

COMAPANY LAW STUDY MATERIAL (LAW 507)

UNIT IV

(CORPORATE ADMINISTRATION)

BY

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1. DIRECTORS

Corporate administration refers to the system and processes by which a company's directors are accountable to all stakeholders, including shareholders, employees, suppliers, customers and society at large. It emphasises fairness, transparency and responsibility in the company's operations. Essentially, it ensures that the business is managed in a way that respects the interests of all parties involved, providing fair treatment and maintaining ethical standards.

As explained by Catherwood, corporate administration means that a company manages its affairs responsibly and is answerable not only to its shareholders but also to employees, suppliers, customers and the local community, promoting overall corporate accountability and integrity.

A company is an artificial person, it must be represented by living individuals. Directors play a crucial role in a company's operations, conducting business and handling daily affairs. According to Section 2(34) of the Companies Act, 2013 "director means a director appointed to the Board of a company" where "Board of Directors or Board, in relation to a company, means the collective body of the directors of the company". According to Section 149 of the Companies Act 2013, "every company shall have a Board of Directors consisting of individuals as directors."

The composition of the board must adhere to the following guidelines:

Public Company: A minimum of three and a maximum of fifteen directors should be appointed. Also, at least one-third of the directors must be independent directors.

Private Company: Minimum of two and a maximum of fifteen directors are required for a private company.

One Person Company (OPC): A minimum of one director must be appointed.

Note:

1 A Company may appoint more than fifteen directors after passing a special resolution.

1 Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

POWERS OF DIRECTORS

Board of directors is the biggest authority of the company and is vested with the various powers under section 179 of the companies act 2013. The board of directors holds complete control over the company's operations, but must act within the limits set by the company's memorandum and articles and cannot perform acts reserved for shareholders in general meetings.

Section 179(3) of the Act provides that the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board-

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

Powers to be exercised with general meeting approval

Section 180 of the Companies Act, 2013 provides certain powers which the Board of Directors of a company shall exercise only with the consent of the company by a special resolution

- Ø To sale, lease or otherwise dispose of the whole or any part of the company's undertakings;

- Ø To invest otherwise in trust securities;
- Ø To borrow money for the purpose of the company;
- Ø To give time or refrain the director from repayment of any debt.

If the director violates the restrictions imposed by this section, the title of lessee or purchaser is affected. However, if a person has acted in good faith and with due care and diligence, it remains unaffected. This section does not apply to companies whose primary business is the sale of real estate or the leasing of real estate.

Power to constitute audit committee

The board of directors has the authority to constitute the audit committee under Section 177 of the Act. It must have at least three directors, including independent directors. The chairman of the audit committee must be able to read and understand financial statements in order to be appointed. The audit committee shall function in accordance with the terms of reference specified in writing by the board.

Power to constitute nomination and remuneration committee and stakeholder relationship committee

Section 178 of the Companies Act of 2013 empowers the board of directors to form a nomination and remuneration committee as well as a stakeholders' relationship committee. In the nomination and remuneration committee, there should be three or more non executive directors, out of which half are required to be independent directors. A stakeholder relationship committee can also be formed by a board of more than 1000 shareholders, debenture holders, or other security holders. This committee is responsible for resolving the grievances of shareholders.

Power to make contribution to charitable and other funds

Section 181 of the act allows the board of directors to contribute to a genuine and bonafide cause as a charity. The only condition imposed is that if the contribution exceeds 5% of the company's net profit, permission is required to be taken in the general meeting.

Power to make a political contribution

Political contributions can be made by companies under Section 182 of the Companies Act of 2013, with exception of a government company or the company which has been in existence for less than 3 years. However companies' contributions to political parties cannot exceed 7.5% of its average net profits during the three immediately preceding financial years. Any contribution should be approved by the board of directors first.

Power to contribute to National Defence Fund

Section 183 of the Companies Act empowers directors to contribute to the National Defense Fund and any other fund established for the purpose of national defence. Any amount of contribution is acceptable; the only requirement is that the amount contributed should be disclosed in the profit and loss account of that financial year.

DUTIES OF DIRECTOR

Section 166 of the Companies Act, 2013 defines the duties of Directors. A Director of a company should perform the following duties-

Ø A director shall act in accordance with the articles of the company.

Ø A director shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.

Ø A director shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

Ø A director shall not be involved in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

Ø A director shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

Ø A director shall not assign his office and any assignment so made shall be void.

If the director contravenes any provisions of this section, he shall be punishable by a fine of Rs. 1,00,000 or more, which may extend up to Rs. 5,00,000.

TYPES OF DIRECTORS

Residential Director

As per the Act, every company needs to appoint a director who has been in India and stayed for not less than 182 days in a previous calendar year. Such a director will be a residential director.

Independent Director

Independent directors are non-executive directors of a company and help the company to improve corporate credibility and enhance the governance standards. In other words, an independent director is a non-executive director without a relationship with a company which might influence the independence of his judgment.

The tenure of the independent directors is five consecutive years; however, they shall be entitled to reappointment by passing a special resolution with the disclosure in the Board's report. Every listed public company must have at least one-third of a total number of directors as independent directors. Following unlisted public companies need to appoint at the least two independent directors:

- Public Companies with Paid-up Capital of Rs.10 Crores or more,
- Public Companies with Turnover of Rs.100 Crores or more,
- Public Companies with total outstanding loans, deposits, and debenture of Rs.50 Crores or more.

Small Shareholders Directors

A listed company, could upon the notice of a minimum of 1000 small shareholders or 10% of the total number of the small shareholder, whichever is lower, shall have a director which would be elected by small shareholders.

Women Director

A company, whether be it a private company or a public company, would be required to appoint a minimum of one [woman director](#) in case it satisfies any of the following criteria:

- The company is a listed company and its securities are listed on the stock exchange.
- The paid-up capital of such a company is Rs.100 crore or more with a turnover of Rs.300 crores or more.

Additional Director

A person could be appointed as an additional director and can occupy the post until the next Annual General Meeting. In absence of the AGM, such term would conclude on the date on which such AGM should have been held.

Alternate Director

Alternate director refers to personnel appointed by the Board, to fill in for a director who might be absent from the country, for more than 3 months.

Nominee Directors

Nominee directors could be appointed by a specific class of shareholders, banks or lending financial institutions, third parties through contracts, or by the Union Government in case of oppression or mismanagement.

Executive Director

An executive director is the full-time working director of the company. They look after the affairs of the company and have a higher responsibility towards the company. They need to be diligent and careful in all their dealings.

Non-executive Director

A non-executive director is a non-working director and is not involved in the everyday working of the company. They might participate in the planning or policy-making process and challenge the executive directors to come up with decisions that are in the best interest of the company.

Managing Director

A managing director means a director entrusted with the substantial powers of management of the company by virtue of the articles of a company, agreement with the company, resolution passed in the company general meeting or by the board of directors.

2. NOMINEE DIRECTOR UNDER COMPANIES ACT, 2013

A nominee director under Company Law is an individual appointed by a shareholder, financial institution or government entity to represent their interests on the board of directors of another company. The nominee director acts as a liaison between the appointing entity and the company, ensuring that the appointing entity's interests are considered in board decisions.

While the nominee director may have a fiduciary duty to the appointing entity, they also have a duty to act in the best interests of the company as a whole. Nominee directors are common in situations where one entity has a significant investment or interest in another company but does not want to directly manage its affairs.

According to *Section 149(7) of the Companies Act, 2013*, a “nominee director” is a director appointed by a financial institution in accordance with the provisions of any applicable law or agreement or appointed by a government or any other entity to represent its interests.

It is important to note that a Nominee Director cannot be classified as an Independent Director in a company, as specified in *Section 149(6) of the [Companies Act, 2013](#)*.

Section 161(3) empowers the Board to appoint any individual as a director nominated by an institution in accordance with the provisions of any applicable law or agreement or by the Central Government or State Government due to their shareholding in a Government company.

Additionally, Debenture Trustees are required to appoint nominee directors to the board of a company to safeguard the interests of debenture-holders and address their grievances, as per Rule 18(3)(e) of the Companies (Share Capital and Debentures) Rules, 2014.

A nominee director is appointed to ensure the protection of the interests of the financial institution involved. Additionally, the nominee director is tasked with fulfilling responsibilities

towards the borrower company and its stakeholders. The nominee director is accountable for the institution or investor and also oversees the activities of the borrower company or investee.

Role of Nominee Director can be outlined as follows:

Safeguarding the interests of the nominator: A nominee director oversees the company's operations to ensure that policy decisions are made based on sound commercial principles and rationality, with adequate safeguards to protect the interests of the nominator.

Information bridge: The nominee director serves as a liaison between the investee company and the nominator for a regular flow of information. It should be noted that the sharing of confidential information by the nominee director raises questions. Judicial principles suggest that while the nominee director has the right to receive information about the company, they are not obligated to share information with the nominator solely by virtue of the nomination. Any duty to share information may arise from a separate agreement between the nominator and the nominee, as seen in the case of *Hawkes v Cuddy*.

Participation in decision-making: The nominee director actively participates in discussions regarding the company's financial performance, future plans, fundraising, etc. The objective is to apply their expertise to protect the interests of the nominator.

Maintenance of confidentiality: Although a nominee director has allegiance to the nominator, they are expected to adhere to the code of conduct for directors and key managerial personnel. This responsibility increases when the investee company is a listed entity, as there are compliance requirements regarding unpublished price-sensitive information. In *Harkness v Commonwealth Bank of Australia Ltd* (1993) 32 NSWLR 543, it was held that the duty of confidentiality of a director was greater than the duty owed to the nominator.

Nominee directors play an important role in ensuring transparency and accountability in corporate governance. They bring diverse perspectives to the boardroom and contribute to informed decision-making. Their presence also helps in maintaining a balance of power between the shareholders and the management, thereby enhancing the overall governance structure of the company.

3. KEY MANAGERIAL PERSONNEL (KMP) UNDER COMPANIES ACT 2013

The Companies Act, 2013 ('Act') mandates that certain classes of companies have to appoint Key Managerial Personnel (KMP). KMP is a group of people in charge of the company's operations. They are the decision-makers and responsible for the company's smooth functioning. They are employees vested with certain essential functionalities and roles.

Section 2(51) of the Act defines Key Managerial Personnel (KMP). It states that the KMP of a company means:

- Chief Executive Officer, manager or Managing Director
- Company secretary
- Whole-Time Director
- Chief Financial Officer
- Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment
- Such other officer as may be prescribed

Chief Executive Officer, Manager or Managing Director

The Chief Executive Officer and Managing Director are responsible for running the company. The Managing Director has authority over all company operations. They are also responsible for growing and innovating the company to a larger scale.

Under the Act, the Managing Director is defined as a director having substantial powers over the company management and its affairs. A Managing Director is appointed through any of the following means:

- By the Articles of Association
- An agreement with the company
- A resolution passed in a general meeting
- By the company board of directors

The Act defines a manager as the individual who manages the whole company affairs, subject to the board of directors' direction, control and superintendence. A manager also includes a director or a person occupying a manager position in a company, even under a contract of service. However, a company cannot appoint a managing director and a manager at the same time.

Company Secretary

A company secretary is responsible for looking after the efficient administration of the company. They take care of the company's compliance and regulatory requirements. They also ensure that the instructions and targets of the board are implemented.

As per the Act, a company secretary or secretary means a company secretary defined under Section 2 of the Company Secretaries Act, 1980. The Company Secretaries Act defines a Company Secretary as a person who is a member of the Institute of Company Secretaries of India (ICSI). The company secretary should ensure that the company complies with secretarial standards.

Whole-Time Director

Under the Act, a Whole-Time Director is defined as a director who is in whole-time employment of the company. A Whole-Time Director means a director who works during the entire working hours of the company. They are different from an independent director as they are part of the daily operation and has a significant stake in the company. A Managing Director can also be a Whole-Time Director.

Chief Financial Officer

A Chief Financial Officer is responsible for handling the company's financial status. They keep a tab on cash flow operations, create contingency plans for financial crises and do financial planning. They lead the treasury and financial functions of the company.

Companies Required to Appoint KMP

Section 203 of the Act provides that certain classes of companies must [appoint](#) the KMP, which includes the Managing Director or manager or Chief Executive Officer, company secretary and Chief Financial Officer. The company must appoint a whole-time director if it does not have a Chief Executive Officer, manager or Managing Director.

Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides the class of companies that must appoint the whole-time KMP, which are as follows:

- Every listed company
- A public company having a paid-up share capital of Rs.10 crore or more

Further, a private company having a paid-up share capital of Rs.10 crore or more must appoint a whole-time company secretary.

Every whole-time KMP is appointed through a resolution of the board containing the conditions and terms of appointment, including remuneration. A whole-time KMP must not simultaneously hold office in more than one company except its subsidiary company.

The board is responsible for filling the vacancies in the post of KMP within six months of the vacancy. A company can appoint or re-appoint a person as its managing director, whole-time director or manager for a maximum of five years.

4. MEETINGS UNDER COMPANIES ACT 2013

Meetings are an integral part of corporate governance and play a vital role in the functioning of companies. The Companies Act 2013, which replaced the Companies Act 1956 in India, has laid down comprehensive provisions regarding various types of meetings that companies must hold. These meetings serve as platforms for decision-making, communication, and transparency within the organization. This article will delve into the different types of meetings mandated by the Companies Act 2013 and their significance in corporate governance.

Types of Meetings

Under the Companies Act 2013, several types of meetings are specified, each serving distinct purposes:

1. **Board Meetings (Section 173):** Board meetings are essential for the management and administration of the company. They must be held at least once every three months, with a minimum of four meetings in a calendar year. The quorum for a board meeting typically includes one-third of the total directors or two directors, whichever is higher.

These meetings are crucial for strategic decision-making, financial planning, and overall management of the company.

2. **General Meetings (Section 96):** General meetings are gatherings of the company's shareholders. These include Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs). An AGM must be held once a year, while EGMs are called for specific urgent matters. AGMs are important for discussing financial statements, appointing auditors, and approving dividend distribution.
3. **Annual General Meeting (Section 96):** The AGM is perhaps the most significant meeting for shareholders. It provides a platform for shareholders to discuss the company's performance, approve financial statements, declare dividends, and appoint or reappoint directors. The quorum for an AGM is typically a minimum of 5 members present in person.
4. **Extraordinary General Meeting (Section 100):** EGMs are convened for urgent matters that cannot wait until the next AGM. These can include changes in the company's constitution, modification of the objects clause, and alteration of share capital. The notice period for an EGM is shorter compared to an AGM, and the quorum is typically higher.
5. **Meeting of Creditors (Section 230):** In cases of mergers, amalgamations, or reconstruction, the Companies Act mandates meetings of creditors. These meetings allow creditors to express their views on the proposed agenda and vote on it. The decision at such meetings can significantly impact the company's future.
6. **Meetings of Debenture Holders (Section 71):** Companies that issue debentures must hold meetings of debenture holders. These meetings are essential for discussing matters related to the debentures, such as interest rates, redemption, and security.

General provisions to know about conducting valid company meetings

1. **Authority to convene meetings**
A meeting must be called by the board of directors of the company in order to be valid. A resolution must be adopted by the board in order to decide to call a general meeting and give notice of it.

2. **Notice**

A proper notice must be given by the board of directors in order for a meeting to be conducted [lawfully](#). This means that such a notice must be as per the provisions of the [2013 Companies Act](#). Additionally, notice must be sent to all members who are qualified to attend the meeting and cast votes, mentioning in detail the meeting's location, date, time, and a summary of the business to be discussed must all be included.

3. **Quorum**

A quorum is defined as the minimal number of participants needed to hold a given meeting in accordance with the Companies Act 2013 and its rules. Any business made during a meeting that doesn't have a quorum is regarded to be invalid. The main object of having a quorum is to avoid taking decisions by a small minority of members that may not be accepted by the vast majority. Every meeting has a different quorum requirement.

4. **Agenda**

Agenda can be viewed as the list of matters to be discussed during any meeting. An agenda is crucial for conducting a business meeting in a structured manner and according to a planned order. Every member who is qualified to attend a meeting gets the agenda as well as a notice of the meeting. The agenda must be followed exactly, and the order of the agenda discussed in the meeting can only be changed with the appropriate approval of the members present in the Meeting.

5. **Minutes**

The minutes of the meetings contain a just and accurate summary of the proceedings of the meeting. The Minutes must be prepared and signed within 30 days of the conclusion of the meeting. Further, the Minutes books must be kept at the Registered Office of the company or any place where the board of directors has given their approval.

6. **Proxy**

A proxy is a person appointed by the shareholder of a company to represent him at a general meeting of the company. Further, it also refers to the process through which such an individual is named and permitted to attend the meeting.

7. Resolutions

Business transactions in company meetings are carried out in the form of resolutions.

There are two kinds of resolutions, namely:

- Ordinary resolution, and
- Special resolution.

5. OPPRESSION AND MISMANAGEMENT IN A COMPANY

Section 241-246 of the Companies Act, 2013 lays down the provisions to effectively deal with oppressing and mismanagement in a company.

Corporate democracy finds its roots in the concept of majority rule. The principle of majority originated in the rule of *Foss v Harbottle* which provided that the individual shareholders have no cause of action in law for any wrongdoing by the corporation and the action brought about in respect of such losses shall be brought either by the corporation itself or through a derivative action.

While majority rule is the common norm, it often overshadows minority rights. The objective is to strike a balance between the interest of the small/individual shareholders and the effective control of the company. Therefore, the Indian company law, 2013 has put in place section 241 to 246 to safeguard minority rights.

Defining Oppression and Mismanagement

The term ‘oppression’ is not clearly defined by [Company Law 2013](#), the court of law defines is conduct that involves a visible departure from the standards of fair dealing and a violation of conditions that require fair – especially with regard to the [right of shareholders](#).

The term mismanagement does not find a clear meaning in the act but can be described as conducting company affairs in a prejudicial, dishonest or inept manner. Section No 241 to 246 provides for remedies to the members when they face oppression and the company is being mismanaged:

Any member of the company who has a complains that the affairs of the company are being conducted in an oppressive manner or any material change has taken place which is not in the interest of its members then he has a right to apply to the [tribunal](#).

Such an application can also be made by the Central Government to the tribunal. If the tribunal is of the opinion that the company's affairs are being conducted in a manner prejudicial to the interest of the public, members or company then the tribunal shall make such orders as he may deem fit on whether the company should be wound up or not.

- The specific orders may provide for
- Regulation of the conduct of the affairs of the company.
- Purchase of shares/interest of the members by other members.
- Purchase of shares by the company and consequent reduction in capital.
- Restriction on transfer/allotment of shares.
- Termination or setting aside of agreements between company and MD, any other [director](#) or manager, as the tribunal may think fit.
- Termination of any other agreements between the company and any other person other than those referred to above. The agreement shall be terminated only after due notice and after obtaining the consent of the concerned party.
- Setting aside of transfer/delivery/payment/execution or any act related to property made either by or against the company within 3 months before the date of the application under this section which if done by or against the individual be deemed to be a fraudulent preference.
- A certified copy of the order shall be filed with the registrar by the company within 30 days of the order of the tribunal
- The tribunal may impose interim orders as may be necessary.
- If the order of the tribunal results in an alteration of the MOA or AOA, then such alteration shall be in accordance with the order of the tribunal.

- The certified copy of the altered order shall be filed with the registrar.
- Where the order of the tribunal setting aside an agreement is made, such order shall not give rise to any claim against the company and no
- MD/Director/Manager shall act as the MD/Director/Manager for a period of
- 5 years from the date of the order without the permission of the tribunal.
- Such permission shall be granted only after the notice of intention to apply for leave is served on the Central Government and the Government was given an opportunity of being heard.

Class of company	No. of members to apply
Company with a share capital	–Not less than 100 members OR Not less than 1/10th of the total number of its members Whichever is less OR –Any member or members holding not less than 1/10th of the issued share capital of the company Note: The applicant should have paid all the calls and other sums due on his/her shares
Company with no share capital	Not less than 1/5th of the total number of its members

1. The tribunal has the power to waive off the requirements provided above.
2. Joint holders of shares shall be counted as one member.
3. One member can make an application on behalf of the other members.