

LEGAL ASPECTS OF BUSINESS

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- Managerial Personnel

MEMBERSHIP IN A COMPANY

The members of a company are the persons who collectively constitute the company as a corporate entity.

WHO CAN BECOME MEMBERS?

Any person who is competent to contract may become a member of a company. This is subject to the provisions of the Memorandum and Articles of the company. As regards competency of a person to become a member the provisions of the Indian Contract Act, 1872, regarding the persons who can contract, apply.

1. Minor

A minor is incompetent to become a member of a company because an agreement with a minor is absolutely void. If the directors, in ignorance of the fact of minority, allot shares to a minor and enter his name in the register of members, the company can repudiate the allotment.

The Company Law Board had however decided that agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian and the registration of a transfer of shares in the name of the minor, acting through his or her guardian, specially where the shares are fully paid, cannot be refused on the ground of the transferee being a minor.

2. Insolvent

An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver.

3. Partnership firm

A partnership firm may hold shares in a company in the individual names of partners as joint shareholders. The firm cannot be entrusted as a member in the register of members as a firm, being an unincorporated association, is not a person.

4. Foreigner

A foreigner may become a member of a company, but if at any time he becomes an alien enemy, his rights as a member of the company are suspended.

5. Company

- a. A company may, if so authorized by its Articles, become a member of another company
- b. A company cannot become a member of itself, i.e., it cannot purchase its own shares.

HOW TO BECOME A MEMBER?

1. Membership by Subscription

The subscribers of the Memorandum of Association of a company are deemed to have agreed to become its members. When the company is registered, their names are entered as members in the register of members. Neither application nor allotment of shares is necessary.

2. Membership by qualification shares

The Companies Act, 1956, does not require directors to hold any shares at all. If Articles of Association of a company require a person to hold qualification shares, he can be appointed as a director only when he takes, or signs an undertaking to take and pay for, the qualification shares. Thus he becomes a member and is in the same position as a subscriber to the memorandum of the company is.

3. Membership by application and registration

Apart from the subscribers of the Memorandum, every other person, who agrees in writing to become a member and whose name is entered in the register, is a member of the company?

CESSATION OF MEMBERSHIP

A person may cease to be the member of a company –

1. If he transfers his shares to another person
2. If his shares are forfeited

3. If the company sells his shares under some provisions in its Articles
4. If he is adjudicated insolvent
5. If he dies
6. If he rescinds the contract to take shares on the ground of misrepresentation in the prospectus or on the ground of irregular allotment
7. If irredeemable preference shares are redeemed
8. If he surrenders shares, where surrender is permitted
9. If his shares are sold in execution of a decree of the court
10. If share warrants are issued to him in exchange of fully paid shares
11. If the company is being wound up. But he continues to be liable as a contributory and is also entitled to share in surplus assets, if any.

RIGHTS OF MEMBERS

1. Statutory Rights

- a. Right of priority to have shares offered in case of increase of capital
- b. Right to transfer shares
- c. Right to receive a share certificate
- d. Right to inspect the register of members
- e. Right to apply to the Tribunal for calling an AGM when the company fails to convene the meeting
- f. Right to receive notice of meetings, attend and vote at meetings
- g. Right to apply to the Tribunal for calling an extraordinary meeting where it is impracticable to call such a meeting
- h. Right to receive copies of annual accounts of the company
- i. Right to participate in appointment of directors and auditors in the AGM
- j. Right to make an application to the Tribunal for ordering an investigation into the affairs of the company
- k. Right to petition to the Tribunal for the winding up of the company

2. Documentary rights

3. **Legal rights** – given to members by the general law e.g., in case of mis-statement or concealment of a material fact in the prospectus.

LIABILITIES OF MEMBERS

- Company with unlimited liability
- Company with limited liability by shares
- Company with limited liability by guarantee

MEETINGS

A company as a legal entity is capable of acting in its own name. But since it has no physical existence, it has always to act only through its members or directors of a company. Only when act as a body at the respective meetings through resolution, the company is perceived to be acting. Hence the meetings are very important for transacting and implementation of business politics.

MEANING

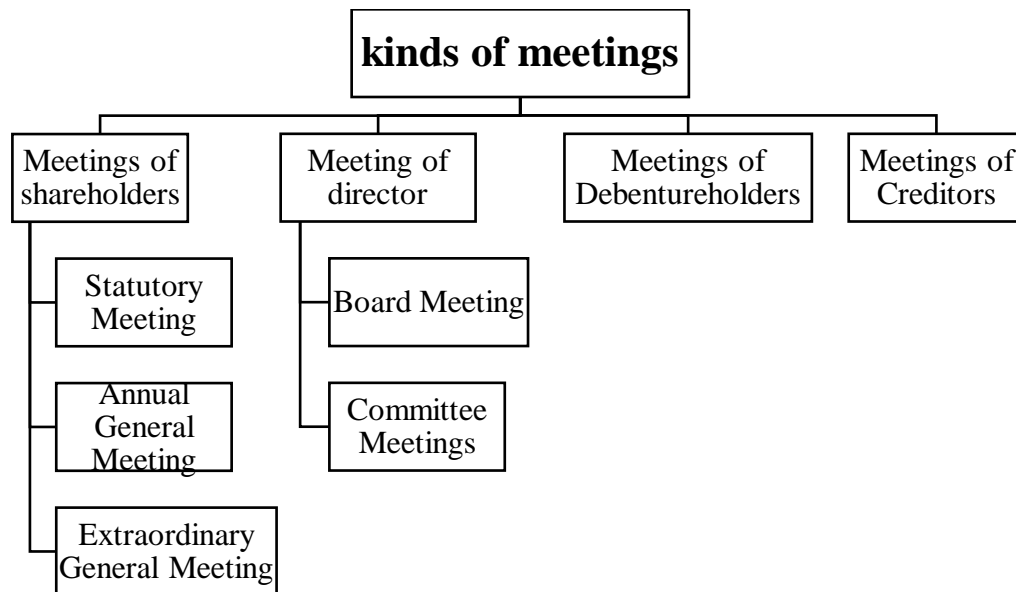
A meeting is a gathering of people to present or exchange information, plan joint activities, make decisions, or carryout actions already agreed upon. In other words, as assembly of relevant persons validly convened through proper notice for transacting business mentioned in an agenda is known as a meeting.

REQUISITES OF A VALID MEETING

A meeting is any kind, to be valid, must satisfy the following conditions.

1. It must be properly convened. That is, it should be called by the proper authority entitled to call the meeting. The proper authority to convene the meeting is the Board of directors, shareholders or the Company Law Board
2. It must be legally constituted. This means that the meeting should have a proper chairman; quorum must be present
3. It should be conducted according to the provisions of the Act and the Articles
4. It should be properly conducted

KINDS OF MEETINGS



MEETINGS OF SHAREHOLDERS

1. Statutory Meeting

The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as statutory meeting. Every public limited company limited by shares and limited by Guarantee Company must compulsorily hold this meeting within 6 months and not earlier than one month from the date on which the company is entitled to commence business. This is held only once in the life time of the company.

The object of the meeting is to afford an opportunity to the shareholders to know important details of company formation, the success of its capital issue, properties that have been acquired, etc. Along with the notice convening the meeting, a report called statutory report must also be sent to all members at least 21 days before the date of the meeting.

This meeting provides an opportunity to members to discuss various matters relating to the contents of statutory report. They can also effect any modification to the contracts mentioned in the prospectus.

Content of Statutory Report

1. Details of shares issued for cash and those issued for consideration other than cash
2. Total amount of receipts and payments upto a date within 7 days of the report
3. An account or an estimate of the preliminary expenses
4. Particulars of contracts for approval and proposed modification
5. Details of underwriting contract not carried out and the reasons therefor

6. Particulars of commission or brokerage paid or to be paid to directors on issue of shares or debentures
7. Particulars about directors, managing directors, manager and secretary
8. Particulars of calls due from directors, managing director, etc

The statutory report must be certified as correct by at least two directors, one of whom must be a Managing Director. As far cash received on shares allotted and other receipts and payments they must be certified by an auditor. A certified copy of the statutory report must be filled with the Registrar. Members can inspect the list of members and the number of shares held by them.

Consequence of default

If any default is made in holding the statutory meeting within the prescribed time or in filing the statutory report to the Registrar, every director or other officer in default is punishable with a fine upto Rs.5,000.

Further, the court can order even winding up of the company on a petition filed by a member of the company. Such is the significance of the statutory meeting.

2. Annual General Meeting (AGM)

Every company is required to hold an annual general meeting in addition to any other meetings. The first AGM must be held within a period of 18 months from the date of its incorporation. Subsequently the interval between two AGM must not be more than 15 months.

The ordinary businesses at these meetings are:

- i. Consideration and adoption of the annual accounts and the reports of the directors and auditors
- ii. Declaration of dividend
- iii. Appointment of directors in place of those retiring
- iv. Appointment of auditors and fixing remuneration to them

Special Business

All other businesses transacted at this meeting are called special businesses. Examples of special business; Removal of Director, issue of rights or bonus shares, election of a person other than a retiring person as a director, etc

Consequences of Default

If a company fails to hold an AGM, the company and every officer who is in default shall be punishable with a fine upto Rs.50,000 and in the case of continuing default, with a further fine of Rs.2,500 per day during which the default continues.

Importance of AGM

The shareholders get an opportunity to review the performance of the company to discuss the affairs of the company and to take steps necessary for protecting their interests.

3. Extraordinary General Meeting

Any meeting other than the statutory meeting and the AGM of the company is called extraordinary general meeting. It is convened for transacting any urgent or special business which cannot be postponed till the next AGM. An extraordinary general meeting may be convened by the Board of directors on its own, or on the requisition of the members subject to certain conditions.

Extraordinary General Meeting convened by the requisitionists

If the Board of directors fails to call the meeting within 21 days and the meeting is not held within 45 days of requisition, the requisitionists themselves may call the meeting within three months from the date of requisition.

Extraordinary General Meeting by Company Law Board

If it is not possible for the members to convene an extraordinary meeting, the Company Law Board either on its own motion or on the application of any director or member may call such a meeting.

Meetings of the Board of Directors

Meetings of directors are called Board meetings. They are very important because all important matters relating to the company and its policies are decided there at.

Provisions regarding Board Meetings

The Board meeting must be held at least once in every three calendar months. At least four such meetings should be held in every year. The notice of every Board meeting must be given by writing to every director. Who is present in India at his usual address. The quorum for the Board meeting shall be one third of the total strength of the Board (any fraction being rounded off as one) or two directors whichever is higher.

The Board is entitled to exercise all such powers and to do all such acts as the company is authorized to do. However the Companies Act imposes certain restrictions on the powers of the Board.

Meetings of Committee of Directors

Since it is not possible for the Board to devote time to carry on investigation on different matters, the Board may delegate their powers to committees, if the Articles of Association so provides. The Board is empowered to delegate for example the following powers to any committee of directors.

- a) The power to borrow money, otherwise than on demand
- b) The power to invest the funds of the company
- c) The power to make loans, etc

Meetings of Debenture Holders

Such meetings are convened when the company wants to change the terms of security or to modify the rights, or to change the rate of interest payable, etc

Meetings of Creditors

Meetings of creditors are held when the company proposes to make a scheme of arrangements with its creditors.

OTHER ASPECTS TO BE REMEMBERED DURING THE MEETINGS

A. PROXIES

The term 'Proxy' may refer to a person who is authorized by a member for the purpose of attending the meeting. It also means the instrument by which the proxy is authorized. The following points relating to proxies are worth nothing;

- a) Members of a company having a share capital have a right to appoint proxies.
- b) Proxy need not be a member of the company
- c) Proxy can attend a meeting but he has no right to speak
- d) Proxy cannot vote except on a poll
- e) A member can appoint more than one proxy
- f) The proxy form must be in writing, duly signed by the appointer and stamped. It must be lodged at the company's office 48 hours before the commencement of the meeting.

B. QUORUM

The word 'Quorum' means the minimum number of members required to be personally present at a meeting for validly transacting any business. Usually the quorum is fixed by the Articles.

The quorum shall be two members personally present in the case of a private company and five in case of public company. The quorum for the Board meeting shall be one third of the strength or two directors whichever is higher. However the Articles may provide a larger number.

For calculating quorum, proxies should not be counted and only members present in person must be considered. Quorum should be present throughout the meeting. The importance of quorum can be understood if it is noted that any resolution passed in the absence of a quorum is not valid. Similarly if quorum is not present, the meeting itself stands adjourned.

C. AGENDA

Agenda means the list of business to be transacted at the meeting. It is generally prepared by the secretary in consultation with the chairman.

D. MINUTES

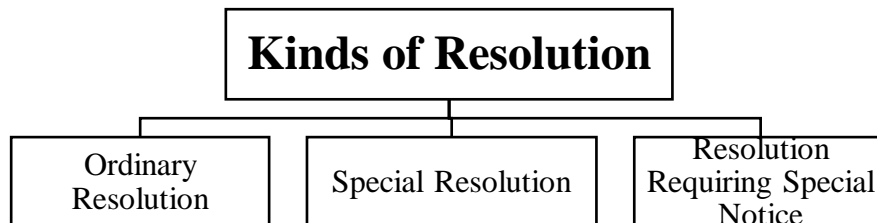
The term minutes refers to accurate official record of decisions taken at various company meetings. Every company must keep the minutes containing summary of all proceedings of general and Board meeting in books. Minutes should be brief and factual. It should be so accurate as not to give for misinterpretation. It should be free from superfluous words.

The following particulars should be present in the minutes;

- i. Nature of the meeting
- ii. Date, time and place of the meeting
- iii. Names of Chairman, directors, secretary and number of members attending
- iv. Business of the meeting in the order set out in the agenda
- v. Approval of the minutes of the last meeting
- vi. Resolution passed in the meeting
- vii. Chairman's signature with date

RESOLUTION

When a proposal placed before the meeting is passed by the meeting, it becomes a resolution. A resolution thus reflects the decision of the majority. In other words, the decisions of the company are made by resolutions of its members passed at meetings of members. A proposal accepted by the members becomes resolution.



1. ORDINARY RESOLUTION

Any resolution passed by a simple majority is an ordinary resolution. Simple majority means that 51 percent or more of the votes have been cast in favour of the resolution.

When ordinary resolution is necessary?

- a) Adoption of audited accounts, director's report and auditor's report
- b) Appointment of auditors
- c) Election of directors in place of those retiring
- d) Declaration of dividend
- e) Issuing shares at a discount
- f) Removing a director before the expiry of his term
- g) Appointing a director in the place of removed director

2. SPECIAL RESOLUTION

Special resolution is one which is required for transacting any special business. It has to be passed by a three-fourths majority. In other words, the votes cast in favour of the resolution must exceed three times the votes cast against it.

The notice calling the meeting should specify the intention to pass the resolution as a special resolution. Notice must be given at least 21 days before the date of the meeting.

When special resolution is required?

- a) Altering the objects clause of the Memorandum
- b) Changing the place of the registered office from one State to another
- c) Altering the Articles of Association
- d) Reducing the Share Capital

- e) Making loans to other companies under the same management
- f) Paying interest out of capital in certain cases
- g) Voluntary winding up of the company

3. RESOLUTION REQUIRING SPECIAL NOTICE

This type of resolution does not belong to a separate category. However, the mover of the proposed resolution must give a special notice of 14 days to the company. On receipt of this resolution, the company in turn has to give notice to the members at least 7 days before the date of the meeting. Where it is not practicable, it can publish it in a newspaper.

Items requiring special notice

- a) Appointing an auditor other than a retiring auditor
- b) Passing a resolution that a retiring auditor should not be appointed
- c) Removing a director before the expiry of his term
- d) Appointing a director in place of the removed director

VOTING AND POLL

VOTING

Voting means expressing one's statement either for or against a proposed resolution, called motion. In a company meeting voting can be by way of acclamation of voice, show of hands and poll.

1. VOTING BY ACCLAMATION OF VOICE

Those favouring the motion are requested to say 'yes' or those who are against it are requested to say 'no'. The intention of the members is ascertained by the volume of sound.

2. VOTING BY SHOW OF HANDS

Members favouring a resolution are asked to raise their hands and the number is counted. Similar procedure is adopted to count the number of members who are against it. Thus the resolution is declared passed or lost.

3. VOTING BY POLL

When dissatisfied with the result of voting by show of hands, a poll may be demanded. Here each member records his vote on a voting card for or against the resolution. The voting rights of a member are in proportion to his share of the paid up equity capital of the company. Either the chairman on his own motion or on demand by prescribed number of members present in person or by proxies, can order poll. Proxy is allowed to vote in a poll.

MANAGERIAL PERSONNEL (Directors, Managing Directors and Managers)

I. DIRECTORS

Management of the affairs of the company is entrusted to Board of Directors who are elected by the shareholders. Though shareholders are the real owners of the company, they cannot take part directly in its management. However, there is indirect participation as it is in the hands of the elected representatives called directors.

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MEANING

A director includes any person occupying the position of director by whatever name called. Only an individual can be appointed a director.

POSITION OF DIRECTORS

1. Directors as agents

When the directors enter into contract with third parties sign documents for and on behalf of the company etc, they act as the agent of the company. They bind the company by their acts.

2. Directors as Trustees

They are in the position of trustees, when they manage the assets and properties of the company. Similarly when they exercise the powers entrusted to them they are in the same position. It means that they should safeguard the interest of the company and should never abuse the powers for promoting their personal ends.

3. Directors as Officers

Directors also act as officers of the company. When they have to manage the affairs of the company, they are in the position to Chief Executive Officers. Thus the directors combine in themselves the roles of agents, trustees and officers.

QUALIFICATION OF DIRECTORS

1. Only individuals can be appointed as directors of the company.

2. They must have contractual capacity
3. They must possess qualification shares, if laid down in the Articles. In such a case the qualification must be acquired within two months of their appointment as directors. The nominal value of qualification share should not exceed Rs.5,000 or one share where its nominal value exceeds Rs.5,000.

DISQUALIFICATION OF DIRECTORS

The following persons are disqualified for appointment as directors of a company;

1. A person of unsound mind
2. An undischarged insolvent
3. Any person who has applied for being adjudged an insolvent
4. Any person who had been sentenced with imprisonment for an offence involving moral turpitude for a period exceeding 6 months and a period of 5 years has not elapsed since the date of expiry of the sentence
5. A person who has not paid the call money and the calls in arrear are outstanding for more than 6 months
6. Any person disqualified by a court for appointment as director for having committed fraud in management

APPOINTMENT OF DIRECTORS

First directors are usually named in the Articles if the Articles are silent, the signatories to the memorandum shall be deemed to be the first directors of the company.

a. Appointment of Directors by the Company

Subsequent directors are elected by shareholders at the AGM. If a company adopts the principle of retirement by rotation, one-third of the directors must retire by rotation. The retiring directors are eligible for reappointment.

b. Appointment by Board of Directors

The Board can appoint additional directors. They can fill up casual vacancy caused by death, resignations, etc. they can also appoint alternate director. If empowered by Articles, the Board may appoint an alternate director during his absence for a period of the less than 3 months from the date in which meetings of the Board are ordinarily held.

c. Appointment by Third Parties

If authorized by the Articles, third parties such as vendor of the business, banking or financial institutions which have advanced loans to the companies, can appoint their nominees on the Board.

d. Appointment by Central Government

The Central Government can also appoint directors on an order passed by the Company Law Board or on the application of not less than 100 members of the company or of members holding 10% of the total voting power.

NUMBER OF DIRECTORSHIP

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.

Every public company must have at least 3 directors and every private company must have at least 2 directors.

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.

VACATION OF OFFICE

A director must vacate his office in the following circumstances;

- i. When he is found to be of unsound mind by a competent court
- ii. If he is adjudged an insolvent
- iii. If he fails to obtain his qualification shares within the prescribed time or ceases to hold at any time thereafter
- iv. If he is convicted of an offence involving moral turpitude and sentenced to imprisonment for not less than 6 months

- v. If he fails to pay any call money within 6 months
- vi. If he absents himself from three consecutive Board meetings or from all meetings of the Board for a continuous period of three months whichever is longer without obtaining leave of absence from the Board
- vii. If he becomes disqualified by an order of the Court
- viii. If he fails to disclose to the Board his interest in any contract entered into by the company.

POWER OF DIRECTORS

According to sec.292, the powers are mentioned below;

1. General Powers

The board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to do. However the Board shall not do any act which is to be done by the company in general meeting.

2. Statutory Powers

By means of resolutions passed at the Board meetings, the following powers can be exercised by the directors.

- i. To make calls
- ii. To issue debentures
- iii. To borrow money otherwise than on debentures
- iv. To make loans

3. Other powers to be exercised at Board Meetings

- i. To fill up casual vacancy in the office of directors
- ii. To appoint additional directors, if authorized by the articles
- iii. To appoint an alternate director if authorized by the articles
- iv. To accord sanction to contracts in which any director or his relative is interested
- v. To recommend a certain rate of dividend to be declared at the annual general meeting
- vi. To make investments in the companies in the same group
- vii. To appoint the first auditors of the company
- viii. To fill up the casual vacancy of the office of an auditor not caused by resignation

4. Restrictions on the powers of directors

The following powers cannot be exercised by the Board without the consent of the shareholders in the general meeting.

- i. To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
- ii. To extend time for repayment of any debt due by a director
- iii. To borrow money where the money to be borrowed together with that already borrowed is in excess of the aggregate of the paid up capital and free reserves
- iv. To contribute to charitable funds in excess of the prescribed limit

DUTIES OF DIRECTORS

1. Fiduciary Obligation

Since the company is an artificial person, it acts through the agency of natural persons who are known as directors. Though the directors have powers, they have to do it for the benefit of the company. Accordingly they must display good faith in all dealings or acting on behalf of the company.

2. Duty to Care

The directors should work very careful and honesty so that the company will get more profits. Directors must act honestly in the performance of his duties.

3. Duty to attend the Board Meeting

Board meetings are the appropriate places for the decisions and policy making of the company. If the does not attend the meetings, it shows his negligence. If he absents for three consecutive meetings, then he shall be removed from the company. It is the duty of the directors to attend the board meetings regularly.

4. Duty not to delegate

The directors must perform their duties personally. The powers of the company are delegated to the directors. Therefore he cannot delegate his powers to others persons.

5. Duty to disclose interest

Every director who is in any way whether directly or indirectly concerned or interested in arrangement or proposed contract or arrangement, entered into or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board of directors.

6. Statutory Duties

Some of the important duties laid down in the Companies Act are listed below;

1. To sign a prospectus and deliver it to the Registrar before its issued to the public
2. To see that all moneys received from applicants for shares are kept in a scheduled bank
3. Not to allot shares before receiving minimum subscription
4. To forward a statutory report to all its members at least 21 days before the date of the meeting
5. To hold the meetings at least once in three months
6. If a director is interested in a contract, to disclose the nature of his interest
7. To call for annual general meeting every year
8. To file all statutory returns with prescribed authorities
9. To take steps for filing declaration of solvency in the case of voluntary winding up

LIABILITY OF DIRECTORS

A. liability to outsiders

The directors are personally liable to third parties of contract in the following cases;

- They contract with outsiders in their personal capacity
- They contract as agents of an undisclosed principal.
- They enter into a contract on behalf of prospective company
- When the contract is ultra vires the company
- When they fail to repay application money
- When they make misstatement in prospectus
- When they make irregular

B. Liability to Company

The directors shall be liable to the company for the following;

- Where they have acted ultra vires the company
- When they have acted negligently
- Where there is a breach of trust
- Directors are liable to the company for misfeasance

C. Criminal Liability of Directors

Directors may incur criminal liability for the following activities;

- a. Misstatement in the prospectus
- b. Failure to file return of allotment
- c. Failure to issue share certificates within the prescribed period
- d. Failure to pay dividend within 42 days from the date of declaration
- e. Failure to lay before the AGM audited profit and loss account and balance sheet
- f. Failure to file copies of special resolution with the Registrar within 30 days of passing the resolution
- g. Failure to furnish the necessary information to the company's auditors
- h. Destruction of important document
- i. Holding the office of directors in more than 20 companies excluding private companies.

MANAGING DIRECTOR

Meaning

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

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

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

1. Without the approval of Central Government no change can be effected in the terms of appointment of a managing director
2. A managing director cannot be appointed for a period exceeding 5 years at a time
3. A person cannot act as a managing director of more than 2 companies at a time
4. 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.

MANAGER

Manager and managing director have similar functions to perform. The important difference between the two is that while a managing director must be a director, a manager need not be a director. Only an individual can be appointed as a manager.

Subject to the superintendence, control and direction of the Board of directors, a manager is entrusted with the management of the whole or substantially the whole of the affairs of the company.

1. A company cannot have more than one manager
2. The powers of a manager are wider than those of a managing director, because the manager may be entrusted with the management of whole of the affairs of the company.
3. Maximum remuneration payable to a manager cannot exceed 5% of the annual net profits
4. Manager cannot be appointed for a period exceeding 5 years at a time

MANAGERIAL REMUNERATION

Managerial remuneration may take 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.

In a year of no profits or inadequate profits, such managerial remuneration shall be governed by the provisions of Schedule XIII of the Companies Act, 1956.

Otherwise, the remuneration payable to directors is usually determined by the Articles of Association or a resolution passed by the company in its general meeting. The total managerial remuneration payable to directly managing director, or manager and whole-time director should not exceed 11% of the net profit and if profit is inadequate, a sum not exceeding Rs.50, 000 per annum, this will be applicable for public company and there is no restriction for private company.

Web links

- ebook.mca.gov.in/default.aspx
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