

CA FINAL – CORPORATE & ALLIED LAWS

Dear Students,

- Summary of topic of “BOARD OF DIRECTORS’ (BOD) 27 chapters in 27 pages.
- BOD covers 30 per cent of examination paper.

PREPARE 1/3rd EXAMINATION PAPER IN HALF DAY

With best wishes.

(R.D.Maheshwari)

THE COMPANIES ACT, 2013 BOARD OF DIRECTORS

Introduction to Board of Directors

Only individuals be appointed directors. There can be executive and non-executive directors. Executive Directors include Managing Director or Whole Time Director. Non-Executive Directors are simply directors. In the new Act, new concept of “Key Managerial Personnel” is introduced. Discussion on Board of Directors:

1. On appointment & connected matters.	2. On Qualification, removal or vacation &* resignation	3. On Managerial remuneration.	4. On Restrictions on powers of Board of Directors.	5. Discussion on meeting of Board of Directors.
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In new Act, some new features are introduced.

Terms of Independent Director, Resident Director & Woman Director	Related Party Transactions. These transactions intended to avoid conflict of interest	Provisions in regard to Audit Committee strengthened and new provision for constitution of Nomination & Remuneration Committee
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Chapter: 1

Company To Have Board Of Directors (Section 149)

(1) Minimum Number of Directors

For public company, minimum number of directors is 3	For private company, minimum number of directors is 2	For One person company, one director is the minimum director.
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(2) Maximum Number of directors

Maximum number of directors is 15 for each kind of company	After passing special resolution company may appoint more than 15 directors.
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(3) Woman Director (Sub sec. 1)

Woman Director on the Board (Rule 3) Companies (Appointment of Directors) Rules 2014

Class of companies shall appoint minimum one woman director –

- (a) Listed company
- (b) Other public company
 - (i) With paid up capital of 100 crore of rupees or more or
 - (ii) Turnover of 300 crore of rupees or more

(4) Resident Director: Every company to have at least one director having stayed in India for total period of not less than 182 days in previous Calendar Year.

(5) Independent Director (Sub sec. 4)

In case of Listed Company at least 1/3rd of total number of directors will be independent directors. Any fraction in 1/3rd shall be rounded off as one (In a company where Audit Committee is constituted, minimum number of directors shall be 2 and not 1 of 3 directors.)

(i) For public companies (not listed companies) at least 2 directors will be independent directors.

- (a) Public companies with paid up capital of 10 crore of rupees or more or
- (b) Public companies having turnover of 100 crore of rupees or more
- (c) Public companies which have outstanding loans, debentures and deposits exceeding 50 crore rupees.

(ii) (a) Who can be Independent Director?

- One who is a person of integrity and has expert knowledge.

(b) Who cannot be Independent Director?

Managing Director	Whole Time Director	Nominee Director. Nominee director is one nominated by financial institution or may be appointed by Govt. or by any person to represent its or his present.
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(iii) Term of the Independent Director:

To hold office for a term up to 5 consecutive years. Eligible for re-appointment on passing of special resolution by the company. Disclosure of such appointment be made in Board's report (Remember one term is up to 5 years)	Not more than 2 consecutive terms No independent director shall hold office for more than 2 consecutive terms. After completion of 2 consecutive terms, he will be eligible for the appointment after a gap of three years. But during 3 years he shall not be appointed in the company nor be associated with the company in any capacity.
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- (iv) **Vacancy:** Vacancy be filled up by Board not later than immediate next Board meeting or 3 months whoever is later.

Maintenance of Data Bank

(Selection of Independent directors) (Sec. 150)

Data Bank shall be kept & maintained and Independent director may be selected from a data bank Data Bank to contain names, addresses & qualifications of persons eligible & willing to act. It will be maintained by agency with experience in creation & maintenance of data bank.

Chapter: 2 Appointments of Directors (Section 152)

Introduction:

Normally General meeting appoint directors	Board of Directors to appoint additional director or to fill in Casual vacancy & to appoint Alternate Directors	Third parties to nominate their representatives on Board known as Nominee Directors
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(1) First Directors (Section 152) (1)

<ol style="list-style-type: none"> Articles can name 1st Directors Articles can provide the manner for 1st Directors 	In the absence of prepared articles, subscribers may decide 1st Directors. Subscribers to memorandum, if not able to decide will themselves be first directors., until directors are duly appointed.
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(2) Directors in public company (Section 152)

Section 152 provides these options.

(a)	(b)
Articles of association may provide for retirement of all directors in every AGM.	<p>In case articles do not provide for retirement of all directors in every Annual General Meeting (AGM), following provisions will apply</p> <ul style="list-style-type: none"> At least 2/3 directors shall be directors retiring by rotation (Minimum number of retiring directors shall be 2/3rd. Retiring directors can be more than 2/3 or all directors can be retiring by rotation.) and They Shall be appointed in general meeting. Remaining directors (non-retiring) if any, will be appointed in general meeting or articles may provide the manner for their appointment.

Directors to retire by rotation appointed under section 152 in general meeting.

(i) How many to retire every year? In	Who will retire? In the company suppose A, B, C, D, E, F (six) are directors. Retiring by	Adjournment of AGM Company in AGM does not reappoint	However, in following cases retiring director will not be deemed to be reappointed:
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every AGM 1/3rd of directors who are to retire by rotation shall retire. When 1/3rd comes in fraction nearest to 1/3 shall retire. Directors who retire can be reappointed or other persons can be appointed in their place.	rotation. 1/3 rd to retire. Out of 6, two will retire. Who will retire ? Among these directors those who are longest in office since the last appointment will retire first. However, if all directors are appointed on the same day then who will retire? In that case directors who will retire will be determined by agreement or in the absence of agreement it will be decided by lot. AGM can reappoint retiring directors or AGM can appoint other persons as directors	them nor co. appoints others, AGM shall be adjourned to next day at the same time and place (not a national holiday) In adjourned meeting, vacancy is not filled ii, retiring director be deemed to be re-appointed	If retiring director is disqualified; or If the retiring director has given notice to the Co. or to the Board about his unwillingness to be reappointed
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Directors appointed under special acts: There are some institutes like IDBI, UTI, SBI, LIC created under special acts. Special acts give them right to appoint directors in company. Directors appointed by them under special acts not taken into account for counting 2/3rd of directors.

Chapter: 3 Appointment of Directors Voted Individually (Section 162)

In general meeting of public co., appointment of 2 or more than 2 directors not be made by single resolution. It is permissible if agreed at meeting without any vote against it.

Consequence of Contravention:

Appointment made in contravention is defective	Appointment defectively made not be deemed to be automatically re-appointed when he retires.	For defective appointment, benefit of section 176 available i.e. Acts during tenure protected till the time defect is noticed.
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Chapter: 4 Defects in Appointment of Directors Not To Invalidate Actions (Section 176)

<p>Acts done by a director shall be valid</p> <p>(a) If done before it was noticed that his appointment was invalid because of defect or disqualification</p> <p>(Illustration: X a director retiring by rotation was appointed on 30th Sept. 2014 in Annual General Meeting and some defect was left in his</p>	<p>Acts done by a director shall not be valid</p> <p>If acts are done after his appointment has been noticed by the company to be invalid or to have been terminated.</p>
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<p>appointment. This defect was not noticed until 30th Sept. 2015. Acts therefore, done by him between 30th Sept. 2014 to 30 sept. 2015 will be valid.)</p>	
<p>(b) if done before it was noticed that his appointment has been terminated for reason of any provision in this Act or in the articles of the company.</p>	<p>Note: There is a defect or disqualification in appointment. Acts done by director are valid if done before defect is discovered. Defect is discovered & thereafter acts done not protected.</p>

Chapter: 5

Appointment of Director Elected by Small Shareholders (Section 151)

Introduction

Section 151 and rule 7 of Companies (Appointment & Qualification of Directors) Rules enable the small shareholders to have their representation in the Board of Directors

Section 151 of Companies Act, 2013	Rule 7 of Companies (appointment & qualification of directors) Rules 2014
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1. One director by small shareholders. (Section 151)

- A listed company may have one director elected by small shareholders in such manner as may be prescribed.
- **Who is small shareholder?**
- Small shareholder is one who holds shares of nominal value of not more than 20,000/- rupees or such other sum as may be prescribed.

2. Companies (Appointment of Directors) Rules, 2014. (Rule 7) (Before Appointment)

Notice:- (Listed company may opt to have a director representing small shareholders suo motu. (on its own) In such case requirements of notice shall not apply)

- A listed company may have a small shareholders' director elected by small shareholders upon notice by

Not less than 1000 small shareholders or	1/10 of total number of small shareholders
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Whichever is lower.

Small shareholders proposing a person as a candidate shall leave

(1)	(2)
<p>Notice of their intention with the company under their signature at least 14 before the meeting. Notice will specify name, address, shares held and folio number of the person whose name is being proposed.</p>	<p>Notice given shall also specify Such particulars of the small shareholders who propose the person for the office of director.</p>

(1) Such Director is Independent Director:

Such director after appointment shall be considered as independent director and he will comply conditions of being independent as specified in section 149	He will also make declaration that he meets the criteria of being independent.
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(2) But such director

(a) Shall not be liable to retire by rotation.	(b) His tenure as small shareholders director shall not exceed a period of 3 consecutive years and	(c) on the expiry of the tenure, such director shall not be eligible for the re-appointment.
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Small Shareholder director shall not be in more than 2 cos. at same time. (Limit upto 2 cos.) However, 2 nd co. not be in business competition with 1st co.	Small Shareholder director ceases to be director, for 3 years not to hold office as Small Shareholder Director in co. During 3 years not be appointed in any other capacity
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Chapter: 6

Provisions Regarding Meetings of Board of Directors (Section 173, 174 and 175)

(1) Number of Board Meetings (Section 173) (1)

Ist Meeting Every Company shall hold first meeting of the Board within 30 days of its incorporation.	Thereafter to hold minimum 4 meetings every year. Not more than 120 days shall intervene between two consecutive meetings of the Board.
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(2) Notice for Board Meeting (Section 173) (3)

Notice for the Board Meeting shall be given in writing

- Not less than 7 days before the meeting.
- To every director at his address registered with the company (address registered with the company. This address may be Indian address or abroad address.)
- Such notice shall be sent by hand delivery or by post or by electronic means.
- **For transacting urgent business**

<ul style="list-style-type: none"> • Meeting of the Board may be called at shorter notice to transact urgent business. But in such contingency, at least one independent director if any, shall be present at the meeting. 	In the absence of independent directors, decisions taken at such a meeting shall be circulated to all the directors. Decisions taken shall be final only on ratification by at least one independent director, if any.
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(3) Participation of Directors:- (section 173 (2) and Rules 3, 4 of Companies (Meetings of Board and its powers) Rules, 2014

Participation of directors in a meeting of the Board may be

- Either in person or

- Through video conferencing or other audio visual means as prescribed. They should be capable of recording and recognizing the participation of the directors. They should be capable of storing the proceedings along with date and time.

(4) Quorum for Board meetings (Section 174) (1) (3) Quorum is the minimum number of competent directors with whose presence the business can be transacted in board meeting.

<p>Quorum:- Quorum is 1/3 of total strength and if it comes in fraction it is rounded up</p> <p><i>Or</i> Two Whichever is higher Participation of directors by video conferencing or by other audio visual shall be counted in quorum.</p>	<p>Quorum when 2/3rd Directors are interested 2/3rd or more than 2/3 of directors are interested, all remaining directors not interested should be present in the Board meeting to constitute the quorum but the number of directors present should not be less than two.</p> <p>Illustration:- Company has 9 directors. 7 are interested (more than 2/3rd) To constitute the quorum remaining 2 who are not interested should be present.</p>
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(5) Resolution by circulation. (Section 175)

In specified circumstances, resolutions are necessarily to be passed in board meetings. In other circumstances board resolution can be passed by circulation.

Procedure for resolution by circulation

Resolution by circulation by board of directors or by a committee shall be deemed to be passed if following conditions are fulfilled.

<p>(a) Draft resolution with necessary papers are sent to all the directors or members of the committee as the case may be at their addresses in India registered with the company. This can be done by hand delivery or by post or by courier or through electronic means.</p>	<p>(b) Shall be approved by majority of directors or members of the committee who are entitled to vote on the resolution.</p>	<p>(c) Resolution passed should be noted at a subsequent meeting of the Board or of the committee as the case may be. Resolution passed shall be made part of the minutes of such meeting.</p>
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Chapter: 7

Additional Director, Director in the Casual Vacancy, Alternate Director, Nominee Director, Director by Proportional Representation (Secs 161, 163)

(1) Appointment of Additional Director: Appointment of additional director is need based and need arises Board appoints

Section 161 (1) of Companies Act, 2013 provides

- (i) Articles of a company may confer on its Board of Directors the power to appoint an additional director at any time.
- (ii) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.

(2) Filing Casual Vacancy: When there is casual vacancy, board can fill in (Section 161) Section provides

The director appointed in general meeting vacates the office before the expiry of his term, Board of Directors (BOD) of public company in its meeting can fill in the vacancy. This is applicable in the

absence of articles

The person appointed in casual vacancy shall hold office till the time the person in whose place he has been appointed could have held the office.

Note: Director appointed in general meeting & vacancy repeatedly occurs. Board can fill in u/s 161 when vacancy occurs. Board is advised instead of filing casual vacancy, it can appoint as additional director if articles authorize the Board.

(3) Appointment of Alternate Director: This is another contingency that the Board of Directors if authorized can appoint alternate director.

(Section 161) provides

In case Board of Directors (BOD) is authorised —

- (i) By articles or
- (ii) By resolution in general meeting (GM)

Board can appoint an alternate director to act for a director (original) during his absence from India for a period not less than 3 months.

Prohibitions:

1. Board cannot appoint alternate director a person who is already Alternate Director for another director in the same company	2. No person shall be appointed as an alternate director for independent director unless he is himself qualified to be appointed as an Independent Director
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Term of Alternate Director

<p>Term of Alternate Director: Term of alternate director shall not be longer than the term available to director (original director) in whose place he has been appointed.</p>	<p>Original director returns As and when original director returns to India alternate director shall vacate the office.</p>	<p>Term of original director expires Suppose the term of original director expires before he returns to India the provision of automatic reappointment shall apply to the original director and not to the alternate director.</p>
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(4) Nominee directors (Section 161)

Subject to articles, Board of Directors may appoint any person as a director

- nominated by an institution in pursuance of the provisions of any law or of any agreement or
- nominated by the Central govt. or the State Govt. by virtue of its shareholding in a Government company

Chapter: 8

Number of Directorship (Section 165)

(1) Be director in not more than 20 companies (Section 165)(1)

No person shall be director at the same time in more than 20 companies. This number includes the alternate directorship.

- Number of public companies shall not exceed 10
- Directorship in private company which is holding or subsidiary company of public company shall be included in the public company.

Note:- Provisions of this sub section shall not apply to companies with charitable objects formed u/s 8 vide V No. 1/2/2014 D.L.I dt.5-6-2015

(2) Lesser number of companies (Sec. 165(2) Members by special resolution may specific lesser no. of cos. in which a director may act as directors. Thus members can restrict the number.

Chapter: 9

Right of Person Other Than Retiring Director To Stand For Directorship (Section 160)

(1) Person by following specified procedure eligible to be elected in general meeting. Director who is retiring by rotation need not to follow procedure for his reappointment.

(a) Procedure:—

<p>Person concerned to leave candidature:— Person at least 14 days before the meeting can leave his candidature under his signature at the registered office of Company He shall also deposit 1 lakh of rupees or higher amount as may be prescribed 1 lakh rupees has been substituted for 10,000/- or such higher amount as may be prescribed- F.No. 2/11/2014-CL.V, dated 5-6-2015</p>	<p>Member's notice of proposal:— OR any member at least 14 days before the meeting can leave notice of his intention at registered office of the company to propose the name of a person for directorship. Member shall deposit 1 lakh of rupees or higher amount as may be prescribed 1 lakh rupees has been substituted for 10,000/- or such higher amount as may be prescribed. F.No. 2/11/2014 CLV, dated 5-6-2015</p>
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To refund the amount

- Person gets elected or gets more than 25 per cent of total valid votes cast on show of hands or on poll, amount deposited shall be refunded to the person who deposited the amount.

<p>To serve individual notices at least 7 days before meeting of candidature or the intention of member to propose him</p> <ul style="list-style-type: none"> • Through electronic mode to such members who provided their e-mail addresses for communication purposes • In writing to all other members and Shall place notice of candidature or intention on the website of the company, if any. 	<p>To advertise Individual notices shall not be necessary if the company advertises candidature or intention one in the principal language of the district and one in English language at least 7 days before the meeting language.</p>
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Chapter: 10

To file the Consent (Section 152 (5))

(1) Introduction

Principle underlying the section is that a person who is already a director is only seeking reappointment. He needs not to file his consent as his functioning as a director is an evidence of consent. Person seeking fresh appointment should file the consent to act.

Brief statement of main points

- Person appointed as director has to give the consent.

Rule 8 Companies (Appointment of Director) Rules, 2014

To furnish consent in writing in FORM DIR-1

(2) To give the consent:-

1. Person appointed as a director shall not act as a director unless

He gives his consent to hold office as director and

Consent be filed by company with Registrar in 30 days of appointment in prescribed manner.

Chapter: 11

Disqualifications for Directorship (Section 164)

(1) Disqualifications: (Section 164)

Person not capable for appointment (Sub section 1)

(a) Person of unsound mind	(b) An un-discharged insolvent (un discharged is though insolvent but not freeing from liability)	(c) He applies for being adjudged as insolvent	(d) Convicted for offence of moral turpitude or otherwise & sentenced to not less than 6 months and period of 5 years not passed after expiry of imprisonment. Person is convicted of offence & sentenced to imprisonment for 7 years or more, he is ineligible for appointment (Person is convicted for 7 years, expiry of 5 years from release does not make qualified)
(e) Order disqualifying him for appointment is passed by court or Tribunal and order is in force.	(f) Calls are not paid on shares for 6 months from last date for payment of calls.	(g) He is convicted during preceding 5 years of offence of related party transactions u/s 188	(h) He has not complied with sub section (3) of section 152 i.e. he has not been allotted the Director Identification Number (DIN)

(2) **As per sub section (2)** Person who is director shall not be eligible for reappointment in co. or appointment as director in other company for 5 years if

1. Company in which he is a director fails to file annual return or financial statements for continuous period of

3 financial years

OR

2. Co. in which he is a director fails to pay deposits due or interest thereon due or fails to redeem debentures on due date or pay interest due thereon or fails to pay declared dividend and default continues for one year or more.

Chapter: 12

Vacation of Office of Director (Section 167)

(1) Director shall vacate his office (Sub-Section 1)

(i) He incurs any of the disqualifications specified in section 164	(ii) He absents from all meetings of Board of Directors held during a period of 12 months	(iii) He acts in contravention of section 184. This contravention is in regard to entering into contract or arrangement in which he is directly or indirectly interested.	(iv) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested in contravention of section 184.
(v) He becomes disqualified by order of Court or Tribunal	(vi) He is convicted by court offence of moral turpitude or otherwise & imprisonment for not less than 6 months. Note:- He shall vacate office even if he has filed appeal	(vii) He is removed in pursuance of provisions of Act.	(viii) He is holding office in holding, subsidiary or associate company and by such holding, he becomes director. Ceasing to hold employment is ground of vacation.

Note: Director functions as director when he knows that he has vacated office, shall be punishable for

Imprisonment – may extend to one year or	Fine not less than 1 lakh to extend to 5 lakhs or with both (Imprisonment & fine)
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Chapter: 13

Removal of Director by shareholders (Sec. 169)

(1) Removal of director by shareholders (Sec. 169)

- Co. by ordinary resolution can remove director.
- Following directors can't be removed:—

• Director is appointed by the tribunal to prevent	• Directors are appointed by proportional
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the Oppression and Mismanagement.	representation. Number should not be less than $\frac{2}{3}^{\text{rd}}$ of total directors. (Directors other than appointed under proportional representation can be removed)
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Procedure for removal of a director:

(a) General meeting

Director is removed by members in general meeting. General be called for removal special notice is needed & for removal it should be given.

Extraordinary General Meeting may be called for the purpose. This may be called by Board of Directors on requisition of

Members holding $\frac{1}{10}$ th of the paid up capital (Sec. 100) OR	$\frac{1}{10}^{\text{th}}$ of total voting power when co. not having share capital. (section 100)
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(b) Special Notice

Special notice in terms of sec. 115 be given to company

For removal of a director OR	To appoint director in place of removed director
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Special notice be given

- By members holding minimum 1 per cent of total voting power or
- By members holding shares aggregate minimum 5 lakhs of rupees as prescribed has been paid.

Chapter: 14 Resignation by Director etc. (Section 168)

(1)

<p>Right of director:</p> <p>Director may resign by giving notice in writing to Company</p> <p>Director who resigns shall forward copy of resignation to Registrar in 30 days with detailed reasons for resignation</p> <p>Director who has resigned be liable for offences occurred when he was in office.</p>	<p>Obligations of Board of Directors:</p> <p>On receipt of notice,</p> <ul style="list-style-type: none"> • Board shall take note of it. Board shall intimate Registrar in the Form no. 12 in 30 days (Rule 15 of Cos. (App. of Directors) • Co. shall place resignation in the report of directors to be laid in following general meeting.
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(2) Resignation of the Managing Director (M.D.)

Position is different in case of a managing or whole time director. Formal acceptance of resignation is essential to make it complete and effective. Managing director occupies two positions (i) first of a director & (ii) other of whole time employee.

Chapter : 15

Compensation for Loss of Office (Section 202)

(A) Compensation payable (S/S1)

Compensation for loss payable to Managing Director (MD), Whole Time Director (WTD) and Director who is Manager.

(B) Compensation not payable to any other director for loss of office

(C) Compensation though payable but will not be paid when M.D. etc. resigns for reconstruction or amalgamation & is appointed as M.D. etc., when office vacated u/s 167, winding up to take place on account of negligence, if guilty of fraud, breach of trust, gross negligence etc. or they instigate others to terminate.

As per rule 17 of Cos. (Meetings of Board & its powers) Rules – no compensation be payable

In default of redemption of deb. Or interest or not paid dividend on pref. shares.	In default in redemption of deb. Or interest	In default of repayment of liability payable to any bank etc.	In default of dues for income tax, VAT, excise duty, service tax.	Outstanding statutory dues to employees not paid
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(D) Amount of remuneration not prohibited

M.D. WTD or Manager renders services in other capacity. Payment for these services is not prohibited despite compensation is prohibited.

Chapter: 16

Duties of Directors (Section 166)

(1) Directors to Act

Director to act as per articles of association of the company.	Directors (a) To act in good faith to promote objects (b) To act for benefits of members. (c) To act in the interest of company, employees, shareholders, community. (d) To take efforts for protection of environment
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(2) A director of a company

- To exercise duties with due & reasonable care, skill & diligence
- To exercise independent judgement.

Not to assign.

Director shall not assign his office & assignment, if made, shall be void. **Oriental Metal Pressing V. B.K.Thakur.** A held office as M.D. for life in pvt. Co. Articles gave the power to appoint his successor. A appointed

"G" by will to succeed after his death. This is appointment. Appointment is made when there is vacancy. This is not assignment. Assignment occurs when office is held. Appointment made is valid.

Chapter: 17

Appointment and Remuneration of Managerial Personnel (Sections 196, 197, 198, 199, 200, 203)

Meaning of Managing Director, Manager and Whole Time Director

Managing Director	Manager	Whole Time Director
A director entrusted by resolution in general meeting or by its Board of Directors with substantial powers of management	An Individual having management of whole or substantially whole of co. Director too can be manager.	A director in whole time employment of company

(1) Appointment, Disqualifications, Terms of Appointment (Section 196)

Section 196 provides no company shall appoint or employ at the same time

- (a) Managing director (MD) and
- (b) Manager.

No company shall appoint or re-appoint

Managing director, whole time director or manager exceeding 5 years at a time	Can be re-appointed. Re-appointment not be made earlier than 1 year before expiry of term.
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(2) Remuneration of Managing Director, Whole Time Director or Manager:

- Remuneration to managing director or whole time director or manager not to exceed 5 per cent of net profits of company.
 - More than one in number, remuneration not to exceed 10 % of net profits to all.
- Remuneration to directors –(not managing director nor whole time directors) not to exceed
- (a) 1 per cent of net profits when there is managing or whole time director or manager.
 - (b) 3 per cent of net profits in other case.

Company in general meeting may increase remuneration.

(3) Determination of remuneration:

Remuneration payable to directors, managing or whole time director or manager be determined

- By Articles of company or
- By resolution or
- If articles require then remuneration be determined by special resolution.
- **Remuneration determined shall be inclusive for services rendered in any other capacity** (except services of professional nature)
- **Payment of Guarantee Commission** to director is paid for risk undertaken for giving surety against loans taken by co. It is not for services rendered. It is not a part of managerial remuneration.

(4) Remuneration for Professional services:

- Remuneration for professional services can be separately determined and paid
- If Nomination and Remuneration Committee is of opinion that director possesses necessary qualification for profession. Where Nomination and Remuneration committee is not constituted, Board if of opinion that director possesses necessary qualifications.

About the fee:

Director may receive remuneration by way of fee for attending meetings of the Board of Directors or attending meetings of committee or for any other purpose as decided by Board.

(5) Recovery of Remuneration: (Section 199)

<p>Fraud is detected or non-compliance</p> <p>Company is to restate its financial statements when fraud is detected or non compliance with any requirements under act or under rules.</p>	<p>Company shall recover from past or present</p> <ul style="list-style-type: none"> • Managing director or • Whole time director or • Manager or • Chief executive officer <p>Who received remuneration in excess of what would have been payable as per restatement of financial statements</p>
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(6) Appointment of Key Managerial Personnel

Key Managerial Personnel: means

- (i) Chief Executive Officer or managing director or manager,
- (ii) whole time director
- (iii) company secretary
- (i) chief Financial Officer and
- (ii) Such other officer as may be prescribed.

Section 203 provides As per Rule 8 Companies (Appointment & Remuneration) Rules, 2014, following companies shall have Key Managerial Personnel

Listed company to have whole time key managerial personnel.	Other public company having paid up capital of 10 crore or more shall have whole time key managerial personnel.
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(7) Appointment of whole time key managerial personnel:

- (i) Whole time key managerial personnel be appointed by resolution of Board. Resolution shall contain terms & conditions of appointment including the remuneration
- (ii) Whole time key managerial personnel **shall not hold office in more than one company** except in its subsidiary company.
- (iii) Key managerial personnel **can be a director of any company** with the permission of Board

(8) Conditions be fulfilled for appointment of a manager or whole time director or manager without the approval of central govt.

Schedule V

Appointments

No person is appointed as MD, Manager or WTD unless he satisfies following

conditions:

1. He has not been sentenced to imprisonment for any period or to a fine which exceeds 1000 for the conviction of offence under –
 - A person is not detained for any period under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.
 - A person has completed 21 years of age. A person has not attained 70 years of age.
 - He is a managerial person in more than one company
 - He is resident of India.
2. Person is not detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
3. Person completed 21 years of age but not detained 70 years of age.

Section I Remuneration payable by cos. with profits. Remuneration payable should not exceed the limits specified in such section.

Section II Remuneration payable by company with inadequate profits

- (i) In a financial year, co.'s profits are inadequate. Company to pay without approval of Central Govt. Remuneration to a managerial person not exceeding the higher of limits under (A) and (B) given below

Effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
----- (i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores & above but not less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs.
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores.

Approval by shareholders

Appointment and remuneration under Part I and Part II shall be subject to approval by a resolution of shareholders.

Chapter : 18

Related Party Transactions (Section 188)

(1) Consent of the board of directors: (Sub section 1)

(A) With consent of Board of Directors, Company may enter into following contracts with related party

Sale, purchase or supply of goods or materials	Selling or disposing or buying property of any kind	Leasing of property. (c)
--	---	--------------------------

(a)	(b)	
Availing or rendering of services. (d)	Appointment an agent for purchase or sale of goods, services or property (e)	Underwriting subscription of securities or derivatives of company (f)

(2) Who is a related party in relation to company? (Section 2 (76))

- Director or his relative.
- Key managerial personnel or his relative.
- Firm in which director, manager or his relative is partner.
- Private company in which a director or manager is a member or director.
- Public company in which a director or manager is director and holds along with his relatives more than 2 per cent of its paid up capital

(3) Prior resolution

No such contract shall be entered without prior ordinary resolution by shareholders – (Rule 15 of Companies (Meetings of Board & Powers) rules, 2014) -

- For sale, purchase or supply of goods directly or through agents exceeding 10 % of turnover or rupees 100 crores whichever is lower as in clause (a)
- Selling, disposing or buying property directly or through agents exceeding 10% of net worth or rupees 100 crore of rupees whichever is lower as in clause (b)
- Leasing of property exceeding 10 % of net worth or exceeding 10% of turnover or rupees 100 crores whichever is lower as in clause (c)
- Availing or rendering services directly of through agents exceeding 10% of turnover or rupees 50 crores whichever is lower as in clause (d) Services are commercial services such as banking, insurance, transport etc.

Explanation: Limits specified above shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- Remuneration for underwriting the subscription of any securities or derivatives exceeding 1 per cent of net worth as specified in clause (f)

Turnover or Net Worth shall be computed on the basis of Audited Financial Statement of preceding financial year.

(4) Board's consent should be obtained— (S/S1)

- In a meeting of board. It be prior
- Where members' resolution is needed, it be prior
- Board's consent is not obtained before. It can be ratified within three (3) months. (post facto approval can be obtained)

Chapter: 19

Disclosure of Interest by Director (Section 184)

A. Ist Disclosure: (Sub section1) Director to make disclosure that he has interest in co. or body corporate or firm or other association. Disclosure be made periodically.

(1) Kind of disclosure:-

Director shall disclose his interest in companies or bodies corporate, firm, or other association of individuals & this includes his shareholding

(2) When the disclosure be made:

In the board’s first meeting in which he participates and thereafter in first meeting of Board in every financial year. Change in the disclosures already made, this change be disclosed in first meeting after change.

B. Ind Disclosure

(1) Kind of disclosure (This disclosure shall be while entering into contract or making proposed contract)

Director who is interested in a contract or proposed contract entered into or to be entered into

- (a) With a body corporate in which such director or director in association with other director holds more than 2 per cent shareholding of that body corporate or is a promoter, manager, Chief Executive Officer of that body corporate or
- (b) With a firm or other entity in which such director is a partner, owner or member as the case may be

(2)Time of disclosure:

- (a) The director shall disclose nature of his interest at meeting of board where contract is discussed. He shall not participate in such meeting.
- (b) Director not interested when contract is made, he shall make disclosure in first meeting after the he became interested

Note:- In a private company, interested director after disclosure of interest may participate in the meeting (F.No. 1/1/2014- CL.V dt. 5-6-2015).

Provisions shall apply to company of charitable object u/s 8 only when transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees. (F.No. 1/2/2014-CL.I, dt. 5-6-2015.).

Chapter : 20

Loans to Directors etc. (Section 185)

Company directly or indirectly shall not advance loan

To its director or person in whom director is interested	Nor to give guarantee or security for loan taken by director or person in whom director is interested.
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(1) Prohibitions for loan, or guarantee or security for following people

- (i) Director of lending or its holding company or relative or partner of director of lending company or director of its holding company.
- (ii) Firm in which director of lending or director of holding company or their relative is a partner.
- (iii) Private Company in which director of lending co. or director of holding co. is director or member.
- (iv) Body corporate where 25% of voting power in general meeting is exercised or controlled by one or more directors of lending and directors of holding company.
- (v) Body corporate where Board of Directors (BOD) or MD or Manager is accustomed to act according to directions of directors of lending company.

(2) Section does not apply: (Loan, guarantee, security permissible)

<p>(a) Giving of any loan to a managing or whole time director – (i) as part of conditions of service applicable to company's employees. or (ii) In pursuance of scheme approved by members by a special resolution</p>	<p>(a) Company in ordinary course of its business provides loans, or gives guarantee or securities for due repayment of any loan and interest is charged at a rate not less than the bank rate declared by the RBI</p>
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(3) Applicability or non –applicability to a book debt. (Book debt may be created by the advance of money or may be created by credit sale)

<ul style="list-style-type: none"> Section will apply i.e. prohibition to apply if book debt is created by advance of loan 	<ul style="list-style-type: none"> Section will not apply i.e. permissible if the book debt is created not by advance of loan but by credit sale of Rs. 10,000/- This is permissible. Co. can do it. Case: F.A.Mehta V. Union of India. – A co. sold one of its flats to Managing Director & received 50 % of price in cash & agreed to receive balance in installments. It is credit sale. It is book debt created by credit sale. This is permissible.
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Chapter : 21

Powers of Board of Directors

(Sections 179, 180 and 181 of Companies Act, 2013)

(1) General Powers Section 179 (1)

Board to exercise all powers c. can exercise subject to following 2 limitations.

<p>Board not to exercise power reserved for general meeting (G.M)</p>	<p>& Board to exercise subject to articles, memorandum, this act or subject to regulation including the one of General Meeting (GM) but regulation of general meeting shall not invalidate prior act of board.</p>
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(2) Powers by Board in its Meeting (Section 179) (3)

Powers exercisable in board meeting –

- (i) To make calls
- (ii) To authorise buy back of shares specified in Section 68. Buy back up to 10 per cent of paid up equity capital & free reserve can be sanctioned by Board's resolution in its meeting.
- (iii) To issue securities in India or outside India.
- (iv) To borrow money
- (v) To invest funds of company
- (vi) To grant loans or give guarantee or provide security in respect of loans.
- (vii) To approve financial statement and Board's report

- (viii) To approve amalgamation, merger or reconstruction
- (ix) To take over a company or to acquire controlling or substantial stake in another company
- (x) To diversify the business of the company

However, power to borrow money, Power to invest, power to grant loan	Be exercisable by circulation instead of meeting For company u/s 8 of charitable objects.
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In addition, following powers (as per rule 8 Companies (Meeting of Board & its powers) Rules, 2014. Be exercised by Board of Directors in its meeting

- (i) To appoint or remove key managerial personnel (KMP)
- (ii) To appoint internal auditors and secretarial auditor.
- (iii) To approve quarterly, half yearly and annual financial statements or financial results as the case may be
- (iv) To take note of appointment or removal of one level below the key Managerial Personnel
- (v) To invite or to accept or to renew public deposits.
- (vi) To review terms & conditions of public deposit.
- (viii) To buy or sell investments which may constitute 5 % or more of paid up capital and free reserve
- (ix) To make political contribution.

(3) Restrictions on Powers of the Board (Section 180)

Introduction Provisions of this section shall not apply to private company

Board of Directors to exercise following powers with consent of special resolution (Sec 180)

Power to sell lease To sell, lease or to dispose of whole or substantially whole of undertaking.	Power to invest To invest (other than trust securities) amount of compensation received of merger or amalgamation.	To borrow money Money to be borrowed with money already borrowed exceed its paid up capital & free reserve. Borrowing does not include temporary loans obtained from bankers. Illustration: Paid up capital 100 crores & free reserve 100 crores Co. already borrowed 75 crores and now borrows 150 crores exceeding the limit. consent of general meeting is needed.	Remission To remit i.e. to cancel a debt or give time for the repayment of debt due from a director
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(4) Co. to contribute to bona fide & charitable funds etc. (Sec. 181)

Board of Directors may contribute to bona fide charitable & other funds.	Prior permission of general meeting be required for contribution if aggregate amount in financial year exceeds 5 per cent of its average net profits for 3 immediately preceding financial years.
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Chapter: 22

Contribution to Political Party (Section 182)

(1) Who can or who cannot contribute?

<ul style="list-style-type: none"> • Who cannot contribute? • Government Company & company in existence less than 3 financial years not to contribute (a) To political party (b) To person for political purpose. 	<ul style="list-style-type: none"> • Who can contribute? • Other company can contribute
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(2) Limits of Contribution ---

Contribution in financial year not to exceed 7.5 percent of average profits of preceding 3 financial years.

Contribution to person with knowledge that he is carrying likely to affect public support for political party be deemed to be contribution to a person for political purpose.

(3) Procedural Safeguards

Resolution be passed Resolution be passed in board meeting.	Disclosure be made <ul style="list-style-type: none"> Amount contributed be disclosed in P&L Account of the year
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(4) Penaltie

Company making contribution in contravention punishable with fine which may extend to 5 times of amount contributed in contravention.	Liability of Officers Officer who is in default punishable with imprisonment which may extend to 6 months & with fine which may extend to 5 times amount contributed in contravention.
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Contribution to National Defence Fund etc. (Sec 183 of new act)

Notwithstanding of Sections 180,181,182 or any other provision or, AOA or MOA or any instrument. Board or any person or authority having the power of Board or gen meeting may contribute to National Defense fund or any other fund approved by Central Government for national defense.

However, disclosure should be made in P&L A/C for the year to which it relates.

Chapter: 23

Loan and Investment by Company (Section 186)

As per sub section 1, Co. shall not make investment through more than 2 layers of investment companies. Thus section restrains investments with more than 2 layers of downstream investment companies. It does not prohibit investment made through any number of layer of companies if they are not more than 2 investment companies in the corporate layer. Example – A co. is holding. B co. is its subsidiary, C is subsidiary of B. B and C companies are two layers of A Co. It can make investment together with B and C Companies. Provision is intended to avoid round about investment.

Limits of loan, investment, guarantee and security (S/S.2)

Board of Directors (BOD) of a co. with consent of all directors present in meeting may (a)make loan to any body corporate and (b)may give guarantee or provide security for loan to body corporate and (c) to purchase or subscribe securities in any body corporate.	When limit exceeded. Loan, investment, guarantee or security already made by company to body corporate & further loan, investment, guarantee, or security proposed to be given & they exceed (a) 60% of paid-up capital, free reserve & securities premium or (b) 100% of free-reserve and securities premium Whichever is greater can be made but two conditions be fulfilled
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|--|--|
| | (i) Board's resolution (with consent of all directors present) be obtained and
(ii) Prior approval by special resolution. |
|--|--|

(2) Mandatory conditions.

For loan etc. to body corporate prior approval of Public Financial Institution also be obtained if term loan exists i.e. company has borrowed from public financial institution by way of term loan

Prior approval of public financial institutions not required even if term loan exists

When following conditions are complied.

- (a) Investment made loan given, guarantee or security provided does not exceed 60% of paid up capital, free reserve, and securities premium or does not exceed 100 per cent of free reserve and securities premium whichever higher &
- (b) Company not made any default in payment of loan installment or interest on loan.
- Prior approval of public financial institution is called for even if the company not defaulted but loan or investment exceeds specified amount.
- Similarly, prior approval is called for even if loan etc. does not exceed specified amount but there is a default.

(3) Non applicability of section:

<p>Loan made, guarantee given or security or acquisition of securities provided by</p> <p>(i) Banking company (ii) insurance company (iii) housing finance company (iv) a company engaged in business of financing of companies (v) company providing infrastructural facilities.</p> <p>(ii) Acquisition of securities made by banking company or insurance company or housing finance company</p>	<p>Acquisition made</p> <p>(i) By non-banking financial company & whose principal business is acquisition of securities</p> <p>(ii) By a company whose principal business is acquisition of securities.</p> <p>(iii) And shares allotted as per section 62 i.e. investment in right shares</p>
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Meaning of Body Corporate ? Body corporate is a company incorporated outside or company8 incorporate under this act. But it does not include Co-operative Society or Body Corporate notified by Central Govt.

Chapter: 24 Constitution of Committees

(A) Audit Committee (Section 177)

(1) Constitution of Audit Committee:

As per rule 6 of Companies (Meetings of Board and its powers) Rules

- Every listed company
- Public companies whose paid up capital of 10 crore rupees or more
- Public companies whose turnover of 100 crore rupees or more
- Public companies whose outstanding loans or borrowings or debentures or deposits exceed 50 crores or more

Shall have an Audit Committee

- Above companies too will have Nomination & Remuneration Committee (can be seen later on)

(2) Composition of Audit Committee:

To have minimum 3 directors. Independent directors in majority	Majority members including its chairperson be persons with ability to read & understand financial statement.
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(3) Functions of Audit committee:

Audit Committee shall act as per terms of reference specified by Board of Directors of co.

- (i) Audit Committee shall recommend remuneration of auditors
- (ii) Committee shall review and to monitor auditor’s performance and his independence
- (iii) Committee to examine financial statement and auditor’s report
- (iv) Committee to monitor use of funds raised by public offers
- (v) Committee to evaluate financial controls & risk management systems.
- (vi) Scrutiny of inter -corporate loans and investments

(B) Vigil Mechanism (Section 177)

- Listed company or
- Cos. Accepting deposits from public
- Cos. which have borrowed from banks & financial institutions in excess in of 50 crores.

Shall establish Vigil Mechanism. Directors & employees to report their genuine concerns. Establishment of such mechanism be disclosed (a) on website & (b) in Board’s report

On its website, if any and
In the Board’s report.

(C) Nomination and remuneration Committee (Section 178)

Provisions are not applicable to cos. whose objects are charitable u/s 8.

(I) Constitution of Nomination and Remuneration Committee. Constituted by

- (i) Listed company
- (ii) Companies – Where Audit Committee is constituted.

Composition of the Committee:-

Committee to consist 3 or more non-executive directors. Independent directors to form majority	Besides these members, Chairman be appointed as member of committee. Illustration: There are 5 non-executive directors as members. Out 5 three shall be 3 independent directors. Besides Chairperson of the company shall also join as member
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Functions of the Committee: Committee to formulate necessary criteria for determining qualifications, positive attributes and independence of directors. Committee shall also recommend to Board policy relating to remuneration packages for directors, key managerial personnel.

(D) Stakeholders Relationship Committee

(I) Constitution of Committee:-

Board of Directors to constitute committee when there are more than 1000 shareholders, or debenture holders, or deposit holders or any other security holders or cumulatively

(2) Composition of the committee:

1. Chairperson be non-executive director &
2. Other members decided by Board.

(3) Functions of the Stakeholders Relationship Committee:-

Committee to consider & to resolve grievances of security holders.

Chapter: 25

Director Identification Number (DIN)

(Sections 153,154,155,156,157,158,159)

(1) Application for allotment of Director Identification Number: (Section 153)

- Individual to be appointed as director to make application for allotment of DIN

Allotment of DIN: (Section 154)

- Central Government shall allot DIN in 1 month

Director to intimate DIN (Section 156)

Existing director to intimate his DIN in 1 month of receipt of DIN	Intimation to company or all companies where he is working
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Company to inform DIN to Registrar. (Section 157)

<p>Company to intimate to Registrar.</p> <p>Company in 15 days of receipt of intimation shall furnish DIN to Registrar or other authority as specified.</p>	<p>Penalty:</p> <ul style="list-style-type: none"> • Company failing to furnish DIN before expiry of period u/s 403 be liable with additional fee. Company be punishable with fine not less than 25000/- extend to 1 lakh of rupees. • Officer of company who is in default be punishable with fine not less than 25,000/- may extend to Rs. 1 lakh
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Cancellation or Surrender DIN (Rules 11): Govt. or Regional Director may cancel

Din is duplicated	DIN obtained in wrongful manner	On death of concerned individual	Concerned person is declared unsound mind	Concerned individual is insolvent.
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Change in particulars given in form DIR-3

Govt. on satisfaction after verification of changed particulars shall incorporate	DIN cell to intimate changes to Registrar.	Concerned individual to intimate changes to company in 15 days
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Chapter: 26

Restriction on Non-Cash Transactions Involving Directors (Section 192)

Under this chapter there are 4 points of Restriction:

1. **Section 192**
2. **Section 193**
3. **Section 194**
4. **Section 195**

1. (Section 192) Restriction on Non Cash Transactions.

<p>No acquisition:</p> <p>Director of company or its holding, its subsidiary or associate company or person connected with him not to acquire assets for consideration other than cash from company</p> <ul style="list-style-type: none"> • No company to acquire assets for consideration other than cash from director 	<p>Acquisition by resolution</p> <p>Prior approval for acquisition obtained in general meeting. Director is director of holding company, approval be obtained in general meeting of holding company.</p>
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2. Contract by one Person Company (Section 193)

<p>Contract with sole member</p> <p>One person enters into contract with sole member who is director.</p>	<p>To record in memorandum or in minutes</p> <p>Contract be in writing otherwise terms of contract</p> <p>(i) contained in memorandum or</p> <p>(ii) recorded in minutes of first meeting of Board of Directors</p>	<p>Exceptions:</p> <p>Will not apply to contracts made by company in ordinary course of its business.</p>
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3. Prohibition on forward dealings in securities of company by director or Key Managerial Personnel (Sec. 194)

No director or key managerial personnel to buy in company, or its holding, subsidiary or associate company—

- Right to call for delivery or right to make delivery at specified price and in specified time, of specified number of relevant shares or a specified amount of relevant debentures; or
- A right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

4. Prohibition on insider trading of securities (Section 195)

<p>Buying or dealing in securities by one who has access to non-public price sensitive information.</p> <ul style="list-style-type: none"> Insider Trading is subscribing, or dealing or agreeing to subscribe or dealing in securities By director or key managerial personnel or officer To have access to non-public price sensitive information of securities 	<p>Counseling or communicating non-public sensitive price sensitive information</p> <p>Insider Trading includes counselling for procuring or communicating non-public price-sensitive information to any person;</p>
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No Insider Trading

No person including director or key managerial personnel shall enter into insider trading.	Will not apply to communication required in ordinary course of business
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Price Sensitive Information: Such information if published likely to affect price of securities – May be periodical financial results, intended declaration of dividend, merger, amalgamation, expansion plans, execution of new projects, issue of intended bonus shares or buy back of securities, changes in projects, plans.

Contravention

Imprisonment to extend to 5 years	Fine not less than 5 lakh & to extend to 25 crores or 3 times of profits whichever higher.
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Chapter: 27

Secretariat Audit for Bigger Companies & Functions of Company Secretary

(1) Secretarial Audit Report be annexed (Sec. 204)

<ul style="list-style-type: none"> Listed company & Public Company with paid up capital of 50 crores or more Public company with turnover of 250 crores or more 	To annex with Board's report a secretarial audit report Secretarial Audit Report Shall be given by a company secretary in practice in Form No. MR 3
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Board of Director to explain in their report qualifications made by co. secretary in practice

(2) Functions of Company secretary include

<p>(a) To report</p> <p>To report to Board of compliance of provisions & rules made & other rules applicable to company</p>	<p>(b) Compliance of Secretarial standards.</p> <p>To ensure company complies applicable secretarial standards.</p> <p>Note:- Secretarial standards are standards issued by Institute of Company Secretaries of India and approved by Central Govt.</p>	<p>(c) Other duties.</p> <p>To discharge other duties as prescribed.</p> <p>Note:- Sections 204 and 205 shall not affect the duties and functions of Board of Directors, chairperson of company, or the managing director or whole time</p>
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		director under this Act or under any other law.
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Duties of Company Secretary as per Rule 10 of Cos. (Appointment & Remuneration) Rules.

To discharge other duties.

To provide guidance to directors	To facilitate convening of meetings	To obtain approvals from Board, general meeting, the Govt.	To assist Board in affairs of co.	To ensure good corporate governance.	To represent before regulators & other authorizes
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Note:

Besides the compliance of above provisions, company has to maintain records of the following:

- (a) Maintenance of Registers of Directors, Key Managerial Personnel (Section 170)
- (b) Maintenance of Register of Contracts in which directors are interested. (Section 189)
- (c) Contract of Employment with Managing or Whole time Director (Section 190)

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