
UNIT-5 MEANING & CONCEPT OF DIRECTOR

Structure:

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Meaning & Concept
- 5.3 Qualification of Director
- 5.4 Appointment of Director
- 5.5 Legal Position of Director
- 5.5 Let's Sum up
- 5.6 Key Words
- 5.7 Further Readings
- 5.8 Terminal Questions

5.0 OBJECTIVES

After studying this unit you will be able to know

- The meaning and definition of director
- The qualification, disqualification & appointment of Director
- The legal position of Directors in a company
- The different grounds for disqualification of a person to be appointed as a director in a Company

5.1 INTRODUCTION

A company director is appointed to a limited company to manage the day-to-day business activities and finances and he also ensure all statutory filing obligations. Directors must act lawfully with an objective to make decisions for the benefit of the company and its members.

A director may be defined as an individual who controls or manages the affairs of the Company. A director is a person who is appointed to perform the duties and functions of a company in accordance with the provisions of The Company Act, 2013.

A director is the head of an organization, either elected or appointed, who generally h as certain powers and duties relating to management or administration. A corporation'

s board of directors is composed of a group of people who are elected by the shareholders to make important company policy decisions.

Directors are expected to perform their duties and obligations as a rationally diligent person with skill, knowledge, and experience as the person carrying out the functions of a director and of that himself. Hence, a director plays several roles in a company, as an agent, as an employee, as an officer and as a trustee of the company.

5.2 MEANING AND CONCEPT

Directors are the persons appointed to direct and supervise the affairs of a company. Section 2(34) of the Companies Act defines a director as any person appointed to the board of a company. Further, director means any person occupying the position of director by whatever name called. Thus, a person will be deemed to be a director if he performs the functions of a director, though he may be named differently. The directors of a company are collectively referred to as the “Board of Directors” or “Board”.

According to Section 149(1), every public company must have at least three directors. Every private company must have at least two directors and there must be at least one director in the case of a One Person Company. The maximum number of directors, a company can appoint is Fifteen. However, a company can appoint more than 15 directors by passing a special resolution. Further, there must be at least one director in the company’s board who has stayed in India for a total period of not less than 182 days in the previous calendar year.

5.3 QUALIFICATION OF A DIRECTOR

- Under the act, anyone can be a director of a company.
- There is no academic or technical qualification of a director.
- Under section 270 of the act requires a director to hold qualifications on shares in the company and I should be fixed by the articles of association.
- The nominal value of qualification shares of the director mentioned in the articles of association must not exceed Rs 5000.
- The qualification share must be acquired by the director within two months of his appointment.

Disqualification of Directors:

As per Section 164 of the Companies Act, a person shall not be eligible for appointment as a director of a company, if

- a) He is of unsound mind and stands so declared by a competent court;
- b) He is an undercharged insolvent;

- c) He has applied to be adjudicated as an insolvent and his application is pending;
- d) 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 the expiry of the sentence. Provided, that if a person has been convicted of any offence and sentenced thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company.
- e) An order disqualifying him for appointment as a director has been passed by a Court or Tribunal and the order is in force.
- f) 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;
- g) He has been convicted of the offence dealing with related party transactions under section 188 (Related Party Transaction) at any time during the last preceding five years; or
- h) He has not complied with the requirements of the DIN under section 152(3).
- i) He has been a director of a company which - has not filed financial statements, or annual returns for any continuous period of three financial years; or - 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.

5.4 APPOINTMENT OF DIRECTOR

The appointment of directors in a company can be made in the following manner:

- **Appointment of Directors by Promoters (First Directors)**

The First Directors of the company are usually appointed by the promoters in the manner laid down by the company's articles. Their names are usually given in the company's articles. Where the articles do not provide for the appointment of first directors, the signatories to the memorandum, who are individual, shall be deemed to be the first directors of the company subject to the regulations of the company's articles. (Section 152(1)) The first directors can hold office only till the first annual general

meeting of the company when they will be replaced by directors appointed by the company at this meeting.

- **Appointment of Directors by Members**

The Subsequent Directors, in the case of a public company, are appointed by the members of the company in general meeting. Every person proposed to be appointed as a director 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. Further, a person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed (Section 152)

- **Appointment of Directors Retiring by Rotation**

Section 152 also provides that unless the articles provide for the retirement of all directors at every annual general meeting, at least two-thirds of the total number of directors of a public company shall be persons who shall be subject to retirement by rotation and must be appointed by the company in general meeting. The remaining directors in the case of any such company and the directors of a private company may be appointed in accordance with the provisions of the company's articles. In the absence of any such provision in the articles or in case of default in so appointing directors, these directors shall also be appointed by the company in general meeting.

Therefore, the office of two-thirds of the total directors shall be subject to retirement by rotation in the general meeting of the company. These are called Rotational directors. Any fraction in this two-thirds shall be rounded off as one. Now, at every AGM, one-third of these rotational directors shall compulsorily retire by rotation. The turn for retirement shall be determined by the length of office of each director. Those who have been longest in office shall retire first. As between persons who become directors on the same day, retirement may be decided by lot. For instance, if there are 8 directors in company. The number of rotational directors shall be $\frac{2}{3}$ rd of 8, i.e. 5.33 rounded off to 6. Out of these 6, $\frac{1}{3}$ rd shall compulsorily retire by rotation, i.e. 2.

The vacancies caused by the retirement of directors should be filled up at the same meeting. Retiring directors are eligible for reelection and may be re-appointed again. Section 160 provides that a person, other than the retiring director, can contest election for directorship only if he or any other member who intends to propose him has given at least 14 days' nomination notice before the date of the meeting, in writing, to the company along with a deposit of Rs 1, 00,000 or such higher amount as may be prescribed which will be refunded on election of such person as director or if he gets

more than 25% of the total valid votes cast. On receipt of such a notice the company is required to inform the members at least 7 days before the meeting about the candidature. However, individual notices to members will not be necessary if the company advertises such candidature or intention not less than 7 days before the meeting in at least two newspapers circulating in the place where registered office of the company is located, of which one is published in English language and the other in regional language of that place. If the vacancy caused by the retirement of a director by rotation is not filled up at the same general meeting, the meeting shall be deemed to be adjourned to the next week. If at the adjourned meeting also the vacancies are not filled up, the retiring director shall be deemed to have been re-appointed automatically except in the following cases:

- a) At that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- b) The retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be re-appointed;
- c) He is not qualified or is disqualified for appointment;
- d) A resolution, whether special or ordinary, is required for his appointment or reappointment by virtue of any provisions of this Act; or
- e) Section 162 is applicable to the case. It is to be noted that failure on the part of the company to call the annual general meeting on the due date, does not entitle a director to continue in office. He will be treated as having vacated his office on the last day on which the annual general meeting could and should be held.

- **Appointment of Directors by Board**

The Board of Directors are authorized to make the following appointments:

- a) **Additional or co-opted directors**

Section 161(1) provides that, if authorized by the Articles, Board of Directors may appoint additional directors within the maximum strength of the board fixed by the Articles of Association. Such additional directors shall hold office only up to the commencement of the next annual general meeting.

- b) **Casual or Ad-hoc Directors**

Section 161(4) provides that a casual vacancy occurring amongst the directors (on account of death, resignation or otherwise) may be filled up by the Board of Directors unless the Articles provide a different procedure. The person so appointed shall hold office only up to the time his predecessor would have continued.

c) Alternate directors

Section 161(2) provides that the Board of Directors may, if so authorized by the Articles of Association or by a resolution passed by the company in general meeting appoint an alternate director, to act for a director during his absence for a period of not less than 3 months from the State in which meetings of the Board are ordinarily held. Such a director will vacate office immediately on the return of the original director to the state. Such an alternate director will automatically vacate office on the expiry of the term of the original director even if the latter has not returned.

d) Other directors

Section 161(3) provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

- **Appointment of Directors by the Tribunal** Where an application is made to the Tribunal under Section 241 for relief against oppression and mismanagement of a company's affairs, the Tribunal may, if satisfied, order for the appointment of such number of persons as directors, who may be required to report to the Tribunal on such matters as the Tribunal may direct. The Tribunal may issue an order on a petition made to it by at least 100 members of the company or the member(s) holding at least 10% of the voting rights in the company. The ground on which such a petition can be filed is conduct of the affairs of the company in a manner oppressive to any member of the company or prejudicial to the interests of the company or public interest.
- **Appointment of Directors by the Central Government**
Section 167(3) provides that where all the directors of a company vacate their offices under any of the disqualifications, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting

5.5 LEGAL POSITION OF A DIRECTOR

Directors are the persons duly appointed by the company to direct and manage the affairs of the company. They are sometimes described as agents, trustees, employees, managing partners and so on. But each of these expressions is used not as exhaustive of their powers and responsibilities, but as indicating useful points of view from which they may for the moment and for the particular purpose be considered.

Directors as Agents

Directors are viewed as agents of the company for the conduct of business of the company. A company cannot act by itself; it acts only through its directors. Directors act on behalf of the company and acting on behalf of the company make the company liable on it and not the directors. The directors cannot be held personally liable for any default of the company. Like agents, directors should conduct the business of the company with care, skill and diligence possessed by them. They are accountable for all of the company's assets under their control, and the profits from assets of the company. They should not make any secret gains at the expense of the company.

Directors as Trustees

Directors are also described as trustees of the company as they stand in fiduciary capacity towards the company. However, they are not trustees in the legal sense as the rules applicable to trustees under the Trustees Act does not apply to the Directors. But, for the assets and properties of the company, in addition to being an agent, they also act as trustees. They must account for all money over which they exercise control. They must exercise their powers honestly in the interest of the company and all the shareholders, and not their own sectional interest. The peculiar nature of their office is one of the reasons why the directors have been described as trustees.

Directors as Employees

A person holding the position of a managing director or a whole-time director shall be in full time employment of the company and hence, can be called as an employee.

Directors as Managing Partners

Directors represent the shareholders to conduct the business of the company on their behalf. They enjoy vast power of management over the company and perform many functions which are in the nature of the proprietary - allotment of shares, raising of loans, and investment of funds of the company. This gives the impression of directors being the active partners and the shareholders appointing them as dormant partners. The very fact that most of the times, directors themselves is the significant shareholders in the company strengthen the argument that directors are the managing partners of the company. But this may be true only partially as unlike partners directors cannot bind other shareholders by their dealing, and dissimilar to partners, directors are elected and are subject to retirement also

5.5 LET US SUM UP

Directors are the persons appointed to direct and supervise the affairs of a company. The directors of a company are collectively referred to as the “Board of Directors” or “Board” Directors are paid agents or officers of the company and conduct business for the company without being the legal owners. Section 164 contains certain grounds

which makes a person disqualified to be appointed as a director of a company. The directors can be appointed in company by the Promoters, Shareholders, Board of Directors, Central Government, and the Tribunal.

5.6 KEY WORDS

- **Undercharged Insolvent:** When a debtor goes insolvent, the insolvency resolution process can be initiated (it has to be). When the insolvency resolution process is initiated, the goal is to enable the corporate debtor so that they can repay their debts to their creditors in some way. Now, the result of this insolvency needs to be decided by a special tribunal called the NCLT (national company law tribunal) if the debtor is a company or DRT if the debtor is an individual. Once the result of the resolution is reached, the creditors are paid and the debtor (insolvent) is “discharged” from his debts. Now, the time taken for the process to complete can be anywhere from 180 to 270 days. During this period, till the result of resolution is accepted and entertained, the debtor is not-yet-discharged from his debts. Therefore, in this case, the insolvent debtor is called “undischarged”.
- **DIN:** Director Identification Number (DIN) is a unique 8-digit number that is allotted by Central Government to the individuals who intend to become a director in a company or who already are directors of company.

5.7 FURTHER READINGS

- A Compendium of Companies Act 2013, along with Rules, by Taxmann Publications.
- Corporate Law, Gupta, Garg, Dhingra, Kalyani Publication
- Company Law: Roy & Das, Oxford University Press.
- Kumar, R., Legal Aspects of Business, Cengage Learning
- Corporate Law– S K Matta, Geetika Matta, Vrinda Publications (P) Ltd
- Arora & Banshal, Corporate Law – Vikash Publication
- Gogna, P.P.S – Company Law, S. Chand
- MC Kuchhal Corporate Laws, Shri Mahavir Book Depot. (Publishers).
- K Kapoor & Sanjay Dhamija, Company Law, Bharat Law House

5.8 TERMINAL QUESTIONS

- Q1 What do you understand by a company director?
- Q2 Explain the legal position of directors of a company.
- Q3 Explain different grounds for disqualification of a person to be appointed as a director in a Company.

- Q4 Describe in detail the process of appointment of directors in the company.
- Q5 Write a short note on undischarged insolvent.

UNIT-6 POWER & DUTIES OF DIRECTORS

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Powers of the Directors
- 6.3 Duties of the Directors
- 6.4 Liabilities of the Directors
- 6.5 Removal & Resignation of Directors
- 6.6 Let's Sum up
- 6.7 Key Words
- 6.8 Further Readings
- 6.9 Terminal Questions

6.0 OBJECTIVES

After studying this module, you shall be able to

- To be aware of the powers, duties and liabilities of directors towards the company
- Know the Removal and Resignation of the Directors

6.1 INTRODUCTION

The powers of directors of a company are co-extensive with the powers of the company. As per section 179 of the Companies Act, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. There are however, two limitations upon the powers of the Board:

1. The Board cannot exercise those powers which the Act, or Memorandum or Articles required to be exercised by the shareholders in general meeting.
2. In the exercise of their powers, the directors are subject to the provisions of the Act, Memorandum and Articles and other regulations, not inconsistent therewith, made by the company in general meeting.

6.2 POWERS OF THE DIRECTORS

Powers of a company are distributed between the Board of Directors and the shareholders in a general meeting. Powers vested in the Board of Directors can be exercised by it alone. The general meeting cannot interfere with the decision of the directors, unless they are acting contrary to the provisions of the Act or the Articles. However, the inherent residuary and ultimate powers of a company lie with the general meeting of shareholders, and therefore, the general meeting i.e., the shareholders can act even in a matter delegated to the Board in the following exceptional cases:

- **Where the directors' actions are found to be mala fide:** Where the actions of directors are mala fide and against the interests of the company, e.g. clash of directors' personal interest with the duties towards the company.
- **Where the Board becomes incompetent to act:** Where the Board of Directors has for some valid reasons become incompetent to act, e.g. all the directors are interested in a particular transaction.
- **Deadlock in the Board:** Where directors are unable to act because of a deadlock in the meeting of the Board of Directors. They are equally divided and, therefore, cannot come to any decision.

Statutory Powers of the directors

As per Section 179(3), The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:-

- a) To make calls on shareholders in respect of money unpaid on their shares;
- b) To authorise buy-back of securities under section 68;
- c) To issue securities, including debentures, whether in or outside India;
- d) To borrow monies;
- e) To invest the funds of the company;
- f) To grant loans or give a guarantee or provide security in respect of loans;
- g) To approve financial statement and the Board's report;
- h) To diversify the business of the company;
- i) To approve amalgamation, merger or reconstruction;
- j) To take over a company or acquire a controlling or substantial stake in another company;
- k) Any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

As per Section 180(1), The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:-

- a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. (“Undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent.)
- b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business.
- d) To remit, or give time for the repayment of any debt due from a director.

As per Section 181, The Board of Directors of a company may contribute to bona fide charitable and other funds, Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. If its average net profits for the three immediately preceding financial years.

In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:-

- a) To make political contributions;
- b) To appoint or remove key managerial personnel (KMP);
- c) To take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- d) To appoint internal auditors and secretarial auditor;
- e) To take note of the disclosure of director’s interest and shareholding;

- f) To buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- g) To invite or accept or renew public deposits and related matters;
- h) To review or change the terms and conditions of public deposit;
- i) To approve quarterly, half yearly and annual financial statements or financial results as the case may be.

6.3 DUTIES OF THE DIRECTORS

The duties and responsibilities of directors stipulated by the Indian Companies Act of 2013 can broadly be classified into the following two categories:-

1. The duties and liabilities which encourage and promote the sincerest investment of the best efforts of directors in the efficient and prudent corporate management, in providing elegant and swift resolutions of various business-related issues.
2. Fiduciary duties which ensure and secure that the directors of companies always keep the interests of the company and its stakeholders, ahead and above their own personal interests.

The following duties and liabilities have been imposed on the directors of companies, by the Indian Companies Act of 2013, under Section 166:-

- A director of a company shall act in accordance with the Articles of Association (AOA) of the company.
- A director of the company shall act in good faith, in order to promote the objects of the company, for the benefit of the company as a whole, and in the best interests of the stakeholders of the company.
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

- A director of a company shall not assign his office and any assignment so made shall be void. If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one Lakh Rupees but which may extend to five Lac Rupees.

6.4 LIABILITIES OF THE DIRECTORS

The liabilities of the directors of a company can be grouped under the following three heads:

- (i) Liability to outsiders
- (ii) Liability to company
- (iii) Criminal liability

- **Liability to Outsiders.**

Directors are not personally liable to outsiders for any acts done by them on behalf of the company. They act as agents of the company and, therefore, they will be liable only under those circumstances under which ordinarily an agent can be held liable. The directors would be personally liable to third parties in the following circumstances:

- a) Directors shall be held liable for all the ultra-vires transactions amounting to a breach of an implied warranty of authority held out by the directors.
- b) Directors shall also be liable on all those contracts which they enter in their own name. They shall also be personally liable on contracts entered into on behalf of the company when they have expressly or by implication personally undertaken the responsibility for the same.
- c) Directors shall be personally liable to the outsiders if they are found guilty of fraud or other torts. Outsiders who have subscribed for shares on the basis of false statement can make the directors liable either under section 62 by an action for damage or by an action for deceit under general law.

- **Liability to the Company**

The liability of directors towards the company may be put in the following four categories:

- a) **Liability for “ultra-vires” acts:** The directors are responsible to the company for any loss that it may suffer on account of ultra-vires acts e.g. application of funds of company for objects not sanctioned by the company’s memorandum or payment of dividend out of capital. The acts may not have been committed with any fraudulent intention on their part.

- b) **Liability for negligence:** Directors shall be liable to the company for negligence, when they do not use so much skill and care in the management of the affairs of the company as an ordinary man would reasonably use in his own case or which may be expected from a person of such experience and knowledge. Directors are, however, not liable for mere errors of judgment when they have acted within their powers in the bona fide exercise of their discretion or negligence of the subordinates relied upon by them, in the absence of any ground for suspicion. A director is not required to give continuous attention to the affairs of the company. He is justified in trusting officials of the company to carry out honestly any duty which in the absence of grounds for suspicion, may properly be left to him
- c) **Liability for breach of trust:** Directors shall be held liable for the misapplication of the funds of the company or for misappropriation of assets or for making a secret profit out of their dealings on behalf of the company. He will also be liable for breach of trust if he fails to act honestly and in the interests of the company as a whole. He will be liable to make good any loss sustained by the company as a result of any wrongful act committed or authorized by him or which he has joined in sanctioning at a board's meeting.
- d) **Liability for misfeasance:** Misfeasance implies misconduct on the part of a director in the conduct of the company's affairs which cause loss to the company. In order to take action against a director on the ground of misfeasance, two conditions must be fulfilled, i.e., (i) there must be misconduct or negligence on the part of a director and (ii) such misconduct or negligence must be wilful. Mere failure on the part of the director to take certain steps for the benefit of the company, e.g., recovery of a debt, will not amount to misfeasance.
- **Criminal Liability of Directors:** When the directors fail to fulfill the statutory obligations imposed upon them by law, they may be held criminally liable. There are various provisions in the Companies Act under which directors shall be criminally liable. The directors can also be held criminally liable for fraud, misapplication and embezzlement of the company's funds under the provisions of the Indian Penal Code.

Liability for the acts of co-directors – A director is not liable for the misconduct or wrongful acts committed by his co-directors unless he has expressly or impliedly authorized the same. A director would be liable for loss or damage to the company resulting from carrying out such decisions if he has taken an active part in giving effect to the decisions of the board. It will be immaterial whether he attended such meeting of the board or not. In case of breach of trust, directors are jointly and severally liable.

6.5 REMOVAL AND RESIGNATION OF DIRECTORS

The directors can be removed from his office:

- a) By the shareholders under section 169
 - b) By Tribunal under section 242
- **Removal by shareholders According to section 169:** “a company may, by ordinary resolution, remove a director before the expiry of his period of office.” A special notice shall be required to be given for moving a resolution to remove a director. On receipt of notice of a resolution to remove a director under the section, the company shall forthwith send a copy thereof to the director concerned. The director shall be entitled to be heard on the resolution for his removal at the meeting. On request of the director, the company shall send a copy of any representation made by the director in writing thereon to each of its members. In case the copies of the representation could not be sent to the members because it was received too late, the director concerned may require it to be read out at the meeting. The Tribunal may not allow the representation to be sent out or read to the members if on an application of the company or any member it is satisfied that the rights conferred by law shall be abused by the director concerned in securing needless publicity for defamatory matter. The vacancy created by the removal of a director may be filled at the same meeting in which the removal takes place, provided an earlier special notice to this effect has been given to the members together with the removal notice. The person so appointed will hold office up to the date to which his predecessor would have held it, had he not been removed. If the vacancy is not filled at the meeting it may be filled by the Board as a casual vacancy.

However, the shareholders cannot remove the following directors:

- Director appointed by Tribunal under section 242.
 - Director elected by proportional representation under section 163
 - Director appointed by the Central Government under IDRA Act 1951
 - Director holding office for life on the 1st day of April 1952, in the case of private company.
 - A director appointed by the Financial Institution as Nominee director.
- **Removal by Tribunal:** Where an application has been made to the Tribunal under section 241 against oppression and mismanagement of a company's affairs, the Tribunal may, if satisfied, order for the termination or setting aside of an agreement which the company might have made with its directors. (Section 242) The effect of such order will be removal of such director or directors from his or their office. Further, the Tribunal may also order the

manner in which the managing director, manager or any of the directors of the company may be appointed subsequent to an order removing the existing managing director or manager or director of the company. Such a director (including managing director) shall not be entitled to serve as a manager, managing director or director of any company without the sanction of the Company Law Board for a period of 5 years from the date of the Tribunal's order terminating or setting aside his contract with the company. Further, he cannot claim compensation for the termination of his appointment. (Section 243)

6.6 LET US SUM UP

The powers of directors of a company are co-extensive with the powers of the company. The Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. The directors owe a duty of loyalty and care in performing their responsibilities on behalf of the company.

6.7 KEYWORDS

- **Ultra Vires:** Beyond one's legal power or authority.
- **Breach of Trust:** A failure to act responsibly for someone who has given you something to keep safe, for example money or a company's secret information: The Company initiated legal proceedings alleging industrial espionage and breach of trust.
- **Misfeasance:** Misfeasance is the willful inappropriate action or intentional incorrect action or advice.
- **Tribunal :** A tribunal, generally, is any person or institution with authority to judge, adjudicate on, or determine claims or disputes.
- **Statutory Powers:** A statutory power is simply a legal power given by statute law. That power may be given to a government body or private organization.

6.8 FURTHER READINGS

- A Compendium of Companies Act 2013, along with Rules, by Taxmann Publications.

- Corporate Law, Gupta, Garg, Dhingra, Kalyani Publication
- Company Law: Roy & Das, Oxford University Press.
- Kumar, R., Legal Aspects of Business, Cengage Learning
- Corporate Law– S K Matta, Geetika Matta, Vrinda Publications (P) Ltd
- Arora & Banshal, Corporate Law – Vikas Publication
- Gogna, P.P.S – Company Law, S. Chand
- MC Kuchhal Corporate Laws, Shri Mahavir Book Depot. (Publishers).
 - GK Kapoor & Sanjay Dhamija, Company Law, Bharat Law House

6.9 TERMINAL QUESTIONS

- Q 1: What are the duties and responsibilities of a Director according to the Indian Companies Act 2013?
- Q 2: Write a brief note on the liabilities of a Company Director.
- Q 3: What are the statutory Powers of a Director?
- Q 4: Discuss about the removal of a Director.
- Q 5: Under which circumstances the director can be removed by the shareholders.

UNIT-7 KEY MANAGERIAL PERSONNEL

Structure

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Appointment Key of Managerial Personnel
- 7.3 Managing Director
- 7.4 Whole Time Director
- 7.5 Manager
- 7.6 Managerial Remuneration
- 7.7 Roles and Responsibilities of Key Managerial Personnel
- 7.8 Let's Sum Up
- 7.9 Key Words
- 7.10 Further Readings
- 7.11 Terminal Questions

7.0 OBJECTIVES

After studying this module, you shall be able

- To understand the concept of Key Managerial Personnel
- To learn the process of appointment of Key Managerial Personnel in a company
- To get a complete understanding of provisions related to Managing Director
- To learn the concept of Whole time Director and Manager
- To know the points of differences between Managing Director, Whole-time Director and Manager
- To know the provisions relating to the Managerial Remuneration

7.1 INTRODUCTION

As per section 2(51) of the Companies Act 2013 - "Key managerial personnel", in relation to a company, means—

- a) The Chief Executive Officer or the managing director or the manager;
- b) The company secretary;
- c) The whole-time director;
- d) The Chief Financial Officer; and

e) such other officer as may be prescribed;

Board of directors usually appoints managerial personnel such as managing directors, whole-time director (also known as the executive director), and manager (i.e. Chief Executive Officer) to manage the affairs of the company under the superintendence and control of the board.

Section 196 does not allow the simultaneous appointment of a managing director and a manager in a company. But a company is permitted to appoint more than one managing director

7.2 APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Section 203 of the Companies Act 2013 provides that every listed company and every other public company having a paid-up share capital of Rs 10 crores or more shall have the following whole-time key managerial personnel: a) Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director; b) Company Secretary; and c) Chief Financial Officer

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless, a) the articles of such a company provide otherwise; or b) the company does not carry multiple businesses:

Provided further that nothing contained in the above provision shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. [Section 203(2)]

Restriction on number of offices to be held: whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, a whole-time key managerial personnel may be a director of any company with the permission of the Board. It is further provided that a whole-time key managerial personnel who is holding an office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel. Number of Managing Directorships: A company may appoint or employ a person as its managing director, if he is the

managing director or manager of one, and of not more than one, other company. However, such appointment or employment is to be made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of such meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. (Section 203(3))

Filling of Vacancy: If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy. (Section 203(4))

Penalty Provisions: If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues. [Section 203(5)]

7.3 MANAGING DIRECTOR

According to Section 2(54), Managing Director means “a director who, by virtue of articles of a company or an agreement with the company or resolution passed by the company in general meeting or by its board of directors, is entrusted with substantial powers of management of the affairs of a company and includes a director occupying the position of a managing director, by whatever name called.”

A managing director has essentially to be a director. A managing director will cease to be so the moment he ceases to be a director. A managing director of a company has to exercise his powers subject to the superintendence, control and direction of the Board of directors.

- **Appointment of a Managing Director** The appointment of a managing director can be made either by—
 - a) An agreement with the company; or
 - b) A resolution passed by the company in general meeting; or
 - c) A resolution of the Board of Directors; or
 - d) A clause in the articles or association of the company.

As per section 196(4), a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable (subject to the provisions of section 197 and Schedule V)

be approved by the Board of Directors at its meeting. The appointment and remuneration payable, however, shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V of the Act. Section 196(5) further provides that where the appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

- **Term of office:** As per Section 196(2), no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time, provided that no re-appointment shall be made earlier than one year before the expiry of his term

Disqualifications

Section 196(3) provides that no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who: a) is below the age of twenty-one years or has attained the age of seventy years. Provided that the appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; b) is an undischarged insolvent or has at any time been adjudged as an insolvent; c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

Powers and duties of Managing Director

A managing director is appointed to manage the affairs of a company. His powers and duties are usually defined by (a) the agreement with the company by which he is appointed, or (b) by the Memorandum and Articles of the company, or (c) by the resolutions of the shareholders or the directors.

A managing director is entrusted with substantial powers of management. His powers may relate either to particular division or divisions of the business. This follows that there may be more than one managing director in a business.

A managing director is required to exercise his powers subject to the superintendence, control and direction of the board of directors of the company. Since a managing director must be a director he has also the duties, responsibilities and liabilities of an ordinary director. Also, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of

share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

7.4 WHOLE TIME DIRECTOR

According to Section 2(94) “whole-time director” includes a director in the whole-time employment of the company. He may be taken as a director who devotes his whole or substantially the whole of his working time to work with the company. Thus, whole-time director is an employee director of the company. He does not exercise “substantial power of management”, but performs important administrative functions. Appointment of Whole-time Director. The provisions of section 196, which are applicable to the appointment of a managing director, are also applicable to the appointment of a whole-time director.

7.5 MANAGER

According to Section 2 (53) “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

Appointment of Manager

Provisions which are applicable to the managing director regarding appointment, term of office and number of companies which can be managed also apply to a manager.

7.6 MANAGERIAL REMUNERATION

The term managerial remuneration includes remuneration payable to the:

- a) Managing director,
- b) Manager, and
- c) The whole-time and other directors.

It does not include remuneration paid to technical advisers or secretary. Besides that remuneration paid to a person of the category of “managerial personnel”, for duties performed by him which cannot be termed as “managerial” shall not be called managerial remuneration e.g., remuneration received by a director for working as secretary or technical adviser. But if a person is designated as secretary but performs the functions of a director or manager or managing director, then his remuneration will be included in the definition of managerial remuneration. Section 197 of the act

provides that the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven percent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits. However, the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven percent of the net profits of the company, subject to the provisions of Schedule V.

Overall Limit on Managerial Remuneration

- a) It is further provided that, except with the approval of the company in general meeting, the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten percent of the net profits to all such directors and managers taken together;
- b) The remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - (i) One percent of the net profits of the company, if there is a managing or whole time director or manager;
 - (ii) Three percent of the net profits in any other case.

The percentages aforesaid shall be exclusive of any fees payable to directors for attending Board's meetings or a committee thereof. (Section 197(2)) In a financial year, if a company has no profits or its profits are not adequate, the company shall not pay any remuneration to its managerial personnel (exclusive of any fees payable to the directors) except with the previous approval of the Central Government. However, the consent of the Central Government is not required if the managerial remuneration is as per the provisions of Schedule-V. (Section 197(3))

Section 197(4) provides that the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if

- a) the services rendered are of a professional nature; and

- b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under section 178(1), or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

In addition, a director may receive remuneration by way of fees for each meeting of the Board, or a committee thereof, attended by him. Provided that the amount of such fees shall not exceed the amount as may be prescribed. (Section 197(5))

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one and partly by the other. (Section 197(6))

Any remuneration drawn and received by any of the managerial personnel in excess of the statutory limits shall be required to be held in trust for the company and shall be refunded to the company. (Section 197(9)) The company cannot waive the recovery of any such sum paid in excess. (Section 197(10))

Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed. (Section 197(12))

Where any insurance is taken by a company on behalf of its managing director, whole time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel. However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. (Section 197(13))

Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report. (Section 197(14))

If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. (Section 197(15))

7.7 ROLES AND RESPONSIBILITIES OF KEY MANAGEMENT PERSONNEL

The Key Managerial Personnels are basically responsible for taking the most important decisions and managing all the employees. They are also liable if they do not follow compliances laid down by the Companies Act 2013.

The growth and development of the company depend on the effectiveness of the Key Managerial Personnel at their jobs. The main responsibilities and functions of the Key Managerial Personnel are:

- As per Section 170 of the Companies Act, the details about the securities held by the KMPs in the company or its holdings and subsidiaries must be disclosed and thus recorded in the Registrar.
- KMPs have a right to voice their opinion especially in meetings of the Audit Committee. However, they don't have a voting right.
- According to Section 189, Companies Act, KMPs should disclose their interests in other companies and associations, at least within 30 days of the start of the employment period.

7.8 LET US SUM UP

“Key managerial personnel”, in relation to a company, means the CEO or the MD or the manager, the CS, the WTD, the CFO and such other officer as may be prescribed. Board of directors usually appoints managerial personnel to manage the affairs of the company under the superintendence and control of the board. Section 203 provides that every listed company and every other public company having a paid-up share capital of Rs 10 crores or more shall appoint the key managerial personnel.

Managing Director is a director who is entrusted with substantial powers of management of the affairs of a company and includes a director occupying the position of a managing director, by whatever name called.

A managing director has essentially to be a director. A managing director will cease to be so the moment he ceases to be a director.

Whole-time Director includes a director in the whole-time employment of the company.

Manager means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company.

Section 197 of the act provides that the total managerial remuneration payable by a public company, to its directors including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven percent of the net profits of that company for that financial year.

7.9 KEYWORDS

- **Appointment Key:** An act of assigning a job or position to someone.
- **Remuneration:** The payment or compensation received for services or employment. This includes base salary and any bonuses or other economic benefits that an employee or executive receives during employment.
- **Whole Time Director:** A whole-time director is a director in the whole-time employment of the company. In other words, a director who devotes his whole time to the affairs of a company is called a whole-time director of the company.

7.10 FURTHER READINGS

- A Compendium of Companies Act 2013, along with Rules, by Taxmann Publications.
- Corporate Law, Gupta, Garg, Dhingra, Kalyani Publication
- Company Law: Roy & Das, Oxford University Press.
- Kumar, R., Legal Aspects of Business, Cengage Learning
- Corporate Law – S K Matta, Geetika Matta, Vrinda Publications (P) Ltd
- Arora & Banshal, Corporate Law – Vikas Publication
- Gogna, P.P.S – Company Law, S. Chand 8. MC Kuchhal Corporate Laws, Shri Mahaveer Book Depot. (Publishers).
- GK Kapoor & Sanjay Dhamija, Company Law, Bharat Law House.

7.11 TERMINAL QUESTIONS

- Q1: Write a note on the appointment key of Managerial Personnel.
- Q2: State the meaning of a whole time Director.
- Q3: What are the powers and duties of a Managing Director?
- Q4: What is Managerial Remuneration? Write about the overall limit to managerial remuneration.

UNIT-8 TYPES OF DIRECTORS

Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Types of Directors
- 8.3 Companies Secretary
- 8.4 Chief Financial Officer
- 8.5 Resident Director
- 8.6 Independent Director
- 8.7 Women Director
- 8.8 Additional Director
- 8.9 Women Director
- 8.10 Let's Sum up
- 8.11 Key Words
- 8.12 Further Readings
- 8.13 Terminal Questions

8.0 OBJECTIVES

After studying this unit you will be able to know:

- The Types of Director in a company
- Duties, Responsibilities & Restrictions of a Company Secretary
- Roles of a Women Director

8.1 INTRODUCTION

Directors refer to the part of the collective body known as the Board of Directors that is responsible for controlling, managing and directing the affairs of a company. Directors are considered the trustees of company's property and money, and they also act as the agents in transactions which are entered into by them on behalf of the company. Directors are expected to perform their duties and obligations as a rationally diligent person with skill, knowledge, and experience as the person carrying out the functions of a director and of that himself. Hence, a director plays several roles in a company, as an agent, as an employee, as an officer and as a trustee of the company.

8.2 TYPES OF DIRECTOR

Shadow Director

He is a director who is not formally appointed in a company but exerts such an influence over the company's directors that other directors are accustomed to act in accordance with his instructions. He acts in the background and hides the fact that he is in control of the company.

De-facto Director

He is also not formally appointed in a company or who is disqualified to be appointed as director but discharges the function of a director, despite a lack of authority and right to act.

First Director

First directors are appointed by the promoters of the company immediately after the incorporation of the company. They are either named in the articles of the company or if articles are silent, the subscribers to the Memorandum of Association who are individuals become the first directors of the company.

Additional Director

Such directors are appointed by the Board of Directors from time to time if so authorized by its Articles of Association. They hold office only up to the date of the next Annual General Meeting or the last date on which the AGM should have been held, whichever is earlier.

Casual / Ad-hoc Director

Casual directors are also appointed by the Board of Directors in case a vacancy arises in the office of the director by death, resignation, insolvency or disqualification of a director. Such director will hold office till the term of the original director.

Alternate Director

Such director is appointed by the Board, in the position of a director who remains absent from the state in which meetings of the board are ordinarily held for a period of more than three months. Article of Association must contain the provision for the same. Such director holds office till the expiry of the term of original director or till he returns to the state.

Executive and Non-Executive Director

Executive directors are the directors who are also involved in day to day management of the company. They are also termed as Whole time directors. For example, Finance Director, Marketing director, etc. On the other hand, Non-Executive are the ones who

are not involved in the day to day management of the company and do not hold any executive position within the company. They bring an independent voice and perspective to the board.

Rotational Director

These directors are subject to retire by rotation from the company's Board. However, they may be re-appointed after retirement.

8.3 COMPANIES SECRETARY

A company secretary is a senior position in a private sector company or public sector organisation. In large American and Canadian publicly listed corporations, a company secretary is typically named a corporate secretary or secretary.

According to Section 2(1) (c) of the Company Secretaries Act, 1980, company secretaries are the people who are a member of the Institute of Company Secretaries of India. Hence, he is a member of ICSI and performs various ministerial and administrative functions of the organization.

Major Roles of Company Secretary according to the Companies Act, 2013

- Firstly, to assist the Board in the conduct of the affairs of the company.
- Secondly, to provide guidance to the directors about their duties.
- Ensuring and Complying with Corporate Governance.
- Ensuring that the company complies with secretarial standards.
- To take the required permissions from the board and various government bodies. Hence, he also has to follow the provisions regarding the permission acquisition.
- Lastly, to facilitate the convening of meetings.

Major Rights of Company Secretary

- Firstly, he can supervise, control and he can direct subordinate officers and employees.
- Secondly, he can sign and authenticate the proceedings of meetings.
- He has a right to blow the whistle whenever he finds necessary.
- He can attend the meetings of shareholders and the Board of Directors.
- He can sign any contract/agreement on behalf of the company.
- Lastly, at the time of liquidation, he can claim his dues like a creditor.

Restrictions on Company Secretary

- Firstly, he cannot acknowledge a debt against a suit against the company.
- Secondly, he cannot register, transfer shares without the authority of the Board of Directors.

- Thirdly, he cannot enter into a contract on behalf of the company (unless specifically authorized by the BOD).
- Lastly, he cannot borrow money in the name of the company.

8.4 CHIEF FINANCIAL OFFICER

A Chief Financial Officer is an executive who is in charge of monitoring cash flow, financial planning and other financial activities within an organization. The primary function of a CFO is to perform the administrative, risk management and financial operations within an organization. While they do answer to the president, they are the executive who has the most say when it comes to the company's investments and how the organization will manage income and operational costs. The ultimate goal is for the CFO to develop strategies and different control systems that will preserve the company's assets and income.

- He is responsible for a company's past and present financial situation, and he or she is an integral part of a company's financial future.
- He has multiple duties, from financial reportage to deciding where and when to invest company funds.
- He oversees the capital structure of the company, determining the best mix of debt, equity, and internal financing.
- Addressing the issues surrounding capital structure is one of the most important duties of a CFO.

A Chief Financial Officer is accountable for the following tasks:

- Monitoring strategic business plans
- Development of Financial strategy
- Making tax strategies to reduce obligations
- Managing budgets from department to department
- Meet with managers and executives for decision-making
- Managing the accounting, legal, tax and treasury departments
- Implementing and overseeing processing systems
- Overseeing the employee benefits system
- Reviewing financial reports
- Reporting results to the board
- Investing
- Monitoring legal issues that could affect the company
- Making sure the company is in compliance with all regulations

- Maintaining insurance to protect the organization against risks

8.5 RESIDENT DIRECTOR

Section 149(3) of the Companies Act 2013 is as follows: “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.” Resident Director shall have all the powers and duties which are defined for other Director of the company but subject to the approval of the Board. He shall abide by all the provision for directors defines under the Companies Act, 2013.

8.6 INDEPENDENT DIRECTOR

Section 149(4) provides that every listed public company shall have at least one third of the total number of directors as independent directors. Such directors shall not retire by rotation. They shall not be entitled to any remuneration, other than the sitting fees, reimbursement of expenses for participation in the Board meeting and profit related commission approved by the members. The whole and the sole purpose behind introducing the concept of independent directors is to take unbiased decisions and to check various decisions taken by management and majority shareholders. They bring accountability and credibility to the Board process and are the trustees of Good Corporate Governance.

8.7 WOMEN DIRECTOR

The following class of companies shall appoint at least one woman director (as laid down by Companies (Appointment and Qualification of Directors) Rules 2014.

- (i) Every listed company;
- (ii) Every other public company having -
 - (a) Paid-up share capital of one hundred crore rupees or more; or
 - (b) Turnover of three hundred crore rupees or more:

Roles of Women Directors

Women director has to play the role like any other director. Women can take up a role of Nominee Director who will be nominated by a party in the company to take care of its interest. Also, Women can take up the role of Independent Director who is not liable to retire by rotation Women Director can hold a maximum of twenty directorships that

includes the sub-limit of ten public companies. Any contravention of this part shall be subjected to a fine ranging between Rs.5000-Rs.25000.

8.8 ADDITIONAL DIRECTORS

An individual can act as an additional director by taking the position of a director until the next Annual General Meeting.

Term for Additional Director

A person appointed as an additional director can occupy their post until the date of the next Annual General Meeting. In the absence of an Annual General Meeting, their term of appointment will conclude on the date on which the annual general meeting should have been held.

Powers and Obligations

Though appointed on a temporary basis, an additional director is vested with the same powers of a director. Moreover, they are subject to all obligations and limitations of a director. They are also entitled to seek appointment as a permanent director at the Annual General Meeting. The additional director must utilize his/her powers in the best interest of the company and the shareholders.

Number of Additional Directors

The number of directors and additional directors taken together shouldn't exceed the number specified in the Articles of Association. For example, if the Articles of Association of a company permits the appointment of 11 directors in total, and the company currently houses 5 full-time directors, the Board of Directors may appoint 6 additional directors. Further the Board is not authorized to appoint any person as an additional director whose resolution for appointment is rejected by the shareholders in a general meeting.

Method of Appointment

The additional director may be appointed in a meeting of the Board, which may be held physically or through video conferencing or other audiovisual means. The other applicable method of appointment is through circulation, on which no prohibitions have been meted out.

8.9 ALTERNATE DIRECTOR

When a director is absent for more than three months; an alternate director comes on board on his behalf. He acts as a director for a temporary period. And can only hold office as permissible to the director whose office this director holds. Appointment of alternate directors wouldn't keep the original directors sidelined. The original director

as well as the alternate director, is entitled to receive notices of board meetings, and may participate in it. This is especially relevant when a meeting takes place in a location where the original director is stationed. It may be noted that both the original and alternate director cannot attend the same meeting. The alternate director is specifically appointed to fill the temporary void of the original director. For example, if an original director is supposedly stationed at Brussels, and the meeting is being held at Brussels, the alternate director wouldn't be a part of the meeting due to the availability of the original director.

8.10 LET US SUM UP

A Chief Financial Officer is an executive who is in charge of monitoring cash flow, financial planning and other financial activities within an organization. The primary function of a CFO is to perform the administrative, risk management and financial operations within an organization. A company secretary is a senior position in a private sector company or public sector organisation. A Woman Director can be appointed during the time of company registration or after incorporation by the Board Members and the Shareholders. Independent directors bring accountability and credibility to the Board process and are the trustees of Good Corporate Governance

8.11 KEYWORDS

- **Ad Hoc:** Created or done for a particular purpose as necessary.
- **De Facto:** Existing or holding a specified position in fact but not necessarily by legal right.
- **Rational:** Based on or in accordance with reason or logic.
- **Shadow Director:** A **shadow director** is a person in accordance with whose directions or instructions the **directors** of a company are accustomed to act.
- **Nominee Director:** Shareholders, central government or third parties appoint them. Nominee directors come on board when there is grave mismanagement or the board members abuse their powers.

8.12 FURTHER READINGS

- A Compendium of Companies Act 2013, along with Rules, by Taxmann Publications.
- Corporate Law, Gupta, Garg, Dhingra, Kalyani Publication
- Company Law: Roy & Das, Oxford University Press.
- Kumar, R., Legal Aspects of Business, Cengage Learning
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- Arora & Banshal, Corporate Law – Vikash Publication

- Gogna, P.P.S – Company Law, S. Chand
- MC Kuchhal Corporate Laws, Shri Mahavir Book Depot. (Publishers).
- GK Kapoor & Sanjay Dhamija, Company Law, Bharat Law House.

8.13 TERMINAL QUESTIONS

- Q1 Discuss about the different types of directors of a Company.
- Q2 What are the major roles of a Company Secretary?
- Q3 What is the extent of accountability of a Chief Finance Officer?
- Q4 What are the roles and responsibilities of a Woman Director?
- Q5 Write a brief note on Resident Director & Independent Director
- Q6 Differentiate between the following:
- a) Ad hoc Director
 - b) Alternate Director
 - c) Rational Director
 - d) Shadow Director
 - e)