

Chapter - 1 "Appointment and Qualification of Directors"

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

(C) Tenure and Reappointment of I.D.:

Sec. 149(10)

Sec. 149(11)

- I.D. shall hold office for a term upto 5 Consecutive years (i.e. ≤ 5 years)

- No I.D. shall hold office for more than 2 consecutive terms.

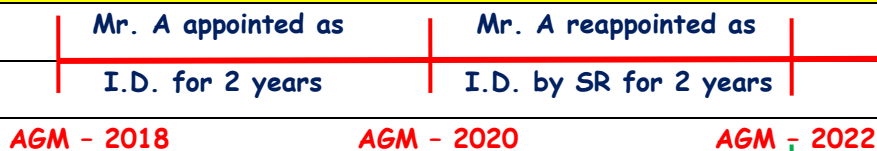
- I.D. shall be eligible for reappointment on passing of a special Resolution and disclosure of such appointment in Board's Report.

- Cooling Period: 3 years provided that I.D. shall not be appointed or associated with company in any other capacity during the said 3 years.

Example 1:



Example 2:



Q. Whether Mr. A can be reappointed as I.D. in 2022 AGM for 1 year.

Ans.No, as cooling period of 3 years required after two tenures.

(d)	<u>Other provisions relating to I.D. Sec. 149(7), (8), (9), (12) and (13):</u>
	<u>Sec. 149(7):</u> Every independent director shall
	<ul style="list-style-type: none"> • at the 1st meeting of Board in which he participates as a director, <p style="text-align: center;">and</p> <ul style="list-style-type: none"> • thereafter at the 1st meeting of the Board in every FY, <p style="text-align: center;">Or</p> <ul style="list-style-type: none"> • whenever there is any change in the circumstances which may affect his status as an independent director, <p>give a declaration that he meets the criteria of independence as provided in Sec. 149(6).</p>
	<u>Sec. 149(8):</u> The company and independent directors shall abide by the provisions specified in Schedule IV.
	<u>Sec. 149(9): Remuneration of Independent Directors:</u>
	Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of Sec. 197 & 198, an I.D.
	- shall not be entitled to any stock option
	and
	- may receive remuneration by way of
	(i) fee provided u/s 197(5),
	(ii) reimbursement of expenses for participation in the Board and other meetings, and
	(iii) profit related commission as may be approved by the members.
	Note: If a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable u/s 197(5), in accordance with the provisions of Schedule V.
	<u>Sec. 149(12):</u> Notwithstanding anything contained in this Act,
	(i) an independent director, and
	(ii) a non-executive director not being promoter or KMP
	shall be held liable, only in respect of such acts of:

- omission or commission by a company which had occurred with his knowledge,
- attributable through Board processes, and
- with his consent or where he had not acted diligently.

Sec.149(13): The provisions of Sec. 152(6) and 152(7) in respect of retirement of directors by rotation shall not be applicable to appointment of I.D.

(e) Selection of Independent Directors (Sec. 150 and Rule 6):

- An independent director may be selected from a data bank.
- The responsibility of exercising due diligence before selecting a person from the data bank, as an independent director shall lie with the company making such appointment.
- The appointment of independent director shall be approved by the company in general meeting and the explanatory statement annexed to the notice of the general meeting shall indicate the justification for choosing the appointee for appointment as independent director.
- The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149. (Refer Rule 6)

Rule 6 - Compliances required by a person eligible and willing to be appointed as an independent director: To be covered from the Book

DO PRACTICE - QUESTIONS ON INDEPENDENT DIRECTORS

