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Introduction

A Company is a large business formation. It is formed in compliance with the provisions of the Companies Act. The personality of a company is artificial. It cannot work by itself. In Company formation the number of shareholders / owners is huge. They are spread over the whole country. More over, there is no restriction on share transfer. There is always change in it's ownership. A company is a large entity. Now-a-days special managerial skills are required due to compulsion of maintenance of international standard, production of quality product and increase in competition. In a company direct management by owners / share holders is not possible. So, Shareholders appoint their representatives. The functions of the company are carried out by a group of these representatives known as their Board of Directors. According to provisions made, the Board is required to meet within 30 days of the formation of the company and thereafter atleast four times in a year. Every Director should participate in meetings. If, for any reason he is not able to attend the meeting he can participate through video conference, according to the new Companies Law. According to the Companies Act 2013 minimum of $\frac{1}{3}$ or at least 2 Directors (whichever is more) should be present in a meeting. Every company shall have, at least, one director who has stayed in India for a total period of not less than 180 days in the previous calendar year.

Two elements are very important for the existence of the company : (1) Ownership and (2) Management. In a Company formation owners are the shareholders who have invested in the form of Equity shares. They take the risk of investment in shares. They have to bear whatever the result of the company is profit or loss. Good management leads to Name, Fame and Profit, while inefficient management invites losses. So now, in many companies Directors are owners of the company by holding shares and by their proper management policy, efficient administrative skill they lead the Company to success.

In India, the dynamics of managing a company change from time to time. At present, the management of a Company is conducted only by a Board of Directors. A Managing Director is appointed to assist the Board.

5.1 Directors and Board of Directors

(1) Meaning : According to The Companies Act 2013 “Director means a director appointed to the Board of a Company”. A director has been defined by many authors.

(i) “A Director is that person who formulates general policies for overall management, direction and control of the company”.

(ii) “A Director is that person who manages the company entirely, by formulating policies and strategies within the parameters of ‘Memorandum of Association’ and ‘Articles of Association’.

Here, we have to note that the company is managed collectively by a group of directors. This group is called the Board of Directors. The Board of Directors is the highest managing authority of a company. Board of Directors is the brain in the body of a company.

(2) Legal Position of Directors : According to various judgements passed by various courts in context of the role of Directors, the relationship between a director and the company can be understood as under :

(i) Director as a Representative : Directors are representatives of shareholders. They are elected by shareholders. They are given a remuneration for their services. However they are not paid employees of the company, as the specified company is managed by elected representative of shareholders. They act in accordance with the authority specified in the Memorandum of Association. They act within the limits of the authority granted to them. The directors are personally responsible for acts beyond their authority.

(ii) Director as an Administrative Partner : Shareholders are the owners of the company. They elect representatives from amongst themselves. These representatives manage the company. Thus, the status of a Director is that of an administrative partner. As administrative partners they, in capacity of owners, can collectively decide about allotment of shares and making calls on shares. They are not partners, because like a partner in the firm, a Director cannot make other Directors responsible for work done by him. Secondly relation among partners is of permanent nature while Directors have to retire by rotation.

(iii) Director as a Trustee : When Directors are elected by shareholders then they are automatically entrusted with the property and funds of the company. The Board of Directors manages these as trustee. It means that the Board of Directors has to manage such funds and property in the interest of company. They cannot derive any personal benefits or profit from the management of the company property. Thus directors are just managing trustees not real trustees. The property of the company

is not in the name of its Directors, but it is in the name of the company, whereas a trustee holds the property of a trust in his own name. Moreover, a trustee can file a suit in court in his own name, while in case of company legal proceedings are done in the name of the company and not in the name of its Directors.

(iv) Director as Employee : Directors of a company are not employee of the company. They are considered officers of the company in certain matters.

Therefore, it is evident that it is very difficult to decide legal status of Directors. In certain matters they are officers of company but they are not employee of the company. To certain extent, they are representative / agents of the company. To some extent, they also have characteristics of trustees. Thus, they possess the peculiarities of all these four fiduciary positions.

5.2 Number of Directors and their Identification Number

5.2.1 (i) Number of Directors :

For a Public Company : In a Public Limited Company there must be a minimum of three Directors.

For a Private Limited Company : In a Private Limited Company a Minimum of two Directors are required.

For a Single Person Company : In a single person company minimum one director is essential.

The maximum number of Directors in a company can be 15. However the number of directors can be increased to more than 15 by passing a resolution.

(ii) Number of Directorship : A person can hold the office of a Director for maximum 20 companies including Public Company and Private Company. A person can be appointed Director at not more than 10 public companies. A provision in the Companies Act specifies that this number can be reduced by the shareholders through a special resolution. Any one found accepting an appointment in violation of this rule, is liable to be punished.

5.2.2 Identification Number of Directors : A person who wants to be a Director has to apply through a specific application form for an identification number to the Central Government. The Central Government issues a Director's Identification Number within one month of receiving such an application. Nobody can apply for a second identification number. After receiving the identification number, a person has to inform the company where he is director.

The company has to inform this identification number of all Directors of the company to the Registrar of Companies within a specific time. If this is not informed within specific time period, officers responsible are liable to be punished.

5.3 Appointment of Directors and Types of Directors

5.3.1 Appointment of Directors : As per The Companies Act, management of a company is conducted by a Board of Directors, jointly. Each and every company has to appoint Directors mandatorily. Partnership firm, trusts, other companies or Associations can't be appointed as directors. Only a living individual can be appointed as a director in a company. As per the Companies Act, following provisions are specified for appointment of Directors.

(1) Appointment of First Directors : Where no provision has been made in the Articles of Association of a company for the appointment of the first Director, the subscriber to the Memorandum of Association shall be deemed to be the first director of the company. In case of a Single Person Company, an individual member, shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provision of the Companies Act.

As soon as Directors are duly appointed by the company, in a general meeting, the first director's post automatically falls vacant.

(2) Appointment of Directors after First Directors : The term of the first Director expires on the very day of the first general meeting. Directors are appointed by the shareholders in the first general meeting and then, in every subsequent Annual General Meeting to be held every year. The directors due for retirement can be reappointed by the company in the general meeting. Every person proposed to be appointed 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. A person proposed to be appointed as director by the company in general meeting or otherwise has to submit a consent within 30 days of his appointment which is to be further presented to the Company Registrar in a prescribed manner. Provisions regarding appointment of directors are prescribed in the Articles of Association. If the Articles of Association provides for retirement of all directors in every general meeting, then all directors will be retired in the meeting. However usually no such provision is made in the Article of Association. In that case 2/3 directors of the total directors are liable to retire by rotation. From 2/3 number of directors 1/3 directors will be retired as per their seniority. So, within the span of three years all 2/3 directors will be changed. The vacant post of Director can be filled by the reappointment of retired Director.

5.3.2. Types of Directors : A company is a large entity and appointment of Directors is mandatory. There are following types of directors in a company :

(1) Independent Director (2) Managing Director (3) Nominee Director (4) Additional Director (5) Alternative Director (6) Director's appointment before completion of term on Director's vacant position (7) Appointment of directors elected by small shareholders.

5.3.2.1 Independent Directors : This is a new provision of The Companies Act 2013. According to this provision at least 1/3 directors of the company will be independent directors. Central Government may decide a minimum number of independent directors for a specified public company. The Independent Director means, a person who is not a Managing Director or full time director or a nominee director. Independent director is appointed from a data bank. Such type of data bank containing names, addresses, and qualification of persons who are eligible and willing to act as independent director can be maintained by anybody, Institute or Association, as may be notified by The Central Government. A company has to select from this data bank. The Company should take proper care at the time of selection from such data bank and his appointment should be approved in the general meeting.

The term of an Independent director is for five years. The Independent director can be reappointed. For that, a special resolution should be passed in the company. It should be specified in a report of the Board of Directors. Proper reason should be given, as to why, the reappointment is essential. Any independent director would not be appointed for more than two terms (ten years). Independent director can be reappointed after the gap of three years. During these three years he should not be connected or appointed in any manner directly or indirectly to the company.

- (1) A person appointed as an Independent Director by a Board, should be experienced, skillful and an expert in his field.
- (2) Such person should not be a promoter of the company or its subsidiary companies.
- (3) The person should not be relative of any promoters or directors.
- (4) He should not have any economical or financial relations with company or subsidiary company or with its director or promoters in the last two financial years.
- (5) Independent director should not have any relation in with the Key Managerial Personnel (KMP) for 3 years before his appointment as an independent director.

5.3.2.2 Managing Director/Full time Director : A Managing director is also known as Executive Director. In the modern times a company is the best example of commercial organization. Management of a company requires business tactfulness, Ethics and Business strategy. It is managed by Board of Directors. Members

of the Board of Directors spread over in different cities of the country. So they are not able to do, day to day, management. To manage daily routine work of the company a Managing Director / fulltime director or Manager is appointed. Managing Director has to carry out the day to day functions of the company. Not only that, he has to carry out and execute policy decisions taken by the Board of Director. The Managing Director is appointed by Board of Directors.

5.3.2.3 Nominee Director : Board of Directors can appoint Nominee Director as per directives of Articles of Association under the following conditions :

- (1) The board may appoint any person as a director nominated by any institution, in pursuance of any agreement.
- (2) The board may appoint any person as nominee director nominated by an institution in pursuance of provision of any law.
- (3) The board of director appoints any person as director nominated by Central Government or State Government by virtue of his shareholding in a Government Company.

5.3.2.4 Additional Director : Sometimes experts or technocrats are essential for company but they are not included in the Board of Directors. At that time, according to the provisions of Articles of Association, such persons can be appointed as director at any time. But the person who fails to get appointment as a director in a general meeting would not be appointed. As an additional director, he/she shall hold office up to the date of the next Annual General Meeting.

5.3.2.5 Alternative Director : Directors are important for the management of a company. But due to some reason if a director goes out of the country for more than three months a person is appointed to act as director and is known as alternative director. An alternative can be appointed as per the provision of Articles of Association or by passing a resolution in the general meeting. The person shall be appointed as an alternative for an independent director unless he is qualified to be appointed as an independent director as per the provision of the Companies Act. A person holding an alternative directorship for any other director can not be appointed.

5.3.2.6 Director appointed before Completion of Term on Director's Vacant Position : As per the provision of the Companies Act, if a Director is removed from his post, before completion his term or is unable to complete term, Board or Central Government may appoint a director. Any person so appointed shall hold office only to the date up to which the director in whose place he is appointed, would have held office, if it had not been vacated. Director's post falls vacant under the following circumstances :

- (1) Director removed in general meeting or in the meeting of Board of Directors.
- (2) Director remain absent in the Board meeting for last 12 months without permission.
- (3) Director becomes insolvent, he expires or he is of unstable mind.
- (4) When he has been disqualified by court.
- (5) When he has been convicted by a court for an offence involving moral turpitude or any other offence.
- (6) When he has a direct or indirect financial interest or agreement in the company and he fails to disclose it.
- (7) Private company may include other restrictions in Articles of Association.

Directors are appointed on posts that fall vacant under these circumstances.

5.3.2.7 Appointment of Directors Elected by Small Shareholders : As per the Companies Act, 2013 a listed company may have one director elected by small shareholders. Small shareholder means a shareholder holding shares of nominal value of not more than ₹ 20000/- or such other sum as

may be prescribed. More over, as per the provisions of the Companies Act a minimum of 1000 shareholders should be there for appointment of the director.

5.3.2.8 Female Director : As per the Companies Act 2013, every listed company having a paid up share capital of ₹ 100 Crores or more such class or classes of companies as may be prescribed, shall have at least one female director.

5.4 Qualification and Disqualifications of Directors

(A) Qualifications : The Companies Act 2013 prescribes the following qualifications for independent directors.

- (1) Appropriate skill, experience and imagination,
- (2) Knowledge in Law, Management and field of Finance.
- (3) Knowledge of Administration and Research Aptitudes
- (4) Skill of corporate governance
- (5) Knowledge of technical operations related to company's business

(B) Disqualifications : The Companies Act prescribes the following provisions as disqualification for appointment of a director :

- (1) Person is of unsound mind.
- (2) Person is insolvent.
- (3) Person has been convicted by a court of law and sentenced for at least 6 months.
- (4) A Person who has been convicted for above offence and has been sentenced for more than seven years is disqualified for life.
- (5) An order, disqualifying him for appointment as a director, has been passed by a court and the order is in force.
- (6) Person has failed to pay calls on shares of the company on his name or held jointly and even after six months have elapsed after the due date.
- (7) Person convicted for fraudulent activities with relative parties in the last 5 years.
- (8) Appointed director does not present annual accounts for three continuous financial years.
- (9) A director who fails to pay interest, dividend declared and interest on debenture, for more than one year can't be appointed as director for five years from the date of the failure.

A Private company may amend these conditions in Articles of Association by changing the terms from 6 month to 30 days.

5.5 Retirement of Directors, Resignation of Directors and Removal of Director

5.5.1 Retirement of Director

- (1) The first directors of the company retire on the day of the first general meeting, as their term expires on that day.
- (2) An Independent director retires after completion of a term of five years. In case of reappointment, the independent director can be appointed for two terms i.e. maximum of ten years. He has to retire after that period.
- (3) At least 2/3rd of the directors of a public company retire by rotation, 1/3 of these are the senior most.
- (4) Person not qualified for appointment, is disqualified and retires.

(5) If retiring director informs the Board of Director, through written notice, his unwillingness for reappointment, he retires.

(6) Retiring director's reappointment resolution is not passed in general meeting, the director retires.

5.5.2 Resignation of Director : Any director who wants to vacate his office can give a notice of resignation in writing specifying reasons to the Board of Directors at any time.. He has to inform to Registrar of Company with a copy of resignation within 30 days of the resignation. Company also informs to Registrar of Company within the specified time. The Board of Directors also provides their information in their report at the Annual General Meeting. Such a resignation comes into force from the date of resignation or date specified in the notice. One thing should be noted here that director is responsible for his act during his tenure of his directorship.

5.5.3 Removal of Director : According to provision of the Companies Act, a director can be removed from his office before the expiry of his term by the following :

(1) **By Shareholders :** A company can remove any director before expiry of his term by general resolution. (Director appointed by Government or tribunal cannot removed by shareholder). When special notice is given, it is the duty of a company to give a copy of that special notice to the concerned director. Before removal, such a director should be given reasonable opportunity, to be heard and to be represented.

(2) **By Board of Directors :** Board of Directors can also remove a director. The procedure is to be followed is as above.

The person is removed in the above manner can not be reappointed.

5.6. Vacation of Office of Director

According to the provisions of Company Act director has to vacate his office in following circumstances :

- (1) Director incurs disqualifications as specified in the Companies Act;
 - (i) Court declares director unsound of mind;
 - (ii) Court declares director insolvent;
 - (iii) He has applied to be adjudicated as insolvent and his application is pending;
 - (iv) He has not paid any calls in respect of any shares of the company and six months have elapsed from the last day for the payment of call;
 - (v) Director has conducted misappropriation or fraudulent activities in the promotion or management of the company;
- (2) When a director remains absent for the last 12 month from a meeting of the board;
- (3) Director makes such a contract with the company in which his interests are manifested directly or indirectly;
- (4) When he fails to make a disclosure to the Board of Directors with regards to any contract with the company in which he is interested;
- (5) When he has been disqualified by a court of law;
- (6) Director has been convicted by court and sentenced for more than 6 months imprisonment for an offence involving moral turpitude;

If a person continues to act as a director even after being aware of his disqualification, he is liable to imprisonment and penalty.

5.7 Authorities, Duties and Responsibilities of Directors

5.7.1 Authorities of Directors : Shareholders elect representatives amongst themselves to manage the company. Directors enjoy special status in the management of company. As they are representative of shareholders, so a relationship of agent - principal is created. As per the provisions of the Companies Act it is essential for a Board of Directors to take consent for certain actions from the shareholders. Thus, shareholders are considered supreme authority. The Board of Directors takes of decision in form of a resolution through majority. As the directors are fewer in number generally dispute do not arise among them. For fundamental decisions unanimity is necessary. Company is an artificial person and it possesses all authority by the Companies Act. The Board of Directors acquire powers through three ways : (1) In accordance with the Companies Act (2) In accordance with Memorandum of Association of the Company (3) In accordance with the Articles of Association.

5.7.1.1 Power Assigned by the Companies Act to Directors

- (1) The Board of directors passes a resolution in the meeting and acquires the following powers :
 - (i) To issue and allot shares of the company;
 - (ii) To make calls on shareholders in respect to unpaid money
 - (iii) To authorize buy back of securities;
 - (iv) To issue debentures and other securities whether in India or outside India;
 - (v) To borrow money on behalf of the company;
 - (vi) To invest funds of the company;
 - (vii) To declare interim dividend;
 - (viii) To determine proportion of dividend on the basis of profit earned by company;
 - (ix) To appoint alternate directors and additional directors on temporary basis;
 - (x) To Grant loans, to give the guarantee for loan or to provide security for loan;
 - (xi) To approve financial statement and report of the board;
 - (xii) To expand business of the company;
 - (xiii) To approve amalgamation, reconstruction or merger;
 - (xiv) To take over a company or acquire a control on an other company;
 - (xv) Any other matter which may be prescribed.
- (2) For the following functions Board of Director has to take consent in general meeting by special resolutions :
 - (i) To sell or dispose off the whole company or to dispose off extra units of the company;
 - (ii) To lease the company;
 - (iii) To invest in trust securities, the amount of compensation received, by it as a result of any merger or amalgamation;
 - (iv) To borrow money from the bank in excess of the aggregate of its paid up share capital and free reserve;
 - (v) To give time for payment of any debt or write off debts of a director;

5.7.1.2 Authority Acquired by Memorandum of Association : Directors acquire some of their authority through the Memorandum of Association. They cannot function beyond this power. IF the directors act beyond these powers, such acts are considered to be ultra-vires. Such acts cannot be subsequently rectified even by passing the resolution by all the shareholders unanimously. For such acts directors are held personally liable.

5.7.1.3 Authority Acquired by Articles of Association : There is a provision in the Companies Act, Articles of Association to manage a company. Most of the administrative powers of the directors is acquired through the Articles of Association. It is the responsibility of a director to function according to that. But if directors act beyond the limits of their powers such acts are considered to be ultra-vires. The shareholders can free the directors from such liability by rectifying such acts subsequently by passing resolution.

5.7.2 Duties of Directors : In a managerial hierarchy status of the Board of Director is most important. They have to observe their duties as below :

- (1) Director will act as per the provisions of Articles of Association.
- (2) A director of a company shall act in good faith in order to promote the objectives of the company for the benefits of shareholder.
- (3) A director of a company shall act in the interest of shareholders, employees and society and for the protection of environment.
- (4) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (5) A director of a company shall not be in a conflict of interest with the company directly or indirectly.
- (6) Directors must attend every meeting of the Board of Directors. If, he can't, he must inform in advance.
- (7) He must not make any secret profit.
- (8) They must take due care of the financial as well as the immovable and movable assets of the company. They should not make any use of them for any personal benefits.
- (9) They must invest company's funds properly.
- (10) They must call a meeting of the Board of Director at least once in every quarter.
- (11) A director of a company shall not achieve or attempt to achieve any undue advantage for himself or for his relatives, partners or associates. If a director found guilty of making any undue gain, he shall be liable to pay an amount double to that gain to the company.
- (12) A director of a company shall not assign his office to another. Such assignment shall be void.
- (13) If a director of the company contravenes the provision, he shall be punishable with minimum ₹ One lakh, extendable to Five lakhs.
- (14) It is duty of every Board of Director to constitute an Audit committee.
- (15) The Board of Director has to constitute a Stakeholders Relationship Committee.
- (16) A director of a company cannot acquire assets for consideration. He can accept only cash.
- (17) Any director of a company cannot enter into insider trading.

5.7.3 Responsibilities of Directors : The directors acquire powers in accordance with Companies Act, Memorandum of Association and Articles of Association. When directors misuse their power or act beyond their authority or do not implement their duties properly, they are held personally liable towards the third parties or towards the company. Responsibilities of the directors are two types : (1) civil liability (2) criminal liability.

5.7.3.1 Civil Liability : Civil liability is that type of liability in which the loss suffered by the aggrieved party is required to be compensated. If the directors act within the limit of law in good faith, bonafide and take

reasonable care in discharge of their duties, they cannot be held liable for any damage caused. Civil liability arises towards two parties. (1) Liability towards company (2) Liability towards third parties.

(1) Liabilities towards Company : When directors perform their duty beyond the powers (ultra-vires) of Memorandum of Association they are responsible to the company.

- (i) When they willfully misappropriates the accounts of the company.
- (ii) When they declare dividend even when company has not earned enough profit.
- (iii) When they use company's funds or properties for their personal use and thus commit breach of trust.
- (iv) Directors behave dishonestly or carry out fraudulent transactions, purchasing property in their own name first and then selling it to the company at a profit.
- (v) When a director becomes habitually irregular and absents himself from meetings causing losses to the company.

(2) Liability towards third party

- (i) When directors give misleading information or false information in the prospectus or conceal some important information, as a result of which some share applicant has to suffer financial loss.
- (ii) When directors enter into any transaction in their own name without mentioning the name of the company.
- (iii) When they enter into fraudulent transactions with third parties.
- (iv) When directors liability is unlimited as per Memorandum of Association (Table D & E).
- (v) When director borrows money in excess of permitted limits.
- (vi) When the court holds directors liable to a third party, at the time of winding up of the company.

5.7.3.2 Criminal Liability : According to the provisions of the Companies Act, directors are held criminally liable in the following circumstances for which they are punishable with the fine or imprisonments or both.

- (1) When they commit cheating, fraud or breach of trust with the company.
- (2) When directors disobey various provisions of the Company Act.
- (3) When directors give misleading or false information in the prospectus or hide some important information.
- (4) When directors commit a criminal offence at the time of incorporation, management or winding up of the company.

5.8 Provisions of the Companies Act for the Managing Director

According to the Companies Act all the management power is empowered with the Board of Directors. However, Board of Directors may not be able to come to the company every day. Not only that, they may be staying in different cities so they may not be able to look after day to day problems. To resolve the problems and for management, a Managing Director or Manager is appointed. Thus the Managing Director manages day to day management of a company. He has to execute the policies decided by the Board of Directors. According to the Companies Act Managing Director is considered the Key Managerial Personnel (KMP) and a full time employee of the company. Following are the provisions of The Companies Act for a Managing Director :

5.8.1 Appointment :

- (1) Appointment of Managing Director can be done by :
 - (i) Articles of Association
 - (ii) Agreement with the company
 - (iii) Resolution passed in general meeting
 - (iv) In the meeting of Board of Directors
- (2) Only a living person can be appointed as Managing Director. A firm or institution cannot be appointed as Managing Director in a company.
- (3) According to the Companies Act, Managing Director and manager can't be appointed simultaneously.

- (4) The Managing director can be appointed for five years at a time.
- (5) Terms and condition are to be decided a in the meeting of Board of Directors.
- (6) Appointment should be approved in the general meeting.
- (7) Reappointment of Managing Director can't be done before the expiry of term of the Managing Director.
- (8) If Managing Director is appointed other than original terms then the approval of Central Government is necessary.
- (9) Company Registrar should be informed about the appointment of the Managing Director (Form MR 1), within 50 days of appointment.
- (10) Managing Director can work in maximum in two companies. (Resolution is essential to work in two companies).

5.8.2 Qualifications and Disqualifications of Managing Director : In the Companies Act there is no specification for the qualifications of Managing Director. The appointee should be experienced, creative, technocrat, subject expert and capable of takeing proper decision in critical times. However the Companies Act has mentioned disqualification of Managing Director as below :

- (1) Age of the appointee Managing Director should not be less than 21 years and more than 70 years.
- (2) He should not have been declared to be insolvent at any time.
- (3) He should not have suspended payment to his creditors.
- (4) If he has been convicted by a court of an offence for more than six months for breach of any law prevailing in India he is not qualified for appointment.

5.8.3 Remmuneration of Managing Director :

- (1) The remuneration payable to a Managing Director is up to 5 % of the net profit without consent of general meeting.
- (2) One percent of the net profits of the company is payable to part time Managing Director without consent of general meeting.
- (3) The remuneration payable to the Managing Director shall be determined in accordance with the provisions of the Companies Act or Articles of Association or the resolution of the company.
- (4) Where a company is required to restate its financial statement due to noncompliance with any requirement as per Act, the company shall recover from managing director, remuneration received in excess during that period.
- (5) Managing Director may be paid compensation for the termination of his office. (This type of remuneration cannot be paid to other directors.) He is not be entitled to any compensation in case of his rcsignation, or being found guilty in some legal procccdings, fraud, brcach of trust, mismanagement of company, or if he provokes others to initiate and expediate the termination of his office.

5.8.4 Authorities and Responsibilities of Managing Director :

(1) **Power :** Managing director enjoys highest authority in company management. Therefore, he enjoys a special status. A Managing Director enjoys wide powers in the company. One thing is to be noted here that managing director is empowered by Memorandum of Association, Articles of Association and resolution of general meeting and the resolution of Board of Directors.

A Managing Director utilizes his power under the supervision, direction and control of Board of Directors. Managing director cannot sign or put a seal on any documents without being assigned the power by the Board of Directors.

(2) **Responsibilities** : Managing Director is also a director. Therefore all the duties of a director also apply to Managing Director.

5.9 Difference between Managing Director and Director

Sr. No.	Points	Managing Director	Director
(1)	Appointment	Managing director is appointed by the Board of Directors and they decide the term and conditions.	Director is appointed in the Annual General Meeting. There are no terms and condition.
(2)	Term	Managing director is appointed for five years.	Director has to retire as per rotation.
(3)	Position	Managing director is one of the directors. He execute day to day work.	Director is elected by share holders. He manage the company.
(4)	Compulsion	Appointment of Managing Director is not compulsory.	Appointment of Director is compulsory.
(5)	Function	Managing Director carries on day to day administration. He has to execute policies of the Board of Director.	Board of Directors does not carry out day to day administration, but decides the policies of management.
(6)	Control	Managing Director functions under the control of Board of Director.	Board of directors is independent.
(7)	Compensation	Managing Director can be paid compensation on termination of his office.	Directors have no such rights.
(8)	Number	(A) A person can function as Managing Director in not more than two companies.	(A) Director can function maximum in 20 companies.
		(B) Generally only one Managing Director is appointed in a company.	(B) There must be at least 3 directors in public company and two in a private company.
(9)	Retirement	Managing director retires after 5 years. He is eligible for reappointment.	1/3 of the 2/3 directors retires by rotation every year. They are eligible for reappointment.

Introduction : Company is a large business organization. Shareholders are the owner of company. They are huge in number and spread over the country. So, to manage the company they elect representatives amongst them selves. These representatives are known as Board of Directors. A Company is managed by such an elected Board of Directors. In a company formation ownership and management is two different elements. Good directors provide proper guidance which leads the company to success. Inefficient directors can push a company in to the ditch of failure.

According to the Companies Act, the first meeting of directors should be conducted within 30 days of the formation of a company. Directors meeting should be conducted a minimum of 4 times in a year. In the meeting minimum 1/3 or 2 directors (whichever is more) should be remain present. At least one director should be a resident of India for a minimum period of 180 days.

Directors and Board of Directors : “A director is that person who formulates the policies for overall management, direction and control of the company”.

Directors collectively manage the company and are known as the ‘Board of Directors’.

Legal Status of Directors :

(1) **Directors as Representative :** Directors are elected representative of the shareholders and they function according to the Memorandum.

(2) **Directors as Administrative Partners :** Directors are elected representatives amongst shareholder so they become administrative partners and they carry out functions like share allotments, calls on share etc.

(3) **Director as a Trustee :** Directors are elected by shareholders and so become administrators of the assets and funds of the company.

(4) **Director as an Employee of a Company :** For certain functions directors act as an officer of a company but they are not paid employees of the company.

Number of Directors and their Identification Number :

Number of Directors : (1) A public company should have a minimum of 3 directors and maximum 15 directors. A private company should have of minimum 2 and maximum 15 directors. In a single person company minimum one director is essential. A special resolution is essential to increase the number. (2) A person can be a director at the most in 20 companies including public company and private company. A person can be director at the most in 10 public companies.

Identification Number : Every director has to obtain Director’s Identification Number (DIN). He has to inform this number to the company and company has to inform to the Registrar of Companies. Every director is allotted only one identity number.

Appointment of Director : It is compulsory for a company to appoint directors. Only a living person can be appointed as director not firm, trust or association.

Appointment of First Director : As per the provisions of Articles of Association, signatories of Memorandum of Association are considered as first director of the company.

Same way in a single person company, single person is treated as director. In company after appointment of other directors, term of first director automatically ends.

Appointment of Director after First Director : The term of first directors expires on the very day of the first general meeting. The appointment of directors is done in general meeting and then in every subsequent AGM. There are provisions in the Articles of Association for the appointment of Directors. In only company 2/3 of the directors retire by rotation out of that 1/3 retire every year.

Types of Director : (1) Independent director (2) Managing director (3) Nominee director (4) Additional director (5) Alternate director (6) Director appointed before completion of term on director's vacant position (7) Directors appointed by small shareholders. (8) Female director.

(1) Independent Director : An Independent director is appointed from a databank. This is prepared by institutes as directed by the Central Government. The term of an independent director is five years. The data bank has name, qualifications, experience, expertisation etc. of a person. The maximum tenure is 10 years (two terms). Such director should not have any economic interest with the company.

(2) Managing Director : Directors may not reside in the same city as the company so a managing director is appointed for day to day administration. His function is to carry out and implement the policy decisions taken by the Board of Directors. Usually he is appointed in the meeting of the Board.

(3) Nominee Director : Board of Directors appoints nominee director as per the provision of Articles of Association. He is appointed as per the agreements of institutions.

(4) Additional Director : Expert persons who are not included in the Board of Directors are appointed as additional director by Board of Director.

(5) Alternative Director : When any director is to be out of the country for more than three months then director is appointed in place and is known as alternative director.

(6) Director Appointed before Completion of Term on Director's Vacant Position : In any director is removed in general meeting before his term expires on that vacancy BOD appoints director.

(7) Director Elected by Small Shareholders : A director is appointed by small shareholders (small shareholder means face value of share not more than ₹ 20,000) in specified company. (A Minimum of 1000 small shareholders are needed).

(8) Female Director : Companies as may be prescribed shall have at least one woman director as per the provisions of Company Act.

Qualifications and Disqualifications of Director : Provisions as per the Companies Act regarding qualifications of independent director : (1) Proper skill and experience (2) Knowledge of finance-law-management (3) Administrative knowledge (4) Ability of corporate governance. (5) Knowledge of company business. **Disqualifications are :** (1) declared as unsound mind (2) declared as insolvent (3) convicted for offence involving moral turpitude (4) disqualified by court (5) unpaid of share call amount individually or jointly (6) accounts not submitted for last three years (7) failure to pay dividend and interest. (8) Person convicted for fraudulent activities.

Retirement of Director, Resignation of Director, Removal of Director :

Retirement of Director : (1) First directors retire in the first annual general meeting. (2) Independent directors retire after a term of 5 years, in case of reappointment after two terms. (3) In a public company, 1/3 of the 2/3 retires every year by rotation. (4) If he acquires disqualifications. (5) Unwillingness for reappointment. (6) Resolution for reappointment does not pass.

Resignation of Director : If Director wants to vacate his office he has to give details in writing to Board of Directors. It is informed to registrar of companies and in general meeting. Resignation enforced from the date specified.

Removal of Director : Any director can be removed at any time before his terms ends in general meeting, except director appointed by the Government or a tribunal.

Vacation of Office by Directors : Director has to vacate his office if he acquires disqualification, he is declared un sound of mind, declared insolvent, he has not paid calls on share, he remains absent in Board of Directors meeting since last 12 months without permission, court declares him disqualified, convicted by court for moral turpitude offence.

Director's Authority, Duties and Responsibilities :

Authority of Director : Board of directors take decisions by resolutions passed by a majority. Powers acquired in accordance with (1) Companies Act (2) Memorandum of Association and (3) Articles of Association.

(1) Accordance with the Companies Act : To issue share, to allot share, to call share money, to borrow money, to take loan, extension of business, amalgamation, merger, reconstruction are the powers of directors. They also have powers to declare dividends, to appoint alternative director, additional director etc. For certain functions special resolution in general meeting is required like - to sell, to lease the company, to take loan excess of capital and reserve, to write off debt of any director etc.

(2) Accordance with Memorandum of Association : Director cannot act ultra vires specified in Memorandum.

(3) Accordance with Articles of Association : Mostly administrative powers are acquired by Articles of Association. Ultra vires acts create personal liability of director but by resolution of shareholder personal liability can be avoided.

Duties of Director : In a company directors are Supreme authority, they carry out duties as per Articles of Association. They will act for the benefits of shareholders, society, employees, to protect environment. A director will not take undue economical advantage of for his own or his relatives. It is duty of director to remain present in BOD meeting, not to take secret profit, to take proper care of company's property, not to use such property for own purpose to invest company's fund in proper way and a meeting of the Board of Director must be called within atleast 3 months. He will not assign his office to any others; they have to constitute audit committee.

Responsibility of Director : It is of two type (1) Civil liability and (2) Criminal liability.

Civil Liability : Is that type of liability in which the loss suffered by the aggrieved party is to be compensated. Civil liability arises towards company and third party.

Liability towards Company : When misappropriates the accounts of the company, dividend declares without profit, liability arising out of dishonesty, remaining absent in the meeting of Board of Directors.

Liability towards Third Party : Directors provides misleading information in the prospectus; enter into contract in their own name, director borrowing money in excess of permitted limit, and court holding them liable at time of winding up of a company.

Criminal Liability : In this liability directors are punishable with fine or imprisonment or both. A Director is liable for the punishment cheating, fraud or breach of trust or providing misleading information in prospectus or he has been convicted of an offence at the time of incorporation or winding up of the company.

Provisions of Companies Act for Managing Director : All powers are concentrated in the hands of Board of Directors. Members of the board reside in different cities, to resolves day to day the problems and for management of company Managing Director is appointed. Managing director is considered full time employee of the company as KMP.

Appointment of Managing Director : Only a living person can be appointed as per the provisions of the Companies Act by the Board of Directors. Managing Director is appointed for five years. Terms and conditions are decided and approved in general meeting. Company Registrar should be informed within 60 days of appointment. Managing director can be appointed in a maximum of 2 companies.

Qualification and Disqualification of Managing Director : There is no specification regarding qualifications in company Act. He is appointed for day to day management he must be experienced, creative, subject expert and ability to take decision in critical position is expected. His age should not be less than 22 years and more than 70 years. He should not be insolvent, unstable mind, and not convicted by court for any offence under any law prevailing in India.

Remuneration of Managing Director : Remuneration can be given up to the 5 % of net profit, for a part time managing Director 1% of the net profit of the company.

Powers and Duties of the Managing Director : Managing Director possesses wide powers with respect of company. He is empowered by resolution of general meeting, resolution of Board of Directors, Memorandum of Association and Articles of Association. Managing director cannot sign any documents without empowered authority.

Difference between Managing Director and Director : Points : (1) Appointment (2) Term (3) Position (4) Compulsion (5) Function (6) Control (7) Remuneration (8) Number (9) Retirement.

Exercise

1. Select the suitable option from the given option :

- (1) In how many companies can a person become director ?
(A) 10 (B) 20 (C) 30 (D) 40
- (2) What is the minimum number required as directors in a Public company ?
(A) 2 (B) 4 (C) 3 (D) 5
- (3) What is the minimum number required as directors in a Private company ?
(A) 1 (B) 2 (C) 3 (D) 4
- (4) In how many public companies can a person be a director ?
(A) 10 (B) 20 (C) 30 (D) 5
- (5) How many identification numbers can be acquired by a director ?
(A) 4 (B) 3 (C) 2 (D) 1
- (6) Having a director identification number
(A) is not compulsory. (B) is compulsory.
(C) may be taken at ease.
(D) is depending upon the willingness of director.
- (7) How many independent directors can a company have ?
(A) 1/4 (B) 2/3 (C) 3/4 (D) 1/3
- (8) Approval of independent directors is
(A) to be taken in general meeting. (B) not necessary.
(C) to be taken from Government. (D) to be taken from data bank.

- (9) For certain functions, Board of Directors
- has to take approval from the shareholder.
 - has not to take approval of shareholder.
 - may take approval subsequently.
 - has not to take permission as per provision.
- (10) Who is responsible to constitute the stakeholder Relation Committee ?
- Shareholders
 - Secretary
 - Board of Directors
 - All combined
- (11) What type of assets can be taken by Directors ?
- Land
 - Machinery
 - Building
 - Only cash
- (12) Who can be appointed as Managing Director ?
- Private Ltd. Company
 - Partnership Firm
 - Living Person
 - Recognized Institutions
- (13) For how many years can a Managing Director be appointed ?
- 3 Years
 - 4 Years
 - 5 Years
 - 7 Years
- (14) In how many days should the company registrar be informed after the appointment of Managing Director ?
- 30 days
 - 60 days
 - 90 days
 - 120 days
- (15) What is the minimum of a person to be appointed as Managing Director ?
- 21 Years
 - 25 Years
 - 30 Years
 - 35 Years
- (16) How much can be paid as remuneration to all fulltime Managing Director ?
- 5 % of sales
 - 5 % of net profit
 - 5 % of share capital
 - 5 % of reserve
- (17) For Managing Director, for termination of office compensation
- can be paid.
 - can be decided later on.
 - approval of central Government is essential.
 - permission of Registrar of Companies is required.
- (18) Personality of the company
- is combined
 - is individual
 - is artificial
 - has no personality
- (19) What are the minimum numbers of meetings be held by the Board of Directors every year ?
- 4
 - 8
 - 2
 - 10
- (20) What is the quorum for Board of Directors meeting ?
- $\frac{1}{3}$
 - 2
 - $\frac{1}{3}$ or 2 (whichever is more)
 - Whatever it is

2. Answer the following questions in one sentence :

- Which two elements are essential for existence an institution ?
- Who manages the company in modern time ?
- Who is Director ?
- How many minimum Directors are required in a public company ?
- How many minimum Directors are required in a private company ?
- How many minimum Directors required in single person company ?
- What is the Board of Directors ?
- Who are the first directors of a company ?
- When does the term of the first director expire ?

- (10) What is the face value of share of small shareholder ?
- (11) How is the Managing director appointed ?
- (12) How many female directors should there be in a company ?
- (13) Who is responsible to constitute the Audit Committee ?
- (14) Who approves appointment of the Managing Director ?
- (15) What should be the maximum age of an appointee Managing Director ?
- (16) How much remuneration can be paid to a part time Managing Director ?

3. Answer the following questions in brief :

- (1) What is the status of director as a representative ?
- (2) What function is the director fulfilling as administrative partner ?
- (3) Who can be appointed as director ?
- (4) Who cannot be appointed as director ?
- (5) Who is an independent director ?
- (6) How is an independent director selected ?
- (7) What is the maximum term of an independent director ?
- (8) What is the function of a Managing Director ?
- (9) Who are small shareholders as per the Companies Act ?
- (10) How does the Board of Directors acquire power ?
- (11) How many types of liabilities can directors have ?
- (12) How is the Managing Director empowered ?
- (13) When is appointment of a female director essential ?

4. Answer the following questions point wise :

- (1) What type of legal status does a director have as a representative ?
- (2) "Directors are trustee - but they are not" Explain.
- (3) Explain the types of directors.
- (4) What are the provisions of an Independent Director.
- (5) Why is the managing director essential ?
- (6) When is a nominee director appointed ?
- (7) When alternative director is appointed ?
- (8) Explain civil liabilities of a director.
- (9) Explain civil liabilities of a director towards the company.
- (10) Explain criminal liabilities of a director.
- (11) Explain the provisions of the Companies Act for Managing Director.
- (12) How can a managing director be appointed ?
- (13) When can extra remuneration be recovered from a Managing director ?
- (14) When is a managing director not compensated ?

5. Answer the following question in detail :

- (1) Explain the legal status of directors.
- (2) “Directors have status of trustee.” Explain the statement.
- (3) Write down notes on Directors’ identification number.
- (4) Write down the provisions for appointment of Directors.
- (5) Give the meaning of Additional Director and state the provisions for his appointment.
- (6) Write down the provisions for the appointment of Alternative Director.
- (7) Under which circumstances is the office of a director to be vacated ?
- (8) Narrate the disqualification of the director.
- (9) In which circumstances is the director to be retired ?
- (10) How can a director resign from his office ? Explain.
- (11) How can a director be removed before the expiry of term?
- (12) Narrate the authority of a director.
- (13) Which powers are enjoyed by directors by passing a resolution in Board of Director’s meeting ?
- (14) Narrate duties of directors.
- (15) Explain the civil liabilities of director towards third party.
- (16) State how a Managing Director can be disqualified.
- (17) Differentiate between Managing Director and Director.
- (18) Write down the qualification of Directors.
- (19) Write a note on Director appointed by small shareholders.

