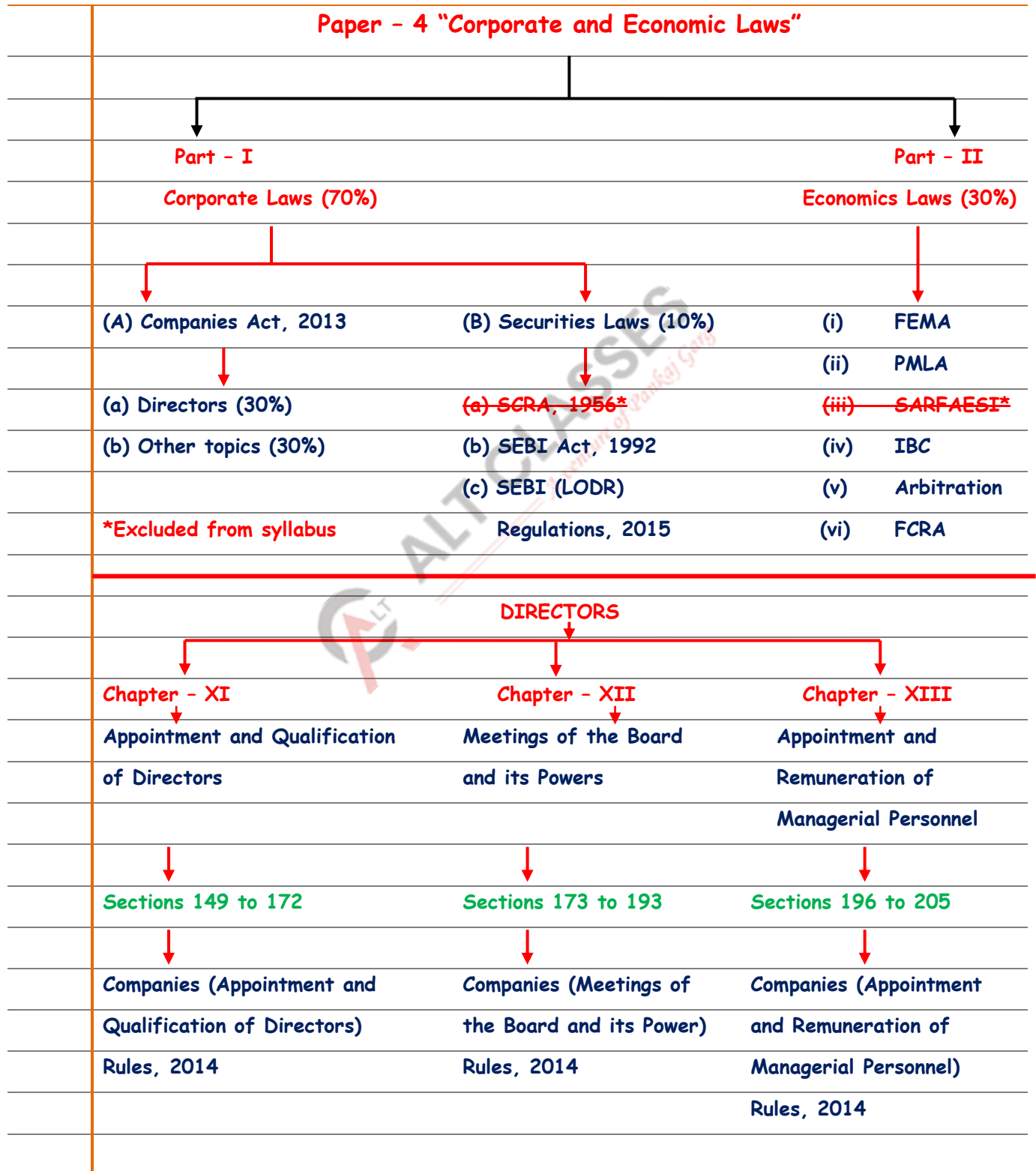
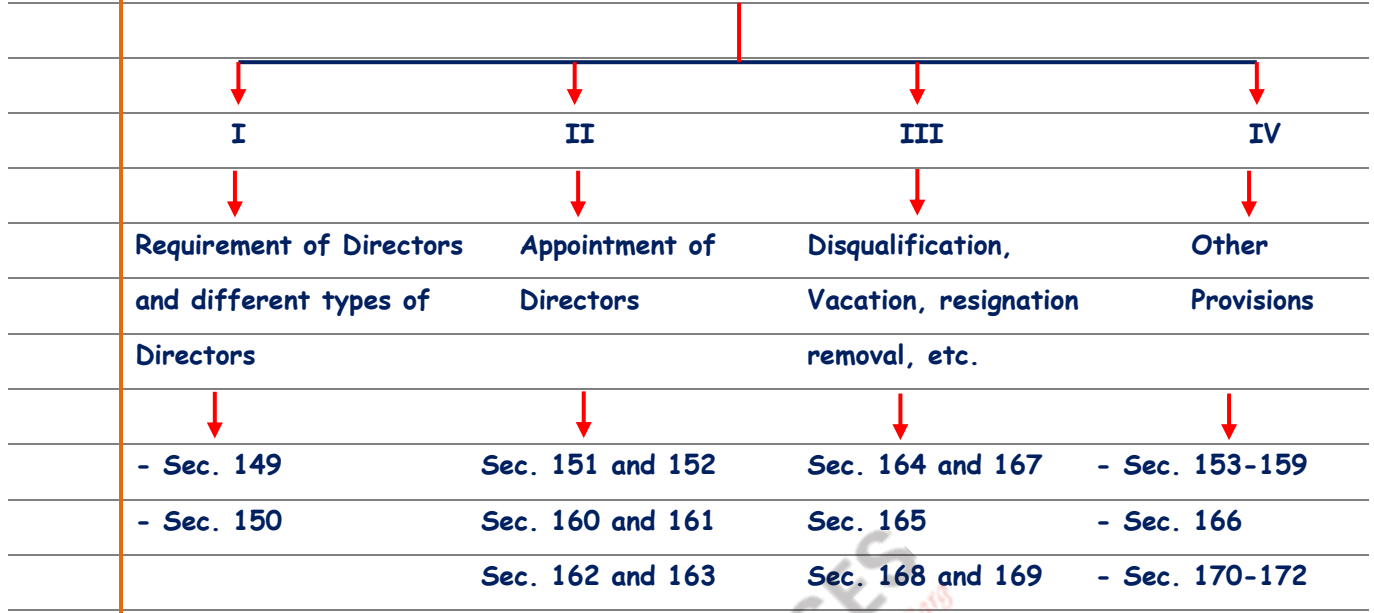


Chapter- 1 "Appointment and Qualification of Directors"

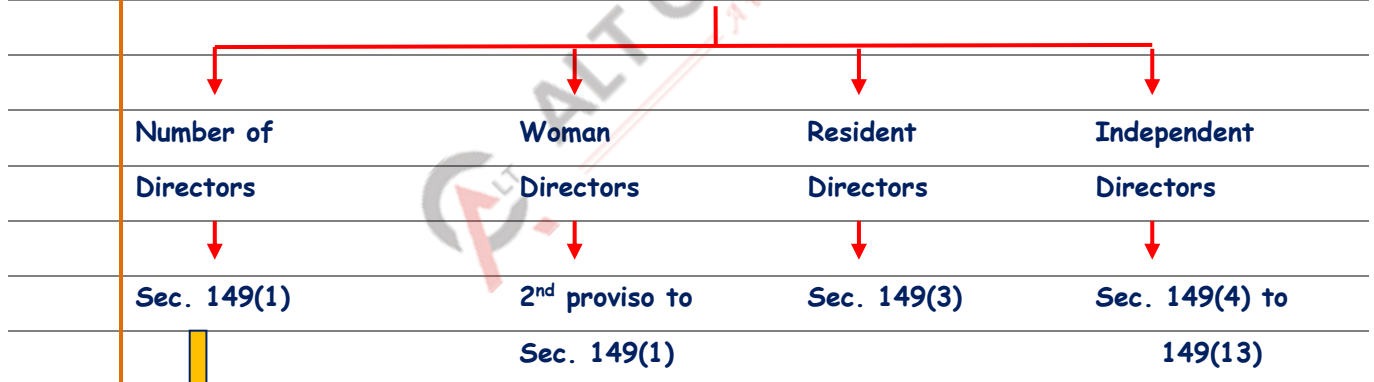


Chapter - 1 "Appointment and Qualification of Directors"

PARTS



(i) Sec. 149: Company to have Board of Directors:



- (i) Every Company shall have a BOD Consisting of Individuals.
- (ii) Minimum directors: 1 (OPC); 2 (Private Co.); 3 (Public Co.)
- (iii) Maximum directors: 15

First Provisio to Sec. 149(1): To appoint >15 directors, SR is required

Note: Limit of Maximum directors and requirements of SR, not applicable over Govt. companies and Section 8 companies subject to conditions.

Woman Director: 2nd proviso to Sec. 149 (1) and Rule 3

↓
Prescribed Companies shall have
atleast one woman director

Companies required
to have woman director

Appointment in case
of a new company

Filling of Intermittent
vacancy

(a) Every Listed Company

Covered under

Intermittent Vacancy

(b) Unlisted Public Companies

prescribed criteria

shall be filled by Board

PUC or Turnover
≥ 100 Cr 300 ≥ Cr.

shall be made within
6 months of date of
Incorporation

at earliest but not
later than

- Immediate next

Note: PUC or Turnover as on
date of latest audited
Financial statements to
be considered.

Board Meeting; or
- 3 Months from date of
vacancy,
whichever is later.

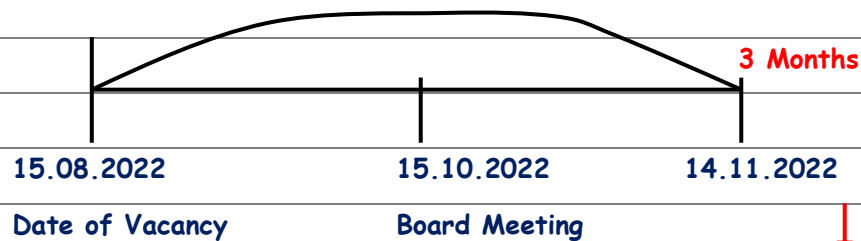
Example - 1:

		PUC	Turnover	whether women director required
ABC Ltd.	Listed	50 Cr.	200 Cr.	Yes
A (Pvt.) Ltd.	"	90 Cr.	250 Cr.	Yes
X Ltd.	Unlisted	40 Cr.	240 Cr.	No
Y Ltd.	"	110 Cr.	290 Cr.	Yes
Z Ltd.	"	90 Cr.	305 Cr.	Yes
M Ltd.	"	110 Cr.	350 Cr.	Yes
O (Pvt.) Ltd.	"	105 Cr.	360 Cr.	No
P (Pvt.) Ltd.	"	90 Cr.	400 Cr.	No

Example - 2: ABC Ltd. Incorporated on 05.09.2022 with PUC of ₹ 150 crores. Within how much period, Woman director shall be appointed.

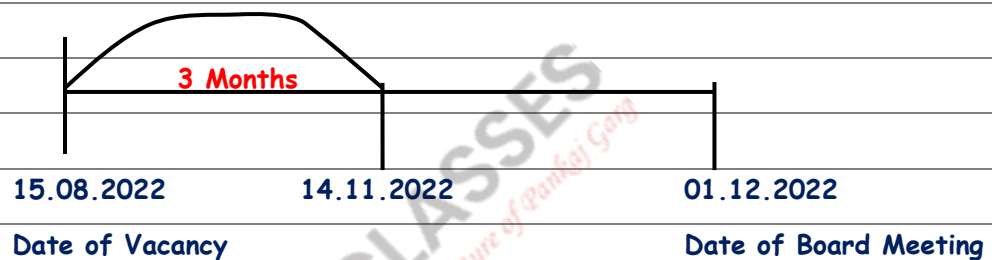
Ans.: 6 months from date of incorporation.

Example - 3: Vacancy Created in office of woman director on 15.08.2022.



Last date by which Vacancy to be filled

Example - 4: Vacancy created in office of woman director on 15.08.2022



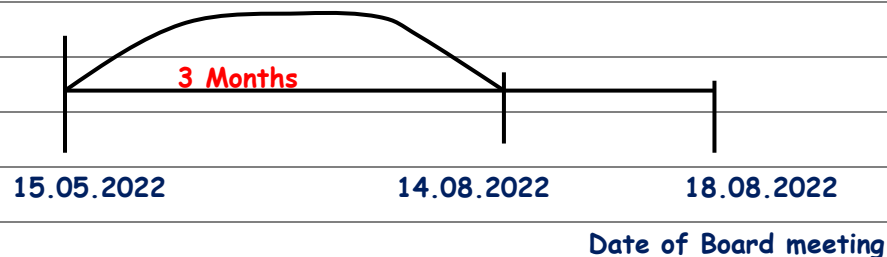
Last date by which Vacancy to be filled

Example - 5: ABC Ltd incorporated on 05.03.2022 with PUC of ₹ 150 Cr. and listed on Bombay Stock Exchange.

- Company has 7 directors - M₁ M₂ M₃ M₄ M₅ (Mens); and W₁ W₂ (Women)
- Office of W₁ falls vacant due to resignation on 15.05.2022.
- Office of W₁ not filled up by the Board in Board meeting held on 18.08.2022.

State whether Sec. 149 (1) has been contravened?

Ans.: No



Resident Director - Section 149 (3):

Existing Companies

Newly Incorporated Companies

Every Company shall have

This requirement shall apply proportionately for the financial year in which company is incorporated

atleast one director

who stays in India for ≥ 182 days during the financial year

Example-1: For financial year 2022-23, period of stay of directors in India of X Ltd. is as follows:

- D₁ - 01.04.2022 to 31.10.2022 > 182 days
- D₂ - 15.06.2022 to 15.08.2022 < 182 days
- D₃ - 01.01.2023 to 15.01.2023 < 182 days
- D₄ - 10.10.2022 to 05.01.2023 < 182 days
- D₅ - 18.06.2022 to 20.07.2022 < 182 days

State whether Section 149 (3) has been complied with. **Yes**

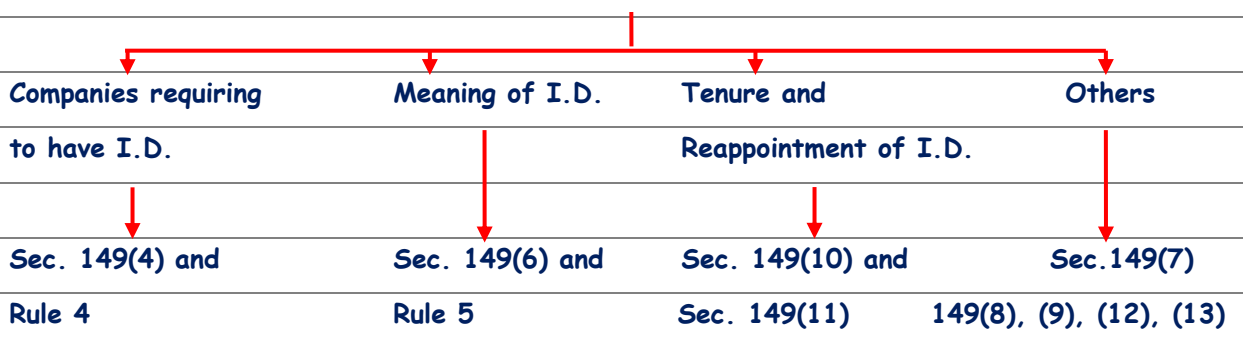
Example-2: A (Pvt.) Ltd. was incorporated on 15.07.2022. Compute number of days a director must stay in India so as to fulfill the requirement of Sec. 149 (3).

Ans.: No. of days from 15.07.2022 to 31.03.2023
 = 17 + 31 + 30 + 31 + 30 + 31 + 31 + 28 + 31
 = 260 days

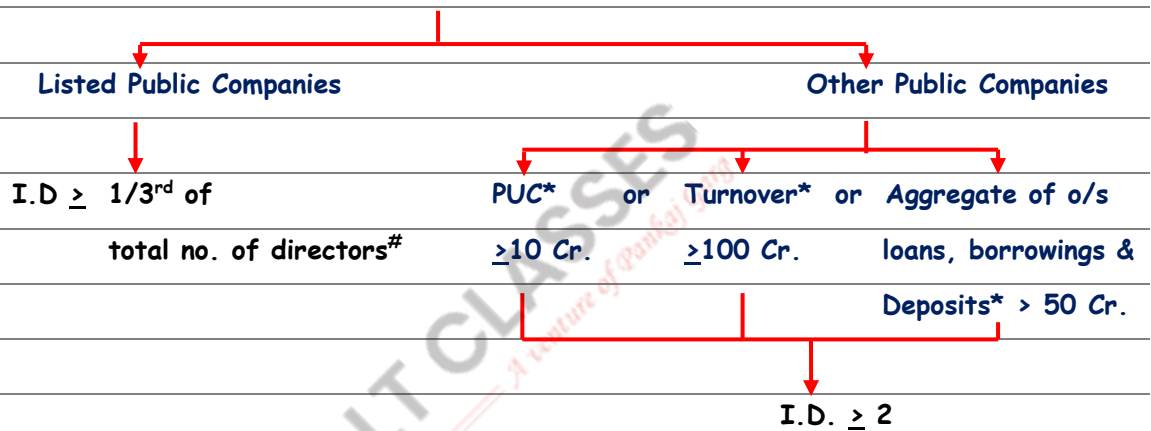
Proportionate days = $182 \times \frac{260}{365}$
 = 130 days

DO PRACTICE - Questions on Woman director / Resident Director.

Independent directors (ID): Sections 149(4) to Sec. 149(13) and Rule 4 and Rule 5



(A) Companies requiring to have I.D.: Sec. 149(4) and Rule 4



*as on last date of lastest audited F.S.

#Note: Any fraction shall be rounded off as one.

Examples:

		PUC	T/O	Loans etc.	No. of directors	I.D.
A Ltd.	Listed	8 Cr.	90 Cr.	45 Cr.	13	5
B (P) Ltd.	Listed	15 Cr.	105 Cr.	40 Cr.	8	Nil
C Ltd.	Unlisted	8 Cr.	90 Cr.	45 Cr.	10	Nil
D (P) Ltd.	Unlisted	15 Cr.	105 Cr.	55 Cr.	12	Nil
E Ltd.	Unlisted	8 Cr.	90 Cr.	55 Cr.	3	2
F Ltd.	Unlisted	15 Cr.	90 Cr.	55 Cr.	4	2
G Ltd.	Unlisted	15 Cr.	105 Cr.	10 Cr.	5	2
H Ltd.	Unlisted	8 Cr.	105 Cr.	45 Cr.	6	2

Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014:

(i) If Company ceases to fulfil any* of the 3 conditions as prescribed in rule 4

↓
for 3 consecutive years
↓

it shall not be required to comply with requirements of Rule 4 until such time as it meets any of such conditions.

***to be interpreted as all**

(ii) In case of company requiring to have audit committee, company shall be required to appoint a higher number of independent directors, so as to fulfill the requirements of Sec. 177.

Sec. 177: Audit Committee shall consist of minimum 3 directors with I.D. forming a majority.

Examples:

		BoD (I.D.)	A.C. (I.D.)	No. of I.D.
X Ltd.	Listed	10 (4)	3 (2)	4 (1/3 rd of 10)
Y Ltd.	Listed	10 (4)	4 (3)	4 (1/3 rd of 10)
Z Ltd.	Unlisted	12 (2)	5 (3)	3 (due to Sec.177)
A Ltd.	Unlisted	12 (2)	6 (4)	4 (due to sec. 177)
B Ltd.	Unlisted	12 (2)	4 (3)	3 (due to sec. 177)
C Ltd.	Unlisted	12 (2)	3 (2)	2

(iii) **Filling of Intermittent Vacancy:** Same provisions as of woman director

(iv) Exceptions:

I.D. not required in case of following unlisted public companies

- Joint Venture
- Wholly owned subsidiary
- Dormant Company

(B) Eligibility of Independent Director - Sec. 149(6) and Rule 5:

Analysis of definition of term "Independent Director" under the Companies Act, 2013					
Sec. 149(6) - An independent director in relation to a company, means - a director other than a <i>managing director</i> or a <i>whole-time director</i> or a <i>nominee director</i> .					
(a)	who,		in the opinion of the Board (Ministry in case of Govt. Company), is a person of integrity and possesses relevant expertise and experience		
(b)	(i)	who	is or was not a promoter of the company or its holding, subsidiary or associate company (CHSA).		
	(ii)	who	is not related to promoters or directors in the CHSA.		
(c)	who	has or had	no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed, with the CHSA, or their promoters, or directors,	during the • 2 immediately preceding FYs or • current FY.	
(d)	none of whose relatives	is	holding • any security of or • interest in the CHSA,	during the • 2 immediately preceding FYs or • current FY.	Relative may hold security or interest in the • company of face value not exceeding ₹ 50 lakhs or • 2% of the paid-up capital of the CHSA or • such higher sum as may be prescribed;
		is	indebted to the CHSA or their promoters, or directors, in excess of such amount as may be prescribed; (Rule 5 - Prescribed Amount ₹50 Lakhs)	during the • 2 immediately preceding FYs or • current FY.	
		has	given a guarantee or provided any security in connection with the indebtedness of any third person to the CHSA or their promoters, or directors of such holding company, for such amount as may be prescribed; (Rule 5 - Prescribed Amount ₹50 Lakhs)	during the • 2 immediately preceding FYs or • current FY.	
		has	any other pecuniary transaction or relationship with the CHSA amounting to 2% or more of its gross turnover or total income.		
(e)	who, • neither himself nor • any of his relatives		• holds or has held the position of a KMP or • is or has been employee of the CHSA	in any of the 3 FYs immediately preceding the FY in which he is proposed to be appointed	However, in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding 3 FYs.
		is or has been	an employee or proprietor or a partner, of: (A) a firm of auditors or company secretaries in practice or cost auditors of the CHSA; or (B) any legal or a consulting firm that has or had any transaction with the CHSA amounting to 10% or more of the gross turnover of such firm;	in any of the 3 FYs immediately preceding the FY in which he is proposed to be appointed.	
			holds together with his relatives 2% or more of the total voting power of the company		
		is	a Chief Executive or director, by whatever name called, of any NPO • that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or • that holds 2% or more of the total voting power of the company.		
(f)	who		possesses such other qualifications as may be prescribed.		