

## E Learning Module

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Name of this Unit- Management

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### *Subject, Name of the Unit– Management*

**Structure of the Content-** Basic and some necessary concepts of different types of Auditors have been discussed here. Then different types of meeting, requisite of a valid meeting have been discussed. After that there are different types of committees. After that, there is a summary of the content and there are self-assessment questions. And there are references of the content.

**Use of the Software-** I have used Microsoft Word software to write and prepare this e learning material. I can use this platform to take online classes also by sharing the screen and also can be used as a system of offline classes. So, by considering all this things, Microsoft Word is used here for preparing the E-learning material.

**Objectives-** Objective is to discuss the management topic in Corporate Law in an easy way. There are various matters in management chapter of corporate law such as directors, meetings, committee. These are important for the students. Students should have a clear idea about this topic. They should study about auditors, meetings etc. to have knowledge in it. These are important in corporate law.

*Introduction-* Corporate Law is all about the Various Law provisions regarding the functioning of the Corporates or Companies. Out of this Corporate Law, one important topic is management which is related with Company Directors, appointment of directors, Types of Directors, Various types of Meetings, requisites of a valid meeting, different types of Committee.

## UNIT- 3

### MANAGEMENT

- I. Classification of Directors, Women Director, Independent Director, Small Shareholders Director, Disqualification, Director Identity Number, Appointment, Legal position, Power and Duties, Removal of Directors, Key Managerial Personnel, Managing Director, Manager.
- II. Meetings- Meetings of Shareholders and Board of Directors, Types of Meetings, Convening and Conduct of Meetings, Requisite of a valid meeting, Postal Ballot, Meeting through Video Conferencing, E-Voting.
- III. Committees of Board of Directors- Audit Committee, Nomination and Remuneration Committee, Stakeholders relationship committee, Corporate Social Responsibility Committee.

#### TYPES OF DIRECTORS:

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 functions of a director and of that himself.

Directors are responsible for controlling, managing and directing the affairs of a company. He/She plays multiple roles in the company. 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.

### **Minimum and Maximum number of directors in a company**

The law requires that every company must have at least 3 directors in case of public limited companies, minimum 2 directors in case of private limited companies and a minimum 1 director in case of one-person companies. A company can have a maximum of 15 directors. The company could appoint more directors bypassing the special resolution in its general meeting.

### **Types of Directors**

#### **Residential Director**

As per the law, every company needs to appoint a director who has been in India and stayed for not less than 182 days in a previous calendar year.

#### **Independent Director**

Independent directors are non-executive directors of a company and help the company to improve corporate credibility and enhance the governance standards. In other words, an independent director is a non-executive director without a relationship with a company which might influence the independence of his judgment.

The tenure of the Independent directors shall be up to 5 consecutive years; however, they shall be entitled to reappointment by passing a special resolution with the disclosure in the Board's report. Following companies need to appoint at the least two independent directors:

Public Companies with Paid-up Capital of Rs.10 Crores or more,

Public Companies with Turnover of Rs.100 Crores or more,

Public Companies with total outstanding loans, deposits, and debenture of Rs.50 Crores or more.

#### **Small Shareholders Directors**

A listed company, could upon the notice of minimum 1000 small shareholders or 10% of the total number of the small shareholder, whichever is lower, shall have a director which would be elected by small shareholders.

## **Women Director**

A company, whether be it a private company or a public company, would be required to appoint minimum one woman director in case it satisfies any of the following criteria:

1. The company is a listed company and its securities are listed on the stock exchange.
2. The paid-up capital of such company is Rs.100 crore or more with a turnover of Rs.300 crores or more.

## **Additional Director**

A person could be appointed as an additional director and can occupy his post until next Annual General Meeting. In absence of the AGM, such term would conclude on the date on which such AGM should have been held.

## **Disqualification of Directors**

A company has no physical existence, it is merely a legal entity. It can only act through natural persons. The person acting on the company's behalf is called a Director. They are professional people, hired by the company to direct its affairs. They can also be called – the officers of a company.

Any person can hold the position of Director. Company law in India does not prescribe any qualifications for Directors. Therefore, the Indian companies may, in its Articles, lay down qualifications for Directors.

## **Disqualifications of Directors**

Under company law, a director can be disqualified for any of the following reasons:

1. He is of an unsound mind and is declared so by the court.
2. He is insolvent.
3. He is in the process of declaring insolvency and his application is pending.
4. He has been convicted by a court of any offence (whether or not involving moral turpitude) and has been imprisoned for at least six months. However, if a person has

been convicted of any offence and has served a period of seven years or more, he shall not be eligible to be appointed as a director in any company.

5. If an order has been passed disqualifying him from being appointed as a director by a court or Tribunal.

6. He has not paid any calls with respect to any shares of the company held by him, whether alone or jointly with others, and a period of six months has elapsed from the last day fixed for the payment of the call.

7. He has been convicted of offences dealing with related party transactions at any time during the last preceding five years.

8. He has failed to acquire a Director Identification Number.

### **Remedies against Disqualification**

In case of disqualification, a director can appeal to the National Company Law Appellate Tribunal (NCLAT). He/she can temporarily ask for a stay order. Under the Companies Act 2013, an order disqualifying a Director does not take effect within the next 30 days of it being passed. As soon as an appeal is initiated, the disqualified person will still continue to be a director for the next seven days. Within this period, he can file his annual returns to stay the order of disqualification. However, there exists no procedure to reappoint a disqualified director. He can only be reappointed after a period of five years has elapsed from the date of disqualification.

### **Director Identification Number**

DIN is a unique Director identification number allotted by the Central Government to any person intending to be a Director or an existing director of a company.

### **Meaning of Director Identification Number (DIN)**

It is an 8-digit unique identification number that has lifetime validity. Through DIN, details of the directors are maintained in a database.

DIN is specific to a person, which means even if he is a director in two or more companies, he has to obtain only one DIN. And if he leaves a company and joins some other, the same DIN would work in the other company as well.

### **Usage of DIN**

Whenever a return, an application or any information related to a company will be

submitted under any law, the director signing such return, application or information will mention his DIN underneath his signature.

### **DIN Application Procedure and Relevant Forms**

**SPICe Form:** Application for allotment of DINs to the proposed first Directors in respect of New companies shall be made in SPICe form only.

**DIR-3 Form:** Any person intending to become a director in an already existing company shall have to make an application in eForm DIR-3 for allotment of DIN.

**DIR-6 Form:** Any changes in the particulars of the directors shall be filed in form DIR-6.

To apply for DIN, the above forms are to be filed electronically. It has to be digitally signed and then uploaded on the [MCA21 portal](#).

### **Reasons for Surrendering or cancelling the DIN**

The Central Government may cancel the DIN due to the following reasons:

1. If a duplicate DIN has been issued to the director
2. DIN was obtained by fraudulent means
3. On the death of the concerned person
4. The person has been declared unsound mind by the court
5. The person has been adjudicated as insolvent

## **APPOINTMENT OF DIRECTORS**

### **MANDATORY REQUIREMENTS**

1. The individual who will be appointed as a Director shall have an Active DIN. **[Section 152(3)]**
2. A person shall not be eligible for appointment as a Director of a Company, if he is disqualified from being appointed as a Director in the Company as per Section 164(1).
3. No person who is or has been a director of a company which  
I. has not filed financial statements or annual returns for any continuous period of three financial years or

II. 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, shall be eligible to be re-appointed as a director of that company for a period of five years from the date on which the company fails to do so. **[Section 164(2)(a)]**

## **FOLLOWING PROCEDURE IS TO BE FOLLOWED**

### **1. Convene a Meeting of Board of Directors [As per section 173 & Secretarial Standard -1 (SS-1)]**

Issue Notice of Board Meeting to all the Directors of Company at their addresses registered with the Company, at least 7 days before the date of Board Meeting. A shorter notice can be issued in case of urgent business.

Attach Agenda, Notes to Agenda and Draft Resolution with the Notice.

Hold a meeting of Board of Directors of the Company to discuss the agenda and deciding on the name of Proposed Director and pass Board Resolution

### **2. Consent and Declaration from the Proposed Director**

The Proposed Director has to submit Form DIR-2 (Consent to act as a Director) and Form DIR-8 (Intimation by Director about his disqualification) to the Company either before the Board Meeting or during the Board Meeting.

### **3. Obtaining DIN and Digital Signature Certificate [Section 153]** If the person does not have Digital Signature, he shall obtain Digital Signature from Certifying Authority in India.

The person shall have a valid DIN allotted by the Ministry of Corporate Affairs. At present, application for allotment of DIN can be submitted to MCA only through the company where he/she is proposed to be appointed.

### **4. Convene General Meeting (Section 96, 100 and Secretarial Standard-2 (SS-2))** Notice of General Meeting shall be given at least clear 21 days before the actual date of a General Meeting in writing, by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means or a Shorter Notice can be issued with the consent of at least majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting in accordance with **Section 101**.

Notice will be sent to all the Directors, Members, Auditors of Company, Secretarial Auditor, Debenture Trustees and to others who are entitled to receive the notice of the



General Meeting.

**5. Obtain Form MBP-1 from the Appointed Director(Meeting Of Board and its Powers)**

Obtain the declaration from the Appointed Director regarding his interest in other entities in Form MBP-1.

**6. Filing of Return of Appointment of Director with the ROC [Section 152(2) and Rule 8 of the Companies (Appointment and Qualifications of Directors) Rules, 2014]**

After the General Meeting, a Return of Appointment of Directorship (Form DIR-12) is required to be filed with Registrar within 30 days of appointment with copy of Ordinary Resolution along with Consent to Act as Director and Declaration about his disqualifications.

**7. Making Necessary entries in Register of Directors**

Company shall make necessary entries in the Register of Director and Key Managerial Personals and registers of contract and arrangements in which Directors are interested in Form MBP-4.

**Powers of Directors**

According to [Companies Act 2013](#), the Board of Directors of a Company has the following powers in the Company.

1. Power to **make calls** in respect of **money unpaid on shares**
2. **Call meetings** on suo moto basis.
3. **Issue** shares, debentures, or any other instruments in respect of the Company.
4. Borrow and invest funds for the Company
5. Approve Financial Statements and Board Report
6. Approve bonus to employees
7. Declare dividend in the Company
8. Power to grant loans or give **guarantee** in respect of loans
9. **Authorize buy back** of securities
10. Approve **Amalgamation/Merger/ Takeover**
11. **Diversify the business** of the Company

## Duties of Directors

Board of Directors acts as agent of the Company. However while acting for Company, Director needs to take care of his duties which are as follows:-

1. To **act in good faith**
2. **Act in accordance** with the [Articles of Association](#) of the Company
3. To act so as to **promote the objects** of the Company
4. Act in **best interest of the Company** and its stakeholders
5. Exercise duties with **due and reasonable care**
6. To exercise **independent judgement**
7. Not to get involved in a situation where his interest conflicts with the interest of the Company
8. He **cannot assign his office** to any other person.
9. Not to achieve **undue gain or advantage**

### Can a company remove director?

First, we need to understand what is removal of director. A removal of Director is a situation where the Board management of the company decided Suo-moto to remove director from company.

Now, the reasons for taking such step is huge and varies from company to company but Yes, a company can remove any of its director but there is procedure for removal of director from company.

### Which laws/provisions governs the removal of Director?

Section 169 of the Companies Act, 2013 deals with the removal of director. The company needs to comply with this provision other wise company and its officer will attract penal provisions under The Companies Act, 2013.

### What is the process to remove a director?

The procedure to remove a director is as follows:-

1. Prepare notice of board meeting along with draft resolution(s) to be passed in the

board meeting.

2. Company should give intimation to the concern director about his removal.

Sending of Notice along with Agenda of Board meeting to all the Directors of company.

3. Convene board meeting and pass the Board Resolution for considering the removal of concerned Director and notice of general meeting to members of company.

4. Sending of general meeting notice to all the members atleast 14 days before date of general meeting along with special notice with the intention of removing a director by the specified no. of members of the company has to be passed at least before 14 days before the concerned meeting at which it has to moved excluding the day on which the notice is served and the day of the meeting.

5. Holding of General Meeting, allowing the removing director to be heard and speak. Passing of ordinary resolution if it is seems just and equitable.

6. Preparation of Documents for removal of director and intimation to concerned departments.

### **Which Companies are obligated to Appoint KMP (Key Managerial Personnel)?**

According to section 203(1) read with Rule 8 of the [Companies \(Appointment and Remuneration of Managerial Personnel\) Rules, 2014](#) the following companies are mandated to appoint a Whole-time KMP:

1. Every Listed Company

2. Public Companies having paid-up share capital of 10 Crore rupees or more.

3. Public Companies Having paid-up share of 5 Crore rupees or more.

4. Companies having paid-up share capital of 10 Crore rupees or more are mandated to appoint a Company Secretary.

### **Key Managerial Personnel :**

#### **Managing Director or Whole-Time Director or Manager:**

Section 2(54) of the Companies Act,2013 defines Managing Director as a Director who is responsible for substantial powers of the management of the company and its affairs and is appointed by an agreement or a resolution passed in its General Meeting.

#### **Whole-Time Director :**

Whole-Time Director of a Company is defined under Section 2(94) of the Act which means a director in whole-time employment of the Company.

**Manager:**

Manager as defined under Section 2(53) of Companies Act, 2013 is any individual who works under the control and direction of the Board of Directors and is entrusted with the management of whole the affairs of the Company.

A manager is appointed by the Board of Directors at a meeting which shall be subject to resolution to be passed at the next general meeting of the company. The resolution consists of terms and conditions for the appointment and remuneration to be paid to the manager which has to be initially approved by the Board of Directors.

**Company Secretary:**

A Company Secretary or Secretary under Section 2(24) of the Act whose function is to report the Board about the compliance of the provisions of the Act and other rules in relation to this Act. It also ensures that whether or not the company is complying with the secretarial standards.

**Chief Financial Officer :**

Chief Financial Officer under Section 2 (19) of Companies Act,2013 is a person who leads the finance and treasury functions of a business enterprise is designated as "CFO",a CFO of the company should be the person who us appointed as CFO and not engaged in any other manner (retainer or consultant) or by any other designation.

**Chief Executive Officer :**

Chief Executive officer under Section 2(18) of Companies Act, 2013 is a person appointed as Chief Executive Officer of a Company.

**Meeting of Board of Directors-**

**1. Periodicity of the BoD Meeting**

The meeting of Board of Directors should be held at least once in every 3 months. Minimum of 4 such meetings should be held in a year.

**2. Objectives of BoD Meeting**

The objective is that Board meetings should be held at frequent intervals so that directors can regularly monitor the functioning and progress of the company.

The Central Government can relay the rule regarding the frequency of conduct of directors meeting, in case of small companies which have insufficient business to be transacted.

### 3. Notice to BoD Meeting

Notice of the meetings of the Board of Directors must be given in writing to every director in India at his usual address. Notice should be given to a director even if he has stated his unwillingness to attend a meeting.

Unless the articles specify, a reasonable period of notice should be given before every meeting. What is reasonable period will depend on each particular case. The notice should mention the time, place, date and venue where the meeting would be held.

### 4. Agenda for BoD Meeting

Agenda represents the things that need to be done and the order in which they need to be done. In the case of meetings it lists out the items of business that would be transacted and the order in which they would be transacted. Though sending the agenda is not compulsory, it is generally sent so that the directors would come prepared on the items to be discussed.

### 5. Quorum of BoD Meeting

It refers to the minimum number of members required to be present to conduct a meeting and transact business. If the required quorum is not present, a meeting cannot be held. If any meeting is held without adequate quorum, any business transacted in such a meeting would be held invalid.

The quorum for Board meeting is, there should be at least two directors or one-third of the total strength of the Board of Directors, whichever is more.

In the case of meeting of members, for a public company there should be at least 5 members personally present and two members personally present in case of any other company constitute the quorum.

## **Meeting of Shareholders-**

### Annual General Meeting

Every Company, other than One Person Company (OPC), must hold a general meeting in each year apart from other meetings as Annual General Meeting (AGM). The AGM must be held within six months from the closing date of financial year. A notice of 21 days has to be sent to all members.

### **APPROVAL OF FINANCIAL STATEMENTS AT AGM**

According to Section 129(2), at every AGM, Board of Directors of the company shall lay before the meeting financial statement for the financial year.

Moreover, Section 129(3) says, where the company has one or more subsidiaries, then they have to prepare in addition to the statement under section 129(2) a consolidated financial statement and of all subsidiaries in same format and also present before the AGM of the Company with the prescribed statement under section 129(2).

### **BUSINESS TO BE TRANSACTED AT AGM**

As per section 102(2) of the Companies Act, 2013, the following businesses may be transacted during AGM:-

#### **1) Ordinary Business [Section 102(2)], i.e.**

- a. Consideration of financial Statements and reports of board of directors and Auditors.
- b. Declaration of any Dividend
- c. Appointment of directors in place of retiring one
- d. Appointment of and Fixation of the remuneration of the auditors.

**2) Special Business [Section 102(b)]:** Apart from the above businesses, the rest are deemed to be a Special business, transacted during the AGM.

### **DEFAULTING IN HOLDING ANNUAL GENERAL MEETING**

If a Company not holding an Annual General Meeting as per Section 96, or not complying with any direction of the Central Government, then the Company and its every officer come in the Category under Section 99 of the Company Act, 2013 and punishable with fine which may extend to Rs. 100,000 and in case of continuing default,

it may extend to Rs. 5000 for every day.

Further, Section 97 of the Companies Act, 2013, provides for the power of the Tribunal to call AGM if the Company fails to hold Annual General Meeting. Any member of the company can request to NCLT for calling AGM. [Section 97(1)].

### **EXTENSION FOR HOLDING AGM**

The Registrar of Companies (ROC) may extend the period within which the AGM (not being the first AGM) shall be held, **not exceeding 3 months** under section 96(1).

There is no provision for extension of 1st AGM but in other cases it can be extended for period of three months by ROC. [Second proviso to Section 96 of the Companies Act, 2013]. However, if such first AGM is not held, NCLT can order holding of General Meeting under section 97 of the Act.

### **Requisites of Valid Meeting**

Following are the requisites for valid meeting:

1. properly conducted
2. Conducted by Authorized persons
3. Proper and also adequate notice
4. legally constituted.
5. must have chairperson.
6. follow rules of quorum
7. validly transacted business.

### **Types of Meeting**

#### **1. Member's Meeting :**

This meeting is only for the members of the company. Members and also directors discuss on the matters related to company.

Following are the types of member's meeting:

- i. Statutory Meeting.
- ii. Annual General Meeting.

iii. Extra Ordinary General Meeting.

#### **i. Statutory Meeting :**

Statutory meeting is the first meeting which company conducts after its commencement. Conduction of statutory meeting is compulsory. Public limited company is required to hold such meeting within a period not less than one month and not more than six months from the date of commencement. The directors of company also need to make statutory report. Every members also must be given a copy of report at least 21 days before the date of the meeting and a copy is also to be sent to the Registrar for registration.

**Section 165(3) provides that the Statutory Report must contain the following particulars:**

- (i) The total number of fully paid-up and partly paid-up shares allotted;
- (ii) The total amount of cash received ;
- (iii) the receipts, classifying them and also the expenses incurred for commission, also brokerage etc.
- (iv) The names, addresses and also occupations of directors, auditors, managers and secretaries and also changes of the names, address etc.
- (v) Particulars of contracts with proposed modifications presented at meeting for approval;
- (vi) The arrears of calls;
- (vii) Commissions and brokerages paid to directors and managers.

#### **ii. Annual General Meeting (AGM)**

Under Section 96 of the companies act, every company shall hold a general meeting as annual general meeting every year. Except one person company. There should not be a gap of more than fifteen months between two AGM.

Notice of AGM can be either in writing or also in electronic form. The member should get the notice at least for 21 clear days. . The notice should consist of place, day, date and the proper hour of the meeting. It should also contain agenda of meeting. Every member of the company, legal representative of deceased and assignee of insolvent member, auditor and every director of the company should get notice. Section 101 of



the Companies act 2013, deals with the provision of Notice for the AGM.

### **iii. Extra ordinary meeting (EGM)**

Every meeting which is not a AGM or statutory meeting meeting is EGM. An EGM is held for some special business which can not be transacted at AGM. It is also held to transact some urgent business. This meeting may be called by the Directors or by the member's according to Sec.169 of the Companies Act, 1956.

### **2. Meeting of Creditors:**

Meeting is when directors of company has any scheme for creditors. The Court may order a meeting of the creditors on the application of the company or of liquidator in case of a company being wound-up.

### **3. Meeting of Debenture Holders:**

Such meetings is held in the interest of debenture holder. The rules for appointment of Chairman, no-tice of the meeting, quorum etc. are there in the Trust Deed.

### **4. Meeting of Creditors and Contributories:**

The main purpose is obtain consent of creditors and contributories to the scheme of rearrangement or compromise. It is to save the company from financial difficulties. Sometimes, the Court may also order to conduct meeting. The term "contributory" covers every person who is liable to contribute to the assets of the company when the company is being wound-up.

### **5. Meeting of the Board of Directors:**

The Board of Directors controls the management of the company. Therefore, the Directors are to meet frequently to decide both policy and also other related matters. It is conducted four times in a year.

### **Procedure for Convening and Conduct of General Meetings :**

The business at a meeting is said to have been "validly transacted" if the members of the organization or body concerned, whether or not they were present, are bound by the decision made there at. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:

(a) Properly convened; i.e. a proper notice must be sent by the proper authority to every person entitled to attend.

(b) Properly constituted, i.e. the proper person must be in the chair, the rules as to quorum must be observed, and the regulations governing the meeting must be complied with.

(c) Properly conducted, i.e. the chairman must conduct the proceeding in accordance with the law relating to general meetings as per the Companies Act (Sections 101 to 109 of the Companies Act, 2013), the Company's own Articles of Association or, in respect of any specific matter, by the common law relating to meetings.

### **Meaning of postal ballot-**

As defined in clause (65) of section 2, "Postal Ballot" means the casting of vote by a shareholder by postal or electronic mode. "Voting by postal ballot" has been defined in Secretarial Standard- 2 as voting by ballot, by post or by electronic means. Hence, postal ballot is an alternative means of voting on the proposed businesses.

### **Certain matters to be transacted by means of postal ballot-**

1. alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum 2. alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company 3. change in place of registered office outside the local limits of any city, town or village. 4. change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised 5. issue of shares with differential rights as to voting or dividend or otherwise 6. variation in the rights attached to a class of shares or debentures or other securities 7. buy-back of shares by a company 8. appointment of a director elected by small shareholders 9. sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings 10. giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186.

### **Certain matters not to be transacted by means of postal**

Company Act empowers a company to transact any business other than the prescribed businesses through postal ballot. However, the following types of businesses are not to be transacted by way of postal ballot:

- i. Ordinary business.

- ii. Any business in respect of which directors or auditor has a right to be heard at any meeting.

### **Procedure for Postal Ballot**

As we now understand the fundamental aspects of the postal ballot, let us examine its procedures.

### **Personnel to Scrutinize**

The Board shall appoint a scrutinizer who is not being employed by the company, so as to ensure fairness and efficiency in the voting process.

### **Board Resolution**

The company must pass the requisite Board resolution for postal ballot. Also, the Board must plan and fix the recommended date and time schedule for various activities, and finalize the schedule of events.

### **Issue of Notice**

The company is required to send a notice of postal ballot to all the shareholders, along with a draft resolution that describes the reason for the event. The shareholders must respond to the notice conveying their assent or dissent on the postal ballot, within a period of 30 days from the date of dispatch of the notice. The notice should also be published on the website of the company if any.

Notices can be sent through the following means:

Registered post or speed post

Any electronic means

Courier service

### **Advertising in Newspaper**

An advertisement pertaining to the dispatch of the postal ballot should be published in an English and vernacular newspaper. The advertisement must specify the following:

A statement concerning the transacting of business through postal ballot.

The date of completion of dispatch of notices.

The date of commencement of voting through postal ballot.

The concluding date of voting through postal ballot.

A statement declaring that postal ballots received after the end of the voting period will be invalid.

A statement declaring that the members, who have not received postal ballot forms may apply to the company and obtain a duplicate postal ballot.

The contact details of the concerned person, in case of any grievances with postal ballot voting.

### **Safe Custody of Postal Ballot**

Postal ballot and other relevant papers returned by the shareholders should be safely maintained by the scrutinizer, until the Chairman signs minutes. Scrutinizer should maintain a register to record assent or dissent received along with other details.

### **Declaration of Result**

The result of postal ballot along with the scrutinizer's report pertaining to the details of the ballot should be deemed to be passed on the date of a general meeting.

### **Meeting through Video Conferencing**

What is Video-conferencing? Rule 3 of The Companies (Meetings of Board and its Powers) Rules, 2014 defines Video conferencing or other audio-visual means. As per definition "Video conferencing or other audio-visual means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting."

### **Who can hold meeting through Video Conferencing (VC) under the Act?**

As per Section 173(2) of Companies Act, 2013 (the Act) read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 (the Rules), every Company can hold a Board Meeting through video conferencing or other audio-visual means,

which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

#### **MATTERS NOT TO BE DEALT WITH IN A MEETING THROUGH VC –**

- a. the approval of the annual financial statements;
- b. the approval of the Board's report; the approval of the prospectus;
- c. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and

the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

#### **What Does Electronic Voting (E-Voting) Mean?**

Electronic voting is when a voter casts a ballot through a digital system instead of on paper. Until the beginning of the 21st century, electronic voting did not exist, and paper ballots were the sole means of recording votes. However, since the late 1990s/early 2000s, electronic voting has become more popular and made advances, despite many concerns around auditing and transparency.

**Committees of Board of Directors- Audit Committee, Nomination and Remuneration Committee, Stakeholders relationship committee, Corporate Social Responsibility Committee.**

#### **1. Audit Committee:**

##### **Applicability:**

Every Listed Public Companies and Public Companies having a Paid-up share capital of 10 crore rupees or more, and a turnover of Rs. 100 Crore or more.

Additionally All Public Companies which have in aggregate outstanding loans, debentures and deposits exceeding 50 crore rupees are required to constitute an Audit Committee.

## **2. Nomination and Remuneration Committee:**

### **Applicability:**

- Every Listed Public Companies and Public Companies having a Paid-up share capital of 10 crore rupees or more, and a turnover of Rs. 100 Crore or more.
- Additionally All Public Companies which have in aggregate outstanding loans, debentures and deposits exceeding 50 crore rupees are required to constitute an Audit Committee.

## **3. Stakeholders Relationship Committee:**

Section 178 of Companies Act,2013 states that a company which holds 1000 numbers of shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year.

## **4. Corporate Social Responsibility Committee:**

Section 135 of Companies Act,2013 , with Companies(CSR Policy) Rules,2014 states that every company having :

net worth of not less than Rs.500 crores or more

or turnover of not less than Rs. 1000 crores or more

Or Net Profit of Rs.5crore or more shall constitute a Corporate Social Responsibility Committee.

## **Unit- 4**

### **Dividends, Accounts, Audit:**

**Provisions relating to payment of dividend,**

**Provisions relating to books of accounts,**

**Provisions relating to Audit,**

**Auditors Appointment,**

**Rotations of Auditors,**

## Auditors Report, Secretarial Audit

### Introduction:

The word "dividend" has origin from the Latin word "dividendum". It means a thing to be divided. Every investor is aware that dividend is nothing but profits earned by the company and divided amongst the shareholders in proportion to the amount paid up shares held by them. Simply stated it is a return on investment made by the shareholders. Dividend is paid by a company to its shareholders on a particular date (book closure date) either out of profits or out of reserves.

### Provisions relating to payment of dividend:

1. Depreciation must be provided: Companies can not declare or pay dividend for any financial year unless it is paid - Out of profits for that year arrived at after providing depreciation in accordance with provisions sub section 2 of Section 123 or –

Out of accumulated profits of the company for any previous financial year or years arrived at after providing depreciation and remaining undistributed or - Out of both above or - Out of money provided by the central government or a state government for payment of dividend in pursuance of a guarantee given by that government

2. Transfer to Reserves for declaration of dividend. A company may, before declaration of any dividend transfer such percentage of its profits for that financial year as it may consider appropriate. The Board of directors is given freedom to decide the percentage of transfer of profits to reserves before declaring a dividend (First proviso to section 123(1))

\* If proposed dividend is 10%, transfer to reserve is Nil, if proposed dividend is 10%-12.5%, transfer to reserve is 2.5%.

3. Declaration of dividend out of accumulated profits-

In case of inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

4. Manner of depreciation: Sub section 2 of 123 clarifies that for the purposes of clause (a) of sub-section (1), depreciation must be provided in accordance with the provisions of Schedule II.

5. Interim dividend:

The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared. In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

6. Time limit for deposit of dividend:

The amount of the dividend, including interim dividend, must be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

7. Dividend to be paid to registered shareholders:

No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash. Proviso however clarifies that capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount is permissible.

8. Mode of payment of dividend:

Any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

9. Prohibition on payment of dividend:

If a company violates the provisions of sections 73 and 74 with regard to acceptance of deposits from public, it shall not declare any dividend on its equity shares till such non compliance exists. In the old Act, there is prohibition for payment of dividend, if violation of Section 80-A (redemption of preference shares within stipulated time)



continues.

### **Provisions for Maintenance of Books of Accounts-**

Maintenance of books of accounts would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that –

1. Every company shall keep proper books of accounts. This clause specifies the main features of proper books of accounts as under –

(i) The company must keep the books of accounts with respect to items specified in clauses (i) to (iv) of sub-section 2(13) which defines “books of accounts”.

(ii) The books of accounts must show that all money received and expended , sales and purchases of goods and the assets and liabilities of the company.

(iii) The books of accounts must be kept on accrual basis and according to the double entry system of accounting.

(iv) The books of accounts must give a true and fair view of the state of the affairs of the company or its branches.

2. What is required to be prepared and kept are books of accounts, other relevant books and papers and financial statements. Books of accounts are defined in clause 2(13) , ‘books and papers’ in clause 2(12) and ‘ financial statement’ in Clause 2(40). Both are required to be prepared and kept.

3. Books of accounts, books and papers and financial statements should explain the transactions effected at company’s registered office and any branch(es).

4. Records, books, papers and financial statements must relate to any specific financial year only.

5. A company engaged in production, processing, manufacturing or mining activity, is also required to maintain particulars relating to utilization of material, labour or other items of cost as the Central Government may prescribe for such class of companies.(Section 148)

6. The branches of the company, if any, in India or outside India shall also keep the books of accounts in the same manner as specified in sub-section (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return made up-to-date to the company at its registered office or the other places as decided by the board.

7. Books of accounts of the company shall be kept at the registered office of the company.

8. In case of Books of accounts being maintained at any other place other than registered office in India, as may be decided by resolution of Board of Directors, company shall be required to intimate full address of such place to Registrar of Companies within 7 days.

9. The maintenance of books of accounts and other books and papers in electronic mode is permitted and is optional. (Second Proviso to Clause 128(1)).

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

i) Managing Director,

ii) Whole-Time Director, in charge of finance

iii) Chief Financial Officer

iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

### **Penal Provision**

In case the aforementioned persons referred to in sub-section (6) (i.e. Managing Director, Whole Time Director, Chief Financial Officer etc.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

### **Provisions relating to Audit-**

#### **Appointment Of Auditors:**

## SECTION 139 – Appointment of auditors:

### 1) Appointment of Auditors other than First:

A company shall, at the 1st AGM, appoint an individual or an audit firm (always includes LLP) as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6<sup>th</sup> AGM and thereafter *till the conclusion of every 6<sup>th</sup> AGM.*

### Appointment of First Auditors:

However, the first Auditors of a company are to be appointed always by the BOD within 30 days of registration of company and in case of failure to do so, the members shall be informed who shall within 90 days at an EGM appoint such auditor and such auditor shall hold office till conclusion of 1<sup>st</sup> AGM.

### 2) Ratification at every AGM :

Company shall place the matter relating to such appointment for **ratification by members at every AGM.**

Note : If the appointment is not ratified, the rules prescribe that the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

### 3) Compliance before appointment by company/auditor:

Before the appointment, a company **shall obtain from the auditor–**

- a. Written consent of the auditor to such appointment
- b. Certificate that
  - (a) auditor is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made there under;
  - (b) the proposed appointment is as per the term provided under the Act;
  - (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
  - (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

### 4) Compliance after Appointment by Company:

A Company shall inform the auditor of his appointment & is to file a notice of appointment with ROC within 15 days of the meeting in which auditor is appointed.

**5) Mandatory Rotation of Auditors in case of Listed Companies & Certain classes of Companies :**

All Listed companies and Companies prescribed by CG **shall not** appoint or re-appoint –  
an individual – for more than **one term of 5 consecutive years**

an audit firm – for more than **two terms of 5 consecutive years**

**Rotation of Auditors {Section 139(2)}**

**Applicability:** Rotation of auditors will be applicable on the below mentioned class of companies:

- Listed company
- The following classes of companies excluding one person companies and small companies:

(a) all unlisted public companies having paid up share capital of Rs. 10 crore or more

(b) all private limited companies having paid up share capital of Rs. 50 crore or more

(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more

**Terms of Rotation:** The class of companies on which this section is applicable which is prescribed above shall not appoint or re-appoint: –

an individual as auditor for more than one term of five consecutive years (i.e. 5 years)

an audit firm as auditor for more than two terms of five consecutive years (i.e.10 years)

**Point to be Noted for Term of Rotation:**

► Also the individual auditor who has completed his term of 5 years shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term

► And that audit firm which has completed its term of 10 years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such term

► That means there must be a gap of 5 years in both the cases either it is an individual auditor or an audit firm after completing the period of 5 years or 10 years as mentioned above.

### Contents of an Audit Report

Heading	Brief of contents
Title	Title should mention that it is an 'Independent Auditor's Report'.
Addressee	Should mention clearly as to whom the report is being given to. For example Members Mention that it is the Management's responsibility to Prepare the Financial Statements of the company, To Board of Directors.
Management's Responsibility for Financial Statements	
Auditor's Responsibility	Mention that responsibility of the Auditor is to express an unbiased opinion on the financial statements and issue an audit report.
Opinion	Should mention the overall impression obtained from the audit of financial statements. For example Modified Opinion, Unmodified Opinion

Basis of the Opinion	State the basis on which the opinion as reported has been achieved. Facts of the basis should be mentioned.
Other Reporting Responsibility	If any other reporting responsibility exists, the same should be mentioned. For example Report on Legal or Regulatory requirements
Signature of the Auditor	The engagement partner (auditor) shall sign the audit report.
Place of Signature	The city in which audit report is signed.
Date of Audit Report	Date on which the audit report is signed.

#### SECRETARIAL AUDIT:

Secretarial Audit is a compliance audit. It is a part of total compliance management in an organization. It is an effective tool for corporate compliance management, which helps to detect noncompliance and to take corrective measures.

Secretarial Audit is a process-

To check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc.,

**By an independent professional**

**To make sure that the legal and procedural requirements are complied with**

**Also followed the due process.**

**It is essentially a mechanism to monitor compliance with the requirements of stated laws.**

**Applicability-**

**The mandatory provisions relating to applicability of secretarial audit are as explained below**

**Every Listed Company.**

**Every public company having –**

**Paid up share capital > Rs. 50 crore**

**Turnover > Rs. 250 crore If anyone of the criteria meets then also secretarial audit is mandatory. A practicing Company Secretary has been recognized to conduct a secretarial audit.**

## ***SUMMARY OF THE TOPIC***

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 functions of a director and of that himself.

Directors are responsible for controlling, managing and directing the affairs of a company. He/She plays multiple roles in the company. 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. There are different types of directors, like Residential director, Independent director, Small share holders director, Woman director etc. There are some key managerial personnel like whole time director, manager, company secretary, chief financial officer etc.

There are different types of meetings. Every Company, other than One Person Company (OPC), must hold a general meeting in each year apart from other meetings as Annual General Meeting (AGM). The AGM must be held within six months from the closing date of financial year. A notice of 21 days has to be sent to all members. There are various types of meeting like shareholders meeting, directors meeting, creditors meeting. Every conditions should be fulfilled to hold a meeting.

Divident means a thing to be divided. Every investor is aware that dividend is nothing but profits earned by the company and divided amongst the shareholders in proportion to the amount paid up shares held by them. Simply stated it is a return on investment made by the shareholders. Dividend is paid by a company to its shareholders on a particular date (book closure date) either out of profits or out of reserves.

### ***SELF ASSESSMENT QUESTIONS/ EXERCISE***

1. What are the various types of directors?
2. What do you mean by AGM?
3. Who are the key managerial personnel?
4. Define a residential director.
5. What are the matters to be transacted at AGM?
6. Explain the provisins relating to payment of dividend.
7. What do you mean by secretarial audit?
8. Describe the content of an Audit report.
9. Write a note on postal ballot.
10. What are the requisite of a valid meeting?

### ***REFERENCES***

1. Dutta, D. and Dutta, M., *Marketing Management*, Vrinda Publication Private Limited, 2006



2. D. L. Datta, COMPANY LAW(Corporate Law), TEE DEE PUBLICATIONS, 2021
3. N.D. Kapoor, Dr Rajni Abbi, Bharat Bhushan, Rajiv Kapoor, Business Law, Sultan Chand and Sons, 2019
4. M.C. Kuchhal and Vivek Kuchhal, Business Law, Sultan Chand and Sons, 2018
5. Dr. Avtar Singh, Company Law, EBC Publication, 2016
6. <https://cleartax.in/g/terms/auditor>
7. <https://www.legalserviceindia.com/legal/article-1133-company-meeting-meaning-characteristics-and-kinds.html>
8. <https://economictimes.indiatimes.com/defaultinterstitial.cms?default=1>
9. <https://corporatefinanceinstitute.com/resources/accounting/dividend/>
10. <https://www.indiafilings.com/learn/appointment-of-auditor/>

