

Shiksha Mandal's

G. S. College of Commerce, Wardha

Department of B. Com. Computer Application

Unit - IV

Secretary

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Secretary

The secretary of a person who is appointed by another person to write letters, to look after all types of routine work, to keep accounts, to keep records to give advice to his employer and to act in confidential capacity. In large organizations he holds a key position, commands respect and honour

In ancient time, a secretary was appointed by kings and emperors to look after their affairs. In roman literature he has called as 'Scribe' it means a person who knows and write the secrete. In India the secretary was known as 'Amatya' or 'Sachiva or Chitnis' he was appointed to perform routine work, to write letters and give important advice to his boss therefore, it is an Oldest profession.

Definition

According to Oxford Dictionary

“ A secretary is one whose office is to write another, especially one who is employed to conduct correspondence, to keep record and to transport various other business for another person or for a society, corporation or public body.”

According to Indian companies Act

“A secretary means any individual possessing the prescribed qualification, appointed to perform the duties which may be performed by a secretary under the act and an ministerial or administrative duties.”

Features of Secretary

1) Individual

A secretary is an individual. He should not be a firm or a corporate body.

2) Confidential writer

A secretary is a confidential writer. He is given various secret matters for writing and handling. He should not disclose such secret information to outsider even to the staff.

3) Appointment

A secretary may be appointed by an individual like busy business man, lawyers, doctors, c.a. etc. in this case his appointment is optional. He may be appointed by local body, joint stock company. Cooperative society or association. In this case his appointment is compulsory



4) Duties

The duties of the secretary depends upon the nature of the organization. But he has to look after the correspondence, day to day routine, administrative work, maintenance of book of accounts of the organization

5) Types

There are different types of secretary, such as personal secretary, non profit association secretary, co-operative society secretary, joint stock company secretary, govt. dept, secretary.

6) Qualities

A secretary must possess some qualities. As he deals with several persons at different level and has to satisfy all of them as far as possible. Naturally he must possess certain qualities. Qualities can be classified into two parts such as qualities of Head and qualities of heart.



7) Qualification

Each secretary must have certain qualification. It includes educational, professional and training.

8) Payment

Generally a secretary paid salary / remuneration for his service. But in some cases he works on honorary basis.

9) Representative

He has to work as the representative of his organization when he deals with employees, customers or government authorities.

Work, Duties or liabilities or responsibility of Company Secretary

To carry out company successfully the company secretary has to perform several activities. He has to perform several duties in connection with his work. These duties or responsibilities are depended on size of a company. As the size of firm increase the responsibilities are also increases proportionately. The company secretary comes into contact with the government, share holder, directors, company staff, customers and overall society. Therefore, he has to perform the several duties in connection with it. These duties can be classified into statutory duties, administrative duties, duties towards share holders, directors and consumers. These are stated below.

A) Statutory Duties

Company secretary is the topmost office of a company. Therefore, he has to perform the several duties as prescribed by law. All the duties in connection with the establishment of company, payment of taxes, submission of documents etc. are included in statutory duties. These duties are stated below.

1) Memorandum of Association

It is the basic document of company. A secretary has to provide help in preparation of Memorandum of association and to submit a copy of the same to the registrar of companies. Before registration.

2) Articles of Association

A secretary has to prepare Articles of Association as per various instructions provided by promoters. He can even select 'Table A' as it is or with some modification instead of Articles of Association. He has to submit copy of the same with the registrar of companies.

3) Income Tax

A secretary has to deduct income tax on wages, salary and remuneration as per the prescribed rates. He has to submit copy of the same every month with the govt.

4) Dividend Tax

A secretary has to deduct tax on dividend earned by share holders as per latest tax rates and to fill up the same in government treasury along with statement.

5) Common Seal

A secretary has to use common seal of a company on all document issued by a company

6) Stamp

A secretary has to see that every legal document is properly stamped as per the prescribed rates provided in Indian Stamp Act 1899. He has also to considered the latest amendments made in it.

7) Statutory Book

A secretary has to maintain all the statutory books like register of members, debenture holders, directors etc. up to date.

8) Meeting

A secretary has to arrange the various meetings as per statutory provisions provided in company Act 1956. He has to fulfill all the legal proceedings in connections with these meetings.

9) Minute

It is the report of whatever happened in meeting. The company secretary has to take rough notes during meeting and after preparing a minute from it. It is to be submitted to the registrar of companies.

10) Final Account

A secretary has to arrange audit of trading, profit and loss Account. Balance sheet and to submit audited copy of the same to the registrar of companies.

11) Information

Last but not the least a secretary has to supply necessary information to the registrar of companies from time to time whichever has demanded by him.

B) Administrative Duties

A secretary has to control over the various administrative activities of a company. It is because of he is the chief administrative officer of a company. The administrative duties are of immense value because of these are connected with outside world. These duties are stated below.

1) Correspondence

A secretary has to make necessary correspondence with the debtors, creditors, bankers etc. He has to make the settlements of all payments as well as recovery with the help of this correspondence.

2) Control Accounts

A secretary has to control over account books of a company by the way of appointing skilled staff and audit these accounts.

3) Filing

A secretary has to make filing of all the documents for future reference.

4) Insurance

A secretary has to make contract with insurance company for safeguarding assets of a company.

5) Remuneration

A secretary has to determine remuneration for the office staff as per minimum wage act.

6) Records

A secretary has to maintain records of all the transactions and to supply it to the concerning parties whenever demanded by them.

7) Recruitment

A secretary has to make necessary arrangement for the recruitment of workers and employees.

8) Supervision

A secretary has to supervise issue and allotment of shares and debentures.

9) Selection

A secretary has to make proper selection of office staff on the basis of qualification, experience, knowledge, skill, expected salary etc.

10) Sanction loan

A Secretary has to make necessary steps for sanctioning loan from bank and other financial institutions.

11) Training

A secretary has to make proper arrangements for the training of office staff with a view of skill development.

12) Trade union

A secretary have to make necessary contracts with trade union on behalf of a company.

C) Duties Towards Share Holders

Shareholders are the real owners of a company. Therefore, a link between shareholders and the company is necessary. The company secretary has to take necessary steps in connection with it to perform the duties towards shareholders. These steps are stated below.

1) Allotment letters

The company secretary has to prepare allotment letters and sent to those share holders within 3 months who paid the allotment amount.

2) Annual General Meeting

A secretary has to provide pre-intimation of an annual general meeting to all the shareholders at least 21 days before the meeting. He should also be provided a copy of the agenda along with it.

3) Call

A secretary has to provide pre-intimation of call on shares to all the share holders before prescribed date.

4) Dividend Warrant

A secretary has to make necessary arrangement for distribution of dividend warrants to all the share holders after declaring of dividend.

5) Duplicate Certificate

A secretary has to make necessary arrangements for the issue of duplicate share certificates to those shareholders whose original certificates are lost or destroyed and if they applied for the same.

6) Information

A secretary should be provided with all the necessary information asked by shareholders.

7) Reminder

A secretary has to provide the necessary number of reminder letters as per articles of association to the defaulter shareholder before forfeiture of share.



8) SEBI

The company secretary has to perform his duties to safe-guard the interests of shareholders as per the guidelines provided by SEBI.

9) Share Warrant

A secretary has to make necessary arrangements for the conversion of a share certificate into share warrant and vice versa if the share holder applies for the same.

10) Transfer

A secretary has to take the necessary steps for transfer and transmission.

D) Duties towards Directors

A secretary possesses legal knowledge of all the concerning matters. Therefore, he has to guide the board of directors. He should be provided information of legal provisions in connection with the daily routine of directors. These duties are stated below.

1) Agenda

A secretary should prepare the agenda of board meetings from time to time and it should be sent to the board of directors for sanctioning.

2) Annual Report

A secretary should help to the directors in the preparation of the annual report.

3) Controlling

Controlling is the basic function of directors, therefore, a secretary should help the directors in controlling the various activities of a company.

4) Decision making

A secretary should be provided helping hand to the directors in decision making process.

5) Guidance

A secretary possess knowledge of legal affairs. Therefore, he should provide guidance to the directors in connection with legal matters.

6) Intimation

A secretary should be provided necessary information to the board of directors as per need and requirement.

7) Meeting

A secretary should be conducted board meeting for the company directors from time to time.



8) Policy making

One of the function of board of director is policy making. A secretary should be provided necessary help to the board of directors in policy making.

9) Qualification shares

A secretary should make necessary arrangements for the issue or qualification shares to all the members of the board of directors and to make call on it in the prescribed time limit.

10) Secrecy

The company secretary should maintain secrecy of all the decisions taken by board of directors.

E) Duties towards consumers

The success of a company depends on the nature of the consumer. If they are co-operative then a company can make progress. Otherwise, the stock may remain unsold. Therefore, it creates hindrances in production. Thus, a company suffers from the financial crisis. To avoid this drawback a secretary has to perform the following various duties.

1) Advertisement

A secretary should be provided necessary information of product to the consumers through advertisement. He should make prompt payment to advertising companies from time to time for the processes of advertisement made by them.

2) Change

A secretary should provide helps to determine necessary changes in products. He should be appointed skilled staff for it.

3) Information

A secretary has to be provided necessary information asked by the consumers in connection with goods.

4) Market survey

A secretary should arrange market survey. He should be concluded it. Thus, necessary changes should be made as per consumer's desire.

5) Pollution


A secretary should take necessary steps towards reduction in air and water pollution. Otherwise, consumers may strongly oppose to industry.

Appointment of Company Secretary

The appointment of a company secretary is an important decision for any company. Here are some of the key considerations to keep in mind when appointing a company secretary:

1) Legal requirements: According to the Companies Act 2013, every company is required to have a company secretary. The company secretary must be a member of a recognised professional body and have a valid practice certificate. Ensuring that the person being appointed meets these legal requirements is important

2) Duties and responsibilities of the board: The board of directors has a duty to appoint a company secretary who has the necessary skills and experience to perform the duties required of the position. The board is responsible for overseeing the work of the company secretary and ensuring that they carry out their duties effectively.



3) Factors to consider: When appointing a company secretary, it is important to consider factors such as experience, qualifications, and reputation. The company secretary should have a good understanding of the company's operations and should be able to provide valuable advice and guidance to the board.


4) Process of appointment: The appointment of a company secretary typically involves a selection process that includes screening and interviewing candidates. The board may also seek recommendations from professional organisations or other companies in the same industry.

5) Appointment letter and contract of employment: Once a company secretary has been selected, they should be provided with an appointment letter and a contract of employment. These documents should outline the terms and conditions of their appointment, including their duties, responsibilities, and remuneration.

Appointment of company secretary needs thorough consideration of all relevant legal requirements, board responsibilities, and selection criteria. The selection procedure should be open and transparent, and it should lead to the hiring of a qualified candidate who is capable of performing the job's essential functions.


Dismissal or Removal of Company Secretary

1) Legal requirements: The Companies Act 2013 sets out the legal requirements for removing a company secretary. The board of directors must follow the procedures in the act and the company's articles of association. In addition, the company secretary may be entitled to certain legal protections and remedies in the event of unfair dismissal.




2) Reasons for removal: There are a number of reasons why a company may decide to remove a company secretary, including poor performance, misconduct, or a breach of the company's code of conduct. It is important to have clear reasons for the removal and to document any performance or conduct issues.

3) Process of removal: The process of removing a company secretary will depend on the company's articles of association and the applicable laws and regulations. Generally, the board of directors will need to give notice to the company secretary and provide them with an opportunity to respond to any allegations of misconduct or poor performance. If the board decides to proceed with the removal, they will need to pass a resolution and follow any procedural requirements set out in the company's articles of association.



4) Termination letter and compensation: Once the company secretary has been removed, they should be provided with a termination letter and any compensation owed under their employment contract. The termination letter should outline the reasons for the removal and any relevant legal requirements. If the company secretary was unfairly dismissed, they might be entitled to compensation or reinstatement.



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Directors

A company is an artificial person, invisible and existing only in the eyes of law. It has neither a mind nor a body of its own. Hence, we have to entrust its business to human agents. Directors have to act as agent of the company. The directors are responsible for company's business in the best manner possible. They issue order and instructions to the subordinate. They have to shoulder ultimate responsibility for efficient management and successful conduct of the business enterprise of the company.

The term board of directors denotes a group of persons appointed to control over the various activities of company. The members of a company are the real owner of company but these members are scattered in distinct areas of nation or even in abroad. Therefore, it is very difficult to make control by all these share holders. To replace this difficulty they elect few members among them to control over company. It is called a director and collectively they are called board of directors.

According to company Act 2013 there should at least 2 directors for private company and at least 3 directors for public company. There is no maximum limit for number of directors. It may be determined by Article of Association.

Section 2 (13) of the Indian companies act defines as “Any person occupying the position of a directors by whatever name called”

Provision for Appointment of Director

1) Initial Directors

All the person who are signing on memorandum of Association are the initial directors. These directors can work till the appointment of next directors.

2) Appointment by Promoters

The persons who are involved in establishment of company are called promoters. They elect some of them as directors to control over company. There are working till the first annual general meeting. In that meeting election is held out and some of them may be re-appointed.

3) Appointment by Share holder

The share holder can elect to directors in first annual general meeting. It is the usual way for the election of board of directors. It means whenever the directors are elected in future then their election is held out in annual general meeting.

4) Appointment by Directors

The board of directors can be appoint additional director in various conditions. These conditions are applied only if there is a provision in Articles of Association. Otherwise, the board of directors are not entitled to appoint directors. These directors may additional, casual or even alternate directors.

A) Additional Directors

The board of directors can appoint additional directors to control over activities of a company, only if there is higher work load. They can be appointed any number of directors. However the number of directors should not exceed the maximum number of directors as stated in Article of Association. These directors can work till the next annual general meeting. They can be continued their directorship if they reappointed in election which is carried out in next annual general meeting. Otherwise, new directors is elected. It is subjected to Article of Association.

B) Casual Directors

This directors is appointed to fill the vacant space due to death or permanent sickness or any other reason of permanent nature. He can be continued his directorship till the period of vacant directors is over. Once the period of original directors is over, the place of casual directors become automatically vacant.

C) Alternate Directors

He can work in place of any other director who is absent for at least 3 months due to departure of a particular directors outside state or in abroad. However alternate director has to drop directorship when the vacant directors is arrived. It means alternate director can work on behalf of director who is on leave and only till the period is vacant.

5) Appointment by Creditors

Debenture holder, creditors, banks and other financial institutions provide loan to a company. They can appoint director on behalf of them if articles of Association having such provision. But the number of such directors should not exceed $\frac{1}{3}$ of total directors.

6) Appointment by Central Govt.

If at least 1/10 of the members of public company demanded control of central government then two directors can be appointed by central Govt. the basic purpose of appointment of directors by central Govt. is to safeguard the interest of share holders. These directors are initially appointed for 3 years and can be re-appointed again if demanded by at least 1/10 of members in future.

7) Appointment by Managing Director

The managing directors can appoint one extra director if number of directors is up to 5 and 2 directors if the number of directors exceeds 5. These directors are called working directors and are of permanent nature.

8) Re-appointment

A particular director who is already retired can be re-appointed by passing ordinary resolution in annual general meeting. But if he expressed his unwillingness for re-appointment then he can not be re-appointed

Qualification of Director

Company Act does not specify any specific, academic, technical, professional degree or diploma. However the various terms and condition for appointment of directors are made as stated in Article of Association. If article of Association is silent about appointment of directors then the provision of company Act are applied for the appointment of directors. These provisions are called qualification of directors.

1) Article of Association

The appointment of directors should be made as per the various provisions stated in Articles of Association and not against that.

2) Contractual Capacity

The directors should possess contractual capacity. It means nobody of them should be minor, unsound mind, insolvent, etc.

3) Election

Usually directors are elected persons. They should be elected by share holder in annual general meeting.

4) Individual

Director must individual person only. Any company, partnership firm, institution etc. are not individual persons. Therefore, these cannot be appointed as director.

5) Qualification shares

A director should be purchased necessary number of qualification shares as stated in Articles of Association within 2 months after appointment. Moreover he should be paid amount on all shares within 6 months from such appointment.

6) Statutory Disqualification

A director should not be dis-qualified by statutory provisions during the course of action. It means he should not be involved in any one of the following

- a) Convicted for an offence.
- b) Defaulter call payer
- c) Involved in im-moral activities
- d) Involved in Fraudulent activities
- e) Idiot
- f) Sentenced to imprisonment
- g) Unsound mind.

Power or Rights of Director

According to the Company Act, 2013 director does not possess any specific right individually. But he can apply these rights collectively. It means, these can be applied by the board of directors and only after passing a resolution in a board meeting. These rights are stated below.

1) Administration

Directors are entitled to take active part in administrative work of a company. They are empowered staffing and dismissal of staff, payment of expenses etc.

2) Bank loan

Directors are entitled to take bank loan for a company as per need and requirement.

3) Call

Director can demand balance amount on share call as per need and requirement

4) Casual Director

If workload is higher or business affairs are complicated then director can appoint a casual director to reduce their work load.

5) Employee

Director workload can appoint employees for different posts in a company and can dismiss unable employee.

6) Expansion

Directors can prepare expansion plan for a company and can take necessary steps to implement it.

7) Forfeiture

Directors can pass resolution to forfeit those shares on which amount is not received at proper time.

8) Inspection

Director can inspect any book of account. He can take necessary notes from it. He can make Xerox copies of it for himself.

9) Issue

Directors can issue shares and debentures to fulfill requirement of capital and loan respectively

10) Meeting.

Director is entitled to receive intimation of meeting, he can attend meeting, discuss the facts, can provide speech and vote in this meeting

11) Managing director

Directors are empowered to elect any one of them as a managing director.

12) Premium

Directors can be issued shares and debentures at premium when there is good demand for it.

13) Purchase of Assets

Directors are empowered to purchase assets for a company. They can make necessary agreements for the purchase of these assets.

14) Reserve

Directors are entitled to create various reserves as per planning and can transfer reasonable amount to these reserves.

15) Transfer

Directors are empowered to refuse transfer of share if this transfer is made by a defaulting party.

16) Share allotment

Directors can appoint an allotment committee to determine the basis of allotment. On the basis of the recommendations of this committee the directors determine criteria of allotment. This criteria may be proportionate, full allotment or any other.

Duties or Liabilities of Director

Directors are top most authority in company. Therefore, they have to fulfill several duties for performance of work. Success of company is depended on promptness of director in performing these duties.

1) Application money

The directors should be called up application amount as per the provision stated in Articles of Association. Moreover, directors should be kept this amount in scheduled bank only.

2) Agreement

Directors should be made necessary agreements on behalf of company. They should be considered company's interest at the time of agreement and personal interest should be kept aloof. [kept close].

3) Attend meeting

Director should attend each and every meeting held by a company. If it is not possible to attend meeting then he should be provided pre-intimation for it.

4) Certificate

Directors should take the necessary steps to acquire certificate of registration and a certificate of commencement of business. They should renew it before expiry of the certificate.

5) Dividend

Directors should be recommended reasonable dividend as per trade custom.

6) Good faith

Directors should be maintained good faith with company. They should act honestly and in the favour of company.

7) Inspection

A director should carefully inspect various statements in the prospectus. It should not contain untrue or misleading statements. Otherwise, he should refuse to sign on it till the correction of concerning statements.

8) Investment

The director should invest funds of a company in the most beneficial and safe investments

9) Proper use

Every director should make proper use of the assets of the company. He should use these assets for the benefit of the company and not for personal benefit.

10) Qualification shares

Director should purchase necessary number of qualification shares as stated in the Articles of Association within two months from his selection. He should pay the call amount on these shares within 6 months. Preferably he should be purchased qualification shares and to pay call amount thereon as early as possible. He should not make un-necessary delay in it.

11) Reasonable care

A director should take reasonable care in his course of action. He could not make silly mistakes in planning, decision-making, controlling etc.

12) Secret profit

Director should not earned any secret profit by using his own position.

13) Sign

Director should be signed on any document only if he is agreed with it. He should not be signed under any pressure of threat.

14) Statutory meeting

Director should be held statutory meeting within 6 months from establishment of a company.

15) Skill

A director should show reasonable skill in his decision-making, planning, staffing, working etc.

16) Transfer

Directors should be transferred shares as per the various provisions of Articles of Association. If they are refused transfer then they should be provided reasonable reason for it. They should not demand bribe for transfer of shares.

17) Transfer to reserve

Directors should be transferred reasonable amount to reserve as per the various provision stated in Articles of Association

Director Identification Number (DIN)

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.

It is an 8-digit unique identification number which has a 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 2 or more companies, he has to obtain only 1 DIN. And if he leaves a company and joins some other, the same DIN would work in the other company as well.


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.

Features of DIN

- 1) Director Identification Number (DIN) is of 8 digits.
- 2) Same DIN can be used by the Director in case he changes the company.
- 3) DIN once allotted can be used “n” number of times and days till the DIN holder surrenders it.

DIN Form Types

- 1) **SPICe Form:** When the applicant is applying for the first time or if the company he is applying for is new.
- 2) **DIR-3 Form:** This form is filled when the applicant is appealing to an existing company.
- 3) **DIR-3C Form:** This form is submitted by the Company to Registrar for intimation of DIN.

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- 4) **DIR-4 Form:** This is the verification form in which the details of the applicant is verified.
 - 5) **DIR-5 Form:** If in case the person wants to surrender the DIN he needs to fill this form
 - 6) **DIR-6 Form:** Amendments can be made using this form by the applicant.

To apply for DIN, the above forms are to be filed electronically. It has to be digitally signed and then uploaded on the Ministry of Corporate Affairs (MCA) portal.

Reason 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

The director can also surrender the DIN in Form DIR-5. With the form, he has to submit a declaration that he has never been appointed as a director in the company and the said DIN has never been used for filing any document with any authority. Upon verifying the e-records, the central government will de-activate the DIN.

Disqualification for Directors

A person shall not be eligible for appointment as a director of a company, if

- (a) he is of unsound mind and stands so declared by a competent court;
- (b) he is an undischarged insolvent;
- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
- (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;



(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not got the DIN.

Resignation of Directors


- (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:
- (2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Vacation of office of Directors

The office of a director shall become vacant in case—

- (a) He incurs any of the disqualifications specified in section 164;
- (b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;




(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested

(e) He becomes disqualified by an order of a court or the Tribunal;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.



If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000 or with both.

Removal of Directors

The directors of a company bear the responsibility for managing its day-to-day operations, while the shareholders, who are the rightful owners, delegate this role to the directors as their representatives. The Companies Act 2013 in India distinctly delineates directors' and shareholders' rights and duties. As a general principle, the entity that appoints a director retains the authority to remove them.

Reason for Removal of Directors

As mentioned above, A director may be subject to removal for any of the following reasons:

- Incurring any disqualifications as specified under the Companies Act.
- Prolonged absence from board meetings spanning over 12 months.
- Entering into contracts or agreements contrary to the provisions outlined in Section 184 of the Companies Act.
- Receiving a disqualification order from a court or tribunal.
- Being convicted by a court for an offense and sentenced to a minimum of six months in prison.
- Failure to adhere to the terms and regulations stipulated in the Companies Act of 2013.
- Voluntarily resigning from their position.

Method for Removal of Directors

The removal of a director from a company can be carried out through three distinct methods:

- **Resignation by Directors:** When the directors voluntarily tender their resignation.
- **Director Absence from Board Meetings:** When a director remains absent from board meetings for 12 months.
- **Shareholder-initiated Removal:** When shareholders decide to remove a director.

Removal of Directors- Resignation by Director

When a director voluntarily tenders their resignation, the following steps are taken to remove their name from the register of directors:

- **Board Meeting Notice:** The Company convenes a Board Meeting, providing clear notice, which typically means a notice period of 21 days, excluding the day on which the notice was sent and received.
- **Resignation Discussion:** During the Board Meeting, board members discuss and deliberate on whether to accept the Director's resignation.
- **Board Resolution for Resignation:** Upon agreement, the Board passes a formal resolution to accept the Director's resignation.

- **Filing Form DIR-11 (Director's Responsibility):** The outgoing Director takes responsibility for filing Form DIR-11. This form must include the Board Resolution, proof of delivery of the resignation letter, and a copy.
- **Filing Form DIR-12 (Company's Responsibility):** The Company is responsible for filing Form DIR-12 with the Registrar of Companies (RoC). This filing should include the resignation letter and the Board Resolution.
- **Removal of Director Name from MCA:** After completing all necessary form submissions and formalities, the Director's name will be officially removed from the Company's master data on the Ministry of Corporate Affairs website.

Director Absent from Board Meeting


The steps in case a director remains absent from all board meetings over twelve months are as follows:

- **Step 1:** If a director is absent from all board meetings over twelve months, regardless of seeking leave of absence, they are deemed to have vacated their office under Section 167.
- **Step 2:** File Form DIR-12.
- **Step 3:** Upon completing the formalities, the concerned Director's name will be removed from the Ministry of Corporate Affairs (MCA) database.

Director Removal by Shareholder

The steps for the removal of a director by shareholders are as follows:

- **Board Meeting Notice:** Initiate the process by calling a Board Meeting and giving seven days' notice to all directors. In this notice, inform the directors about the intended removal of the Director.
- **Extraordinary General Meeting Resolution:** During the Board Meeting, pass a resolution to convene an Extraordinary General Meeting (EGM). Additionally, pass a resolution for removing the Director, contingent upon shareholder approval.
- **EGM Notice to Members:** Issue a notice for the EGM, ensuring a clear notice period of 21 days. Clear notice means a notice period of 21 days, excluding the day on which the notice is sent and the day of the meeting.

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- **Voting at EGM:** Members are asked to vote on the resolution for the Director's removal at the EGM. If the majority of members are in favor of the decision, the resolution is passed.
 - **Opportunity for Director to Be Heard:** Allow the Director to be heard before passing the resolution. Allow them to present their case or provide an explanation.
 - **Form DIR-11 and Form DIR-12 Submission:** Following the passing of the resolution, submit Form DIR-11 and Form DIR-12 to the Registrar of Companies. These forms should include the attachments of the Board Resolution and Ordinary Resolution.
 - **Removal of Director Name from MCA:** Upon successful form submissions and completion of all required formalities, the Director's name will be officially removed from the Ministry of Corporate Affairs website.