

Corporate Laws

Classification of Directors

① ↓
De-facto Director

② ↓
Shadow Director

③ ✓
deemed Director

④ ✓
Inside / Executive Directors

⑤ ↓
outside / Non-Executive Directors

• Those who have not been formally appointed yet openly assume the position of director.

• Those who hides the fact that he is in control of the company. He is like a puppet master who controls the actions of Board.

• Any person on whose directions, Board of Directors are accustomed to act.

Executive Directors are whole time employees of the company associated with day to day working of the company.
Non-Executive Directors are not in the employment of the company. They serve the Board of more than one company and are appointed for their experience.

~~not allowed~~
Disqualifications of Directors (Section 164)

A person shall not be eligible of being appointed as director of any company if :-

- 1) He is of unsound mind.
- 2) He is an undischarged insolvent.
- 3) Adjudged as an insolvent.
- 4) convicted by a Court of an offence
- 5) An order has been passed by Court disqualifying him for appointment as a Director.
- 6) He has not paid any call for shares held by him for more than six months.
- 7) He has not fulfilled provisions related to Director's Identification Number.
- 8) He has not fulfilled provisions related to Maximum Number of Directorships.
- 9) convicted of the offence dealing with related party transaction during last preceding 5 years;

Section 164(2)

(3)

* NO person who is or has been a director of a company which -

a) has not filed financial statements / annual returns for 3 financial years, or

b) has ~~for~~ failed to repay deposit accepted by it or pay interest, or redeem any debentures or pay any dividend declared, for one year or more,

shall be eligible to be reappointed as a Director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do.

Section 164(3) - A private company may by its Articles provide for any disqualifications for the appointment as a director in addition of the above.

Maximum Number of Directorships

Section 165(1) - A person can hold directorships in not more than 20 companies at the same time.

* Directorship in Dormant Company shall not be included while calculating this figure of 20.

Section 165(1)
Maximum — 20

Public Company (10)

~~Public~~ Private Company

(A person can be appointed only in 10 public companies as a Director)



SEBI - this limit has been reduced from 10 to 8 by April 2019 and to 7 by April 2020.

Section 165(3): If a person holds office as a director in more than above mentioned limit then within 1 year, he → Shall choose his companies. → resign from other remaining. → communication such selection to Registrar.

Section 165(5): No person shall act as director in more than above mentioned limit after dispatching the letter of resignation as Director or after the expiry of one year from the date of commencement to this Act.

Section 165(6): Liability of ₹ 5000 for each day if a person accepts an appointment as a Director in contravention of the limit stated above.

(5)

Removal of Directors → Important

I) By shareholders (Section 169)

- A director may be removed before the expiry of his period of office, by passing an ordinary resolution ~~pass~~ in general meeting.
- An independent director re-appointed for second term can be removed by passing a special resolution and after giving him reasonable opportunity of being heard.

Exceptions to above:

- 1) a director appointed by tribunal under Section 242 (Prevention of Oppression and Mismanagement).
- 2) a company following a system of electing 2/3 rd of its directors by the principle of proportional representation under Section 163.

Section 169(2): Any intention to remove a director must be communicated to a company through a 14 days, special notice.

Section 169(3): The copy of the above notice must be sent to the concerned director who shall have the right to make a representation.

The representation ^{notice} made by the directors should be sent to each member by the company.

The vacancy thus created may be filled at the same meeting, provided special notice of the proposed appointment was also given. The director removed cannot be reappointed but will get compensation for wrongful termination.

II) By Tribunal (section 242)

The tribunal can order the removal of the Managing Director, Managers or any of the Directors of the company on an application made to it by any member of the company for the prevention of OPPRESSION and MISMANAGEMENT.

• Section 243: Directors so removed, cannot except with leave of the Tribunal, hold any managerial office for a period of five years in any company.

• Tribunal may also make an order for recovery of any undue gains made by them.

III) By Tribunal on Application by Central Government (Section 241)

Section 241(3): empowers the Central Government to apply to the Principal Bench of the Tribunal, if in its opinion there exist circumstances

(7)

suggesting that -

- a) any person is guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations,
- b) the business of company is / has been conducted in accordance with sound business principles of the company.
- c) Persons managing the company has caused, serious injury or damage to the interests of the trade, industry or business, or
- d) Persons are managing the business with an intent to defraud its creditors.

Section 242(4A): Tribunal shall record its decision stating as to whether or not the respondent is a fit and proper person to hold the office of director in concerned company.

Section 243(1A): Persons found unfit to hold a office shall not hold the office for a period of 5 years from the date of such decision.
(Except in case Central Govt. permit to ~~of~~ hold office).

Section 243(1B): Such person shall not be entitled to be paid any compensation for loss or termination of office.

* In contravention of the 5 years ban, every person | director knowingly acts as a managing director or other director, shall be liable for 6 months imprisonment or fine upto 5 lakhs or both.

Refer: Book of "Corporate Laws" by Reena Chadha and Sumant Chadha.
(Chapter 13 - Company Management)