



## UNIT 10

# COMPANY LAW AND SECRETARIAL PRACTICE



## 27 CHAPTER

## COMPANY MANAGEMENT

முறைசெய்து காப்பாற்றும் மன்னவன் மக்கட்கு  
இறையென்று வைக்கப் படும்.

—குறள் 388

### COUPLET

That king, will be esteemed a God among men, who performs  
his own duties, and protects (his subjects).



### Learning Objectives

To enable the students to understand the

- The concept of Company Management
- The meaning of Director and Qualification of Director
- Concept of Board of Director, legal position of Directors
- Removal of director from a company
- Other Managerial personnel involved in the Company Management.

### Chapter Synopsis

- 27.01 Introduction, Meaning and Definition of Director
- 27.02 Key – Managerial Personnel of a Company
- 27.03 Board of Directors
- 27.04 Types of Directors as per Companies Act 2013
- 27.05 Number of Directors
- 27.06 Legal position / Status of Director

- 27.07 Appointment of Director
- 27.08 Qualification of Director
- 27.09 Disqualification of Director
- 27.10 Removal of Director
- 27.11 Remuneration of Director
- 27.12 Power of Director
- 27.13 Rights of Director
- 27.14 Duties of Director
- 27.15 Liabilities of Director
- 27.16 Directorial Register
- 27.17 Manager Vs Director
- 27.18 Managing Director Vs Whole time Director

## INTRODUCTION

The concept and nature of Company was explained in the previous lesson. It has a endless life span and the life of the company is not affected due to changes in the members i.e any member may come and go but the company lives till its death according to the provisions of the Act. In this lesson, how this artificial person

is managed is discussed. It is managed by a group of human beings.

The group of human beings who undertake the responsibility to run the business of the company are known as Board of Directors and the members of the Board individually called as Director. The Directors play a vital role in the functioning of the company by controlling, guiding, directing and managing the affairs of the company. The overall performance of any company is vested with the directors. So they are responsible for it. The every person in the Board individually or collectively is responsible for achieving the objectives prescribed in the Memorandum of Association of the Company. The appointment of Directors and their qualifications are specified in the Companies Act 2013 Chapter XI.

In the Company Management, Board of directors gets nucleus position and their selection is according to the procedure prescribed lay down in the Act and the Articles of Association.

Since the Success of any company depends on the efficient functioning of its Directors, they can be called as eyes, ears, brain, hands, nerves and other essential parts of a company. The directors formulate policies and establish organizational set up for implementing those policies, in order to achieve the objectives contained in the Memorandum of association of the company.

### **27.01 Meaning and Definition of Directors**

The person one who takes active interest in the well being of a company and one of the Members of Board of Directors is called as Director of a company. A Director is a person from a Board of Directors who leads or supervises the functioning of a company.

The Companies Act 2013 section 2 (34) defines a director appointed to the board of a Company is

"A Person who is appointed or elected member of the Board of Directors of a company and has the responsibility of determining and implementing policies along with others in the board. It is not necessary to, hold any shares in the company or be an employee. Directors act on the basis of resolutions made in the Board of Directors meeting according to their powers stated in the Articles of Association of the company."

**Minimum/Maximum Number of Directors in a Company-** Section 149(1) Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

A period of one year has been provided to enable the companies existing on or before the commencement of Companies Act, 2013 to comply with this requirement.

**General duties are not mentioned in the Companies Act and therefore are not obligatory for the directors to perform. Some of them are mentioned below:**

**To act in good faith:** The directors are expected to act in good faith i.e. they should always act in the best interest of the company. The directors should not make any secret profits.

**To act with utmost care:** The directors should conduct their work with utmost care. They should act with prudence.

**Not to delegate work:** The directors are supposed to perform all their work by themselves. They are not expected to delegate their work to anyone else.

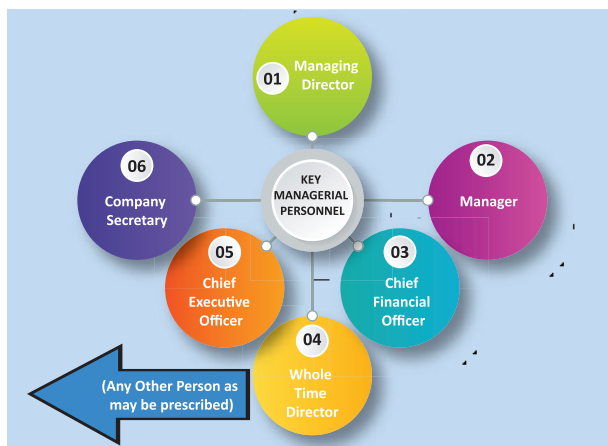
However in the following cases the directors may choose to delegate the work to someone else:

If it is permitted in the Companies Act or in the Articles of Association.

If the directors cannot perform certain work that demands specialized expertise, such work can be delegated in such a case.

## 27.02 Key- Managerial Personnel of a Company

Companies Act, 2013 (Act) has introduced many new concepts and Key Managerial Personnel (KMP) is one of them. KMP covers the traditional roles of managing director and whole time director and also includes some functional heads like Chief Financial Officer and Chief Executive Officer and Company Secretary.

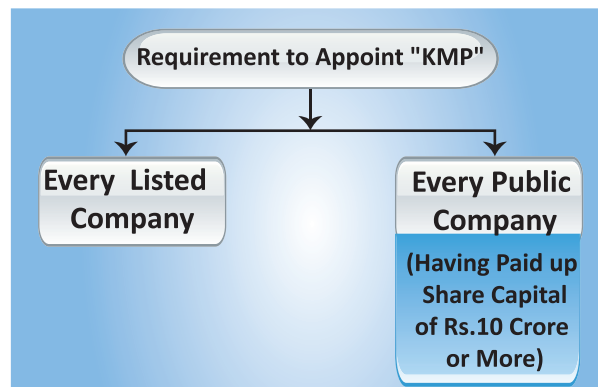


### WHO ARE THE KEY MANAGERIAL PERSONNEL ?

The definition of the term Key Managerial Personnel is contained in Section 2(51) of the Companies Act, 2013. This Section states:

- (i) the Chief Executive Officer
- (ii) the Managing Director or the Manager;
- (iii) the Company Secretary;
- (iv) the Whole-time Director;
- (v) the Chief Financial Officer; and
- (vi) such other officer as may be prescribed;

Following Companies are required to appoint KMP



## 27.03 Board of Directors

The Governing body of a Company incorporated under Companies Act called Board. It is a group of individuals called directors, elected to represent the views of shareholders of a public limited company and to manage the company affairs by establishing policies and implementing them to achieve the goal. They are empowered to take decisions on the major issues to lead the company in the right way. In General the Board is empowered to

- (i) Set the Policies
- (ii) Restructure the objectives
- (iii) Evaluate the performance of Managing Director and Senior Executives.
- (iv) Exercise overall Direction
- (v) Adopt bylaws
- (vi) Determine and pay the dividend
- (vii) Issue additional shares.

In General, the Board is responsible for assisting the company in setting broad goals, supporting the management, ensuring the adequate resources available in the company and its utilisation.

### COMPOSITION OF THE BOARD OF DIRECTORS:

#### a) General Optimum Combination:

Board of Directors shall have an optimum combination of executive and non-executive

directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors.

## Board of Directors



### b) When the non-executive Director is the Chairperson:

In this case, at least one-third of the board of directors shall comprise of independent directors and where the company does not have a regular non-executive chairperson, at least half of the board of directors shall comprise independent directors.

### c) when the non-executive chairperson is a promoter or is related to any promoter or person occupying management positions at the level of board of director or at one level below the Board of Directors:

In this case, at least one half of the board of directors of the company shall consist of Independent Directors (ID).

A director is appointed to the Board of a Company. Such Directors have a different role to play to attain the goal of the company. According to their role they are differently classified in accordance with the provision of the Companies Act 2013.

**Whole Time Director:** A Director is one who devotes whole of his time of working hours to the company and has a significant personal interest in the company as the source of his income.

**Managing Director:** A Director is one who is employed by the company and has substantial powers of management over the affairs of the company subject to superintendence, direction and control of the board.

## Executive Director

An executive director is a **Chief Executive Officer** (CEO) or Managing Director of an organization, company, or corporation, who is responsible for making decisions to complete the mission and for the success of the organisation. In the globalised business world the title of President or of Chief Executive Officer is used instead of Managing Director.

## Non - Executive Director

A non-executive director typically does not engage in the day-to-day management of the organization, but is involved in policy making and planning exercises. In addition, non-executive directors' responsibilities include the monitoring of the executive directors and acting in the interest of the company stakeholders.

## Difference Between Executive and Non-Executive Director

An Executive Director can be either a whole-time Director of the Company or a Managing Director. But a Non- Executive Director is a Director who is neither a Whole-time Director nor a Managing Director.

## 27.04 Types of Directors as per Companies Act 2013

**1. Residential Director:** – According to Section 149(3) of Companies Act 2013, Every company should appoint a director who has stayed in India for a total Period of not less than 182 days in the previous calendar year.

**2. Independent Director:** According to Section 149(6) an independent director is an alternate director other than a Managing Director who is known as Whole Time Director Or Nominee Director. The following type of companies has to appoint minimum Two independent directors:-

- a) Public Companies which have Paid-up Share Capital- ₹10 Crores or More; –



b) Public Companies which have Turnover- ₹100 Crores or More:-

c) Public Companies which have total outstanding loans, debenture, and deposits of ₹50 Crores or More.

**3. Small Shareholders Directors:** Small shareholders can appoint a single director in a listed company. But this action needs a proper procedure like handing over a notice to at least 1,000 Shareholders or 1/10th of the total shareholders.

**4. Nominee Director:** "A director nominated by any financial Institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests".

From the above,

- a) should be nominated by any financial Institution in pursuance of any law or in terms of an agreement entered into by the company
- b) could be appointed by the Government or by any other person.
- c) The person so appointed shall represent the interests of the organization /Institution which he represents.

**5. Women Director:** As per Section 149 (1) (a), there are certain categories according to which there should be at least one woman as a director on the Board. The following class of companies shall appoint at least one woman director

- (i) every listed company;
- (ii) every other public company having:
  - (a) paid-up share capital of one hundred crore rupees or more; or
  - (b) turnover of three hundred crore rupees or more.

**6. Additional Directors:** Any Individual can be appointed as Additional Directors by a company.

**7. Alternate Directors:** Alternate director is appointed by the Board of Directors, as a substitute to a director who may be absent from India, for a period which is not less than three months. The appointment must be authorised either by the Articles of Association of the company or by a passing a resolution in the General Meeting. The alternative director is not a representative or agent of Original Director.

**8. Shadow Director:** A person who is not the member of Board but has some power to run it can be appointed as the director but according to his/her wish.

## 27.05 Number of Directors Required

Under section 149 (1) of the Companies Act, 2013 states that the requirement of Minimum/ Maximum Number of Directors in a Company

### Minimum Number of Directors

**a) Public Company:** Every Public company shall have a minimum number of 3 directors and

### b) Private company

**In case of One Person Company:** The requirement of directors is one.

**Other Private Companies:** The minimum requirement of Directors is two.

### Maximum Number of Directors:

A company can appoint maximum 15 fifteen directors out of which one must be resident of India and after passing special resolution in general meeting, the company can appoint more than fifteen directors, for which the approval of Central Government is not required.

### Number of directorships:

Under Section 165 of the Companies Act 2013 A person can hold the position of Directorship in different companies up to maximum of 20. The number of directorships in public companies/ private companies that



are either holding or subsidiary company of a public company shall be limited to 10. Further the members of a company may restrict above mentioned limit by passing a special resolution.

If a person holds Directorship in more than the limit specified above he/she has to resign the excess, according to his / her choice.

If a person accepts an appointment as a director in excess of above mentioned limit is punishable with a fine of not less than Rs. 5,000 but which may extend to Rs. 25,000 for every day after the first day for the period of Directorship hold by the person.

## 27.06 Legal Position of Director

Directors are the persons duly appointed by the Company to lead and manage its affairs and their legal position. At times they have to act as agents, managing partner, trustees, Employee, and Officer.

**Directors as Agents:** A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision made for the benefit of shareholders. Hence directors share a relationship of an agent and a principal with the company.

**Example 1:** XYZ is Chennai based private limited Company which has two directors, Agi and Logu. The company wants to start its business operation in state of Karnataka and for that they need an office accommodation. Agi goes to Karnataka and buys a property in Bangalore to house the office. Although the purchase has been made by Agi the property belongs to the company. Agi has just acted as an agent of the company.

Directors are appointed to lead the company in relation to third parties. They can enjoy the rights and privileges of an agent. There is no personal liability on any contracts entered by them, if it is within the powers stated in the memorandum and articles of the company. If it is not so they have personal liability.

It is also considered that directors are not a full fledged agents of the company because they are elected person but agents are appointed persons.

## Directors as Managing Partners

The management of company is vested in the hands of many executives. So, the directors are virtuals managing partners and the Directors elected by shareholders are like partners to the shareholders. However, substantial powers may be entrusted with the directors or to an outsider, such a person has to act under the superintendence, control and direction of the board of Directors. Therefore, unlike in a partnership firm, no power can be delegated to a single director as a managing partner.

**Example 2:** The same company due to negligence of its Directors fails to pay sales tax to the government. The government files a case against the directors for the recovery of tax payable by the company. As the fault is that of the directors, they are personally liable for the payment of the taxes.

## Directors as trustees

Directors are trustees of the company's money and property and they have to safeguard them and use them for the sake of the company and on behalf of the company. According to Law of trust, the equitable ownership of the trust property is vested with the beneficiary only, Hence directors cannot act as a full-fledged trustee.



**Example 3:** Eswar Company has two directors Deepa and Mani. The directors issue 1,000 shares to the public and receive Rs.100 each per share from the shareholders as share application, share allotment and share first call money. However they themselves do not pay Rs.100 for each of the shares taken by them. This amounts to breach of trust and hence they are required to pay Rs.100 each for the shares held by them.

### Directors as employees

Directors are professionals who manage the company for the benefit of themselves and for the benefit of the shareholders. However, if a director accepts employment in the same company under a separate contract of service, then, in addition to the directorship, he is also treated as an employee or servant of the company. In other words, when the director is appointed as whole time employee of the company, then that particular director shall be considered as employee director or whole time director.

**Example 4:** Gunalan is a director of a company who has also taken an extra charge to act as a manager of the company. But as per the contract of service as a manager he is entitled to receive a remuneration. Hence he is a director who also happens to be an employee of the company.

### Directors as officers

“**Officer**” includes any director, manager or key managerial personnel or any person in accordance with the directions or instructions the Board of Directors or any one or more of the directors who is or are accustomed to act. Therefore Director is treated as officers of an company. Sometimes, they may be also liable for punishments in form of penalties, under

Companies Act, when the provisions of the Act are not strictly complied with.

## 27.07 Appointment of Directors under Companies Act 2013 - Section 152

Generally, in a public company or a private company subsidiary of a public company, two-thirds of the total numbers of Directors are appointed by the shareholders and the remaining one-third's appointment is made as per Articles and failing which, shareholders shall appoint the remaining one-third.

In a private company, which is not a subsidiary of a public company, the Articles can prescribe the manner of appointment of any or all the Directors. In case the Articles are silent, the Directors must be appointed by the shareholders.

Any company which wants to follow the principle of Proportional representation, the Companies Act also permits the Articles to provide for the appointment of two-thirds of the Directors accordingly.

Nominee Directors can be appointed by a third party or by the Central Government in the event of oppression or mismanagement.

### General provisions relating to appointment of directors

1. Every director should be appointed by the company in general meeting as per the provision of the Act.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director should give his consent to hold the office of director in physical form on or before his appointment i.e., Consent to act as a director of a company.



5. Company should file Form with the Registrar of Companies mentioning particulars of appointment of directors and Key Managerial Persons along with the Consent form signed by Directors, as an attachment within 30 days of the appointment of a director with necessary fee.
6. Articles of the Company may provide the provisions relating to retirement of the all directors. If such provision relating to retirement are not made in the articles. Provision in the Act will be applicable.

### First Director

“First directors” mean those directors who hold office from the date of incorporation of the company. The first directors are usually named in the articles of association or are appointed by the directors.

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

## 27.08 Qualifications of Director

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

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.
4. A director should be a solvent person.

5. A director should not be convicted by the Court for any offence, etc.

## 27.09 Disqualifications of a director

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

- a) A person shall not be capable of being appointed director of a company, if the director is
  - (a) Of unsound mind
  - (b) An undercharged insolvent;
  - (c) Has been convicted by a court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months
  - (d) Has not paid any call in respect of shares of the company held by him, whether alone or jointly with others.
  - (e) An order disqualifying him for appointment as director has been passed by a court in pursuance of section 203
  - (f) He has been convicted of the offence dealing with related party transactions under section 188.
  - (g) He has not got the Director Identification Number.

## 27.10 Removal of Director

A Director of Company can be removed from his Office before the expiry of his term by

- a) the Shareholders
- b) the Central Government
- c) the Company Law Board

**A director can be removed from his office in any of the following three ways:**

### a) Removal by shareholders 169

A company (whether public or private) may, by giving a special notice and passing an ordinary resolution, remove a director before the expiry of his period of office without the proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the director. If the shareholders feel that the policies pursued by the director are not appropriate, then director can be removed. The shareholders can do so by passing an ordinary resolution in a general meeting.

### b) Removal by the Central Government

The Central Government has been empowered to remove managerial personnel from office on the recommendation of the Company Law Board under the following circumstances.

- (i) Where a person concerned in the conduct and management of the affairs of a company has been guilty of fraud, misfeasance, persistent negligence in carrying out his obligations.
- (ii) Where the business of a company has not been conducted and managed by such a person, in accordance with sound business principles or prudent commercial practices;
- (iii) Where the business of a company has been conducted and managed by such a person in a manner which is likely to cause injury or damage to the interest of the trade, industry or business.
- (iv) Where the business of the company has been conducted and managed by such a person with the intent to defraud its creditors, members or any other persons.

### c) Removal by the Company Law Board

If an application has been made to the Company Law Board against the oppression and mismanagement of the company's affairs by a director, then the Company Law Board may order for the termination of the director's tenure or set aside any agreement that has been entered into between the company and the

director. Such order can effect the removal of the director from his office.

## 27.11 Remuneration of Director

Managerial Persons covered are Managing Director, Whole-time Director, Part time Directors and managers who shall be paid remuneration in accordance with provisions of Section 197 of the Companies Act, 2013.

### Managerial Remuneration

The Managerial remuneration is payable to a person's appointed u/s 196 of the Act. The Term remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites.

1. Value of rent-free or concession accommodation
2. Value any other items provided at free of cost or at concessional rate. .
3. value of securities / sweat equity shares allotted or transferred by the employer or former employer to the employee.
4. a contribution made by an employer to an approved superannuation fund.
5. Value of any other fringe benefit or amenity.
6. Stock options would be part of remuneration for all directors.

### Forms of Managerial Remuneration

1. Based on Profit of the company
2. Based on Shareholders' recommendations
3. Based on Shareholders' and Central Government recommendations.

### Remuneration Allowed to Managerial Person in case of Company's having adequate profits:

A Public Company can pay remuneration to its directors including Managing Director and Whole-time Directors, and its managers which shall not exceed 11% of the net profit and

it may also be noted, when a Company has only one Managing Director or Whole-time Director or manager the remuneration payable shall not exceed 5% of net profits if it is more than one 11% as calculated in a manner laid down in section 198 of the Companies Act, 2013.

Remuneration Payable by a company in case where is no profit or inadequacy of profit without Central Government and to pay remuneration in excess of the above limit is detailed below:

Where Effective Capital is	Limit of yearly Remuneration payable shall not exceed (Rupees)
(i) Negative or less than ₹5 Crore	₹30 lakh
(ii) ₹5 Crore and above but less than ₹100 Crore	₹42 lakh
(iii) ₹100 Crores and above but less than ₹250 Crore	₹60 lakh
(iv) ₹250 Crore and above	₹60 lakh plus 9.91% of the effective capital in excess of ₹250 Crore.

## 27.12 Powers of Director

Directors should have a vision to frame policies to achieve high level of performance. To achieve high level of performance, they must set the goals of the company. They must have powers to carry on objectives of the company. The power of the Directors grouped into four different heads viz.,

- Statutory Powers of Directors
- Managerial Powers of Directors
- Powers only with a resolution
- Other Powers

### Statutory Powers of Directors

In the General Body Meeting of the Company the following powers must be exercised by the Board of Directors by passing a resolution.

- Power to make calls on shareholders in respect of money unpaid on their shares
- Power to issue debentures
- Power to borrow moneys otherwise than on debentures
- Power to invest the funds of the company
- Power to make loans
- Power to diversify the company business
- Power to approve amalgamation, Merger or reconstruction
- Power to approve Financial Statement and Board reports.

### Managerial Powers of Directors

- Power to contract with the third party.
- Power to allot, forfeit or transfer shares of company
- Power to decide the terms and conditions to issue debentures.
- Power to frame new policies and to issue instructions for the efficient running of the business.
- power to appoint Managing Director, Manager, Secretary of the company.
- power of Control and supervision of work of subordinates.

### Powers only with a resolution

- To sell or lease any asset of the company
- To allow time to the director for repayment of the loan
- To borrow money in excess of paid up Capital and free reserves
- To appoint a sole agent for more than 5 years.



- (v) To issue bonus shares and for reorganization of share capital
- (vi) To contribute money for charitable purposes exceeding ₹50,000 or 5% of the average profits of 3 years whichever is greater.

#### Other Powers

- (i) Power to fill casual vacancy
- (ii) Power to appoint the first auditor of the company
- (iii) Power to appoint alternative directors, additional directors and Key managerial personnel.
- (iv) Power to remove Key managerial personnel
- (v) Power to recommend the Interim and final dividend to shareholders.
- (vi) Power to declare solvency position of the company.
- (vii) Power to make political contribution

### 27.13 Rights of Director

Rights can be categorized into individual rights and collective rights.

#### Individual rights are such as

- (i) Right to inspect books of accounts
- (ii) Right to receive notices of board meetings
- (iii) Right to participate in proceedings and cast vote in favour or against resolutions
- (iv) Right to receive circular resolutions proposed to be passed
- (v) Right to inspect minutes of board meetings.

#### Collective rights are as follows

- (i) **Right to refuse to transfer shares:** Directors of private companies and deemed public companies are entitled to refuse registration of transfer of shares to a person whom they do not approve.

- (ii) **Right to elect a Chairman:** The directors are entitled to elect a chairman for the board meetings.
- (iii) **Right to appoint a Managing director:** The Board has the right to appoint the managing director/ manager of the company.
- (iv) **Right to recommend dividend:** The Board is entitled to decide whether dividend is to be paid or not. Shareholders cannot compel the directors to pay dividend. However they can reduce the rate of recommended dividend. Payment of dividend is the prerogative of the board

### 27.14 Duties of Director

Directors act as agents of the shareholders and act as a trustees of shareholders. Thus they have a fiduciary duty to protect the property of the company. Simply stated the following are the duties of Directors.

**Collective Duties of Directors:** Directors as a part of Board perform certain duties collectively. The following are some of those duties exercised collectively:-

- (i) Approval of annual accounts and authentication of annual accounts
- (ii) Directors report to shareholders highlighting performance of the company, transfers to reserves, investment of surplus funds, borrowings
- (iii) Appointment of First Auditors
- (iv) Issuance of Notice and Holding of Board meetings and shareholders meetings
- (v) Passing of resolutions at board meetings or by circulation.

#### General duties of Directors:

- (i) Structuring or new policy to reach the objectives of a company.
- (ii) Delegating power to any committee if the Articles Permits for well being of the company



- (iii) Issuing instructions to employees for implementation of policy to review company's progress.
- (iv) Appointing their subordinates like Managing director, Manager, Secretary and other employees.
- (v) Acting in accordance with the Articles of the company
- (vi) Act in Good faith in order to promote the objects of the company
- (vii) Perform duties with due and reasonable care and diligence.

### Specific Duties of Directors

- (i) Duty to disclose his name, address and occupation
- (ii) Duty to disclose his shareholding and interest in Contracts of the company.
- (iii) Duty to hold minimum qualification shares within two months after his appointment.
- (iv) Duty to issue prospectus and fix the minimum subscription.
- (v) Duty to take care that prospectus should not contain any false or misleading statement.
- (vi) Duty to confirm the required disclosure in the prospectus as required by the Act.
- (vii) Duty to sign in the prospectus before submitting it to the Registrar of Companies
- (viii) Duty to deposit application money in a scheduled Bank and its utilisation in accordance with the specification given in the Act.
- (ix) Duty to file Return of Allotment of Securities with the Registrar.
- (x) Duty to arrange for making payment of Dividend declared.
- (xi) Duty to forfeit and transfer shares.
- (xii) Duty to file all the reports and resolutions as required by the Act with the Registrar of Companies.
- (xiii) Duty to carry out all other activities as specified in the Act in time.
- (xiv) Duty to call on an Extraordinary General Body Meeting, if necessary.
- (xv) Duty to call statutory and annual general meeting of the company

## 27.15 Liabilities of director

The liabilities of directors may be discussed under three heads:

### 1. Liability to outsiders:

The directors are not personally liable to outsiders if they act within the scope of powers vested in them. The general rule in this regard is that wherever an agent is liable, those directors would be liable, but where the liability would attach to the principal only, the liability is the liability of the company. The directors are personally liable to third parties of contracts in the following cases:

- a. They contract with outsiders in their personal capacity
- b. They contract as agents of an undisclosed principal
- c. They enter into a contract on behalf of a prospective company.
- d. When the contract is ultra-vires the company.

In default of statutory duties, the directors shall be personally liable to third parties in the following cases:

- 1. Mis-statement in prospectus.
- 2. Irregular allotment.
- 3. Failure to repay application money if the minimum subscription is not received.
- 4. Failure to repay application money if allotment of shares and debentures is not dealt in on the stock exchange as specified in the prospectus.

### 2. Liability to company

The directors shall be liable to the company for in the following cases:



**(a) Where they have acted ultra-vires the company**

For example, where they apply the funds of the company to objects not specified in the memorandum of association or when they pay dividends out of capital.

**(b) Where there is a breach of trust**

Directors being the trustees of the company, they should discharge their duties in the best interest of the company; Where they commit a breach of trust resulting in a loss to the company, they are bound to make good the loss. For example, where the directors of the companies utilise company's property for their own benefit, they are guilty of breach of trust.

**(c) Misfeasance**

Directors are liable to the company for misfeasance. The word misfeasance covers willful negligence. However mere failure on the part of the director to take necessary steps for recovery of debts due to the company does not constitute misfeasance.

**3. Criminal liabilities of directors:**

Directors will be liable with a fine and imprisonment or both for fraud or non-compliance of any statutory provisions in the following situations where

- (i) There is mis-statement in Prospectus
- (ii) There is failure to file return on allotment with the registrar
- (iii) There is failure to give notice to the registrar for conversion of share into stock
- (iv) There is failure to issue share Certificate and Debenture certificate
- (v) There is failure to maintain register of the members and register of debenture holders
- (vi) There is default in holding Annual General Meeting
- (vii) There is failure to provide Financial Statements

## **27.16 Directorial Register or Register of directors and KMPs (Rule 17)**

In corporate law, the **directors register** refers to a list of the **directors** elected by the shareholders, generally recorded in the company's minute book. By law, companies are required to keep this list up to date to remove those directors who are deceased or resign, and to add those who have been elected by the shareholders.

**(1) Every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:—**

- (i) Director Identification Number (optional for key managerial personnel);
- (ii) present name and surname in full;
- (iii) any former name or surname in full;
- (iv) father's name, mother's name and spouse's name(if married) and surnames in full;
- (v) date of birth;
- (vi) residential address (present as well as permanent);
- (vii) nationality (including the nationality of origin, if different);
- (viii) occupation;
- (ix) date of the board resolution in which the appointment was made;
- (x) date of appointment and reappointment in the company;
- (xi) date of cessation of office and reasons therefor;
- (xii) office of director or key managerial personnel held or relinquished in any other body corporate;
- (xiii) membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
- (xiv) Permanent Account Number (mandatory for key managerial personnel if not having DIN);

(2) In addition to the details of the directors or KMPs, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to—

- (i) the number, description and nominal value of securities;
- (ii) the date of acquisition and the price or other consideration paid;
- (iii) date of disposal and price and other consideration received;
- (iv) cumulative balance and number of securities held after each transaction;
- (v) mode of acquisition of securities;
- (vi) mode of holding – physical or in dematerialized form; and
- (vii) whether securities have been pledged or any encumbrance has been created on the securities.

(3). Apart from the above the following Registers must be available in the company Registrar Office:

1. Register of loans, guarantee, security and acquisition made by the company

2. Register of investments not held in its own name by the company
3. Register of contracts with related party and contracts and Bodies etc. in which directors are interested
4. Register of directors and key managerial personnel
5. Register of details of securities held by Directors and Key Management Personnel
6. Register of members
7. Register of debenture holders/ other securities holders
8. Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept
9. Declaration by the registered owner of shares who does not hold the beneficial interest in such shares
10. Declaration by the beneficial owner who holds or acquires beneficial interest in shares but whose name is not entered in the register of members

## 27.17 Differences between Manager Vs Director:

BASIS	MANAGER	DIRECTOR
Nature of work	A person who is in charge for the particular department of the Company and is responsible for the performance of that department is called as manager.	A person appointed by the shareholders to lead the company to achieve its goal is known as Director
Nature of work	A manager allocates works to the Subordinate according to their nature of appointment and decided by whom the particular job has to be done and provide necessary guidelines regarding what to do, when to do and how to do.	A director implements policies and provides fundamental guidelines to carry out a job to the concerned manager and direct them to work accordingly.



<b>Level of management</b>	A manager comes under executive level i.e at the Middle-level management	Directors comes under Top-level management and play important role in Decision making.
<b>Responsibility</b>	Managers are responsible for implementation of plans and policies approved by the Board of Directors	Directors responsible for formulation of plans and policies time to time to achieve the goal of the company.

## 27.18 Differences between Managing Director Vs Whole time Director

Differentiate between managing director and whole-time directors of a company.

BASIS	MANAGING DIRECTOR	WHOLE-TIME DIRECTOR
<b>Power</b>	Managing Director is entrusted with substantial powers.	The Power is stated in the term of employment.
<b>Prohibition</b>	Section 197 Prohibits to act both a managing director and a manager simultaneously.	Sometimes a whole-time director may be appointed as manager and director of a company.
<b>Appointment</b>	Consent of the shareholders of the company by means of resolution is not necessarily for the appointment of managing director	Consent of shareholders of the company by a special resolution is must for the appointment of a whole- time director
<b>Duration of Appointment</b>	No individual can be appointed for more than five years at a time.	There is no such restriction regarding the appointment of a whole-time director.



As the salary of an average Indian CEO at top listed private companies is doubling from Rs. 10 crore to Rs. 20 crore in just two years, it's bound to trigger interests as we hope for a legitimate raise in our paychecks this year. The analysis of CEOs salaries in top listed companies for FY 2015-16 shows that the average remuneration paid to the top executives was approximately Rs. 19 crore.

The payment includes their salary, commissions, allowances, value of all prerequisites and ESOPs (**Employee Stock Ownership Plans**) exercised during the year and all other benefits.

### Key Words

Board of Directors    Management    Managers    Managing Director    Promoter



Wouldn't it be interesting to know who are these highest paid CEOs in India?

Name	Annual Salary in Crores	Company Name
M. Naik	Rs. 66.14	L&T
Vishal Sikka	Rs. 48.73	Infosys
Desh Bandhu Gupta	Rs. 44.80	Lupin Ltd.,
Chandrasekaran	Rs. 25.60	TCS
Rahul Bajaj	Rs. 22.32	Bajaj Group
Yogesh Chander Deveshwar	Rs. 15.15	ITC Ltd.,
Mukesh Ambani	Rs. 15.00	RIL,
Sanjiv Mehta	Rs. 13.87	Hindustan Unilever Ltd.,
Abidali Neemuchwala	Rs. 11.96	Wipro
Gopal Vittal	Rs. 10.40	Bharti Airtel



## Exercise



### I. Choose the Correct Answer:

1. A person Shall hold office as a director in \_\_\_\_\_ companies as per the Companies Act, 2013.
  - (a) 5 companies
  - (b) 10 companies
  - (c) 20 companies
  - (d) 15 companies
2. A Private Company shall have a minimum of \_\_\_\_\_.
  - (a) Seven directors
  - (b) Five directors
  - (c) Three directors
  - (d) Two directors

3. A Public Company having a paid up Share Capital of Rs. \_\_\_\_\_ or more may have a Director, elected by such small shareholders.
  - (a) One crore
  - (b) Three crores
  - (c) Five crores
  - (d) Seven crores
4. What is the statue of Directors who regulate money of the company.
  - (a) Banker
  - (b) Holder
  - (c) Agent
  - (d) Trustees
5. According to Companies Act, the Directors must be appointed by the.
  - (a) Central Government
  - (b) Company Law Tribunal
  - (c) Company in General Meeting
  - (d) Board of Directors.

### Answers:

1	c	2	d	3	c	4	d	5	c
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### II. Very Short Answer Questions:

1. Name the companies required to appoint KMP.
2. Who is whole time Director?
3. Who is called as Managing Director?
4. Who can be Executive Director?

### III. Short Answer Questions:

1. When are alternative directors appointed ?
2. Who is a shadow director?
3. State the minimum number of Directors for a Private company.

### IV. Long Answer Questions:

1. Who are the KMP?
2. Brief different types of Directors. (5)
3. State the qualification of Directors.