

## Lecture - 6

# Chapter - 1 "Appointment and Qualification of Directors"

(x) Sec. 165 - Number of Directorships:

Sec. 165(1): - Overall limit (Public + Private)  $\leq$  20 Companies

- Public companies only  $\leq$  10 Companies

- Inclusion: Alternate directorship

- Exclusion: Dormant companies and Sec. 8 Companies

**Note:** Directorship in private companies that are either holding or subsidiary of a public Company will be considered as directorship in public company.

Sec. 165(2): Members may be Special Resolution, specify any lesser number of companies in which a director of the company may act as a director.

**Example:**

| Existing directorship |                             |                |                    | Acceptance of New directorship |                      |
|-----------------------|-----------------------------|----------------|--------------------|--------------------------------|----------------------|
| Public Co.            | Private Co. (H/s of Public) | other Pvt. Co. | Dormant and Sec. 8 | Public or Pvt. (H/s of Public) | other Pvt. Companies |
| 4                     | 4                           | 11             | 4                  | 1                              | 0 or 1               |
| 5                     | 3                           | 10             | 5                  | 2                              | 0 or 2               |
| 6                     | 2                           | 9              | 3                  | 2                              | 1 or 3               |
| 7                     | 1                           | 8              | 2                  | 2                              | 2 or 4               |
| 8                     | 1                           | 10             | 2                  | 1                              | 0 or 1               |
| 9                     | 0                           | 8              | 4                  | 1                              | 2 or 3               |
| 10                    | 0                           | 8              | 6                  | 0                              | 2                    |

|      |   |   |
|------|---|---|
|      | <b><u>Sec. 165(6) - Penalty:</u></b>  | If a person accepts an appointment as a director in   |
|      |   | contravention of <u>Sec.165(1)</u>  |
|      |   | ↓   |
|      |   | he shall be liable to a penalty of  |
|      |   | ↓   |
|      |   | ₹ 2,000 for each day after the first during which such  |
|      |   | contravention continues subject to a maximum of ₹ 2 Lakhs.  |
|      |   |   |
|      | <b>Example: Mr. X holds directorship in more than 20 companies. State the consequences.</b> |   |
|      | <b>Answer:</b>  | (i) Penalty imposed u/s 165(6).   |
|      |   | (ii) Disqualification arises u/s 164(1)(i)  |
|      |   | (iii) Vacation of office u/s 167(1)(a)  |
|      |   | (iv) Penalty imposed u/s 167(2), if office not vacated.   |
|      | <b>DO PRACTICE - Questions on Sec. 165</b>  |   |
|      |   |   |
| (xi) | <b><u>Sec. 168 - Resignation of Director:</u></b>   |   |
|      |   |   |
|      | <b><u>Sec. 168(1): Manner of resignation:</u></b>   |   |
|      |   | <ul style="list-style-type: none"> <li>• A director may resign from his office by giving a notice in writing to the company</li> <li>• The Board shall on receipt of such notice take note of the same.</li> <li>• The company shall intimate the Registrar in prescribed manner and shall also place the fact of such resignation in the director's report.</li> </ul> |
|      |   |   |
|      |   | <b>Notice of resignation of director - Rule 15</b>  |
|      |   | The company shall within 30 days <u>from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR - 12</u>  |
|      |   | and   |
|      |   | <u>post the information on its website, if any.</u>   |
|      |   |   |
|      |   | <ul style="list-style-type: none"> <li>• Director, who resigned, may also forward a copy of his resignation to the the Registrar in prescribed manner. (Rule 16)</li> </ul>   |

**Copy of resignation of director to be forwarded by him - Rule 16**

Where a director resigns from his office, he may within a period of 30 days from the date of resignation:

- \* forward to the Registrar a copy of his resignation
- \* along with reasons for the resignation in Form DIR - 11
- \* along with the prescribed fee.

**Sec. 168(2): Effective date of Resignation:**

The resignation of a director shall take effect:

- form the date on which the notice is received by the company
- or
- the date, if any, specified by the director in the notice.
- whichever is later.

**Example:**

| S. No. | Date of Notice | Date of Dispatch | Date of Receipt by company | Date Specified by the Notice | Effective date |
|--------|----------------|------------------|----------------------------|------------------------------|----------------|
| 1.     | 10.09.2022     | 12.09.2022       | 16.09.2022                 | 15.09.2022                   | 16.09.2022     |
| 2.     | 10.09.2022     | 12.09.2022       | 16.09.2022                 | 18.09.2022                   | 18.09.2022     |
| 3.     | 10.09.2022     | 12.09.2022       | 16.09.2022                 | No Date specified            | 16.09.2022     |
| 4.     | 10.09.2022     | 16.09.2022       | 22.09.2022                 | 01.09.2022                   | 22.09.2022     |
| 5.     | 10.09.2022     | 16.09.2022       | 22.09.2022                 | 10.09.2022                   | 22.09.2022     |

**Sec.168(3): Resignation of All Directors:**

Where all the directors of a company resign from their offices, or vacate their offices u/s 167.

- the promoter
- or
- in his absence, the Central Government

Shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

**Do PRACTICE - Questions on Sec. 168**

|       |   |
|-------|---|
| (xii) | <b>Sec. 169 - Removal of Director:</b>  |
|       | <pre> graph TD     A[Sec. 169 - Removal of Director] --&gt; B[Directors Appointed by Tribunal u/s 242]     A --&gt; C[Other Directors]     B --&gt; D[Cannot be removed]     C --&gt; E[Directors other than I.D.]     C --&gt; F[I.D.]     E --&gt; G[Company may remove by OR]     F --&gt; H[First Tenure]     F --&gt; I[2nd Tenure]     H --&gt; J[Company may remove by OR]     I --&gt; K[Company may remove by SR]                     </pre>   |
|       | ----- after giving on opportunity of being heard -----  |
|       | <b>Note:</b> Provisions of Sec. 169(1) shall not apply where the company has availed itself of the option given to it u/s 163 to appoint not less than 2/3 <sup>rd</sup> of the total number of directors according to the principle of proportional representation.  |
|       | <b>Procedure for Removal of Director:</b>   |
|       | <p>1. <b>Requirement of Special Notice [(Sec. 169(2))]</b></p> <p>Special notice shall not be sent earlier than 3 months from the date of meeting but at least 14 clear days before the date of the meeting, at which the resolution is to be moved.</p>  |
|       | <p>2. <b>Sending the copy of Notice of director [Sec. 169(3)]</b></p> <p>On receipt of notice of a resolution to remove a director, the company shall forthwith send a copy thereof to the director concerned.</p>  |
|       | <p>3. <b>Director's right as to representation - [Sec. 169(4)]</b></p> <p>Where notice has been given of a resolution to remove a director &amp; concerned director makes representation in writing to the company &amp; requests its notification to members, the company shall, if the time permits it to do so-</p> <p>(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and</p> <p>(b) send a copy of the representation to every member of the company.</p> <p>and if copy of the representation is not sent due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.</p> |

**Filling of Vacancy**

**Sec. 169(5):** A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board.

- be filled by the appointment of another director in his place at the meeting at which he is removed.
- provided special notice of the intended appointment has been given.

**Sec. 169 (6):** A director so appointed shall hold office till the date up to which his Predecessor would have held office if he had not been removed.

**Sec. 169(7):** If the vacancy is not filled u/s 169(5), it may be filled as a casual vacancy in accordance with the provisions of this Act.

The director who was removed from office shall not be re-appointed as a director by the Board of Directors

**Compensation for Loss of Office: [Sec. 169(8)]**

- A director removed u/s 169 is entitled to claim compensation for loss of office in accordance with the terms of contract.
- However, the right to compensation is subject to the restrictions imposed u/s 202 of the Companies Act, 2013.

**DO PRACTICE - Questions on Sec. 169**