



Major changing impacts on : Role, Duties & Responsibilities of Directors & KMPsunder various Corporate Laws

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"DIRECTORS"

Definition :

- Section 2(34) of the Companies Act, 2013
"director" means a director appointed to the Board of a Company.
- Section 2(13) of the Companies Act, 1956
"director" includes any person occupying the position of director, by whatever name called.

• Major Changes

- "Director" compulsorily to be a part of the Board now.
 - No other person can use the designation "Director" unless a part of the Board now.
 - "Director" has to mention the word "Director" now.
 - The new definition has a major impact on entities registered as Non-Profit seeking entity.
- (Under Section 8 of the Companies Act, 2013 / earlier Section 25 of the Companies Act, 1956)

• Types of Directors :

- Additional Director
- Alternate Director
- Casual Director
- Director (Promoter / Non-Promoter)
- Nominee Director
- Independent Director
- Whole-time / Executive Director
- Managing Director
- Chief Executive Officer (CEO)

Key Managerial Persons (KMPs)

- Managing Director (MD)
- Manager
- Company Secretary (CS)
- Chief Financial Officer (CFO)
- Whole-time / Executive Director

Role, Duties & Responsibilities of Directors & KMPs Under The Companies Act, 2013

Directors : Role / Duties

- Duties of Directors have been defined (Section 166) for the first time in the Act.
- There are more clarity now for Disqualification for appointment of Director (Section 164), Vacation of office of

Director (Section 167), Resignation of Directors (Section 168) and Removal of Directors (Section 169).

➤ Disqualification of Director (Section 164) :

➤ Most of the aspects like, insolvency, unsound mind, conviction, etc. are common in comparison to that of the previous Act of 1956.

➤ New Provisions :

□ Director is disqualified if he has been convicted of the offence dealing with RPT u/s 188 at any time during the last preceding 5 years;

□ He does not have the DIN (Section 152(3))

➤ Vacation of Office of Director (Section 167) :

➤ In case of any of the disqualification in Section 164;

➤ New Provisions :

➤ Leave of Absence : in case of a director absents from all the meetings of the BOD held during a period of twelve months with or without seeking leave of absence of the Board, his/her directorship will be ceased.

➤ Failure to disclose his nature of interest u/s 184.

➤ Resignation of Director (Section 168) :

➤ New Provision :

Director can file his resignation directly with MCA (DIR-11)

➤ Removal of Director (Section 169) :

➤ Nothing new as such.

➤ Duties of Directors (Section 166) :

➤ To act according to the AOA of the Company;

➤ To act in good faith in order to promote the objects of the Company for the benefit of the members as a whole and in the best interests of the Company, its employees, the shareholders, the community and for the protection of the environment;

➤ To exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;

➤ To avoid conflict of interests;

➤ To not to achieve any undue gain or advantage either to himself or to his relatives, partners or associates ;

➤ To not to assign his office;

➤ For contravention :

Fine : Minimum : Rs. 1 Lakh

Maximum : Rs. 5 lakhs



➤ *Miscellaneous Provisions :*

- To attend the Board Meetings, Committee Meetings and General Meetings.
- To recommend the remuneration of the auditors to the Board : by the Audit Committee.
- To consider observations of the auditors – Audit Committee / Board.
- To ensure proper access, reporting and control over fraud reporting.
- The Chairman of the Audit Committee has to attend the Annual General Meeting.
- To ensure that the Accounting Standards are properly followed.
- To laid down the criterias for appointment of Senior Management and other employees : by the Nomination and Remuneration Committee.
- To recommend the appointment of Senior Management and other employees : by the Nomination and Remuneration Committee.
- To frame the Remuneration Policy : Nomination and Remuneration Committee.
- To furnish the declaration of independency : Independent Directors.
- To furnish the disclosure of interest at the beginning of every financial year.
- To frame the CSR policy : CSR Committee.
- To develop the Risk Management Policy including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the Company.
- To make the formal annual evaluation of its own performance and that of its Committees and individual directors.
- To laid down the internal financial control and monitor its operating effectiveness.
- To establish vigil mechanism for directors and employees to report genuine concerns.
- To conduct at least one meeting in a year exclusively for the Independent Directors and to :
 - (a) Review the performance of non-independent directors and the Board as a whole;
 - (b) Review the performance of the Chairperson of the Company, taking into account the views of executive directors and non-executive directors;
 - (c) Assess the quality, quantity and timelines of flow of information between the Company management and the Board that is necessary for the Board to effectively and reasonable perform their duties.

- To ensure that the matters required to be passed by the Board get passed by the Directors only.

Directors : Responsibilities

- Managing Director : In overall in-charge of the affairs of the Company and being a KMP responsible for almost all the provisions of the Act.
- Executive / Whole-time Director : Shall be responsible for the violations only if it applies to the KMPs or the entire Board.
- Other Directors : Shall be responsible for the violations only if it applies to the entire Board.

Key Managerial Personnel

➤ *Company Secretary :*

- Functions of the Company Secretary is exclusively defined in Section 205 of the Act.
- Company Secretary has to report to the Board about the compliances with the provisions of the Act, the rules made there under and other laws as applicable to the Company;
- Shall be responsible for the violations only if it applies to the KMPs. However, almost in all the provisions of the Act Company Secretary is responsible along with Managing Director.
- The Company Secretary has to sign the financial statement.
- *Other KMPs (except MD and CS) :*
- CFO has to sign the financial statement.
- Shall be responsible for the violations only if it applies to the KMPs.

Under Secretarial Standards (SS-1 / SS-2)

- Directors must ensure receipt of Notice of the Board Meeting alongwith Agenda and necessary annexures at least seven days prior to the date of the Board Meeting.
- All the directors, including all other attendants, to sign the attendance register.
- In case of video conferencing the director opting for such mode must inform the company well in advance.
- The Board has to ensure that the audio visual means of the recordings are kept at least for one year from the date of Board Meeting.
- The directors must receive the draft minutes of the meeting within fifteen days of the conclusion of the meeting.
- The directors may provide inputs or record their dissent or seek clarification on the draft minutes within next seven days.

- The Company Secretary has to ensure the minutes duly complete entered into the minute book within thirty days of the conclusion of the Board Meeting.
- The final minutes should be circulated to all the directors alongwith notice of the Board Meeting and the Agenda.
- The signed copy of the previous minutes should be circulated to all the directors within fifteen days of the conclusion of the Board Meeting.
- There should not be a gap of more than 120 days between the dates of two Board and Audit Committee Meetings.

- All the directors must receive the circular resolution, if any, with a clear cut deadline of the date by which the circular resolution needs to be responded.
- The Chairman of the general meeting to ensure that the proceedings are conducted in a fair manner.
- The physical ballots are required to be circulated at the venue of the meeting or evoting facility has to be provided at the venue of the general meeting.

Under SEBI (Takeover) Regulations, 2011

- No routine compliance under Takeover Regulations unless the director is a Promoter Director.
- In case of Promoter Director, the director is required to submit his holding alongwith his associates, to the Company and the stock exchange where the shares of the Company are listed within seven days of the beginning of the financial year.
- The Directors, KMPs and senior executives of the Companies acquiring/selling the shares in the Company would have to ensure compliance for the trigger points. (for every +/- 2% in shares of the Company if the shareholding exceeds 5% / or / first time exceeding 5%, 26% or 75% individually / or / of the entire promoters' shareholding beyond 75%)

Under SEBI (Insider Trading) Regulations, 2015

- Initial Disclosure : Within 30 days of the Regulation coming into effect, i.e. 15.05.2015.
- Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.
- Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from

becoming aware of such information.

- Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

- There are major three terms to monitor : Insider / Connected Person / Unpublished Price Sensitive Information.

- "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:—

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

- No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

- No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

- No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

- In all cases the onus of ignorance would lie on the insiders or connected persons.

ÀÛÜThe board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a *code of practices and procedures for fair disclosure of unpublished price sensitive information* that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations,

without diluting the provisions of these regulations in any manner.

➤ The board of directors of every listed company and market intermediary shall formulate a *code of conduct* to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

➤ *Every other person* who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

Under SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015

➤ All existing material related party transactions entered into prior to notification of listing regulations (w.e.f. 01.12.2015) and which may continue beyond such date shall be placed for approval of the shareholders in the first general meeting subsequent to notification of the listing regulations.

➤ There are certain events upon occurrence of which intimation is required to be given *not later than twenty four hours from the occurrence of event or information* (earlier, such material events were to be disclosed immediately, no timeline was specified). (Regulation 30).

➤ The Listing Regulations lay down a list of information which should be disseminated by a company on its website.

➤ Transfer of securities and issue certificates within 15 days from the date of such receipt of request for transfer.

➤ The listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode within 7 days and 21 one days respectively, after receipt of the specified documents.

➤ All share certificates are to be issued *within 30 days of the date of lodgement* for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies.

➤ Disclosure to the SE : Proceedings of Annual and extraordinary general meetings within 24 hours and details regarding the voting results within 48 hours of the conclusion of the meeting.

The CEO and the CFO shall provide the compliance certificate to the BOD (Corporate Governance).

Policies to be adopted :

Regulation Policies

9	Policy for Preservation of Documents
16	Policy for Determining Material Subsidiary
23	Policy on Materiality of Related Party Transactions and on dealing with Related Party Transactions
30(4)	Policy on Materiality of Event
30(8)	Archival Policy
Schedule II (PART-D)	Policy on Diversity of Board of Directors

