

All about 'DIRECTORS'

*ICAI Nagpur
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Board Composition

TYPE OF DIRECTOR	Pvt. Ltd.	Public Ltd. (Unlisted)	Listed
WOMAN	Not Applicable	a) Paid up share capital Rs. 100 Crores or more, or b) Turnover of Rs. 300 Crores or more	Applicable
INDEPENDENT	Not Applicable	1/3 rd of the board to be Independent if the Company has <ul style="list-style-type: none"> ● paid up capital 100 Crores or more, or ● turnover 300 cores or more, or ● outstanding loans or debenture or borrowings exceeding 200 Crores or more 	Applicable 1/3 rd of the board to be Independent if the Company
SMALL SHAREHOLDERS DIRECTOR	Not Applicable	Not Applicable	Mandatory? <i>Suo motu</i> option Request of 1/10 th the number of small shareholders or 1000 small shareholders (whichever is lower)

Director Identification Number

- ❖ Application for Allotment of DIN Under Section 153.
- ❖ Prohibition to obtain DIN Under Section 155
 - ✓ no more than one DIN
 - Punishable with fine of Rs.50000 or imprisonment of 6 months or BOTH

Disqualification

❖ Disqualifications U/s164:

- (1) A person shall not be eligible for appointment as a Director of the Company, if he is
 - a) of unsound mind
 - b) an undischarged insolvent
 - c) adjudicated as an insolvent and application is pending
 - d) convicted by a Court for any offence
 - e) any order passed by Court or Tribunal
 - f) not paid any calls on any shares held by him
 - g) dealing with related parties transaction
 - h) not complied with sub section (3) of Section 152

Disqualification (contd...)

- (2) No person who is or has been a director of a Company which-
 - a) not filed financial statements or annual returns for any continuous period of 3 yrs
 - b) failed to repay the deposits, debenture or any interest there on, any declared dividend and the default continues for 1 yr
 - re appointment not possible for 5 yrs
- (3) A private company may by its Articles provide for any other disqualification.

Appointment

- ❖ Appointment of First Director U/s152
 - ✓ Subscribers to the Memorandum of Association
 - ✓ In case of a One Person Company – Individual being a Director

- ❖ Appointment of Additional Director U/s 161 (1)
 - ✓ between two AGMs; and
 - ✓ holds office upto the date of next AGM

- ❖ Appointment of Alternate Director U/s161 (2)
 - ✓ in the absence of Original Director\
 - ✓ for not less than 3 months
 - ✓ this provision not applicable for an Independent Director unless the person to be appointed qualifies to be appointed as Independent Director

- ❖ Appointment of Nominee Director U/s161 (3)
 - ✓ by financial institution
 - ✓ by State / Central Govt. by virtue of its shareholding in Govt. Company

Removal (u/s 169)

Not applicable to a Director appointed by Tribunal

- ❖ Special Notice
- ❖ Representation by a director
- ❖ Appointment of any person as a Director in his place
 - ✓ special notice for the appointment

Vacation (u/s 167)

- a) disqualification under section 164
- b) absents from all the meetings of Board of Directors
- c) contravention of provision of section 184
- d) fail to disclose his interest under section 184
- e) an order of a Court or tribunal
- f) convicted of any offence
- g) removed in pursuance of the provision of this Act

Independent Director

- ❖ Section 149 (6) of the Companies Act, 2013 provides that:
 - a) in the opinion of the Board, is a person of **integrity**, with relevant **experience and expertise**
 - b) (i) is or was **not a promoter or director** of the company or any holding, subsidiary or associate company;
(ii) is **not related to a promoter or director** of the company, or any holding, subsidiary or associate company;
 - c) does not have and has **not had any pecuniary relationship** with the company and its promoters or directors, including any holding company, subsidiary or associate company (no materiality threshold, unlike Listing Agreement);

Independent Director

- d) whose **relatives do not have any pecuniary relationship** or transaction with the company or its holding, subsidiary or associate company, or their promoters or directors amounting to 2% or more of the gross turnover of the relevant entity, or INR 50 lakhs (subject to change), whichever is lower, during the current financial year or the two preceding financial years;
- e) who neither **himself nor any of his relatives**:
 - (i) holds or **has held the position of Key Managerial Personnel** or has **been an employee** of the company, or its holding subsidiary or associate company in the **preceding 3 financial years**;
 - (ii) is or has been an employee or proprietor or a partner, in any of the 3 financial years preceding financial year in which he is proposed to be appointed, of –
 - a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; OR
 - any legal or consulting firm that has or had any transaction with the company, its holding/subsidiary/associate amounting to 10% or more of the gross turnover;
 - (iii) holds together with his relatives 2% or more of the total voting power of the company;
 - (iv) is a CEO or Director of any NGO that receives 25% or more of its receipts from the Company, its promoters or holding/subsidiary/associate or holds 2% or more of the total voting power of the company.

Number of IDs on Board

- ❖ According to Section 149 (4) every listed company shall have:
 - at least 1/3rd of the total number of Directors as Independent Directors; and
 - the Central Government may prescribe minimum number of Independent Directors for other class or classes of Public Companies

- ❖ In terms of Rule 4 of the Companies (Appointment & Qualification of Directors) Rules, 2014, the following class or classes of companies should have at least two directors as independent directors-
 - Public Companies having paid up share capital of Rs.10 crore **or** more; **or** having turnover of Rs.100 crore or more; **or** which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs.50 crore.

Number of Directorships

❖ U/s 165:

- maximum directorships in aggregate is 20 Companies (including alternate directorships)
- maximum directorship in public companies is 10.

✓ Restriction under Clause 49 of the Listing Agreement which provides

- maximum 7 listed companies
- a person serving as a Whole Time Director in any listed company shall serve as an Independent Director in maximum 3 listed companies.

Independent Director - Selection

- Independent Directors may be drawn from a data-bank of persons 'eligible and willing', maintained by any body, institute or association as may be prescribed by the Central Government.
- Appointment has to be approved by members in general meeting and the explanatory statement to the notice should indicate justification of such appointment.
- No retirement by rotation
- Independent Directors are eligible for sitting fees, commission from profits and reimbursement of expenses
- Independent Directors are not entitled to any stock options. This is contrary to the Listing Agreement, where the maximum limit can be fixed by shareholders resolution

Independent Directors - Tenure

- ❖ Term Restriction under Section 149 of the Companies Act, 2013
 - 2 consecutive terms of 5 years each,
 - 3 years cool-off before become eligible again.

Responsibilities of Directors

- ❖ Disclosure of Information
- ❖ The Board shall lay down the code of conduct for all the Board Members
- ❖ All Board Members shall affirm compliance with the code on an annual basis
- ❖ The Board should provide the strategic guidance for the Company.
- ❖ The Board should set a corporate cultures and the values.
- ❖ The Board should apply the highly ethical standards.
- ❖ The Board shall review compliance report
- ❖ Monitoring and reviewing Board Evaluation Framework.

Responsibilities of IDs

❖ Audit Committee (2/3rd Members)

- ✓ All Listed Companies
- ✓ All Public Companies having
 - Paid Up Capital Rs.10 Crores or more; OR
 - Turnover of Rs.100 Crores or more; OR
 - Outstanding Loans / Borrowings / Debentures / Deposits of Rs.50 Crores or more.

❖ Remuneration Committee (50% Members)

- ✓ All Listed Companies
- ✓ All Public Companies having
 - Paid Up Capital Rs.10 Crores or more; OR
 - Turnover of Rs.100 Crores or more; OR
 - Outstanding Loans / Borrowings / Debentures / Deposits of Rs.50 Crores or more.

❖ CSR Committee (3 or more Directors, at least 1 ID)

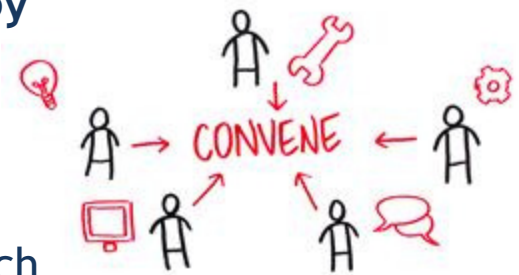
- ✓ Net worth Rs.500 Crores or more; OR
- ✓ Turnover Rs.1000 Crores or more; OR
- ✓ Net Profit Rs.5 Crores or more.

*Board Meetings
(as per SS 1)*

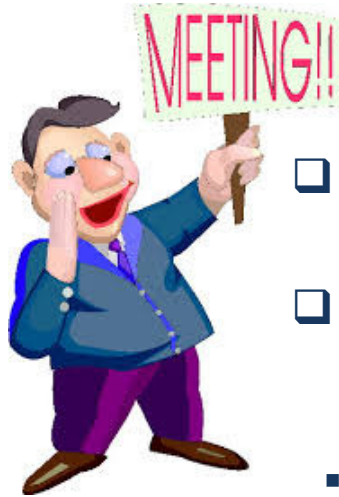
CONVENING

Chairman may Adjourn a meeting for any reason and at any stage unless dissented by majority of Directors even if Quorum is present ...

- ❑ **Which:** Every Meeting shall be serially Numbered just like an AGM and every item too.
- ❑ **Where:** Specific mention of venue (RO or otherwise) in the notice specially if participation in Electronic Mode is provided.
- ❑ **Items to be Discussed :**
 - Certain Items restricted (under participation in Electronic mode) *unless expressly permitted by chairman*
 - Item not included in Agenda to be discussed with *permission of chairman and majority of Directors including ID*
- ❑ **Notice: issued by CS/ Director/ Person authorised by Board**
 - to be sent *at postal/ e-mail address registered with company/ appearing in DIN registration*
 - Dated, serially numbered, contain time and full address
 - If electronic participation allowed, information of such facility and advance confirmation of participation



Notice to contain Contact No/ e-mail ID of Chairman/ CS/ Person Authorised by Board



- ❑ Notice , Agenda and notes to be given to original Director even if sent to alternate Director
- ❑ Notice, Agenda, Notes to Agenda to be given 7 Days / As per AoA prior to the meeting; whichever is longer - if at shorter notice, mention as such in the notice
 - For urgent business at least 1 ID must be present at the meeting, if not, decisions thereat shall be final only upon ratification by ID.
 - If there is no ID – decision shall be final only on ratification by majority of Directors (of the Company), unless previously approved by majority of Directors at the meeting itself.

❑ **Maintaining Proofs of Dispatch and Delivery of Notice, Agenda and Notes to Agenda**

UNPUBLISHED PRICE SENSITIVE INFORMATION:

Notes may be given at shorter period with consent of Majority of Directors including ID, if any, and recorded in Minutes

↓
General consent in First BM of the FY /
change in Directors

❑ **Frequency:**

IDs, if any, to meet at least Once in a year at meeting; to be convened by CS, if so desired

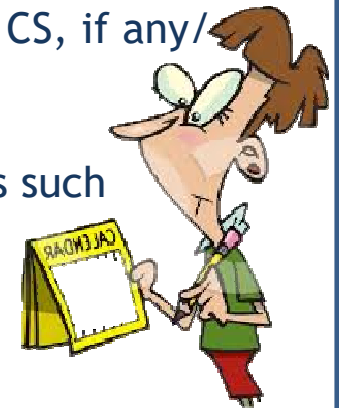
❑ QUORUM:

- Director participating in electronic mode to be a part of the quorum, unless interested or participating in respect of restricted items.
- For COMMITTEE Meeting: All members necessary
- Regulations under other laws for Quorum, if any, shall be followed


❑ ATTENDANCE: REGISTER

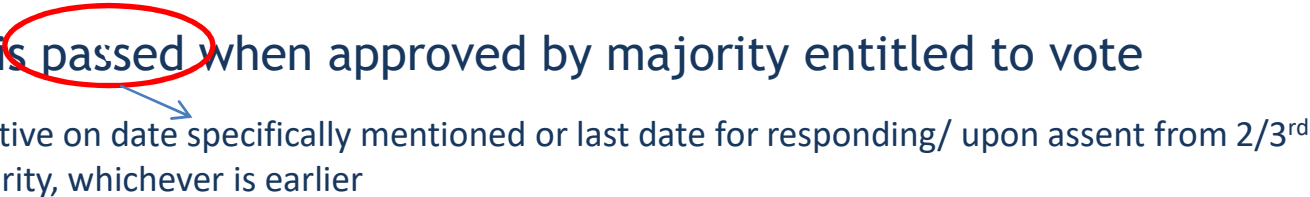
- Separate for Board and Committees
- Signed by Every Director, CS and Invitees present (confirmation of attendance in case of electronic participation by giving full name and location and recording by chairman/ CS)
- Can be inspected by Director, CS in Practice/Secretarial Auditor but not Member
- Entries Authenticated by CS, if any/Chairman and kept in custody of CS, if any/ Director authorised by Board
- Preserve for 8 FY
- Leave of absence shall be granted to a Director only when request as such has been received by the CS / Chairman

The Annual Report and Return shall disclose no. and dates of Board and Committee Meetings *indicating number of meetings attended by EACH Director!*



CIRCULAR RESOLUTIONS

- Chairman/ MD/ WTD/ Director not Interested shall pre-decide if approval by means of circular resolution needs to be obtained
- Resolution to be put at Meeting where at least **1/3 of total** directors for the time being require so.


Including Interested Directors
- Draft Resolution and Notes to be sent to all directors on the same day and proof of Dispatch and delivery to be maintained
- Not more than 7 days from date of circulation to be given to respond
- Resolution is **passed** when approved by majority entitled to vote


Effective on date specifically mentioned or last date for responding/ upon assent from 2/3rd majority, whichever is earlier
- In case not less than 1/3rd directors wish the matter to be discussed and decided at meeting, each must communicate the same for specified date
- Interest of director to be disclosed before last date and he must abstain from voting

MINUTES

- *Recorded separately for BM and each Committee Meetings*
- Minutes in Electronic Form to be TIME STAMPED
- Recorded By CS/ Person duly Authorised by Board or Chairman
- Should be clear and Concise in third person and past tense; however Resolutions in Present Tense
- Chairman to decide whether opinion of director to be recorded verbatim, if so requested
- Proper Identification of papers on basis of which decision is taken shall be made by placing initials of CS/Chairman thereon and referred to in minutes
- Minutes to have reference of resolutions which are superseded/modified
- Minutes entered in the book to be noted in immediately following meeting
- Minutes of Committee meeting to be noted in immediately following Board Meeting



Contents

General

- Sr. No, Type, day, date, time and venue of Meeting along with name of the Company in respect of original as well as adjourned meeting
- If meeting convened but adjourned for want of quorum, statement to this effect
- Name of Directors starting with Chairman, CS and Invitees – capacity/ name of entity representing/ relation
- Appointments
- *Appointment one level below KMP to be Noted by Board*

- Include Brief Background of all proposals and summary of deliberations thereof. In case of Majority Decisions, rationale thereto
- Include fact of casting vote of chairman

Decisions in narrative form except where statutorily required in form of resolutions

Specific

- Record of Election of Chairman, if any
- Record of Presence of Quorum
- Directors who sought and were granted leave of absence
- Mode of attendance of each director
- If electronic, location and agenda items in which director participated
- Noting minutes of previous meeting of BM/ Committee
- Text of resolutions passed
- Fact that interested director was not present and did not vote
- Views of Directors, if insisted
- Items in which director did not participate
- Fact of dissent and name of dissenting director
- Ratification by ID
- Time of commencement & conclusion of meeting



□ Finalisation & Recording

Meeting: on T day

Circulation of Draft: within T+15 days

* Communication of Comments: within T+15+7 **days

* Director who has ceased to be a director after the meeting entitled to receive draft even if he was not present at the said meeting

** Discretion of chairman to accept comments later than 7 days

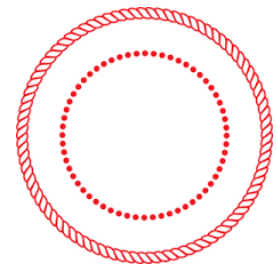
ENTRY IN MINUTES BOOK: within 30 days

Alteration in minutes already entered to be made by approval at subsequent Board Meeting

Minutes to **signed** by chairman of meeting or chairman of next meeting at next meeting. → Digitally signed, if maintained in electronic format

Blank space between conclusion of matter and sign of chairman to be scored out

Circulation of copy of final Minutes certified by CS
/Authorised Director within 15 days of it being signed



❑ Inspection

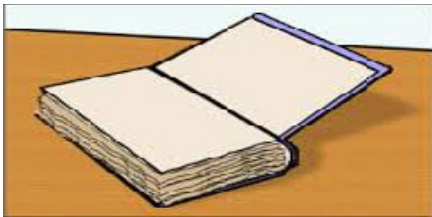
- May be in Physical or electronic form
- Director can inspect minutes of meeting held before he became director
- Director can inspect minutes of meeting held during his tenure as such even after he ceases to be a director
- CS in Practice appointed by Company
- Secretarial Auditor
- Statutory Auditor, Cost Auditor, Internal Auditor



Extracts to be given only after the minutes have been duly certified

❑ Preservation:

- Permanently in physical/ electronic form
- In case of Merger/ amalgamation minutes to be transferred to and preserved permanently by transferee company



Penal Provisions

Section	Civil/ Criminal Liability Involved
53 - provision for issue of shares at discount	Maximum imprisonment of 6 months or fine not less than One Lakh and may extend Five Lakhs or with both
68(11) - to purchase its own securities	Maximum imprisonment of 3 years or fine not less than One Lakh and may extend Three Lakhs or with both
71(11) - debentures	Maximum imprisonment of 3 years or fine not less than Two Lakhs and may extend Five Lakhs or with both
92(5) - Annual Returns	Maximum imprisonment of 6 months or fine not less than 50000 and may extend Five Lakhs or with both

Penal Provisions

118(12) - Minutes of any Meeting	Maximum imprisonment of 2 years or fine not less than 25000 but may extend One Lakh
128(6) - Books of Account	Maximum imprisonment of 1 year or fine not less than 50000 and may extend to Five Lakhs or with both
129(7) - Financial Statement	Maximum imprisonment of 1 year or fine not less than 50000 and may extend to Five Lakhs or with both
134 - Board Report	Maximum imprisonment of 3 years or fine not less than 50000 and may extend to Five Lakhs or with both

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