(e) of the Companies (Specification of definitions details) Rules, 2014]

Section 153 of the Companies Act, 2013 deals with the filing of application for allotment of DIN. According to it, every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the Central Government in such form and manner and along with such fees as may be prescribed.

Rule 9 of Companies (Appointment & Qualification of Directors) Rules, 2014 provides for the points for making application for allotment of DIN according to which:
1. Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the companies (Registration offices and Fees) Rules, 2014.
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. (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-
   (i) photograph;
   (ii) proof of identity;
   (iii) proof of residence; and
   (iv) specimen signature duly verified.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -
   (i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or
   (ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

4. In case the name of a person does not have a last name, then his or her father’s or grandfather’s surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.

**** CG has wide Notification delegated powers u/s 153 & Sec 154 to Regional Director, Joint Director, Deputy Director, Assistant Director posted in office of Regional Director at Noida.

VI. Section 154 - ALLOTMENT OF DIRECTOR IDENTIFICATION NUMBER
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 may be prescribed.
Rule 10 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides the procedure for allotment of DIN according to which:

(i) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode, an application number shall be generated by the system automatically.

(ii) After generation of application number, the Central Government shall process the applications received for allotment of DIN and decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(iii) 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 15 days of such placing on the website and email.

Provided that the Central Government shall –

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(iv) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(v) All DIN 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.

(vi) The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

The MCA vide Notification No. S.O. 1354(E) dated 21st May, 2014 delegates the powers and functions of the Central Government in respect of allotment of Director Identification Number under section 154 of the Companies Act, 2013 to the Regional Director, Joint Director, Deputy Director or Assistant Director posted in the office of Regional Director at Noida.

VII. Section 155 - PROHIBITION TO OBTAIN MORE THAN ONE DIRECTOR IDENTIFICATION NUMBER

No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

VIII. Section 156 - DIRECTOR TO INTIMATE DIRECTOR IDENTIFICATION NUMBER

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.
IX. Section 157 - COMPANY TO INFORM DIRECTOR IDENTIFICATION NUMBER TO REGISTRAR.

1. Every company shall, within 15 days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar within prescribed time in prescribed form and manner.

2. If a company fails to furnish, the company shall be punishable with fine of ₹25,000/- and in case of continuing failure, with further penalty of ₹100/- for each day after the first during which such failure continues, subject to a maximum of ₹1,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹25,000/- and in case of continuing failure, with further penalty of ₹100/- for each day after the first during which such failure continues, subject to a maximum of ₹1,00,000/-.

According to rule 10A of the companies (Appointment & Qualification of directors) Amendment Rules, 2014:

1. Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B.

2. The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within 15 days of receipt of intimation under section 156.

X. Section 158 - OBLIGATION TO INDICATE DIRECTOR IDENTIFICATION NUMBER

Every person or company shall mention the Director Identification Number while furnishing any return, information or particulars as are required to be furnished under this Act, in case such return, information or particulars relate to the director or contain any reference of any director.

XI. Section 159 - PUNISHMENT FOR CONTRAVENTION

If any individual or director of a company, makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

(NO IMPRISONMENT NOW. AMENDMENT)
CA FINAL – CORPORATE AND ECONOMIC LAWS.
Chap. I. Appointment and qualification of Directors.

153 – 159: DIN

A: 153 : Apply : Application to CG
B: 154 : Banega : Allotment of DIN
C: 155 : Cheating X : Not more than 1 DIN
D: 156 : Director : Dir → Company (1 month)
E: 157 : (remember with 157) : Company → ROC (15 days)
F: 158 : Furnish : Furnish/Intimate DIN
G: 159 : Galti : Penalty

1. CANCELLATION OR SURRENDER OR DEACTIVATION OF DIN

Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014 as amended by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014, lays down the procedure for cancellation or surrender or deactivation of DIN as under:

The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received alongwith fee as specified in Companies (Registration Offices and Fees) Rules, 2014, from any person, cancel or deactivate the DIN in case –

a) The DIN is found to be duplicated in respect of the same person provided the data related to both the DINs shall be merged with the validly retained number;

b) The DIN was obtained in a wrongful manner or by fraudulent means;

Provided that before cancellation or deactivation of DIN pursuant to the above clause (b), an opportunity of being heard shall be given to the concerned individual

For this purpose

(i) The term “wrongful manner” means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation.

(ii) The Term “fradulent means” means if the DIN is obtained with an intent to deceive any other person or any authority including the central government.

c) of the death of the concerned individual;
d) the concerned individual has been declared as a person of unsound mind by a competent Court;
e) if the concerned individual has been adjudicated an insolvent.
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.

Provided that for deactivation of any DIN in such case the central government shall verify e-records

2. INTIMATION OF CHANGES IN PARTICULARS SPECIFIED IN DIN APPLICATION:

Rule 12 of the Companies (Appointment and Qualification of Directors) Rules, 2014 as amended by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014, provides for the procedure for Intimation of changes in particulars specified in the DIN application according to which:
1) Every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely:-

(i) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the form and attach duly scanned copy of the proof of the changed particulars and submit electronically.

(ii) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;

(iii) the applicant shall submit the Form DIR-6;

2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

**Question 13.**
What do you understand by the term “Director Identification Number” (DIN)? Describe the procedure to obtain the same as enumerated under the Companies Act, 2013 read with the relevant Rules.

**Answer**
Director Identification Number (DIN) is a Unique Identification Number issued by the Ministry of Corporate Affairs. It is required to be obtained by every person who is intending to become a director of any company. DIN is a pre-requisite for filing various forms with the Registrar of Companies. The electronic system of the Ministry of Corporate Affairs will not allow filing / submitting of forms if DIN of the signatory director is not mentioned in the form being filed / submitted.

Under section 153 of the Companies Act, 2013 every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

1. Under rule 9 sub rule 1 of the Companies (Appointment & Qualification of Directors) Rules, 2014 every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.

2. Under rule 9 (2) of the said rules 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 sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically:

4. (i) photograph;
Chap. 1. Appointment and qualification of Directors.

(iii) proof of residence; and

(iv) specimen signature duly verified.

5. Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -

(i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director

Section 154 of the Companies Act, 2013 states that 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 may be prescribed.

Rule 10 (1) of the Companies (Appointment & Qualifications of Directors) Rules, 2014 states that on the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode, an application number shall be generated by the system automatically.

Rule 10 (2) further provides that after generation of application number, the Central Government shall process the applications received for allotment of DIN and decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

XII. Section 160 - RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP

1. Eligibility: A person who is not a retiring director shall, be eligible for appointment to the office of a director at any general meeting.

Conditions for appointment: if he himself or some member intending to propose him as a director has given at the registered office of the company, a notice in writing nominating his candidature as a director along with the deposit of one lakh rupees [₹1,00,000/-].

As per Notification G.S.R. 465(E) dated 5th June, 2015, in case of a Nidhi Company, in section 160(1) of the Companies Act, 2013, the words “one lakh rupees” shall be substituted with “ten thousand rupees” [₹10,000/-].

Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.

2. Time limit for filing nomination: Not less than fourteen days before the meeting.
3. Refund of Deposit: Deposit shall be refunded if the person proposed gets elected as a director or gets more than 25% of total valid votes.

The MCA vide General Circular No. 38/2014, dated 14th October, 2014, has issued a clarification with respect to Refund of deposit under section 160. In case of companies registered under section 8 of the Companies Act, 2013, the Board of directors of such company is to decide as to whether the deposit [₹1,00,000 received by them under section 160(1)] made by or on behalf of the person failing to secure more than 25% of the valid votes is to be forfeited or refunded.

4. The company shall inform its members of the candidature of the nominated person for the office of director in the manner prescribed.

Exemptions
Non applicability of section 160: The MCA has clarified via Notifications No. 463(E), 464(E) and 466(E) dated 5th June, 2015, that section 160 of the Companies Act, 2013, shall not apply to:

(1) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

(2) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company.

(3) A Private company

(4) Section 8 Companies whose articles provide for election of directors by postal ballot.

NOTICE OF CANDIDATURE OF A PERSON FOR DIRECTORSHIP:
Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the following points for giving notice of candidature of a person for directorship as under:

(i) The company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-
a. by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

b. by placing notice of such candidature or intention on the website of the company, if any.

(ii) However, it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than 7 days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

XIII. Section 161 - APPOINTMENT OF ADDITIONAL DIRECTOR, ALTERNATE DIRECTOR AND NOMINEE DIRECTOR

1. Additional director [Section 161(1)]:
   a) The articles of a company may confer on its Board of Directors the power to appoint any person as Additional director.
   b) A person who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director at any time.
   c) Additional Director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Question 14.
The Articles of Association of a company have fixed the maximum strength of the board as 12 directors. At present the Board has 9 directors of whom 6 are liable to retire by rotation and 3 not liable to retire by rotation. The Board wishes to appoint 3 additional directors. Can they appoint as desired as per provisions of the Companies Act, 2013?

Answer
Under section 161(1) of the Companies Act, 2013, the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office up to the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

From the above provision, it is clear the Board of directors of the company can appoint the additional directors only if they are authorized by the articles of the company to do so. In case such power is not given by the articles of the company, the articles will first have to be altered to confer such power on the Board after which the Board can appoint the 3 additional directors.

Question 15.
Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:
(i) Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?
(ii) Can the power of appointing additional director be exercised by the Annual General Meeting?
(iii) As the Secretary of the company what checks would you make after M is appointed as an additional director?

Answer
Section 161(1) of the Companies Act, 2013 provides that the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office up to the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

(i) M cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting could have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or could not be called within the time prescribed.

(ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company.

(iii) As a Company Secretary, I would put the following checks in place in respect of M’s appointment as an additional director:
1. He must have got the Directors Identification Number (DIN);
2. He must furnish the DIN and a declaration that he is not disqualified to become a director under the Companies Act, 2013;
3. He must have given his consent to act as director and such consent has been filed with the Registrar within 30 days of his appointment;
4. His appointment is made by the Board of Directors;
5. His name is entered in the statutory records as required under the Companies Act, 2013.

Question 16

Queens Limited is a company listed at Bombay Stock Exchange. Company’s Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K. as the additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K. as a director on the Company’s Board was rejected by the members at the company’s Annual General Meeting.

Examine the provisions of the Companies Act, 2013, answer the following:

(i) Whether Mr. K’s appointment as additional director by the Board of Directors is valid?

(ii) Whether the Company’s Annual General Meeting can appoint Mr. K. as the additional director when the proposal to appoint comes before the meeting for the first time?

(iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K. who was appointed by the Board as additional director, for the first time, can continue to act as a director?

Answer

Problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained under section 161 (1) according to which:

(A) The Articles of a company may confer upon its Board of Directors the power to appoint any person as an additional director at any time.
(B) A person, who fails to get appointed as a director in a general meeting of the company cannot be appointed as an additional director in the same company.

(C) Additional director shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

In the given case, the answers to sub-questions are:

(i) The appointment of Mr. K. as additional director by the Board of Directors is not valid because before appointing him as an additional director, the proposal to appoint Mr. K. as a director on the Company’s Board was rejected by the members at the company’s Annual General Meeting.

(ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company. Therefore, in the present case, the company’s Annual General Meeting cannot appoint Mr. K. as the additional director when the proposal to appoint comes before the meeting for the first time because the company’s Articles empower the Board of Directors to appoint additional director.

(iii) In case the AGM of the company is not held within the stipulated time, Mr. K. cannot continue as additional director, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting ought to have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or could not be called within the time prescribed.

2. **Alternate director [Section 161(2)]:**
   a) The Board of Directors of a company may appoint a person to act as an alternate director for any director (original) during his absence for a period of not less than three months from India.
   b) Board must be authorised by its articles or by a resolution passed in general meeting.
   c) The alternate director appointed must not be holding any alternate directorship for any other director in the company or holding any directorship in the same company at the time of appointment.
   d) Alternate director for an independent director must be a person qualified to be appointed as an independent director under the provisions of this Act.
   e) Term : Alternate director shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate the office when the director in whose place he has been appointed returns to India.
   f) Reappointment of original director : If the term of office of the original director ends before he returns to India, any automatic re-appointment of retiring directors shall apply to the original, and not to the alternate director.

**Question 17.**
Examine the validity of the following:
Mr. Q, a Director of PQR Limited proceeding on a long foreign tour, appointed Mr. Y as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Q claims that he has a right to appoint alternate director.

**Answer**
Under section 161(2) of the Companies Act, 2013 the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director or holding any other directorship in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India. From the above provision it is clear that the authority to appoint alternate director has been vested in the board of directors only and that too subject to empowerment by the Articles. Therefore, Q is not authorized to appoint an alternate director and the appointment of Mr. Y is not valid.

3. **Nominee by third party [Section 161(3)]:**
   a) The Board may appoint any person as a director,
      a. nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or
      b. by the Central Government or the State Government by virtue of its shareholding in a Government company,
   b) Only if the articles of the company allow such appointment.

4. **Casual Vacancy [Section 161(4)]:**
   a) In the case of ANY COMPANY, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board, which shall be subsequently approved by members in the immediate next general meeting.
   b) Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

**Question 18.**

The Board of directors of XYZ Limited appointed Mr. A as a Director in the casual vacancy caused by resignation of Mr. X. Mr. A is proposed to be re-appointed as a Director at the Annual General Meeting, when he vacates his office. Examine with reference to the relevant provisions of the Companies Act, 2013 whether Mr. A can be considered as a ’Retiring Director’ and state the legal requirements to be fulfilled to give effect to the proposed appointment of Mr. A as a Director at the Annual General Meeting.

**Answer**

In the given case, Mr. A was appointed as a director of XYZ Ltd. to fill a casual vacancy. His appointment would have been made under section 161(4) of the Companies Act, 2013 which provides that in the case of any company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board, which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Therefore, in the given case, Mr. A would be eligible to hold office till the date upto which Mr. X would have held office. Mr. A will not automatically be considered as a “retiring director” at the next AGM of the company.
In case he has to retire at the forthcoming Annual General Meeting and wants to be reappointed as a director he will have to follow the provisions of Companies Act, 2013 relating to the appointment of a person other than a retiring director as a director of the company which are as under:

(a) Section 152(2) of the Companies Act, 2013 provides that unless expressly provided in this Act, every director shall be appointed by the company in general meeting.

(b) Section 152 (3) further provides that no person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

(c) Section 152 (4) states that every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.

(d) Section 152 (5) states that 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.

(e) Further under section 160(1) of the Companies Act, 2013 a person who is not a retiring director may be appointed a director at the general meeting of the company including the AGM by following the below mentioned procedure:

(i) He or any other member intending to propose him as a director, has given a notice of not less 14 days in writing under his hand signifying his candidature as a director or, as the case may be, intention of such member to propose him as a candidate for that office;

(ii) The above referred notice has been delivered at the Registered Office of the Company;

(iii) The notice should be accompanied by a deposit of ₹1,00,000 or such higher amount as may be prescribed;

(iv) The deposit will be refunded to such person or to the member, as the case may be, in case the person is appointed as a director at the meeting or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

(v) Under section 160(2) on receipt of the notice as referred above, the company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed. Rule 13 of the Companies (Appointment & Qualification of Directors) Rules, 2014 prescribes, the company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and by placing notice of such candidature or intention on the website of the company, if any.

Question 19.
The Board of directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2014. Unfortunately Mr. C expired on 15th May, 2014 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard as per the provisions under the Companies Act, 2013.

Answer
Section 161(4) of the Companies Act, 2013 provides that in the case of any company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be
Chap. 1. Appointment and qualification of Directors.

1. Appointment and qualification of Directors.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.

However, Mr. C expired on 15th May, 2014 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy resulting from P’s demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. C.

The Board may however appoint Mrs. C as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office until the conclusion of the next annual general meeting.

Question 20.
Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2013, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2014, but the same was not held due to delay in the finalisation of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2014. Advise the company on the complaints made by the shareholders.

Answer
Under section 161(1) of the Companies Act, 2013, the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time when the director in whose place he is appointed would have held office if it had not been vacated, whichever is earlier.

Further, section 161(4) states that in the case of any company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board, which shall be subsequently approved by members in the immediate next general meeting.

In the given case, Mr. Sachin has been appointed as an additional director in order to fill in a casual vacancy. A casual vacancy on the Board can be filled only by means of a board resolution passed at a meeting of the Board and not by circulation. Therefore, the appointment of Mr. Sachin is invalid.

However, it is rather strange that in the given case Mr. Sachin has been appointed as an additional director to fill a casual vacancy in the Board. Actually, additional directors are appointed by the Directors (if authorized by the Articles) to increase the number of directors within the legally prescribed limits and not to fill a casual vacancy. In case Mr. Sachin had been appointed as an additional director not to fill a casual vacancy, his appointment could have been made by a resolution by circulation under section 161 (1) and he would have held office till the date of the next AGM or the last date when the next AGM should have been held, whichever is earlier.

In the given case, as the AGM was due on 31st March 2014 which is presumably the last date for holding it, his appointment would terminate on 31st March 2014.
Question 21.
Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
(i) The Board of Directors of AJD Limited appointed Mr. N as an alternate director for a period of two months against a director who has proceeded abroad on leave for a period of six months. Articles of Association of the company are silent.
(ii) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.
(iii) On the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination.

Answer
Appointment of alternate Director (Section 161 of the Companies Act, 2013)
(i) According to section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director for a director (original director) during his absence for a period of not less than three months from India.
In the present case, the Board of Directors of AJD Limited appointed Mr. N as an alternate director for a period of two months against a director who has proceeded abroad on leave for a period of six months and Articles of Association of the company are silent. The said appointment is not valid because the power to appoint alternate director is not authorised by its articles or by a resolution passed by the company in general meeting.
(ii) According to first proviso to section 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.
In the present case, Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director. Thus, the said appointment is not valid.
(iii) According to section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.
In the present case, on the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power and further there is no agreement between the company and the bank. Thus, the appointment of Mr. Peter as nominee director is not valid as Articles do not confer upon the Board of Directors any such power.
# Appointment and qualification of Directors

<table>
<thead>
<tr>
<th>POINTS</th>
<th>ADDITIONAL DIRECTOR.</th>
<th>ALTERNATE DIRECTOR.</th>
<th>NOMINEE DIRECTOR BY 3\textsuperscript{RD} PARTY.</th>
<th>CASUAL VACANCY.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. WHY / WHEN?</td>
<td>Because of some special skill or knowledge that he has.</td>
<td>When an Original director goes outside India for 3 months or more.</td>
<td>As per terms &amp; conditions of loan contract.</td>
<td>When a director, appointed by shareholders, vacates his office before end of his term.</td>
</tr>
<tr>
<td>3. TERM</td>
<td>Till the Next AGM.</td>
<td>Till original director returns to India or till the end of Original director’s term whichever is earlier.</td>
<td>As per terms &amp; conditions of loan contract.</td>
<td>Balance term of Original director.</td>
</tr>
<tr>
<td>4. AUTHORIZATION</td>
<td>AOA</td>
<td>AOA Or O.R. of shareholders.</td>
<td>AOA</td>
<td>ACT.</td>
</tr>
<tr>
<td>5. SPECIAL POINTS.</td>
<td>A person rejected by shareholders cannot be appointed by BOD as additional director.</td>
<td>a. Alternate for an ID must be independent. b. One person can be alternate to only one director at a time. c. Any automatic re-appointment of retiring directors u/s 152(7) shall apply to the original, and not to the alternate director. d. Person being appointed as Alternate director should not be an existing Director at the</td>
<td>Nominated by PFI.</td>
<td>Approval by members subsequently at the immediately next General meeting. (#Amendment). Applicable to ALL COMPANIES. (#Amendment)</td>
</tr>
</tbody>
</table>
XIV. Section 162 - APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY

1. At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

2. A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.
   i.e. Appointment of every director requires separate resolution at GM.

Exception:
A separate resolution to be passed BEFORE passing resolution of appointment. This separate resolution should be UNANIMOUS.

After such a resolution is passed normal resolution for appointment i.e. OR to be passed.

- This section does not apply to appointments made in board meetings.

**Exemptions**

Non applicability of section 162: The MCA has clarified via Notifications No. 463(E) and 464(E) dated 5th June, 2015, that section 162 of the Companies Act, 2013, shall not apply to:

1) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

2) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company.

3) A Private company.

**Question 22.**
In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2014, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of directors were elected as directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 2013 and decide: Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void.

Answer

The matter of appointment of directors in place of those retiring at the annual general meeting has been correctly stated in the agenda as the ordinary business to be transacted at the general meeting. But in accordance with the provisions of section 162(1) of the Companies Act, 2013, at a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. Section 162 (2) further provides that a resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved. Taking into account of the above, the contention of the members shall be tenable. Each director has to be appointed by way of a separate resolution.

Question 23.

XYZ Company Ltd. in its annual general meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 2013. Will it make any difference, if XYZ Company was a private company?

Answer

Under section 162(1) of the Companies Act, 2013, at a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

From the above provision of law, it is mandatory for the company to first get a unanimous approval of the company on the appointment of more than one director by a single resolution. In the given case, no such motion was put to vote at the meeting and passed unanimously. Merely not raising any objection is not the same as active unanimous approval.

Further, according to section 162(2), a resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved. Hence, in the given case the appointment of all the directors made by a single resolution at the AGM is void.

The Ministry of Corporate Affairs has clarified via Notifications No. 464(E) dated 5th June, 2015, that section 162 of the Companies Act, 2013, shall not apply to a private company. Thus, if XYZ would have been a private company, then provisions of section 162 shall not be attracted.

XV. Section 163 - OPTION TO ADOPT PRINCIPLE OF PROPORTIONAL REPRESENTATION FOR APPOINTMENT OF DIRECTORS.

--Notwithstanding anything contained in this Act, --the articles of a company may provide for the appointment of --not less than two-thirds of the total number of the directors of a company --in accordance with the principle of proportional representation, --whether by the single transferable vote or by a system of cumulative voting or otherwise and --such appointments may be made once in every three years and
Chap. 1. Appointment and qualification of Directors.

--casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.
-- Single transferable vote means, a candidate gets elected if he gets the required number of votes fixed as quota. These systems of voting ensure that the Board will have fair representation of the minority interest.
-- Whereas under the method of cumulative voting, each shareholder’s total number of votes shall be calculated by multiplying his total shares with the number of candidates, & he is allowed to cast all those votes in one resolution itself.

Exemptions
Non applicability of section 163: The MCA has clarified via Notifications No. 463(E) dated 5th June, 2015, that section 163 of the Companies Act, 2013, shall not apply to:

1. A **Government company** in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
2. A **subsidiary of a Government company**, referred to in (a) above, in which the entire paid up share capital is held by the Government company.

Question 24.
A company has in its Articles of Association provided for appointment of not less than two-thirds of the total number of its directors according to the principle of proportional representation. Can the directors so appointed be removed by the company in general meeting as per the provisions of the Companies Act, 2013?

Answer
Under section 163 of the Companies Act, 2013, the articles of a company may provide for the appointment of not less than two-thirds of the total number of directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161 i.e. by the board of directors at a duly convened board meeting.

Section 169 (1) of the Companies Act, 2013 provides for the removal of a director by ordinary resolution of members (except a director appointed by the Tribunal) before the expiry of his term of office. However, according to the proviso to section 169(1) this is not applicable where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

Hence, according to proviso to section 169(1), the directors elected by the principle of proportional representation under section 163 of the Companies Act, 2013 cannot be removed by the shareholders in general meeting.

XVI. Section 164 - DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR

**SECTION 164(1)**: A person shall not be eligible for appointment as a director of a company, if—

\{UC\textsubscript{2}I\textsubscript{2}C DR + 1\}

(a) he is of **unsound** mind;

(b) 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:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(c) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(d) he is an undischarged insolvent;

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

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has not complied with sub-section (3) of section 152. i.e. he does not have DIN.

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

(i) He has not complied with the provisions of sub-section (1) of section 165.

Point no. c, d & h, disqualification will attract EVEN IF FILED ANY APPEAL AGAINST THE ORDER.

**SECTION 164(2)**: A person who is or has been a director of a company which—
(a) has not filed financial statements or annual returns for any continuous period of three financial years;
OR
(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,
shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

*Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.*

**Exemptions**

The MCA has clarified via Notifications dated 5th June, 2015, that Section 164(2) is not applicable to *Government company.*

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**Question 25.**

Mr. Kishore is a Director of AB Limited and PQ Limited. AB Limited did not file financial statements for the years ended 31st March, 2010, 2011 and 2012. AB Limited did not pay interest on loans taken from a public financial institution from 1st April, 2012 and also failed to repay matured deposits taken from public on due dates from 1st April, 2013 onwards.

*Answer the following in the light of relevant provisions of the Companies Act, 2013:*-

(i) **Whether Mr. Kishore is disqualified under the Companies Act, 2013 and if so; whether he can continue as a Director in AB Limited and can he also seek reappointment when he retires by rotation at the Annual General Meeting of PQ Limited to be held in September, 2014?**

(ii) **Mr. Kishore is proposed to be appointed as Additional Director of XY Limited in June, 2014. Is he eligible to be appointed as Additional Director in XY Limited?**

**Answer:**

According to section 164(2) of the Companies Act, 2013, a person who is or has been a director of a company which

(A) has not filed the financial statements or annual returns for any continuous three financial years; or

(B) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay any dividends declared and such failure continues for one year or more.

shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

In the given case, the irregularities committed by AB Ltd. are

(a) Non filing of financial statements for year ended 31March 2010 to 2012 (3 Years);

(b) Non payment of interest on loans taken from financial institution; and

(c) Non repayment of matured deposits taken from the public from 1st April 2013.

1. Here, Mr. Kishore is a director of AB Ltd. and PQ Ltd. AB Ltd. did not file financial statements for three years ended 31st March 2010, 2011 and 2012. Further, AB Ltd failed to repay matured deposits taken from public from
1st April, 2013 onwards. Both these failures constitute a disqualification under section 164 (2) and consequently, Mr. Kishore will be disqualified under section 164(2) and shall not be eligible for reappointment in AB Ltd.

It may be noted that the failure to pay interest on loans taken from a public financial institution is not covered under section 164 (2) and hence does not constitute a disqualification.

As per section 167(1)(a) of the Companies Act, 2013, the office of a director shall become vacant in all the companies except the defaulting company, in case he incurs any of the disqualifications specified under section 164(2) of the Companies Act, 2013. Since, Mr. Kishore has attracted disqualification under section 164(2) of the Companies Act, 2013, he has to vacate office of a director in PQ Ltd. only.

Mr. Kishore cannot seek reappointment in PQ Ltd. as he will vacate office immediately and shall not complete his term itself.

(ii) In view of his disqualification under section 164 (2), Mr. Kishore is not eligible to be appointed as additional director in XY Ltd. in June 2014.

**SECTION 164(3):** A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

**Question 26.**
State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a Director of a company:
(i) Mr. A, who has huge personal liabilities far in excess of his Assets and Properties, has applied to the court for adjudicating him as an insolvent and such application is pending.
(ii) Mr. B, who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks.
(iii) Mr. C, a Former Bank Executive, was convicted by a court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.
(iv) Mr. D is a Director of DLT Limited, which has not filed its Annual Returns pertaining to the Annual General Meetings held in the calendar years 2017, 2018 and 2019.

**Answer**
The first 3 cases stated in the question are based on the provisions of Section 164 (1) of the Companies Act, 2013 and the fourth case is dealt with in section 164 (2) of the said Act. Based on the provisions of the said sections, each case can be discussed as follows:
(i) Section 164 (1) (c) states that a person shall not be eligible for appointment as a director of a company if he has applied to be adjudicated as an insolvent and his application is pending. Therefore, in the present case, Mr. A cannot be appointed as a Director of a Company – whether public or private.
(ii) Section 164 (1) (d) states that a person shall not be eligible for appointment as a director of a company if he has been convicted by a court for any offence 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. In the present case, although the sentence was only two years ago, but the period of sentence was only eight weeks, i.e., less than six months. Hence, Mr. B does not come under the purview of this disqualification and can be appointed as a director of a company.
(iii) The third case also falls within the provisions of section 164 (1) (d). In this case the imprisonment was for a period of one year, i.e., for more than six months, but since more than five years have elapsed from the expiry of the sentence, Mr. C is no longer disqualified and can be appointed as a director of a company.
(iv) Section 164 (2) states that a person who is or has been a director of a company which has not filed the financial statements or annual returns for any continuous three years, then such a person shall not be eligible either to be appointed as a director of other company or reappointed as a director in the same company. In the present case, DLT Limited has failed to file annual returns. Hence, the disqualification for Mr. D is attracted and he cannot be appointed as a director in other company nor can he be reappointed in the same company.
Question 27.
Mr. John is a director of MNC Ltd., which had accepted deposits from public. The financial position of MNC Ltd. turned very bad and it failed to repay the deposits which fell due for payment on 10th April, 2013 and such repayment has not been made till 5th May, 2014. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its annual general meeting to be held on 6th May, 2014. You are required to state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd.

Answer

Section 164 (2) (b) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be reappointed in that company or appointed as a director of any other company for a period of five years from the date on which such company, in which he is a director, failed to repay its deposit.

In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than one year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd.

Question 28.
Mr. Ramanathan is a Director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. for the financial year ended on 31st March, 2013. Two irregularities were discovered against Fraudulent Ltd. Fraudulent Ltd. did not file its financial statements for the year ended 31.3.2013 and failed to pay interest on loans taken from a financial institution for the last three years.

On 1st June, 2014 Mr. Ramanathan is proposed to be appointed as additional director of Goodwill Ltd, which company has sought a declaration from Mr. Ramanathan and he also submitted the declaration stating that the disqualification specified in Section 164 of the Companies Act, 2013 is not attracted in his case. Decide under the provisions of the Companies Act:

(i) Whether the declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order?
(ii) Whether Mr. Ramanathan can continue as a Director in Honest Ltd. and Regular Ltd.?

Answer

(i) The declaration of Mr. Ramanathan is in order. According to section 164 (2) of the Companies Act, 2013 a person who is or has been a director of a company which:

(a) has not filed the financial statements or annual returns for any continuous three financial years; or
(b) has failed to repay the deposits accepted by it or interest thereon on due date or redeem its debentures on due date or pay dividends declared and such failure continues for one year or more.

shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

As the financial statements were not filed only for one year, no disqualification attaches to him. Further, the non-payment of interest to the financial institution is no ground for disqualification under section 164 (2) of the Act.

(ii) Mr. Ramanathan can continue his directorship in all companies as no disqualification attaches to him under section 164 (2) of the Companies Act, 2013.

Question 29.
Mr. Ravindranathan is holding the post of Director in three companies out of which Goodluck Colours Limited is one. For the financial year ended on 31st March, 2014, Goodluck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2015, Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited, submitted a declaration that the disqualification specified in Section 164 of the Companies Act, 2013 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order.

Answer
According to section 164 (2) of the Companies Act, 2013, a person who is or has been a director of a company which:
(a) has not filed the financial statements or annual returns for any continuous three financial years; or
(b) has failed to repay the deposits accepted by it or interest thereon on due date or redeem its debentures on due date or pay dividends declared and such failure continues for one year or more.
shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.
The disqualification specified in section 164 (2) of the Companies Act, 2013 is not applicable in matters of loan from public financial institutions.
However, as Goodluck Colours Limited has failed to repay its deposits on due date and the said failure continues for more than one year, Mr. Ravindranathan is disqualified under the said section.
The declaration submitted by him therefore, is not in order and he is not eligible to the appointment as Additional Director in Soma Footwear Limited.

XVII. Section 165 - NUMBER OF DIRECTORSHIPS

No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.

Exemptions
The MCA vide Notification No. 466(E) dated 5th June, 2015, has clarified that section 165(1) of the Companies Act, 2013, [ie. Point (i)] shall not apply to section 8 companies.

Dormant companies shall be excluded in counting total 20 companies.

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
Exemption.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

1. Subject to the provisions of sub-section (1), 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 directors.

2. Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—
(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;
(b) resign his office as director in the other remaining companies; and
(c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

3. Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

4. No such person shall act as director in more than the specified number of companies,—
(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or
(b) after the expiry of one year from the commencement of this Act, whichever is earlier.

5. If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine of ₹ **fifty thousand rupees for every day** after the first during which the contravention continues.

**Question 30.**
**Mr. Influential is already a director of 19 companies out of which 10 are public limited companies and 9 are private companies. He is being appointed as a director of another company named Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:**
(i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof
(ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors in a public company?

**Answer**
(i) Under section 165 (1) of the Companies Act, 2013, no person, after the commencement of this Act, shall hold office as a director including any alternate directorship, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation to section 165 (1) clarifies that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

In the said question, Mr. Influential is already a director in 10 public companies and as Expensive Remedies Ltd is a public company, he cannot be appointed as a director therein, even though his directorships are less than 20.

(ii) For calculating the limit of 10 public companies, a private company which is neither a subsidiary nor a holding company of a public company will be excluded in terms of the explanation to section 165 (1) of the Companies Act, 2013.

**Question 31.**
Mr. Raj is director in 10 public limited companies as on 30th July, 2014 and continues to be so till 26th September, 2014. The following companies appoint Mr. Raj as a director at their respective Annual General Meetings held on dates mentioned against their names:
(1) MLP Ltd. (AGM held on 27th September, 2014)
(2) PAT Private Ltd. (AGM held on 25th September, 2014)
(3) KMC Ltd. (AGM held on 29th September, 2014)

You are required to state with reference to the relevant provisions of the Companies Act, 2013 the options available to Mr. Raj in respect of accepting or not accepting the appointment of the above companies.

**Answer**
Section 165 of the Companies Act, 2013 debars any person from holding office as a director of more than 20 companies at the same time out of which directorships in public companies cannot exceed ten.

In the given case, Mr. Raj is already a director in 10 public companies, hence he cannot hold office in any additional public company. Hence, he cannot accept appointment in MLP Ltd. and KMC Ltd. as these are public companies.

However, he can be appointed as director in PAT Private Ltd. as total number of directorship does not exceed 20 in the present case.
XVIII. Section 166 - DUTIES OF DIRECTORS

Duties of directors have been defined in the company Law for the first time under section 166 of the Companies Act, 2013. The following duties have been prescribed for a director under the said section:

1. A director of a company shall act in accordance with the articles of the company.

2. A director of a company shall **act in good faith** in order to promote the objects of the company for the benefit of its members as a whole, **and in the best interests** of the company, its employees, the shareholders, the community and for the protection of environment.

3. A director of a company shall exercise his duties with **due and reasonable care**, skill and diligence and shall exercise independent judgment.

4. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

5. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

6. A director of a company shall not assign his office and **any assignment so made shall be void**.

7. If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than **one lakh rupees** but which may extend to **five lakh rupees**.

XIX. Section 167 - VACATION OF OFFICE OF DIRECTOR

(1) The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in section 164;

*Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.*

(b) he absents himself from all the meetings of the 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, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Vacation under point (e) & (f) shall not take effect—
(1) for thirty days from the date of order of disqualification;
(2) where an appeal is preferred within thirty days, until expiry of seven days from the date on which such appeal is disposed off; or
(3) where any further appeal is preferred within seven days, until such further appeal is disposed off.

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the 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.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

XX. Section 168 - RESIGNATION OF DIRECTOR

(1) A director may resign from his office by giving a notice in writing to the company

(2) The Board shall on receipt of such notice take note of the same.

(3) The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.

(4) The company shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

(5) Such director MAY also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in Form DIR-11 along with the prescribed fee. Provided that in case a company has already filed Form DIR-12 with the Registrar (as provided above), a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation. [Companies (Appointment and Qualification of Directors) Amendment Rules, 2015].
(6) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

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

(7) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

The MCA vide General Circular No. 3/15 dated 3rd March, 2015 has clarified that in the event of deactivation of Digital signature certificate (DSC) following en masse resignation of all the directors of a company before appointment of new directors in their places. The difficulty arises because of automatic deactivation of DSC on filing of DIR-11 (Notice of resignation of a director to the Registrar) by the resigned/resigning Director(s), and none of the new Director's details having been filed. As a result, form DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) cannot be filed by a company due to lack of an authorized signatory Director.

In order to enable the filing of such e-forms and till an alternative mechanism is put in place in MCA 2I system, it is clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

**Question 32.**
Due to internal problems in the working of M/s Infighting Detergents Ltd., Mr. Satyam and Mr. Shivam, a Director, have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundram, the Managing Director, decides to refuse their resignations. Examine whether the Managing Director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act, 2013.

**Answer**
Section 168(1) of the Companies Act, 2013 provides that a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and company shall intimate the Registrar in Form DIR-12 as prescribed in Companies (Appointment & Qualification of Directors) Rules, 2014 and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

The proviso to section 168(1) states that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed. Under the Companies (Appointment & Qualification of Directors) Rules, 2014 the director may within 30 days of resignation forward to the Registrar a copy of his resignation along with the reasons for his resignation in Form DIR-11 along with the prescribed fee.

Further, section 168(2) states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

The law does not give an option to the Managing Director or the Company or the Board to reject the rejection of a director and force him to continue.
Therefore, in the given case, the Managing Director cannot compel Mr. Satyam and Mr. Shivam to continue as directors in view of the above provisions.

**Question 33.**
Mr. Raj, a director of POL Ltd., submitted his resignation from the post of director to the Board of Directors on 30th June, 2014 and obtained a receipt therefore on the same day. The Board of Directors of POL Ltd. neither accepted the resignation nor did it file the required form with the Registrar of Companies. You are required to state whether Mr. Raj ceases to be the Director of POL Ltd. and if yes, since when?

**Answer**
Section 168(2) of the Companies Act, 2013 states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. The effectiveness of the resignation of the director is not in any way connected to its acceptance by the Company or the Board nor is it linked to the filing of required form with the Registrar.

However, under the Proviso to section 168 (1), the resigning director may file with the Registrar a copy of his resignation and the reasons of his resignation in form DIR 11 within 30 days of the date of his resignation.

Hence, if the company has failed to file the form DIR 12 as required by the Companies (Appointment & Qualifications of Directors) Rules, 2014, the effectiveness of his resignation will not be impacted.

Therefore, in the given case, the resignation of Mr. Raj is valid and he will cease to be a director of POL Ltd with effect from the date of notice i.e. 30th June 2014 as he has obtained the receipt of the notice on the same day.

**XXI. Section 169 - REMOVAL OF DIRECTORS**

(1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:
Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation. i.e. director appointed by proportional representation cannot be removed.

(2) An independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

(3) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(4) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(5) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—
Chap. 1. Appointment and qualification of Directors.

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company’s default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company’s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(6) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(7) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(8) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(9) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
(b) as derogating from any power to remove a director under other provisions of this Act.

**Question 34.**

Mr. Stubborn is a director of Doubtful Industries Ltd. He along with other two directors has been running the Company for the past twenty years without declaring any dividends or giving any benefit to the shareholders. Frustrated by this, some shareholders are desirous of giving notice to pass a resolution with the support of other shareholders for his removal as a director in the Annual General Meeting of the Company to be held in the month of December of 2014. State the procedure to be followed for the removal of Mr. Stubborn as a director and the right of Mr. Stubborn to defend his position.

**Answer**

Mr. Stubborn, a director of Doubtful Industries Ltd., can be removed by following the provisions laid down in section 169 of the Companies Act, 2013 which provide for the removal of any director (excluding a director appointed by the tribunal under section 242) by passing of an ordinary resolution at a duly convened meeting of the members of the company after giving special notice under section 115.

According to section 115 where, by virtue of any provision contained in the Companies Act, 2013 or in the articles of a company, special notice is required of any resolution, such notice of the intention to move such resolution shall be given the company by such number of members holding not less than one percent. of total voting power...
or holding shares on which the sum prescribed in the aggregate not exceeding five lakh rupees has been paid up, and the company shall give its members notice of the resolution in such manner as may be prescribed.

Therefore, the first thing that the shareholders must do is to ensure that the required number of members as mentioned in section 115 are lined up for giving the special notice of the resolution proposed for the removal of the directors.

Having achieved the required numbers and keeping the various provisions as mentioned above, the procedure for the removal of Mr. Stuborn will be as under:

(i) An ordinary resolution is required to be passed at the proposed annual general meeting of the company [Section 169 (1)].

(ii) A special notice shall be required of any resolution, to remove a director under this section [Section 169 (2)].

(iii) On receipt of the notice of a resolution to remove a director under section 169, the company shall forthwith send a copy thereof to Mr. Stubborn and he is entitled to be heard on the resolution at the meeting [Section 169 (3)]

(iv) On serving of notice of a resolution to remove director: Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company’s default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company’s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it [section 169(4)].

Question 35.
Mr. SDR, a shareholder in JKP Ltd. holding ten equity shares of ₹ 10 each fully paid up wants to give a special notice to the company for removal of Mr. EDM, a Director of JKP Ltd. without stating any reason in the notice. You are required to state as per the provisions of the Companies Act, 2013 and/or any decided case law whether Mr. SDR is entitled to do so.

Answer
The problem as stated in the question is governed by the provisions of section 169 (1) of the Companies Act, 2013. Further, sub-section (2) of the said section states that a special notice is required of any resolution to remove a director. The section does not put any condition in respect of the number of members or their shareholding for the giving of the special notice and furnishing any reason therefore.

However, the provisions of section 169 (1) and (2) must be read with the provisions of section 115 which deal with resolutions requiring special notice and section 102 of the Companies Act, 2013 which requires an explanatory statement to be annexed with every resolution passed in respect of a special business.
It must be understood that apart from the ordinary businesses conducted at an AGM every other business conducted either at an AGM or at any other general meeting of members will fall within the category of “special business” and hence must be accompanied by an explanatory statement under section 102 of the Act. Section 102(1)(b) states that the explanatory statement to every resolution proposed to be passed for a special business must include all necessary information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Therefore, Mr. SDR cannot give a special notice without full details and facts of the case.

XXII. Section 170 - REGISTER OF DIRECTORS AND KEY MANAGERIAL PERSONNEL AND THEIR SHAREHOLDING

(1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company’s holding company or associate companies.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days* from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.

★ In case of Specified IFSC Public Company- In Sub-section (2) of section 170 for the words “thirty days” at both places read as “sixty days”. - Notification Dated 4th January 2017.

★ In case of Specified IFSC Private Company- In Sub-section (2) of section 170 For the words “thirty days” at both places read as “sixty days”. - Notification Dated 4th January 2017.

Exemptions

Section 170 of the Companies Act, 2013 shall not apply to a Government company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Government by MCA vide Notification No. 463(E) dated 5th June, 2015.

XXIII. Section 171 - MEMBERS’ RIGHT TO INSPECT

(1) The register kept under sub-section (1) of section 170,—
   (a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and
   (b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.

(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if anycopy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

Exemptions

Section 171 of the Companies Act, 2013 shall not apply to a Government company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by...
the Central Government or by one or more State Government by MCA vide Notification No. 463(E)
dated 5th June, 2015.

XXIV. Section 172 – PUNISHMENT

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.