The Companies Act, 2013 - Provisions for Directors

The Companies Act, 2013 has come into existence on 29.08.2013 that replaces a nearly six decade-old legislation and overhauls the way corporate function and are regulated in the country.

This article contains the description of some provisions related to directors which have been modified in Companies Act, 2013.

**Board of Directors:** Every Company shall have a minimum number of three directors in case of public company, two directors in private company and one director in one person company; and a maximum of fifteen directors in its Board of Directors. Only individual can be appointed as Directors. A company may appoint more than fifteen directors after passing a special resolution.

Prescribed class or classes of company shall have at least one woman director.

**Resident Director:** Every company shall have at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

**Independent Directors:** Every listed public company shall have at least one third of the total number of directors as independent directors and CG may prescribe the minimum number of independent directors in case of any public company.

**Small Shareholder Director:** 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 twenty thousand rupees.
**Right of other persons to stand for directorship:** A person who is not a retiring director be eligible to be appointed as director if he or any member gives a notice proposing him to be appointed as director. The notice must be sent at the registered office of the company, not less than 14 days before the meeting, along with the deposit of one lakh rupees. The deposit of one lakh rupees shall be refunded to the person if he gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

**Alternate Director:** Alternate director shall be appointed for a director during his absence for 3 months or more from India. The Board of directors, if so authorized by articles or by a resolution passed in general meeting, appoint a person to act as an alternate director.

**Independent Director:** An independent director is not a managing director or whole time director or a nominee director. Following conditions are required to be satisfied by a person to become an independent director:

1. A person of integrity and possess relevant expertise and experience.
2. He is not a promoter of the company or its holding, subsidiary or associate company.
3. He is not related to promoters or directors in the company, its holding, subsidiary or associate company.
4. He has no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year.
5. His relatives have no pecuniary relationship or transaction, amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such prescribed higher amount, whichever is lower, with the company, its holding, subsidiary or associate company or their promoters or directors, during the two immediately preceding financial years or during the current financial year.
6. He or his relative does not hold the position of KMP or in employment of the company, its holding, subsidiary or associate company in any of the 3 immediately preceding financial years.
7. He or his relative has not been in employment of firm of auditors, company secretary or cost auditors of the company or legal consultants of the company.
8. He does not hold together with his relatives 2% or more of the total voting power of the company.
9. He or his relative has not be chief executive or director of any non-profit organization that receive 25% of its receipt from the company, any of its promoters or directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.

**Remuneration of independent director:** An independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub section 5 of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as approved by members.
Tenure of independent director: An independent director shall hold office for a term up to five consecutive years, but shall be eligible for reappointment by passing special resolution and require disclosure in Board’s report. He shall not hold office for more than two consecutive terms, but shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director.

Selection of independent directors: An independent director may be selected from a databank, maintained by any body, institute or association notified by CG, having expertise in creation and maintenance of such databank and put on their website for the use by company making the appointment of such director.

Databank contains names, addresses and qualifications of persons who are eligible and willing to act as independent directors.

Responsibility of exercising due diligence before selecting an independent director lie with the company making such appointment.

The appointment of independent director shall be approved by the company in GM and the explanatory statement, annexed to the notice of GM, shall indicate justification for choosing the appointee for appointment as independent director.

Number of Directorship: A person can hold office as a director, including any alternate directorship, in at most 20 companies at the same time out of which at most 10 companies can be public limited.

Duties of Directors:

1. Director shall act in accordance with the article of company.

2. Act in good faith to promote the objects of company.

3. Exercise his duties with due and reasonable care, skill and diligence, and exercise independent judgment.

4. Shall not involve in conflicting situation.

5. Shall not achieve or attempt to achieve any undue advantage.

6. Shall not assign his office.

7. If provisions related to duties contravened, then punishable with the fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Resignation of Directors: A director may resign from his office by giving a notice in writing to the company and the Board shall take note of the same. The company shall intimate the registrar and shall also place the fact of resignation in the reports of directors laid in the immediately following general meeting by the company.
A director shall also forward a copy of his resignation to the registrar along with the detailed reasons within thirty days of resignation.

The resignation shall take effect from the date on which the notice is received by the company or the date specified by the director in the notice, whichever is later.

The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

**Loan to Directors Etc.:** The Company shall not advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom director is interested. Company shall also not give guarantee or provide security in connection with any loan taken by him or such other person.

This provision shall not apply in the following case:

1. the giving of any loan to MD or WTD- as a part the conditions of service extended by the company to all its employees or any scheme approved by the members by a special resolution.

2. If loan or guarantee or security is provided in ordinary course of business and interest is charged at the rate not less than the bank rate declared by the RBI.

**Any other person in whom director is interested means:**

1. Any director of the lending company or of a company which is its holding company.

2. Any Partner or relative of any such director.

3. Any firm in which director or relative is partner.

4. Any private company of which such director is a director or member.

5. Any body corporate at a GM of which not less than 25% of total voting power may be exercised by such director.

6. Any body corporate the Board or MD or manager whereof is accustomed to act in accordance with the directions or instruction of the BOD of the lending company.

**Appointment of Key managerial personnel:** Every company as may be prescribed shall have the following whole time key managerial personnel:

1. MD or CEO or Manager and in their absence, a whole time director.

2. Company secretary, and

3. Chief Financial Officer
An individual shall not be appointed as the chairperson as well as the MD or CEO of the company at the same time unless the articles provide otherwise or the company does not carry multiple businesses.

Every whole time KMP shall be appointed by means of resolution of the Board.

If the office of any whole time KMP is vacated, the resulting vacancy shall be filled up by the Board at the Board meeting within six months from the date of such vacancy.

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Recommended Read
- Highlights of the Companies (Amendment) Bill, 2019
- Amendment through Companies Amendment Second Ordinance 2019
There's no mention for auditor. But otherwise nice one.