

CH-4 BOARD AND BOARD COMMITTEES

INTRODUCTION

A company, being an artificial person, has no mind, or body or soul. Therefore, it must act through human agency. **The persons through whom the company acts and does its business are called as its directors. Directors collectively are called as " Board of Directors".** The board of directors is the top administrative organ of the company. As per Sec.2(34) of the Companies Act, 2013, a director means a **director appointed to the Board of a company.**

Directors are those persons who are responsible for directing, governing or controlling the policy \ management of the company. Since directors are at the helm of affairs of a company, if they are irresponsible, dishonest and unscrupulous, interest of countless persons in the capacity of shareholders, employees, creditors etc. will be adversely affected. Therefore, **Companies Act has made stringent provisions regarding their appointment, powers and functions.**

Legal Position of Directors It is difficult to define the exact legal position of the directors of a company. Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But none of these expressions is exhaustive of their powers and responsibilities. Infact directors play different roles at different points of time.

COMPOSITION OF BOARD OF DIRECTORS

- **Directors must be individuals** only- The individual must be competent to contract, must have a DIN and should not be disqualified u\s164. A firm, association or company cannot be appointed as director.
- **Minimum No. of directors** required in a company are -1 in case of OPC; 2 in case private company; 3 in case of public company
- **Maximum No of directors**-Every co. shall have ≤ 15 directors. This limit can be increased by passing SR in the general meeting.
- **Woman Director**- There must be at least 1 women director in the Board of every
 - ✓ listed public company or
 - ✓ every unlisted public company having paid up share capital \geq ₹100 crore or turnover \geq ₹300 crore

- **Resident Director-** Every co. shall have at least 1 director who has stayed in India for a period of ≥ 182 days during the financial year. For a newly incorporated co., the requirement of 182 days shall apply proportionately in the year of incorporation.
- **Independent Director-** There must be presence of Independent Directors also in the Boards of the prescribed companies to ensure adherence to good corporate governance standards. They must be men of outstanding merit and integrity having no pecuniary relationship with the company so that they can act independently without any influence or pressure from promoters or management. The number of independent directors shall be as follows
 - ✓ In case of listed public co.- at least $\frac{1}{3}$ of total number of directors must be independent (any fraction to be rounded up)
 - ✓ In case of unlisted public company having paid up share capital \geq ₹10 crores or turnover \geq ₹100 crores or aggregate outstanding loans, debenture and deposits \geq ₹50 crores, at least 2 directors in Board must be independent directors.
- **Small Shareholders' Director (Sec.151)-** A listed co. may have 1 director elected by small shareholders from amongst themselves. Only small shareholders can vote on the election of small shareholder director and such a director himself should be a small shareholder. Small shareholder is one holding shares of nominal value \leq ₹ 20,000.
 - ✓ Having small shareholders director in the BOD is optional. The company may decide to have small shareholders director either suo motu or upon written notice from at least 1000 small shareholders or 10% of total small shareholders, whichever is lower, proposing the name of a small shareholder for directorship.
 - ✓ Election of small shareholders director shall be conducted only by means of **voting through postal ballot.**
 - ✓ Such a director will be treated as an independent director and should meet the criteria of independence u/s 149(6)
 - ✓ A small shareholder director shall not retire by rotation. The tenure of such a director shall be ≤ 3 years and on expiry of his term he is not eligible for reappointment

INDEPENDENT DIRECTOR: As per section 149(6), Independent Director in means a director other than MD\WTD\Nominee Director

a) who in the opinion of the board is a person of integrity, and possesses relevant expertise and experience	
b) who is neither the promoter nor relative of any promoter \ director of the company \ its holding\ subsidiary\ associate company	
c) who has no pecuniary relationship with the company \ its holding\ subsidiary\ associate co.\their promoters or directors during the current FY or two immediately preceding FYs	<p>However, the following is allowed.</p> <ul style="list-style-type: none"> • the person can have remuneration as a director • he can have transactions \leq 10% of his total income with the co.
d) none of whose relatives is holding any security\ interest \ is indebted to \has given guarantee to the co.\ has any other pecuniary interest in the company \ its holding\ subsidiary\ associate co. during the current FY or two immediately preceding FYs	<ul style="list-style-type: none"> • relative(s) may hold security\ interest in the co. of face value\leq50 lakhs or 2% of paid up capital of the company\..... • relative may be indebted \ may give guarantee up to ₹ 50 lakhs in the company\..... • relative may have transactions of value $<$ 2% of its gross turnover\ total income
e) who neither himself or nor any of his relatives is\was	<ul style="list-style-type: none"> • KMP\ employee in the company \... during previous three years • employee\ proprietor \partner during previous three years in the audit firm \ legal firm\ consulting firm having transactions amounting to \geq10% of its gross turnover with the co... • who together with relatives holds \geq 2 % voting power in the company \ • CEO of any nonprofit organization that receives 25% or more of its receipts from the company\... or that holds\geq 2% voting power of the company.
f) who possesses such other qualifications as may be prescribed i.e possess appropriate skills, experience and knowledge in fields such as finance, law, management and like .	

DUTIES OF DIRECTORS (Sec.166)

- **Attend board's meetings** and participate in discussions/decision-making
- **act in Best interest of the company** and promote its objects and protect the interest of various stakeholders- employees, community, investors and environment.
- **Comply the legal provisions-** Companies Act, Company Rules, MOA, AOA
- **Disclose interest in the contracts/arrangements** with the co.
- **Exercise independent judgement** and discharge his duties with reasonable care, skill and diligence
- **Duty not to assign his office**
- **Duty not to involve himself in conflicting situation-** he should avoid situations where his personal interest clashes with the interests of the company.
- **Duty not to delegate power to some other person and** to perform duties personally.
- **Duty not to make any undue gain-** he should not attempt to obtain any undue advantage for self, relatives or friends at the cost of the company
- **Duty not to indulge in fraud and insider trading**

POWERS OF THE BOARD (Sec.179)

Under the Companies Act, the BOD is entrusted with general powers like-

- To make calls on shares
- To authorise buyback of securities u\s 68
- To issue shares or debentures
- To borrow monies
- To invest the funds of the company etc.
- To approve Corporate Social Responsibility Policy
- To appoint casual\alternative\ additional directors or first auditors
- To recommend the rate of dividend

FUNCTIONS OF THE BOARD-POWERS AND RESPONSIBILITIES

The Board of Directors is responsible for the overall governance and strategic direction of a company. Its main functions could be categorised into-

1. Strategic Functions

- **Setting Vision, Mission and Objectives** – Determines the long-term direction of the company.
- **Strategic Planning** – Approves business strategies, plans, budgets and policies.
- **Major Decision-Making** – Approves mergers, acquisitions, expansions, and large investments.
- **Resource Allocation** – Ensures effective use of financial, human, and physical resources.
- **Future-Proofing** -Ensures long-term sustainability and future readiness of the organization by integrating ESG (Environmental, Social, and Governance) considerations into strategy, promoting innovation and digital transformation.

2. Governance and Control Functions

- **Appointment and Supervision of Management** – Selects, monitors, and evaluates top executives. Succession Planning.
- **Financial Oversight** – Ensures proper financial reporting and maintenance of accounts. Reviews budgets, financial statements, and financial controls.
- **Risk Management** –Ensures that company's physical, financial, intellectual and technological assets are safeguarded. Develop and implement risk management policies.
- **Legal and Ethical Compliance** – Ensures compliance with laws, regulations, and ethical standards.
- **Performance Monitoring** – Evaluates organizational and managerial performance.

BOARD COMMITTEES and their FUNCTIONS

Board Committees are small working groups, identified by the Board, consisting of Board members, for the purpose of supporting the Board's work. The Board Committees are regarded as pillars of corporate governance.

Features of Board Committees

- Subsets of the Board of Directors (BOD)
- Function according to terms of reference fixed by the Board.
- Created for a specific purpose or to meet legal requirements.
- Examine certain key issues closely and in greater detail
- Prepare report after doing ground work and submit to board for discussions and necessary action.

Kinds of Board Committees

Mandatory Committees- The Companies Act,2013 has mandated the constitution of the following committees for all the listed companies and certain prescribed companies-

1. **Audit Committee**
2. **Nomination and Remuneration Committee**
3. **Stakeholders Relationship Committee**
4. **CSR Committee**

Audit Committee (AC)	Nomination & Remuneration Committee (NRC)	Stakeholders Relationship Committee (SRC)	Corporate Social Responsibility Committee (CSRC)
Sec.177	Sec.178(1)	Sec.178(5)	Sec.135
Applicability			
-Every listed public co. -Public co. with paid up capital of ₹ 10 crore or more	-Every listed public co. -Public co. with paid up capital of ₹ 10 crore or more	-Co. having more than 1000 shareholders, debenture holders etc.	-Every company having net worth of ₹ 500 crore or more, or turnover of ₹1000 crore or more or a net profit of ₹ 5

-Public co. having turnover of ₹100 crore or more -Public co. having total borrowings of ₹ 50 crore or more	-Public co. having tur over of ₹100 crore or more -Public co. having total borrowings of ₹ 50 crore or more		crore or more during the immediately preceding year.
Constitution			
AC shall consist of minimum 3 directors with Independent Directors forming a majority. Also, they shall be persons with ability to read and understand, the financial statements.	NRC shall consist of minimum 3 non-executive directors out of which Independent directors shall be 1\2 or more. Chairperson of the company may become member but not the chairman of this Committee.	SRC shall consist of such numbers of members as may be decided by Board. Its chairman shall be a non executive director	CSRC shall consist of minimum 3 directors out of which at least 1 director shall be independent director.
Number of meetings			
Fixed by the Board or Decided by the Committee	Fixed by the Board or Decided by the Committee	Fixed by the Board or Decided by the Committee	As often as necessary depending on company's CSR policy and scale of CSR projects being implemented.
Role			
-to recommend appointment, remuneration etc. of auditors -to review auditors independence, performance, audit process -to examine financial statements and auditors report thereon - to approve or modify the	- to identify persons eligible for directorship\senior mgt position -to specify methodology for effective evaluation of performance of BOD, its various committees, and its directors -to review the implementation of evaluation system	- to consider and resolve the grievances of the security holders of the company.	-to formulate and recommend to Board , a CSR Policy keeping in mind activities specified in Schedule VII.(eg. eradicating hunger, education, empowering women, environmental sustainability, healthcare etc.)

<p>transactions of co. with related parties -to scrutinize intercorporate loans and investments - to evaluate internal financial controls and risk mgt. systems -to oversee vigil mechanism (which shall provide for adequate safeguards against victimisation of employees and directors who report genuine concerns and shall have direct access to the Chairperson of the Audit Committee). - to investigate into any matter specified above</p>	<p>-to formulate criteria for determining qualifications, positive attributes and independence of directors. -to recommend to Board, remuneration policy wrt. directors, KMP, and other employees suggesting therein appropriate performance bench marks, fixed pay, incentive pay etc.</p>		<p>- to recommend the expenditure to be incurred on such activities - to monitor the CSR policy from time to time. Note-The BOD shall ensure that the co. spends every financial year, at least 2% of its average net profits made during 3 immediately preceding financial years, as per the CSR Policy otherwise the Board shall specify the reasons for not spending the amount in its report.</p>
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Non-Mandatory Committees- The BODs may also constitute committees other than those mandated by law. Their nomenclature, composition and functions will vary depending upon the specific objectives. Some examples of such committees are –

1. **Corporate Governance Committee-** Responsible for ensuring good governance in a co. by looking into matters such as size, composition, and diversity of the Board, appointment of directors, succession planning etc.
2. **Regulatory and Compliance Committee-** Responsible for ensuring regulatory and legal compliances and developing code of conduct.
3. **Risk Management Committee-** Assists Board in designing, implementing and monitoring risk management systems in the organisations.
4. **Investment Committee-** Assists Board in formulating investment policies and reviewing performance of company’s investments and capital expenditure.