

I. DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTORS

Provisions in section 164 of the 2013 Act for disqualification of a person for appointment as director are similar to provisions in section 274 of the 1956 Act. A person shall not be eligible for appointment as a director of a company, if —

- i. he is of unsound mind and stands so declared by a competent court;
- ii. he is an undischarged insolvent;
- iii. he has applied to be adjudicated as an insolvent and his application is pending;
- iv. he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. Conviction for offence involving moral turpitude and being sentenced to imprisonment was a disqualification.¹
- v. The 2013 Act permanently debars from directorship of a company any person who is convicted of any offence and sentenced to imprisonment of 7 years or more. There was no such provision in the 1956 Act.
- vi. an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- vii. he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- viii. he has been convicted of the offence dealing with related party transaction under Section 188 of the 2013 Act at any time during the last preceding five years; or
- ix. he has not complied with sub-section (3) of section 152 of the 2013 Act.²
- x. An additional disqualification is provided in sub- section (2) of section 164 of the 2013 Act relating to consequences of not filling of financial statements or annual returns. Any person who is or has been a director of a company which-
 - a) has not filed financial statements or annual returns for any continuous period

of three financial years; or

¹ Section 274(1)(d) of the 1956 Act.

²No person shall be appointed as a director of a company unless he has been allotted the DIN

- b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

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

Every director shall inform to the company concerned about his disqualification under sub-section (2), if any, in Form DIR-8 before he is appointed or re-appointed.

Vacation of Office, Resignation and Removal of Director:

Vacation of office of Director: Provision in Section 167 of the 2013 Act for vacation of office of a director are similar to Section 283 of the 1956 Act except for the addition of the following reasons for vacation:

- a) Remaining absent from all the meetings held during a period of 12 months, with or without leave of absence.
- b) Failure to disclose interest in any contract in contravention of provision relating to disclosure of interest.

If all the directors vacate their office, the promoter or in his absence the Central Government, can appoint the required number of directors to hold that office until directors are appointed in General Meeting.

Resignation of Director: Section 168 of the 2013 Act provides for resignation of a director which is a new provision, as there was no provision in the 1956 Act as regards resignation of director. This section requires that the director should resign in writing – by written notice to the company. Rule 15 and 16 prescribe the procedure for the same.³

Removal of Directors: Section 169 of the 2013 Act provides for removal by a director. Elaborate provisions in this section are made more or less on the same lines as Section 284 of the 1956 Act. No change in the provisions except that a special notice for intended resolution of removal can only be given by members who satisfy the numerical/ shareholding criteria in Section 115 of the 2013 Act. (Sec 115- Where special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one percent of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.)⁴

³ Companies (Appointment and Qualification of Directors) Rules, 2014

⁴ Rule 23, Companies (Management and Administration) Rules, 2014