

I. COMPOSITION OF BOARD

Board of Directors

“Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.¹

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes.

Number of Directors

The minimum number of directors in the case of a public company shall be three, two in the case of a private company, and one director in the case of a One Person Company; and the maximum number of directors to be 15. However, a company can provide for maximum number of directors as more than 15 by passing a Special Resolution and no approval from the Central Government is required for the same.²

Classes of Directors

Resident Director

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.³

Women Director on the Board

Rule 3⁴ states that in every listed company there should be one Woman Director. The Rule also provides that in every other public company where paid up Share Capital is Rs.100 cr. or more or turnover is Rs.300 cr. or more, a Woman Director shall be appointed. A company which has been incorporated under the 2013 Act shall comply with such provisions within a period of six months from the date of incorporation.

¹ Section 2(10), Companies Act 2013

² Sec 149(1), Companies Act 2013

³ Sec 149(3), Companies Act 2013

⁴ Companies (Appointment and Qualification of Directors) Rules, 2014

Nominee director

The Companies Act, 2013 defines nominee director as 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 the Government or any other person to represent its interests.⁵

Independent director

Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.⁶

Independent Director must, among other things, be a person of integrity, possess expertise and experience, not be a promoter of the company or the holding or associate company, not be related to the promoter or directors of the company, or the holding or subsidiary or associate company, whose relatives not have any pecuniary relationship or transaction with the company or the holding or associate company and neither he nor any of his relatives hold any key managerial position in the company or the holding or associate company.⁷

Small Shareholders' Director

A listed company to have one director elected by the small shareholders who are defined as those shareholders who have a shareholding of nominal value rupees twenty thousand.⁸ This section is similar to section 252 (1) of the 1956 Act. The Companies (Appointment and Qualification of Directors) Rules, 2014 states that a listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.⁹

Number of Directorships

Section 165 of the 2013 Act provides that no person shall be a director or alternate director in more than 20 companies. It may be noted that under Section 275 of the 1956 Act this limit was 15 companies. Out of these, the maximum number of public companies cannot exceed 10. For computing this limit of public companies directorships in a private company which is a holding or subsidiary company of a public company shall be included. Members of a company may, by a special resolution, specify for any lesser number of companies in which its director may act as a director. Any person holding directorship in more than the number specified under Section 165 has to regularize the position in one year after the commencement of the 2013 Act.¹⁰

⁵ Sec 161(3), Companies Act 2013

⁶ Sec 149(4), Companies Act 2013

⁷ Sec 149(6) Companies Act 2013

⁸ Sec 151 Companies Act 2013

⁹ Rule 7, Companies(Appointment and Qualification of Directors)Rules, 2014

¹⁰ Sec 165(3)

II. QUALIFICATION FOR APPOINTMENT OF DIRECTORS***Appointment of Directors:***

Provisions relating to appointment of Directors are contained in Sections 151 to 172 of the 2013 Act. These provisions are more or less on the same lines as provisions of sections 254 to 267, 274, 275, 283, 284, 303, 307 and 313 of the 1956 Act. These provisions are also applicable to private companies, unless otherwise stated.

General Provisions:

- Subscribers to the Memorandum and Articles shall be the first directors, if the Articles do not make any provision.¹¹
- Every director will be appointed by the company at the General Meeting.¹²
- No person shall be appointed as a director, if he is not allotted the Director Identification Number (DIN) under Section 154.¹³
- At least 2/3rd of the directors on the Board of a public company shall be such that they are liable to retire by rotation. At every AGM 1/3rd of such directors shall retire by rotation.¹⁴
- The company has option by articles of association, to adopt the principle of proportional representation for appointment of Directors.¹⁵

The 2013 Act does not specifically prescribe any qualifications for Directors of any company, following which a company may, in its Articles, stipulate its own qualifications for Directors. However there are certain conditions which are required to be complied in order to acquire a directorship of a company. The following are the new requirements in the 2013 Act for appointment of directors which were not there in the 1956 Act:

- Every person proposed to be appointed as a director shall furnish:
 - a) His Director Identification Number and
 - b) A declaration that he is not disqualified to become a director under the Act.
- The person to be appointed as a director has to give his consent in the prescribed form which is to be filed by the company with ROC within 30 days. He has also to give his DIN particulars and a declaration that he is not disqualified under the Act.¹⁶

¹¹ Sec 152(1)

¹² Sec 152(2)

¹³ Sec 152(3)

¹⁴ Sec 152(6)

¹⁵ Sec 163

¹⁶ Sec 152(4) & (5)

- A person other than a retiring director shall be eligible to contest election for directorship of a public company if a shareholder proposes his name for such position and deposits Rs.1 Lac or such higher amount as may be prescribed with the company. This amount will be refunded by the company if such person is elected as director or he gets at least 25% of votes at the AGM.
- **Additional Director:** Board of Directors can appoint an additional director who shall hold office upto the next AGM or the last date on which AGM should have been held, whichever is earlier.
- **Alternate Director:** Board can also appoint an alternate director if any director is to be out of India for more than 3 months.
- Provisions relating to requirement of holding qualification shares have been omitted in the 2013 Act.

Section 263A of the 1956 Act provided that nothing contained in Sections 177, 255, 256 and 263 of the 1956 Act shall apply to any provisions in the articles of a company for the election by ballot of all its directors at each AGM of company if such company does not carry on business for profit or prohibits the payment of dividend to its members. The 2013 Act omits section 263A of the 1956 Act.