

PUBLIC ENTERPRISES AND CORPORATE GOVERNANCE

MPA SEMESTER IV

PAPER : PUBLIC ENTERPRISES AND CORPORATE GOVERNANCE

UNIT IV

TOPIC COVERED : BOARD OF DIRECTOR

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BOARD OF DIRECTORS

INTRODUCTION:

The company is an artificial person and is managed by the human beings. The people who run it are known as Board of Directors. Directors acting collectively are known as Board. The directors play a very important role in the day to day functioning of the company. It is the board, who is responsible for the company's overall performance. The company depends on Board of Directors (collectively) and directors (individually).

Section 2(10) of the Companies Act, 2013 defines that Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

As per **Section 149** of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director.

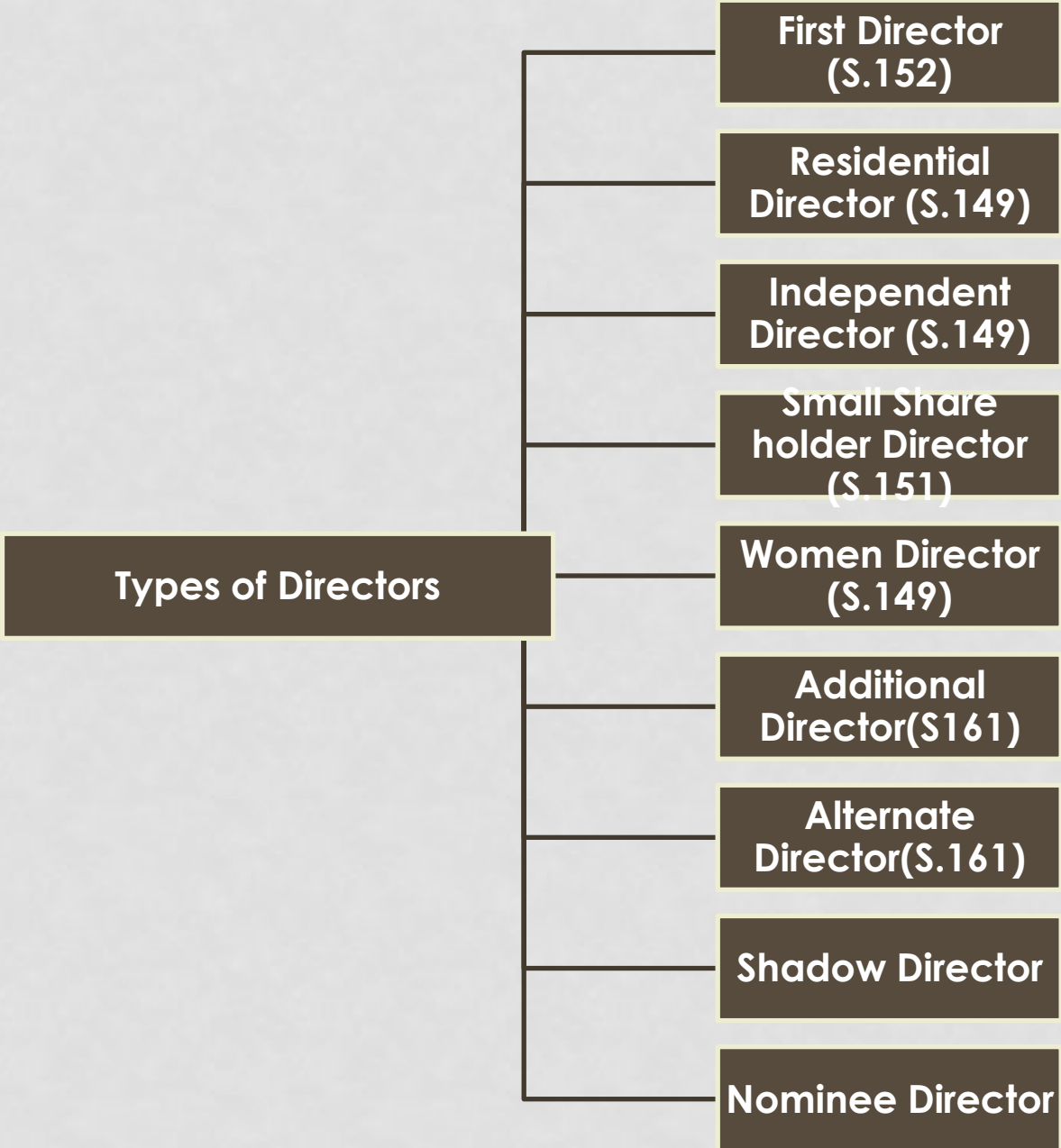
COMPOSITION OF BOARD OF DIRECTOR

Maximum Number of Director is 15, which can be increased by passing a special resolution. Section 8 companies can have more than 15 directors. Section 149(3) provides that 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 previous calendar year.

Further, Second proviso to Section 149(1) read Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one Women Director.

Minimum no. of director is required depends upon the type of company and are as follows:-

| | |
|--------------------|------------|
| Public Company | 3 Director |
| Private Company | 2 Director |
| One Person Company | 1 Director |



APPOINTMENT OF DIRECTOR

According to the Companies Act, only an individual can be appointed as a member of the Board of Director. Usually, the appointment of directors is done by shareholders. A company, association, a legal firm with an artificial legal personality cannot be appointed as a director. It has to be a real person. In public or a private company, a total of two-thirds of directors are appointed by the shareholders. The rest of the one-third remaining members are appointed with regard to guidelines prescribed in the Article of Association.

1. In the case of a private company, their Article of Association can prescribe the method to appoint any and all directors. In case the Articles are silent, the directors must be appointed by the shareholders.
2. The Companies Act also has a clause that permits a company to appoint two-thirds of the company directors to be appointed according to the principle of proportional representation. This happens if the company has adopted this policy.
3. Nominee directors will be appointed by third party authorities or the Government to tackle mismanagement and misconduct. The duties of directors are to act honestly, exercise reasonable care and skill while performing their duties on behalf of the organization.

CONDITIONS APPLICABLE WHEN APPOINTING A DIRECTOR

Three conditions applicable when appointing a director to the board of directors are as follows –

1. He or she should not have been sentenced to imprisonment for any period. Otherwise, a fine will be imposed under a number of statutes.
2. They should not have been detained or convicted for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
3. She or he should have completed twenty-five (25) years of age. However, must be less than the age of seventy (70) years. However, there is an exception. this age limit is not applicable if the appointment is approved by a special resolution passed by the company in general meeting or the approval of the Central Government is obtained.

REMOVAL OF DIRECTORS

The following authorities are responsible for the process of removal of directors from the board of directors.

The company in general meeting

A company can remove a director from the board before his term of office expires. They can pass a resolution in a general meeting upon special notice. However, there are certain exceptions :

- This does not apply to a director appointed by the Central Government.
- This does not apply to companies who have adopted two-thirds of its directors by the principle of proportional representation.
- Directors appointed by financial institutions under an agreement like IDBI, IFCI under their respective acts.
- Directors that have been appointed by the Board for Industrial and Financial Reconstruction.

Removal by the Government

A director can be removed from office under advice from Central Government. The Central Government chooses to use this power on the recommendation of the Company Law Board/National Company Law Tribunal.

Removal by Company Law Board/National Company Law Tribunal

The Company Law Board or the National Company Law Tribunal may remove a director from the board. If found guilty of any inappropriate conduct like fraud, harassment, oppression or any other justifiable cause, he will be removed. The terminated director cannot assume the position of director in any other company for the next five years.

DUTIES OF DIRECTORS

The duties of directors and the Board are primarily responsible for leading the organisation on behalf of the stakeholders. As well as they are responsible for ensuring the legal entity of the company. It means that the company must remain viable and properly functioning in the present and the future as well. Under the common law, directors have to be honest, exercise delicacy and skill when dealing with company issues, while working on behalf of the company.

1. Deciding the company's future goals and priorities.
2. Communicating with the stakeholders to inform them of the company's growth and ensuring their input plays a part in the company's future.
3. Checking the external market conditions to ensure that the company is headed in the right direction.
4. Monitoring the performance of employees and encouraging them to achieve their targets is one of the primary duties of directors.
5. Setting the budget for the company's operations and keeping tabs on the profit and loss margin.
6. Reporting back to the stakeholders at the Annual General Meeting (AGM).
7. Establishing rules and regulations and forming policies that everyone in the company would follow.
8. Making sure the organisation has a good system of governance and that there is no gap in communication.
9. Being in an advisory capacity to the CEO.
10. Doing effective risk management assessment

POWERS BOARD OF DIRECTOR

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

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

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