

Management

Subject: Commerce

Lesson : Management

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Management

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Introduction

Many people are involved in managing and running a company. The most important people who direct and control the company are the directors, managing directors and the company secretary. Some of the personnel are actively involved in the management of the company and some are just in name only. How these personnel are important in the smooth running of the affairs of the company and how they are different from each other have been discussed in this lesson.



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7.1 Director

A company is an artificial person without any body and mind and therefore needs human beings to act on its behalf. The persons through whom the company acts are known as directors. They are the human agents of the company. According to Section 252, every public company should have at least three directors and every private company should have at least two directors.



Figure 7.1 Director

Qualifications of a Director

The Companies Act has not laid down any qualifications for the director. Unless the articles of association provide for it, a director need not hold shares of a company. However the articles generally require the directors to hold qualification shares as it increases their interest in the company by making them stakeholders.

If the articles of a company require a director to hold qualification shares and he is presently not holding shares then according to section 270 he must obtain them within two months after his appointment. In a newly established company, the directors must pay for the qualification shares before the company obtains the certificate to commence business. In case the director fails to obtain the qualification shares within the stipulated time, he is to vacate the office and becomes liable to a penalty which may extend to Rs 500 for every day during which he continues to act as a director after the expiry of the said period. The provisions of having qualification shares to become a director does not apply to the following types of directors:

1. Directors representing special interests
2. Directors appointed by the central government
3. Directors in a private company

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Disqualifications of a Director

According to Section 274 the following people are not capable of being appointed as directors in a company:

- 1 A person who has been adjudged to be of unsound mind
- 2 A person who is an un-discharged insolvent
- 3 A person who has applied to be adjudged insolvent
- 4 A person who has been convicted by a court and sentenced to at least six months imprisonment for an offence involving moral turpitude and five years have not elapsed from the date of expiry of the sentence.



Figure 7.2 Disqualification of a director

- 5 A person who has not paid any call on his shares for six months.
- 6 A person who has been disqualified by a court for fraudulent activities in company promotion or management
- 7 A person who is already a director of a public company which-
 - a) has not filed the annual accounts and annual returns for any three successive financial years commencing on or after 1st April 1999 or
 - b) has failed to repay its deposits or interest on due date or redeem its debentures on due date or pay dividend and such failure continued for one year or more.

The above-mentioned disqualifications are not applicable to directors of a government company and disqualifications mentioned in clause 4 and 5 above may be waived by the central government by a notification in the official gazette.

Only an individual can be appointed as a director. No company or firm can be appointed as a director of another company.

Number of Directors

Every Public company must have at least three directors (four if there is a demand from small shareholders under section 252) and every private company, at least two directors. However the articles of a company may fix the minimum and maximum number of directors for its board of directors and within the limits prescribed by the articles, the company may



Figure 7.3 Appointment of a Director

increase or decrease the number of its directors by passing an ordinary resolution in the general meeting.

In case of a public company, any increase in the number of directors which is beyond the limit fixed by the articles must be approved by the central government except where the increase in number does not make the total number of directors more than twelve.

As per Section 253 as amended by the Companies (Amendment) Act 2006, no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under Section 266B. The directors of the company can be appointed by any of the following ways:

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1. By Small Shareholders as Regards Nominee Directors

A small shareholder is one who holds shares of the nominal value of Rs.20000 or less. Section 252 enables to elect a Nominee director in public limited companies whose paid-up capital is Rs. 5 Crore or more, and where the number of small shareholders is 1000 or more.

2. By the articles as regards first directors

(i) The articles of a company usually name the first directors by their respective names or prescribe the method of appointing them.

(ii) If the first directors are not named in the articles, the number of directors and the names of the directors is determined in writing by the subscribers of the Memorandum of association;

(iii) If the first directors are not appointed in the above manner, the subscribers of the memorandum who are individuals become directors of the company. They hold office until directors are appointed in the next annual general meeting.

3. Appointment of directors by a company in a general meeting as regards subsequent directors

(i) Rotational and Non Rotational Directors: According to Section 255, directors must be appointed by the company in a general meeting. In the case of a public company and a private company, which is its subsidiary, out of the total number of directors, only 1/3rd can be given permanent appointment. The remaining 2/3rd are liable to be retired by rotation and are called rotational directors. The shareholders appoint them in the general meeting.

In case of a private company which is not a subsidiary of a public company, it is not compulsory under law that they have rotational directors unless the articles of association of the company so require.

(ii) Ascertainment of directors retiring by rotation and filling vacancies (Section 256):

At the annual general meeting of a public company or a private company which is subsidiary of a public company, 1/3rd (or the number nearest to 1/3rd) of the rotational directors retire from office.

Illustration :

Ghanshyam Roopchandani is a public limited company which is formed in the year 2007 with 9 directors: Ram, Lakshman, Bharat, Shatrughana, Yudhishtir, Bheem, Arjun, Nakul and Sahdev. Out of these Ram, Lakshman and Bharat are the three permanent directors. They represent 1/3rd of the total number of directors. The remaining six directors are liable to retire by rotation in the subsequent annual general meetings. Amongst the rotational directors Shatrughana and Yudhishtir are to retire in the annual general meeting of the year 2008. They represent 1/3rd of 6 rotational directors. Bheem and Arjun would retire in the annual general meeting in the year 2009 and Nakul and Sahdev would retire in the annual general meeting in the year 2010.

The directors to retire by rotation at every annual general meeting are those who have been longest in the office since their last appointment but as between persons who became directors on the same day, the names of those who are to retire is determined by mutual agreement or, failing that, by a draw of lots.

Case Law 1

B.R. Kundra vs. Motion Pictures Association¹

In this case the members of a company by the name of Motion Pictures Association were to elect the board of directors described as an executive committee consisting of 18 members who were then to elect office bearers such as president, vice-president, secretary, joint secretary from amongst themselves. The election was to be held at the first executive committee meeting after the annual general meeting. The directors failed to hold the meeting

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and hence continued with their respective positions of the office bearers. B.R Kundra the plaintiff filed a case against the company for making the directors continue with their respective posts without holding the meeting. The court held that the directors cannot prolong their tenure by not holding the annual general meeting in time and therefore they would automatically retire on the expiry of the maximum permissible period within which a meeting ought to have been held.

(iii) Reappointment of a retiring director: As per Section 256, the retiring director is subject to re-election. The vacancy caused by the retirement of a director by rotation has to be filled up in the same meeting or in an adjourned meeting. If the vacancy is not filled, then the retiring director is deemed to have been appointed at such an adjourned meeting except in the following manner:



Figure 7.4 Reappointment of a retiring director

- At any previous meeting, a resolution for his re-appointment was put to vote, but was lost.
- The retiring director is in writing expressed his unwillingness to continue.
- The retiring director has been disqualified.
- A special or ordinary resolution is necessary for his appointment.
- It is resolved not to fill the vacancy.

(iv) Appointment of a director other than the retiring director (Section 257): If any person other than the retiring director wishes to stand for directorship or any member proposes the name of a person for directorship, then a 14 days written notice must be given to the company before the general meeting by either the person seeking appointment as the director or by the person proposing his name. The company must inform the members at least 7 days before the general meeting either by individual notices or by an advertisement in two newspapers. The candidate or the member who proposes the name must deposit Rs 500/- with the company. If the person, succeeds in being elected, then the sum is refunded, otherwise the company forfeits the amount.

(v) Consent to act as a director (Section 264): The appointment of a director, who is not a retiring director will not be valid unless written consent to act as a director is filed with the registrar within 30 days of appointment.

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(vi) Appointment of directors to be voted on individually (Section 263): Every director is appointed by a separate resolution put to vote separately. An appointment of two or more persons as directors of the company by a single resolution is not valid unless a resolution that it can be so made has first been adopted unanimously by the members.

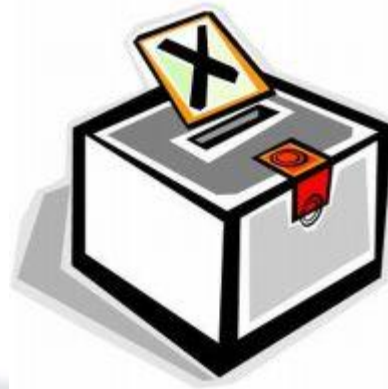


Figure 7.5 Appointment through Vote

(vii) Proportional representation for the appointment of directors: The articles of a company may provide for the appointment of not less than 2/3rd of the total number of directors according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise. Such appointments can be made once every three years.

4 Appointment of directors by the board of directors

The board of directors can appoint directors in any of the following cases:

a) Additional Directors: If the articles so permit, the board of directors can also appoint additional directors subject to a maximum number as fixed in the articles. These directors can hold office only up to the date of next annual general meeting.

b) Alternate directors: An alternate director can be appointed by the board if it is authorized by:

(i) the articles of the company, or

(ii) a resolution passed by the company in the general meeting. The alternate director acts for a director, called "the original director" during his absence for a period of at least 3 months from the state in which the board meetings are ordinarily held.

c) Casual Vacancy: A casual vacancy occurring may be filled up by the board of directors themselves unless the articles provide a different procedure, but the person so appointed can hold office only up to the time his predecessor would have continued.

5) Appointment of directors by third parties

A company may give, by its articles, power to the debenture holders, the banking company or the financial corporation who have advanced loan to the company to appoint their nominees on the board. The number of such directors should not exceed one-third of the total strength of the board. These directors are also not required to retire by rotation. The right to nominate directors on the board of financed companies is usually contained in the contract itself.

6) Appointment of directors by the central government

In case of oppression or mismanagement, the central government has the power to appoint such number of directors on the board of directors of a company as the Company Law Board may direct to effectively safeguard the interests of the company or its shareholders or the public. Such persons can hold office as directors for not more than three years on any one occasion. The CLB can take up the matter for such direction on a reference made to it by



Figure 7.6 Appointment by Central Government

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the central government or on application signed by at least one hundred members of the company or by members who together hold at least 1/10th of the total voting power.

A person appointed by the central government as a director will not be:

- a) considered for the purpose of reckoning 2/3rd or any other proportion of the total number of directors of the company
- b) required to hold qualification shares
- c) required to retire by rotation

The central government may remove any such director from his office at any time and appoint another person to hold office in his place. The provisions of the Section are applicable to both public and private companies.

Number of Directorships (sections 275 to 279)

As per Section 275 'a person cannot hold office at the same time as director in more than 15 companies'.

Exclusion of certain directorships (Section 278). In calculating the number of companies of which a person may be a director, the following companies are excluded;

- (a) A private company which is neither a subsidiary nor a holding company of a public company;
- (b) An unlimited company;
- (c) An association not carrying on business for profit or which prohibits the payment of a dividend; and
- (d) A company in which such a person is only an alternate director.

Choice of a person becoming director of more than 15 companies (section 277)-

Section 277 provides that if a person who is already a director in 15 companies is appointed director in any other company, after the commencement of the Companies Act 2000, then

- (a) his appointment cannot take effect unless within 15 days of such appointment, he vacates his office in any other company in which he was already a director, and
- (b) his appointment will be void immediately on the expiry of the 15 days ,if he has not vacated his office as director in any of the other companies, before such expiry.

Section 279 provides that directors holding office in more than 15 companies shall be subject to a fine put Rs.50,000/- for every office which they hold after the first 15.

The exact position of a director has not been defined in the company law. They are sometimes described as agents of the company, sometimes as managing partners and at times as trustees of the company.

Directors as agents

A company is an artificial person therefore it cannot act on its own. If it has to do anything or enter into any contract it does it through its directors. Hence directors share a relationship of an agent and a principal with the company.



Figure 7.7 Legal Position of a Director

Illustration :

Namik is a Delhi based private limited company which has two directors, Ramchandra and Krishnachandra. The company wants to start its business operation in Manipur and for that they need an office accommodation. Ramchandra goes to Manipur and buys a property in Imphal to house the office. Although the purchase has been made by Ramchandra the

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property belongs to the company. Ramchandra has just acted as an agent of the company.

Case Law 2

In Ferguson vs. Wilson ²

It was observed Ferguson had an option to subscribe for some of the company's shares and hence he applied for some shares. The directors allotted the whole of the authorized capital to other persons including themselves. Consequently the option given to Ferguson became worthless. He then sued Wilson, one of the company's directors, to transfer some of his shares to him and pay damages. However, Ferguson's claim failed on the ground that the directors were only the agents of the company and incur no personal liability.

Illustration :

Namik a Delhi based company due to negligence of its Directors Ramchandra and Krishnachandra fails to pay sales tax to the government. The government files a case against the directors for the recovery of tax payable by the company. As the fault is that of the directors, they are personally liable for the payment of the taxes.

Since directors act on behalf of the company in relation to third parties, they enjoy the rights and privileges of an agent. They incur no personal liability on contracts entered into by them unless, they have exceeded the power given to them by the memorandum and the articles, in which case they will be liable for breach of authority.

However directors are not completely like agents because directors are elected and agents are appointed.

Directors as Managing Partners

Directors are shareholders who have been elected by other shareholders to manage the company. Hence they are like partners to other shareholders and as they are entrusted with the job of managing the company, they are called managing partners. However, directors are not completely like partners because a director cannot bind other directors and shareholders by his actions. Other directors and shareholders are not liable for the acts done by him.



Figure 7.8 Different Roles of a Director

Directors as trustees

A trustee is a person in whom is vested the legal ownership of assets which he administers for the benefit of another or others. Like trustees, directors in the performance of their duties stand in a fiduciary position in relation to the company.

Directors are trustees of the company's money and property and therefore they must act in good faith and exercise their powers in the interest of the company. Since directors occupy a fiduciary position, they should not make any secret profits.

They must exercise powers like making calls on shares and forfeiting the shares etc. in the bona fide interests of the company.

Illustration :

Rajnagar Company has two directors Rustam and Ismail. The directors issue 100 shares to the public and receive Rs 10 each per share from the shareholders as share application,

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share allotment and share first call money. However they themselves do not pay Rs 10 for each of the shares taken by them. This amounts to breach of trust and hence they are required to pay Rs 10 each for the shares held by them.

Directors as employees

Directors are professionals who manage the company for the benefit of themselves and for the benefit of the shareholders. However, if a director accepts employment in the same company under a separate contract of service, then, in addition to the directorship, he is also treated as an employee or servant of the company.

Illustration :

Ram is a director of a company who has also taken an extra charge to act as a manager of the company to any remuneration but as per the contract of service as a manager he is entitled to receive a remuneration. Hence he is a director who also happens to be an employee of the company.

A Director of a company has the power to do all such acts as the company is authorized to do as per section 291 (1). If the articles mention the powers of the directors then the directors can exercise only those powers. Nobody has the right to interfere and control the way in which the directors choose to act. However if the directors are found to be misusing their powers or are using their powers in a manner that is not in the best interest of the company, then the shareholders can either alter the articles to restrict the powers of the directors or refuse to re-elect those directors of whose action they disapprove. These are the exceptional cases where the majority of the shareholders may intervene and exercise a power which is vested in the Board of Directors:

- a) Where the directors act for their own personal interest with complete disregard for the interest of the company.
- b) When the directors have become incompetent to act
- c) When the directors are either unable or unwilling to act.

Illustration :

Roop Nikhar is a private limited company having two directors Sonu and Monu. In the Articles of Association directors have the freedom to execute any contract of financial or non financial nature without the approval of the shareholders. Sonu has a farm house in Delhi in the name of the company but keeps it solely for his own personal use. This is against the interest of the company. Hence Monu with the consent of the other shareholders gets the articles of Association amended. In the amended articles it is mentioned that the Directors have to take prior approval of the entire board as well the shareholders for any contract of a financial nature.

There are two types of duties of a director:

- 1 Statutory duties
- 2 General duties

Statutory duties are mentioned in the Companies Act and are therefore obligatory for the directors to perform. Some of them are mentioned below:



Figure 7.9 Duties of a Director

Filing return of allotments: The directors are required to file with the Registrar within a period of 30 days, a return of the allotments made, stating all the particulars.

Issuing only redeemable shares: The directors should not issue shares that are irredeemable or are to be redeemed after twenty years.

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Attending board meetings: The directors have to attend three consecutive board meetings or all meetings for a period of three months, whichever is longer.

Disclosing receipt from transfer of property: The directors have to disclose to the shareholders the money received from the sale of the company's property (asset).

Disclosing interest: In case the director is personally interested in any transaction then he should disclose his interest to the Board members. As the director stands in a fiduciary capacity with the company therefore he must not place himself in a position in which his personal interest conflicts with his duty.

Convening meetings: It is the duty of the directors to convene statutory meeting, the annual general meeting and the extraordinary general meeting.

Appointing the first auditor of the company: It is the directors who appoint the first auditor of the company.

General duties are not mentioned in the Companies Act and therefore are not obligatory for the directors to perform. Some of them are mentioned below:

To act in good faith: The directors are expected to act in good faith i.e. they should always act in the best interest of the company. The directors should not make any secret profits.

To act with utmost care: The directors should conduct their work with utmost care. They should act with prudence.

Not to delegate work: The directors are to perform all their work themselves. They are not to delegate their work to anyone else.

However in the following cases the directors may choose to delegate the work to someone else:

- If it is permitted in the Companies Act or the Articles of Association
- If the directors cannot perform certain work that demands specialized expertise, then in that case such work can be delegated.

A director can be removed from his office in any of the following three ways:

a) Removal by shareholders (Section 284)

A company (whether public or private) may, by giving a special notice and passing an ordinary resolution, remove a director before the expiry of his period of office. It is not necessary that there be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the director. If the shareholders feel that the policies pursued by the director are not appropriate, then he can be removed. The shareholders can do so by passing an ordinary resolution in a general meeting.

However this Section does not apply to:

- a) A director appointed by the central government under section 408.
- b) A director of a private company holding office for life on April 1, 1952.
- c) A director representing special interests (eg. debenture-holders).
- d) A director elected by proportionate representation under Section 265.
- e) A nominee director.
- f) A director appointed by the Company Law Board (now Tribunal)

Requirement of special resolution : Special notice is required of any resolution to remove a director under this Section. On receipt of the notice of a resolution to remove a director the company can forthwith send a copy of the notice to be heard on the resolution at the meeting.

Right of director to be heard or make representation

On the request of the director, the company shall send a copy of any representation made by

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the director in writing thereon to each of its members. In case the copies of the representation cannot be sent to the members because it is received too late, the director concerned may require it to be read out at the general meeting.

Such representation need not be sent out and read out at the meeting, if the Company Law Board is satisfied that the rights under this Section are being abused to secure needless publicity for defamatory matter.

Filling up the casual vacancy created by the removal of a director

If a director is removed from his post at a general meeting, the vacancy thus created may be filled at the same meeting, provided special notice of the proposed appointment is given prior to the meeting. If the position is not filled at this meeting, it will be filled by the board as a casual vacancy. The director so appointed should hold office till the expiry of the removed director's term. A removed director cannot be reappointed.

Right of compensation

A director removed under this Section cannot be deprived of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that director. Compensation can not exceed the remuneration which he would have earned if he had been in office for the unexpired residue office term or three years whichever is shorter.



Figure 7.10 Right of Compensation

b) Removal by the central government (Section 388B TO 388E)

The central government has been empowered to remove managerial personnel from office on the recommendation of the Company Law Board. The central government is empowered to make reference to the Company Law Board against any managerial personnel, where in the opinion of the central government, there are circumstances suggesting:



Figure 7.11 Central Government

(i) A person concerned in the conduct and management of the affairs of a company has been guilty of fraud, misfeasance, persistent negligence in carrying out his obligations and functions under the law, or breach of trust; or

(ii) that the business of a company is not or has not been conducted and managed by such a person, in accordance with sound business principles or prudent commercial practices; or

(iii) that the business of a company is or has been conducted and managed by such a person in a manner which is likely to cause or has caused serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(iv) the business of the company has been conducted and managed by such a person with the intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to the public interest.

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Consequences of the order

The person removed cannot hold the office of a director or any other office connected with the conduct and management of the affairs of the company for a period of 5 years, unless the period is remitted by the central government with the prior concurrence of the Company Law Board. Again, no compensation is payable to him for the termination of office. The company may, with the previous approval of the central government, appoint another person to that office.

c) Removal by the Company Law Board

If an application has been made to the Company Law Board against the oppression and mismanagement of the company's affairs by a director then the Company Law Board may order for the termination of the director's tenure or set aside any agreement that has been entered into between the company and the director. Such order can have the effect of the removal of the director from his office.



Figure 7.12 Removal by Company Law Board

Such director or the managing director cannot be entitled to hold any managerial office for a period of five years from the date of the Company Law Board's order

Vacation of office of a Director (section 283)

The office of the director can become vacant if,

1. He fails to obtain qualification shares within two months of his appointment or at any time thereafter ceases to hold qualification shares;
2. He is found to be of unsound mind;
3. He applies to be adjudicated as an insolvent;
4. He is adjudged as an insolvent;
5. He is convicted by the court on the grounds of moral turpitude;
6. He fails to pay unpaid call money on his shares for more than six months;
7. He makes a contract with the company in contravention of Section 299;
8. He is debarred by the court from being a director on account of fraud in relation to Section 203;
9. He is removed in accordance to Section 284;
10. He absents himself from three consecutive meetings of the board of directors or from all meetings of the board for a continuous period of three months, whichever is longer, without obtaining leave of absence from board;
11. He or his firm or any private company of which he is a director accepts loan or guarantee from the company for the debts incurred by him personally without the approval of the central government, thus contravening the provisions of Section 295.

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Penalty for non compliance.

If a person functions as a director and knows that his office has become vacant on account of any of the above disqualifications, he will be punishable with a fine which may extend to Rs. 5,000/- per day.

A private company can have additional ground for the vacation of the office of a director.



Figure 7.13 Penalty for Non Compliance

Resignation of a Director

There is no provision relating to the resignation of office by a director in the companies Act. If there is any provision in the articles of association giving right to a director to resign at any time a director may resign his office in the manner provided in the articles. A resignation once made takes the effect immediately when the intention to resign is made clear without any need for its acceptance by the board of directors or the company in general meeting. Even resignation orally tendered at a general meeting and accepted by the meeting was held to be effective.

From above it is concluded that a director, who has submitted his resignation, will be deemed to have resigned from the date of his resignation, without prejudice of course to his liability and obligations which had occurred up to that date and which he cannot evade.

Remuneration of a Director

As per the Companies Act there is no provision for payment of remuneration to the directors of a company. As they are agents and elected representatives of the shareholders therefore they are not employees of the company. Hence they are not entitled to any remuneration. However the articles may provide for an honorarium to be given to the directors.

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7.2 Managing Director

The Board of Directors manage the affairs of a company either by means of a committee of its own or by appointing managerial personnel such as managing directors, whole time directors and managers to work under their superintendence. According to section 269 (1) of the Companies Act it is obligatory for every public company or a private company which is a subsidiary of a public company having a paid up share capital of rupees five crores or more to appoint a managing director or whole time director or a manager. Section 2(26) of the companies Act defines "Managing Director" as a director who



Figure 7.14 Managing Director

- a) by virtue of an agreement with the company, or
- b) by virtue of a resolution passed by the company in a general meeting, or
- c) by virtue of a resolution passed by the Board of Directors, or
- d) by virtue of its Memorandum or Articles of Association,

is entrusted with "substantial" powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing

director, by whatever name called.

From the above definition it is clear that a managing director must necessarily be a director.

Powers of a Managing Director

The substantial powers conferred upon the managing director may be altered or varied by the company or the board of directors.

A managing director exercises his power subject to the superintendence, control and direction of the board of directors.

Appointment of a Managing Director

A managing director is usually appointed under a service contract and accordingly he is both the director as well as an employee of the company. If a managing director's appointment is prematurely terminated, he is entitled to claim damages for breach of his service contract even though there is a provision in the articles for the premature removal.

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Case Law 3

Nelson vs. Nelson (James) & Sons Ltd ³

The articles of J. Ltd empowered the board of directors to appoint a managing director to hold the office as long as he was a director. He held his qualification shares and performed his duties efficiently. The board revoked his appointment while he still fulfilled the conditions of the agreement. Held, he was entitled to damages for breach of contract.

Some general legal provisions relating to the managing directors are as follows:

- He must be an individual.
- he is appointed by the board of directors usually to perform such functions and carry out such duties as may be assigned to him by the board of directors to whom he is responsible. The board can revoke the authority of the managing director.
- there can be two or more than two managing directors in the company.
- approval of the central government may be necessary in case the conditions as laid down in schedule XIII are not satisfied. The government may subject its approval to any conditions, that it may deem fit.
- No person can be appointed as the managing director or manager in more than two companies of which each one or at least one, is public company or a private company which is subsidiary of a public company. A person cannot be appointed as a managing director of more than two companies without the approval of the central government However a person can be managing director of any number of private companies.
- every public company having a paid-up share capital of Rs.5 crores or more can have a managing or whole-time director or manager.
- the term of the office of the managing director cannot exceed 5 years at a time. Also re-appointments or extension can be made on the basis of 5 years tenure on each occasion.
- a managing director may be remunerated either by way of a monthly payment or as a specified percentage of the net profits of the company or partly by one way and partly by the other. However, such remuneration should not exceed 5 per cent of the net profits without the sanction of the central government. Where there are more than one managing directors, the remuneration must not exceed 10 per cent of the net profits without sanction of the central government.

Disqualifications of the Managing Director (Section 267)

No person can be appointed a managing director or whole time director who-

1. is an undischarged insolvent, or has at any time been adjudged an insolvent;
2. suspends or has at any time suspended, payment to his creditors, or makes, or has at any time made, composition with them.
3. has at any time been, convicted by a court of an offence involving moral turpitude.
4. Has been disqualified to be appointed as a director under Section 274.

Remuneration:

According to sub section (3) of section 309 a director who is in whole time employment of the company or a managing director is entitled for a remuneration. The remuneration may be paid in any of the following ways:

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- a) by way of a monthly payment
- b) by way of a specified percentage of the net profits of the company
- c) partly by monthly payment and partly by a specified percentage of the net profits of the company.



Figure 7.15 Remuneration of a MD

7.3 Whole-time Director

According to Section 269(1) the term whole time director includes a director in the whole time employment of the company. Thus a whole time director is one who devotes all his time and attention in carrying out with the affairs of the company as may be assigned to him by the board. His position is similar to that of the Managing Director of the company. Therefore at most of the places in the Companies Act the whole time director is interchangeably used as the Managing Director.

Appointment of whole time director

The provisions of Section 269 which are applicable to the appointment of managing director are also applicable to the appointment of a whole time director. Also the consent of the company in the general meeting by a special resolution is necessary because the office of the whole time director is an office of profit.

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Table 7.1 Distinction between a Managing Director and a whole time Director

Points of difference	Managing Director	Whole time director
Appointment	Appointment of a managing Director need not necessarily be made with the consent of the members.	Appointment of whole time Director requires the consent of the members by a special resolution.
Period of appointment	A person cannot be appointed as a managing Director of a company for more than five years.	There is no such restriction regarding the appointment of a whole-time Director.
Number of companies	A managing Director may be appointed in that capacity in two or more companies at the same time.	By virtue of his whole time employment, he cannot Act as such in more than one company.
Powers	A managing Director is entrusted with substantial powers of management	A whole time Director enjoys power as per the terms of employment.
Manager	A managing Director cannot coexist with a manager.	A whole time Director can be appointed together with the manager.

7.4 Manager

According to Sec.2 (24) a manager, means an individual who has the management of the whole or substantially the whole of the affairs of a company. He is subject to the superintendence, control and direction of the board of directors. 'Manager' includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not. Only an individual can be appointed as a manager. No firm, body or corporate can be appointed as a manager.



Figure 7.16 Manager

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Disqualifications of a Manager

According to section 385 of the Companies Act, the following people cannot be appointed as Managers in the company:

- he is an undischarged insolvent
- within the preceding five years he has been adjudged an insolvent
- he suspends or has suspended within the preceding five years payment to his creditors
- he is or has at any time within preceding five years been convicted of an offence involving moral turpitude.

However, the Central Government may by notification in the official Gazette, remove any of the aforesaid disqualifications incurred by any person either generally or in relation to any company or companies specified in the notification.

Appointment in more than one company

According to sub-section (1) of section 386 a person cannot be appointed as a manager if he is either the manager or the managing director of any other company. However, according to sub-section (2) of section 386 a person can be appointed as a manager if he is a manager or managing director of one and not more than one other company. This can be done only by passing a resolution in a board meeting with the consent of all the directors present at the meeting.

Remuneration

A manager may receive remuneration in any of the following manner.

- Monthly Payment
- A specified percentage of the net profits
- Partly by a monthly payment and partly by a specified percentage of the net profits.

A company cannot appoint simultaneously and at the same time both a manager as well as a managing director. They can either appoint a manager or a managing director.

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7.5 Secretary

According to Section 2 (45) of the Companies Act 1956 a secretary means a company secretary as defined under sub-section (1) of section 2 of the Company Secretaries Act 1980. Under the Company Secretary Act 1980 a company secretary is any individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary. The duties may also include other ministerial or administrative duties.

Qualifications of a Secretary

There are two types of qualifications which a person must possess in order to be appointed a company secretary in a company.

These are: Statutory Qualifications and General Qualifications

Given below are the statutory qualifications

- In case of a company having a paid-up share capital of Rs. 2 crores or more the whole-time secretary must be a member of the Institute of Company Secretaries of India.
- In case of companies having a paid up capital of less than Rs. 2 crores, the secretary must possess one or more of the following qualifications:

1 Membership of the Institute of Company Secretaries of India.

2 Pass in the Intermediate Examination conducted by the Institute of Company Secretaries of India.

3 Post-graduate degree in commerce or corporate secretaryship granted by any University of India.

4 Degree in Law granted by any University.

5 Membership of the Institute of Chartered Accountants of India.

6 Membership of the Institute of Cost & Works Accountants of India.

7 Post-graduate degree or diploma in management sciences granted by any university or the

Institutes of Management i.e. Ahmedabad, Calcutta, Bangalore or Lucknow.

8 Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi.

9 Post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice, Delhi.

10 Membership of the Association of secretaries and managers, Calcutta.

11 Post-graduate in Company Law and Secretarial Practice granted by the University of Udaipur.

In case the paid-up capital is raised to Rs 2 crores or more then the company may within a period of one year from the date of such increase, appoint a whole-time secretary who should be a member of the Institute of Company Secretaries of India.

General Qualifications of a Company Secretary

In addition to the statutory qualifications mentioned above a company secretary should



Figure 7.17 Qualifications of a CS

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also have some other general qualifications. Some of them are mentioned below:

Good Personality and Behaviour: A Company Secretary should be pleasant and efficient while dealing with the staff, shareholders and the outsiders.

Knowledgeable: A Company Secretary should have sound knowledge about the economy, office management, government policies and legal frameworks.

Proficiency in Language: As the job of a Company Secretary involves with a lot of correspondence therefore he needs to have a good command over the language which he uses for such business correspondences.

Duties of a Company Secretary

A Company Secretary has to perform two types of duties: Statutory Duties and General Duties.

Some of the statutory duties to be performed by the Company Secretary are given below:

- 1 to maintain statutory books like Register of investments held by the company in the name of its nominees, index of members and register of directors, manager and secretary
- 2 to sign the annual return and certify the documents annexed thereto.
- 3 to make available for inspection and furnish copies of the Register of members.
- 4 to make available for inspection the Register of Directors.
- 5 to verify and sign any document of proceedings requiring authentication by the company.



Figure 7.18 Duties of a Company Secretary

The general duties of a secretary are determined by the nature, size and terms of the arrangement of the company and hence it may vary from company to company. Some of the general duties, which are universally found to exist in every company, are given below:

- 1 to be physically present in all meetings of the company
- 2 to make minutes for all the meetings held
- 3 to issue notices to members and others as and when required.
- 4 to make correspondences with the shareholders during making of calls, allotment of shares, forfeiture of shares and transfer of shares.
- 5 to perform other administrative functions.

Liabilities of a Company Secretary

There are two types of liabilities of a Company Secretary: Statutory Liability and Contractual Liability.

Some of the Statutory Liabilities of a Company Secretary are mentioned below:

The Company Secretary is held liable when he makes a default in any of the following matters:

- In filing returns as to allotment of shares within the prescribed time and.

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- In filing of annual returns.
- In preparing and delivering share certificates and debenture certificates.
- In holding statutory and annual general meeting.
- In maintaining Register of Members, Register of Directors and Index of Members.
- In circulation of member's resolutions.
- In recording the minutes of the meetings.
- In giving notice of Board's meeting.

Depending upon the kind of default made by the Secretary a stipulated amount of fine is imposed upon him.

The contractual liability arises out of the service agreement entered into between the secretary and the company. The secretary will be held liable in matters mentioned below:

- If he does not carry out the orders given to him by the Board.
- If he allows clash between his personal interest and the interest of the company.
- If he commits fraud in course of his employment.
- If he discloses secret information about the company due to which the company suffers a loss.
- If he acts beyond his authority.
- If he makes secret profit in the company by virtue of his position as a secretary.

Section

SECTION	DESCRIPTION
Section 274	Disqualifications of a Director
Section 291(1)	Powers of a Director
Section 2 (26)	Definition of a Managing Director
Section 267	Disqualifications of a Managing Director
Section 269 (1)	Definition of a Whole-time Director
Section 2 (24)	Definition of a Manager
Section 385	Disqualifications of a Manager
Section 2 (45)	Definition of a Secretary

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Summary

Director

- Qualifications and Disqualifications
- Appointment by Small Shareholders
- Appointment by Articles
- Appointment by Company
- Appointment by Board of Directors
- Appointment by Third Parties
- Appointment by Central Government

Legal Position of a Director

- Directors as Agents
- Directors as Managing Partners
- Directors as Trustees
- Directors as Employees

Powers of a Director

- When the directors act for their own personal interest
- When the directors have become incompetent to act
- When the directors are either unable or unwilling to act
- Cases where the majority of shareholders may intervene and exercise powers vested in Board.

Duties of a Director

- Statutory Duties
 - To file return of allotments
 - To issue only redeemable shares
 - To attend board meetings
 - To disclose receipt from transfer of property
 - To disclose interest
 - To convene meetings
 - To appoint the first auditor of the company
- General Duties
 - Duty of good faith
 - Duty of care
 - Duty not to delegate

Removal of a Director

- Removal by Shareholders
- Removal by the Central Government
- Removal by the Company Law Board
- Resignation of a Director

Managing Director

- Powers of a Managing Director
- Appointment of a Managing Director
- Remuneration of a Managing Director

Manager

- Disqualifications of a Manager
- Appointment in more than one company

Management

- Remuneration

Secretary

- Qualifications of a Secretary
- Duties of a Secretary
- Remuneration

