



VIT[®]

Vellore Institute of Technology
(Deemed to be University under section 3 of UGC Act, 1956)

Legal Aspects of Business

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Recapitulate

The companies Act, 2013 Resolution

- Introduction
- Kinds of Resolution
 - Ordinary Resolution
 - Special Resolution
 - Resolution requiring Special Notice
- Voting and Poll

The Companies Act, 2013

Managerial Personnel

Director

A company is an artificial person created by law. It does not have any physical existence and exists only in the eyes of law.

It cannot act by itself and acts instead through human agency, known as directors by whom the business activities can be executed.

The directors of a company are collectively known as the “Board of Directors” or the “Board”.

The Companies Act, 2013

Managerial Personnel

Only the individuals can act as directors, no body corporate, association or firm shall be appointed as director of a company.

Every public limited company shall have at least **three directors** and every other company shall have at least **two directors**.

A person can hold office as director in not more than **20 companies** at the same time. In calculating the number of directorships, the directorship of independent private limited companies, non-profit associations, and alternate directorships excluded.

The Companies Act, 2013

Position of Directors

- Directors as agents
- Directors as Trustees
- Directors as Officers

Qualification of Directors

- Only individuals can be appointed
- Contractual capacity
- Possess qualification shares

The Companies Act, 2013

Disqualification of Directors

- Unsound mind
- Insolvent
- Applied for being adjudged an insolvent
- Sentenced with imprisonment
- Not paid the call money and the calls in arrear
- Disqualified by a court

The Companies Act, 2013

Appointment of Directors

- **Appointment of Directors by the Company**
- **Appointment by Board of Directors** - casual vacancy caused by death, resignations, etc.
- **Appointment by Third Parties** - If authorized by the Articles, third parties such as vendor, banking or financial institutions which have advanced loans to the companies
- **Appointment by Central Government** - The Central Government can also appoint directors on an order passed by the Company Law Tribunal or on the application of not less than 100 members of the company or of members holding 10% of the total voting power.

The Companies Act, 2013

Vacation of Office

- Unsound mind
- Insolvent
- Fails to obtain his qualification shares
- Convicted
- Fails to pay any call money
- Absents himself from three consecutive Board meetings or from all meetings continuously period of three months whichever is longer
- Disqualified by an order of the Court
- Fails to disclose to the Board his interest

The Companies Act, 2013

Removal of Directors

- The company can remove by an ordinary resolution before the expiry of his term
- The Central Government
- The Company Law Tribunal

The Companies Act, 2013

Power of Directors

- **General Powers**

- **Statutory Powers**

1. Make calls
2. Issue debentures
3. Borrow money otherwise than on debentures
4. Make loans

- **Other powers to be exercised at Board Meetings**

1. Fill up casual vacancy
2. Appoint additional directors
3. Appoint an alternate director
4. Sanction to contracts
5. Recommend rate of dividend
6. Make investments
7. Appoint the first auditors
8. Fill up the casual vacancy of the office of an auditor not caused by resignation

The Companies Act, 2013

Removal of Directors

- A director of a company can be removed from office by the company by an ordinary resolution before the expiry of his term, when such a director has acted in fraudulent manner or abused his fiduciary position.
- The Central Government can remove a director under certain circumstances.
- The Company Law Tribunal may also order for removal of a director where an application has been made to it on charges of oppression and mismanagement of the company affairs.

The Companies Act, 2013

Duties of Directors

1. **Fiduciary Obligation** - good faith in all dealings or acting on behalf of the company.
2. **Duty to Care** - should work very careful and honesty
3. **Duty to attend the Board Meeting**
4. **Duty not to delegate**
5. **Duty to disclose interest**
6. **Statutory Duties**
 - Sign a prospectus and deliver it to the Registrar
 - See that all moneys received from applicants for shares are kept in a scheduled bank
 - Not to allot shares before receiving minimum subscription
 - Forward a statutory report to all its members at least 21 days before the date of the meeting
 - Hold the meetings at least once in three months
 - Call for annual general meeting every year
 - File all statutory returns with prescribed authorities
 - Take steps for filing declaration of solvency in the case of voluntary winding up

The Companies Act, 2013

Liability of Directors

A. Liability to outsiders

1. Contract with outsiders in their personal capacity
2. Contract as agents of an undisclosed principal.
3. Contract is ultra vires the company
4. Fails to repay application money
5. Misstatement in prospectus
6. Make irregular

B. Liability to Company

1. Where they have acted ultra vires the company
2. When they have acted negligently
3. Where there is a breach of trust
4. Directors are liable to the company for misfeasance

The Companies Act, 2013

Liability of Directors

C. Criminal Liability of Directors

1. Misstatement in the prospectus
2. Failure to file return of allotment
3. Failure to issue share certificates within the prescribed period
4. Failure to pay dividend within 42 days from the date of declaration
5. Failure to lay before the AGM audited profit and loss account and balance sheet
6. Failure to file copies of special resolution with the Registrar within 30 days of passing the resolution
7. Failure to furnish the necessary information to the company's auditors
8. Destruction of important document
9. Holding the office of directors in more than 15 companies excluding private companies.

The Companies Act, 2013

Managing Director

Managing Director is a director who is entrusted with substantial powers of management, which would not be otherwise available to him. Routine administrative work is not included in the term “Substantial Powers of management”. A managing director is appointed

- As result of an **agreement** entered into with the company or
- As a result of a provision contained in the **memorandum or articles** or
- In pursuance of a **resolution** passed wither by the Board or by the company in general meeting

The Companies Act, 2013

Managing Director

Some of the important points worth noting regarding managing director are given below

- Without the approval of Central Government **no change** can be effected in the terms of appointment of a managing director
- A managing director cannot be appointed for a period exceeding **5 years** at a time
- A person cannot act as a managing director of more than **2 companies** at a time
- The remuneration should not exceed **5% of the annual net profits** if there is one managing director. If there is **more than one such director, 10%** for all of them together. This can be paid by way of monthly payment or at a specified percentage of net profits or by both ways.

The Companies Act, 2013

Managerial Remuneration

Managerial remuneration may take in the form of monthly payments (salary), or a specified percentage of net profits or a commission, etc. this expression shall include the value of perquisites.

The total managerial remuneration payable by a public limited company to its director or manager must not exceed 11% of the net profits of the company for that financial year.

Remuneration to a managing director or whole time director may be paid not exceeding 5% of the net profits and if there is more than one such director, 10% for all of them together.

Review Questions

1. Any individuals can act as directors, body corporate, association or firm shall be appointed as director of a company. **True or False**
2. Who can appoint the board of directors?
 - a. Company
 - b. Central Government
 - c. Company Law Tribunal
 - d. All of the above
3. The remuneration of the managing director should not exceeds
 - a. 15%
 - b. 5%
 - c. 11%
 - d. 20%

Answer

1. Any individuals can act as directors, body corporate, association or firm shall be appointed as director of a company.

Answer: False

2. Who can appoint the board of directors?

Answer: d. All of the above

3. The remuneration of one managing director should not exceeds

Answer: b. 5%

Thank You