



## DIRECTORS AND KEY MANAGERIAL PERSONNEL OF A COMPANY

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## INTRODUCTION:

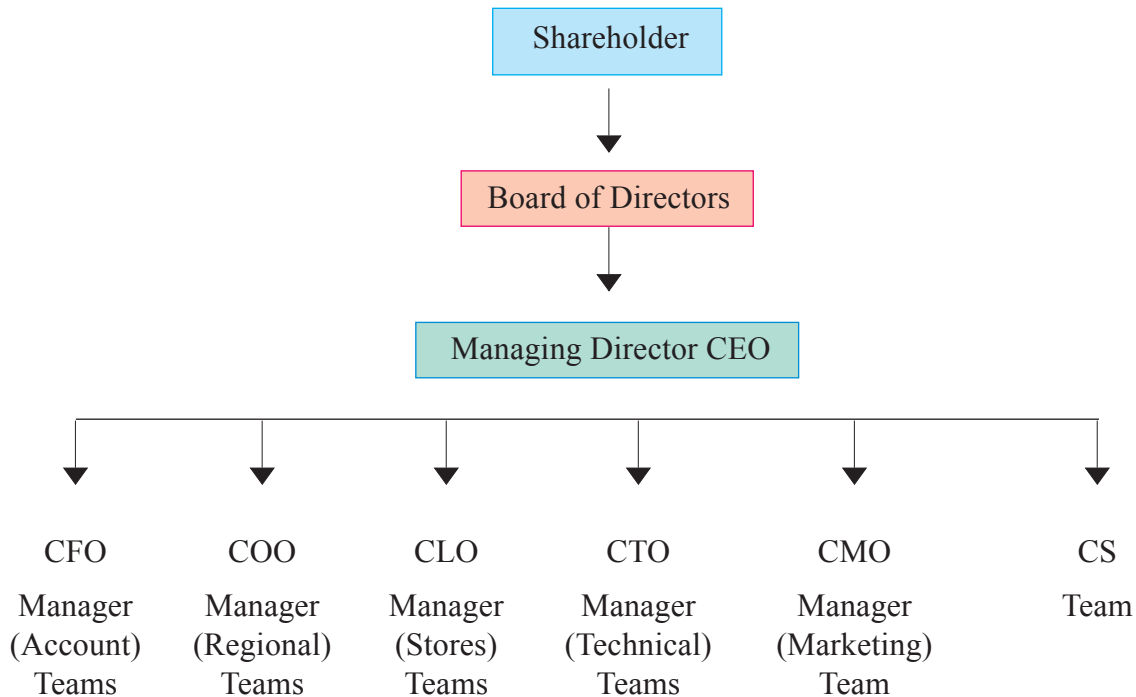
As we have already learnt that company has a unique feature of separate ownership and management; whereby shareholders are its owners and Directors are its managers. Also, as an artificial person it needs a human agency to manage and control its working and day-to-day affairs. Following are the reasons which leads to separation of ownership and management in company:

- 1) It is a large business organization having vast scope of business.
- 2) Large number of shareholders who are scattered all over and thereby management of company by them is impractical.
- 3) Disinterest on part of most of the shareholders to manage such a huge organization.
- 4) Incapability in terms of qualification and inability on part of most of shareholders to manage company.

Company as an artificial person having no physical existence needs human beings to look after its functioning and day-to-day activities. In any other case shareholders as owners would have fulfilled this duty but we have already discussed the reasons why they cannot.

So company needs a set-up/structure to manage and organize its activities.

### Hierarchy of Company Management



- 1) CEO - Means is Chief Executive Officer
- 2) CFO is Chief Financial Officer
- 3) COO is Chief Operating Officer
- 4) CLO is Chief Law Officer
- 5) CTO is Chief Technology Officer
- 6) CMO is Chief Marketing Officer
- 7) CS is Company Secretary

**Its top level management comprises of the Board of Directors which is a group of Directors.**

## 6.1 DIRECTOR -

### 6.1.1 MEANING:

As per Section 2(34) of the Act, Director means a director appointed to the Board of the company.

Simply speaking Director is a person appointed to manage, direct and supervise the affairs of a company.

**6.1.2 Provisions and Rules with respect to appointment of a Director:** Section 149 of the Act states the following:

- 1) Only an Individual can be appointed as Director. It means a body corporate, association or firm cannot be director of the company.
- 2) Minimum number of directors:

Type of company	Public	Private	One-Person Company (OPC)
Minimum Number of Director	(03) Three	(02) Two	(01) One

- 3) Maximum Number of Directors: Upto fifteen (15) Directors are allowed to be appointed. If a company requires more than fifteen it should pass a special resolution.
- 4) Prescribed classes of companies shall have at least one woman director.
- 5) There must be at least one director who stayed in India for at least 182 days during the financial year.
- 6) Every listed public company should have 1/3<sup>rd</sup> of its Board as Independent Director.
- 7) A person is allowed to hold Directorship of maximum Twenty (20) companies at the same time. The Act also states that maximum number of public companies in which a person can be a director is Ten (10) only.

#### Who can be the Director of a company?

The person should fulfill these two conditions to be eligible to become a director: (i) only an Individual can apply for directorship (ii) Person should have been allotted a Director Identification Number (DIN).

#### 6.1.3 What is DIN?

It means Director Identification Number:

- 1) DIN is a unique identification number for an existing director or person intending to be the director of company.
- 2) It is compulsory to acquire DIN by every director.
- 3) Only a single DIN is needed by an individual irrespective of number of directorship held by him.
- 4) On resignation of a person as director of a company, DIN should not be cancelled.
- 5) DIN is obtained through an online process of filing an application which includes photograph, proof of residence etc., duly attested by a Notary/gazetted officer/company Secretary etc.,
- 6) DIN is a pre-requisite for e-filing of company's documents.
- 7) Every document authorised by a director deed should mention his DIN along with his name.

#### ● Importance of DIN:

- 1) It helps the investors of the company to take more accurate and informed decision because they get to know the composition of the top management of the company.

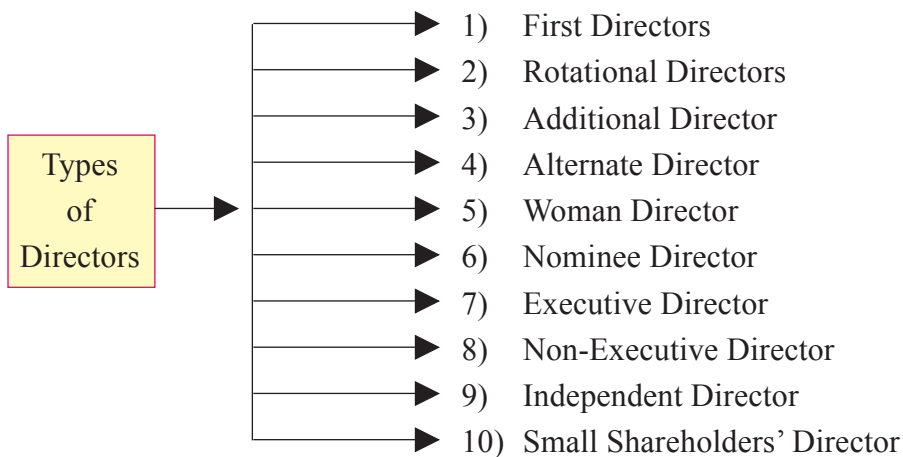
- 2) It helps to handle the problems arising due to a company disappearing after collecting/raising money from public.
- 3) It helps in detection and handling of offences committed by a Director.

**6.1.4 Qualification of a Director:** The Companies Act has not prescribed any academic or professional qualifications for director. Also the Act does not impose any share qualification on them. So unless the Articles of company contain a provision, a director does not have to be shareholder of the company (Unless willingly he wishes to be one).

The noteworthy point is that usually Articles provide for a minimum share qualification.

**Qualification shares:** It means a director is required to buy shares of a company if articles of company states so.

**6.1.5 Types of Directors: Some of the types of directors are as follows -**



**1) First Directors:**

They are appointed by the promoters of the company at the time of incorporation of the company. They remain in office till the first Annual General Meeting of the company is held.

**2) Rotational Director:**

This indicates those directors who are liable for retirement by turn or rotation. They are eligible for re-appointment.

**Additional information:**

**Retirement by Rotation:**

Directors of Public company and Private company which is subsidiary of public company have to retire by rotation in every Annual General Meeting. It is decided on the basis of time spent by a Director on the Board.

u/s 152 (6) 2/3rd of the Board is subject to retirement by rotation.

1/3rd of the above will retire at every annual general meeting.

e.g. A company with 3 Directors on Board, at least Two (2) Directors must be rotational Directors and one (1) Director thereof will retire at every AGM.

**Exception:**

- 1) Nominee of certain Financial Institutions not liable for retirement by rotate.
- 2) Independent Director
- 3) Executive Director like MD and WTD having pre-decided term of appointment (viz. (5) years), do not retire by rotation.

**3) Additional Director:**

Powers and Rights of Additional Directors are on par with other directors. Additional Director is appointed by the Board as authorized by Articles as and when needed. Additional Director holds office till the next AGM.

**4) Alternate Director:**

It means a director who is nominated by Board to act in the place of a director in his absence. This appointment cannot be for less than 3 months.

**5) Woman Director:**

The following class of companies are required to appoint at least one woman director on their Board:-

- 1) Every Listed Company
- 2) Every Public company which has
  - i) Paid-up share capital of ₹ 100 crores or more
  - ii) Turnover of ₹ 300 crores or more.

**6) Nominee Director:**

This person is nominated on the Board by a major/dominant shareholder like a financial institution to represent and safeguard its interests.

**7) Executive Director:**

This category can also be called Whole Time Director (WTD). They are in a full-time employment with the company. They play a big role in day-to-day management of the company. For all practical purposes, they are given managerial responsibilities and suitable titles like Marketing Director, Finance Director, etc.

**8) Non-Executive Director:**

This category is not involved in day-to-day management of the company and therefore hold no executive managerial positions. In fact Non-Executive Director is labelled as 'Outside Director'. The idea behind this appointment is to get independent ideas, perspective, second opinions, and alternate voice to the Board.

**9) Independent Director:**

u/s 149: Any Director other than a Managing Director, Whole Time Director or a Nominee Director is Independent Director as per sections 149 of the Act.

**❑ Term of Independent Director:**

- 1) Independent Director holds office for a term upto Five (5) consecutive years and is eligible for reappointment.
- (2) Independent Director cannot hold office for more than Two (2) consecutive terms.

- ❑ **Qualification of Independent Directors:** The person is expected to possess appropriate skill, experience and knowledge in the fields of law, management, sales, market, administration, corporate governance and technical process/operations concerning company's business.
- ❑ **Number of Independent Directors:** The below given table reflects the number of Independent Directors as per Section (4) of 149 of the Act.

Listed Public company	Public company with paid-up share capital of ₹ 10 crores or more	Public company with turnover of ₹ 100 crores or more	Public company with aggregate outstanding loans, Debentures Deposits exceeding ₹ 50 crores
1/3rd of its total number of Directors	At least Two (02) Directors		

Schedule IV of Companies Act 2013 has stated elaborately manner of appointment, re-appointment, tenure, etc. of the Independent Directors.

#### 10) **Small Shareholder's Directors:**

Under section 151: The Act has provided to elect one director by small shareholders of listed company. This is not a mandatory appointment.

*Small shareholder is a person holding shares of nominal value of maximum ₹ 20,000.*

**6.1.6 Appointment of Directors:** The rules of appointment of Directors are provided by the Act under its different sections as explained below:

- A) First Directors:** u/s 152: 1) usually appointed by the promoters of the company, as stated in the Articles of company. 2) If Articles do not provide for the same, signatories of Memorandum will be deemed to be first directors and in case of OPC the single member is deemed to be the first director.
- B) Appointment of Directors by Members:** u/s 152: The subsequent Directors in a Public company are appointed by Members at the Annual General Meeting. Generally this is 2/3<sup>rd</sup> of the Board and they are subject to retirement by rotation.
- C) Appointment of Directors by the Board: u/s 161:**
  - 1) Additional or co-opted Director:** This appointment is made by the Board.
  - 2) Casual Vacancy:** u/s 161 (4): Casual vacancy on Board arises due to different reasons such as death/resignation of a director, which is to be filled by the Board at the Board meeting. Such an appointment is valid only upto the time of the vacating directors incomplete term.

*Reasons of additional directors: To fill casual vacancy, to take assistance in recent vital project.*

- 3) **Alternate Directors:** Board of Directors may appoint an alternate director in place of a director who is going to be out of the state where Board meetings are usually held for a period of not less than 3 months.

This appointment is valid till the return of original director to the state and also expiry of the term of original director even if he has not returned.

- 4) **Nominee of an Institution:** The Board of Directors may appoint any person as director as nominated by an institution under the provisions of the Act.
- D) **Appointment of Directors by the Tribunal:** u/s 241: A Tribunal may appoint director/s, on receiving petition or application from members as relief against mismanagement of company's affairs.
- E) **Appointment of Directors by Central Govt:** u/s 167: The Central Government may order appointment of Directors, in the case where Directors have vacated their offices under any of the specified disqualification. e.g. Conviction by a court of law.
- F) **Appointment of Directors by Proportional Representation:** u/s (163): Director may be appointed either by straight majority or proportional representation.

#### 6.1.7 **Powers of the Directors:** (under section 179 of the Act)

- 1) Directors have to work as a team via. Board of Directors and not individually.
- 2) Board cannot exercise the powers which are required to be exercised by the shareholders in the general meetings as given to them by the Act, Memorandum and Articles.
- 3) The exercise of powers by Board is subject to provision of the Act, Memorandum and Articles.
- 4) The Powers of Directors can be exercised in two ways - (i) At the Board Meeting by passing a Resolution (ii) By Delegation to different committees created by the Board.

Some examples of the powers of Board of directors are -

- a) to borrow money
- b) To invest funds of the company
- c) To issue securities whether in India or abroad.
- d) To diversify the business of the company.
- e) To appoint or remove Key Managerial Personnel.
- f) To fill casual vacancies in the Board.
- g) To recommend dividend
- h) To appoint first auditors of the company.
- i) To remit or give time for repayment of any debt due from a director.

- 6.1.8 **Duties of a Director:** A Director's relationship with the company is regarded as fiduciary in nature i.e. his duty is full of trust, loyalty, obedience, care and most good faith. Director should not exploit his or her position of trust and confidence for personal gain, at the expense of company or shareholders. Director will not involve in any situation where Directors interests conflicts with that of the company. Director should not achieve any undue gain or advantage for self or family or associates.

*Fiduciary means based on trust. It means to be responsible & careful with someone else's money. It means being agent-in-trust for a Principal (like shareholder).*

#### Directors duties can be under two heads -

- I) **Statutory Duties:** These are imposed by the Act Examples of Statutory Duties: 1) To file Return of Allotments 2) To act in accordance of Articles of the company 3) To disclose interest in a transaction 4) To attend Board Meetings. 5) To appoint first auditors of the company
- II) **General Duties:** These can be described as:
  - 1) **Duty of good faith:** Director must act in best interest of company and its present and future members.
  - 2) **Duty of Care:** Director must display care in performance in work assigned. Director is required to display care as much as a person of ordinary prudence would.
  - 3) **Duty not to delegate:** Director being an agent cannot delegate further. Director is required to perform his functions personally. Director may delegate if permitted by Act or Articles or required to be delegated in urgent conditions.

#### 6.1.9 The Liabilities of Directors: A Director is liable in following different ways:

- 1) Liability to the company
- 2) Liability to the third party
- 3) Liability for breach of statutory duties
- 4) Liability for the acts of Co-directors
- 5) Criminal Liability

#### 6.1.10 Legal Position of Directors: Though the Companies Act has not defined position of Directors, keeping in mind the vastness of their powers and extensive responsibilities; an attempt is made to describe them as Agents, Trustees and Managing Partners. These expressions are indicative and not complete explanation and understanding of their powers and work.

- I) **Directors as Agents:** Since the company is an artificial person; it needs to be represented by the Director. They act on its behalf. Directors should deal skillfully, carefully and eligently. Their liability is as agents while company is held liable as the Principal.
- II) **Directors as Managing Partners:** Directors represent owners of the company viz. shareholders to conduct and manage business of the company on their behalf. They are entrusted with vast powers of management and perform several functions which are proprietary in nature like allotment of shares, raising of loans, investing funds of the company etc. This is because they themselves are significant shareholders of the company. In fact they are the most active shareholders of the company.

Board acts as the supreme policy and decision making body. It is commented that the directors are commercial men who manage a trading concern for the benefit of themselves and all the other shareholders of company.

- III) **Directors as Trustees:** Directors are required to act in the most honest ways. They are the guardians of interest of company and shareholders. They should account for all money are entrusted with. They have to utilize and apply funds of the company most cautiously. They are the trustees of all the assets of the company.

The above given triple roles played by the directors highlights the depth and vastness of their involvement with company and its investors within the parameters of the Act. It is appropriate at this point to have clarity whether directors are employees of the company or not.

**Are Directors, Employees of the company?:** Directors are elected representatives of the company's shareholders and enjoy well-defined rights and powers.

Whereas status of an employee is within the limits of his contract of service and his employer holds the ultimate control to guide his activities and functions.

These limits cannot be applied to directors in the context of their roles and powers we have already studied.

Directors therefore cannot be regarded as employees of the company.

**6.1.11 Remuneration of Directors:** u/s 197: The managerial personnel of the company viz. the Directors, Managing Directors etc. hold the managerial position and this entitles them to get managerial remuneration. It may be in the form of monthly payment like salary, specified percentage of net profits or commission and sitting fees for attending Board meetings or Committee meetings. At the same time there is no automatic entitlement of remuneration of director.

The Act states that total managerial remuneration payable by a public company to its Directors, Managing Director etc. should not exceed 11% of net profit in a financial year. This excludes sitting fees paid or to be paid for meeting.

**Sitting Fees:** The director is given fees to attend Board or Committee meeting which may be upto ₹ one lakh.

**6.1.12 Removal of a Director:** A Director may be removed from his office by (a) Shareholders u/s 169 (b) Tribunal u/s 402.

- **Vacation of office by a Directors: u/s 167 of the Act**

The office of a director shall automatically become vacant in following cases:

- 1) **Any disqualification u/s 164 :** As per this section, a person cannot be appointed as a Director if he is of unsound mind, insolvent, convicted by Court etc.
- 2) **Absentee at Board Meaning u/s 167.**  
Director has been absent in the meeting of the Board of Directors held during a period of (12) Twelve months with or without taking leave of absence of the Board.
- 3) **Contravention of Provisions of Act:**  
Director has acted in contravention of provision of section 184 which is about entering into contracts or arrangements where he is directly or indirectly interested.
- 4) **Failure to Disclose Personal Interest:** If a Director fails to disclose his personal interest in any contract where director is directly or indirectly interested.
- 5) **Disqualification by Court or Tribunal:** Director has to vacate office if he has been disqualified by an order of a court or the Tribunal.
- 6) **Imprisonment for an offence:** Director has to vacate office if he is convicted by a court of law for an offence involving moral grounds or otherwise and is sentenced to imprisonment of six (6) months or more.
- 7) **Provision of the Act:** Director has to vacate office if director is removed under the provision of Companies Act.

**Activity:**

Visit the website of a listed public company and • Find out DIN of a director of the company. • Find out the composition of Board of Directors.

## 6.2 KEY MANAGERIAL PERSONNEL (KMP) OF THE COMPANY

The Board of Directors of company is assisted by several persons to assure efficient and effective management and administration of the company. They need to work under the superintendence and control of the Board.

u/s 2(51) KMP means the following:

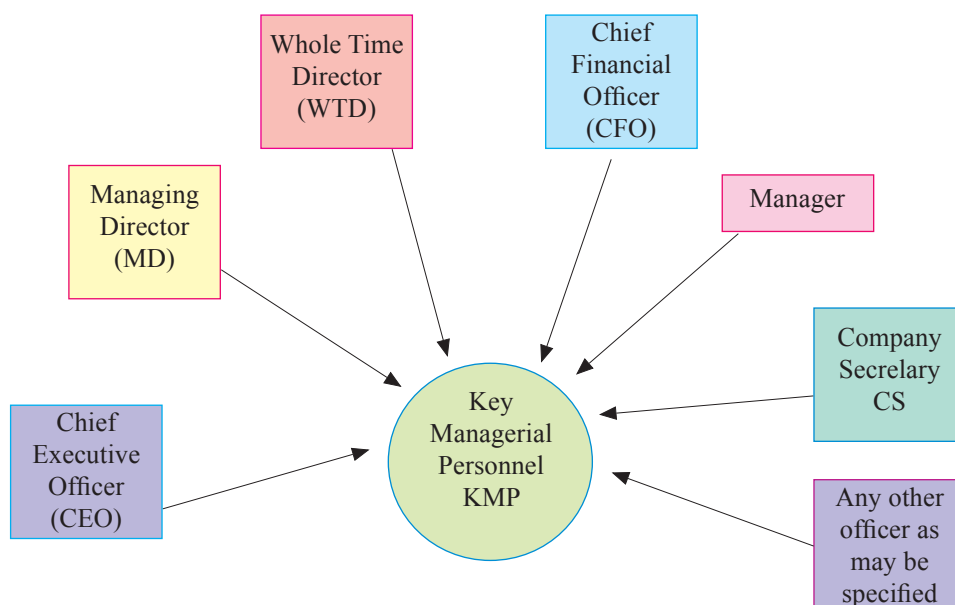
- 1) The CEO or the Managing Director or the Manager
- 2) The Company Secretary
- 3) The Whole Time Director
- 4) The Chief Financial Officer
- 5) Any other officer as may be prescribed

**u/s 203 of Act:** It is stated that every listed company and public company with a share-capital of Rs. 10 crores or more should have following Whole Time KMP:

- 1) The Managing Director/The Chief Executive Officer/The Manager and in their absence a Whole-time Director.
- 2) A company Secretary
- 3) A Chief Finance Officer

Also none of the whole-time KMP can hold office in more than one company; (except if its subsidiary of the company) at the same time; without the permission of the Board.

### Illustration depicting different key managerial personnel



### 6.2.1 THE MANAGING DIRECTOR: U/S 2(54):

It means a Director who by virtue of Articles of or agreement with company or Resolution passed in General Meeting or by its Board; is entrusted with substantial powers of management of the affairs of the company.

- **Appointment of the Managing Director:** This appointment can be made by (a) An Agreement with company (b) A Resolutions passed by company in the General Meeting (c) A Resolution passed by the Board of Directors d) A clause in the Articles of Association of the company.

The Act states that a Managing Director be appointed by Board of Directors. Terms and conditions of the appointment and remuneration should be approved by the Board of Directors at its meeting. This appointment is subject to approval by Resolution at the next General Meeting.

- **Term of Appointment:** Appointment of Managing Director is made for a term of 5 years.
- **Disqualification for the post of Managing Director:**
  - 1) Any person less than 21 years of age and more than 70 years of age.  
N.B. If a person of age above 70 years is required to be appointed as Managing Director, there should be passed a special Resolution with explanatory statement attached to its notice which justifies such an appointment.
  - 2) Any person who is an undischarged insolvent person or at any time been adjudged as an insolvent.
  - 3) Any person who has suspended payment to his creditors at any time or made compositions with them.
  - 4) Any person who has been convicted by a court of law of an offence with a sentence of more than six months period.
- **Powers and Duties of the Managing Director:**
  - 1) The Managing Director is appointed to manage the affairs of the company.
  - 2) Powers and Duties of the post of Managing Director are defined by a) Agreement made with company on the basis of which this appointment to made b) By Memorandum and Articles of Association of the company c) By Resolutions passed by Board and Members.
  - 3) Managing Directors is entrusted with substantial powers of management.
  - 4) The power of Managing Director may relate to particular division/s of the business.
  - 5) There may be more than one Managing Director in business/company.
  - 6) The Managing Director is required to function and exercise his powers subject to superintendence control and directions of the Board of Directors.
  - 7) Managing Director must be a Director of the company.
  - 8) In context of above, he has to fulfill his duties, responsibilities and liabilities also of an ordinary director of the company.

### 6.2.2 THE WHOLE TIME DIRECTOR OF THE COMPANY (U/S 2(94) (WTD):

- 1) This post includes a director who is in whole time employment of the company.
- 2) Whole time Director devotes his whole/full time to work with the company.
- 3) He can be called an employee director of the company.
- 4) WTD does not exercise 'substantial powers' of management like the Managing Director.
- 5) The whole time Director performs important administration functions.

### 6.2.3 THE MANAGER: U/S 2(53):

- 1) The manager means any individual appointed subject to superintendence, control and direction of the Board.
- 2) The Manager looks after or is expected to manage whole or substantially whole affairs of the company.
- 3) It includes a Director or any other person who occupies the position of a manager (or known by any name).
- 4) The manager need not be the director of the company.
- 5) Company cannot have more than one manager.

**N.B.** The Act allows either Managing Director/Manager.

Some clarifications about simultaneous appointment of different categories of managerial personnel (under section 196) -

- 1) It is prohibited to appoint both Managing Director and Manager simultaneously.
- 2) There is no prohibition on having whole time director and manager simultaneously.
- 3) There is no prohibition on having managing director and whole time director simultaneously.
- 4) There is no prohibition on having more than one Managing Director in a company.

*The Indian companies prefer Managing Director more than Manager. This is because Managing Director holds dual authorities and is able to influence the Board better.*

### 6.2.4 COMPANY SECRETARY:

We have studied company Secretary earlier as an important type of Secretary. Let's now study this officer of the company as KMP of company.

Section 2(24) defines Company Secretary. It states that:

- 1) Company Secretary is appointed to perform functions of company Secretary under the Act.
- 2) Person should be a member of the Institute of Company Secretaries of India (ICSI).
- 3) Following classes of companies must appoint a whole-time company Secretary
  - a) Listed companies
  - b) All other companies with a paid-up share capital of ₹ (5) five crore or more.
- 4) The whole-time company Secretary is appointed by a resolution of the Board. The Board decides terms and conditions and remuneration.

- 5) The whole-time company Secretary cannot hold office in more than one company.
- 6) The whole-time Secretary can be director of a company with the permission of the Board.
- 7) The first Secretary of the company is appointed by the Promoters of the company.
  - a) The first Secretary is called 'Pro-tem Secretary'.
  - b) The Pro-tem Secretary appointed by Promoters may or may not be appointed as regular Secretary by the Board.
  - c) The 'Pro-tem' Secretary helps in fulfilling different formalities during formation of the company.

*Pro-tem means temporary for the moment, Interim for now.*

- 8) The appointment of Secretary must be recorded in the 'Register of Directors and key managerial personnel and their shareholdings.'

- **Duties of Company Secretary :**

Secretary's duties can be categorized as- I) Statutory Duties II) General Duties

**I) Statutory Duties :** As given to the Secretary by the Act.

Some of these are -

- 1) To organize and be present at all meetings of the company including the Board meetings.
- 2) To make minutes of all meetings.
- 3) Conducting correspondence with the shareholder on matter like Issue of shares, transfer of shares etc.
- 4) Issuing notices and circular to members of the company and others as guided by the Board.
- 5) Maintain and update different Registers and books of the company like Register of Members and Debenture-holders etc.
- 6) Filing all necessary returns with the Registrar of Companies.

*Minutes means the recorded proceeding of the meeting written after its conclusion.*

**II) General Duties :**

This depends on size and nature of business and the terms of arrangement made between Secretary and the company. Some of these are:-

- 1) To provide guidance to the Board and Director of the company with respect to their duties responsibilities and powers.
- 2) To represent before different regulators and authorities with discharge of different duties under the Act.
- 3) To assist the Board in the conduct of the affairs of the company.
- 4) To assist and advise the Board in ensuring good corporate governance.
- 5) To perform all the duties that may be assigned by the Board from time to time.

- **Liabilities of Company Secretary:**

Since the company Secretary is regarded the KMP of the company, company Secretary is held liable for several non compliances and penalties are imposed on him for any default or non-compliance of the provisions of the Act and other laws of the land.

- **Rights of Company Secretary:**

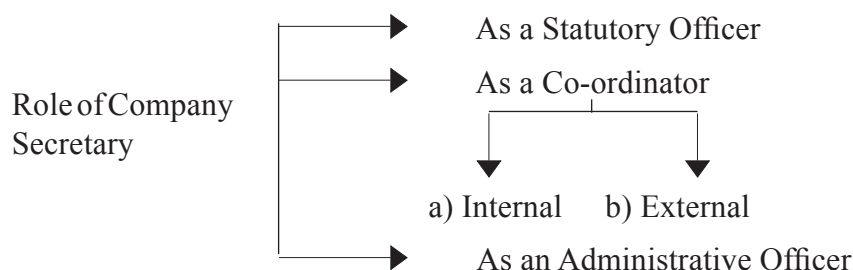
Rights are given to the Secretary by the Companies Act, Board of Directors and the shareholders. Also some rights are conferred on him by his service agreement. The rights are enlisted below -

- 1) Right to control and supervise the working of his department.
- 2) Right to be indemnified by company if any loss is suffered by Secretary while performing, discharging his duties.
- 3) Right to sign a document which requires authentication by the company; as the Principal officer of the company.
- 4) Right to get remuneration as employee of the company.

- **Role of Company Secretary**

Company Secretary plays a crucial and important role in administration of the company. It can be best explained as a three -fold role as follows -

The emphasis on good governance has increased role of Secretary in protecting the interests of different stakeholders manifolds:-



### 1) **Secretary as a Statutory Officer :**

As the principal officer of a company he is responsible for strict compliance of the different provisions of the Act. like :

- a) Sign any document for authentication.
- b) To sign and deliver Annual Returns and other documents and forms of Company to the Registrar of Companies
- c) To maintain different statutory registers like
  - 1) minutes of General and Board Meetings of Company, 2) Registers of Members and Debenture-holders, 3) Register of Directors and KMP and their shareholdings etc.
- d) Ensure necessary compliance of law.

## 2) Secretary as a Coordinator :

The Board of Directors as the supreme managerial authority decides the broad policies to be followed by the company. Effective implementation of the same is the duty of Secretary. Secretary is required to work as network between the Board and other executives at different levels. Secretary is mouthpiece / spokesperson of the Board. Secretary is a coordinator on two ways:

- a) Internally
- b) Externally
- (a) As Internal coordinator, Secretary's activities involve the Board, the M. D., the chairperson on one hand and the executive of different cadres, trade union and auditors of the company on the other hand.
- (b) As External coordinator, Secretary needs to create a relationship between company and shareholders, Government and public at large.

## 3) Secretary as Administrative officer

Secretary as a general administrative officer is required to ensure implementation of the policies of the company. Supervision, control and functioning of different departments of company is Secretary's job. The position of Secretary enables him / her to have an overall view of different aspects of company's administration and develop a strong and efficient organizational set up. Secretary contributes in administration of the company, whereby recruitment, training, remuneration, promotion etc. of staff members is assured.

### □ Company Secretary in employment and in Practice:

The company Secretary is a key functionary in the corporate pyramid. What we have studied until now indicates company Secretary in Employment as employee of the company. Let us understand:-

### Company Secretary in Practice

The member of the Institute is in practice when individually or in partnership with one or more members of the Institute engages himself / herself -

- 1) In practices of Profession of company Secretary.
- 2) Offers to perform services in relation to promotion, formation, incorporation and amalgamation, reconstruction, reorganization of companies
- 3) Offers services in areas of
  - a) filing, registering, presenting and verifying documents like forms, applications and returns by and on behalf of the company.
  - b) share transfer agent
  - c) share stock broker
  - d) An Issue house
  - e) Secretarial Auditor or Consultant.

### □ Secretarial Standards (SS) Meaning :

The Secretarial standards are formulated by the Institute of Company Secretaries of India (ICSI) and approved by Central Government through the Ministry of Corporate affairs.

The Companies Act 2013, makes compliance with the secretarial standards I and II mandatory.

The Secretarial standards are developed to standardize different practices.

- **The Need and Impact of adoption of Secretarial Standard**

Companies follow diverse practices based on differing business cultures and varied usages over a period of time. The secretarial standards aim at and achieve integrating, harmonizing and standardizing fine corporate governance practices across all companies. It leads to provide better monitoring of compliances of law, strengthening the processes of the Board and create confidence in investors. The ICSI constituted Secretarial Standard Board (SSB) in year 2000, which, includes representative of Institute of Chartered Accountants of India, Institute of Cost and Work Accountants of India, different Industrial associations like ASSOCHAM, CII, FICCI.

- 1) *FICCI - Federation of Indian chamber of Commerce and Industry*
- 2) *CII - Confederation of India Industries*
- 3) *ASSOCHAM - Associated Chambers of Commerce & Industry of India.*

There is an elaborate procedure followed while formulating the SS on a subject.

It is note worthy that SSB and its statutory recognition and implementation is unique to India. It is a quantum leap towards standardization of diverse secretarial practices existing in the corporate sector.

SS is to be reviewed by SSB once in a year or whenever there is substantial change in the law which ever is earlier.

The scope of secretarial standards : ICSI has issued total (10) Ten secretarial standards as stated below -

- S-1 : Secretarial Standard on Meetings of the BOD
- S-2 : Secretarial standard on General Meetings.
- S-3 : Secretarial Standard on Dividend
- S-4 : Secretarial Standard on Registers and Records
- S-5 : Secretarial Standard on Minutes
- S-6 : Secretarial Standard on Transmission of shares and Debentures
- S-7 : Secretarial standard on passing Resolution by circulation.
- S-8 : Secretarial standard on Affixing common seal.
- S-9 : Secretarial standard of Forfeiture of shares
- S- 10 : Secretarial standard on Board's Report

Exemption from SS: 1) SS - 1 and SS- 2 not applicable to OPC as it has only a single director on its Board.

2) SS- 2 is not applicable also to companies exempted by Central Government by notification.

#### ❑ **Secretarial Audit : u/s 204**

##### **I) Meaning:**

This is an audit which checks the compliance of various legislations including Companies Act and other corporate and economic laws applicable to the company,

## II) Importance:

- 1) It is a mechanism to monitor compliance requirements.
- 2) It aims at detecting errors, mistakes in compliance mechanism.
- 3) It prevents the company from the risk and losses due to non-compliances.
- 4) It gives confidence to regulators, management, stakeholders that company is following a disciplined approach of evaluation and improve effectiveness, risk management, control and governance.

## III) Applicability of Secretarial Audit : u/s 204(1)

- 1) Every listed company
- 2) Every public company with paid -up share capital of ₹ 50 crores or more,
- 3) Every Public company with a turnover of ₹ 250 crores or more,
- 4) Every private company which is a subsidiary of a public company.

### □ Appointment of secretarial Auditor :

- 1) Only member of ICSI holding certificate of practice can conduct secretarial Audit and furnish the Secretarial Audit Report.
- 2) This appointment is made by the Board of Directors at their meeting by passing a Board Resolution.
- 3) This Appointment should be preferably made in the beginning of the financial year; thus to make possible checking of compliances on a continuous basis.
- 4) The secretarial Audit Report : should be in prescribed format viz. form no. MR-3 and to be annexed with the Board's Report.

## 6.2.5 The Chief Financial (Finance) Officer (CFO)

**Meaning:** CFO is the officer of a company who is responsible for company's finances.

- 1) This extends to financial planning, management, financial risks, record keeping and financial reporting.
- 2) CFO helps in analyzing and recognizing company's strengths and weaknesses.
- 3) This leads to take timely corrective actions with respect to finances of the company.
- 4) The CFO is responsible for presenting and reporting accurate and timely financial information of the company.
- 5) Inputs by the CFO make the basis of the Board Report.
- 6) CFO is appointed as a regular employee in the rolls of company or may be on contractual basis for a certain period of time.
- 7) CFO need not be the Director of the Company.
- 8) CFO is compulsorily required to sign audited financial statements of the Company.



**Activity:** Find out the KMP of the following:

- 1) Reliance Industries Limited
- 2) Cadbury India
- 3) Union Bank of India

### 6.3 Distinction between:

#### 1. Director and Managing Director

Sr. No.	Points	Director	Managing Director
1)	Meaning	Director is the elected representative of the shareholders of the company.	Managing Director represents the Board in the day-to-day activities of the business.
2)	Appointment	Is elected at the Annual General Meeting by the members of company.	Appointed by the Board of Directors.
3)	Number of Companies	Director can work in 20 companies at a time out of which not more than 10 public companies at a time.	A person can be a Managing Director of two companies at a time by passing a unanimous resolution by the Board of the second company.
4)	Tenure	a) Directors of public company retire by rotation. b) 1/3 <sup>rd</sup> Independent Director is not liable to retirement by rotation. c) This post can have maximum tenure of three years.	Appointment of Managing Director is made for a term of five years.
5)	Positions Held	Director is only a person/member on the Board.	This is a post of dual identity. Managing Director is the Director on the Board. M. D. is the head of the management of the company by being a whole time manager.
6)	Remuneration	Specific Provision entitles the directors for remuneration for their services. The director is given fees to attend Board Meeting which may be upto Rs. 1 lakh plus prescribed remuneration.	If more than one managing director is appointed, the maximum remuneration cannot be more than ten percent of net profits. M.D. is entitled to either a monthly salary or five percent of net profits.
7)	Status	Directors are elected representatives of the shareholders managing company on their behalf. They can be agents of the company but not employees of the company.	As the duties of Managing Director are more than that of an ordinary director with more contribution, efforts and timewise; M. D. can be treated as the employee of the company.

## 2. Managing Director and Whole -time Director

Sr. No.	Points	Managing Director	Whole-time Director
1)	Meaning	The managing Director represent the Board in day-to- day management of the company.	The Whole-time Director is a director who devotes whole time to the working of the company.
2)	Powers	Managing Director is entrusted with substantial powers of management.	A whole time director does not have discretionary powers to take decision on policy matters.
3)	Number of Post	A person can be a Managing Director of more than one company if the Board of second company unanimously approves his appointment.	A person cannot have whole -time employment of more than a company at a time. so more than one whole-time directorship is not possible.

## 3. Managing Director and Manager

Sr. No.	Points	Managing Director	Manager
1)	Meaning	The Managing Director is the representative of the Board as far as the day-to-days administration of company is concerned.	The Manager is a person in charge of whole or substantially whole management of the affairs of the company.
2)	Power	Managing Director is entrusted with substantial powers of management.	The manager is entrusted with whole or substantially whole powers of management.
3)	Position Held	The Managing Director must be the director of the company.	The manager need not be a director of the company.
4)	Number of Posts	A Company may have more than one Managing Directors.	The company can have only one Manager.
5)	Appointment	The managing director may be appointed by virtue of an agreement with company or resolution passed by company's general meeting or Board meeting or memorandum or articles of the company.	Manager is appointed under a contract of service.
6)	Remuneration	In case of more than one managing director the maximum remuneration payable would be 10% of the net profit.	Maximum remuneration to a manager cannot be more than 5% of the net profit.

## SUMMARY

- 1) A strong organizational structure is needed in company to take care of its unique feature of separate ownership and management.
- 2) The Board of Directors : This is the highest body with extensive powers, comprising of several Directors who are expert in their fields and appointed as per provisions of the Act.
- 3) DIN : It is a unique identification number required by every individual who intends to be the director of company.
- 4) Role of the Directors : Act in the capacities of
  - a) Agents of the company (representing the company)
  - b) Managing partners (Conducting management) and administration for and on behalf of shareholder and
  - c) trustees (guarding the interests of the company)

### ❑ **Key Managerial personnel of company**

It consists of

- 1) The Managing Director
- 2) The Company Secretary
- 3) The Chief Financial Officer
- 4) The Whole Time Director

The KMP strengthens the efforts of Board to assure efficient and lawfully compliant management of company.

- ❑ **Secretarial Standard (SS) :** It aims at standardizing diverse secretarial practices prevailing in corporate world. Note worthily; it is legally adopted in India. There are 10 SSs prepared and issued.

The SS-1 & SS-2 are approved by the Central Government and mandatory to be observed by all companies in India.

### ❑ **Secretarial Audit :**

It is the audit which verifies the compliance of different legislations influencing functioning of the company. A member of institute of company secretaries of India holding a certificate of Practice can conduct secretarial audit and prepare secretarial Audit Report in form No : MR-3 which is to be annexed to the Board Report.



## EXERCISES

### Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) ..... comprises of a team of Directors.  
a) Board of Directors      b) Board of Trustees      c) Board of Managers
- 2) ..... can be a director.  
a) An Individual    b) A Firm      c) A Body corporate
- 3) Up to ..... as maximum directors are allowed to a company.  
a) five      b) fifteen      c) fifty
- 4) A maximum of ..... Directorships is allowed to a person.  
a) two      b) ten      c) twenty
- 5) A maximum of ..... Directorships of a public company is allowed to a person.  
a) one      b) ten      c) twenty
- 6) ..... is a unique identification number required to be a Director.  
a) PIN    b) DIN    c) TIN
- 7) ..... powers are the powers given to Board under the Act.  
a) Statutory      b) Managerial      c) Administrative
- 8) Director represents company in his role as .....  
a) Agent      b) Managing Partner      c) employee
- 9) Managing Director is appointed for a period of ..... years.  
a) 5      b) 10      c) 15
- 10) ..... is required to work under superintendence, control, guidance of the Board.  
a) Government      b) ROC      c) Managing Director
- 11) ..... is an employee of the company.  
a) Alternate director      b) Non-executive Director      c) Whole-time director
- 12) ..... need not be a director of the company.  
a) Manager      b) Managing Director      c) Whole-time director
- 13) ..... needs a whole time director.  
a) Listed company      b) Partnership      c) OPC
- 14) To provide guidance to Board is ..... duty of company Secretary.  
a) Personal      b) General      c) Statutory
- 15) Only a member of ..... can be a practicing Company Secretary.  
a) ICAI      b) ACCA      c) ICSI
- 16) ..... is to be prepared in prescribed form MR -3.  
a) Annual Report      b) Auditors Report      c) Secretarial Audit Report

**B. 1. Match the pairs:**

	Group 'A'		Group 'B'
a)	Board of Directors	1)	Nominated by the Board
b)	Managing Director	2)	Assists and advises the Board
c)	Company Secretary	3)	Automatic Appointment
d)	First Directors	4)	Appointed by ROC
e)	Alternate Director	5)	Extensive Powers of management
		6)	Substantial Powers of management
		7)	Appointed by Promoter
		8)	Assists and Advises the Government
		9)	Negligible Powers of management
		10)	Nominated by Council

**B. 2. Match the pairs:**

	Group 'A'		Group 'B'
a)	Public company	1)	Arises due to death of Director
b)	Private company	2)	Collective Powers
c)	Secretarial Auditor	3)	Individual Powers to Directors
d)	Casual Vacancy of a Director	4)	Arises due to additional work
e)	Powers of the Board	5)	Appointed by Managing Director
		6)	At least 2 (two) Directors
		7)	At least 3 (three) Directors
		8)	At least 15 (fifteen) Directors
		9)	At least 1 (one) Director
		10)	Appointed by the Board

**C. Write a word or a term or a phrase which can substitute each of the following statements.**

- 1) The organization with distinct feature of separate ownership and management.
- 2) The officer responsible for company's finances.
- 3) The body of elected representatives of company.
- 4) The officer who is statutory and administrative officer and also acts as co-ordinator of the company.
- 5) Qualification required to be a Company Secretary.
- 6) Agents, Trustees and Managing Partners of the company.
- 7) Audit which checks compliances of different legislations.
- 8) This KMP signs document of company requiring authentication by company.

- 9) The nature of relationship of Director with the company.
- 10) Name the secretarial standard - 1
- 11) Name the secretarial standard - 2
- 12) Name the secretarial standard - 3

**D. State whether the following statements are True or False.**

- 1) Large number of shareholders necessitates company to have separate managerial body.
- 2) Maximum number of Directors allowed to a company are 15 (fifteen).
- 3) A public company should have a minimum of 10 (ten) directors
- 4) DIN is required for Secretaryship.
- 5) Executive Director is called as outside Director.
- 6) Promoter of a company cannot be the Independent Director.
- 7) Only individuals can be directors.
- 8) Casual vacancy of Board is filled by the members.
- 9) To function as per Articles of Association of the company is statutory duty of the Board.
- 10) A Director is an employee of the company.
- 11) Managing Director is appointed by a resolution.
- 12) Minimum and Maximum age to be a Managing Director is 21 and 70; respectively.
- 13) A company may appoint more than one M. D.
- 14) Indian companies prefer a Managing Director over a Manager.

**E) Find the odd one.**

- 1) Woman Director, Promoter, Executive Director.
- 2) Absent at Board Meeting, failure to disclose interest, DIN.

**F) Complete the sentences.**

- 1) Separate ownership and management is a unique feature of .....
- 2) Minimum number of Directors for a private company should be .....
- 3) Minimum number of Directors for a public company should be .....
- 4) Minimum number of Directors for an OPC should be .....
- 5) First Directors of a company are appointed by .....
- 6) At least one Woman Director is required by ..... company.
- 7) Casual vacancy on Board is filled by .....
- 8) Director is the guardian of interest of company as .....
- 9) First Secretary is appointed by .....
- 10) The audit which checks the compliance of Companies Act is called as .....

**G) Select the correct option form the bracket.**

Group 'A'	Group 'B'
1) Rotational Director	-----
2) -----	Alternate Director
3) Woman Director	-----
4) -----	First Director

(Every Listed Company, Appointed by Promoters, Appointed in place of a Director who is absent, Retire by rotation)

**H) Answer in one sentence.**

- 1) Who is the officer responsible for the Company's financial plan?
- 2) What is the importance of Secretarial Standards?
- 3) Who provides guidance to the Board of Directors?
- 4) What is the tenure of 'Managing Director'?

**I) Correct the underlined word and rewrite the following sentences.**

- 1) Public company must have minimum 15 Directors.
- 2) First Directors are appointed by ROC.
- 3) Secretarial Standards are given by the Companies Act, 2013.

**Q.2 Explain the following Terms / Concepts.**

- |                                 |                            |
|---------------------------------|----------------------------|
| 1) Director                     | 2) Managing Director       |
| 3) Independent Director         | 4) Executive Director      |
| 5) Non Executive Director       | 6) Alternate Director      |
| 7) Casual vacancy of a Director | 8) Chief Financial Officer |
| 9) Company Secretary            | 10) Secretarial Standard   |
| 11) Secretarial Audit           | 12) The Board of Directors |

**Q.3 Study the following case/situation and express your opinion.**

- 1) Mr. A is a commerce graduate. He has vast experience in the field of finance and financial market. He wishes to become director of PQR co Ltd.
  - a) Is he required to obtain DIN?
  - b) Can PQR Co. Ltd. object to his directorship on lack of specialized qualification?
  - c) If he is appointed as director of PQR Co Ltd, is he entitled to remuneration?
- 2) Mr. Z is a member of Institute of Company Secretaries of India.
  - a) Can Mr. Z be appointed as pro-tem Secretary of LMN Ltd. which is under formation?
  - b) Can Mr. Z work as secretarial Auditor?
  - c) Mr. Z wishes to be employed as whole time Secretary in companies ABC Ltd. and OPC Ltd. Is he allowed?

- 3) Mr. M wishes to be the Managing director of QRS Ltd.
  - a) The age of MR. M is 30 years. Can he be appointed as MD of a company?
  - b) Is it necessary that Mr. M should be one of the directors on the Board of QRS Ltd.?
  - c) For how long a period QRS Ltd. can appoint Mr. M. as Managing Director?

**Q.4 Distinguish between the following.**

- 1) Director and Managing Director
- 2) Managing Director and Manager
- 3) Managing Director and Whole Time Director

**Q. 5. Answer in brief.**

- 1) What is DIN?
- 2) State any four powers of Board of Directors.
- 3) Mention any four ways in which the office of a Director becomes vacant.
- 4) State any four powers of Managing Directors.
- 5) State the Statutory duties of a company Secretary.

**Q.6 Justify the following statements.**

- 1) Directors are Managing Partners.
- 2) A Director is an agent of the Company.
- 3) Company has a distinct feature of separate ownership and management.
- 4) DIN helps investors of the company.
- 5) Directors have to work as a team.
- 6) Directors play a triple role.
- 7) Company Secretary plays a triple role.
- 8) A Director cannot be called employee of the company.
- 9) Managing Director has substantial powers of management.
- 10) Indian companies prefer to appoint a M. D. than Manager.
- 11) Pro-tem Secretary is helpful to the company.
- 12) Secretarial Standards should be in conformity with the Act.
- 13) Secretarial Standards leads to better legal compliance.
- 14) Secretarial Audit is required under the laws.

**Q.7 Answer the following questions:**

- 1) Explain the Role of Directors.
- 2) Explain the duties of Director.
- 3) Explain the Managing Director.
- 4) Explain the Company Secretary.
- 5) Explain the Role of Company Secretary.

