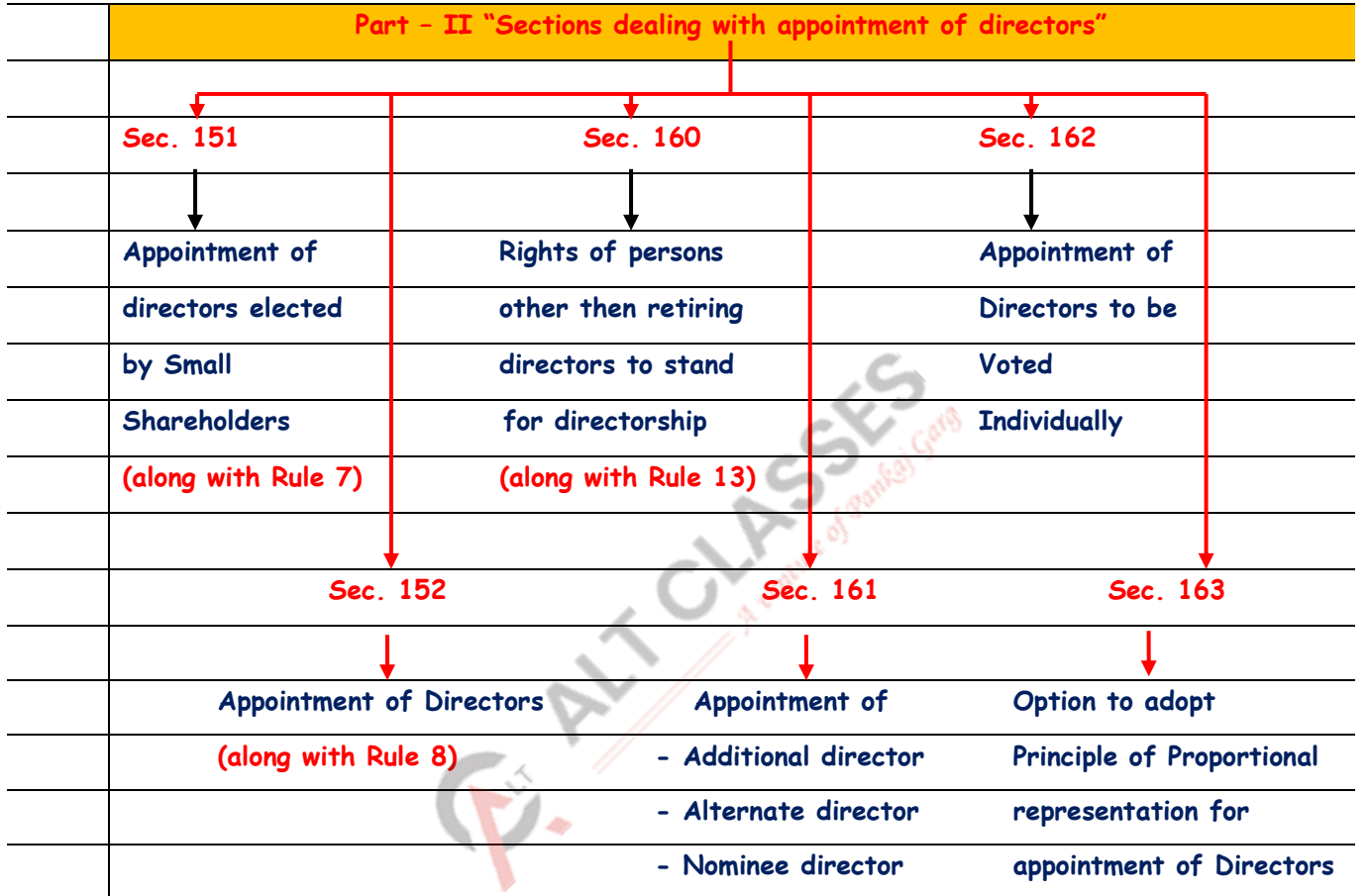


# Chapter - 1 "Appointment & Qualification of Directors"



(ii) **Sec. 151: Appointment of directors elected by small shareholders:**

(Sec. 151 read with Rule 7)

**Small Shareholders (SS):** Shareholders holding shares of nominal Value  $\leq$  20000.

**Small Shareholder director (SSD):** A listed company may have One director

↓  
elected by SS in prescribed manner. (Rule 7)

<b><u>Rules for appointment of SSD (Rule 7):</u></b>			
(i)	<b><u>Requirement of Notice:</u></b>	Notice is to be received from $\geq 1000$ SS or $\geq 10\%$ of total no. of SS whichever is lower	
(ii)	<b><u>Suo Motu appointment:</u></b>	Listed companies may opt to have a director representing SS <u>Suo Motu</u> .	
(iii)	<b><u>Requirement w.r.t. Notice:</u></b>	Notice is to be received <u>14 days</u> before <u>General Meeting</u> . Notice must specify - Name } of the person proposed - Address } for post of director - Shares held } and - Folio Number } of SS who propose.	
Note: If person being proposed does not hold shares, details of shares held and folio no. is not required. (i.e. SSD need not be a shareholder)			
Notice shall be accompanied by a statement signed by the person proposed for the post of SSD stating (a) his DIN (b) that he is <u>not disqualified</u> ; and (c) his <u>consent</u> to act as director			
Q.: Whether a person who is <u>not a shareholder</u> can be appointed as SSD: YES			
Q.: Whether a shareholder holding 30% shares in a company ( <u>Nominal Value &gt; 20000</u> ) can be appointed as a SSD: YES			
<b><u>Examples:</u></b>			
		<b>No. of SS</b>	<b>No. of Applicants</b>
			<b>Status of Application</b>
ABC Ltd. (Listed Co.)	2,000	250 SS	Valid (> 10%)
XYZ Ltd. (Listed Co.)	5,000	450 SS	Invalid (< 10%)
OP Ltd. (Listed Co.)	8,000	810 SS	Valid (> 10%)
MN Ltd. (Listed Co.)	10,000	900 SS	Invalid (< 10%)
PQ Ltd. (Listed Co.)	20,000	1,050 SS	Valid (> 1,000)

	(iv) <b><u>Other provisions:</u></b>							
	(a) <b><u>SSD as I.D.:</u></b>	SSD shall be considered as I.D., if						
		(a) Eligible u/s 149(6); <u>and</u>						
		(b) Declaration of Independence is given in accordance with Sec. 149(7).						
	(b) <b><u>Tenure of SSD:</u></b>	≤3 Consecutive years.						
	(c) <b><u>Reappointment on Expiry of tenure:</u></b>	Not permissible						
	(d) <b><u>Further disqualification:</u></b>	A SSD shall not for a period of 3 years form the date on which he ceases to hold office as SSD						
		↓						
		be appointed in <u>or</u> be associated with such company in any other capacity directly or indirectly.						
	<b>Example:</b>	Mr. X, a practicing CA has been elected as a SSD of ABC Ltd. (Listed Co.) for a period of 2 years.						
		Q. 1: Whether Mr. X can be reappointed for a period of 1 year on completion of tenure of 2 years.						
		Q. 2: Whether Mr. X can be appointed as auditor of ABC Ltd. on completion of tenure.						
		Q. 3: Whether M/s XY & Associates, a CA firm in which Mr. X is a partner can be appointed as auditor on completion of tenure of X in ABC Ltd. As SSD.						
	<b>Answer:</b>							
	2 Years	<table border="0"> <tr> <td>Q.1 - Reappointment</td> <td>- No</td> </tr> <tr> <td>Q.2 - Appointed as Auditor</td> <td>- No</td> </tr> <tr> <td>Q.3 - Appointment of XY and Associates</td> <td>- No</td> </tr> </table>	Q.1 - Reappointment	- No	Q.2 - Appointed as Auditor	- No	Q.3 - Appointment of XY and Associates	- No
Q.1 - Reappointment	- No							
Q.2 - Appointed as Auditor	- No							
Q.3 - Appointment of XY and Associates	- No							
Mr. X appointed As SSD	Tenure of Mr. X Completed							
	(e) <b><u>Limit on No. of Companies:</u></b>	No person shall hold position of SSD in <u>more than 2 Companies at same time.</u>						
		Note: 2 <sup>nd</sup> Company shall not be in a competing business; or is in conflict with business of first Company.						

	<b>(f) <u>Vacation of office of SSD:</u> SSD shall vacate the office, if</b>		
	↓	↓	↓
	He incurs any	office need to be	he ceases to meet
	disqualification	vacated in pursance	criteria of indepanence
	u/s 164.	of Sec. 167	as provided u/s 149(6).

**DO PRACTICE - QUESTIONS ON SSD**

<b>(iii)</b>	<b><u>Sec. 152: Appointment of Directors:</u></b>	
	<b>(a) <u>First directors</u> [Sec. 152(1)]</b>	
	<u>One Person Company</u> : Individual member shall be deemed to be first director	
	↓	
	until <u>director(s)</u> is / are duly appointed.	
	<u>Other Companies:</u>	
	↓	↓
	AOA contains provisions	No provision contained in Articles
	w.r.t. appointment of directors	w.r.t. appointment of directors
	↓	↓
	Appointment will be as	Individual subscribers to the
	per provisions contained	Memorandum
	in the Articles	↓
		shall be deemed to be first
		directors until directors are
		appointed in <i>General Meeting</i> .
	<b>(b) <u>Appointment in General Meeting: Sec. 152(2):</u></b>	
	- Save as expressly provided in the Act,	
	- every director shall be appointed by company in <i>General Meeting</i> .	
	<b>Note:</b> Additional, Alternate & Nominee directors are appointed by Board u/s 161.	
	Directors may be appointed by NCLT (Sec. 242).	

(c) Requirements w.r.t. DIN:

Requirement of DIN - Sec. 152(3)

A person cannot be appointed as director, if he has not been allotted - DIN; or

- Other number as prescribed u/s 153.

Duties to Furnish DIN - Sec. 152(4)

Every person proposed as director shall furnish

DIN or such other number as prescribed and a declaration that he is not disqualified.

(d) Consent to act as director : Sec. 152(5) and Rule 8:

Every person appointed as director shall not act as director, unless he gives his consent.

Rule 8: Consent shall be furnished on or before appointment, in writing, to company in Form DIR - 2

Consent of director shall be filed within 30 days with Registrar.

Consent is to be filed by company within 30 days to Registrar, in Form DIR-12.



Proposed Director

(e)	<u>Rotational and Non - rotational director and vacancy in case of retiring directors:</u>	
	<u>Sec. 152(6) and Sec. 152(7)</u>	
	<u>Sec. 152(6):</u> Unless Articles provide for retirement of all directors at Every AGM	
	↓	
	<u>Not less than 2/3<sup>rd</sup> of total number of directors</u> of a <u>public company</u>	
	shall	
	↓	↓
	<u>be persons</u> whose period of office	<u>be appointed</u>
	is liable to determination by	and by Company
	<u>retirement of directors by rotation</u>	in <u>General Meeting</u>
	i.e. <b>Rotational director <math>\geq 2/3^{\text{rd}}</math></b>	
	<b>of total no. of directors</b>	
	Notes:	
	1. Total no. of directors shall not include I.D.	
	(and Nominee directors appointed by any Financial Institution)	
	2. Additional directors appointed u/s 161 are considered as non - rotational directors as they hold office till Next AGM.	
	3. Retiring directors at AGM = $1/3^{\text{rd}}$ of rotational directors	
	(rounded to nearest one)	
	Examples:	
	<b>Total No. of directors</b>	<b>Rotatinal No.</b>
	<b>(Excluding I.D.)</b>	<b>of directors (i.e. <math>\geq 2/3</math>)</b>
		<b>Retiring directors</b>
		<b>(<math>1/3^{\text{rd}}</math> of rotational)</b>
	3	2
	5	3.33 / 4
	8	5.33 / 6
	10	6.67 / 7
	11	7.33 / 8
	12	8
	13	8.67 / 9
	15	10
		3.33 or 3

Notes:

(i) Directors liable to retire:

- Those who have been longest in office → shall retire first
  - If  $\geq 2$  directors liable to retire → directors shall retire by agreement
- ↓ No agreement  
by lot

(ii) Appointment in place of retiring directors:

At AGM, at which a director retire by rotation, company may fill the vacancy by appointing → the retiring auditor; or  
→ some other person  
(Sec. 160 is to be complied with)

**Situation - I**

Company fill the vacancy

**Situation - II**

Vacancy not filled up  
and  
No resolution passed  
not to fill the Vacancy

**Situation - III**

Resolution passed  
not to fill the  
Vacancy.

Meeting shall stand adjourned

At Adjourned Meeting

Vacancy not filled up  
and  
No resolution passed  
not to fill the Vacancy

Vacancy filled up

Resolution passed  
not to fill the  
Vacancy

Retiring director shall be deemed to have been reappointed

subject to following exceptions

- Resolution for reappointment was put and lost.
- Retiring director is unwilling.
- Retiring director is disqualified.
- Resolution required for re - appointment.
- Sec. 162 applicable.

**DO PRACTICE - Questions on Sec. 152**

